

A NEW BUSINESS-MEDIATION. ADVANTAGES AND DISADVANTAGES OF MEDIATION AND NEGOTIATION.

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Abstract:

Mediation is a new alternative to solve the conflict amicably, with a person called a mediator, in terms of neutrality, impartiality, confidentiality and with the free consent of the parties. Mediation is a new business must be promoted. The mediation process has many advantages and disadvantages for both parties, as well as courts. Negotiating process aimed at reaching a final agreement between parties who do not share the same views. Mediation is assisted negotiation. Mediation is part of the negotiation.

Mediation is, above all, an art that manages to transform a conflict mediator in a settlement as result of the options generated and chosen by the parties. It is known that resolving conflict requires resorting to traditional judicial organs, they settled on the principle of win-lose (one part wins, the other loses). This settlement does not address the many types of conflict in contemporary society, mainly because of very diverse nature of social relations and economic conditions.

Key words: mediation, negotiation, advantages and disadvantages

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The international literature on assessment results in a lot of mediation, which it describes, inter alia, as a response to the problems of modern life, an instrument of civil society that serves the affirmation of values such as responsibility and solidarity, a current phenomenon which consensus ahead of other ways of resolving conflicts, social development in education aimed at developing communication skills and conflict resolution, so that people get to directly understand the problems they have.

Mediation is part of the family of alternative methods of dispute resolution - ADR (Alternative Dispute Resolution). This term designates a variety of processes by which certain conflicts can be resolved outside the judicial process. Although the names and contents of these processes have some differences, their common aim: achieving, through a third party to an agreement between parties in conflict without resorting to judicial proceedings.

Latin etymology mediate mediation period, which means mediation, intercession. Over time and across countries, mediation and have been given many definitions. In Romania, having as yet literature in the true sense of the word in mediation, but only a few early works, the only definition of "official" that we can report is that of Law 192/2006, which provides in art. 1 paragraph 1 that "Mediation is a way of resolving conflicts amicably through a third party as mediator specializing in conditions of neutrality, impartiality, confidentiality and with free consent of the parties." Paragraph 2 of that article states that "mediation is based on trust that the parties in the mediator, that person able to facilitate negotiations between them and support them to resolve conflict by reaching a mutually agreed solution, efficient and sustainable."

Although mediation is voluntary, a step towards its promotion was done by changing the meaning of article 6 of the Act obliging arbitration and judicial bodies and other authorities having jurisdiction to inform the parties of the possibility and advantages of mediation proceedings and to use it to resolve conflicts between them.

The mediation may be used as required by law, including after the commencement of a trial before the courts, the parties may agree to resolve any conflicts that way in civil, commercial, criminal, family and other matters, as provided by law.

The principles of mediation.

1. Voluntary character of mediation

The principle is embodied in the freedom of parties to use mediation and making a decision.

2. Knowingly accepting

The principle states parties' right to be informed of the mediation process.

The mediator is obligated before the beginning of mediation to provide parties the principles of mediation, the procedure to be followed, the role of mediator and the parties in the process of mediation and dispute resolution.

Law no. 192/2006, art. 29 para. States that a mediator must do so for the parties "to understand the scope, limits and effects of mediation in particular the relationships that are the subject of conflict." The mediator shall meet this requirement before signing the mediation.

3. Empowerment

It is the principle that affirms the right and ability of the parties to define their own problems, needs and solutions. The mediator must respect and encourage the parties the right decisions in free and informed choices, to resolve differences between them.

The mediator will inform the parties at the outset, in what will be its work and that the final decision belongs exclusively to them and that they may withdraw from the mediation process anytime.

4. mediator neutrality and impartiality

In the mediation process, parties should have equal rights and an impartial mediator treated, none of them cannot be favored or disfavored. As a consequence of the principle of equality of the parties is their non-discrimination by denying the problem through mediation or a mediation exercise to lower standards of race, color, nationality, ethnic origin, language, religion, sex, political affiliation, wealth or social origin (Article 3 of Law no. 192/2006).

In exercising his professional duties, the mediator must enjoy complete independence from the entities that may have interests in cases where mediation takes place. This independence must be such as to guarantee impartiality and neutrality to the cause, the results and the parties to the dispute.

The mediator must avoid any situation likely to limit its independence and to comply with professional ethics. At the beginning of the mediation process the mediator is aware of any circumstance that would prevent them from being neutral and impartial, is obliged to refuse to take the case for mediation. If at any time during the mediation process the mediator loses these attributes, he is obliged to bring this fact to the parties. In the extreme case in which the mediator cannot maintain neutrality towards the parties, it is recommended closure of the mediation.

5. Privacy

By the very nature of its mission, the mediator is depositary "secrets" parties involved in the mediation. The mediator cannot be questioned as a witness in connection with information and facts that he is aware of the mediation process than with the consent of the parties' prior written

By ensuring confidentiality, the mediator respects the privacy of the parties and ensure their loyalty. Therefore, to maintain secrecy is recognized as a primary and fundamental task of the mediator.

This obligation is not extinguished upon conclusion of mediation, but is permanent. The mediator will draw the attention of persons participating in mediation in accordance with Art. 52 of Law no. 192/2006 on the obligation of confidentiality and they may require signing a confidentiality agreement.

Advantages of mediation

There are a lot of arguments that may cause the parties to choose mediation as a first attempt to resolve their differences.

The most compelling of these arguments are:

- Duration of conflict resolution through mediation
- if the parties really want this, during conflict resolution through mediation is significantly less than the duration of conflict resolution in court: a few days to several months or even years
- The parties may jointly choose the mediator
- The parties shall agree to call the mediator, which can happen if a process - the distribution of cases is random, selecting the mediator by the parties gives them greater confidence in getting the desired result.
- amicable solution reached by the parties in mediation shall be decided by them
- The solution found by the parties is seen as mutually advantageous solution is not required by the mediator. The mediator does not judge the parties and does not give verdicts. His mission is to facilitate dialogue between parties from which they generate options to resolve existing differences. In judicial proceedings, the solution is imposed on the parties by the judge.
- In conflict mediation between the parties are terminated and creating the conditions for preventing the emergence of new ones
- Throughout the mediation the parties shall, during the legal proceedings when there is communication and when it ended finally disappears, being replaced by a deeper state of conflict because, unlike mediation, the court there are winners and losers. Finally, mediation is a way of resolving the conflict on the solution path of confrontation remains legal.
- The mediation procedure can be started quickly and easily
- Details of the case where mediation is clearly advantageous compared with those in the case of judicial proceedings: date and time at which the mediation session is set by the parties with the mediator, depending on their agenda, and mediation sessions may be rescheduled if the parties so request, the judicial proceedings, trial periods are established by the court.

Mediation and mediation sessions are not limited in time, the parties can reach an agreement after one session of mediation. Mediation and may result in partial agreement, in which case it is possible to finalize the resolution, schedule another mediation session at a later date.

- Mediation is conducted in a private and confidential

Problems parties fail to inform others as to the mediation session is allowed only the parties and the people agreed by them. In this case the emotional stress that occurs in any situation of conflict is much reduced.

- Mediation allows the whole approach to conflict respond to judicial process or at most a few questions that may be just the visible part of a conflict.)
- From a financial standpoint, mediation is less costly than judicial proceedings.
- Expenditures include only the mediation the mediator's fee (payable in equal parts) and any costs incurred with the consent of the parties in interest mediation. In the judicial proceedings, the costs are much higher and concern: lawyers' fees, experts, stamp duties, etc. judicial stamp. And these expenses are not fixed, but may be increased during the procedure depending on the complexity of the case and the extension duration.
- Starting the mediation process does not prevent access to judicial proceedings
- If the parties fail to settle their conflict through mediation, they are still able to address the court.
- If the parties agree to mediate after the commencement of judicial proceedings
- Judging by the court case can be suspended at the request of the parties under the terms of art.242 paragraph 1 item 1 of the Code of Civil Procedure. Lapse period is suspended during the course of mediation, but no more than 3 months after signing the mediation agreement. If the conflict was not resolved by mediation, the request for reinstatement is pending judicial tax exempt;
- If the conflict was resolved through mediation, the case will call the role, and the court will rule on the request of the parties, a decision that will reflect the agreement of the parties, with the ruling, the court will, at the request of the interested party, restitution judicial stamp duty paid for its inauguration.
- mediation contract can be terminated at any stage of the mediation process
- Either party may terminate the contract in conflict mediation at any time provided notice in writing to the other parties and the mediator.

Disadvantages of mediation.

One of the biggest drawbacks is the fact that:

mediation is voluntary, parties are free to attend or not the mediator, they cannot be constrained.

No party can be forced by another person or authority to participate in the mediation procedure. An exception to this principle where mediation is a mandatory procedure prescribed by special laws - eg Law 168/1999 on the settlement of labor disputes.

Weak cooperation of the courts. Courts do not cooperate with associations of mediators or Mediation Board to be released from the large number of pending cases.

Failure profession. The profession of mediation is relatively new in Romania, although it is used by many European countries with great success. The state has no intention in the promotion of the profession.

disbelief in the mediation process. Many Romanian with skepticism and concern that profession because they have not ever heard of this method of conflict resolution and because anything new is not necessarily good

mentalities, traditions, customs. There are people who have preconceived mentality and cannot adapt to change in novelty. Those people are conservative and respect tradition, I believe that justice is still in the hands of the court.

Few trainers. Although there are several training centers and mediators that are about a total of 2,000 persons who act as mediator in the law, there is a very small number of trainers, some 13 associations and businesses.

Additional costs in the event of failure.— If the parties fail to come to mediation or a settlement, after several sessions of mediation, and conflict is back in court, following the ruling, they are obliged to pay the mediator's fee, so will incur additional expenses.

hostility liberal profession. Many lawyers, mediators not see this antipathy profession, arguing that they will no longer work. If all the court cases go to mediation, which is unlikely, lawyers will no longer have any role in the courtroom.

Art of negotiation

In conflict management can call on a variety of types of intervention: negotiation, mediation and arbitration.

Negotiation is a process whereby two parties or individuals get, after some discussion, agreement and actively participate in decision-making set.

In the negotiation process both parties make a series of proposals. Part of the success of negotiations is given by the accuracy of their proposals, but also the ability to anticipate partners' assumptions. Each of the two negotiating parties are motivated by the needs and interests direct or indirect, which would normally want to meet. In situations in which partners have common interests and desires, the chances to successfully complete negotiations are very high. In cases where one party is weaker and its interests are ignored, the chances to finish negotiating rates are very low for both partners.

Situations of conflict can be approached from two directions: competition and cooperation. As such, negotiation is based on the competition can be described as a process of bargaining that can be completed either by win / loss, either through compromise / deadlock. In this case, both parties stand loss. Negotiation is the kind of collaborative process that can lead to the final win-win, both parties involved and act to satisfy both interests and that is the result of negotiations based on cooperation between the two parties is an agreement quality. Through such an agreement means that the interests of both parties are satisfied, the negotiation process is balanced and sustainable progress requires less time and helps to improve relations between the parties.

Negotiation concept and main features

The definition of negotiation is noted several differences, depending on the position from which they are addressed. Of course, in most cases, negotiation is seen as a form of communication whose purpose is to solve civilian problems in general and trade in particular. The narrow sense of the concept of negotiation, the most common.

In a broad sense, means the act of discussion, in order to reach an agreement. Moreover, and explanatory dictionary of Romanian language, negotiation is defined as "a concept, which deals with one conclusion of an agreement of economic, political, cultural." Or "an act of mediation, the mediation of a business." Other definitions include the concept of negotiation "any form of meetings, discussions, consultations, or other direct or indirect links.

Circumlocution negotiation in specific fields, defining it is equally varied. According to the Dictionary of Political Economy, where he defines the notion of collective bargaining, it is present in the sense of "multilateral talks on issues of common interest", while diplomatic dictionary also defines a concept in terms of the importance of negotiation in this area activity, namely "core function of diplomacy and the most important and effective peaceful resolution of disputes and international conflict, irrespective of their nature and magnitude."

In fact, negotiation is based on the fact that each has a direct or indirect, which wants to satisfy. When two partners are considering mutual desires, negotiations are relatively

easy, and contacts can successfully continue. But when one party requests are ignored, the negotiation results are not expected. In such a context it is clear that negotiation bears the imprint of human behavior. The

Also, ultimately, the main purpose of negotiation is to satisfy a particular human needs. In conclusion, given the above, the negotiation can be defined as the main form of communication, a complex of processes, activities, consisting of contacts, meetings, consultations, negotiations held between two or more partners to achieve a settlement.

Arriving at the economics, in general, trade in particular, negotiations should be viewed as meaning "talks, discussions between two or more partners, in connection with a common economic goal, the achievement of agreements or commercial transactions."

In a firm, negotiations are an essential moment of the whole activity:

- a) negotiations always go in a double representation: that of a seller and a buyer;
- b) in terms of sales, negotiation is the whole purpose of business activities, realization of all the technical and economic efforts;
- c) in terms of purchase, negotiation is a time which precedes the other activities of the company, a milestone for the results of which depends on the effectiveness of all subsequent phases.

Completion of negotiations, it was decided that future cooperation certainly a defined period, means the sale of certain products and warranty provider in the supply of material (in the form of material and technical equipment) to the consumer. Negotiation is a process of negotiations in which the partners are in a kind of competition, which takes place between at least two participants, which aim, through certain forms (written, telephone, direct meetings, etc.), To conduct a transaction, a business (bringing progressive interests and their positions on, for example, the sale, purchase, cooperation in making a product, performing work, etc.). Action is completed, when it comes to understanding, in an agreement, agreement, contract, etc.. legal value.

Negotiation is essentially all the actions and documents prepared or presented in a dialogue between two partners, conducted by their officials, leading to completion of a transaction, a business. In literature and in economic practice, "negotiation" and have outlined several definitions, emphasizing specialists in the field, sometimes different sides considered significant for this action. After Harold Bloom, "professional negotiation is a means by which a buyer and a seller, using a communications specialist, an agreement on how to manage a contract must reflect a balance between the interests of both parties."

Regardless of how it is defined the concept of negotiating position from which it approached its relevant analysis must consider the following main features:

negotiation process is a social phenomenon that involves regular communication between people, usually between two parties, in particular. That if only because it is a process conducted by humans, bears the imprint separate negotiation behavior. That is why the way in which human behavior is perceived is the main element underlying theory of negotiation. In fact, this behavior causes the result of negotiation, but cannot be ignored social context in which they operate, the negotiator representing an isolated island in the ocean.

negotiation is an organized, which would, if possible, avoid confrontations and assumed a constant competition.) Typically, the negotiation takes place in a formal framework based on procedures and techniques. Even when negotiations are carried out such a framework, the parties must comply with certain procedural requirements and Ethics, established itself over time;

Negotiation is a process with better targeting, which requires the harmonization of interests. It aims to achieve an agreement of will, a consensus and not necessarily a

victory, both partners (not opponents) must complete the process of negotiating with the feeling that they have achieved the maximum possible of what they have proposed. In other words, negotiation is considered successful when all parties are winners or believes he won. This involves presenting their positions, but also knowledge of the other position, the grounds, but also listening carefully to the arguments against, the achievement of impartial judgments possible and finally reach a solution acceptable to all those involved in the negotiation process.

negotiation is par excellence a competitive process to satisfy both partners pursuing common interests and some contradictory, that requires a series of efforts seeking to avoid confrontation and to reach mutually beneficial solutions. In turn, the competition facing individual skills will allow the achievement of goal.

Despite the fact that beyond the competitive nature of the negotiation process as such seeks affirmation of items of mutual interest, in practice very few cases in which negotiations are carried out easily without problems.

Ultimately, the negotiation involves mutual concessions and repeated until the balance that you like according to its needs and available information.

To this must be clearly defined mutual interests in a total transparency and sincerity, without the slightest recourse to conceal or suspicion.

It begins with the formulation of problems to be solved, as answers to questions like: What's wrong? Where is evil? How is it manifested? What are the facts that contradict the desired situation?

It continues with a diagnosis of the situation, insisting on the causes that prevent problems. Then search for theoretical solutions and agreed that measures at least some of them may be put into practice. Rationality algorithm is then: define problems, diagnose causes and seeking solutions. Negotiator seeks to understand the stakes wagered by a partner, to know his feelings, motivations, and its concerns. Which remain unresolved disagreements are settled by recourse to objective criteria such as scientific references, legal norms, moral rules or by recourse to the offices of a neutral arbitrator.

Conclusions

Negotiation is a communication process which is aimed at reaching an agreement between parties who do not share the same views. Negotiation allows the creation, maintenance or development of interpersonal and social relations in general, and business and diplomatic work, in particular.

Negotiation is mainly aimed at achieving a consensus and not a victory and that is because in a negotiation are always involved two partners and not opponents. Because of this negotiation is a cooperative process, both partners remaining after negotiation with the feeling that they have made the most of what he had originally proposed.

Because the negotiation is conducted by people, and they are defined by emotional factors and individual negotiation clearly bears direct footprint of human behavior. First, the role of negotiation is to satisfy needs. In these circumstances, negotiation is a method of human intercommunication.

Negotiation creates the context in which partners can discuss and analyze problems that are reached after a number of purposes. The process of trying to obtain the desired benefits for both parties. This can be achieved when negotiators perceive that discussions take place within a framework of balance and honesty, fairly and honestly. Thus, while negotiation is both a science and an art.

Negotiation is a concentrated form of interactive communication between people in which the parties disagree aim to achieve a common goal. This understanding can be a simple verbal agreement, a tacit consensus, a convention or a truce. The main objective of achieving a negotiated agreement will, of a consensus and not a victory.

Success will depend upon the resolution to change people's attitudes and opinions, to adapt to new conditions of life and to accept the idea of new change.

After negotiations, however, there may be many more possible joint outcomes than expected by the parties. But if negotiations do not resolve the conflict, the solution is indicated mediation or arbitration.

Mediation is part of the negotiation. Mediation is assisted negotiation.

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