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Mediation as a conflict resolution process

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*“The impossibility to communicate with another human
being is one of the greatest torments of the earthly life”.*

Maria Dąbrowska

ABSTRACT

The paper demonstrates and discusses a conflict resolution process through mediation. There will be some selected methods and strategies presented, which accompany the mediation process, as well as chosen situations, where adoption of an alternative conflict resolution method allows to reach an agreement and direct it towards development. This study intends to raise awareness that mediation is not only applied in court cases, but also in numerous social issues as a process for communication and conflict resolution.

Keywords: mediation, conflict resolution, agreement, problem solution, mediation process

1. INTRODUCTION

Disputes, arguments and conflicts occur in all kinds of human relationships, in all dimensions and cultures. Regarding the persistence of a conflict and interrelated internal costs (those emotional physical, personal or financial), people attempted to seek a peaceful solution to a problem. In majority of cases, people solve problems informally or privately, however

there are plenty of situations where the dispute between parties affects those who accompany them in daily lives - children, family, friends - and thus is shifted to a formal path. An example of this is divorce, which is decided in court, and the spouses maintain positive relations, or otherwise it is a process of quarrels, fights and disagreements, which impacts the whole family surroundings. Mediation is a process intended to dissolve a conflict or dispute with participation of a third party, namely a mediator, accepted by all participants. The mediator is not the one who makes the decision for the participants of the conflict, but rather an individual who acts as an intermediary with a purpose to improve relations and communication. The beginnings of mediation - or its similar forms, to be more precise - may be sought for already in the Christian, Jewish, Buddhist and Islamic culture . Out-of-court dispute resolution methods were generally applied in Egypt in 6th century AD, but this long tradition goes back to China and Japan. The typical use of mediation began in the United States, and its success triggered a whole cycle of introducing mediation programs and trainings. Mediation is one of the alternative dispute resolution methods, abbreviated to ADR. Mediation, as a different form of conflict resolution, provides persons with a possibility to talk to each other, and offers knowledge by looking on the conflict from numerous points of view [10-15].

2. CONFLICT

Conflicts pose an inevitable phenomenon that we observe at every stage of our lives. Starting from pre-school, through conflicts at school family, work, social life or political area. A conflict (*conflictus* in Latin, meaning a strike) is the incompatibility of views, interests or values between at least two persons or groups who perceive some irreconcilable differences. The conflict itself is not bad, as it shapes new features and uncovers new skills and emotions. The resolved conflict will be an added value for its participants, an opportunity to change; it will contribute to growth as well as strengthening and deepening of relations. F. Glasl described the conflict escalation degrees and divided them into stages [1-8].

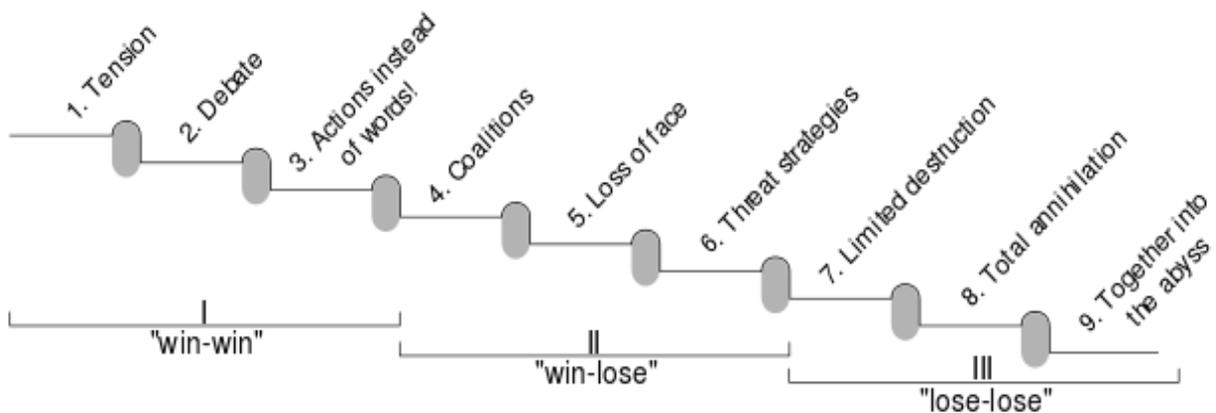


Figure 1. Conflict escalation stages according to Frederich Glasl

On the other hand, the impact exerted by the conflict on its participants may escalate, decrease, dissolve or postpone - this is when an unresolved conflict will affect its participants emotionally.

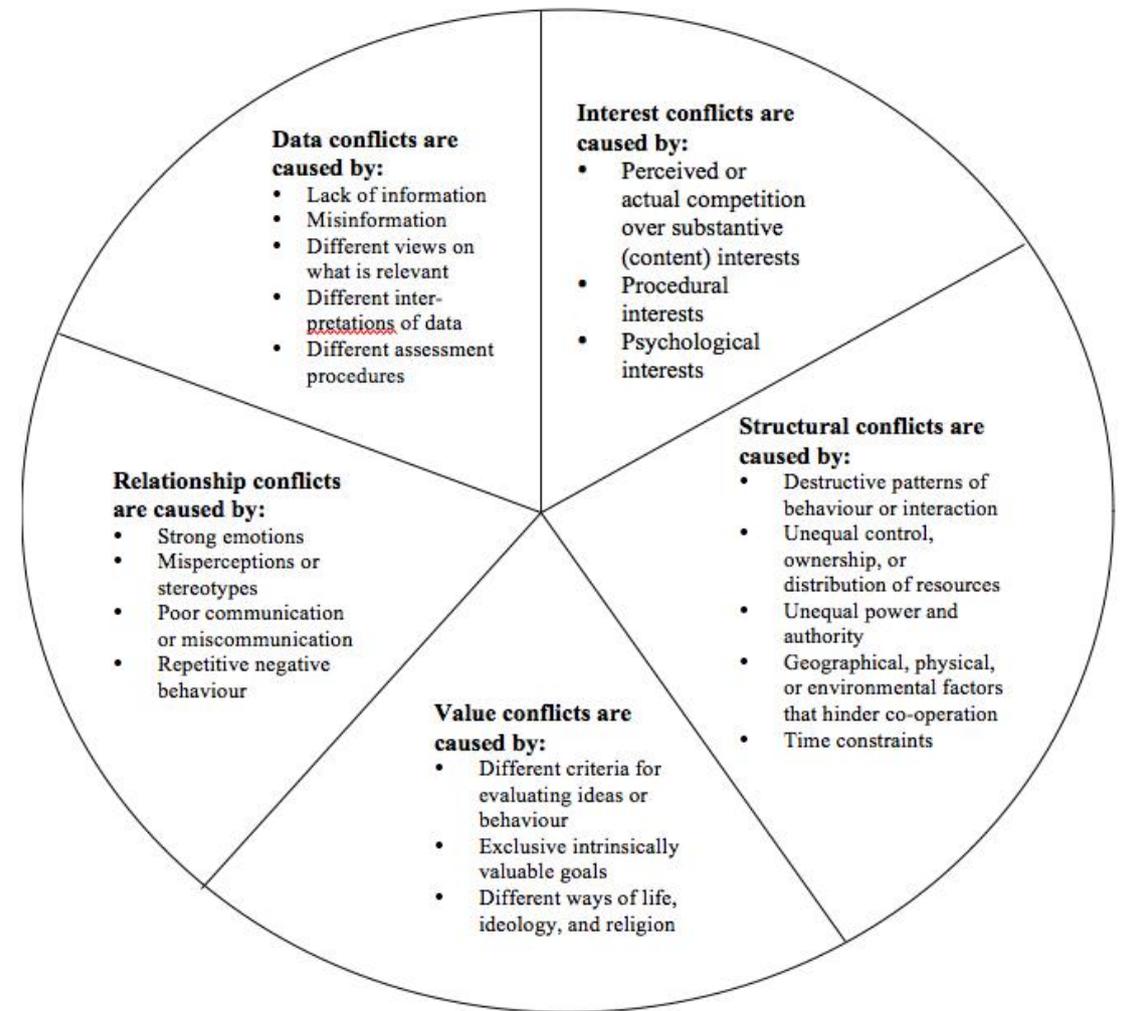


Figure 2. Conflict circle according to Ch. Moore.

According to Moore, we can divide conflicts into conflicts of relations, conflicts of data, conflicts of interest, conflicts of structures or values. The ability to characterize conflicts helps the mediators to undertake the appropriate actions and techniques to seek to resolve a dispute. The most important step in a conflict analysis is to determine the main individuals or groups that are or will be participating in the communication process. The parties to the conflicts can be foreground, background, experts and third-parties. The foreground parties are the entities or persons directly involved in the dispute. The background parties are not directly involved, but they are or may be interested in the outcome. These parties often remain an external observer and sometimes an ally or even an intermediary in a dispute. Afterwards we have the experts, who have or can obtain some information which is valuable for the parties due to the resolution and course of the dispute. As Pielke mentions, experts play four important roles in

the course of the dispute. They can be independent and disinterested data providers, data arbiters, ombudsmen and so-called fair brokers. Each type of expert is an independent, neutral and impartial person or group when it comes to the disputed and demonstrated data within the conflict resolution process. The experts are not interested in the decision-making process of the parties or the outcome. They intend to present the information which is most valuable and accurate for the participants in a dispute. The conflicting issues, problems often arise from a lack of satisfaction of needs, fears, desires, aspirations or interests. The needs and interests of the parties after the dispute is dissolved are also the output that the parties are willing to achieve through mediation, i.e. conflict resolution.

The direct parties in a conflict must always decide the material, procedural and psychological-relational needs in order to facilitate the resolution of the dispute, and to be capable of conducting the process in an amicable manner. The expert may also provide such information as independent data providers. The needs, and precisely lack of fulfillment of those needs, i.e. the basic requirements of human existence, comfort of mental life and survival often become the main element of a dispute between individuals or groups or organizations involved. It is often the case that the lack of those needs leads to development and escalation of a conflict. Understanding the basic needs of a human life can eliminate any smaller conflicts, solved internally, without participation of third parties.

However, as the literature of the subject suggests, failure to fill the basic needs in groups, at work or in organizations leads to a conflict and misunderstanding. It is therefore necessary to understand the needs and interests of human life and functioning in a society in order to be able to eliminate and prevent the emergence of a dispute that starts with the basic components of life of each of us. The conflicts are also related to some personality features of those involved in a dispute - here we can mention authoritarianism, low self-esteem and dogmatism. The variables that occur in participants of a conflict are education, age, origin, culture and social patterns. In numerous cases, the significant difference makes it difficult to reach initial talks and mediation or negotiations, but over the time, the mediator's observations and preparation will result in the initiation of behaviors striving for a dialog and problem solution. Thus, the determination of needs regarding the personality, variable and other factors which determine a dispute [1-5, 10-20].

Failure to fulfill the needs of persons or groups will lead to conflicts in numerous dimensions. Therefore, the mediation is conducted in plenty of areas. Depending on the participants and the subject of the conflict, we distinguish between economic, civil, family, peer and educational mediation. However, as the literature of the subject suggests, there are also political mediations operating on a global scale. An example is the intervention by the UN Secretary, K. Annan, and other African authorities who joined the mediation of the disputed elections in Kenya in 2007. Another example is the agreement regarding the conflict in South Africa in 1991.

The African National Congress and the Inkatha Freedom Party developed a national peace agreement, which contributed to the establishment of local peace commissions. In that period, despite of numerous structural, political and first of all logistics obstacles and limited resources, the conflict resolution system, namely the mediation, made some important contribution to the peaceful transformation of South Africa. Members of peaceful commissions, mediators and community activists contributed to the change of the conflict into constructive development, which is evidence by general elections in 1994 and then the strive for development and reconciliation in South Africa. Activity in South Africa is an example of

change in the conflict participants and the strive rather for general growth than aggravating the dispute.

The impact exerted by the conflict on the society could have only worsen the situation and support the negative emotions, but it turned into development of the desire for reconciliation. In cases of settlement in such significant, political disputes, the needs of not only those who take part in the conflict are fulfilled, but also the needs of residents, who become participants of the conflict and feel that their needs - e.g. security - are fulfilled. There are numerous political conflicts in the history of every nation, and they often begin with strikes or manifestations, which with quick-response, social dialog and the willingness to drop further escalation of the problem, may be closed or turned into better action. Problem solving is a stage and strategies which can help in special situations. Practitioners and supporters of problem-solving lessons present several possibilities of reaching a dissolution or reconciliation in a conflict.

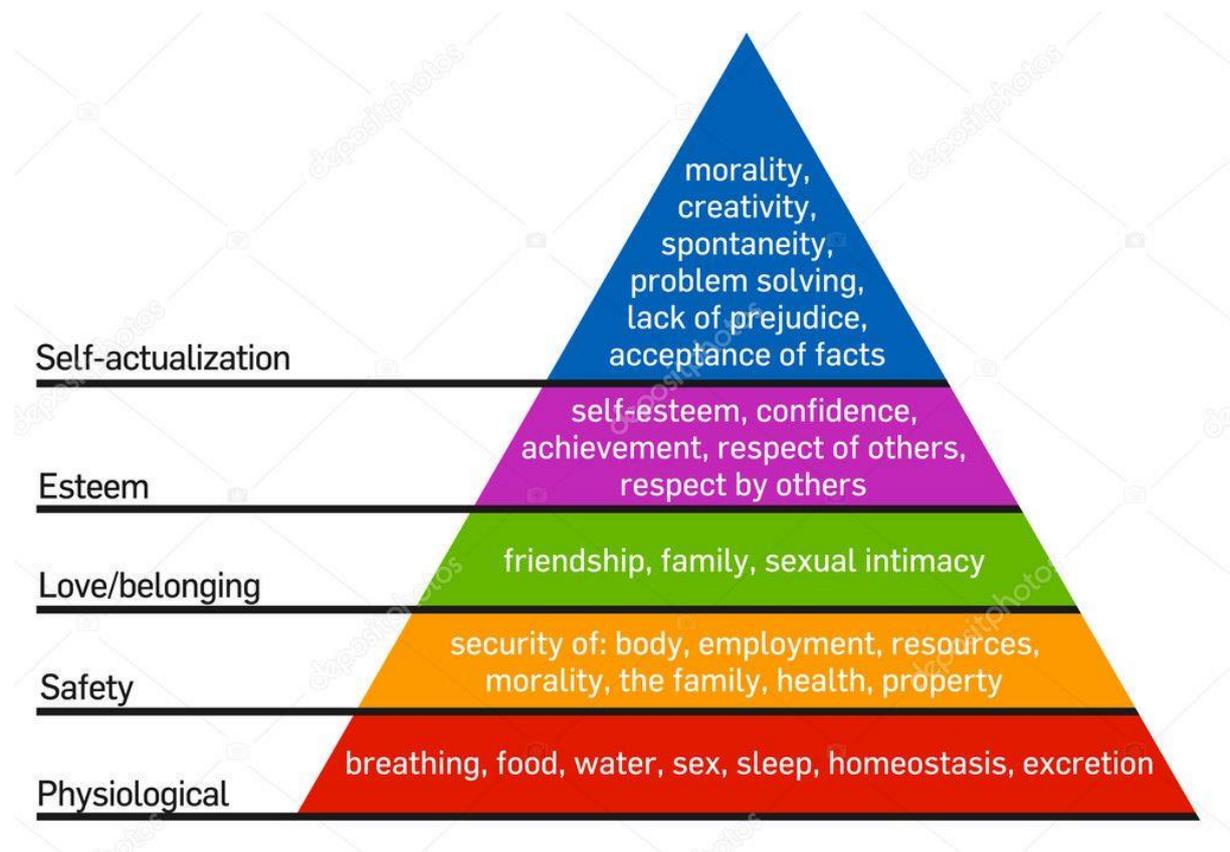


Figure 3. Maslow's pyramid of needs.

The first strategy is beginning with past problems and relationships, meaning deep investigation of needs and relationships which pose the ground, where the conflicts emerged. Recognizing this foundation allows to move forwards. A different example of a strategy is to begin from past and then to move to the presence and solve the problems. Afterwards, the practitioners suggest starting from the past and then move back to the real problems and reconcile the relationships in a given moment. Another strategy is not to return to what was in

the past. The problem emerged now, and this is now when we focus on the issue, especially when the parties believe that the past is already closed. The case is similar with another example, where the mediator starts from the present problem, pointing exactly to the present relations. Majority of Northern American, Australian and Pacific cultures practice this strategy of action on current problems, but they return to the past when any neglected issues emerge, affecting the present conflict. According to Blake and Mouton - supporters of the problem-solving workshops - outlining the vision of future without the present conflict and the return to the past, causes some positive interactions of the conflict participants what accelerates dissolution of the current dispute.

The problem solution becomes a priority, as the developed vision of what may happen is interesting for both parties. This is the strategy, where positive future relationships shape, ensuring common and individual benefits, which should definitely override the costs and problems of the present conflict. Other supporters of problem-solving start from the vision of future, showing what advantages the parties may get, and afterwards they move to the past through the present, in order to clear the unfinished and insignificant disputes. Other concept of using the strategy in special situations is the mixing of past and current problems. It consists in focusing on the current time interval, and it afterwards moves into various periods from the past, present and future.

This strategy is employed in all cases where participants of the conflict are focused on various disputes in various time intervals. The mediation methods, strategies of conversations and conduct of disputes along with interpersonal communications are selected by the mediator depending on the type of the dispute, culture and the dispute participants. While selecting the method of problem solution, consideration must be given to attitudes of the parties. Holstein-Beck distinguishes traditionalist, interactionist and behaviorist attitudes. Traditionalist attitudes are manifested by the idea that a conflict is bad, and it should be ruled out, which is related to suppression, avoidance or postponement of a dispute, or even the use of force. The behaviorist attitudes see a problem as an unavoidable element of a social life, and there is a need to strive for agreement and solution. In turn, the interactionist attitudes seek and isolate the positive forces embedded in the problem, the necessary dialog to solve the problem as well as negotiations and confrontation of arguments [2-20].

3. MEDIATOR

A mediator is a person, whose task is to support communication between the conflicting parties. It is important that the mediator is well-prepared in substantive terms to fulfill their role, and that they have undergone adequate training, acquired the knowledge and gained the ability to conduct a mediation process resulting in an agreement. The mediator should be a positive figure, characterized with quick and effective process of establishing relationships with participants. It is a fact that the mediator should be liked and respected, as the conflict participants feel affection to such a person. A good mediator consists of both personality and knowledge. However, a mediator is an outside person who resolves or attempts to resolve conflicts, and therefore must adhere to the mediator's work ethics, rules and principles. The literature of the subject presents numerous records concerning the mediator's ethics, however, as regards a different tradition and culture, they differ in the message and principles in various

countries. A good example of ethics is the pyramid of ethics presented by G.C Constantinescu which distinguishes four main principles [3-10, 20-21].



Figure 4. Pyramid of ethics principles in mediation.

The Social Council for Alternative Methods of Conflicts and Dispute Resolution at the Minister of Justice developed the Ethical Code for Polish Mediators. Regarding the character and participants of the mediations, the mediation standards are created. In November 2017 in Poland, the Children's Ombudsman published the standards for peer and school mediation in schools and other educational institutions. The literature of the subject and legal framework show that mediation is developing more intensively, and there are legal regulations, principles and acts under preparation. A mediator is a neutral and impartial figure, who is bound by confidentiality, thus it is so important that a person on this position does not aid any of the parties, but still provides some support to the weaker one. An impartial mediator trying to reconcile the parties to a cultural dispute should hold knowledge in the scope of a given culture and tradition, as well as the present involvement of the environment in the conflict. A mediator in family and divorce cases is also obliged for effective agreement between the parties, taking into account the upbringing of children from this relationship and allocate the time of care, stay with the parent or spending the time with children in other ways, not to violate the bond between the parent and the child. These are the parents, who is responsible for upbringing the children, but while mediating the family cases, a mediator must make the parties aware and oblige them to fulfill the parents' duties with the signed agreement. The property issues in a family, in the case of divorces, are also reflected in the mediator's work, as a mediator should provide for such distribution of common property that each of the parties feels fulfilled and is ensured with financial stability, if the property allows. The economic or political issues require the mediator to pay more attention, and it is often necessary to get help from third parties, e.g. experts in order to take a closer look on the conflict. A mediator is not someone, who can make final decisions on e.g. the value of the matter at issue or ensure legal support in the court proceedings, thus they lean on experts, lawyers, doctors in the case of

medical environment conflicts or other specialists in a given field. Mediation practitioners and supporters of conflict-resolution through mediation formulate their experience-based standards or rules for mediation according to U. Haeska. Haeska distinguished ten rules for mediation, dividing them into categories of professional conflicts and personal life: goal orientation, inclusion instead of exclusion, voluntariness, self-determination, flexibility, equal opportunities, respecting various interests - versatility, responsibility, time limit and implementation. Haeska believes that following and conducting mediation in accordance with the proposed rules will bring some positive final output. [7-22]

4. TYPES OF MEDIATION

<p>You have the right to mediation;</p> <p>You don't need to go to court with every dispute - choose mediation!;</p>
<p>In mediation, parties decide about the conditions of agreement</p> <p>- an impartial mediator will help you;</p>
<p>Mediation is quicker, cheaper and less stressful than court proceedings;</p>
<p>An agreement made in front of a mediator has the same effect as a court ruling</p> <p>- after it is approved by the court.</p>
<p><i>www.ms.gov.pl/pl/dzialalnosc/mediacje</i></p> <p><i>www.mediacja.gov.pl</i></p>

Figure 5. Raising awareness of mediation.

The proposed style of conflict resolution as ADR describes types of mediation in the scope of its problem-solving approaches. In this division there is a type of facilitative mediation (classic) which focuses on the parties' approach to settlement with the help of the parties, their ideas and proposed solutions. Evaluative mediation consists in helping the parties to assess the strengths and weaknesses of the case and provides for no conclusion by consensus and referral of the case to court. A mediator's role in this method includes presentation of the case from a balcony and from the financial, psychological and legal

perspectives. Another one is the mediation based on interests of the parties, meaning the mediation focused on conflict resolution - it is the most common method, and it comes from negotiations.

The win-win negotiations strategy selected in this method provides the parties with cooperation intended to reach a bilateral agreement. Afterwards, we have the transformative mediation with a purpose to change the character of relationships emerging from a conflict. It is the mediator's task to strengthen the parties so they are clear about their objectives, and they undertake actions intended to make their own and well-thought decisions. The humanist mediation which consists in a dialog and communicating one's emotions present in the conflict situation to the mediator. This type of mediation is most often used in family, employment and criminal problems.

The mediator meets each party separately, to obtain the necessary information and be capable of shifting the emotions and change the perception of the conflict, so an agreement can be reached by the parties. The various mediation stages also distinguish out-of-court mediation, namely the contractual ones which result for the dispute participants' awareness, when the parties seek for agreement. In such a type of mediation the mediator cooperates with the parties in order to establish the dialog, and the participants have the feeling of control over the course of the issue, they feel responsible for their own decisions and they voluntarily seek to start mediation. The court mediation is directed by the court to an independent persons, who does not take part in the dispute, so the parties make an attempt to establish the contact. According to the style of resolving an increasing number of disputes, popularized in Poland, the court - by referring the case to a mediator - cares about the welfare of this process, in both the financial and emotional sides.

5. AGREEMENT AND TERMINATION OF THE DISPUTE

Strategies, methods and other manners of conducting the dispute by a mediator result in an agreement or on the contrary, in court cases, termination of the mediation and transfer of the case to court proceedings. Mediators, namely the persons who prefer an amicable way of settling conflicts and disputes, use the developed and proven tools and methods to close the case. The mediator's role in closing the dispute is not only to improve communication. On the final stages of mediation, in the conclusion and termination of the dispute, the participants need additional support in confirming the mutually acceptable agreements. The users also need to articulate the achieved objectives and changes, as well as the final summary covering all decided issues. In order to make it easier for the parties to formulate their opinions and reach the ultimately written and shaped arrangements, the mediator applies the same strategies as in the case of conflict resolution, but emphasizing to select those, which had the greatest effect in the course of the dispute. In the case of family mediation, the final summary consists in determination of care over children and the family calendar. Participants of family mediations also needs the approval of the court, which is why such mediations end up with an agreement sent to the authority which decides and approves the signed agreement.

The same applies to cases concerning the distribution of property. Based on own experiences and literature of the subject, we observe that the property cases also want to be articulated and finally presented in a form of an agreement approved by the court.

The problem is the fact that there is no trust between the property conflict participants in that strive for agreement, and there is a fear that the arrangements or principles determined in the agreement may not be followed. On this stage, it may give raise to another conflict, which must be thoroughly clarified by the mediator and discussed neutrally, showing that it is worth submitting the final arrangements for the court's approval, for the well-being of the parties.

The parties to the distribution of property, as well as the parties in economic cases look at all conflicts mainly in terms of benefits on one side. A mediator must create a vision of both one and the other party, showing the final result when the dispute will be only a one-sided benefit. In the case of economic or employment disputes, the parties only see their own arguments, and they do not want to look at the problem from the other perspective. In the case of a conflict in an enterprise between an employer and an employee, should present the employer's and employee's side.

Based on their own experience as a mediator, I will cite an example of employees, who did not want to terminate the contract by agreement, because they consumed alcohol at work in small amounts. By defending their positions and at the same time lying to the employer in groups, they necessarily wanted to bring the case to court, thinking that the employer does not have any evidence of it.

The employer, on the other hand, did not want to take the case to court because it could reveal the monitoring installed in the workplace, which the employees did not know about. Explaining the case and its consequences to one party (disciplinary dismissal of employees and refusal of the case in the employment court regarding the monitoring recording) and to the other (financial penalty for the monitoring installed and immediate loss of employees) caused that each party looked at the course of the conflict from the so-called balcony. During the meetings, the mediator presented a comparison, informing about the stage, which the case would be at in the court as well as the financial and emotional costs suffered at particular stages, along with the current atmosphere of the dispute.

The Parties unanimously agreed that a mediation form explaining the conflict is more convenient and informal, even though the meetings gave rise to some conflict situations. The final understanding is achieved in groups composed of the dispute participants, when the agreement is reached, and the events are accepted, and how this situation will shape the people or future circumstances. The mediator or their assistants are responsible for writing down the course and the final findings of the dispute. [1-5, 20-29]

6. CONCLUSIONS

Summing up the mediation as an alternative conflict resolution process, as well as manners for voluntary resolution of problems, we increase its significance and roles of mediators in the society. Disputes and conflicts bring destructive emotions, which can be transformed into positive ones within the course of mediation, or the perspective on the problem can be changed. Mediation helps to understand one's behavior and see the vision of life without dispute.

The dispute, which influences the participants and the environment is the dispute which emotionally destructs, causing the conflict to escalate. Everyone has the right to mediation and spreading the awareness in the society through social actions causes that we use this method increasingly more often.

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