

The roles of the mediator

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Despite efforts over the last 20 years to promote mediation and the roles of the mediator at EU level, mediation is very, very little used. This result is observed even after implementation of large-scale promotion projects and education programs regarding the benefits of mediation for the health of relationships between people, groups, companies, states, and international organizations or for efficient conflict prevention, management and resolution.

Anyone can say, "And so what? And the benefits of healthy eating are well-known, but that does not mean that the research in this field is not alarming." That is so, except that if "eating healthy" is a very meaningful concept for the general public, understanding the concept of "mediation" is still at an early stage.

Obviously, the promotion programs aiming to inform the public about mediation and encourage to use the mediator's role in society have not been enough to strengthen significantly the culture of dialogue in general and for understanding and respect for mediation. Few of these have had a significant long-term impact on pre-university, university and post-graduate education systems, including on continuing vocational training in the legal system and beyond.

Faced with this situation, the governments have been tempted to impose the use of mediation through imperative rules, thus potentially creating potential conflicts with the free access to the courts. Some experiments have had excellent results, as is the case with Italy, but this is not the purpose of this post. Instead, we are interested in highlighting some of the mediator's roles in order to better understand what the mediator can do and how it might be useful.

This is because in jurisdictions where mediation is not used or is very little used and not only, there is a genuine lack of understanding about the role of the mediator. This situation leads to confusions about it, overlapping with other professions, and subjective perspectives even at the level of the policy makers that, are reflected in many, many differences in the way that mediation is enacted or implemented.

Manager of the communication and negotiation process between the parties

Indeed, when the parties choose to use mediation services, they basically entrust the mediator with the design and the management of a balanced communication and negotiation process, based on ground rules proposed and agreed by the parties. In this way, being distracted by the process management, the parties focus only on the content, the substance and the decisions they can take together.

Trainer of mediation participants' skills to use mediation effectively

Mediation is not a panacea and the simple use of mediation does not guarantee spectacular results. Going for example with food, "eating" is not "healthy" under all conditions. For this purpose, mediation participants need the support and advice of specialists who have experience in mediation - mediation advocacy. Unfortunately, although this area is growing, growth is very low, at least in countries where mediation is not widely used. Thus, the mediator has a very important role, namely to help the parties understand the principles underlying the mediation process and the concrete way of approaching the discussions that can lead to the best solutions that are durable and mutually convenient. The role of trainer or coach of the mediator can be put into practice in more or less formal ways within the mediation process. For example, when mediating civil or commercial cases, this role can be expressed at the preliminary stages in preparation for the joint meeting, when the mediator communicates separately with the parties. In complex cases with multiple parties and issues, the mediator may have to dedicate capacity building workshops with the representatives of the parties.

Neutral and impartial facilitator, but without power of decision

The communications within the mediation process are organized and facilitated by the mediator. We were discussing above about the fact that the parties agree the ground rules governing the whole process. Well, the mediator must ensure that all participants in the mediation comply with those rules and remind them of rules whenever needed. For example, one of these rules could be that joint meetings are facilitated by the mediator. The parties to the conflict accept the mediator's "facilitator" role because and when the mediator is neutral, impartial and has no decision-making power. This way, they are comfortable in principle because the power of the facilitator can't be harming for them.

Allied and confident of all parties involved in the conflict

The fact that the mediator has no decision-making powers determines his/her ability to get close to all the parties involved, to understand their perspectives, including their vulnerabilities and their most important points of interest. Some of this information, often of utmost importance, is unknown to the other party. The mediator can access this information, usually in confidence, in bilateral meetings with the parties. It is precisely this integrated understanding that allows the mediator to organize talks on solution options that take all these "ingredients" into consideration. Of course, for this, the mediator has to be a good communicator, to empathize and really understand all the perspectives in the process. Thus, he will build trust with the parties and will be accepted as "confidant". When the mediator manages to have these roles as ally and confidant of all parties, the impartiality transforms more into multi-partiality.

Reality agent

One of the psychological factors that can generate or maintain the state of conflict is the overconfidence. Also, being under the influence of their own emotions and focusing on the vulnerabilities of others, the parties forget about their own vulnerabilities. Thus, another possible role of the mediator is to draw attention to their own risks, to unwanted scenarios that can be achieved if the parties can't reach a negotiated agreement. The invitation to objectively analyse these alternative situations, usually addressed in bilateral discussions with the parties, gives the mediator the role of agent of reality. This role is as risky as it is necessary for the amicable settlement of many disputes, even if its expression requires questions, not answers from the side of the mediator.

Expert, specialist in a certain field

Even if the mediator first brings his knowledge of mediation, communication skills, negotiation and organization of the mediation process, mediators often have skills and experience in different fields of activity that may be specific to natural sciences, social sciences or formal sciences. In most cases, mediators are also law practitioners, managers, economists, engineers, psychologists, professors, or professionals in another field. It is possible to see two mediators, including a construction engineer and a lawyer, who mediate a dispute related to a construction project. A mediator who is a psychologist can mediate a family dispute. Another example may be a mediator who is also a human resource specialist and mediating a dispute at the workplace. Even if, in expressing their roles, all of these mediators do not necessarily provide specific advice to their field of expertise (except where the parties do not specifically request such advice), and it is not even appropriate to do so in the light of the potential risks for their impartiality, the expertise specific to a certain field of practice remains. This helps mediators better understand the perspectives related to that field. Sure, there is also the risk that that understanding will become a barrier to the ability of mediators to remain neutral and impartial, but the risk decreases as experience grows. In this way, it remains that understanding that in many situations allows the mediator to get into the depth of the situation more easily and effectively help the parties to seek solutions. So even if some mediators are considering whether to "isolate" the specific expertise of any domain they have, they might think that that expertise, if used effectively, can be added value to the mediation process.

Of course, some of these roles intertwine with others, but their separate emphasis may be useful for understanding what the mediator can do. On the other hand, the mediator adjusts his / her roles according to the stage of the mediation process and the objectives of that stage, so different "hats" could be used throughout the process.

Undoubtedly, the roles proposed above can be discussed, for example, there are many perspectives on the role of mediator expert. Other roles could be discussed as well. One example that could be controversial is "mediator being mandated by the all parties to act on their joint behalf, such as communicating with stakeholders of relaying letters or messages to other interested parties".

At the end of the day, the parties and the mediator should be comfortable with whatever role of the mediator, certainly, within the framework of the fundamental principles. The list is open, I encourage you to add your thoughts and examples to the comments below.