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# Kluwer Mediation Blog

## What do we mean by dialogue?

Constantin-Adi Gavrilă (ADR Center Romania) · Monday, August 14th, 2017

We agree sometimes to engage in a simple dialogue or in a mediated conversation with other people, but do we necessarily mean the same thing when thinking about dialogue? Are there significant process impacts induced by our perspectives and expectations? And could the dialogue process be more effective should these differences be clarified beforehand? What do we mean by dialogue?

Every process is different. Some would say that the mediation process is an informal process while others may argue otherwise. Also, some processes are more complex than others and would therefore need more formalism i.e. to create the dialogue space, to ensure compliance and enforceability with the agreements. Yes, every process is different, but the question is if there are common characteristics, essential across different cases. This baseline could refer to the process principles like process' privacy and confidentiality, parties' self-determination or mediator's neutrality and impartiality.

Whenever starting a new domestic mediation process (civil, family, commercial), I used to explain the process to the parties and sign the Agreement to mediate – a standard form. Parties would therefore adhere or not to the Agreement and to the general principles. Among all principles, parties' self-determination and their freedom to make informed choices should be at the core of both process and substance.

In more complex multi-party cases like the company – community space and not only, I observed the principles becoming more fluid. Public good may be added to the individual interests, the role of the community as a party or stakeholder could shift some paradigms. The mediators have an active role in facilitating topics for conversation like representation, confidentiality, format of meetings or other ground rules. This process may be a hybrid, a mix between mediation, facilitation, conciliation, consensus building and other dispute resolution processes. It can also be referred to as Mediation with a capital M.

For example, assumptions like privacy and confidentiality, default process characteristics in some cases, are being challenged by the parties that need and require not only private but also public meetings, as well as an active role for mass media and no or limited confidentiality. The Agreement to mediate would take the form of a Framework agreement or Process ground rules that would determine the parties' consensus regarding the dialogue space that they would feel comfortable in. Such consensus could take not only days but also weeks or months to be facilitated.

This more fluid approach over principles can be very challenging. It is not easy to meet parties as a

mediator with the assumption that privacy and confidentiality is good for them, before listening to their stories and learning from them if speaking behind closed doors and keeping things in the room would be helpful.

We develop flexibility through practice. Approaching a variety of cases with different typologies would offer even more opportunities to develop flexibility and intuition. One application of flexibility can be to leave not only the substance to be influenced by the parties, but also the process and some of the things we regard as principles.

And when it comes for dialogue, before preaching it to the parties, we may want to listen and see what they mean by dialogue, just to better understand our possible roles. And this can take a while even before the start of the process.

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