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The Evolution and Communicational Aspects of Mediation

Abstract

Since mediation, as a form of alternative dispute resolution, has become part of the canonized legal system, it has come to life and has made its own path of development from the 1950s to the present. In this paper, the process and the stages of it are discussed from communicational point of view through the terminology of the PTC. The sections also represent the types of mediation. Relationships and interactions between the types are also the subject of this study, as well as the scopes for certain types. The participatory theory of communication (PTC) allows us to review the development of mediation in the 20th and 21st centuries, from a facilitative mediation to a transformative mediation, according to a unified, transparent framework.

Keywords: mediation, problem solving consensus building, participatory theory of communication (PTC), typology of mediation, system theory, development of mediation, transformative mediation, narrative mediation, facilitative mediation, evaluative mediation

Phases of separation from the litigation

Supported by changing legal background and several other conditions, the practice of mediation began to spread in the 50s and 60s of the 20th century. This was the period when modern mediation gained wider recognition (Taft-Hartley Act) (Millis & Clark, 1950). At the time, litigations in the United States were becoming increasingly costly and most of the population could not afford to pay such expenses. Court procedures often lasted for years, which, apart from the obvious law costs, entailed heavy losses for the parties, who had to bring their production or services to a halt for the duration of the procedure. Alternative dispute resolution, such as mediation, was not only more affordable to



the public, but it also promised to settle problematic situations in a matter of weeks. The legal system adapted to the new methods and the judges, attorneys and barristers started to refer their clients to the relevant bodies or services according to the nature of their problems. Besides court procedures, mediation, arbitration and consultation were the most frequent options suggested to those seeking legal help. Because of its distinct advantages and the wide legislative and jurisdictional support it enjoyed, mediation offered solution in an increasing number of disputes. Consequently, mediation and its toolkit are constantly changing and developing. In the past sixty years, several distinct types of the mediation procedures have evolved which can be described by exploring their different dimensions. The application of the different types depends on which promises to obtain the best results, taking into consideration the preliminary conditions and the expected goals (Zumeta, 2000).

Facilitative Mediation

The first type of mediation called facilitative or facilitated mediation was developed in the 50s and 60s of the 20th century. At the time, it was the only type of mediation taught and practiced and it had much in common with courtroom procedures. This type of mediation clearly features a continuity with law as a system of problem resolution, especially regarding its toolkit. The primary objective of the facilitative mediator is to assist the parties in reaching a mutually acceptable resolution as soon as possible. Emphasis is placed on the parties' active participation in finding a solution and keeping the costs as low as possible. Emotional issues behind the possibly arising problems were not at all addressed at the time. Therefore, only those agreements proved to be long-lasting where all the interests of the parties could be brought to surface during the mediation process and where emotional dimensions played no part in the mediation. Such may be economic, human resources and business-related cases. In the course of the facilitated procedure the mediator structures the mediation and establishes its framework. Through his or her questions, the mediator seeks to reveal the interests of the parties behind their positions and aims to assist the parties in analysing the situation and in mutually working out options to resolve their conflict. The mediator does not make decisions, neither does he or she express own opinion. His or her only objective is to enable the concerned parties to become agents in the resolution of their own conflicts and to develop their own opinions and perspectives. This way the attorneys of the parties would have less influence on the procedure and its outcome. In facilitated mediation the parties

are in the same space as the mediator, and from time to time they negotiate separately thus suspending the joint communication process with the mediator. In the beginning, facilitated mediation was the type of mediation applied in voluntary mediation centres. Voluntary mediators received no professional training, neither did have exceptional communicational skills or self-knowledge. Due to such deficiencies, this early type of mediation could not address the individual's own world in a conscious and direct way any differently than earlier court procedures. At the time, however, this was not the objective of mediation and neither did it have the toolkit necessary to that end. Nevertheless, it was obvious that this type of mediation was not capable of handling the difficulties emerging between the parties during the process, and the mediators had no tools to facilitate the representation of the agents' own worlds.

Evaluative mediation

In the evaluative mediation the mediator is usually an expert on the specific topic. The parties seek to identify different solutions that they can accept, and the mediator forecasts the court outcome of the solutions suggested by the agents. The mediator, in cooperation with the parties, comes up with solutions that are acceptable to the participants and would be accepted at the court as well. The mediator is therefore the agent who, using his or her expertise, can offer possible solutions, while the parties merely answer in the affirmative or in the negative depending on whether they can reconcile the offered solution with the concepts of their own worlds. In this type of mediation process the mediator deals with the legally enforceable rights of the parties rather than with their interests and needs. Evaluation takes place based on legal concepts and fairness. Evaluative mediators decrease the amount of time necessary for resolving the conflict by predicting the probable outcome of the parties' approaches represented by their attorneys at court. To put it differently, the parties quickly and cost-efficiently purchase a legal resolution that will certainly be accepted at court. As parties do not disclose their real needs to one another, the mediators meet the parties in separate meetings and there is no common mediation space to speak of. This practice of the mediators moving to and from between the separate rooms is called 'shuttle diplomacy'. The term was first applied to describe the negotiation technique adopted by Henry Kissinger in the 1973 Yom Kippur War, referring to the physical movement of the mediator (Kenneth, 1999). As the real needs are not addressed in this type of mediation, the parties, their attorneys and the mediator focus on finding a legally acceptable resolution. In such cases the me-

diator is usually an attorney specialised in different industries such as banking, construction, and so on.

Narrative mediation

The principles of narrative mediation were worked out in the 1980s by Australia's Michael White and New-Zealand's David Epston (Winslade, Monk & Cotter, 1998, 21-41.). Initially, it was their dedication to the ideas of social constructivism that inspired them to develop the narrative method. They sought to understand the filters of their subjects used to represent facts while narrating their subjective stories. In their narration, the agents reveal their own worlds with the emotional load they experience at that moment and they reconstruct facts as precisely as they can. The main advantage of this type of mediation is that the mediator has the agents literally tell their stories, which allows all concerned parties to see each other's whole own world rather than a fragmented one. During the narrative mediation, the participants narrate the conflict and the relating events as a story. They include all the details that they find significant and their thoughts and reflections on the events as they occur in their own worlds. On the one hand, the story is the succession of events, facts and data, and on the other hand it is the context in which the narrator places it. Individual narratives fit into or connect with greater social contexts, which, in turn also connect to context and stories shared by entire cultures. The agents interactively develop, modify, shape and mutually change each other's narratives (Cobb, 1994). Storytelling as a metaphor may be successfully utilized to normalize the atmosphere between the parties. Through this projection the heroes of the tales can clarify the cause and effect relations, the boundaries of the characters' responsibility and competence. They will gain insight into each other's perception and emotions as well as on how they perceive their projected own-world problems. The atmosphere of storytelling naturally eliminates the issue of responsibility, therefore once their own stories have been told, the participants may jointly construct a new, common story where the emphasis is not on finding who is responsible for what happened. The new story lends a new interpretation to the conflict which may result in the participants' being able to find a solution. The narrative model is based on the perspectives of the participants as determined by their social and cultural context rather than on absolute objectivity. These different perspectives, or, as followers of the narrative mediation put it, different truths, are used to confront the parties; consequently, it is demonstrated that certain truths are valid only in certain contexts. Through the storytelling,

clients apply more and more control in their narratives when they perceive the other party's own world as it takes shape in the tale, and this, in turn, will affect their decisions in real-life conflict resolution (Wylie & Pare, 2001, 153-172.). In this model, the language, in which the stories are narrated, plays a crucial role. Words not only describe events and actions, but also construct those. According to social constructionism, language is a type of social action (Winslade & Monk, 2000). Narrative mediation considers both content and process as part of the overall decision-making system and it does not try to separate them in the practice of mediation. The narrative approach places substantive issues as a secondary aim; its primary focus is to settle the relation of the conflict parties. Story-telling reveals not only the perspectives present in the stories of the other, but it also discloses in one's own story how the narrator rejects and neglects the other party and sheds light on the related emotional background. Fundamentally the narrative model is not far from the transformative mediation, as settling the relations between the conflict parties is important in both approaches. This, however, is achieved not by direct communication between the parties but through projective techniques borrowed from psychotherapies, which narrows down the possible field of application. The narrative approach can be best used in resolving conflicts arising from cultural differences which can be minority-related problems or issues centred on migration. This type of mediation can effectively address socially or culturally motivated personal dilemmas, stereotypes, prejudices, discrimination. This technique was applied when the survivors of the Holocaust and their descendants met with the descendants of Nazi war criminals and it is often used in mediations involving immigrants in Australia, New Zealand, Canada and France. While narrative therapy and family therapy quickly gained recognition, the mediation technique which operates on similar principles never became very popular in Europe.

Transformative mediation, or mediation meets PTC

In the transformative type of mediation, the parties themselves define the goals they wish to attain during the process and the task of the mediator is to support the parties in their doing so. The basic principle of the transformative model is that by strengthening their self-confidence. The authors of Transformative mediation call this process '*empowerment*' (Baruch, Busc & Folger, 2005). Conflict parties will have the capacity to recognize their own and the other party's real needs, interests, perspectives and values. Bush and Folger call this process '*recognition*'. In this type of mediation, conflict parties become agents accord-

ing to the definition of PTC. The parties will recognize and resolve the problem together, in the common mediation time and space. The goal is to transform the present condition that is not acceptable for either party in a way that would be acceptable, implementable and sustainable in the future for both parties. In the process of transformative mediation, the perspectives of the agents may change several times which allows the parties to recognize the interests and needs involved. We talk about a shift when the agents seek to understand the position of the other party, which in turn may generate a new shift in the mediation process. These shifts help the conflict parties transform and re-evaluate their own world and understand the present conditions of the problem. This transformation aims to eliminate the most possible misunderstandings, unnecessary information and intentional – not real, fake – emotions existing in between the conflict parties' own worlds. This huge amount of fake and unnecessary information often contributes to the development of the conflict and is rooted in the earlier relation of the parties. As long as the agents' own worlds are not connected at least partially, forming an intersection of the two worlds that would allow the parties to share with the least possible loss their perception, experience and beliefs of the past, or, to put it differently, the reflection of the problem in their own worlds, no relationship of trust can be forged between the parties, and thus the conflict cannot be resolved. The agent - here are treated only individuals -, as the one prepared to resolve the problem, may only become able to solve it, if the emotional relationship between the parties is restored in an optimal range (Horányi, 2007). In this range the agents reach a state of balance where their intentional perception of the other party does not trigger emergency signals in the nervous system. Consequently, they can make decisions regarding the problem in an optimal neurobiological and physical and thus, mental state. In other words, this process marks the recognition of the other party, the acceptance of or reconciliation with his or her person to a certain degree at least, compared to the pre-mediation phase. Of all the mediation types existing today, transformative mediation is the one that provides the most sophisticated protocol to facilitate this kind of communication process. The empowerment of the parties is accomplished through the amplification of their shared successes and positive experiences in the past (Cobb, 1994). Thus, parties do not acquire new skills during the mediation process; rather, mediators stimulate the ones they identify in the parties' own worlds by having the parties recall or reiterate past experiences when they successfully applied the skills they already had. The resurfacing of such positive examples reactivates the agent's capacity to perceive the problem as something that can and needs to be resolved. This process induces progressive thinking and operates as a source of self-confidence and harmony for

the agent. In this phase the problem is separated from the problem bearer. The agent will not identify the other agent with the problem any longer, but recognizes his or her interests, needs, right to exist and thus will be able to communicate with them as their equal partner in resolving their conflict. This process may appear so self-evident that the conflict parties wish to get it over with early in the mediation session claiming they are intelligent enough or pressed for time or otherwise busy and they seek to find a shortcut. However, the mediator must guide the parties through the mutual exploration of the conflict-related emotional parts of their own world. This process often brings about emotional outbursts, doubts, fears, negative thoughts, future projections denoting a deterioration of the relationship. But if this process can bridge the gap between the parties, they often abandon their positional stance and start working on a joint resolution. Practical experience shows that mediators must address the agent's relation to the problem on an emotional level first: this holds true for all types of mediation, including business or workplace mediation processes. It seems therefore that manifesting and channelling emotions that connect to past events is a precondition that enables participants to develop reasonable resolutions of the problem. By channelling means the dynamics perceivable in the process of manifestation, which leads to an emotionally balanced state.

From this aspect, transformative mediation is the latest and most developed type of mediation which integrates a new dimension that so far has never been accessible in official procedures – even though this dimension, the participants' own world, is transformed by the agents before it becomes accessible. In the next chapter I will interpret the accessibility of the agents' own world in the light of PTC and I will discuss how it can be accessed during the mediation process.

The accessibility and transformation of the agents' own world

The agents involved in the mediation protocol can partly recognize and articulate the interests and goals that belong with their own world during the process. The previously discussed mediation types (facilitative, evaluative, narrative) had no access or only partial access to the agents' own world. The facilitative and evaluative types allow a rational approach to the conflict, while in narrative mediation participants act as outside observers. Be that as it may, none of the above types allows the conscious, real-time representation or manifestation of the parties' own world. However, in transformative mediation the agents' own world can be accessed and transformed by the agents. The phenomenon

becomes clear once presented in the framework of PTC. The objective of the process is to enable the agent to access the information and/or unused capacities in his or her own world. The agent explores, reinterprets and updates the information and activates the skills and competences as relevant to the current situation. Upon entering the mediation process, the agents experience insecurity and incompetence. They are concerned that they may not be able to resolve the problem and their concerns are posited in their own world as negative entities, as personal failures or shortcomings. This process is usually reinforced by the other agent, who interprets his or her own tension over the unresolved problem as the other agent's fault and links it to the other's personality while simultaneously projecting it to himself or herself and to the other party. The cultural context we live in also verifies this process since the systems of problem resolution do not differentiate between agents and their actions. Erroneous action stigmatized the actor as a defective individual. Historically, the first reaction was the separation of such individuals, which later became the dominant method. By blaming themselves, agents also degrade their own skills that could help them recognize and resolve their problems. It does not pose a problem in the case of other problem resolution protocols, such as legal procedures. There, parties form a partial coalition with their legal representatives, therefore it is not necessary for them to descend into their own world and to explore their problem-specific real interests and needs. As the agents have no previously acquired patterns of how to access their own world, these efforts often mean that they must step out of their comfort zone and leave it far behind. There was no code that would have represented for the parties the access to the entire own world as a secure and legitimate process. By code I mean the system of behavioural codes that in our cultural context could have made the recognition of interest related to the individuals' own worlds a universally accepted system. Law never made it necessary: what lies in the intersection of law and of the interests and needs of the own world is an intention that can be described in terms of logic: to maximize the profit gained and to diminish the goods of the other party, and the execution protocol was determined by the categories of law as an institution. The intersection of the interests of the own world and of the possibilities of law as a problem-resolving system is rather small if not non-existent, because legal requirements and the needs of the own world cannot or only partly can be satisfied in the same way. The agent participates in the transformative mediation as one who recognizes and resolves the problem. The framework of the problem resolution is provided by the common own world of the agents where an indefinite number of outcomes are possible. However, as the agents have no reliable behavioural pattern to follow, their own world, in relation to the prob-

lem, often remains inaccessible. Because the agents often attribute the problem or the negative aspects of its resolution (pain, loss, sacrifice) to their erroneous or faulty behaviour. Consequently, they shift their focus from the best possible solution to their own personality, which further reduces available resources during the mediation process. Fully accessing one's own world in relation to the specific problem is of crucial importance in the mediation process. If the own world cannot be accessed, then the agent will not be able to disclose it to the other party therefore it will not be part of the constructed common own world. Consequently, even in a best-case scenario, the agreement cannot or only partly can be reached. (In most cases, these agents fail to reach a resolution, and the process comes to a halt.) For the agents to perform their problem recognizing function, they do not need to observe the rules of law or of any other external system; instead, they must have their own problem recognizing tools reactivated. This explicit process may not help develop the mediation agreement, but by granting a deeper understanding of and better access to the own worlds, it certainly helps the agents to adhere to the agreement in the long run.

Access as a participatory term is defined as follows:

'By the perception of the agent we mean data, accessible through sensory modalities. These data form the input for the agent's interpretative activity. These are private data, which means that they obtain their meaning within the agent's own world. These sensory data are remarkably similar in the case of agents belonging in the same community, because the framework of interpretation (which means a certain type of preparedness) is identical for the agents belonging in the same community. It is this very similarity based on which we may speak about the common world of experience. This common world is not merely the sum of the agents' own worlds' (Horányi, 2007). Only the agent can perform the integration of his or her private own world into the common world. It is crucial that the integration or transformation of the own world into the common world be performed with the least possible loss. Data and information are lost when transferred from the agents' own world into the agents' common world. During transformative mediation, the agents therefore must have enough time at their disposal and the rhythm and intensity of the process must be tailored to their needs. During the transformative process, the agent, in the physical presence of the mediator and the other party, walks his or her inner path in the realm of fears, emotions and reason. While the agent is walking this path, problem-related private feelings, emotions, beliefs, fears and thoughts will surface in the

agent's own world. Some of these, shaped by the agent's consciousness and reason, will be rationally articulated in the common world. The agent reaches a point where he or she can review their own, transformed needs related to the problem, and these needs will always be manifested differently than they were at the beginning of the mediation process; even though their argument often remains unchanged, it will be expressed in a way that is understandable or more understandable for the other agent. What explains this change is the nonverbal communication that takes place in the mediation space. Experience and observations show that if the participating agents share the same cultural background, nonverbal communication – unlike rational, verbal communication – takes place without any transformational loss. As the agents transform the problem-related part of their own worlds, they rationally or consciously formulate their meaning, but at the same time, they also communicate and exchange information via unconscious, nonverbal channels. While in verbal communication the agents exercise control over the information they let out, they cannot control nonverbal communication or only for an insignificant amount of time. Information exchange via the nonverbal channel varies in intensity in accordance with the extent to which the agents reinterpret their own worlds. The two communication channels are in correlation, they reinforce or weaken one another depending on the feedback the agent receives during the mediation process. Feedback is first provided by the mediator; he acts as a guide during the mediation and he determines the basic rules of behaviour. Therefore, the preparation of the mediation process, the creation of the physical space, the welcoming of the agents and the opening of the mediation session are all of crucial importance. The mediator finds and uses his or her own voice when opening and conducting the process, which marks a harmony between the mediator's verbal and nonverbal communication and shows that the mediator is a credible person. If the agents² sense both verbally and nonverbally that they can abandon the patterns of formal communication usually applied in other problem-resolving platforms and they can opt for a more colloquial way of communication, then they will follow the patterns presented by the mediator. It seems, however, that for this condition the synchronized verbal and nonverbal behaviour of the mediator is a prerequisite. The transformative process only starts if the agents sense that they can perform the task at hand with their already acquired skills, capacities, and preparedness. Early in the mediation process this is hardly the case since mediation is usually not applied in the phase of early problem detection. Mediation is often preceded by a history of unsuccessful communication and failed legal attempts at resolving the conflict. In this phase the agents experience a loss of trust both in themselves and in the other party. This sensory state of con-

sciousness can be characterized by rejection and closed communication. The first step of the mediator is to open the closed communication patterns and to provide new behavioural patterns to the agents. If it is done in a plausible way, then the participating agents will follow the mediator along the way. They will accept the framework and the protocol. During the process, the mediator indirectly helps the agents accept the other party. Disclosing their own worlds mutually affects the agents and they will increasingly accept the other party as their partner in resolving the conflict. This means that the agents will understand that their partner is not identical with the problem, he or she is not the cause or the only bearer of the problem. Thus, cooperation will be restored which, in turn, will allow the agents to start working on a joint (coalition) resolution. This process of empowerment helps and leads the agents to oversee the problem and to share this process with the other participant.

The communicational aspects of mediation

Mediation as a problem resolving protocol can be characterized by several aspects. Its communicational aspect greatly varies from type to type, but basically there are two major groups: one is the problem solving, the other is the transformative type. If one separates these two and characterizes them along the principles of PTC, it shall become clear that transformative mediation is a new, more developed form of mediation practice. In the next sections these characteristics shall be introduced.

Distinctions between the Transformative and Problem-solving types in the light of PTC

The two largest groups, the problem solving and the transformative mediation, require the most disparate logical approach from a participatory aspect. Problem solving types are the facilitative, evaluative, narrative types and any mixture of these methods. The main feature of this group is that here the goal of the mediation process is nothing but the resolution of the problem, manifested in a written agreement. To attain this goal, the participants have two or three sessions at their disposal. Therefore, the method focuses on the elimination of a problem that is clearly stated from the onset rather than by the agents themselves. These types of mediation processes concentrate on the problem that is presented in advance, in no more than a few sentences, but they do not investigate how the problem

had evolved or how it had affected certain areas of the agents' own worlds. If we define the problem as a temporary state with a definite time interval where the beginning is the problem formation and the ending is the problem resolution, then we can say that problem solving mediation types only focus on the outcome and they attempt to minimize the amount of time the participating agents have to spend in this temporary state. By doing so, these protocols implicitly reinforce the negative sensation of the transitory period in the agents. The mediator exerts his or her influence not only on the process, but also on the content thereof, emphasizing resolvable issues while paying less attention to more complex or difficult ones. In order to facilitate the agreement, the mediator consciously or unconsciously influences the parties, although it appears that the decision and the control over the process is in the agents' hands (Macary, 2008). In the transformative mediation the mediator makes good use of this transitory period (i.e. until the change takes place) when the parties feel insecure and distressed: he reaffirms the position of the parties as agents and empowers them so that they have the preparedness to recognize and resolve the problem. The mediator acts as a leader, but the control over the content of the process remains with the parties thus emphasizing their position as agents (Baruch & Folger, 2005). Transformative mediation seeks to place the agents in an emotional and mental state which allows them to resolve the current and future problems together in an open manner, taking the other's perspectives in consideration in the scene of their shared own world. The agreement is only one of the process outcomes. Transformative mediation does not view the problem as an emergency which is to be eliminated, and the sooner it is done, the better. In the process, the parties are regarded as agents while the mediator understands that they cannot always function as agents. Therefore, the mediator applies such empowering communicational tools that help the participants to function as active, competent and conscious agents.

The dynamics of mediation and how it is to be influenced

The dynamics of the mediation process can be easily interpreted and followed by an experienced mediator, since it strongly correlates with the communication between the parties and with their verbal and non-verbal reactions to content questions. Consequently, the mediator has a great deal of control over the mediation process. The questions asked, the paraphrases and summaries of the statements all create clearly defined changes in the dynamics of the mediation. These changes significantly modify the content of the verbal communication. Changes in the agents' communication can be traced back to changes in dynam-

ics first and the agents will carry over these changes into the content of the dialogue. The chronological description of the process dynamics starts with the so-called '*levelling the playing field*'. The mediator strictly controls the timeframe: both parties have the same amount of time to present their interpretation of the problem. If either party exceeds their timeframe the mediator asks them to stop. If either party finishes the presentation before their time is up, the mediator asks questions to ensure both parties can present their perspective to the full. This is a key point in mediation dynamics. If the empowerment had been successful, then the disclosing and resolution phases of the process will have balanced dynamics as a point of departure. If the playing field is not levelled and the dynamics between the parties is not compensated, then one of the parties will explicitly dominate the other, mainly in the scene of nonverbal communication. This dominance often developed between the parties years before the mediation process, either because of the problem to be mediated or due to earlier disputes. The levelling out of the dynamics between parties may take place before, after, or during the empowerment of the agents: these processes are very often mixed up in time, and the chronological order is irrelevant. The next step of the balanced (compensated) interpersonal process also reflects the agents' dynamics: while representing their own world in a self-identical manner, the agents will respond to the representation of the other participants' own worlds. This is called the discussion phase, when communicational dynamics is not expected to level off, nor should it, at this point of the mediation. On the other hand, the mediator seeks to secure the connection between the agents and their own worlds. To put it differently: the dynamized agent can compare his own world that only he or she can access with the own world of the other agent, under communicational – mainly emotional – pressure during the discussion phase of the mediation process. At this point the agents may comprehend the other parties' own worlds, yet they do not show willingness to change their own worlds in any way. The mediators encounter this phenomenon which, in terms of dynamics, seems to be a total loss of energy. It looks like the parties give up on the possibility of reaching an agreement, because they appear to recognize the yawning gap between their own worlds. This situation marks a turning point in the mediation process. It is often characterized by silence, stillness, rejection or even hostile non-verbal communication. But this is a time when the agents explore their own world in depth. During these long minutes of introspection and lack of verbality the own world is undergoing significant changes, as the agent is taking into consideration the other agents' representation of their own worlds. This is the point in time when mediators can rest assured: it is very likely that an agreement can be reached. Why? Simply because the agents have started to

reconsider the perspectives of their own world that hitherto seemed rock-solid and unshakeable. Lack of speech and non-verbal communication are the tell-tale signs of the internal reconsideration, of the letting go of past emotions and stances; conscious thinking starts making room for changes. By this time the parties had spent together one and a half or two hours which is enough for the agents to experience the atmosphere of security both consciously and neurobiologically.

So, dynamically speaking, this frozen state is of crucial importance where the mediator's task is not to lead but to follow the process. The agents must be kept in this phase if necessary, until the agents realize that the time has come for them to make a change in the part of their own world that is related to the problem. If any of the agents makes an offer towards that change, the others will follow suit. Dynamically the process transcends the defence of the own world and moves towards the construction of something new. Once the parties have reached this stage, they will mutually strive for an agreement. From this stage on, the parties will be dynamizing one another with their offers which is an expression of rebuilding trust. It may even happen that the mediator needs to reduce these new dynamics in order to ensure that the agents will only make reasonable offers that can be fulfilled in everyday life. The agents oftentimes recognize that what they had in common was nothing but the fear to leave their old own world: they were trapped in the past. The parties usually articulate such sentiments in the final, closing phase of the mediation.

The scope and rules of mediation

Mediation may not resolve every problem either as a problem-resolution protocol or as a communication model. Whether it is regarded as an alternative dispute resolution protocol attached to judicial mechanisms or as a communication process, its scope and rules can be clearly defined. These are the conditions necessary for the mediation to take place. Depending on the mediation type, these conditions partly vary.

The primary rule for both the mediator and the participating agents is that they must enter the mediation process willingly, on a voluntary basis. This rule comprises two parts:

- 1.) all participants are to enter the process voluntarily,
- 2.) the voluntariness of all participants must be maintained in all phases of the process.

Agents may together decide to enter mediation before contacting the mediator, or during the preparatory phase when the mediator informs one of the parties that the other has requested the mediation. In restorative cases the mediation protocol is ordered by the court, perhaps as a manifestation of tradition. This happened in the case of a con artist who pretended to be a joiner. He took the advance money from his clients in order to buy the material then simply disappeared. At the victim's request the court ordered mediation. What the court failed to see (and was not able to see) was that the perpetrator only agreed to enter the mediation process because he wanted to buy some time: once mediation has been ordered, the legal procedure is suspended for six months. In other countries mediation has become compulsory not only for criminal proceedings but for civil proceedings as well, earlier than in Hungary. Since April of 2011 in Great Britain mediation is compulsory for divorcing couples before either party files a petition for divorce. The mediator needs to assess the parties' mental condition prior to the session. Assessment can be done by the mediator who conducts the session or another mediator who performed preparatory tasks, providing he or she participates in the process. It is a prerequisite that participants may not have any dependency or addiction that can lead to bipolar disorder. This means any form of psychiatric treatment or any therapy that treats addictions. It can be drug, alcohol or gambling addiction. Such mental state potentially leads to bipolar disorder where agreements reached in one episode may be rejected in the other. Also, individuals experiencing a mental state that – albeit not requiring medical treatment – may cause for a short period of time (maximum a few weeks) extremely strong emotional, distress like bipolar or multipolar disorder are not allowed to enter mediation. Such mental state can be, for example, unprocessed grief, which radically changes how individuals perceive their environment. People often re-evaluate inheritance agreements after the grieving process. In such cases mediation can be considered only when the altered state of consciousness is over. Mediation can only be applied if all concerned parties who have influence over the future adherence to the agreement are present. If it is revealed after the mediation has started that any of the concerned parties is missing, then they must be involved in the next session, if all other parties agree. For example, the ex-wife, who must give her permission before a child can be taken abroad, or any of the parents the concerned party is dependent on, or a senior manager whose permission is needed to conclude an agreement in the mediation process. Mediation cannot be applied in cases of domestic violence or in any other case of violence, where the victim is dependent on the perpetrator during the mediation process.

Participants, either separately or together, may decide to terminate the mediation in any phase. It is important to know that this does not mean that the

mediation process itself was a failure; rather it is a sign that parties can continue negotiations without a mediator, or they understand that other needs must be satisfied before their conflict can be resolved. For example, one of the parties needs to understand more his or her own world and goes into therapy, or a couple decides to go into couples' therapy. But such needs can be identified at community level; in such cases an entire department at the workplace may decide to participate in a team-building training. These needs may be addressed by another professional. As mediation can work as a black box in case of divorces for the legal system, so can couples therapy work for mediation. It is usually the mediation process that helps parties understand that the scene of communication needs to be changed. This is true for transformative mediation only; the logical and practical protocols of other mediation types give no room for such considerations. This recognition, in many cases, facilitates the resolution of the problem, simply because dispute resolution systems (law, mediation, etc.) are not omnipotent and may not offer the best solution for all the problems articulated by the agents. This is particularly true when the problem-related parts of the agents' own worlds have been transformed into a common world: once this process is complete, the agents can shift perspectives and can identify the root cause or the best possible solution of their problem from a different angle. Mediation can offer help in such cases when communication between the parties has been blocked or has completely broken down. It is very important that mediation cannot be applied simultaneously with other protocols: for the duration of a legal procedure or therapy, mediation needs to be suspended. Simultaneously applied protocols reduce efficiency as they have different scope and objectives. An attorney who seeks to maximize profit can hardly cooperate with a mediator striving for a win-win situation, even if the win-win situation means that both parties must give up something in order to reach an agreement.

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