

THE ROLE AND THE TECHNIQUES USED BY THE MEDIATOR IN THE MEDIATION PROCESS

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Abstract

The present work aims to emphasize the complexity of the mediator's activity during the mediation process, as an extra – judicial alternative dispute resolution methodology. Different mediation schools have launched different mediation models in terms of theoretical and practical approach of the matter. So one can note on brief the facilitative, the evaluative, the transformative and the narrative mediation, for example. It is not our goal to praise one of the above mentioned paradigms or to suggest a hierarchy among them. We think that each of these models is valuable and has a potential utility. The most important achievement is to solve the conflicts and to obtain the parties' agreements, based on mediation generated solutions. It seems in this respect that different mediation models fit differently in solving specific cases. To reach the solutions of their conflict, the parties have to follow the mediator through a difficult and complicated route. It can be made easier by the mediator himself if he adapts his role and techniques according to the specifics of the parties and of the case. We assume that he can be more efficient if he will use a proper role from an appropriate model for a definite and concrete conflict or type of conflict. Even he may try to play a multiple role, changing its characteristics dynamically as the mediation process flows. The present work identifies some of the key roles that can be played by the mediator during the mediation process. Only based on these we can select, explain and analyze the specific or common techniques used by a mediator. Our point is that for his new case the efficient mediator must be flexible, knowledgeable and able to decide, select and perform a dedicated role or roles, same time or successively, and accordingly and dynamically use the adequate mediation techniques, which will be also summarized.

Keywords: Mediator, role, technique, negotiation, solution

Introduction

The most important aspect of the mediation, as an alternative solution of resolving disputes, its core, is how the mediation process is conceived and applied as such by the mediator. The process is structured, often individualised, conducted by the mediator and consisting in sequences and sub-sequences, with decision points and recurrences. During each stage, the mediator accomplishes specific functions. The functions that the mediator must carry-out are multiple, different, specialised. To carry-out each function supposes to initiate certain actions, using techniques that are appropriate to it, but also to the sequence and subsequence reached.

However, the mediators' activity becomes confusing sometimes. The stages, functions, techniques and actions are frequently mixed up. In complex cases, or when the parties prove to be resistant or not cooperating enough, the mediation tempts to reach a deadlock. This paper refers to the issue of improving the mediator's activity in relation to preparing and conducting the mediation process.

Much talking about the mediation's advantages is more and more present. There are increased expectations and a change of the paradigm is discussed in relation to resolving the conflicts. The development possibilities are huge, also in countries such as Romania, which have adopted just for a short period and quite timidly such solution. But the mediation practice by itself is hardly keeping the pace with the development of this field. The model of the mediator who empirically settles some simple issues is not enough; it relates to the beginnings of such study field. It is necessary to make the step towards maturity. The urgent conception of some new models and techniques is extremely

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important and represents the condition for consecrating the mediation and the mediator in the society. Thus, the aspiration to successfully settle an increasingly larger number of conflicts under mediation is achieved.

This paper intends to offer solutions for the issue mentioned above, by structuring the mediator's activity and by enlarging the mediation concept. We believe that structuring the mediator's activity naturally follows structuring of the mediation process *per se* and is based on the allotment of a role to each function or congruent group of functions carried-out by the mediator. Thus, a range of roles is configured and is available to the mediator. Specific techniques are identified for each role, as taken-over from its performance field and adapted to the specific nature of the mediation. The paper's aspiration is to identify as many roles as possible at a first sight and, for some of these, it formulates even the basic techniques. Formulating a broader concept regarding the mediation, besides its own answers for the issue, allows identifying some additional roles. The suggested technique aims, at practical level, to offer additional instruments to the mediators so they be able prepare, carry-out and conduct the mediation process, and, at doctrinal level, to deepen and refine the mediation concept.

We think that the paper is in harmony with the structured approaches of the mediation process studied in the main existing works of specialty literature. The analysis of the stages used to carry-out the mediation process and the emphasis on the complex activities of the mediator as presented in such manuals are those aspects that drew our attention regarding the multiple roles this one has to play. Starting from this point, our survey has been subsequently developed and may now replenish the scene of a structured process with a structured performance of the mediator, designed and carried-out in correlation, but separately. Also, our suggestion for broadening the mediation concept may complement, if accepted, the range of the existing definitions, having important theoretical and practical consequences.

Role and techniques used by the mediator.

Despite the tradition called upon in various cultures regarding the attempt to conciliate the parties in dispute by open-minded and powerful people in the community (proto-mediators), the mediation in modern society, used as an alternative technique of resolving conflicts, represents a new field of study for assistance granted to the parties in conflict. Neither the time, nor the restraint of some norms succeeded to deplete its freshness. This means and is seen in the diversity of the theoretical and practical approaches, which actually leads to a certain laxity but also, in return, to a useful flexibility.

We believe that this is mainly in favour of the mediation, even only for allowing creative and individualised approaches, depending on the parties and the situations. This entails the mediator's different attitudes, techniques and actions that may not be found in all the sequences of the mediation process or in all mediation cases. Therefore it leads to individualisation.

But how are these going to be selected for a specific case and during a certain case? By intuition? In the more complex cases, the mediation process would then become chaotic. Or, at the opposite pole, based on a generic *master plan*, structured by sequences, of an abstract process? But how would this be in harmony with the diversity of the situations as formulated?

As for our opinion, the solution is to accept the fact that the mediator can and sometimes must accomplish several functions and, therefore, play several roles¹ during the mediation process, and the actions and especially the techniques used are specific for each role separately and are dictated by the same. In general, in public life (or even in private life, although such aspect is not included in this paper's purpose), the activities of the same person may cover several functions (roles, if the related functions are not close connected, but mainly different). To be aware of such aspect and to identify

¹ Moore, Cristopher, *The Mediation Process – Practical Strategies for Resolving Conflict*, 3-rd Edition (San Francisco: Jossey-Bass, 2003), p. 19.

the roles is useful both as analytical approach, and at the practical level, exceeding the experimental, natural approaches, when meticulously preparing and planning the future professional performances.

The paper intends to offer an approach of the mediation from the perspective of the roles likely to be undertaken by the mediator, to identify the most important ones and to underline, for certain aspects presented as examples, the underlined techniques. Based on these ones, a definite structure may be defined for each case and, in particular, the strategic approach, selected to be used, may be designed.

We do not imagine and not believe as being mandatory for a mediator to be able or to try to play in its practice all the possible roles in mediation. There could be professionals who shine only in some, who choose a unique, minimalistic and – maybe efficient – format for carrying-out the process². In the same manner, other mediators have the freedom, as already mentioned, to elaborately tune their instruments to the specific nature of the case, playing several and different roles. Then, even the fact that a role is played does not automatically mean one should excel or use the entire range of its related techniques. Moreover, among the techniques related to an independent abstract role, only some of them are fit to be taken-over in the mediation process.

But the identification of the roles and of their related techniques seems to be, in our opinion, suggestive as regards the instruments and generates clarifications as regards the approach both of the mediation process in general and of the actual cases in particular.

We think that the starting point for the identification of the roles can only be the origin, *id est* the definition of the mediation itself. We'll briefly present some of the valid definitions and then we'll risk our new own definition, for support.

The most concise definitions are similar to:

- Mediation is “a process of assisting the negotiations of others.”³

- “Mediation is any process for resolving disputes in which another person helps the parties negotiate a settlement.”⁴

Than, more complex:

Mediation is “the intervention in a negation or a conflict of an acceptable third party who has limited or no authoritative decision – making power, who assists the involved parties to voluntarily reach a mutually acceptable settlement of the issues in dispute.”⁵

According to the Romanian law the mediation represents a voluntarily friendly conflict resolution process based on the assistance of a third party in his mediator capacity, in a neutral, impartial and confidential context.

Of course, it could not be otherwise, because the definitions are correct. But, in our opinion, not complete too. We believe that they do not catch either the novelty, or the essence, or the possibility to extension, or the theoretical developments of the concept, but only its original and immediate expression. We think it is necessary to have a broader, more generous definition, able to cover not only the classical definitions, as a particular case, but also the possibilities of the concept that were already explored or that could follow.

Without claiming to have found the best solution, we venture to suggest a new one, for work purposes. Thus, we see mediation to be **the process for the construction in three of a way to surpass a conflict occurred or a deadlock where the relation between two of them is in**. Obviously, in order to simplify things, we limited to the dispute between two parties.

² Greenwood, Marry, *How to Mediate Like a Pro* (New York: iUniverse, 2008), pp. 3-7.

³ Frenkel, Douglas et al, *The Practice of Mediation* (New-york: Wolters Kluwer, 2008), p. 2.

⁴ Beer, Jenifer et al, *The Mediator's Handbook* 3-rd Edition, Revised and Expanded (Gabriola Island, Canada: New Society Publishers, 2009), p. 3.

⁵ Moore, Cristopher, *The Mediation Process – Practical Strategies for Resolving Conflict*, 3-rd Edition (San Francisco: Jossey-Bass, 2003), p. 15.

This is neither the place nor the subject of the discussion to insist on such definition: what does it bring new, how is it related to the previous ones, what are its advantages. This will be probably the topic of a future paper. We refer here only to one of its consequences which is beneficial for our current subject: identification of a more diversified range (and therefore with a higher degree of completeness) of roles in the virtual portfolio owned by the mediator.

The unanimously accepted roles of the mediator are those of a **facilitator/catalyst of the communication** and of a **facilitator of the negotiation**. We'll hold both and we'll add, naturally, the fact that in order to be successful in facilitation, the mediator himself must communicate and negotiate. With the parties, but also on the parties' behalf. Sometimes, not as an accessory to a more important mission, but as part of an independent stage. That means roles of **communicator** and **negotiator**.

However, because it is rightfully deemed that the parties themselves have to communicate and build/negotiate the suitable solution, they must often be encouraged, prepared for such action. It results the mediator's role as an **assistant** of the parties (under its both accepted meanings, of a **trainer** and a **coach**).

A role which is delicate, discussed and debatable from the mediator's main viewpoint, but undeniably efficient, is that as a **persuader** of the parties as regards the acceptance of the options under debate.

Another role generally accepted and played, either consciously or not, by the mediator during the first stages of the mediation is that as a **confessor** and as a **therapist** for the parties, treated individually and not as a group. It is especially the case of the initial releases and venting of strong negative emotions as a result of the conflicting tensions that were accumulated.

The mediation process, as understood in contemporary times, supposes the mediator's assuming the roles of an **organizer** and virtual **host** of the meetings and of a **leader** and **manager** of the entire process. This one becomes more and more complex and specialised, with a structured conception and approach. To the extent it supposes individualization, the mediator may play a role as a **designer** of such individualised structure, as a **guide**, but also as (only) a **companion** of the parties on the designed paths, but also incidentally occurred during mediation.

The roles identified above mostly relate to the canonical approach, with a facilitating nature and understanding of mediation. Our opinion is that in many circumstances such approach must be, if not replaced, at least complemented by evaluative elements. This is congruent with the definition of the mediation itself that we have formulated. Some new roles for the mediator emerge in this complete approach, namely that as an **investigator**, a **diagnostician** (of the case under mediation), an **expert** (in law, but maybe also a technical one in the field of the case analysed or in other related fields), a **consultant** of the parties as a group, a **resolver** of issues (if, at the limit, this would be the case), as **explorer** and **assessor** of the options and solutions. This is, we know, a controversial subject in the mediation theory, but sustainable as long as we agree that the essence of this activity is the search in three of a solution for two.

The mediation practice identifies however other roles too, some of them being conjectural, for the mediators. Thus, we may add the roles as an inter-cultural **interpret/translator** between the parties, as a **supporter** of the parties in difficulty, as person confirming the legitimacy, as provider of additional resources during the process, as agent of reality, as animator and lightning rod, ultimately as scapegoat, etc.

It should be mentioned that to identify a potential role for the mediator does not mean to assimilate the mediation *per se* to the function and activity specific for such role. The fact that the mediator communicates does not mean that the mediation represents just communication, as it does not mean only negotiation, even if it's being assisted. The coincidence that the mediator listens to the parties and allows their feelings to be released does not transform the mediation into psychotherapy. As the mediator makes available to the parties its legal or technical knowledge does not mean that the process represents an assistance procedure or a legal assessment.

Thus, a mediator is not only a facilitator, or a communicator, or a negotiator, etc., but all these as an entirety and even more than that, in a combination of these basic roles, in which the result is more than and different from the amount of the terms.

The meaning of using the roles model and carrying-out the related techniques is that of using various and often non-homogenous instruments by one and only skilled professional in order to reach the target of building an acceptable solution also accepted by the parties. The synthesis itself of such techniques represents the colossal value added by the mediation as a service, which converts it into a unique alternative of indeed resolving in an optimal and individualised manner the conflicts and of surpassing the deadlock.

Among the roles that a mediator may exercise, some roles, very important ones, are specific only to mediation. Thus, there are the roles related to the organisation and management of the process, to the stimulation of formulating options, to their being tested and even the role as a resolver. The others are mostly borrowed but strongly adapted.

In their dynamics during a mediation process, the mediator's different roles:

- a) may either follow one another;
- b) or are alternative;
- c) or coexist.

In the first case, the roles are changing as the process evolves. In the second category, the roles are adopted depending on the mediator's approach (facilitating, evaluating, combined) or on the case. The third one marks the existence of some roles constantly and simultaneously used during the process or in the multiple stages of its development: communicator, facilitator, supporter, negotiator, etc. A survey about these is to be drafted. A map of the techniques used is going to be enclosed thereto, as already mentioned.

The succession of the roles during an actual mediation process depends on the strategy adopted and, naturally, on the tactics used in order to play them. The speciality literature underlines some stages that the mediation process follows. One or several roles impose during each stage. The process may be seen as a series of stages, but also as a series of functions/roles. The stages are assigned to some objectives to be reached, but the roles shape the kind of performance that the mediator must accomplish. The complete plan for carrying-out the process should therefore include the path structured by stages, objectives, **roles**, techniques to be used.

In practice though, it is obvious that the mediator's roles often soften and mingle into a complex performance. At least that is how the parties feel. We believe it is worth that the roles be however individually perceived by the mediator who plays them, not (only) by the systematisation sake, but for allowing a rational, planned preparation and approach both of the professional preparation of the mediator, of its specific training, as well as of carrying-out the mediation process in practical cases.

We are convinced that the short list of roles above may be complemented. The mediator may be and must be someone else in different moments in time. This one plays a role or other roles in the same time. It is important though not to mistake them, to know exactly at any instant who is he at a certain moment, why is he what he is, what and how he has to do accordingly. The specific functions he has to accomplish are related to the role played and it also identifies the techniques available.

We sustain that when studying, but also when practicing, the mediation it is useful **to deconstruct the generic and complex role of the mediator**, as resulted from its definition (according to the classical definition, the person assisting the parties during the negotiation, or, as we suggested, the person building the solution along with the parties) into elementary (sub) roles, which entail their own, specific implementation techniques. We use the term *deconstruction* not according to the meaning given to the text by literary theory sustained by Derrida, but as a mental decomposition of a complex object under analysis into its component elements. In the case at hand, the complex role as a mediator into the fundamental roles forming it and which have constructed it.

We have underlined hereinabove – as in very few professions – more than twenty roles that a mediator can play, in different approaches and stages of the mediation process. Like an athlete of decathlon *sui generis* of the services, mentioning that, at the limit, it must though be able to perform honourably in more than ten disciplines!

For each of these roles, one can identify specific techniques. Trying to cover all of them, to the extent this could be possible, would exceed this paper's size. Therefore, we'll make reference hereinafter to some of the most important techniques available to the mediator, depending on the main roles played during the mediation process.

The mediation is still representing an activity which is not completely formalised, and we repeat that some of its strength and seduction reside in that. Consequently, we do not believe in recipes in this field, but in learning an efficient way to approach the profession, which could be a **multi-role** one. The existence and the acceptance of the roles played by the mediator during the mediation process represent, in our opinion, a technique that can be taken-over (or not) by each professional separately. In case such opinion is accepted, the mediator may chose those roles it deems appropriate for its qualities and possibilities or for the requirements of the case, and then to select and develop certain techniques fitted for the roles under the same circumstances. Not to mention the fact that the same role may be played at different tonalities, with different nuances and objectives. Here begins, even within the same accepted model, the demarcation between the mediators, each one's skill, art, and performance.

It is then, at least and at a first approximation, a question of **method**. We'll be able afterwards to plan an applicative synthesis, but also a specific approach of this field, trying, by the explored consequences of the model suggested, to identify new valences of this field. We also believe that learning to mediate during the professional training of the future mediators as well as to perfect the qualities and skills of the already professionals may be dealt with from such (new) perspective too. Also, we think that the number of the mediation techniques will increase accordingly, as there will be capitalised and included new techniques specific for the new roles identified as to be played by the mediator. There are far few techniques of pure mediation, many being borrowed techniques, because the function of a mediator – as we prove it now – is a synthesis function.

But for this paper, we stop to the importance of the existence of the roles and techniques that may be related thereto. We'll refer hereinafter to some main roles that a mediator may play, namely as an organiser of the mediation process, an investigator, a therapist, a communicator and a facilitator of communication, a supporter of the parties during the process, a persuader, a negotiator and a facilitator of the negotiation, lastly of the leader of the structured mediation process, and we'll try identify some of the techniques that may be used under such circumstances.

Thus, the role of an organiser refers mainly to preparing the mediation meetings, including the technical accessories related thereto. Among the preoccupations related to such role, one may find for example those regarding the optimal arrangement of the participants and the mediator's seat at the negotiation table⁶. A special technique was developed for helping the mediator's strategy, depending on the parties, conflict, status of the conflict, and the way the technique chosen is carried-out during the mediation process. It's about the existence, the size and the form of the negotiation table, the arrangement and the occupation of the seats, the size of the space left between the seats.

There are scientific researches regarding such aspects, which only seem insignificant. The adversaries tend to place themselves on opposite positions, but this keeps them in an animosity condition, accentuating the initial polarity.

Again, for example purposes, we mention some possible options:

- the version of marking the equality, by the symmetrical radial distribution of the parties, but close to one another;

⁶ Beer, Jenifer et al, *The Mediator's Handbook* 3-rd Edition, Revised and Expanded (Gabriola Island, Canada: New Society Publishers, 2009), pp. 29-30.

- the version of placing the parties at a certain distance from one another, separated by the mediator;
- the version of giving up the separating table;
- the version of placing the mediator at the head of the table and the parties laterally, facing each other;
- the version of placing the parties close to one another, on the same side of the table;
- the version of placing the parties at right angle from one another;
- the version of arranging the parties on the bias.

All these arrangements create a certain relation between the parties and serve a specific approach of the case by the mediator. Placing and – we'd suggest – re-placing during the process, depending on the successes on the way to reconciliation, thus represent mediation techniques, developed within the mediator's role as an organiser of the meetings with the parties and enclosed thereto. This may influence the dynamics of carrying-out the process and even its results.

As regards the mediator's role as an investigator, this refers mainly to its efforts to obtain and to filtrate the relevant piece of information regarding the parties and the case, beyond what they are willing or deem necessary to offer. We do not think it is still necessary to underline the importance of the information in the mediation process. It is essential for the mediator to understand the case in order to design and carry-out the process. This one cannot work with impressions or with data that are voluntarily or involuntarily distorted. Even if, under such circumstance, some solutions would be found, they could not last in time.

The techniques used for the investigation activity are based on interviews structured and not structured, generally conducted with the parties being separated⁷. Open questions are used as well as closed questions. The questions used refer mostly to subjects not to chronology. The answers are construed, but also the hesitations, the silences. A special technique implemented is the active listening. The non-verbal messages are additionally studied⁸.

It is a controlled crescendo in the investigator mediator's technique to seek information from the parties. The start point is open, for example "listen, learn and discover" and then slides to a direct approached, focused on clearly defined subjects and aspects, some of them painful.

Having a particular meaning for the use of the same instrument (the interview)⁹ as a technique for playing several roles, we may notice that among the interviewing techniques used during the entire process, several kinds of interviews may be activated: the interview for the mediation seen a support for resolving the issue, the interview as a purely investigation instrument, the interview as a persuasive instrument. That is why not the mediation technique *per se* is important (the interview as such), taken separately, because its contents and finality differ, but the technique within the role undertaken at a certain moment given by time.

One of the most significant aspects of the mediator's role as an investigator is however the disclosure of the parties' hidden interests¹⁰. This operation is useful not only for the mediator, but for the parties themselves, which sometimes also conceal them, hoping to obtain in this way a better result of the negotiation, but in other situations are purely and simply unable to becoming aware of them. The entailed techniques are related not only to the collection of data, but also to psychological, social, economical aspects, as well as to the capacity to jointly develop arguments. Thus, some direct and indirect procedures may be identified for searching and discovering hidden interests. It is essential to become aware of them, as long as the mediation is focused on interests and not on positions.

⁷ Frenkel, Douglas et al, *The Practice of Mediation* (New-york: Wolters Kluwer, 2008), pp. 149-156.

⁸ Beer, Jenifer et al, *The Mediator's Handbook* 3-rd Edition, Revised and Expanded (Gabriola Island, Canada: New Society Publishers, 2009), pp. 68 – 70.

⁹ Frenkel, Douglas et al, *The Practice of Mediation* (New-york: Wolters Kluwer, 2008), pp. 131 - 134

¹⁰ Moore, Cristopher, *The Mediation Process – Practical Strategies for Resolving Conflict*, 3-rd Edition (San Francisco: Jossey-Bass, 2003), pp. 252 – 268.

As regards the therapeutic role, especially during its first stages of the mediation, the technique used by the mediator is noticed in order to allow releasing the parties' feelings, paying the attention and undertaking the precaution measures necessary in order not to escalate the conflict. A correct alternation technique of separate meetings (caucases) with the usual common meetings is extremely necessary¹¹.

To accept and to listen to the parties' stories, their frustrations and positions, the attention, the understanding, the compassion are essential techniques to be used during the process. The techniques are useful for capacitating the complete expression and for sublimating the emotions, in order to prevent violent and aggressive effusions, to control the negative emotions, to develop positive emotions, to overpass wrong representations, the stereotypes and the lack of trust, to change, to open and to transform emotions.

The communicator and communication facilitator's role is probably the most played by the mediator. The entire mediation process is actually based on communication, and the lack of communication or the incomplete communication explains many conflicts. There are things known and generally accepted, so we'll not insist on that. We only mention among the frequently used techniques those based on active listening, underlining the consent points, rewordings, clarifications, productive use of strong emotional moods, deciding and consecrating some basic communication rules.

The role of communicator is often closed to the persuader¹². In this role, the mediator tries to move the parties away from the area of perceptions based exclusively on the subjective reasons of the conflict and of the inflexible positions. It is the matter of insinuating in their conscience of a standpoint which is alternative from that already conceived. This takes place mostly by suggestions and questions than by enunciations, potentially imperative, or by decisions. Among the persuasion techniques that may be used and thus becoming mediation techniques one may notice the persuasion based on empathy (by role change), persuasion by reconciliation (apologies), persuasion by revealing the actual interests, persuasion by doubt.

As regards the roles, at their turn consecrated, as negotiator and facilitator of the negotiation played by the mediator, there are specific techniques of their basic field also attached to them. One can mainly find among such the competitive negotiation techniques, the integrative negotiation techniques (based on resolving the issues), the methods for surpassing the strategic, psychological and cognitive barriers.

Finally, in the chosen selection of roles, the position of leader of the process¹³ is a decisive one for the mediator, especially within the concept of structured negotiation process. Both the control of the dialogue, as well as the evolution during the mediation process, take place upon initiative and on the impulse of the mediator.

Among the process' stages, as well as when passing from one stage to another, the mediator initiates specific actions. Some of these, the non-contingent ones, relate to the generic mediation process and represent general techniques of the mediation as such. Others, the contingent ones, meet the case's requirements and represent special mediation techniques, such as interventions meant to manage the anger break-outs, the bluffing, the negotiation in bad faith, the mistrust, the lack of actual communication, etc.

A special importance for conducting the process has the technique of alternating the usual general meetings with the individual meetings, as well as the management of the deadlock situations, of the blockings¹⁴.

¹¹ Beer, Jenifer et al, *The Mediator's Handbook* 3-rd Edition, Revised and Expanded (Gabriola Island, Canada: New Society Publishers, 2009), pp. 84 – 89.

¹² Frenkel, Douglas et al, *The Practice of Mediation* (New-york: Wolters Kluwer, 2008), pp. 227- 243.

¹³ Beer, Jenifer et al, *The Mediator's Handbook* 3-rd Edition, Revised and Expanded (Gabriola Island, Canada: New Society Publishers, 2009), pp. 89 – 99.

¹⁴ Frenkel, Douglas et al, *The Practice of Mediation* (New-york: Wolters Kluwer, 2008), pp. 260- 269.

Interesting and spectacular techniques, essential during the process, are related to the core itself of the mediator's activity, to its basic role and not to the borrowed one that were added to it. It is the case, for example, of the stimulation of generating options¹⁵, of their virtual assessment and testing, of their dynamic selection and remodelling. Such techniques become more special as the mediator's implication is higher, combining aspects of facilitative mediation with elements of evaluative mediation, as already presented above¹⁶.

Thus, finally, we have developed and exemplified by the above mentioned our initial assertion according to which the mediator's performance may be analytically studied and planned by first of all identifying the functions (the roles) that this one carries-out during the mediation process, and then adding specific techniques from which result the actions performed by the mediator during the stages of the process and form one stage to another. We believe and try to demonstrate that such model gives a clearer image of the position and complex performance of the professional mediator within the mediation process.

Conclusions

Determining the parties under conflict to meet, to have a conversation, to negotiate, to find together a solution, to accept the solution they've chosen, represents a very difficult process, the more so as it is conducted by one person only. The process is complex, going through different stages and levels, and the mediator's performance is the same. The activities, the attitudes and the techniques used are complex and various, the mediator showing several faces and skills during the process. Starting from this, our analysis under this paper reveals as its main result the possibility for the mediator to play during the mediation process several roles. Becoming aware of this fact and conceiving a start for the survey of roles, as a second result of the research, represents the main approach of the paper.

Starting from the roles, the mediation techniques may be organised by categories and systematised. Moreover, new techniques may be identified and attracted to the process. The paper's result is also the identification, for some of the main roles formulated, of certain representative techniques.

In order to complement the list of the potential roles, the paper suggests and has as a different result a development of the mediation concept with evaluative elements at instance, offering the mediator the possibility to be more actively involved in the selection process or in the construction of the solutions for resolving the conflict or surpassing the deadlock.

The mediators interested in the results of the research under this paper may complement the general view of the structured mediation by structuring the specific performance of the mediator himself. This represents an additional instrument both for conceiving the mediation process to follow, as well as for a better control and exercise of its own activity. Distributing the functions by component elements, these may be better prepared and complemented with new techniques, in the field of reference of the undertaken roles. Also, when approaching a case, appropriate roles are selected as well as their sequence.

In the field of improving the mediators' training, new implications may be foreseen. The improvement may start with or include workshops and specialisations for different roles that must be covered and may rely on acknowledging and exercising their specific techniques.

As regards the doctrine-related aspect of the mediation, both the "theory" of roles as well as the new, broader concept, as suggested, based on the joint search of a built solution may lead, if

¹⁵ Moore, Christopher, *The Mediation Process – Practical Strategies for Resolving Conflict*, 3-rd Edition (San Francisco: Jossey-Bass, 2003), pp. 269 – 296, 297 – 308.

¹⁶ Frenkel, Douglas et al, *The Practice of Mediation* (New-york: Wolters Kluwer, 2008), pp. 71 – 86.

accepted, to a remodelling of the mediation activity, at its turn with substantial practical effects in increasing the process' chances to succeed.

Future researches may be developed and studied in detail as conceptually described in this paper. Thus, we intend to emphasize in the future the corresponding aspects between the mediation stages and the roles. Also, to create a detailed inventory and as complete as possible of the techniques used or that might be included in the mediation process depending on the mediator's roles.

An interesting aspect is the choice and the configuration of the roles' range and sequence for the mediator, according to the typology of cases under mediation (family, inter-community conflicts, civil disputes, commercial conflicts, labour conflicts, etc.).

Finally, a major field of our future research, as inspired by the above-detailed model of roles and complex functions of the mediator, is the deeper analysis and the development of the mediation concept (optional as compared to the classical ones) that we have suggested herein, based on the active performance of the mediator as regards the construction of the solution and/or the surpassing of the deadlock. We'll try to model and to theoretically ground this second model too, by pleading for the specific plus value this one brings to the parties under dispute, but also to formulate and to fundament its practical use.

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