

# THE SCIENCE OF COMMUNICATION AND NEGOTIATION IN MEDIATION

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## Abstract

*The present study proposes to contribute in clarifying a subject of great actuality and social importance: why does the contemporary society need such mediation and mediators and what are the psycho-social premises of making the process of mediation more efficient.*

*In the first part, this study keeps the track of identifying the connections and the distinctions between communication-negotiation and mediation. The intercession carries forward with the analysis of the communicational and negotiative abilities of the mediator – premises of efficient mediation. The final part consists in an argument towards the imperative need of mediation felt by the contemporary society at all its levels.*

**Keywords:** communication, negotiation, mediation

## 1. Introduction

I communicate, so I exist. We exist as long as we communicate. We are constantly facing various problems and in order to solve them we must communicate.

Social life and its existence depend upon human interactions, which is negotiated through communication.

People live amidst multiple communication forms that cover more than 11 hours of the total 24 hours that make up a day. We could state – as Lucien Sfez points out – that everything communicates in nowadays society, which is also known as the *communication society*.

Nowadays we can't imagine the democratic society without interactions, communications, negotiations and recently mediations.

## 2. Communication-negotiation-mediation

In *Social organization*, Charles Cooley defines communication as the mechanism through which human relations exist and are developed and which includes all the symbols of spirit and the necessary means to transmit them into the space and to preserve them in time. It is a process that includes facial expression, attitudes, gestures, the tone of voice, words, writing, printing a.s.o.

Etimologically, the term communication comes from the Latin *communis*, which in the XIVth century used to mean “to put together, to share” (Ioan Dragan). Later, in the XVIth century, as the post office services and the roads became more numerous, the term gained a new connotation, i.e. “to transmit”.

During the XXth century, the term *communication* gains a new connotation, i.e. “to broadcast” (to transmit through the radio, TV, cinema etc.). J.J. van Cuilenburg, O. Scholten and G.W. Noomen mention three overlapping meanings of the term: “notification, information”, “verbal contact within a group or collectivity” and “presentation or occasion that favours exchange of ideas or spiritual relations.”<sup>1</sup>

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<sup>1</sup> J.J. van Cuilenburg, O. Scholten and G.W. Noomen, *Stiinta comunicarii*, Bucuresti, Humanitas, 1998, p.25;

Like communication, negotiation is ever-present in human life and in society. It is a “universal activity performed in international businesses, commercial transactions, diplomacy, in internal and international legislation, in the attempt to build social peace within a country/between countries, and it has an interpersonal, inter-group and inter-institutional content.”<sup>2</sup>

**Negotiation** is closely linked to communication, negotiation without communication cannot exist. That is why specialists in negotiation are also specialists in communication. Goodall Jr. considers that negotiation is actually a communication style recommended for mitigating the negative effects of a conflict.<sup>3</sup>

Negotiation must be understood as “a process in which two or more parties, which have common and conflicting objectives, debate the possibilities of coming to a potential agreement.”<sup>4</sup>

In other words, negotiation – as Douglas Kennedy remarked – is the process through which we succeed in obtaining what we want from those who want something from us.

Negotiation is the process by which the conflicting parties try to reach a consensus that is advantageous for all the parties involved in this process, discussing about each party’s pretention and respecting these pretentions as much as possible; this process should not be finalized by deciding who the winner or loser is.

In conclusion, **negotiation** is a nonconfrontational process by which two or more parties, having contrary but complementary interests and positions, attempt to reach an advantageous agreement, whose terms are known from the very beginning.<sup>5</sup>

M. Hiltrop and S. Udall identify three categories of objectives which negotiation must consider:

- a major objective – the best result ever recorded;
- a secondary objective – the least efficient, but acceptable as a result;
- a target-objective – which is expected to be accomplished in an effective way<sup>6</sup>.

When the involved parties cannot jointly negotiate in an efficient way, they can address a mediator to facilitate the negotiation process. Mediation is closely linked to the negotiation and communication processes.

Mediation is often defined as “interference in the negotiation standards and between the conflicting parties, as well as the acceptance of a third party – which has limited powers and cannot adopt any decision authoritatively, but which is meant to assist the involved parties so as to find a mutually advantageous solution in the disputed issues.”<sup>7</sup>

The two parties negotiate in the presence of the negotiator and come to a final agreement. In other words, mediation is an intermediary position, a type of assisted negotiation that is made by a neutral party, known as the mediator.

Mediation is a form of long-term social education that aims to develop communication and conflict mediation skills so that people would directly come to have a good relationship with each other and to solve their problems alone, without having to go to court.<sup>8</sup>

“Mediation is a process of creation and a social life management process, which allows people either to reconnect to social life or to prevent and solve conflicts thanks to an impartial, authoritativeless third party’s interposal that guarantees communication between partners.”<sup>9</sup>

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<sup>2</sup> M. C. Solarte, *Course on negotiation; Theory, Tehniqes and Conflict Management*, Spring 2002; [http://hot.ee/introduccion\\_and\\_conflict\\_management.htm](http://hot.ee/introduccion_and_conflict_management.htm).

<sup>3</sup> H. L. Goodall, Jr., *Small Group Communication in Organizations*, Second Edition, Dubuque, IA.: William C. Brown Company, 1990.

<sup>4</sup> Hellriegel, Slocum, Woodman, 1992, p. 478.

<sup>5</sup> E. Botez, *Negocierea afacerilor*, Editura Universitatii din Oradea, 2000, pag. 9.

<sup>6</sup> M. Hiltrop, S. Udall, *Arta negocierii*, Editura Teora, 2000.

<sup>7</sup> Christopher Moore, *Procesul de mediere: Strategii practice pentru rezol-varea conflictelor*, 2nd ed., (San Francisco: Jossey-Bass Publishers, 1996), pag. 15.

<sup>8</sup> Bernard Lamizet, prof. dr. la Institutul de Studii Politice din Lyon.

Kenneth A. Sprang appreciates that mediation offers many important advantages for the parties involved. A more trustful atmosphere, more confidentiality, less emotional traumas, less transactional costs, a more flexible calendar, more application domains, more creative ways of attack, more opportunities for responsibility and recognition, concentration upon the parties' interests – all are a few of the **advantages** offered by mediation.

Mediation – in Solomon Marcus' view – is a paradigm and it represents, as many other paradigms do, - a convergence point for several disciplines which results in “a richer and more diverse understanding of human behaviour.”<sup>10</sup>

For civil society, mediation is an instrument that leads to the creation of social links and it imposes fundamental values such as: autonomy, responsibility, the ability to adapt to new situations, solidarity and agreement. Today we can notice that, in the Western world, mediation has become more and more successful and it is preferred to other ways of settling conflicts. In my opinion, the appearance of mediation, as well as its popularity is linked to the change of mentality regarding social justice (a new understanding of human rights as a form of world justice), the social actor (accepting the role of subject in social and political life), the notion of guilt and conflict (adding value to the psychological and sociological perspective) etc. These modifications lead to preferring/choosing to develop and use alternative methods (ADR) to going to court, i.e. mediation, negotiation, legal action. The limits and shortcomings of legal action - that is meant to settle conflicts - are more and more mentioned. Such an action is expensive, adversarial and incapable of wholly solving complex cases!

### 3. Comprehension and non-violence – basic principles in the science of communication and negotiation

After graduating school many of us have discovered that there are different ways of learning and listening. Research workers have identified 4 styles of learning.

- the Auditory Learner: the learner is concerned about and interested in the moods/feelings of the other person. Auditory learners try to find common interests with the others and react to the other's emotions/moods. Listening is common for couples, families and friends.

- the Active Listening style: the listener requires accuracy, correct presentations, no errors and, if possible, an organized presentation. A boss, for example, could ask the representative of a department to make a report about the general situation of the company. He would expect the report to be concentrated and straightforward.

- The Content Style: the listener prefers the information to be complex and provoking. Since this information is, in general, abstract, people might listen to it without being emotionally affected and then assess the information without making value judgements. A physician might, e.g., ask for information from his colleagues as to how a certain patient should be treated. Thanks to his/her training and his/her experience he/she will not find it difficult to understand a complex medical explanation.

- The Time Style: the listener who adopts this style prefers fast and concise interaction with others and he often gives his interlocutor the possibility to know the amount of time the latter has for finishing his argument. Reporters, when working for a TV broadcast programme, must collect information quickly and effectively because they have tight deadlines and, in fact, this is the reason why they belong to the time style category.

The best listeners are able to adapt their listening style to the given circumstances. If they have not learned how to do that, they will encounter problems when interacting with the others. E.g., when a person complains of a work colleague, he/she probably prefers the auditory learner. However, his/her superior has little time at disposal and, consequently, he/she will want this person

<sup>9</sup> Monique Sassier, 2001, Construire la médiation familiale, ed. Dunod, Paris, 2001, pag. 10.

<sup>10</sup> Solomon Marcus, Paradigme universale, Ed. Paralela 45, Pitești, 2005.

to quickly state the existing problem and then to leave the office – a reaction that will not satisfy the employee, anyway.

When working with people, it is important to take into account their styles as listeners. E.g., if you want some critical decisive reactions as to a document that you have already written, a listener that identifies himself/herself in the style contained by the text will be more useful than the listener that adapts to the listener's style because the latter will not want to hurt your feelings by pointing out the identified mistakes.

Some research works indicate that culture leaves its mark upon the listening style of a person. A study that has compared American, German and Israeli listeners has revealed that Israeli people concentrate more on the accuracy of the sent messages; Germans are the most active listeners, they often ask questions alongside the listening process.<sup>11</sup>

The ideal communication situation implies observing the non-evaluation, non-interpretation and non-systematic questioning principles.

The first basic condition for avoiding a communication blockage is actively listening to the interlocutor. The active listening attitude is defined according to the above mentioned principles to which one can add the comprehension and rephrasing principle.

The comprehension attitude consists in manifesting interest for what the other says and listening to him in order to try to understand him, not in order to judge or evaluate this person. This attitude is manifested as a request for rephrasing the interlocutor's viewpoints and feelings. Comprehension is the only attitude that favours the interlocutor, which creates a relational climate that is ideal for his/her expressing properly in the absence of any imposed direction or form of manipulation. It is not simple to understand the other person's words. We often take understanding for interpreting. However, understanding does not mean interpreting, but deciphering, decoding the other's words, trying to identify the reasons that guide him. Let us learn how to listen, then! "God has given us two ears and a mouth to listen twice and speak once!"

In order to facilitate authentic communication, one has to be more inclined towards the other, to try to understand his/her inner universe, to see the existing situation through his perspective, to discover the significance he/she gives to a particular event. In other words, to be sympathetic. Sympathy implies "determination and the capacity to control your own social and affective reactions, reaction to the other's feelings, and the verbal capacity to communicate this comprehension." (J.Cl. Abric, 2002).

Active listening is linked to sympathy. It involves surpassing the self, forgetting about ourselves and concentrating upon ourselves, which is not a simple task. Quite often, when our interlocutor speaks, we concentrate upon ourselves, we do not think of what he/she says but of what we intend to tell him/her, of the strategies we are going to use in order to impress, convince or seduce him/her. If we happen to listen to him/her, we shall do this in strict connection with our values, feelings and principles.

Understanding is the only factor that places the interlocutor in a privileged position and that creates a relational climate that is proper for expressing deeply. Understanding the other's words is not easy, however. In other words, paraphrasing Marshall B. Rosenberg, the founder of non-violent communication – let us give up "the jackal's years for the giraffe's ones". The giraffe's ears are big, attentive, open, they know how to decipher the need hidden behind words, while the jackal cannot but hear criticism and answer to them accordingly, provoking violence. The jackal's language is the expression of a biased relationship – as the author states – a relationship based upon waiting, control and guilt. Let us adopt, then, the giraffe's language, a language of amiability, non-judgement/

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<sup>11</sup> Kievitz, Christian, *et al.*, *Cultural differences in listening style preferences: a comparison of young adults in Germany, Israel, and the United States*, in *International Journal of Public Opinion Research*, 9(3), (Fall 1997), 233(15), online: Infotrac, Expanded Academic ASAP).

labelling, of sympathy, through which the interlocutor's deep needs are heard<sup>12</sup>. To achieve this, we must be more inclined towards the other, try to understand his/her inner universe, discover the significance he/she gives to facts, words, events. This implies an effort of surpassing the self, self-forgetfulness – at least for a while, and concentration upon the other person. This is the only way to acquire comprehensive communication.<sup>13</sup>

“Despite of the urging human need to communicate comprehensively, in most of the so-called civilized countries there is an implied non-communication and human relations culture. It does not favour, either within family and school education or in social life, the development of a high relatedness quotient for most individuals.”<sup>14</sup>

In such a society the individual's chance to have a high relatedness quotient (RQ) is low because neither school nor society trains the individual for having lively and healthy relationships. Under these circumstances, as the above mentioned author argues, the relatedness quotient (RQ) could be, however, developed by becoming aware of ourselves and by developing the dynamics of our relationships.

Maryse Legrand – French clinical psychologist – states that one can distinguish between relatedness quotient (RQ) - intelligence quotient (IQ) and emotional quotient (EQ); in her opinion, RQ can be evaluated in two ways: in relationship to the self and in relationship to the others. A good relationship, which has a high RQ, implies the existence of kindness and amiability between its members and it makes possible for the other's particular characteristics to be respected, no matter who the person may be.

RQ is linked to the more or less developed capacity of a person to create for her/him and the others relationships that actively contribute to the increase and flourishing thereof. We could state that an individual has a high RQ when he/she encourages and develops energetic, creative and stimulative relationships for himself/herself and the other one. We shall state the RQ is low when it generates infantile, tiring, alienating relationships for the other one and for himself/herself. (Salome, 2004)

RQ is the art of establishing mutually rewarding relationships. A good relationship implies the following needs: the human need to be accepted, to express oneself, to be recognized as a unique human being and the need to be appreciated. This type of relationship ensures the development, openness and accomplishment of the human being.

As the French writer, Olivier Clerc, points out, RQ also refers to a person's capacity to deal with disagreements and conflicting situations without making use of violence. In such a relationship, our physical, affective and relatedness needs can be heard and recognized – however, this does not mean that they are fulfilled. The need to relate refers to the need to express yourself, to be listened to, to enjoy the others' attention, to be appreciated (to feel yourself appreciated and useful), to be intimate to someone (to be able to share personal secrets), to have a sense of belongingness (to feel that you are accepted in a group), to exercise influence (to contribute to the accomplishment/creation of something new). The RQ is developed within those positive meetings that tend to consolidate personal security, the feeling that you are respected and that you have a certain personal value. At the same time, such a relationship will stimulate openness, interest, curiosity (“taste”) to the others. RQ will favour aspiration towards being yourself when meeting the other one, trying to offer him/her the best that you can.<sup>15</sup>

Listening is an ability that can be improved by learning the way it functions. In a survey accomplished by over 500 most successful companies, 59% of those questioned answered that they

<sup>12</sup> Marshall B. Rosenberg, *Comunicarea Nonviolenta, un limbaj al vietii*, .....

<sup>13</sup> Elena Francisc Publishing, www.efpublishing.ro.

<sup>14</sup> Jacques Salomé, *Minuscules aperçus sur la difficulté d'enseigner*, Editions Albin Michel, 2004, ISBN: 2-226-15337-3.

<sup>15</sup> J. Salome, *Relation d'aide et formation l'entretien*, p. 27, Septentrion.

paid for their employees to be taught listening courses. This interest for improving listening abilities is important because studies reveal that big company's employees spend about 60% of their time listening, while their managers spend about 57% doing this activity. Research workers have found that good listening skills are directly linked to their work results. When employees attended listening courses before going to the IT training class, they were more efficient than those who were not trained for listening. Fig. 3-1 indicates as a percentage the approximate length of time people dedicate to the 4 communication skills: listening (53%), reading (17%), speaking (16%) and writing (14%). Although we spend most of the time listening, this is the least learned skill.<sup>16</sup>

Listening, like any other skill, must be learned and practiced. When research workers questioned 450 economic graduates as to what communication skills are necessary at the workplace, they answered that listening is the most important quality for acquiring success. When they were asked what communication skills they were taught in high-school, they mentioned listening in the first place.<sup>17</sup>

### **The negotiator's qualities**

**Bill Scott** considers that important negotiations require not only a negotiator but the whole team. He tries to identify the ideal leader's qualities within the negotiators' team. The team leader's professional level is very important. He/she must have the same professional level as the (rival) team's leader. If this condition is not met, i.e. if his/her negotiation abilities are not as good as his rival's abilities, then his/her team will be dominated and induced towards adopting a defensive, counter-aggressive attitude and, moreover, it is likely for such a team not to be able to cope with a situation of this kind.

Besides the professional level issue, the team leader's work style is also important. As to this, one can not mention a work style that is preferred to another one. It is important for the team to work together effectively and this depends upon its members' capacity to act according to the style they adopted.

In a company in which all information is controlled by a single superior, who assumes all managerial decisions, the negotiators' team will have an identical type of leader. During negotiations this will be able to give answers but he will address his colleagues only when asking for advice regarding the encountered situations and the possibilities that exist for solving these problems – possibilities which he will negotiate later on.

In a company in which management tasks are assigned, the leader will be a person who will control the progress of negotiations in a more free way encouraging the team members to have major contributions during the negotiation process.

The team leader's style has to reflect the organization style, which he represents, and there is no style that could be defined as "perfect".

Bill Scott considers that the leader's educational background is not relevant in negotiation. This role can be played by persons who have a degree in finance or trading or by persons who come from the field of production. It would be preferable, though, for this role to be played by those who, during their trainee years, worked in the commercial field and not the academic one.

First of all, the negotiator must have good communication skills, make proof of the art and science that this skill involves and master communication techniques. The negotiator must be a sympathetic and comprehensive listener. Without these inborn qualities that are developed by studying, it is difficult to be successful when negotiating. A clear communication, which is generally understood, leads to a decrease in number of unwise decisions and of the costs that the conflicting parties must bear. The wrong perception of the message leads to a wrong interpretation and evaluation of the partner, because one is not fully aware of what they do not know about each other.

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<sup>16</sup> Sperry Corporation, *Your Personal Listening Profile* (Sperry Falls Church, VA:1980), p.4.

<sup>17</sup> Vicent DiSalvo, David C. Larsen, William J. Seiler, *Communication Skills Needed by People in Business, Communication Monographs*, 25, (1976): 274.

In our opinion, surpassing these perception limits is possible if all negotiation components have a clear identity and content and if the relationship is based upon precise language and clear rules.<sup>18</sup>

In "One Minute Portrait", Stefan Prutianu considers that the successful negotiator's main qualities are: honesty, industry, love for the others, inner freedom, persuasion, sense of humor, initiative, diplomacy, inspiration and will.

Even if many people think that artfulness is the key of all successful negotiations, the above mentioned writer argues that the most important quality of a good negotiator is honesty and not artfulness. Only an honest and loyal attitude makes human relationships and relationships between organizations last.

As to the mediator, honesty is the manifestation of neutrality and impartiality, the symbol of remaining confidential in order to avoid conflicts of interest and to obtain the parties' consent. These are qualities provided in the codes of ethics belonging to mediation societies.

Hard work, readiness to make effort on a long term, the patience to accomplish a task are undoubtedly a guarantee for success in negotiation and mediation. Like the negotiator, the mediator has to be ready to come to the mediation process in order to work hard, to survey and check "reality". Common sense, good intuition and introspection are important qualities when one deals with a situation of power unbalance and for ensuring an efficient mediation. The mediator must be ready to be creative and flexible when he deals with mediation.<sup>19</sup>

Humanism, love for people, trust in values and the huge potential of the human being are the most important qualities of the person who wants to be a mediator. "Including humanism among the peremptory moral values is no longer negotiable at the beginning of the IIIrd millenium. Animated with humanist ideals, he/she [the negotiator] respects himself/herself and the negotiation partners. He/she can be generous, but, anyway, he/she is fair. He/she can militate for the free development of the human personality, but, however, not anyhow."<sup>20</sup>

The above mentioned author points out the importance of inner freedom in the negotiation process. The ideal negotiator is an independent and autonomous person who negotiates freely and in an unbiased way. These are the basic conditions upon which one's capacity to be natural and free depends. Inner freedom gives man naturalness, ease, dignity and moral steadiness.

Persuasion is the negotiator's capacity to convince and argue and it is transmitted through the rhetoric of the discourse and the orator's passion. The intelligent, logical but cold discourse does not convince. *Passion* warms up spirit and it makes people enthusiastic. We refer to passion here and not ardour ("as a form of slavery caused by ardour").

Diligence, perseverance, not stubbornness, represent another dimension of persuasion. Repetitive messages are recorded by passive memory and become more convincing.

"Optimism is the golden hand of the negotiator. It is to a great extent a matter of self trust, attitude and will. It comes from the inner universe, the trust in one's own force and generosity. Good is above evil even if we do not live in the best of all the possible worlds. Optimism is a miraculous plant that can be grown. An optimistic negotiator is generous and cautious. A part of him strongly believes that partners can benefit of the negotiated solution, while the other part remains vigilant."<sup>21</sup>

Smile and humour are important qualities in the negotiation process. A smile can sometimes be more convincing than the whole argumentation. "The serene and smiling face represents 51% of personal charm." Happy, joyous persons are more pleasant and are offered a concession by their partners more easily. Humour is also tonic, it weakens tensions, it warms up atmosphere and it facilitates the offering of concessions.

<sup>18</sup> L. P. Zapartan, *Negocierea in viata social-politica*, Ed. Eikon, Cluj Napoca, 2007, pag. 179.

<sup>19</sup> Robert A. Baruch Bush, Joseph Folger, *Promisiunea de mediere*, Elveția, Jossey Bass, 1994.

<sup>20</sup> Stefan Prutianu, *Manual de comunicare si negociere in afaceri*, Ed. Polirom, 2000.

<sup>21</sup> Idem.

Initiative is an ally for the one who proposes, begins and initiates an action. Initiative is an ally of the strong, active ones who make decisions alone and never wait for the others to make a decision. A passive, always expecting person cannot have initiative. The strong negotiator depends upon initiative.

Diplomacy allows for a correct and convenient attitude to be adopted in almost any situation. It requires patience, calm and lucidity. The diplomatic negotiator knows how to address his/her interlocutor - the negotiation partner: he/she is balanced and respectful to the others.

Will is also an important quality for obtaining success in negotiations, it is a characteristic of the strong ones and the winners. For them, the exercise of will is so simple that it requires almost no effort. Will is the psychological function that, consciously, directs the individual towards accomplishing his/her objectives. It focuses energies towards attaining goals. Will often differentiates success from failure. Successful persons are those who adopt strong inner decision and do not give up when obstacles are encountered.

Besides the above mentioned qualities of the good negotiator, Stefan Prutianu also adds competitive spirit, dignity, honour, health, experience and age (30 and 50 years).

## Conclusions

Communication, negotiation and mediation are creative and managing social life processes, which allow and facilitate human communication, rebuilding broken communication bridges, preventing or peacefully settling social conflicts. They are processes meant to reinforce the sensibility of human action, cooperation and solidarity, as well as the sustainable development of societies.

Negotiation and mediation are the most convenient and the cheapest ways to settle disputes. That is why, lately they have been more and more used for solving micro and macro social conflicts.

The frequency of using negotiation and mediation in social relationships reveals the level of democracy and political culture in a society.

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