

# Basics of Mediation

by Klaus Bäumer

**„Mediation is a mode of negotiation and conflict resolution outside of the courts. In its professionalized form, it originates in the United States, where it has been successfully applied for several years, especially in business.“**

Mediation is based on the concept that chances to come to a mutual agreement are especially good when the interested parties, in reaching an understanding, are assisted by a mediator.

The mediator is a neutral third party. He does not act as an arbitrator and does not make judgements. Based on a structured course, he facilitates negotiations and ensures that

- different perspectives are voiced
- interactions at the level of relations and issues are made aware and
- a constructive, feasible solution is developed.

## What are the advantages of mediation?

Mediation will be advisable (see ill. 1) if the conflicting parties have an interest in using it

- to **continue** their **relationships** despite acute conflict, for personal or professional reasons
- to solve conflicts **confidentially**
- to **find quick, unconventional or cost effective solutions**.

Mediation is based on voluntariness, openness and mutual respect. The parties should be able and prepared to

- **acknowledge** the other party, the conflict at hand and the mediation protocol
- **make** all decision relevant **facts transparent**
- assert their own positions, to be **open to new ideas and perspectives**, and to actively participate in the search for solutions and
- **bear responsibility** for the result.

## How does the mediation process proceed?

Explicitly or implicitly, the mediation process will be divided into several stages by the mediator (see ill. 2).

### Phase 1: Work agreement

In the first step, the mediator explains the process. He underlines the aim to find a solution elaborated and approved by the conflicting parties. He checks that mediation is the proper tool to achieve agreement and that the match between mediator and the parties is a good one. If this is affirmed by all sides, a work agreement is created. In this trilateral agreement, the protocol and payment of the mediator are set forth. While both parties are free to withdraw from the process at any time, the mediator may do this only in certain exceptional cases.

### Phase 2: Conflict identification

In this phase, the conflicting parties have the opportunity to present their perspective on the conflict. This is the phase of taking inventory and exchanging information.

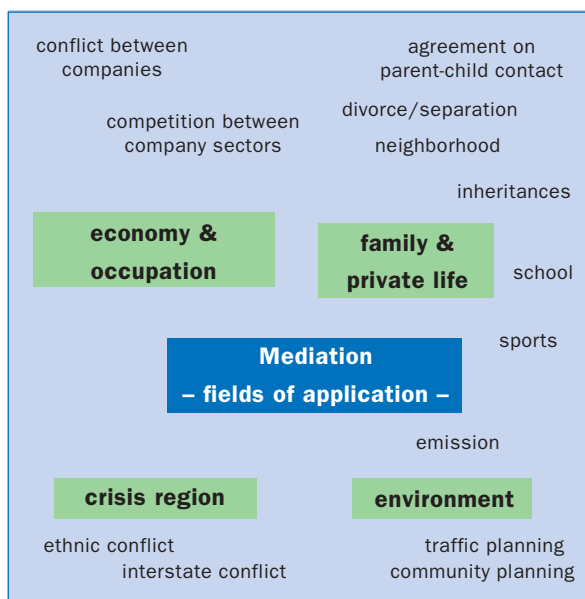
The mediator will support both sides by asking questions, making summaries and ensuring that presentations can be made without disruption. Especially in this phase, his ability to adequately cope with difficult situations and to maintain neutrality and impartiality is very often called upon. As an active listener, he pays close attention and identifies the points of

Mediation	
+ larger variety of solutions	– No guarantee of success
+ confidentiality	– not appropriate for all types of conflict
+ cost saving	
+ speed	
+ basis for improved relations	

### III. 1: Advantages and disadvantages of mediation

Mediation proceedings	
Phase 1	<b>Work agreement</b>
Phase 2	Conflict identification
Phase 3	Conflict specification
Phase 4	Developing optional solutions
Phase 5	Final agreement and completion

### III. 2: Mediation proceedings



### III. 3: Fields of application

conflicts, which he then summarizes in an impartial fashion. At the same time, he has to channel emotions, i.e. the dynamics of the conflict. As soon as all conflicting issues are identified, a structured conflict agenda (issues, not positions) can be established and fine-tuned by all participants, introducing the next phase.

#### Phase 3: Conflict specification

The goal is here to let the parties begin to gain an understanding of the other side's positions and underlying interests.

Positions are not negotiable. Solutions can be found only through knowledge about underlying motives, as there often are also common interests, fears and needs behind contrary positions. During the phase of conflict specification, the participants also begin to shift the focus in dialog from past to future. The mediator assists the conflicting partners in identifying interests and needs behind own positions and those of the other party. He attempts to perceive and address values, desires, feelings and interests that are still omitted in order to make the partners aware of inflexible positions and promote change. Adequate means to reach this goal are again

- impartial **analysis** of positions
- **mirroring or paraphrasing**, i.e. active listening, summarizing and repeating in his own words, and – as important – checking whether what is said conforms with what each party had in mind.
- **reframing**, i.e. impartial summary and repetition of views, i.e. without valuing
- sincere **acceptance and appreciation** of mediants. When the conflict agenda is worked through and participants have the impression that their positions and motives have been made more comprehensible and plausible, then this is the basis on which to search for consensus solutions.

#### Phase 4: Finding optional solutions

Mediants in this phase often feel freed from part of the pressure. Throughout the process of conflict specification, they have gained new insights and new perspectives. This is the ideal basis on which to search for creative approaches to conflict resolution.



In the first step of idea collection even such ideas may and should be addressed which, at first glance, seem unconventional, difficult to realize in practice, not fully thought out or incomplete.

The mediator makes sure that

- all ideas are discussed
- proposals for the resolution of issues are balanced.

In the next step, mediants make a joint attempt to transform ideas into proposals for resolution. The mediator may support this effort, but makes sure that there is no valuing at this point.

The third step is about provisional evaluation of individual options. Based on the parties' interests, the mediator, in a joint effort with the mediants, is expected to find objective criteria for evaluation.

When conceivable approaches to conflict resolution have been provided for all points of conflict, the parties will discuss whether individual solutions are balanced resp. whether solutions are sufficient as a package in the overall context.

### Phase 5: Agreement and completion

Depending on the subject of mediation, the result is set forth in a mandatory agreement. In contrast to the work agreement, the final agreement is signed only by the conflicting parties. If the mediator is not an accredited lawyer or solicitor, he will recommend that mediants seek legal advice and validation of the draft by a lawyer prior to the signing.

The mediator assists the parties in drawing up the agreement or contract. He makes sure that the solution is

- specific
- measurable
- feasible
- realistic and
- fixed in term.

As important is the final report presented by the mediator, appreciating the common endeavour even if the agreement is not signed or mediation was broken off.

### Where are the limitations?

Mediation will stand or fall with the ability of the parties to engage in controversial yet constructive dialog.

A mediation is not appropriate as an approach to conflict resolution if

- the conflict has criminal implications
- there is a background of drug addiction, violence or threatening behaviour
- one of the mediants, due to a psychiatric disorder, is not able to represent his own interests, on his own responsibility
- a precedent shall be created
- there is a need for revenge or punishment
- one of the parties prefers a court/arbitration decision.

### When is mediation an option?

Mediation is an option in all matters where a legal process would result in a no-win situation, where costs and duration matter, or where parties think their future relation will be at risk from winning or losing.

Fields of application therefore are manifold (see ill. 3). In the meantime, special fields have developed in mediation, such as business or environmental mediation. A mediator's expertise in specialty areas can sometimes work in favour of the mediation process. He may have a better understanding of the issues and of the dialog between the conflicting parties. However, this is not mandatory.

It has become usual practice recently in the United States to include in agreements a provision that mediation will be used before going to the courts. As a consequence, mediation centers have been created which are able to perform such procedures very quickly and efficiently and are less expensive.

On the non-commercial side of the spectrum, the so-called Conflict Mediation Program is increasingly used in schools.

Interested pupils and teachers can attend mediator training courses and then mediate conflicts such as class disruption, brawls, verbal insults and exclusion. The advantage is that participants can search for adequate solutions themselves. Thus, the positive effect on the social climate in schools will be more sustained.

*Dipl. Ing. Klaus Bäumer, business mediator, Deutsche Telekom AG, Bonn*