e-Paper

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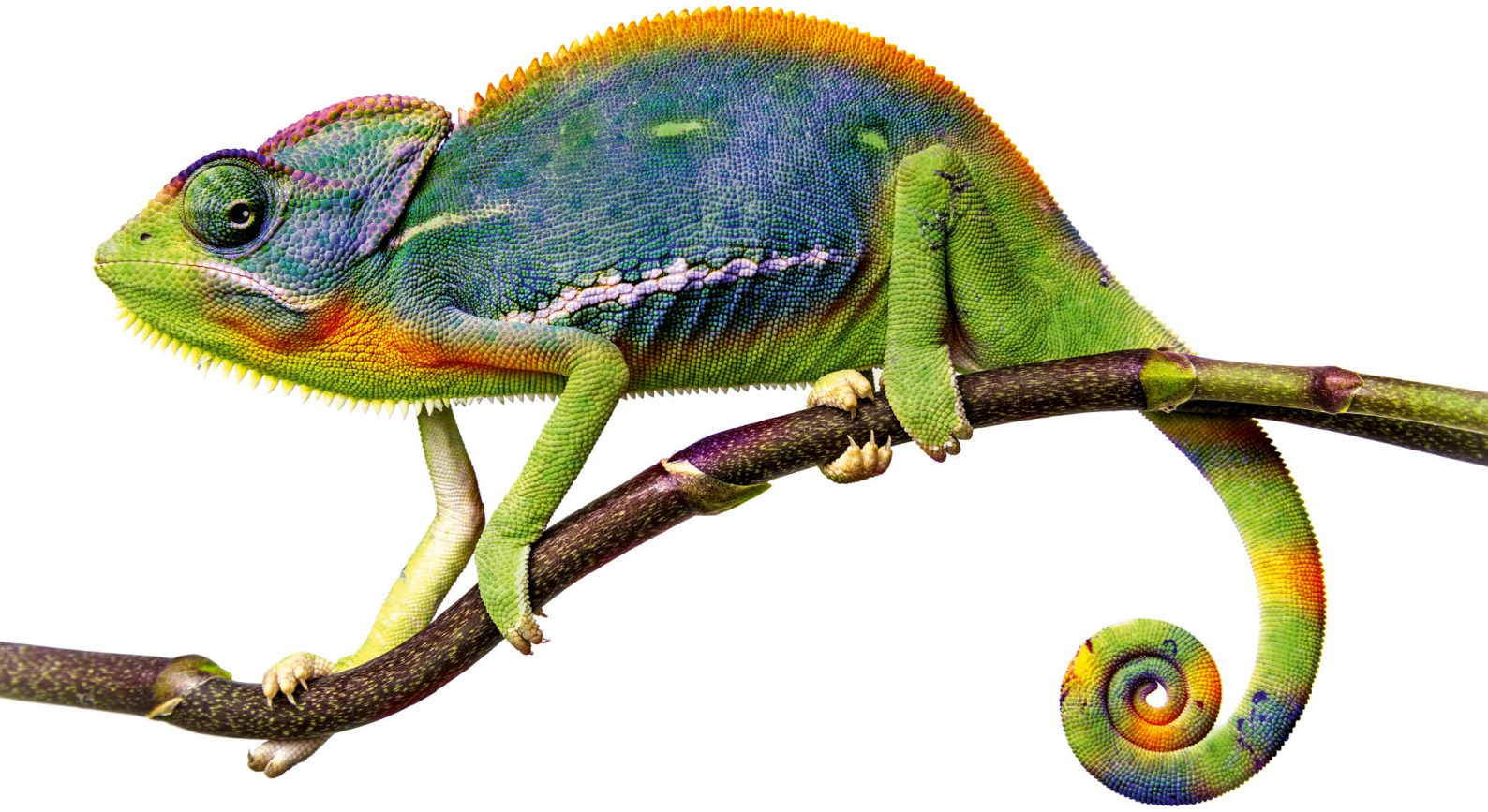
The MEDIATION

Trade magazine for Conflict Resolution – Leadership – Communication

Change

The great constant



How the behaviour of cichlids is similar to ours in times of crisis

When life gives you lemons, make lemonade!

Is it possible to train optimisim?

Fit for the future

Dear readers,

Our recent times have been anything but stable. The world around us has changed – in many cases – irrevocably – and we, well most of us, have learnt to live with it.

But change has been ever-present and no force in the universe has been able to stop its march. As Friedrich Nietzsche once said, "the past bites the tail of everything that is to come". This means that having clarity about the past not only makes it possible to become aware of what has changed, but also to distinguish between good and bad changes. This in turn helps us recognize if we are prepared for them.

No society or organisation is "change-proof". But the next question can then be – what the individual or the organisation needs to position itself as "future-proof"? For the future is an open, uncertain space. The eminent economist John Maynard Keynes already derided the construction of a space of certainty in the temporal distance as "polite techniques that attempt to deal with the present while neglecting the fact that we know little about the future".

In times of particular uncertainty, i. e. in transformation processes of society as well as in change processes of organisations, this seems to me to be the right way: To carry out one's own change in a changing world on the secure basis of one's own strengths. It is therefore totally acceptable to admit change into our lives to build ourselves.

And using this idea as a motivation, I am pleased to introduce to you – our international mediation community – the first English edition of "Die Mediation", our German mediation magazine published since 2012. With this effort, we are in fact inviting change – by becoming more internationally attuned and open to global cooperations.

With a run of 13,000 quarterly editions, our printed publication of "Die Mediation" is already the leading magazine in the German-speaking area in the area of conflict resolution and mediation. As the publishing institute "Steinbeis Mediation", we have completed many international projects, including "Online Mediation in Cross-border Disputes" (2011–2013), "Mediation in Cross-border Inheritance Disputes (2017–2019)" and our current project "InMediate", which aims to train international mediators. Alongside, we have held international mediation conferences in Florence (2011), Berlin (2012), Leipzig (2019) and Stuttgart (2018).

We hope that, through this digital format, we can bring together part of the international mediation community. At the same time, we wish to inspire potential clients to reach out for professional management of escalated conflicts.

We are looking forward to your feedback!

Yours,

"Go through your changes, in a changing world, on the secure basis of your own strengths."

Image Source: Dirk Brzoska

Editor-in-chief Prof. Dr. habil. Gernot Barth

IKOME

Steinbeis Mediation

Taking mediation places

Steinbeis Mediation

MEDIATION

Within and between organizations

SUCCESSION PLANNING

Corporate and family inheritance

CITIZEN PARTICIPATION

Between corporates and communities

"It's not about who is to blame, but how the future can be shaped."

Prof. Dr. Gernot Barth and Team

Active in Leipzig since 2004, Steinbeis Mediation now has presence across Europe and North America, thanks to our network of mediators. We are a growing team of mediation practitioners specialize in conflict management and mediation, internal and cross-company cooperation, as well as in the public sector and administration.

Visit www.steinbeis-mediation.com to learn more about us.

Global Presence, Mediation in Focus

InMEDIATE

With **InMEDIATE**, we are creating a European profile of the international mediator. This is a step in the direction of homogenising mediation standards across the EU. The project is funded by the European Union's ERASMUS + program and produces extensive mediation learning and capacity building.

FOMENTO

Our pioneering project, which was co-financed by the European Commission under the Civil Justice Program, looked at cross-border civil inheritance, and examined the impact of the EU inheritance law and the role of mediation. We interviewed more than 100 experts during the study, designed training courses as the outcome and held a pan-European mediation conference.

Steinbeis Days

The Steinbeis Days Mediation Forum is organized every year together with around 300 participants. The core topics of the conference revolve around the developments in conflict management and out-of-court conflict resolution methods.

Online Mediation in Cross-Border Disputes

With this EU Commission-backed project, we supported the EU directive on the use of mediation as a cost-cutting and time-efficient method for resolving cross-border conflicts and formed an alliance of leading European mediators.

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The scientific column

How the behaviour of cichlids is similar to ours in times of crisis

Information is vital, for humans and animals alike. Particularly in extraordinary times of crisis, serious and scientific answers are often in short supply. We then tend to lower the standards for our information, as our inner quality control fails. But where stress and fear are bad advisors, calm and level-headedness will help you proceed.

By Klaus Harnack

"Never before has there been so much knowledge about the unknown."
Jürgen Habermas (2020)

When stimuli discontinue

When the name Konrad Lorenz is mentioned, most people immediately think of gray geese. Rightly so, but what about cichlids – or more precisely, the male representative of the genus Astatotilapia? The story in a nutshell:

If you confront a male Astatotilapia with a dummy of the same-species male, it will start to attack the dummy. If you repeat this experiment the following day, it will attack the dummy again to the same extent. It seems that the dummy serves as a triggering stimulus for the fighting behaviour of the male Astatotilapia. Up to this point, this behaviour is to be expected. It gets interesting, however, when you withhold the cichlid dummy from the male fish for several days. Now, the fish starts to look for the triggering stimulus more and more actively. And since the original stimulus has disappeared, it begins to imagine the triggering stimuli and reacts aggressively to completely inappropriate stimuli. It now also attacks stones, plants, sticks etc. – things which are in its immediate environment and which did not function as trigger before.

Lorenz explained this response to inappropriate and unfitting stimuli with The Instinct Concept, for which he received the Nobel Prize in Medicine in 1973 together with Karl von Frisch and Nikolaas Tinbergen, among others.

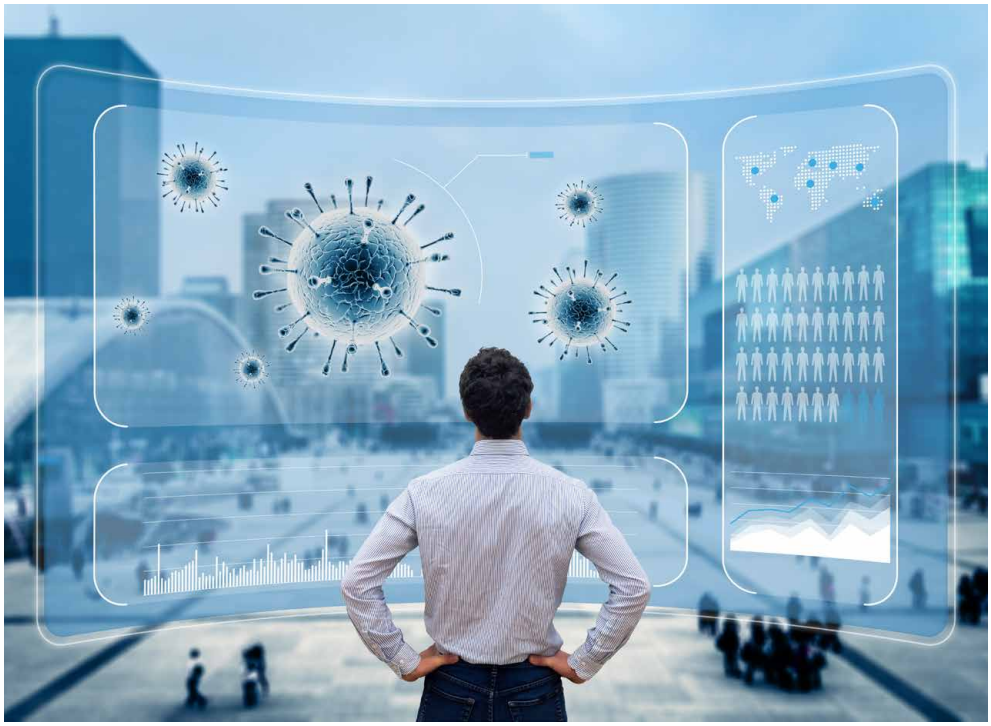
Essentially, he holds the fish's appetitive behaviour responsible for its active and seemingly inappropriate search for triggering stimuli. This search for sign stimuli is consequently a combination of temporal and qualitative factors. As the time gap between stimuli increases, the 'internal quality control' for these sign stimuli decreases (Lorenz 1978).

From the animal kingdom to the world of human beings

Although it is uncommon to speak of appetitive behaviour beyond sexual appetence in humans, we will now exchange the cichlid for a human and additionally exchange the instinct of the fish to drive away its rival for the human behaviour of seeking answers in moments of crisis. What do we find? Like the cichlid, the absolute desire for information and answers intensifies in us humans. In their absence, the temporal delay leads to an increased search for information and neglect of a qualitative demand. In the non-appearance of information, the temporal delay leads to an increased search and a reduction in quality standards.

Image Source: stock.adobe.com/Corona Borealis

An unrealistic example



Let us assume we were faced with a worldwide pandemic and in one country, the head of state suggests to the nation that they would investigate whether it could be feasible to inject disinfectant as treatment for the virus causing the disease. "After all," he says, "it works perfectly on a doorknob." While this, naturally sounds completely implausible, it is an example of what happens when genuine, evidence-based answers are not available for a while. The pressure to provide these answers increases and thus, quality decreases. The moment where we fall short of a quick response and time goes by, people start looking more acutely for information. In that process, they become less selective as to the quality of the information.

Informative appetitive behaviour

Whereas the crowded mucous membranes provide the perfect breeding ground for coronavirus in its human carriers, crises that do not allow for easy solutions provide a perfect breeding ground for increased informative appetitive behaviour. If qualitative information is not found, inappropriate information will not only be readily consumed, but also actively sought out – which lays the foundation for all kind of conspiracy theories. Even though most people, luckily, will not suffer from a serious course of disease, we ought to be aware of this mechanism in order not to be led astray by this informative appetitive behaviour in our course of actions.

Conclusion

As difficult as it might be – what matters in a crisis is: quality over quantity because crisis leads to mental blinkers. It holds true for conflicts of all kinds: if our mental apparatus is under stress, our cognitive faculties narrow down. For example, this is why using war metaphors to describe a crisis, which is particularly popular with male rulers, are incredibly counterproductive because they further fuel cognitive narrowing down.

Especially now, we need a clear perspective of the current situation instead of a perception distorted by fear! Our task at hand is to nurture qualitative reasoning and to begin to learn from this situation so we are well prepared when the next wave of infection hits. Apart from that, we have numerous other roadworks which require our urgent attention but that are currently in danger of going unnoticed due to our appetitive information behaviour. By the way, have you noticed that Berlin Airport has opened?

To sum it up, stay calm and cheerful, and even if keeping your distance, washing your hands and not touching your face is not exactly rocket science, it is still important. In the words of Herbert Grönemeyer: "It could all be so simple, but it's not."

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Image Source: stock.adobe.com / NicoElNino

Dr. Klaus Harnack

Dr. Klaus Harnack is a cognitive scientist, social psychologist and business mediator and works at the Westphalian University of Münster in the Department of Industrial Psychology. He received his doctorate in the topic area of motivational psychology and his current fields of activity in research and teaching include the areas of collective decision making, cognitive biases, and negotiation theory.

Leipzig impulse talk

"A good mediator enables you to think in an entirely new way."

Brigitte Zypries, the former Minister of Justice of the Federal Republic of Germany, has trained as mediator and is well versed in the subject of mediation. In this exchange with editor Gernot Barth, she demonstrates her clear advocacy – and would like to see better education about the advantages of the procedure. A conversation about debt collection companies, the Certified Mediator Training Regulations, and the prospects of mediation.

Editor-in-chief Gernot Barth in conversation with Brigitte Zypries (SPD – Social Democratic Party of Germany)

Gernot Barth: Ms. Zypries, you are active as an ombudswoman for the Federal Association of German Debt Collection Companies (BDIU).

Brigitte Zypries: Yes, that is correct. Not just for the association, but also for other organisations – and I work for them honorarily.

In a conversation I was having with friends some time ago, we had an idea: that it would be of great advantage if the employees of debt collection companies went through training in mediation.

There are debt collection companies that deal with debtors and creditors in a mediative way. And then there are others – especially larger companies – that process everything more IT-wise. Each year, there are about 20 million new cases – it should be difficult to mediate all of them. And to be honest, I also don't think that this necessary. Rather, in most cases, it is, first of all, just about telling them: "Hey, you forgot to pay your bills."

For me, it was more about a mediative language and a mediative interaction. I think our society does not necessarily need more mediations – but a mediative cooperation.

I feel the same way.

"Our system is focused on meeting people's needs."

I often think that the modern society in Germany is lacking in empathy. Ever since the industrialisation, we have been calculating and drawing up balance sheets a lot, and the question keeps on being: "How can we achieve the greatest financial success?" It seems to me that we have forgotten a bit, how to consider the needs of others.

I think that our society with its social market economy still works better than in numerous other countries in which the social aspect is not so prominent.

For example, we are equipped with a functioning health system here, even in poorer areas nobody has to go without teeth as everyone gets provided with dentures. For this reason, I believe that our system is, indeed, geared towards meeting the needs of all people as much as possible. What has certainly taken a turn towards suffering – and that also has to do with the Internet – is how we interact with each other. There is a lack of empathy and serenity.

"I went through a mediation training myself, because I had the feeling that it was good for me."

You're right: we need more understanding for one another. In Germany, about 100,000 mediators have been trained during the past 30 years. Often, we hear the hypothesis that there are too many. But I think, first and foremost, it is not about how many mediators there are – but how great their skill is to communicate in a mediative way. And this is why many people decide to take part in mediation training.

At least for me, it was exactly as you just described it (laughs). I trained in mediation – not because I wanted to work as a mediator – but simply because I felt that it would do me good. I then also took on a few cases, but discontinued pursuing the matter further.

"It is not always just about offering solutions – sometimes, it is simply about listening."

You were Federal Minister of Justice from 2002 to 2009. Is this connected to your mediation training?

Not with the judiciary in particular, but more with my role as minister in general. I have held political leadership responsibilities several times. Before my time in the Justice Department, I was State Secretary in the Ministry for Women, Work and Social Affairs in Lower Saxony from 1997 to 1998, then from 1998 until 2002, I was State Secretary in the Federal Ministry of the Interior.

If you hold such positions for 13 years, you feel yourself to be, over time in a rat race – at least that's what I call it. You go from room to room, and in each room sits a group of people that has a problem. Then you have three quarters of an hour to solve the problem, and you finally say: "This is how we will do it." And then go one to the next room. You learn very well to take things in and to propose solutions.

What then moved me to take up mediation training was the fact that I transferred this attitude into my private life. When a friend told me of her problem I would say: "This is what you are going to do now and I am sure it will be sorted." But with that manner, I could no longer do her justice at all. Because it is not always about just proposing solutions – sometimes, it is simply about listening.

"I would not attach too much significance to the number of training hours required; personal skills are also important."

The regulation on the training and further education of certified mediators (ZmediaAusbV) requires 120 hours of attendance. Within the mediation associations we are currently discussing whether 200 hours would be better. We are also considering establishing a body where certification requires these 200 hours. For many actually practicing mediators an additional 200 hours of advanced training come on top the 200 hours training. I have a feeling that whoever only completes 120 hours views mediation more as an extension of their skills set rather than considering it as professional path.

I think the question of whether you can build a business from mediation training has many more facets. I don't think that it only depends on the content and quality of the training. You can learn a lot in the course of 120 hours – especially, if you bring prior experience or a certain amount of talent for mediation. 200 hours of attendance do not make up for bad training or lack of talent. However, I do not have any statistical data in this context, therefore, I wouldn't want to be as arrogant as to cast judgement.

Nevertheless, I feel that it is similar to those in a teaching profession: some radiate a natural authority and others do not manage to establish authority despite their knowledge of teaching and methodology. Another example would be doctors: There will always be physicians that are insensitive towards their patients and that are treating information irresponsibly. Hence, I would not overestimate the importance of the required hours for mediation training.

In this context, we already spoke with the Ministry of Justice. There, too, people were quite dispassionate and said that only verifiable numbers and research would bring about a quick change. Furthermore, the lawyers in the ministry hold a power that is not to be underestimated. For them, too, it would mean more hours of training. Consequently, there is a lot of resistance in this area. Nevertheless, I personally favour the 200 hours.

I also completed 200 hours of training.

For a moment, think back and imagine you would have had just half the number of hours. I think you would notice that something was missing. In my opinion, the lesser trained mediators also contribute to a bad reputation of mediation.

I had a mediation that I carried out together with an experienced psychologist who training me in mediation. My lack of experience was compensated by someone who had been active in this field for a long time. However, it was of no use: the husband broke off the mediation and said: "Okay, let's take it to court."

Sometimes, it also happens that the mediation comes to a successful completion – however, the parties involved then do not stick to their agreement. What is needed here are sustainable results. And some people simply do not want to spend any money.

Or they can't!

Personally, I work mostly in the field of economy. What I tend to see here: They don't want to.

Right! If, for example, a patriarch doesn't actually want to transfer the company yet, the best mediation will be futile.

In such a case, a conflict analysis is important. You don't need a lot of experience for that. And after two to three hours, you have to say:

Image Source: Harry Soremski

"I had a look at it, please allow at least 30 hours for it." You cannot simply expect that mediation goes quickly.

You are absolutely right, it doesn't work.

"Female founders practice mutual appreciation much more intensively than I am used to from traditional industries."

Ms. Zypries, you also work in the business sector. Do you apply mediation here?

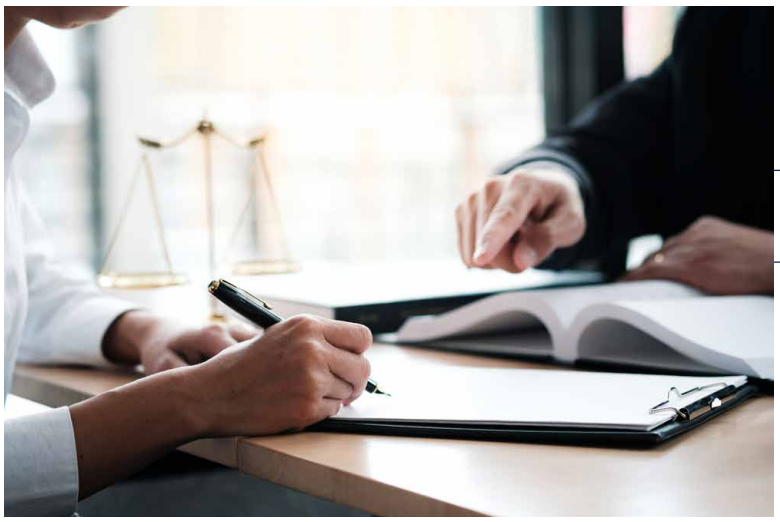
Not really. The only area that stood out to me due to its partly mediative character are the female founders. "Global Digital Women" or the financial heroines and numerous other women who produce podcasts, practice mutual appreciation more intensively than I am used to from traditional industries.

That surprises me, to be honest. You are involved in the German Foundation for Mediation and are publisher of the DUB entrepreneur magazine. I would have thought that you encountered mediation regularly.

No, but especially with regards to the magazine it is a very good idea. Let's have a conversation about mediation in the case of a business transfer, for example. Let's swap roles!

"In politics, many think: we don't need mediation – we can do it on our own."

That would be a great thing! But back to the topic. I made an observation: there was a time, around 2001 to 2011, when there was a lot of talk about mediation in the media. Especially now, mediation is no longer present at all – even though, in my opinion, our society finds itself in a highly escalated state. Despite escalation stage 5 or 6 there is no call for mediation in our country. What could be the reason?



I think that, especially in politics, there are many who think: "Oh, we can solve this ourselves, otherwise it will only cost time – which we don't have." Also in the fields of economics and education one reads often that decision makers in companies are fired after one year of employment, or that professors receive a letter of termination. So, you do really wonder what got out of hand so completely. I believe that conflicts often remain so deep under the surface that mediation is not even considered. And once the letter of termination has gone out, it is no longer necessary.

And in politics? Often, parties in mediation rely on their own consultants, hobnob-mediators, so to speak. There are hardly any mediators in political mediations that are actually neutral.

Someone who can mediate within politics, necessarily disposes of political knowledge. It is hardy preventable that this is linked with a certain preference for a party. And it is correct. Additionally, there is always the fear that information can be leaked to the outside.

Mediators are bound to confidentiality.

Officials too, and yet, confidential information leaks to the outside time and again.

"The hoped-for triumph of mediation has not materialised, other ADR-procedures work better."

In your opinion, what role do ADR-procedures play currently, as well as the mediation itself?*

With regards to mediation, I think it can be said quite objectively that the hoped-for triumph did not materialise. The evaluation report by the federal government of 2017 shows that still far too few mediations are being conducted. Looking at ADR procedures in general, especially in relation to arbitration tribunals and arbitration, the situation is better. Arbitration tribunals are used often in the economic field – arbitrations have successfully been established for pay disputes.

"To convince people of mediation, better educational advertising is necessary."

Could it be that the reason for this is linked to the authoritarian state thinking in Germany? It is preferred to bow to a decision made by someone else than to become active and work towards a dispute settlement together. It takes much more energy to go through a conflict with the opponent, autonomously find a solution and to contractually draft the result.

Image Source: stock.adobe.com/Charlie's

You are right. At an arbitration tribunal there are arbitrators. And in case of industrial action, it is statutorily determined that an arbitration must first be attempted. This has a certain binding force and solution proposals are made by the arbitrator. Thus, it could be connected with the inability to question one's own position.

In family court disputes, many people also don't realise that they, through their child, will be connected through with their (former) partner for the rest of their lives. Very close-knit of course until the 18th birthday, however also still afterwards – because they will always be the parents of that child. Many find it difficult to accept that, in case of a conflict, a process such as mediation is worthwhile and makes it possible to deal with each other in a somewhat sensible manner. I often feel that the process of mediation should be explained better.

"Mediation makes it possible to treat each other with respect even after 20 years."

How could that work?

Just like I just said: You have to demonstrate that mediation makes it possible to treat each other respectfully and appreciatively even after 20 years of dealing with each other. Mediation is always worthwhile when you are in a long-term relationship with each other. After a traffic accident, for example, if it is a matter of deciding whether the traffic light was red or green, a court of law can settle that. You don't have a personal relationship with the other person. But in case of family conflicts, for example with inheritance disputes, it makes sense to communicate. And I sometimes wonder if people have properly realised that the option of mediation is available. In a family court it often is said: "First of all, go through a mediation and then you can come back." The advantages of the process, however, are not laid out.

Maybe judges could explain the mediation process. After all, it is anchored in that judges should ask at the beginning of the hearing whether the parties involved know about the option of mediation and have tried it. Some judges do not even know that – which I find incredible!

I agree! Or the mediators themselves have to address this more strongly at the beginning.

Mrs Zypries, I would like to come back once more to the already mentioned evaluation report. I think this report is very much incomplete. Only mediators were interviewed, and that process took place through the associations. But there are also coaches, business consultants and supervisors who conduct mediations. Even more than 100,000 telephone mediations that take place annually were left out, although they actually form part.

I agree!

And then I ask myself: When did the process of anchoring in mediation in Germany start in the first place? It hasn't been that long – maybe 25 years. And a lot has only been happening during the past ten years. It took other professions centuries. That's why I think that we can speak of a success story in the context of mediation.

Still, the legislator and many people had hoped for more.

"A good mediator enables you to think in an entirely new way."

Maybe the process of mediation just doesn't fit yet into our world as it is today.

Personally, I think the process is an extremely good and valuable process of leading a conversation and I recommend it to anyone who has difficulties and is looking for a solution. A good mediator enables you to think in an entirely new way. Especially now that inheritance is a big societal topic it is incredibly important to talk with the family before the event of a death. In this way, you can prevent the successors from falling out over the inheritance. This is by no means trivia.

When dealing with inheritance, one should always make sure that the intermediator does not only act sensibly on a legal level – but also on a personal one.

Exactly! It is a good idea for the testator, the heirs, and a mediator to meet for a conversation. In that situation, the testator can then ask specific questions, for example: "Would you like to inherit the apartments together? Or take one each? Do you want to settle a compensation due to the different monetary value? Or is it okay if I feel that one of you needs more than the other?" If such topics are addressed in advance, the risk of someone feeling offended afterwards is diminished.

That were excellent closing words! Ms. Zypries, thank you for the conversation.

** Alternative Dispute Resolution (ADR) refer to alternative dispute resolution methods in addition to state court proceedings.*

Image Source Portrait: Susie Knoll

Brigitte Zypries

2002 to 2009 Federal Minister of Justice. 2005 to 2017 directly elected members of the German parliament for the constituency Darmstadt and Darmstadt-Dieburg. January 2017 to March 2018 Federal Minister for Economic Affairs and Energy. Until then Parliamentary State Secretary in this Ministry; responsible for information technology (IT) and foreign trade.

Crisis prevention – Tips to prepare for abrupt change

More and more companies are facing abrupt changes. The perfect crisis management can prevent problems from getting out of hand in the first place, but this requires appropriate preparation and, above all, training for communicators and employees in customer contact.

By Wolfgang Immerschitt

Communication management in extraordinary situations is a much-discussed, documented, and described topic. Twenty-seven million search engine entries are evidence of this. Nevertheless, the knowledge gained years ago still applies today – that it does not prevent many organisations from inadequately preparing for a crisis (Mast 2008: 98). The best form of crisis management is actually not to let it become acute in the first place. "Obviously, the most prepared are those who are ready for everything. Seen in this light, it is not morbid but wise to occasionally also consider loss and failure." (Märtin 2010: 27).

"No matter how the change comes about, it poses a particular challenge for corporate communication, as it scares many people in the company and the environment. What is established might lose its validity, new challenges become apparent, orientation is difficult, and it is not uncommon, for companies and stakeholders alike, to take impulsive action. It is no longer clear which way leads to the goal, so you run all the faster." (Mast 2006: 405).

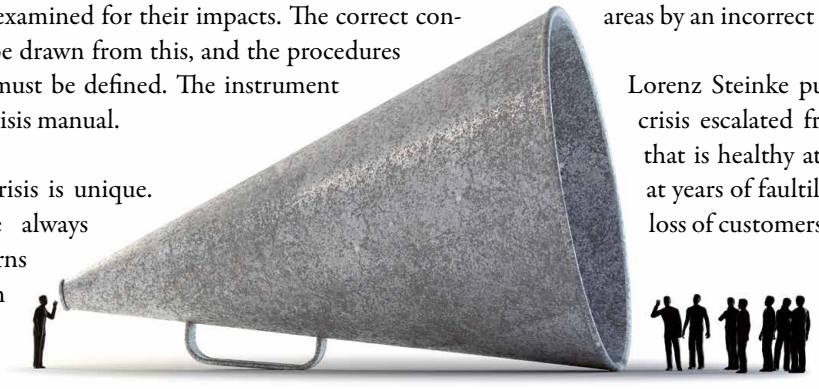
Basic criteria of prevention

The four keys for successful crisis prevention are:

Observe: If you do not know what is going on in a company you cannot react timely. The method for a systematic environment analysis is Issue Management.

Analyse: The observed exogenous and endogenous phenomena must be examined for their impacts. The correct conclusions must be drawn from this, and the procedures and processes must be defined. The instrument for this is the crisis manual.

Train: Every crisis is unique. But there are always recurring patterns that one can adjust to with practice.



Inform: Ongoing internal and external communication is the best preparation for extraordinary events. It helps to establish relationship networks, build trust and standardise procedures.

Subject areas that can trigger crises

When managers and those in charge of communication start looking into the topic of 'crisis', the first things they have in mind tends to be cases of fire, big falling outs, or people getting harmed while at work. As bad as these cases may be, they are usually the easiest to solve.

After all, in such cases, the companies benefit from one particular circumstance: they receive help solving the problem from first responders organisations such as the police, the fire department as well as emergency and rescue centers.

Other sources of crises are much more difficult to handle. On the one hand, they are more complex and their causes and effects are more difficult to assess. On the other hand, crises can be triggered by laws and regulations, business problems, customers or suppliers, production processes, red tape, employees as well as management, and last but not least, environmental issues, to name just a few.

Early detection and crisis prevention

From an empirical point of view, most crises are homemade; that is, they are triggered in a broad array of different areas by an incorrect corporate policy.

Lorenz Steinke puts it this way: "It is rare that a crisis escalated from the outside hits a company that is healthy at its core. Mostly, we are looking at years of faultily established processes, a gradual loss of customers, or outdated management structures that require an adaptation of the business model and strategy to meet current market requirements or changed

Image Source: fotolia.com / Mopic

Did you know?

A shitstorm is not necessarily a crisis

Shitstorms, or massive waves of outrage on social media, have become requisite in the era of Facebook and Twitter. A study conducted by the Macromedia University for Media and Communication in Cologne has shown that companies do not have to count with lasting economic damage despite public criticism. Most of the companies affected, however, were responding to the criticism by adapting contingency plans and restructuring their communications department. Two researchers conducted semi-structured interviews with communications managers from ten companies, which were reported between January 2010 and May 2013 in the online editions of the six largest national German daily newspapers in connection with a shitstorm.

Source: Spiller, Ralf / Hintzen, Thomas (2014): Der Shitstorm. PR magazine – the magazine for the communications industry 5, pp. 57–61.

customer demands. "It is not uncommon for corporate giants, knocked over by a media storm, to have stood on feet of clay for a while. Yet after warnings that had previously gone unheard internally, the shock from the outside and the associated media coverage are only the final straw for the crisis to become public." (Steinke 2014: 46)

How to detect 'dangerous' topics

Communication overwhelm in situations of crisis "... is based to a large extent on the absence of continuous and systematic observation of the organisational environment, meaning above all, on nonexistent or non-functioning strategic early warning systems in corporate communication." (Röttger / Preusse 2008: 159)

The identification of issues takes place on two levels: ***Internal identification of matters through quality, risk and complaint management.*** To put it simply, there are two types of companies – those in which the employees believe each individual must assume responsibility, and those in which the management follows the principle 'knowledge is power'. In the first case, negative signals are sometimes not passed on in good time in the line of authority. In the second case, every kind of information is transported to the top management, resulting in an information overload. Both can result in latent crises not being recognized. Hence, it makes sense to define, propagate and employ communication chains, as illustrated in the example below.

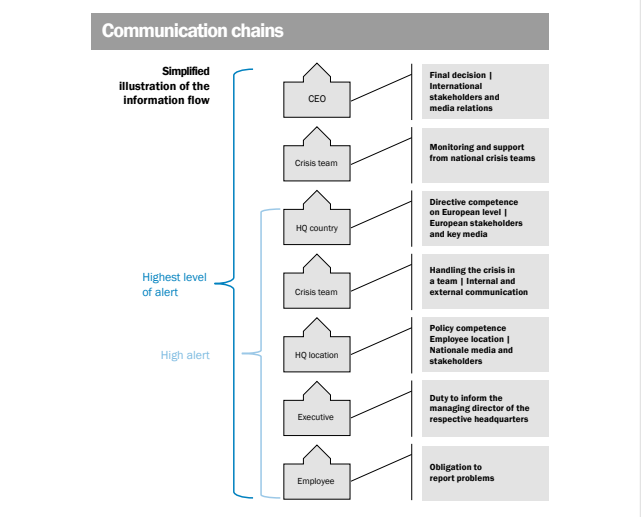


Fig. 1: Communication chains (Source: Wolfgang Immerschitt).

Issue management is used to identify critical external subject matters and evaluate their relevance to the company. You can find topics that can initiate change processes for your company through media monitoring and active use of social media platforms for polling (Immerschitt 2010: 140 f.)

The crisis manual – a central control instrument

Having a crisis manual to refer to helps with keeping a cool head in critical situations. It is an operational set of rules that serves as a guide for handling potential crises. "The aim of such an emergency plan is to guarantee a coordinated and smooth crisis management. The crisis plan enables a shorter assessment of the situation, quick decision-making and – associated with this – an earlier influence on the course of the crisis." (Dreyer / Rütt 2008: 73)

Crisis team – a clear distribution of competencies

The manual also defines how the crisis team is composed. Its head – the person who has to manage the situation – has decision-making authority within the crisis team and summons the committee if necessary. The crisis team supports the head of the crisis team. In the crisis team, whilst cooperative and work-sharing behavior prevails internally, an external appearance, limited to ideally only one person ('communication monopoly'), proves to be expedient.

Dialogue groups with contact details

Another issue that can and must be processed preventively is the definition of dialogue groups. The selection process for the dialogue groups should be based on their significance to the company. The two most important criteria that are chief to this selection are the company's vulnerability and potential of individual groups to influence.

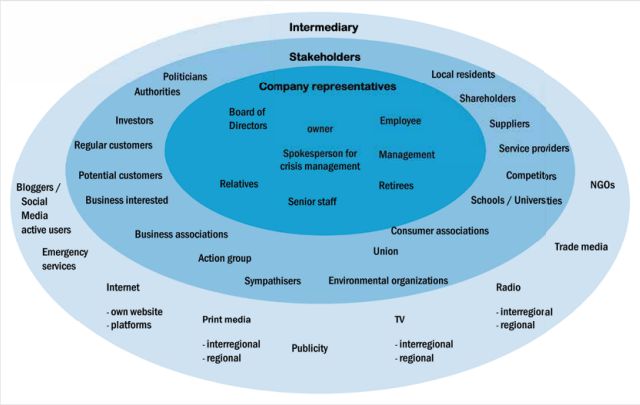


Fig. 2: Stakeholders (Source: Wolfgang Immerschitt).

One of the most time-consuming chapters in the creation of a crisis manual is the list of contacts of all the stakeholders to be informed if necessary. For each of the cases mentioned above, there must be clarity on who is to be informed.

Figure 2 shows the most important dialogue groups for which this exercise must be done and which must be informed in the event of a crisis:

Success factors in crisis communication

Dealing with the stakeholders' interests is a first success factor in corporate communication for solving crises. However, you should already be in dialogue with the stakeholders during ordinary times. In this way, relationships and trust can be built between your company, the interest groups, and the media. (Riecken 2008: 207)

Questions about the incident	Consequences	Responsible
What has happened?		
How is the crisis classified?		
Decisions on how to proceed	**Consequences**	**Responsible**
What is the crisis potential?		
Do the authorities need to be notified?		
Media strategy	**Consequences**	**Responsible**
Which media outlets already know?		
Does the incident have to be made public for legal reasons?		
Do we need to activate the Dark Site of the website?		
Next meeting	**Consequences**	**Responsible**
How often will the Crisis team meet?		

Tab. 1: Key questions for crisis communication

Strategic preparation for a different variety of trigger situations delivers the second success factor: "The likelihood that communication will get out of hand is minimised by careful preparation. This contributes greatly to maintaining a feeling of security: the management is no longer inactively fixing the symptoms of the crisis, but has created the space and opportunity to manage them creatively." (Mast 2006: 414)

The checklist with questions that the crisis team should ask itself can be helpful (see Table 1). Speed plays an important role: every communication vacuum that you leave open will be filled. The basic principle of efficient crisis communication is: "Be quick, consistent and speak with one voice without contradictions and be as open as possible." (Mast 2008: 99)

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Read more

You can read more on the topic in the author's book (only available in German)

Wolfgang Immerschitt: Aktive Krisenkommunikation. Erste Hilfe für Management und Krisenstab (Active crisis communication. First aid for management and the crisis team.)

54 pages. Wiesbaden: Springer Gabler 2015. Published as paperback and e-book.

Dr. Wolfgang Immerschitt

Managing partner of the Plenos agency and lecturer at the University of Salzburg in the communication science department. He is author of numerous papers.

What holds a society together

A conflict theory perspective by Prof. Dr. Gernot Barth

The dominance of cooperative behaviour over competitive behaviour is the basic building block for the cohesion of a modern society. In Germany, this relationship seems to be reversed, thus calling social cohesion into question. Social relations are seeing rising escalations. An essential basis for this process is the reversal of the population pyramid. This also results in the increasing shaping of society from the perspective of generations that have the future almost behind them. This calls for a qualitative new dialogue between generations.

By Gernot Barth

The need for mediative negotiation in Germany seems to be greater than ever. The societal climate is tense, and the number of protest movements is increasing. Digitisation is driving globalisation and making everyone's life faster and more complex. The number of interfaces is growing, and with it the need for coordination and negotiation.

However, negotiations have become increasingly demanding due to a changed, ego-related self-image of the negotiating partners. The high degree of individualisation in Germany strengthens the desire for autonomy and self-determination and prevents people from treating their counterparts with empathy at times. Yet, empathy and the willingness to really understand the other form the basis for conflict resolution. Where does our society stand in this escalating process and how could it be de-escalated?

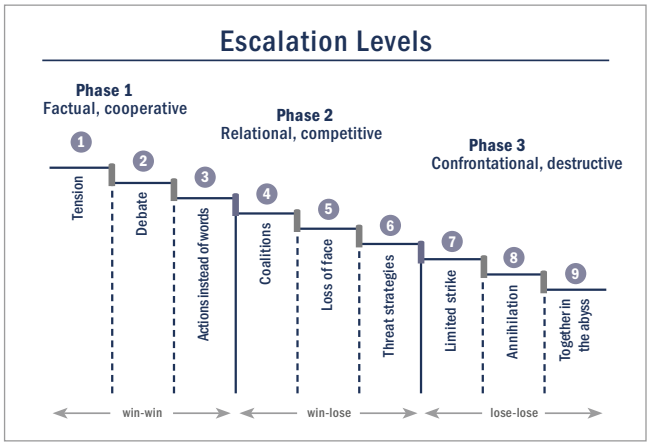

Fig. 1: Stages of conflict escalation (Source: endless creative / Holm Klix according to Glasl 1994: 362 ff.).

A quick glance at the stages of conflict escalation

Friedrich Glasl's model of conflict escalation groups the escalation stages into three levels, which each contain three intermediate stages. In the first main phase, the conflicting parties are still open and strive to achieve the best result for themselves and for the other (win-win). An initial disagreement turns into a contentious, mostly factual dispute in which the pressure slowly increases. In the second main phase, the conflict is conducted on the personal and relationship level, coalitions are formed, the counterpart is attacked in his identity through allegations, and finally threatened. In this phase of the conflict, there can only be one winner (win-lose). In the third and last stage of escalation, the aim is to 'destroy', to 'annihilate' the other party. One's own collateral damage is accepted if the damage to the other is greater. In this highly escalated state, both parties lose equally (lose-lose).

Image Source: fotolia.com / fotomek

Where do we stand?

In our domestic policy in Germany, in my opinion, we currently find ourselves between level 5 and 7. Right-left attributions dominate many irreconcilable debates. The climate discussion is conducted in a similarly oppositional manner and the respective opponents are not only declared as incompetent on a factual level, but they are also discredited in their personality.

A real interest in at least understanding the other party's motives, even if they may seem absurd, is no longer given in many cases. The perception is greatly simplified and limited to negative or threatening aspects. In terms of their foreign policy, Germany has also already reached the highly escalated phase. This becomes especially apparent through the embargo policy between Germany – or the EU- and Russia. The EU sanctions against Russia have been in force since 2014 and have ever since been hitting the economy on both sides hard.

Demographic change

A historically exceptional circumstance plays a key part in the development of conflicts in Germany – demographic change. In the period between 1910 and 2040, it seems that the population pyramid effectively reversed. Today, every second person in Germany is older than 45, and every fifth person is older than 66 years (Statistisches Bundesamt 2016). The year with the highest birth rate of 1964 is now 57 years old, and the majority will be in retirement in ten years at the latest. This circumstance impacts not only the German pension system profoundly but also the political thinking, the economic development of the country and its priorities.

We are living in a democracy in which majorities determine what happens in the country. Politicians need votes and develop party programs accordingly. They primarily benefit the older inhabitants, thus a larger segment of the population. Topics such as pensions, care, and social security are currently governing the political agenda. Issues concerning the future, such as digitisation, artificial intelligence, education, infrastructure, and innovation are lagging. If you believe that this is the case worldwide, take a look at the investments of Asian countries, for example. Germany's then chancellor Angela Merkel said at a press conference in 2013 regarding the US surveillance program PRISM: "The Internet is a new territory for all of us." And in 2019, Research Minister Anja Karliczek also maintained that we don't need the 5G communication network "at every milk can". Digitisation is obviously not very popular with older voters. From a developmental psychological point of view, this older generation is more interested in preserving that which it created itself rather than in changing it.

The angry citizen

The term "angry citizen" has been circulating in the German media since the "Stuttgart 21" project. It describes a predominantly older population group (around the year 2006) over 45 years of age who have an above-average level of education and wealth. Income is primarily secured through pensions, salaries and / or real estate. There is enough experience and intellect to deal with complex societal problems and to engage with them accordingly.

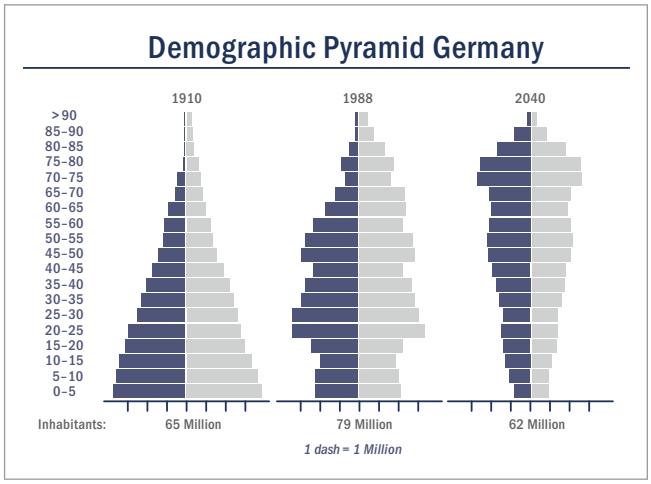

Fig. 2: Demographic structure in Germany 1910–2040 (Source: endless creative / Holm Klix according to the Statistisches Bundesamt 2016 – German Federal Statistical Office 2016).

Image Source: stock.adobe.com / Trueffelpix

This population group feels that their homeland, or their identity and wealth, is threatened by major infrastructural projects, such as the renovation of Stuttgart's main train station and the expansion of Frankfurt Airport, or the construction of rail and power lines. They organise in publicly visible protests – with lasting success and influence on the future infrastructural development of the country (Barth 2014). For instance, this is demonstrated by protest groups against the construction of the Tesla factory in Grünheide, Germany.

Did you know?

Demographic change at a glance: old Germany

The Federal Republic of Germany is in the midst of a demographic change. 83.1 million people currently live here, and the proportion of foreigners is 12.2 % (10.1 million). While the proportion of younger people is decreasing more and more, the number of older people is increasing at an unprecedented rate. Every second person living here is older than 45, every fifth even older than 66. The largest age group is made up of members of the so-called baby boomer generation (born between 1955 and 1970). In the meantime, they have reached a higher working age and will retire from their professsions in two decades at the latest. The number of people over 70 is also growing steadily: while there were 8 million in 1990, this group now accounts for 13 million. In the meantime, not only women but also men are reaching an advanced age. Even if these processes are currently still perceived as gradual, the group of over 80-year-olds in particular will increase noticeably in the future, according to the Federal Statistical Office.

Source: Federal Statistical Office (Destatis) (2019): Population: In the midst of demographic change. Available online at: https://www.destatis.de/DE/ Themen/Querschnitt/Demografischer-Wandel/demografie-mitten-im-wandel.html.

Future perspective: what can be done?

The population class of the "angry citizen", i. e., citizens in an escalated state who are excitable very easily could speak out loud and in an experienced manner in Germany during the next few years or even decades. Additionally, from the perspective of democratic theory, the proportion of the population aged 60+ will increase considerably with their representatives having different concerns than younger generations.

However, the younger generation is also increasingly prepared to protest, especially when it comes to climate issues, as the global movement Fridays for Future demonstrates. There may be signs – formulated with great caution – of an escalating generation gap. In order to hold society together, or rather to bring it back together, a real dialogue between all parties is necessary. The difficulty lies in the fact that people in the escalated state CANNOT LISTEN and CANNOT UNDERSTAND!

Dialogues between the generations or competing population groups, be it in the media or forums, thus require neutral meditation instead of partial moderation. Mediative skills are needed (not necessarily mediators). In the interests of cohesion in society, dialogues should be conducted with EVERYONE, and exclusion should be the exception. The latter should not be based on the argumentative position but the non-dialogical behavior.

So, let's learn (again?) to really listen to each other. Let us try to change perspectives now and then, even if it is difficult.

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Image Source: stock.adobe.com / pathdoc

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Is it possible to train optimism?

A clear 'yes' to a simple method that will sustainably change your attitude

A positive attitude is the key to a healthy and fulfilled life. Those who have it usually also have more success at work and at all other levels of interaction. From the outside, these people seem to succeed at everything, while others seem to find everything difficult. But, thanks to some techniques, everyone can learn to develop a positive outlook on life .

By Christian Zink

In a 2019 published study of approximately 70,000 test persons, the 'Boston University School of Medicine' proved once again that people with an optimistic outlook on life live on average 15 % longer than pessimists. Although they worry less about their health than pessimists, optimists are less prone to depression or cardiovascular disease. Other studies show that optimists have more success at work and higher job and life satisfaction. Consequently, it pays to go through life with an optimistic attitude. But this does not mean 'whitewashing' or ignoring adversity: it is about developing a realistic optimism.

This means focusing on the positive in life or in a situation without ignoring or blocking out the negative. The good news from the studies is that a basic optimistic attitude is not just genetically determined, but that it can also be learned. Through regular training, the positive attitude will grow and become bigger, just like a muscle.

In my practical experience, the following strategy for this purpose has proven successful:

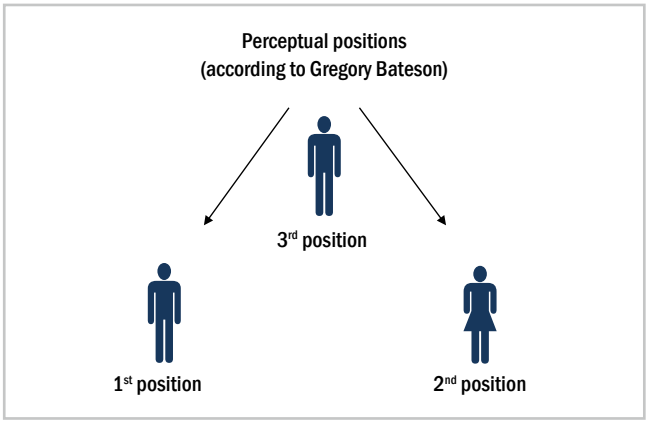

Fig. 1: Perceptual positions (Source: Christian Zink).

Positive start to the day

The mood with which you start your day in the morning often shapes the entire course of the day: and just as you get up on the 'wrong foot' and this can 'colour' the further basic mood for the day unfavourably, you can consciously set positive accents right at the start of the day and tune into the day optimistically. Ask yourself first thing in the morning: What can I look forward to today? What positive things can happen today? What opportunities are there today? What do I want to achieve today? Where can I make a positive contribution or create added value (for myself and others) today?

My clients use the perceptual positions according to Gregory Bateson (see Figure 1). They can effortlessly move into the '1st position' in order to associate with positive situations via the five senses: seeing, hearing, smelling, tasting and feeling. Experience shows: this is the only way to subliminally achieve effective mood improvement.

Focus on solutions

We often find it difficult to stay optimistic when the undesirable, unexpected or negative happens. It is easy to lapse into complaining, grumbling, and catastrophising, ranting about how bad and unfair everything is and how the situation could get even worse. However, this keeps your focus on the problem

and not on the solution. It is much more important to direct your focus on how you could improve the situation and turn it around for the better. Ask yourself: What exactly is bothering me about the situation? Can I influence these aspects or not? And if so: how could I improve the situation in my favour? What different options or ways could there be to improve the situation or to deal with it constructively?

To succeed, my clients put themselves in the '1st position' and are trained to also empathise (associate) – as someone else – with the '2nd position'. In the '3rd position' they can look at themselves as well as at a third person from the 'observer position' in order to concentrate on the solution in a dissociated way. Here too, experience shows: this is the only way to subliminally achieve effective mood improvement.

Positive day review

The positive end of the day plays an important role for our mental well-being and optimism. Often, we are still mentally attached to what did not work (well) that day and what we were angry about. Thereby, you give a lot of weight to the negative. In the process, the positive moments of the day are quickly overlooked. In order to become more optimistic in the long run, it is important to consciously direct your awareness to the positive – of course without completely blocking out the negative. In retrospect, ask yourself: What was good and positive today? What was I happy about? What went well? What went better than expected? What positive feedback did I receive? What did I accomplish today?

Again, my clients put themselves in the '1st position' to associate with the positive situations through the five senses. In my practice, I am told again and again what an incredible positive effect this end of the day review has on the course of the sleep stages.

The task now is to internalise these suggestions permanently. It is helpful to start with one of the three strategies and to apply it regularly over a period of about thirty days. This creates a so-called behavioural habit, i. e., the behaviour becomes self-perpetuating. After that, you can turn to the second strategy, and so on. You will see that you can benefit greatly from this optimism training.

Image Source: stock.adobe.com / konradbak

Did you know?

Personal life and the future of the country: How optimistic are Europeans?

The good news first: according to a Bertelsmann study, the majority of people in the European Union are optimistic about their personal future (58 %). When it comes to the forecast for their own country, however, the picture is somewhat different: Here, only 42 % of respondents are positive. This "optimism paradox" is particularly clear in Germany. Almost two-thirds (66 %) are convinced that things will go well for them personally – but only 44 % predict a positive development for the country. The French are particularly gloomy about the future. 61 % are pessimistic about their personal lives and 69 % about the development of their country. The study even shows a connection between pessimism and political preferences: Supporters of right-wing populist parties were conspicuous for their particularly negative view of the future – both personally and socially

Source: Bertelsmann Stiftung (ed.) (2020): Das Optimismus-Paradox: Individuelle Selbstgefälligkeit versus gesellschaftlichen Pessimismus. Available online at: https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/eupinions_Das_Optimismus_Paradox.pdf.

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The advisory attorney in mediation – a source of disruption or catalyst?

Out-of-court dispute resolution in the context of mediation is characterised by the action of an independent and neutral mediator. Otherwise, an intermediation between conflicting parties would not be possible. Sometimes, however, it is advisable to call in a supporting lawyer or mediation attorney. The following article shows which specific fields of work opens up for advisory lawyers and examines the question of why they must also and especially in mediation have solid fundamental knowledge and a certain soft spot for the task they have taken on.

By Susanne Offermann-Burckart

This article is the second part of a more comprehensive publication, published in *Die Mediation*, Quarter IV / 2020.

Specific scope of work of the advisory attorney

... before mediation

The attendant attorney's tasks depend on, among other things, the point in time at which they become involved in the mediation process. An attorney who has been there from the start, i. e. who has led the client to mediation, presumably has the task – after the conflict's legal assessment and its suitability for the mediation process – to select a suitable mediator, or to make proposals or – and this is a more difficult task – to evaluate proposals made by the other side.

The advisory attorney must try to proceed in a purely professional manner and put personal likes and dislikes aside. They should not let themselves be guided by their own competitive thinking or by the fear that a lawyer colleague would cut such a good figure as a mediator that the client would hire them the next time. The crucial factors are whether the considered person has mediation experience (preferably trained or even better certified) and works on acceptable terms for the client. The attendant attorney may have to make their own inquiries about the shortlisted persons' qualifications and reputation. A mediation attorney who is part of the "mediation scene" will know many of the mediators in question personally anyway.

Furthermore, the attendant attorney participates actively in the conclusion of the mediation agreement.

Suppose all of the clients are represented by a lawyer. In that case, it can also make sense for the advisory attorneys to present the conflict to the mediator in writing, along with a legal assessment. This makes it easier for the mediator to understand and saves time in the actual mediation. Still, it should not turn into an extensively written preliminary procedure that would thwart the purpose of the mediation.

... during mediation

It is a matter of taste whether the advisory attorneys issue an opening statement for their clients at the beginning of the mediation. The decision depends also on the character of the participants and of the complexity of the dispute. If all participants are not represented by a lawyer, legal "opening statements" should be avoided if possible, so as not to question the "balance of forces" from the outset. In all of this, it is of key importance which tone the opening statements are presented in. The attendant attorney must exercise the greatest possible restraint to not slam the door on an agreement before it has been properly opened.

Image Source: stock.adobe.com/Leo Wolfert

must make it clear to the client what precisely they will gain or lose (e. g., through the waiver of the pension equalisation or a compensation under company law). In doing so, they must keep an eye on the feasibility of both the solution found and conceivable alternative solutions and ensure that the final agreement is clear, implementable, and legally sound. It should also not contain any hidden 'pitfalls' for the client. In cases where there are a party's representative and a mediation lawyer, the former will set the tone for the final agreement in case of doubt.

Once mediation has started, the accompanying lawyers should literally fade into the background and let the clients / mediators take the field. Meanwhile, the lawyers should cultivate the art of active listening. If possible, the accompanying lawyers should refrain from making their own statements during the mediation. If a need for consultation arises, the session may be interrupted and the participants are given the opportunity to take stock of the situation with their lawyers.

In cases where both a "classic" party representative and a mediation lawyer are used, it is advisable to keep the party representative out of the actual mediation proceedings. They should only be involved again in evaluating the outcome and in the formulation of the final agreement.

It is possible that in the course of the mediation, the accompanying lawyer realises that their own client is emotionally, intellectually and / or didactically inferior to the other party and that the mediator does not or cannot provide the necessary balance. The risk of this happening is particularly great if there is a relationship of superiority / subordination between the parties, as is the case between employer and employee or a majority and minority shareholder, or if strong personal ties (between spouses or the members of a community of heirs) play a role. In those cases, it may be the lawyer's duty to put on the 'emergency brake' and get the client to end the mediation.

... at the end of the mediation

The most important tasks of the advisory attorney are the legal evaluation of the result achieved by the participants, as well as the co-drafting of the final agreement. The lawyer must assess whether the interests of their client have been sufficiently taken into account. Before signing the final agreement, they

Since the solution worked out in mediation comes at the end of a long process that the participants themselves have actively shaped, the problem of 'settlement compliance' plays a subordinate role after all experience. This is different from ordinary civil proceedings, after the settlement of which parties often have the feeling that they have rashly taken the court's advice and their own lawyer's recommendations. However, remorse is not excluded after a mediation has ended – especially if things subsequently develop differently than expected because of new conflicts arising under company law, the ex-spouse having a new relationship, or as a banal example, promised payments failing to materialise.

Case law places a lot of responsibility on lawyers involved in settlements. It is not afraid to hold a lawyer advising a settlement liable even if the lawyer follows the court's settlement proposal. According to the German Federal Supreme Court (refer to judgment of 14.01.1993 – IX ZR 76/92, NJW 1993, 1325, and judgment of 11.03.2010 – IX ZR 104/08, NJW 2010, 1357), a lawyer participating in settlement negotiations should be granted discretionary powers, because otherwise they would be taking a risk that they cannot bear. If, however, there is a well-founded prospect that a significantly more favourable result can be achieved in the event of a decision, the lawyer must advise against a settlement. In this consideration, even the next instance must be taken into account if necessary. The presumption then applies that the client would have followed the lawyer's suggestion to refrain from a settlement.

However, the previous 'settlement case law' can hardly be transferred one-to-one to the advisory lawyer in mediation when the legislator themselves, in the official explanatory memorandum to the Mediation Act, emphasises the autonomy of the par-

ties in mediation as its essential feature, and states that the parties remain "responsible throughout the proceedings for the measures and agreements made to settle the conflict and in particular also for the content of the final agreement" (BT-Drucks 17/5335, p. 14). On the other hand, there has so far been a lack of supreme court decisions (or any decisions at all) on the subject – apart from the BGH judgment of 21.09.2017 (IX ZR 34/17, NJW 2017, 3442), which does not necessarily inspire confidence. The advisory lawyer is thus well-advised to clarify comprehensively but without destroying the settlement process. This can be achieved by showing the client what he or she will gain in terms of time, inner peace, continuation of an adequate relationship with the 'opponent', and often a greater scope of the agreement. The latter can cover further virulent issues beyond the actual subject matter of the dispute in the event of a successful mediation conclusion.

Advisory attorney, against their will?

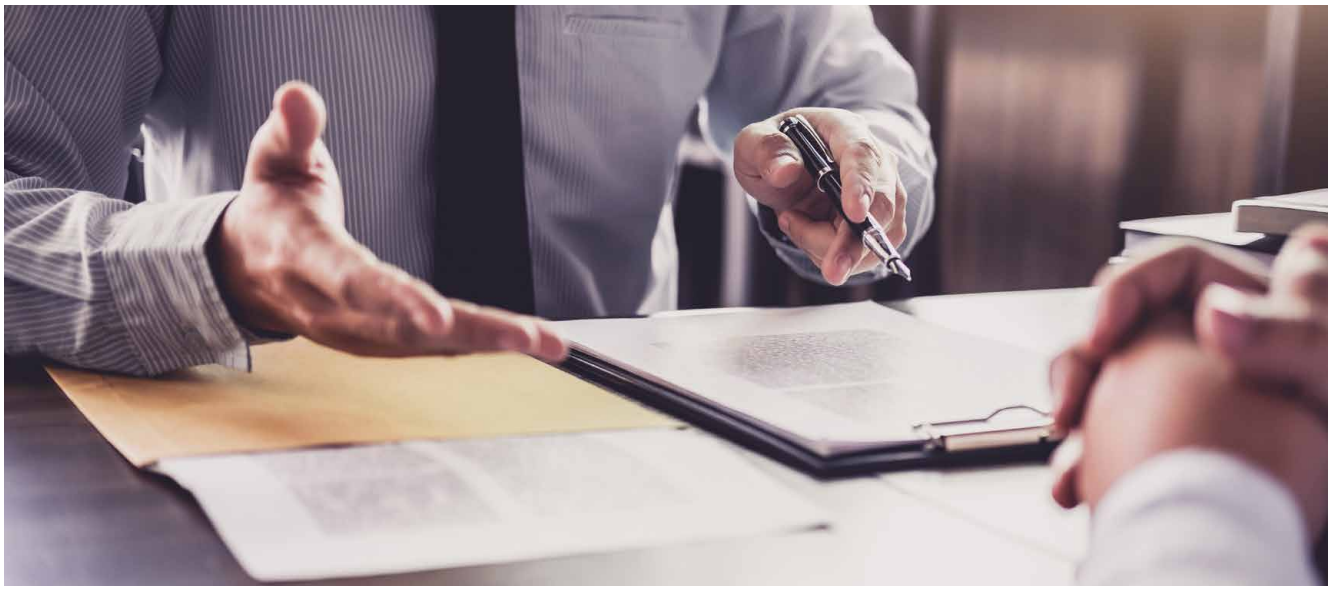
Just like the reluctant mediator, the reluctant advisory lawyer is actually a paradox. A lawyer who does not think much of mediation will hardly advise their client to engage in such a procedure. And even less will they act as a 'mediation lawyer' in the sense described above.

However, plausible cases in which the regular legal representative of a party unexpectedly finds themselves in the awkward position of having to or being expected to participate in mediation are because the client has signed a contract with a mediation clause, or, as an entrepreneur, has advertised on their website that they would participate in dispute resolution proceedings before a consumer arbitration board (section 36 (1) and (2) of the Consumer Dispute Resolution Act [VSBG]). Suppose a lawyer, who has thus found themselves in the position of a mediation facilitator, is opposed to mediation as such, they may be tempted to derail the proceedings as quickly as possible in order to be able to quickly move on to what they favour – dispute settlement in court.

In doing so, however, the advisory lawyer must be aware that they are doing their client a disservice and may even – in the case of a deliberate boycott – be in breach of their obligations under the lawyer's contract. Those who do not succeed in being comfortable with mediation, or at least in dealing with the situation professionally and doing a good job, must refrain from accompanying the client in the mediation process. Otherwise, not only they but also the client runs the risk of losing face in the mediation. This is probably worse for the client than for the lawyer because they risk permanently losing a contractual partner or client who has not received the proper appreciation.

You can't do it without the right tools

Incidentally, the advisory lawyer in mediation must of course also be expected to be familiar with the principles of the procedure. Just as a civil lawyer must be familiar with the Code of Civil Procedure and a criminal lawyer with the Code of Criminal Procedure, the advisory lawyer must be familiar with the basic prin-



ciples of mediation and the process of a mediation procedure. A lawyer who is asked to take on the role of an advisory lawyer unawares and for the first time must acquire the necessary knowledge beforehand and must not simply rely on their own intuition, believing they have always been doing dispute resolution.

The financial side

In the case of out-of-court mediation, the advisory lawyer earns a business fee according to no. 2300 VV RVG, unless – as is often the case – a remuneration agreement has been made. When acting before a conciliation, conciliation or arbitration board established by law, the fee rate according to no. 2303 VV RVG is always 1.5.

In the case of mediation close to the court or within the court (after a lawsuit has been filed), depending on the course of the proceedings, a 1.3 procedural fee according to no. 3100 VV RVG (incurred through the filing of the lawsuit) and a 1.2 appointment fee according to no. 3104 VV RVG (incurred through the mediation proceedings) and a 1.0 settlement fee according to nos. 1000, 1003 VV RVG (incurred through the mediation proceedings). Suppose the mediation fails after an appointment has been held, and a settlement is reached in an appointment in court proceedings. In that case, no additional appointment fee arises, except a 1.5 settlement fee according to no. 1000 VV RVG.

If the mediation is successful, the parties do not incur higher fees for the advisory lawyer than in court proceedings, except for the question of who bears the costs, which has to be answered in the mediation proceedings. A court-connected mediation's failure is – at least if no agreement on remuneration has been reached – cost-neutral. Only the failure of an out-of-court mediation, followed by court proceedings with the corresponding fees for the litigation lawyer, will be more expensive than going to court without prior mediation.

If the factors of time ('Fast money is double money'), and the satisfaction in and the maintenance or restoration of good (business) relations are taken into account, mediation usually proves to be as unbeatable value for money.

Conclusion

An advisory lawyer's participation in the mediation process is usually a win-win situation for lawyer and client. The client gains (legal) certainty through the support, the advisory lawyer a satisfied client in the case of success or, in the case of failure, at least a client who has the comforting assurance of having exhausted all possibilities of an amicable solution. Moreover, the mediator can also pass on a great deal of responsibility to the party representative(s) concerning possible liability risks.

A sceptical or even pessimistic lawyer should do the parties, the mediator and themselves the favour of refraining from assuming the role of advisory lawyer. This is commanded by the contractual obligation towards the client, the demand on one's own professionalism and the respect for the persons involved.

Dr. Susanne Offermann-Burckart

Lawyer and mediator In Germany, including a member of the lawyers' assembly of statutes, member of the RDG committee of the DAV, member of the representative assembly of the pension fund for lawyers in North Rhine-Westphalia; Germany.

The educational function of restorative mediation in white-collar crimes

In an insightful contrast with traditional justice systems, this article describes how restorative mediation has been found to bring attention, apart from the conflict, also to the victim, who typically remains in the background. Especially in case of white-collar crimes, which cause economic and social damages, restorative mediation can help with reparation and reconciliation of the affected parties.

By Luca Dal Pubel and Andrea Marighetto

Access to justice is internationally recognized as a fundamental element of the rule of law. It enables individuals to seek and obtain remedy when their rights are violated, through formal and informal mechanisms of justice. Thus, in the absence of mechanisms to effectively claim any right, the right to access justice is violated. Therefore, the right to justice must be considered as one of the most fundamental of human rights in any modern, postmodern, post-industrial, and egalitarian legal system which aims to effectively guarantee – and not just proclaim – the protection of the rights of all.

In celebrating access to justice, Mauro Cappelletti and Bryant Garth (1978) point out that the effectiveness of substantive law is guaranteed by the formality of a process that allows its applicability. They emphasize that

> *the Courts are not the only way to resolve conflicts to be considered and that any procedural regulation, including the creation or encouragement of alternatives to the formal judicial system, has an important effect on the way the substantive law operates – how often it is enforced, for the benefit of whom and with what social impact.*

Alternative Dispute Resolution (ADR) represents an important element of access to justice by providing citizens with quick, efficient, and accessible alternative instruments to the ordinary justice system.

Among these, mediation offers an efficient and cost-effective method of resolving both commercial and interpersonal disputes and has the power to transform and improve relations between the parties.

Mediation is an alternative form of conflict resolution "where a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement" in a logic of self-composition of interests, and to the detriment of the logic of imposition of the sacrifice of the interest of others (Marighetto, Sgubini and Prieditis, 2004). Through mediation, solutions to conflicts are sought and quarrels are composed. This occurs through a mechanism of direct comparison which consists of placing the disputants one in front of the other. Mediation is primarily a "conciliatory" tool, in addition to performing an important educational and training function. It promotes dialogue between people especially in situations in which differences between one's own culture and another culture lead to misunderstanding.

Among the different types of mediation, victim-offender mediation in criminal cases may be the most complex and challenging for a mediator to mediate. Furthermore, within the so-called *Restorative Justice* movement, whose principles and practices are increasingly spreading at the European and international level, *restorative mediation* appears as the culmination of an individual and social path, which takes place regardless of the outcome of the criminal trial (Pali and Aertsen, 2017).

The three most important concepts of restorative justice, according to the Center for Justice and Reconciliation (see Sources), are (i) repair (crimes generate harm and justice needs to repair that harm); (ii) encounter (the best way to repair the harm is by having the people most affected by the crime doing it together); (iii) transformation (the process of repairing can generate deep changes in people, communities, and ultimately society). It is a different way of thinking about crime and how

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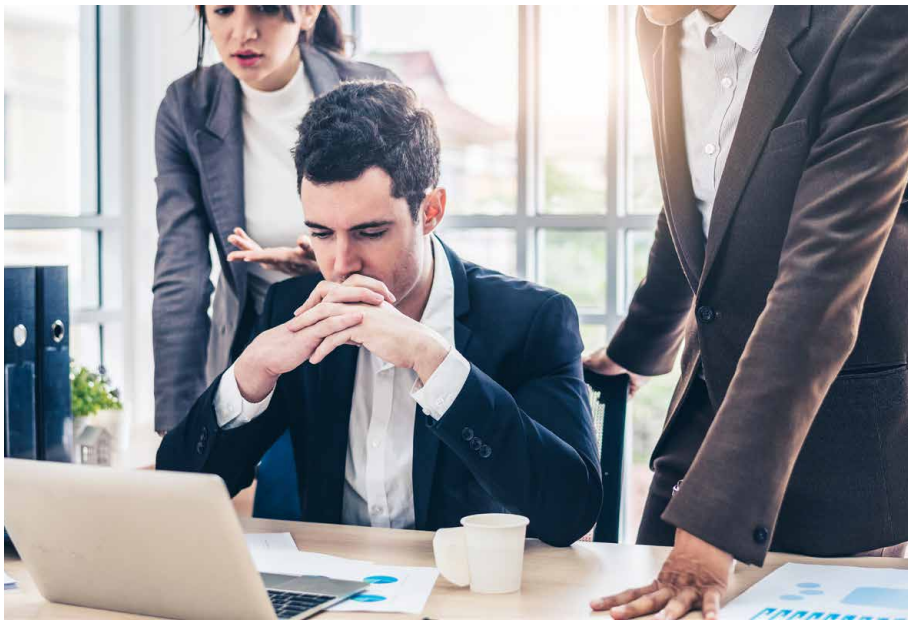

is possible to repair the harm through inclusion, encountering, and the reintegration of the offender.

Restorative justice can be defined as

> *any process in which the victim and the offender and, if appropriate, any other individual or member of the community injured by an offense actively participate together in resolving the issues arising from the criminal offense, generally with the help of a facilitator.(Dandurand et al., n.d.)*

By reading this definition, it is understandable why many authors believe that, through mediation, the most profound and meaningful expression of restorative justice is realized.

Mediation, as a restorative justice approach, gives space to the valorization of the victim, who recuperates an "active" and no longer marginal role. Often the victim, in the so-called traditional justice (retribution) system, remains without a voice for the entire procedure, and his/her emotional burden, in terms of suffering, experiences, feelings, does not find an outlet. Mediation can help carry out various possible forms of "reparation" that consider the needs of the victim and value the "restitution" role of the offender.

In restorative mediation, the role of the mediator is to stimulate the emotional part of both parties making the offender reflect on the consequences of his/her actions and helping the victim process repressed feelings and emotions in a safe and structured setting. The mediator facilitates the meeting between the victim and the offender, helps them express their feelings and perceptions of the offense, and guides them to a possible agreement regarding the steps the offender will take to repair the harm suffered by the victim (Restorative Justice, n.d.). The ratio of mediation is to seek the social pacification between the parties, through the self-composition of the conflict, the harmonization of the phenomenon of the win-lose culture (going from a methodology of confrontation to methodology of cooperation), and by focusing on the most effective and efficient solution.

Recommendation CM/Rec(2018)8 of the Committee of Ministers of the Council of Europe to the Member States concerning restorative justice in criminal matters points out that

> *Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals and members or representatives of affected communities. Hereinafter, the participants in restorative justice are referred to, for the purpose of this Recommendation, as "the parties".*

Restorative mediation as a means that leads to remedial action must be understood not as compensation and reimbursement, but as a trigger that assumes the intrinsic irreparable nature of every act of injustice (in itself inevitable) and relaunches, at the same time, the possibility of planning responsible actions for the future (i.e. the second chance approach, Inbar (1995)).

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Image Source: stock.adobe.com/Nutlegal

Mediation should lead the offender to re-elaborate the conflict and the reasons that caused it, develop a sense of responsibility for others and feel the need for reparation. The offender involved in restorative justice has the opportunity to explore in concrete the meaning and consequences of criminal behavior. Therefore, mediation represents a tool that can help the justice system, which often lacks the necessary tools to control and govern the complexity of social phenomena.

Considering this, mediation can also help manage and guide even sophisticated crimes such as *White-collar crimes*. The term "white-collar crime" was first coined by sociologist Edwin Sutherland who defined it as "a crime committed by a person of high social status and respectability in the course of his occupation." (Sutherland, 1949). However, legal scholars and criminologists have given different definitions of white-collar crime and have classified it in different ways according to the individuals involved and the type of offenses committed. The United States (US) Bureau of Justice Statistics (BJS) has defined white-collar crime as "any violation of law committed through non-violent means, involving lies, omissions, deceit, misrepresentation, or violation of a position of trust, by an individual or organization for personal or organizational benefit" (Bureau of Justice Statistics, n.d.).

If traditionally white-collar crimes were regarded as crimes committed by people in the upper or white-collar class, or as the 'crimes of the powerful', studies have shown how they are often committed by offenders clergy, junior employees, blue-collar employees, or by many other offenders who cannot be described as 'powerful' or high status (Croall, 1989). White-collar crimes can be committed by companies and their managers to achieve the objectives of the company (corporate crimes), governments, professionals, or individuals who, even if the crime involves corporate resources, are driven in committing the offense solely by personal interests (Simpson, 2011). As they involve different types of people and sophisticated systems, white-collar crimes have become difficult to persecute. Non-violent in nature, white-collar crimes consist of criminal offenses that include a full range of frauds such as corporate fraud (i.e. false accounting, fraudulent trades designed to inflate profits or hide losses, misuse of corporate property for personal gain), public corruption, money laundering, health care fraud, fraud against the government, mortgage fraud, and bank fraud (FBI, 2016). Although they do not involve the threat of physical force or violence, white-collar crimes are not victimless. White-collar crimes affect high-level officials, politicians, professionals, consumers, employees, corporations, taxpayers, and people of almost all ages, gender, ethnicities, racial, and socioeconomic groups. Victims of white-collar crimes can be employees injured at work due to the company's lack of safety compliance, consumers affected by faulty or unsafe products (Michael, 2015) and investors who lose money in Ponzi schemes. The economic and social cost of white-collar crimes in the US is estimated at billions of dollars and millions of victims every year (Dodge, 2020). White-collar crime victims suffer not just monetary costs but also physical and emotional damages such as anxiety, depression, distress, insecurity, self-blame, and suicidal ideation. Therefore, the social and economic effects of white-collar crimes require instruments of justice that not only bring criminals to trial but also deal with and address the harm caused by the crime. Instruments that can enable all parties affected by the crime (victims, offenders, and the community) to work together in identifying and addressing the set of needs arising as a result of the crime, and provide an opportunity for healing, reparation, and reintegration. In this context, mediation allows the victim and the offender to actively and freely participate in addressing and solving, with the help of an impartial third party, the difficulties arising from the crime. Mediation can provide a different setting for a constructive dialogue between the offender and the victim and allow the passage from harm to the recognition of suffering, from disorder to the construction of a new order.

Image Source: stock.adobe.com/Gina Sanders

In conclusion, it is worth highlighting that restorative mediation does not aim to place the victim at the center of the pro-

cess. The focus is on the conflict and the reparation of the harm caused by the offender, and finally, on the reconciliation of the parties who have been in different ways affected by the crime. The aim is not to console, but to remedy the rupture of symbolically shared social expectations. In this respect, it is certainly possible to consider and evaluate the educational aspect of mediation in white-collar crimes.

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When life gives you lemons, make lemonade!

Five key success factors for mastering the crisis

Change is always challenging for companies – especially if imposed on the company by external circumstances and if occurring suddenly and unexpectedly. But change also always presents new opportunities. In particular, it is the capacity for mobilising their forces of innovation in the face of change that distinguishes successful companies.

By Stephan Jansen

The Covid-19 pandemic has almost overnight, initiated major changes worldwide. Many of which are irreversible and will entail further transformation. Companies that manage to adapt with creativity and courage will not only maintain but also strengthen their market position.

Especially small- and medium-sized companies will find it difficult to implement innovation in the current climate. However, it certainly is not impossible as demonstrated by an example at the end of this article. However, come rain or shine, the following five evergreen principles for success still apply:

1. Strong customer focus

Almost all companies currently face challenges that are difficult to master. But even if you are busy cutting costs and optimising your cash flow: do not forget about your customers and suppliers! Interaction with those groups that make up your company's economic success is always important. This holds also true in times of crisis. Even if you are currently unable to provide the services which your clients are accustomed to, it is important to seek out a conversation about it with the affected parties. You never know what new insights and opportunities might emerge from these interactions!

2. Empowered employees

Being productive despite contact restrictions is presently not always possible. But home office solutions work very well in many areas and other digital ways of working have proven useful. The current situation presents an opportunity for decision-makers to experiment with new work methods and learn from the experience. Especially now, it is important to be able to delegate responsibility to employees. Decision-makers cannot manage all of the out-of-the-blue occurring changes in a day-to-day business all by themselves, on short notice and with efficiency. Instead, managers should focus on steering the business through the crisis and delegate less important decisions.

3. High energy

The greatest danger in motivating employees lies in the uncertainty brought on by the crisis. What is needed now are quick wins. Subtasks and short-term projects can help align the team and trigger pride when a positive result is achieved. Celebrate and praise even small successes, especially now.

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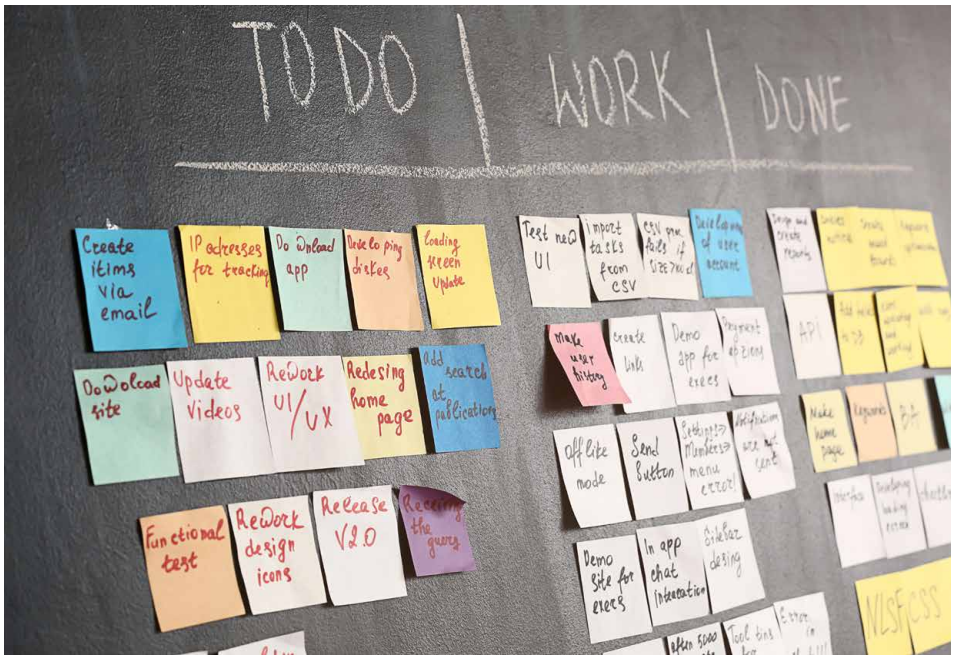


generate new perspectives and ideas. How can you find out about all the ways companies can support each other in cooperation if you do not talk about it?

Conclusion

Opportunities exist always – and everywhere. Sometimes, even when you least expect them. Do not be discouraged by the crisis and most importantly, radiate confidence. Think about what you can do with those lemons that fate dealt you. Do you choose to grin and bear that sour taste in your mouth or might you prefer turning it into fresh lemonade?

4. Managing emotions

It is the job of the management to alleviate concerns during a crisis and to focus the workforce on what matters most in each moment. Communicate regularly and positively, and paint a post-crisis picture of having successfully navigated the challenges. Move forward resolutely yet prudently. No one said leading was easy!

5. Cooperation and alliances

You feel this is not a good time to discuss cooperation or forge new alliances? Even though funding for certain matters might presently be uncertain, continue with ongoing negotiations. In fact, I will even explicitly encourage you to start new ones! Undertakings that are impossible under normal circumstances may become feasible during times of crisis. Altered conditions

Talking about which ... the German brand 'Bionade' was born from an almost bankrupt brewery that, with a radical idea born from desperation, broke all the rules. Not only did they process fruits that were rarely ever used, such as lychee and elderberry, but they also bottled their lemonade in beer bottles and did not invest one penny in advertising. Instead, they put their money on a strong brand and word-of-mouth marketing.

Stephan Jansen

Stephan Jansen, Managing Partner of the M&A and Strategy Consultancy Beyond the Deal (BTD) GmbH, based in Frankfurt and Paris (www.beyondthedeal.de). The consulting firm primarily supports medium-sized companies in the purchase and sale of companies as well as in strategy formulation and implementation.

Marketing for consultants

Digital assessment expertise is indispensable

In a crisis, the omissions of the past become apparent – according to a consultancy saying. This can also be applied to the consultants themselves. In the current extraordinary times, the consultants' deficiencies in expertise in the digital and marketing sector are driven to the surface. Their shortfalls often lead to aimless, ineffective actions – not taking into account the needs aligned with their own profile – and to misplaced trust in online marketers.

By Bernhard Kuntz

Most training and consultancy providers do not have a marketing and sales strategy. Therefore, they waste a lot of time and money on uncoordinated marketing activities – if they pursue active marketing at all. This has become particularly evident in the current crisis. At present, one often gets the impression that all consultants are running in one direction like a panic-stricken herd of sheep.

As an example, ever since the beginning of the coronavirus-related lockdown, I have been flooded with free of charge webinar and coaching offers by consultants via email and social media channels on a daily basis. Consultants who, almost without exception, I do not know and whose websites give the impression that the consultant was catapulted into the digital era overnight.

And what about the content of the webinars and online coaching sessions? Almost all the offers revolve around the three topics of "remote office", "leading virtual teams" and "crisis as an opportunity". This testifies neither to competence in market knowledge nor to a well-thought-out strategy.

Image Source: stock.adobe.com/zinkevych

Consultants are not fit for the digital age

Most training and consultancy providers do not pursue a marketing or sales strategy – I already stated that about thirty years ago. Has anything changed since then? Yes! But not for the better. On the contrary, it has gotten worse. After all, what were the options for training and consultancy companies to initiate contacts with new clients and win (initial) orders from them thirty years ago? They could write advertising letters, place PR articles and advertisements in magazines, call potential clients and occasionally invite them to an event. That was the extent of available marketing tools. Consequently, the marketing and sales strategies that most trainers and consultants pursued twenty-five or thirty years ago were simple – if they used any at all.

However, now, the situation that has changed. As a result of the triumphant boom of the internet, trade journals, for example, have lost their function as the most important source of information. Consequently, the impact of adverts and articles placed in those journals suffered a steep decline. This function has now been taken over by the internet, Google etc. And what happened to sending sales letters to potential customers and contacting them unsolicited by telephone? Legislation has largely put a stop to this. As a result, the marketing and sales strategies of today's consultants have to be structured differently. Compared to thirty years ago, the development of those strategies requires not only greater market knowledge but also greater marketing, sales and digital know-how.

Marketing systems today are more complex

Nowadays, when developing a marketing and sales strategy that is not based purely on trial and error you have to know exactly:

- In which market am I operating in – the B2B or in the B2C sector?
- What is the nature of my "products"? Are they quick-fix items that customers buy largely on impulse or are they strategically relevant investment goods and services?
- Which are my target customers' opinion-forming and decision-making processes? For example, when researching potential solutions to their problems, do they primarily use a classic PC at work or a smartphone at home – and are they using social media, such as Facebook, LinkedIn, Instagram etc.?

Furthermore, in addition to this basic know-how, a certain degree of digital competence is necessary. This can include:

- Which (partial) goals of my marketing strategy can I actually achieve as a regional or interregional B2B or B2C provider by using tools such as website, blog, LinkedIn, Facebook etc.?
- How do I ensure that my website, blog and videos are not just online but are also found and read or viewed by my target customers?
- How do I develop media content in such a way that the input and output ratio is proportionate and content development is not an end in itself?
- How do I use generated content across multiple platforms?

Strategy development requires more know-how

With regards to all of the above-mentioned questions, most education and consultant providers have too little know-how – even if they are digital natives. In broad terms, two groups of people can be differentiated in the training and consultancy market:

Group 1: "Old stagers" like me whose temples are showing the first grey hair. Most of them are aware that it makes a fundamental difference whether a (consultancy) company is operating

- in the B2B or B2C sector,
- selling "nice-to-have products" or strategically relevant "problem solutions", or whether
- it is operating interregionally or only regionally (as many coaches do).

Consequently, marketing and sales also require different strategies. However, it is neither uncommon for them, nor for me, to have to cry out for help with the most mundane of online marketing tasks and call upon a digital native due to little experience with the handling of modern technology.

Group 2: The digital natives of generations X, Y and Z, who use their smartphones and tablets with virtuosity and design websites and blogs with CMS systems in no time at all. However, they often lack the awareness for

- which market am I or my company operating in and
- what makes the decision-makers of the companies tick or what is the media consumption behaviour of the people who ultimately decide on the allocation of budgets?

Consultants often lack the necessary assessment expertise

Despite their different strengths and weaknesses, the two groups of people can usually be characterised by one common shortcoming: they lack the evaluative expertise of being able to differentiate

- what is conducive when using digital media and
- when and under which circumstances the potential input and output of their digital activities are proportionate.

As a result, the "old stagers" are easily talked into using tools like blogs, video channels and social media accounts by online marketing and social media agencies without considering the impetus. This is proven by the many "dead" blogs, video channels and social media accounts on the web.

And what about the digital natives? They often get easily excited about some new tool that is being hyped as a magic cure-all without reflecting: "Does this even apply to our market?" This becomes apparent when we look at 'tools', such as landing pages and marketing funnels, along with keywords like 'content marketing' and 'social media marketing'.

One main reason for the general uncertainty is that neither Google nor Facebook, YouTube etc., disclose their algorithms.

Image Source: stock.adobe.com/bloomicon

As a result, when it comes to optimising websites or generating followers in social media, one is largely dependent on assumptions and empirical values. Accordingly, many myths exist in this area.

Three online marketers have ten opinions

The legal profession has a saying: "Three lawyers, four opinions". In the online marketing sector, it would be: "Three online marketers, ten opinions", as, depending on their background and field of business, marketing professionals hold completely different experience and credos. As a consequence, consultants who work with several (online) marketing advisors who carry out part of their marketing, experience a great deal of irritation. Different marketers often follow completely different approaches, partly in order to generate more turnover.

The best-known online marketing myth probably is: "Content is king." Those who propagate this idea – often PR agencies in disguise looking for new fields of activity – suggest: "The more valuable content you place online, the more easily you will be found." Hence, content is being produced incessantly, whereas it might good to ask the question: "I have already produced a lot of content – in the form of whitebooks, blog posts, videos etc. – that cannot be found on Google & others. Why should I then produce even more content that will, most likely, not be found either?"

Another myth is: "The desktop is dead; the future is mobile". Among other things, this leads to many consultants designing their websites as so-called one-pagers because online marketers made them believe: the user-friendliness of a website on mobile devices is the key ranking criterion of search engines such Google and others.

One consequence of this is that the consultants' websites can no longer be found in Google searches – unless you enter the company name as a search term – because: if a website consists of only one page, it can only be optimised for one or two keywords, for example the company or consultant name. More than that cannot be targeted.

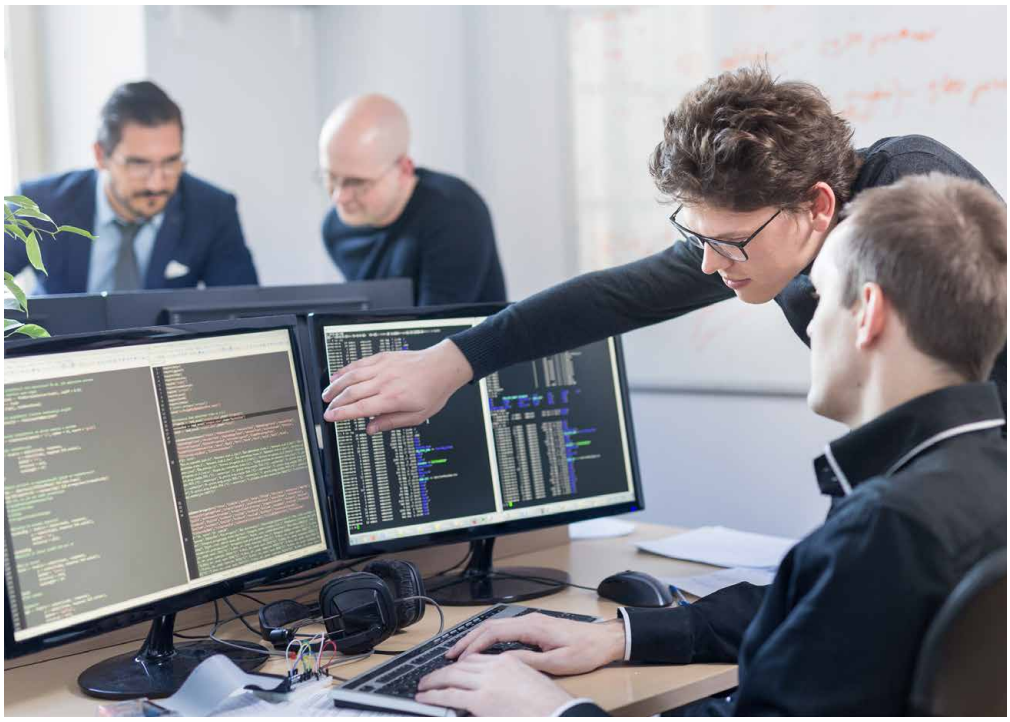
In addition, when analysing websites of B2B consultants it becomes apparent that at least two-thirds of their visitors (usually more) still come via stationary end devices because the visitors are not privately but professionally interested in the services of the consultants. Hence, the number of visitors plummets during weekends. Time spent on site analysis shows that those visitors spent five to six times more time on the websites than visitors using mobile devices due to the fact that no one wants to research a complex subject such as digital transformation on a device the size of a cigarette pack.

Jungle Camp visitors are marketing role models

The insecurity of many consultants with regards to social media is especially great because they notice: "Even the dumbest Jungle Camp candidate has hundreds of thousands of followers and is earning an income as an influencer." As a result, at the request of our clients, additionally to the websites we manage for them, we also take care of the social media channels of several consultancy companies. However, we do this rather unwillingly because:

- we do not like the prevailing "fast food" or "Mickey Mouse" communication, and
- we gauge the importance of social media for B2B marketing to be rather low.

However, unfortunately, we are not alone on this planet. There are whole new legions of service providers who support companies in optimising their websites and managing their social media accounts. Service providers, who:



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- are often much bigger agencies than our three-men-and-women club, and
- whose portfolio contains the more renowned clients, such as branded companies and online shops.

As our consultancy clients naturally also talk to these SEO-, online marketing and social media experts, it sometimes leads to absurd situations.

To give an example, one Friday afternoon in early May, we received a phone call from the owner of a consultancy whose social media account we manage. He told us that several renowned social media experts had assured him: "On LinkedIn you have to post at least four times a day in order to generate any impact at all." I had a different opinion, so I argued against it. However, due to the cumulative expertise of those social media consultants unknown to me who had whispered into our clients' ears, I could not convince him. Therefore, I promised him: "We will place four valuable posts on LinkedIn daily from now on." and I left for the weekend.

Yet, on my return to the office on Monday morning, I received a call by a client whose LinkedIn account we also manage. She told me that she had spoken to several social media experts during the past few days and they had unanimously emphasised that one should never post more than one post daily on LinkedIn. Although, in marketing, I am a fan of the maxim 'moderately but regularly', turning it into a dogma seemed exaggerated to me. And yet, as the maxim 'one post daily' was very important to our client, I promised her to adhere to this rule.

So, who is right? I have a clear opinion; however, I will keep it to myself as there are hundreds of experts who would immediately contradict me. What strikes me as strange is the fact that none of the so-called "experts" told our clients what kind of content they should post in order to create a realistic chance that their target groups, namely the top decision makers in companies, would add them as contacts or potentially read their posts. Apparently, in their opinion, this is less relevant than adhering to the rules of posting once or twice daily on LinkedIn or of uploading those posts in the mornings or evenings.

Beware of 'smart' data generated by data analytics tools

We are experiencing similar situations in SEO-sector. Depending on which SEO expert our clients talk to, they receive inconsistent replies to the question of how to ensure that their website can be found easily and is visited often. Each of the experts has, just like us, at least one smart program that tells them:

- which part of the website still holds a lot of potential for optimisation, and
- which keyword optimisation should be undertaken.

However, these data analytics tools are 'ignorant'. In their analytics they do not take into account, for example, whether

- the consultant actually has a realistic chance to rank on page 1 or 2 in a Google search with fought-for terms such as 'leadership', 'digital transformation', or 'change management', or whether the competition is too tough.
- the necessary input is proportionate to the outcome or whether it exceeds the resources of the consultant.

Such questions are neither included in the analysis provided by those tools nor are they considered in the recommendation of many SEO consultants. The use of Data Analytics Tools might be justified for big companies that have access to unlimited funds, or maybe for companies, such as Zalando, that solely trade online. For small sized companies with limited budgets, however, the application of these tools is wrong. Nevertheless, SEO consultants keep confusing our clients with their 'objective data' spat out automatically by their analytics tools.

Consequently, time and time again, we are faced with the time-consuming and sometimes pointless task to explain to them: "What the SEO, online marketing or social media consultant told you is all well and good, but ...".

Clients must be able to assess proposals by online marketing consultants

We are only one provider among many. Thus, there is no way around it for consultants of any kind but to study the topic of online marketing and the corresponding 'technology' in order to develop at least an expertise in assessing the proposals of said agencies. Failing this, they will fall victim to the old wives' tales told by online marketers which they themselves believe in. Consequently, they will fail to be successful in the medium and long term in this digital age. Furthermore, the consultants ought to develop a marketing and sales strategy for their organisations that will dovetail their online and offline marketing activities in such a way that they establish a cross-linked system. Otherwise, they will engage in the same blind actionism in marketing and sales that they often criticise in their clients.

Bernhard Kuntz

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Case Study

Long-term mediation effectiveness of hierarchical workplace conflicts

This study examined the long-term mediation effectiveness of hierarchical workplace conflicts by analyzing supervisors' and subordinates' perceptions of short-term as well as long-term mediation effectiveness. Data was collected from real workplace mediation cases in the Netherlands. Our results show that short-term mediation outcomes relate positively to the ones in the long-term. Further data show that after one year, supervisors perceive greater compliance with the agreement than subordinates. We found no significant difference in perceptions of long-term effectiveness between exit and non-exit mediations.

By Meriem Kalter and Katalien Bollen

Long-term mediation effectiveness of hierarchical workplace conflicts

Both mediation research and practice have indicated that workplace mediation is an effective tool to resolve conflicts constructively. Next to reasonable settlement rates fluctuating between 60 % and 80 %, research suggests that parties involved in mediation feel (highly) satisfied with the mediation process, its outcomes, as well as the mediator, often resulting in a high level of confidence in the agreement (Bollen et al. 2012; 2014). These studies have typically measured effectiveness shortly after the mediation ended. However, long-term effectiveness may be at least as important since parties only fully appreciate and evaluate the (practical) consequences of what they have agreed upon in mediation after a considerable amount of time. Parties may feel relieved when finishing the mediation but may feel differently when the agreement turns out to be less advantageous than they imagined or if implementation issues arise as such short-term mediation effectiveness may not necessarily predict long-term mediation effectiveness.

Until now, research on the long-term effects of workplace mediation has been very limited. Only one qualitative study assessing the effects of mediation after 18 months observed increased empowerment and transformations in the relationship, in the case of supervisors and subordinates (Anderson & Bingham, 1997). As an outlier, this reflects the deficit of longitudinal research on workplace mediation. Mediation perceptions may alter over time. Studies in the context of community, family, and court-connected mediation show a positive relation between short-term and long-term outcomes (Kaiser & Gabler, 2014). In our study, we examine the sustainability of mediation outcomes. Or, in other words, we study the extent to which short-term perceptions of mediation effectiveness predict perceptions in the longer term.

Long-term effectiveness of mediation in hierarchical conflicts

Many workplace conflicts are hierarchical, arising between supervisor and subordinate. Research shows that supervisors and subordinates differ in the way they experience and perceive conflict – compared to supervisors, subordinates perceive conflicts as more personal, feel less supported or understood, and it takes more to satisfy subordinates involved in conflict than supervisors. This results in decreased well-being, especially for subordinates. It is clear that hierarchy and power profoundly impact disputants' feelings, cognitions, and behaviors. Consequently, supervisors and subordinates will enter the mediation with different needs and wishes, which in turn will impact the mediation.

A yet unpublished research by Kalter, Bollen & Euwema (2020) indicates that subordinates indeed experience more negative emotions in mediation than supervisors. Several studies by Bollen and colleagues show that although mediation is perceived as effective by both supervisors and subordinates, supervisors typically perceive the mediation as more effective than subordinates. Besides, the results of these studies have shown that the conditions for an effective mediation are different for supervisors and subordinates. For example, for subordinates, perceptions of procedural justice, reduced uncertainty, and the mediator acknowledging their anger can enhance their perceptions of mediation effectiveness. This is not the case for supervisors. In this study, we explore whether these differences between supervisors and subordinates still hold on the longer term.

Long-term effectiveness of exit and non-exit mediations

When mediating highly escalated conflicts, the question is often raised about whether the supervisor and the subordinate will continue their employment relationship. In this way, mediation can be part of a process of ending the contact (and contract) with one of the conflicting parties. In the Netherlands, these exit mediations form a substantial proportion of hierarchical workplace mediations. The decision to terminate the employment can be made before the mediation starts (by one or both parties) or during the mediation process itself. Regardless of whether both parties initially intend to continue the working relationship or not, the main distinguishing characteristic of an exit mediation is that, at the end of the process, the parties terminate the connection and reach a settlement. Thus, for parties in an exit mediation, the terms of an agreement are likely to be more important than the restoration of the relationship. This is less likely the case for parties in non-exit mediations. Here, parties may hope to reconcile during the course of the mediation since they intend to work together and thus are socially interdependent. This interdependence can produce cooperative behaviors that promote trust and reconciliation. The mediator role in exit mediations is therefore likely to differ from the one in non-exit mediation. In non-exit mediation, we would expect the mediator to use more solution-oriented techniques with less emphasis on mending the relationship. In non-exit mediations, we would expect mediators to focus more on reconciliation to support a healthy working relationship. So far, there is no existing research comparing exit and non-exit mediations. Thus, the third question we address in this study is: To what extent do perceptions of long-term mediation effectiveness differ between participants involved in exit mediations versus non-exit mediations? As such, we test how the (dis)continuation of an employment relationship affects parties' perceptions of long-term mediation effectiveness. Following social dependency theory, we expect mediators in non-exit mediations to use more reconciliation-oriented techniques to support a healthy working relationship than mediators in exit mediations. This focus on more collaborative behavior may positively influence how parties evaluate the mediation.

Hypotheses

In our study, we test the following hypotheses:

- *Hypothesis 1 on the relationship between short-term and long-term mediation effectiveness.*
  Perceptions of short-term mediation effectiveness (reconciliation, satisfaction with the mediator, mediation process and outcome, and confidence in mediation agreement) relate positively to perceptions of their long-term mediation effectiveness.
- *Hypothesis 2 on the relation between supervisors' and subordinates' perceptions of mediation effectiveness.*
  In the longer term, supervisors will perceive the mediation more favorably compared to subordinates. Specifically, compared to subordinates, supervisors will perceive greater reconciliation (2a). They will also be more satisfied with the mediator (2b), the mediation process (2c), and the mediation outcome than subordinates (2d). In addi-

tion, after one year, supervisors will perceive more compliance with the mediation agreement by the subordinate than vice versa (2e).

- *Hypothesis 3 on the relation between being involved in an exit mediation (or not) and perceptions of mediation effectiveness:* Compared to parties in a non-exit mediation, parties involved in an exit mediation will, over the long term, perceive less reconciliation (3a); less satisfaction with the mediator (3b); less satisfaction with the mediation process (3c); less satisfaction with the mediation outcome (3d), and less compliance with the agreement (3e).

Methodology

Through cooperation with the Dutch Mediation Federation (MfN), we approached workplace mediators. MfN mediators who agreed to participate in the study, asked the conflict parties in their mediations to participate. We sent questionnaires at two different times: First, up to four weeks following the last mediation session, to collect information about the conflict and the perceived short-term mediation effectiveness, Second, one year later, to collect data on perceived long-term mediation effectiveness. We collected data between January 2011 and July 2014. To avoid selection bias, mediators offered all parties in a hierarchical mediation the chance to participate in the study. Participation was voluntary and confidential.

Sample

A total of 69 respondents in 79 mediations completed the first wave questionnaire. The second wave questionnaire was completed by 41 respondents (39 %), including 25 subordinates and 16 supervisors. The subordinates' characteristics were 15 men and 10 women; the average age of 51.52 years; 11 involved in exit mediations, and 14 in non-exit mediations. The supervisors' characteristics were 12 men and 4 women, average age: 48.44 years, 9 involved in exit mediations, and 7 in non-exit mediations. Both subordinates and supervisors were relatively highly educated, with 20 % of the subordinates holding a university degree and 50 % of the supervisors. Only six participants were involved in the same mediation (three dyads). In the sample, 20 mediations (49 %) qualified as exit mediation. In these exit mediations, 30 % of the supervisors and 30 % of the subordinates intended to end the relationship at the start of the mediation. Data showed that the conflicts were perceived as highly escalated with an average escalation level of 3.95 on a 5-point scale, 1 referring to no to very little conflict and 5 referring to highly escalated conflicts. Regarding the mediation outcome, 32 out of 41 mediations ended in an agreement (78 %). These settlement rates are in line with other research.

Practical tips for mediators

1. Work towards perceptions of short-term mediation effectiveness, this will also yield long-term perceptions of mediation effectiveness.
2. Since subordinates are more likely to experience limited compliance with the agreement by their supervisor than vice versa, mediators need to support parties to work on implementing and monitoring the agreement as a part of the mediation process. This is important since it is more difficult for subordinates to address supervisors when they feel that the agreement is not respected than the other way around.

This can be achieved by:

- Helping parties to compose a monitoring plan that includes arrangements for evaluation and guidelines on how to handle new problems
- Paying special attention to power differences and make disputants aware of these dynamics when discussing how to evaluate the agreement
- Incorporating a follow-up session to evaluate the workability of the mediation agreement and discuss "the status".
- Be aware of the fact that exit mediation can be as valuable as non-exit mediations.

To test our hypotheses, we conducted a series of hierarchical regression analyses. When running the analyses, we controlled for parties' intention to end the employment relationship or not. Or in other words, we ran analyses to exclude the potential influence of the parties' intention. The reason to do this was based on the fact that there may be a difference between parties' intentions and the actual outcome, affecting their perceptions of mediation effectiveness. For example, based on expectancy theory, parties expecting an exit might evaluate an exit mediation more favorably than parties who intend to continue working together. Next to this variable, we also excluded the potential impact of gender, age, the objective mediation outcome (agreement reached or not), and the level of conflict escalation.

Measuring long-term mediation effectiveness

Whether the mediation produced an agreement or not is a typical measure of short-term effectiveness. To measure short-term and long-term mediation effectiveness, we relied on our study on the five-dimensional mediation effectiveness model as developed by Jean Poitras and Aurelia Le Tareau (2009). This fifteen-item scale comprises five subscales, each with three statements reflecting the perception of a conflict party. The five

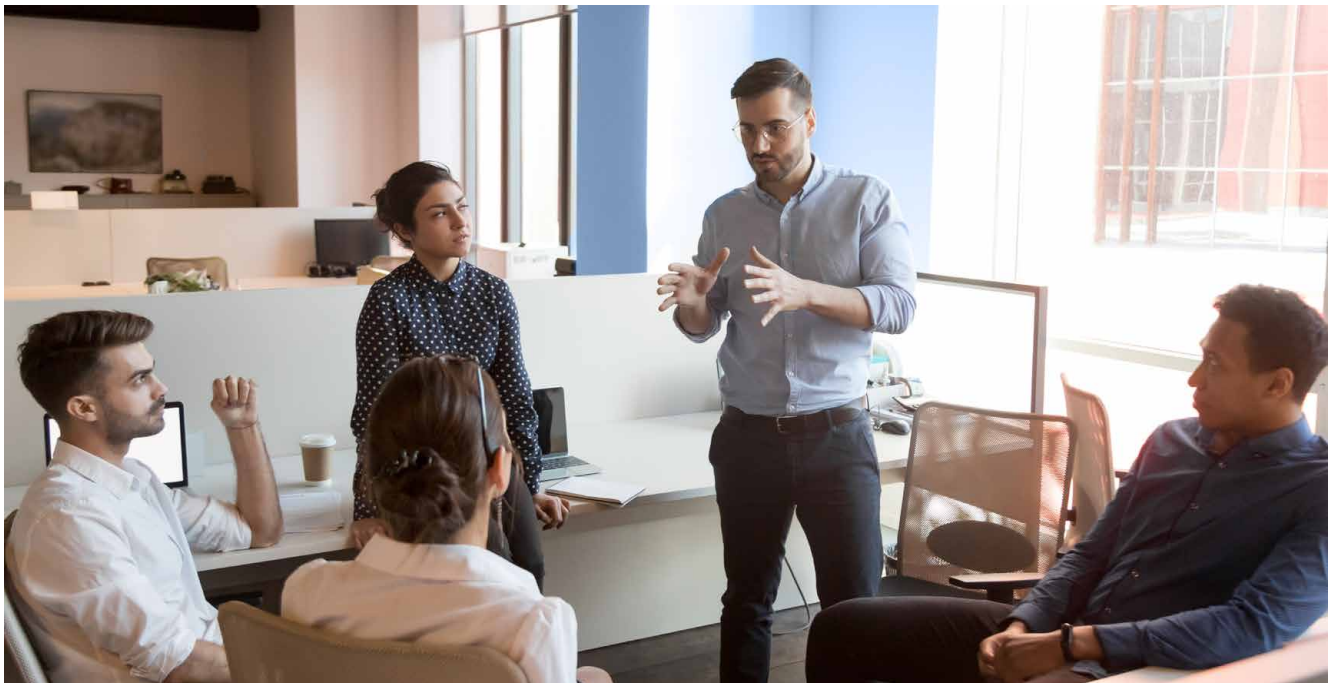
subscales measure parties' level of (a) satisfaction with the mediation process, (b) satisfaction with the mediator, (c) satisfaction with the mediation outcome, (d) reconciliation between the parties, and (e) confidence in the agreement. For example, referring respectively to (a) "Mediation was run in a neutral and objective manner", (b) "The mediator's intervention was crucial in advancing discussions", (c) "I am happy with the solution we came to", (d) "I feel like my relationship with the other party has been restored", and (e) "I believe our agreement will be applied". Except for "confidence in the agreement", we used these scales to measure long-term effectiveness. However, we slightly adapted the statements to make sure the items would reflect the fact that time had passed (e. g., "Looking back, the mediator's intervention was crucial in advancing discussion'). Instead of measuring 'confidence' in the agreement (as used for the short-term measure), for the long-term measure we used 'compliance with the agreement by the other party' (e. g., "The other party complied with the mediation agreement"). Responses for the different items were coded on a five-point Likert scale (1= strongly disagree; 5=strongly agree), with a high score indicating a high level of agreement with the statement. Statistical analyses show good internal consistency, meaning that the scales used to measure the intended construct were suitable.

In previous studies measuring long-term effectiveness, data was collected for a period ranging from three months after the mediation to three years after the mediation. Our study measured long-term effectiveness one year after the mediation had ended (Kaiser & Gabler, 2014). The reason for doing so is that parties, by then, would have had enough time to feel the consequences of the mediation while limiting the risks of parties forgetting about the mediation or us, as researchers, losing contact with them (Pruitt et al., 1993).

Discussion

Policymakers worldwide are increasingly promoting and implementing workplace mediation for several reasons, including the assumption that mediation would lead to sustainable outcomes. However, research and literature on (workplace) mediation are mainly descriptive, focusing on mediation benefits that are not empirically based. Empirical studies illustrate that workplace mediation is effective immediately after its conclusion. Yet, many questions remain regarding the sustainability of these results. The goal of our study was to offer more insight into the long-term effects of mediation in hierarchical workplace conflicts, with special attention to the role of hierarchical position and being involved in an exit mediation or not.

First and foremost, our results show that mediation is considered effective in the long run by both supervisors and subordinates involved in mediation. Generally, short-term measures of mediation effectiveness, such as reconciliation and satisfaction with the mediator and the outcome, as well as trust in the agreement, predicted how mediation clients would perceive long-term mediation effectiveness. As such, we can conclude that perceptions of short-term mediation effectiveness are an accurate indicator of perceptions of long-term mediation effectiveness in the context of hierarchical conflicts. Specifically, the results show reconciliation ($\beta = .63$, $p \leq .001$), satisfaction with the mediator ($\beta = .38$, $p \leq .05$), satisfaction with the mediation outcome ($\beta = .80$, $p \leq .001$), and confidence in the mediation



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agreement ($\beta = .51$, $p \leq .001$) . However, we found one exception: the perceived satisfaction with the mediation process immediately after the mediation did not predict how satisfied mediation clients would feel with the process in the long term. This result may indicate that the mediation process is less prominent for the participants after some time. Further tangible results – such as the mediation outcome – may become over time more salient, noticeable, and memorable than the specific mediation process in the longer term.

Concerning hierarchical position, Hypothesis 2 is only partly confirmed, showing that hierarchical position is a significant and unique predictor of perceptions of compliance with the agreement by the other party in the long term ($\beta = .65$, $p \leq .001$). Specifically, supervisors perceive significantly more compliance with mediation agreements on the part of the subordinate than vice versa. This may reflect the fact that subordinates feel more constrained in their behavior when compared to supervisors and might be less willing or capable of speaking out to make sure that the supervisor behaves according to the mediation agreement than the other way around. There is no relation between hierarchical position and the other long-term mediation effectiveness subscales: reconciliation, satisfaction with the mediator, mediation process, and the mediation outcome. Although supervisors and subordinates may enter and evaluate mediation differently just after the mediation, our study shows that mediation can lead to satisfying long-term results for both subordinates and supervisors.

Finally, we did not find support for Hypothesis 3. As such, our findings show no differences in perceptions of long-term mediation effectiveness, based on whether a party had been involved in an exit mediation or not. This implies that both exit and non-exit mediations yield positive perceptions of mediation effectiveness. Parties in exit mediation consider mediation as effective as parties in non-exit mediation. A possible explanation for our results might be that, parties might still perceive the mediation as useful because it enabled them to leave on good terms or, perhaps, perceived the mediation as effective simply because they were so relieved that the conflict had come to an end.

Interestingly, our data show that reconciliation was just as possible for disputants in exit mediation as for them involved in non-exit mediations. For future research, it would be interesting to consider the different mediation techniques mediators use in the mediation (solution-oriented versus relationship mending) and the effects of mediation on feelings of well-being or improved functioning. This would be particularly interesting since research shows that subordinates' well-being is more negatively affected by hierarchical conflicts than supervisors'.

Conclusion

This study supports the effectiveness of hierarchical workplace mediations for exit and non-exit mediations, both on the short-term and the long-term (one year after the mediation took place). It illustrates the sustainable character of mediation interventions. Further, this study shows that subordinates and supervisors hold different perceptions of compliance with the agreement in the longer term, and this, as such, can be a point of attention for both the mediator and the parties.

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Love in times of Covid-19

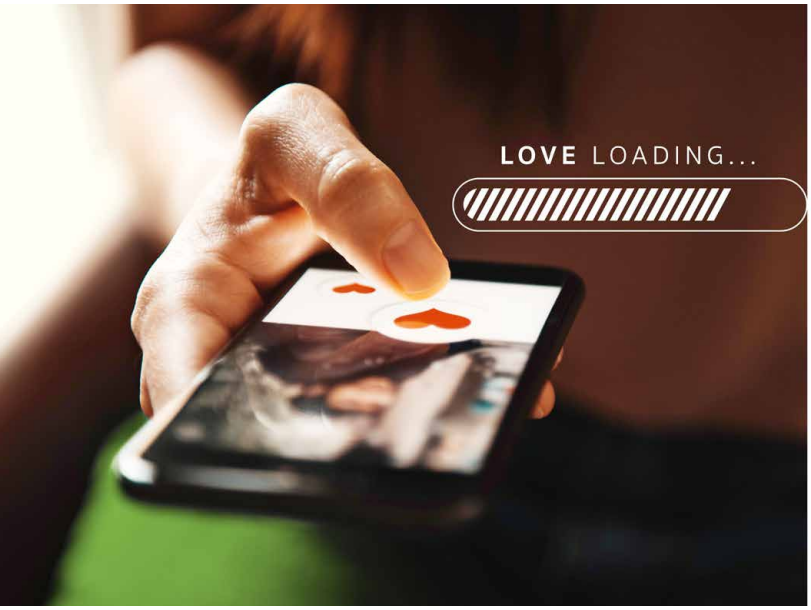
Since the beginning of March 2020, the coronavirus pandemic has become the predominant news item. Readers, listeners and viewers have been enduring and processing an inundating amount of content. But what about love or even sexuality during the Covid-19 pandemic? Surely, one might prefer to drop that subject! However, here is the catch – the pandemic affects all areas of our social and personal life – right down to the most intimate. Love is a part of life. Always. Even in – all the more so, actually – these extraordinary times.

By Kurt Starke

The newly-in-love are hit hardest by the pandemic. In particular, those who are not yet certain whether their affections are returned. "Do they love me, do they love me not?" You cannot just send a quick message on WhatsApp to find out. Or maybe you could? Receiving a reply already is a good sign. And even better so, should the answer not be blatantly negative. Many a game of love has been played via mail or messenger. A bit peculiar, nevertheless a cultural phenomenon full of creative moments and beautiful innuendos.

Young love

Should the "newly-in-love" phase have turned into love by mutual induction, and should a new relationship have formed from this love, then a separation enforced by Covid-19 would be difficult, very difficult to bear. What has just been won threatens to disappear. The beloved other has already become a part of one's own self; the 'you and I' is turning into a 'we' – and suddenly the big stop sign – dating is no longer possible! Phone calls, texts, Skype might help. The new media offer the most diverse possibilities. Nevertheless, they remain virtual, artificial. The dear face on the small or large screen often becomes distorted and threatens to become a flat plastic film, just like words can become tense and superficial. What goes missing is the ease of an alive togetherness, the free and relaxed conversations and also silence. The imagined and pseudo intimacy cannot suffice; it is lacking the physical touch. There is no substitute for seeing each other offline, having real contact, sharing touch, hugs, kisses and caresses.



Proximity and distance

Love needs proximity, and not only young love, but also long-term love, indeed all kind of love. "And love at a distance, in short, displeases me entirely." Wilhelm Busch rhymed. Or as Ernesto Cardenal poetically put it: "Love means being together." On the other hand, without any distance, light breezes can quickly turn into thunderstorms. The Colombian Nobel Prize winner for literature, Gabriel García Márquez, was of the opinion "that it is easier to go through the great marital catastrophes than through the tiny daily miseries." "Unlike other social relationships, love revolves around experiencing the shades of presence and absence [of the beloved]." Love is "first and foremost a need for proximity of interaction, and it wants to be realised in the immediate presence of the lovers for each other" (Tyrell, 1987, p. 586).

Once established as a fundamental feeling, love solidifies or dissipates through a day-to-day living together. Love in long-term partnerships differs from love in short, wild adventures. Having lived together for a long time, lovers know each other well. They trust each other and are familiar with each other's strength and weaknesses. The feeling can be deep and indestructible, the team spirit immune to danger, especially as a result of their shared experiences and shocks in times of war and crisis. The lovers share a fundamental trust in each other that cannot be shaken by anything. They have shared joys and sorrows, they belong together, and one can no longer live without the other.

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Did you know?

This is how Corona is changing the love lives of Germans

Covid-19 has been turning our entire daily life upside down. The current extraordinary situation impacts couple relationships immensely. In a recent study, the online dating agency Parship asked 1,000 Germans who are in a relationship about the impact of the pandemic. According to the survey, 27 % of the participants are uncertain whether their love will survive the Covid-19 crisis. This applies, in particular, to couples with school-age children; as many as 38 % have doubts about the survival of their relationship. However, not just being cooped up together is worrying Germans, but also too much distance – although not as much. Whilst only 25 % of participants who share a household with their partner consider Covid-19 to be a potential love killer, 35 % of couples living apart fear that the relationship will break apart. There is a small light at the end of the tunnel: even though one in five of the surveyed (21 %) anticipate an increase in arguments, at least every fourth person (26 %) stated that they are having more sex than usual during this Corona Virus dominated time.

Source: Parship (2020): Liebesrisiko "Paarantäne". Available online at: https://www.parship.de/presse/pressemeldungen/2020/parship-studieliebesrisiko-paarantaene-corona-massnahmen-stellen-mehr-als-jede-vierte-partnerschaft-vor-die-zerreissprobe/.

The downside of a long partnership is weariness, deadly boredom and lack of excitement. This is especially typical when the couple, voluntarily or forced, as is currently the case as a result of the coronavirus pandemic – goes into isolation, when neither of them brings in new input from the outside, and the flow of conversation dries up. The conflicts might become so great that hatred, contempt or disgust find their way into the relationship, or, due to the lack of excitement, the relationship becomes numb.

Being single

Not getting along with your romantic partner in times of crisis can be bad. But not having a partner to love at all is worse. In our country, this is the case for more than 30 % of the population. It is true that partners can be found on Internet platforms, but that does not get you very far.

If we go by the experiences of the popular program Single-Time on MDR I Radio Thuringia, single people in the middle and older age groups find it very difficult anyway to find a partner who is looking for a lasting connection. It follows that, during a Covid-19 pandemic, there is no chance at all. During this time, when most partner-seeking singles who are virtually living in quarantine, are not only longing for love or sexual partner, but for any social contact at all. How long can the solitude be endured? But at least long-time singles hold one advantage over non-singles: they are used to being on their own. However, this is not necessarily a have at least one advantage over non-singles – they are used to being alone. That, however, is not necessarily comforting.

Sex or no sex

Most singles have a startlingly inactive sex life. In my study "Post-menopause and Sexuality", I found that 13 % of women in the age ranges of 50 to 60 who were in committed relationships had not had sex for more than a year, whereas amongst the inactive single women, the percentage amounted to 76 % (Starke, 2007, p. 24). In fact, the restricting measures due to the pandemic no longer really allow for sexual contact amongst singles at all. Apart from solo sex, no other options remain for the sexually-desiring women and men. No chance acquaintances, no one-night stands, even the red-light districts are closed. The reasoning of 'it is a matter of life and death' is justified, however ineffective in the long run. Sexual desire cannot be squashed.

Of course, most people know how to set priorities with regards to their sex life. In my research, I asked the participants what importance the sexual component plays in their relationship. The vast majority decided on 'important, but not very important' (Starke, 2005, p. 99). This relativisation is realistic – and certainly does not exclude those moments of perfect sexual happiness that outshine everything.

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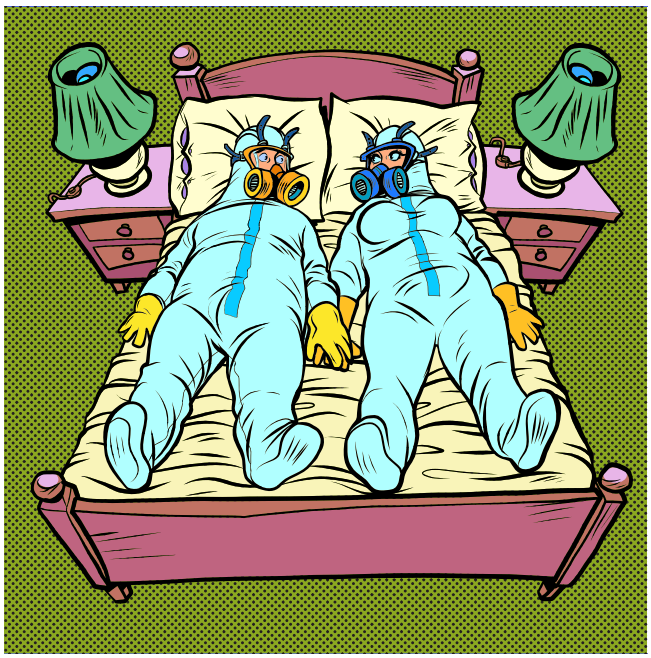
As a result of the Covid-19 pandemic, people have many, many worries and not infrequently also fears. Fear and sexual desire do not really go together. Fears constitute one of the biggest turn-offs – and not only the highly topical fear of a viral infection, but also all the other fears (that can be heightened by Covid-19!): fear of the future, of social descent, of aging, of violence and assault, or fear of contact or failure. On the other hand, sexual desire especially, might perhaps be the only means to – at least briefly – overcome or supress these fears.

Love and Survival

The Covid-19 pandemic shows that our market-based society is not able to cater to all the demands of extraordinary circumstances. On the contrary, it even threatens to render certain things irresolvable. Society's inherent egotism, a selfishness that is celebrated as individualisation is not going to save humanity. What is required now are different structures: cooperation instead of competition, fellowship instead of antagonism, sociality instead of autocracy, being peaceful instead of warlike. What is needed now are the foundational, primal qualities of being human, one of which is love. Love safeguards survival.

The earlier quoted García Márquez wrote in his novel 'Love in the Time of Cholera' about how people love in different circumstancesand how love is exposed to the greatest dangers. But despite all the adversities, at the end of the novel, there is one realisation: love survives.



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Literary conflict analysis

Emile Zola: Germinal

By Klaus Harnack

'Man against nature', 'man against society', 'man versus man', 'man versus himself' are the themes that characterise conflicts in literature. In this new column, Literary conflict analysis, we introduce you to conflicts from a broad literary spectrum and then analyse them briefly through the 'mediative magnifying glass'. We can then use it as a source of inspiration for our practice, as an extension of one's sample pool, and even to relativise everyday mediative work, making it practical. We pay special attention to the recurring conflict patterns described in literature and found in everyday life.

Emile Zola's 1885 novel 'Germinal' marks the beginning of this series. This masterpiece of realism depicts the revolutionary events of the miners' strike in Anzin, France around 1884. The subterranean germination of the revolutionary idea and its execution form the center of the novel. They are also reflected in the title in two senses: firstly, by the name 'Germinal' (French 'le germe' = the germ), which refers to the first Spring month of the French revolutionary calendar, and secondly, by the revolutionary movement that was burgeouning in the mine shaft.

The focus of the plot is on the hard-working northern French coal workers and their living conditions in the second third of the 19th century. The protagonist of the story, the machinist Étienne Lantier, enters the mining pit 'Le Voreux' as a newcomer to the world of coal workers. After a wage cut announced by the mining company, he convinces his pitmen to go on strike and fight for better working conditions and higher pay. He becomes the leader of the strike and organises an aid fund. But due to lack of aid from the International and an escalating incident with the military, the strike finally gets crushed. Shortly after work in the mine resumes, an act of sabotage leads to water ingress in the shaft, due to which many people die. Étienne, as one of the survivors, leaves the coal mines of Montsou at the end of the novel and moves to Paris to support the revolution from there.

The focus of the conflict analysis is the section that describes negotiations between the representatives of the mining company and the spokesmen of the strikers. The prototypical course of this negotiation is symbolic of many conflicts between groups and so-called proxy talks.

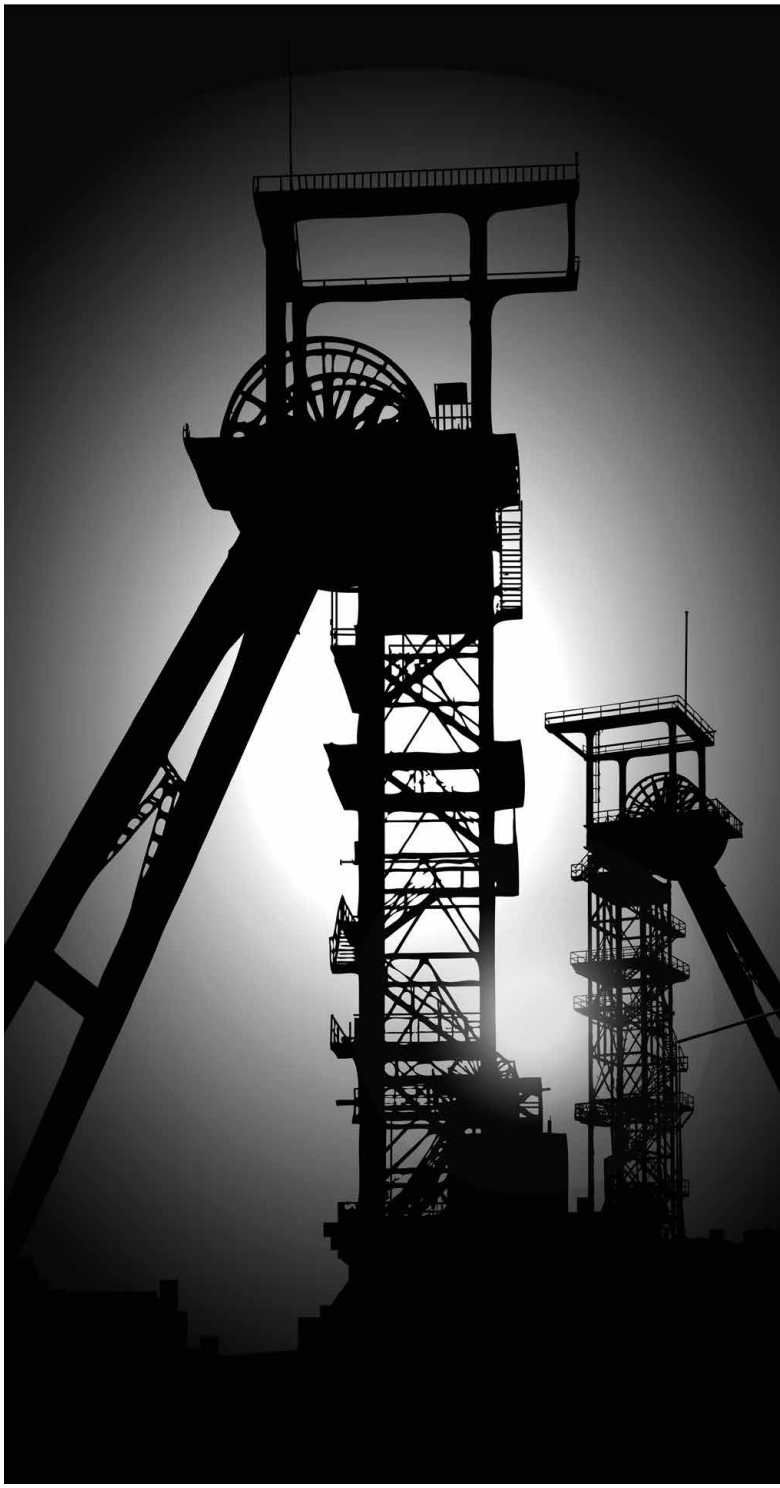


Image Source: fotolia.com/ ufotopixl10

Germinal, Chapter 18 (excerpt)*

At last, Mr. Hennebeau came in his military-style buttoned coat with his medal ribbon in the buttonhole. He spoke first. "Ah, there you are! You rebel, it seems." He paused to add, with a certain stiff politeness, "Sit down; it is just right for me that I have the opportunity to talk to you."

The workers turned and looked for chairs. Some dared to sit down; others stopped, intimidated by the silk fabric. There was a silence. Mr. Hennebeau, who had rolled his armchair towards the fireplace, looked at them with keen interest and tried to remember their faces. He had recognized Pierron, who wanted to hide in the back row. His eyes were fixed on Etienne, who was sitting across from him. "What do you have to tell me?" he asked. He expected the young man to speak and was so surprised when he saw Maheu step forward that he couldn't help but add, "Why, is that you? A good worker who always appeared to be sensible, an old inmate from Montsou, whose family has worked in the pits since the groundbreaking. That isn't good. I am saddened to see you at the head of the discontentment."

Maheu listened to these words with lowered eyes. Then he began in an initially hesitant and dull voice, "Mr. Director, precisely because I am a calm person who cannot be blamed for anything that my comrades chose me. This may prove to you that it is not a matter of rioters' actions, of restless minds who only want to cause disputes. We only want justice; we are tired of going hungry, and it seems to us that it is time to reach an agreement so that we can at least have our daily bread." His voice became more secure. He raised his eyes and continued, while he looked at the Director, "You see that we cannot accept your new wage system. We are accused of making low payments. Indeed, we do not devote the necessary time to this work. If we did, our daily income would decrease even more; and since it is already insufficient to feed us, this would be the sweep of things for your people, the end of everything. Better pay us, and we'll do a better job of lumbering out, devoting the necessary time to lumbering instead of devoting all our zeal to the scales because that's the only worthwhile work. There is no other way out: good work must also be well paid. What did you come up with instead? Something that doesn't enter our heads. They reduce the cart's price and claim to make up for that reduction by paying for the lignification separately. If this were true, we would be no less deceived, but it annoys us that it is not at all true. Society doesn't replace anything for us; it just puts two cents in our pockets for every cart."

"Yes, yes, that's it," murmured the other emissaries when they saw Mr. Hennebeau make a violent gesture to interrupt Maheu. Maheu cut the Director off. He was in the flow now; the words came out of their own accord. At times, he heard himself with surprise, as if a stranger had spoken from inside him. There were things which had piled up in the depths of his chest; things that he didn't even know were there and that were now erupting because his heart was too full. He described the misery of all of them, the hard work, the livestock's life, the poverty of women and children. He spoke of the last wage payments, of the ridiculous half-month wages, which were brought home to the wailing families, reduced by half due to the penalties and days off. "Are you determined to destroy them completely? That is why we have come, Mr. Director", he concluded, "to tell you that if we must die, we'd rather die without working. It is less tiring that way. We have left the pits and will not start until the Society accepts our terms. You want to lower the price of the cart and pay extra for the rooming. We want things to stay as they were, and we also want to be paid five cents more for the cart. You have to show that you stand for justice and work." There were some voices among the workers – "Yes, yes ... He has spoken our thoughts... we only ask for what is right." Others just nodded silently. The sumptuous apartment with its gold rags and embroidery, with its collection of antiquities, was gone; they no longer even felt the carpet, which they trampled on with their heavy boots.

"Let me answer you!" exclaimed Mr. Hennebeau at last, sourly. "Above all, it is not true that the Society wins two cents on every cart. Let's do the math." A confused argument ensued. To find some disagreement, the Director turned to Pierron, who stuttered and hid behind the others. Levaque, on the other hand, was one of the boldest, confusing things and asserting facts he did not understand. The murmur of voices was lost between the curtains in the greenhouse heat of the room. "If you all talk at the same time," said Mr. Hennebeau, "we will never come to an understanding." He had found his calm, the strict but not harsh courtesy of a leader who has received his instructions and is determined to enforce them. Since the first words, he had not taken his eyes off Etienne and played the young man to break the silence in which he had locked himself. He then suddenly broke off the argument about the two cents and began to discuss the question on a broader basis.

* Source: Emile Zola: Germinal, translated by Armin Schwarz, Leipzig: Hesse & Becker Verlag [1929].

"No, admit it, you listen to shameful agitators. It is a plague that grips all workers these days and corrupts the best. Oh, no one need confess to me; I can see that you, who used to be such quiet people, have completely changed. You have been promised golden mountains, you have been told that the time has come for you to become masters. In short, you will join the much-mentioned International, this army of robbers, that dreams of overturning the Society."

Etienne interrupted him. "You are wrong, sir. Not a single one of the coal miners have yet joined. But if you accuse them of doing so, all the pits will join. It only depends on the company." Since that moment, the fight between Mr. Hennebeau and him continued as if the other coal miners weren't there.

"The Society is a providence for its workers, and you are wrong to threaten it. This year it has spent over three hundred thousand francs building workers' villages, which brings it barely two percent. I don't want to talk about the pension it pays, nor about the coals, about the medicines it administers free of charge. You seem so sensible and in a few months have become one of our most skilled workers. You would do better to spread these truths than run to your doom by associating with people of ill-repute. Yes, I am talking about that racist zealot who we had to dismiss to keep our pits from socialist rot. You are always seen with him; he must have urged you to set up this relief fund. We would gladly tolerate this if it were only a savings bank, but we suspect it is a commodity directed against us, a reserve fund to cover the war's costs. I must take this opportunity to add that the Society wishes to exercise control over this fund."

Etienne let him speak as he looked at his people, and a nervous tremor moved his lips. At the last sentence, he smiled and replied: "So this is a new requirement; because so far you have not requested this control, Mr. Director. Our wish, unfortunately, is that the Society is less preoccupied with us and that, instead of playing the part of Providence, it is righteous and give us what is due, our gain, which it shares with us. Is it lawful to starve workers in any crisis to secure dividends for shareholders? You may say what you say want, Mr. Director: the new wage system means a further wage reduction, which outrages us; for if the Society has to make savings, it is very wrong to save only on the worker."

"Well, there we are!" Exclaimed Mr. Hennebeau. "I awaited this charge, that we would starve the people and feed on their sweat. How can you speak such follies when you should know what great risk capital has in industry, like in mining? A fully equipped pit costs one and a half to two million, and how much trouble one has before one draws moderate interest from such a sum! Almost half of the mining companies in France perish. It, by the way, is stupid to accuse those who succeed. When their workers suffer, they suffer too. Do you think that the Society does not have as much to lose as you do in the current crisis? It is not the hoarder of wages; it must submit to the competition if it does not want to perish. Stick to the facts and not to troublemakers. But you do not want to hear or understand!"

Image Source: fotolia.com/determined

"Yes, we understand," said the young man, "that there is no improvement for us as long as things go as they go, and that is why sooner or later, the workers have to decide to take a different path." So moderate in form, this word was spoken in a low voice with such conviction that a threat trembled through it and there was a deep silence. An embarrassment, a touch of fear ran through the silent room. The other delegates, felt that their comrade was demanding their participation. Amid this prosperity, they began to cast curious glances at the warm curtains and carpets, at the comfortable armchairs, at all the luxury, the least of which would have been enough to pay for their soups for a month. Mr. Hennebeau had sat there pensively for a while and then rose to see them off. Everyone followed his example. Etienne had nudged Maheu gently with his elbow, and Maheu, swaying, said heavily, "Is that all, Sir? Then we will tell our comrades that you reject our terms."

"I am not discarding anything, dear man," the Director called out. "I'm a paid employee like you, and I have no more will of my own here than the last of your henchmen. I am given instructions, and it is my job to see that they are properly carried out. I told you what I thought was good to say to you, but I will be careful not to make a decision. You bring me your demands; I will submit them to the administration and give you their answer." He spoke with a high official's elegant air, avoiding getting excited about these questions, and with the polite dryness of a simple tool of authority. The miners now looked at him suspiciously and wondered where he came from, what interest he might have in lying, and how much he might steal by placing himself between them and the real men. Perhaps he was a schemer, a man who was paid like a worker and who lived so well here!

Etienne dared to restrict himself again. "It is really so, I am sorry, Mr. Director, that we cannot stop our case here. We could explain many things, and we could find reasons that you will inevitably escape. If only we knew where to turn!"

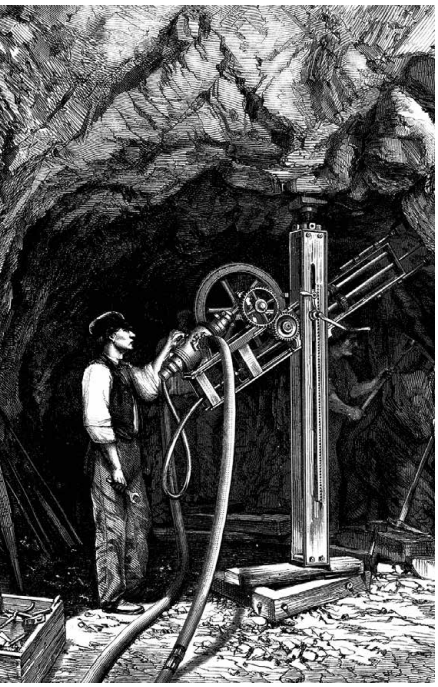
Mr. Hennebeau did not get angry; he even smiled. "If you don't trust me, things get more difficult. You must go there." The emissaries had followed his indistinct gesture, his hand which he stretched out towards one of the windows. Where was that – there? Without a doubt, Paris. But they did not know exactly; it receded into a terrifying distance, into an inaccessible, awe-inspiring region where the unknown god was enthroned, crouching in the depths of his sanctuary. They would never see him; they just felt it as a force that weighed from afar upon the ten thousand coal mines of Montsou. When the Director spoke, it was this hidden, oracle-like power that was behind him. Deep dejection came over them. Etienne shrugged his shoulders to tell them it was best they go their way. "That was a cruel lesson for you, and yet you defend the wicked lignification! Make up your mind, friends; you will see that a strike will be a calamity for everyone. Before the week ends, you will die of hunger; what do you want to do there? By the way, I count on your cleverness and I am convinced that you will return by Monday at the latest."

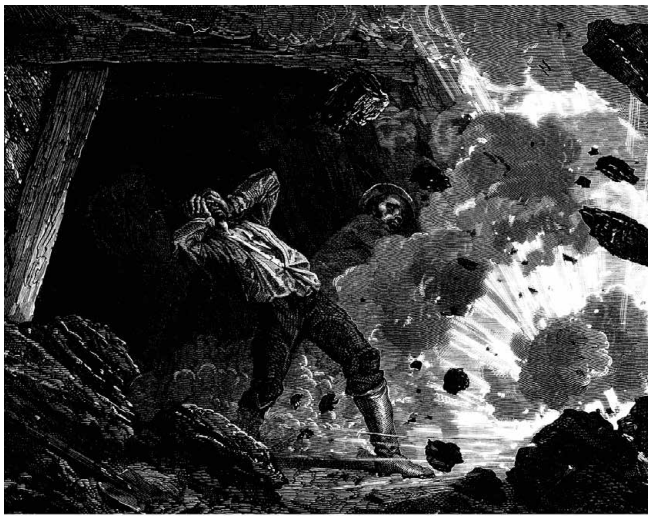
All walked out; they left the parlor with the pounding of a herd, their backs bowed, without saying a word in reply to this expectation of submission. The Director, who escorted them, felt compelled to sum up the conversation: on the one hand, the Society with its new tariff; on the other hand, the workers with their desire for a wage increase of five cents for every cart. To keep them from delusion, he thought he ought to tell them that the administration would certainly reject their conditions. "Think about it before you do anything stupid," he repeated, troubled by their silence. At last, Mrs. Hennebeau called the servant. "Hippolyte," she ordered, "before we go over to the drawing-room, open the windows to let in some fresh air."

Brief analysis

The big differences between the conflicting parties concerning their personal BATNA (best alternative to a negative agreement) are characteristic of Zola's conflict situation. While the workers around Étienne are dependent on a negotiation result, as their immediate personal existence is threatened and they suffer from hunger, the unique position of Mr. Hennebeau as a representative of the mining company is not directly affected by the outcome of the negotiation. To make matters worse, it is an asymmetrical representative negotiation – while the workers negotiate directly for themselves, Mr. Hennebeau only acts as the representative of the mining company. Structurally, it is also noticeable that Mr. Hennebeau only has a weak negotiating mandate and little room for maneuver (see reference to Paris). You can see how counterproductive this case constellation is for negotiations when picturing this situation in a telephone call center. Here, too, it depicts an asymmetrical proxy negotiation. Like the miners, the customer is in a worse negotiating position in two respects: they negotiate for their own interests, in contrast to the call center employee, and the customer's BATNA is also worse since they are left with their problems in the case of an unsuccessful negotiation.

Beyond the structural differences that characterize the negotiation discussion, there are patterns in terms of content observed in many conflicts: one factor is that, essentially only the past is discussed and no options for action are developed. Another feature of an unproductive negotiation, also described here, is the exchange of supposedly valid facts and moral standards that have nothing to do with the actual problem. These placeholder arguments mean that mutual resources cannot be uncovered and functionalised, and the conflict becomes obstructed due to strong emotionality. One consequence of this negative emotionalisation is that the parties achieve a perceived reduction in their room for maneuver. To compensate for this restriction, new demands are made even before a first rapprochement could take place (e. g. the demand of Mr. Hennebeau to gain control of the strike fund). The nail in the coffin that finally makes this exemplary negotiation fail is the self-designation of Mr. Hennebeau as 'just a henchman' and ordinary employee of the company, despite an apparent difference between him and the employees. This ultimately undermines his credibility as a negotiating partner.





Regardless of the chaotic and imbalanced initial situation, there could have been chances for an agreement because both parties have mutual interests and resources that they could have harnessed for resolving the conflict. The most central adjustment screw would have been their mutual interest in bringing the mine back into operation. Beyond this overarching mutual goal, there were also specific shared interests. For example, a better timbering of the tunnels would have been advantageous for both sides – more accidents could have been prevented, and at the same time, the productivity of the mine could have been increased.

In summary, on the one hand, the text excerpt documents a number of prototypical behavioral patterns that occur in asymmetrical, so-called proxy negotiations. On the other hand, it vividly illustrates – through Zola's excellent knowledge of human nature – the personal nuances of a doomed negotiation (e. g. the mixing of personal and factual levels when uncertainty arises). All in all, it is a sham negotiation (similar to the interaction with call centers) that complicates the initial situation, makes a sustainable solution more difficult to achive, and contributes to the escalation of the conflict.

Image Sources: fotolia.com / Erica Guilane-Nachez

Dr. Klaus Harnack

Dr. Klaus Harnack is a cognitive scientist, social psychologist and business mediator and works at the Westphalian University of Münster in the Department of Industrial Psychology. He received his doctorate in the topic area of motivational psychology and his current fields of activity in research and teaching include the areas of collective decision making, cognitive biases, and negotiation theory.

What is mediation?

Over the past few decades – and the trend is increasing – there has been talk of win-win situations. Hereby referred to are solutions to conflict that make all parties to the dispute feel like winners, or to put it a little less euphemistically: feel that they have won something. What are such outcomes of conflicts in which the parties believe they did not lose? First of all, the underlying understanding of conflict present in this scenario ought to be defined.

By Gernot Barth

Experience of incoherence

A conflict is based on an experience of incoherence. Different perceptions of the same state of affairs cannot be integrated into a mutual picture of reality. Expectations and demands of acting, thinking, wanting, or feeling are rejected by another person. Thus, at least one of the involved parties feels restricted in their thoughts, feelings, desires, or actions by the other side. A conflict resolution aims to eliminate this 'feeling under constraint'.

Over the past 30 years, mediation has become an established and recognised procedure in Germany as well as internationally alongside existing court, arbitration, or conciliation procedures. We can speak of an establishment of a mediation procedure even though not every potential economic conflict party is aware of this option yet.

The reason is that a lot has changed in the landscape of disputes: a law to promote mediation has come into force in 2012. It provides a legal framework for mediative conflict resolution and was the first of its kind in Germany, There are already thousands of practicing mediators and judge mediators at courts, a mediation guideline published by the European Union (on cross-border mediation in commercial matters), and many projects – especially those funded by the European Union – to establish out-of-court dispute resolutions.

In my opinion, we are dealing with the establishment of a conflict resolution culture that takes into account the fact that, in modern society, we are increasingly dealing with quasi-autonomous subjects/systems. These can be people, groups, companies, and organisations that have to constantly renegotiate how they deal with each other.

The growing number of negotiation processes hold the potential for an increase in conflicts. These can be resolved – should they escalate – through the decision of others, or they could be incorporated into a process in which the conflicted parties engage actively and responsibly in work towards finding a solution: mediation as conciliation procedure.

Mediation, as we know it today, is based on the one hand on the results of conflict research in current times and, on the other hand, on the negotiation concept as developed at Harvard University in the course of the negotiations between Israel and Egypt during the Sinai conflict. The Harvard concept focuses the conflict parties on their needs and interests, on their concerns in the conflict resolution process. There are four basic principles, which I will also apply here to the process of mediation:

1. Separation of person and matter: the art of leading proceedings lies in not allowing the troubled relationship between the parties in conflict to dominate the content-based dispute. Optionally, in difficult cases, the two areas can be dealt with separately.
2. The focus is not placed on the other side's demands but on working out one's own interests in the discussion.
3. The aim is to develop options for solutions that do justice to one's own concerns and promise mutual benefit or minimise loss.
4. Criteria are developed that enable an evaluation of the negotiation outcome with regards to what extent it meets one's own requirements.

Fields of mediation

As of the late 1980s, mediation practice has developed into various distinctive fields of mediation and has become associated with a particular strength in conflict resolution. It all started with family mediation, which remains the most established mediation practice to date. Compared to other mediation fields, the depth of the conflicts and their emotionality is probably most considerable in family mediation. Included subject matters are: generational disputes, separation and divorce mediation, child contact or adjustment conflicts or disputes between couples. The regulation of disputes in family businesses provides an intersection to business mediation. Regulations of both systems interlink. Business mediation is differentiated in:

1. one the one hand, conflicts within the company or the organisation: between employees, between employees and executives, between executives, on the supervisory board, in teams, between management and work councils;

2. and on the other hand, conflicts between companies or organisations: between suppliers and buyers, between companies and customers (insurance, construction, leases), in the event of company transfers, liability and warranty claims, in the event of customer complaints, or conflicts with subcontractors.

Another field is mediation in the public sector and administration. Examples are night flying restrictions at airports and the construction of bypasses or power lines. This mediation field is characterised by the inclusion of a large number of parties, civic engagement, as well as the particular nature of the administrative procedures that need to be taken into account.

The mediation procedure

It is feasible to initiate mediation proceedings if the parties want to settle their conflict autonomously, legal obstacles do not obstruct the way, and other proceedings do not promise to provide a better solution (by the way: Winning a court case is not always the best solution if there is an interest in securing good business relations in the future. If one side feels that they have the law 'on their side', a court case tends to be the preferred choice.)

"All people are smart – some beforehand, others afterwards."
Voltaire

In the business, public, and administration sector, the mediation process as a tiered-structured procedure usually begins as a multi-party mediation with a 'preliminary phase'. In this phase, preliminary talks with the parties involved follow an informative meeting and clarification of mandate with the client. The process continues with the 'introductory phase', in which the basis for the further procedure is established, including the signing of the mediation contract. At this point, the principles and methods are explained to all parties. Subsequently, the topics to be negotiated are agreed upon and prioritised according to their relevance (agenda). What follows is the 'interest phase' which is about supporting the parties in working out their concerns (self-assertion, identity) and 'preventing them' from escalating the dispute. Furthermore, they are given the opportunity to become aware of the perspective of the other party (they do not have to accept it!). These interests and concerns make up the criteria against which, after a process of collecting options for solutions, the outcome subject to the negotiation is cross-checked for consistency. These processes result in a mediation contract which, if necessary, is enforceable. Should the disputes' subject matter so require, each party is required to have the mediation result checked by their advisory attorney. Generally, an evaluation session ought to take place in order to discuss the implementation of the achieved outcomes. The resolution of a conflict tends to be equally as difficult as the implementation of the agreement reached.

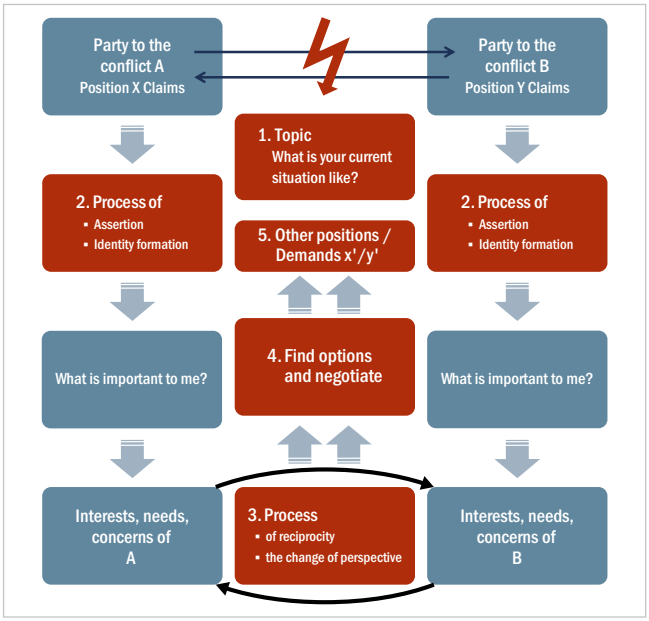


Fig. 1: The mediation process (Source: Prof. Dr. Gernot Barth).

The Mediator

The mediator chosen by the parties is bound to conduct the proceedings with impartiality and neutrality. This means that they have to ensure that all parties can assert their claims, whilst they must maintain neutral to the subject matter (relations must be disclosed).

By contract, the mediator as well as the parties to the dispute are bound to secrecy and confidentiality. This applies to all information on the issue discussed in the proceedings.

Through the mediation law, mediation receives a certain kind of protection. While the term 'mediator' remains unprotected and, in the strict sense, could be used as desired, the term 'certified mediator' introduces a name protected by law in terms of quality. The use of the term is subject to clearly defined training requirements. It is associated with the expectation of warranting quality in mediation. This poses another area of debate. Karl Anton, an Austrian mediator, once called the mediator a 'catalyst': "[A mediator] enables the bringing together of parts that, without their help, not come together."

Prof. Dr. habil. Gernot Barth

Prof. Dr. Gernot Barth, mediator and trainer, has been working in the field of conflict mediation for 10 years. His mediation work focuses on intra- and inter-organisational and inter-company mediation, as well as in planning and participation processes in the public sector. In addition Gernot Barth is also active as a mediator in family conflicts. He is head of Steinbeis Mediation and Director of the Academy for Social Affairs and Law at Steinbeis University Berlin.

Getting to yes – The classic of principled negotiation

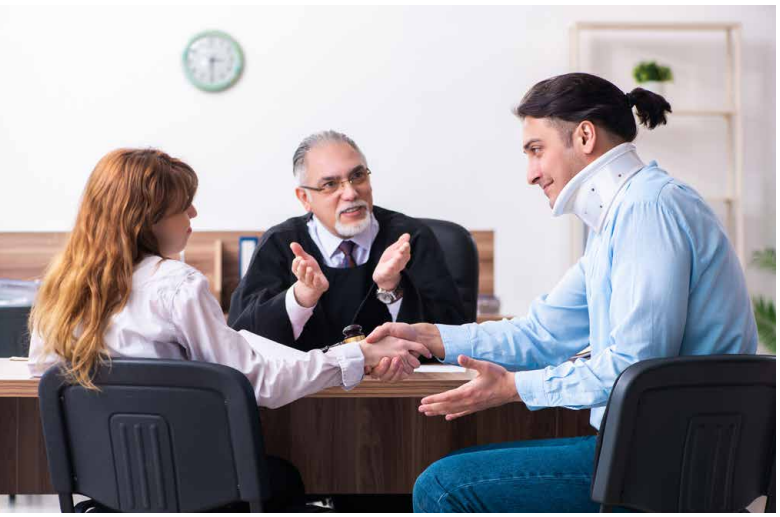
By Reiner Ponschab

Not hard, not soft, but factual and befitting negotiation!

Alisher Faizullaev, Director of the Negotiation Laboratory at the University of World Economy and Diplomacy (UWED), Tashkent, Uzbekistan, regularly sends his students to the bazaar with the assignment of either negotiating extremely competitively or to establishing good relations with the sellers prior to making their purchases. The results are quite surprising.

One group of students responds to an offer from the seller for 1 kilo of apples for about 3,200 som (about 1 Euro) with a counter-offer of 50 som. After some time, they increase their offers to 60, 70, 80 som etc. in order to secure the lowest price possible. Some of the vendors usually get so angry that they shoo the students away from their stall. If they agree to a price, the feeling of the vendors usually ranges from great disapproval to hatred. And yet, after all, this negotiation method brings success for a 'one-shot-deal'.

The other group of students has the task to, first of all, initiate trust-building empathic conversations with the traders. They ought to appear honourable and avoid any kind of manipulation, remain friendly when negotiating prices and not take up extreme positions. It takes the students by surprise that they obtain excellent results from this form of negotiation. Often, the sellers give them part of the goods for free because they empathise with the hard life of the students. Many students even achieve better results negotiating in this way than the 'hard' negotiators.



What can we learn from this example? Two of the most important objectives of people seem to be having good relationships and receiving approval. If the scene is set for both, any negotiator can achieve good results. In the following, we will look at principled negotiation as one of the most important methods of negotiation.

What is the ground for a negotiation?

In order for a negotiation to take place at all, various conditions must be met. The most important ones are:

Balance of power between the parties:

If the balance of power is utterly unequal, the more powerful party will usually come out on top even without a negotiation. If the balance of power is to your disadvantage, you should work to change it before the beginning of a negotiation. You can do this by extending the negotiation to adjacent fields (offering additional services), offering important information to the negotiator, involving other people or strengthening the personal relationship with the other party. Your leverage in a negotiation depends on the alternatives you have available or what happens should you not be successful in the negotiation process. In technical terms we call this BATNA – Best Alternative of Negotiated Agreement.

Agreement as mutual goal:

The aim of a negotiation usually is to come to an agreement of a particular outcome with the opposite party. Whether and how I achieve this goal depends on my method of negotiation.

Willingness to negotiate of all parties involved:

If I want to obtain something that is owned by the other side and if this side is not willing to hand this commodity over to me, meaning that they do not want to trade with me, no negotiation will take place.

Differing interests:

In general, a negotiation serves to reach agreements on the various interests of the involved parties by finding solutions that provide an appropriate option for each individual set of interest.

Principled negotiation

Principled negotiation is a rational form of negotiating, as opposed to the so-called intuitive negotiation, which has been described in detail by Haft (2000). In a sense, intuitive negotiation is innate to us, whilst principled negotiation needs to be trained. A good negotiator is not born but made. In general, the skill of principled negotiation is usually acquired through training, which, however, is taught very inadequately or not at all at German universities. According Haft's research, intuitive negotiating results from being overwhelmed when dealing with a complexity of subject matters. The intuitive negotiator reduces his negotiating to techniques of bargaining. The principled negotiator works on the premises that they do not want to achieve more than the other side but as much as possible. They do not take issue if the other side also receives an appropriate share.

Is the negotiation about the distribution of objects, the fairness of the distribution is paramount. What is key for the principled negotiator is what people truly want. The negotiator accepts the different world views of the negotiating parties. Also, the focus lies not focus on the problems but on the solutions. Their negotiation follows strict structures and principles and is based on evidence-based strategies (not on intuitive ideas). They stop intuitive negotiation practices (especially bartering) by rational argumentation. The principled negotiator places trust in the other side, which is based on their cooperation. If the other side does not cooperate, the principled negotiator ceases their trust.

What follows is a TIT for TAT strategy that Robert Axelrod (2000) compared with various other techniques in the form of game theoretical experiments and found it to be the most successful method. The result of numerous studies is that, at the end of the day, there is no single negotiation style that guarantees success in all cases. If the other side constantly tries to betray or manipulate you, it sometimes requires 'putting the gun on the table' (Ponschab / Schweizer 2010, p. 120).

The Method of Harvard Principled Negotiation

Roger Fisher, who has unfortunately since passed away, is considered the inventor of the method of principled negotiation (Fisher / Ury / Patton 2013). When he was still teaching negotiation classes at Harvard University, the Wednesday afternoons were used for discussions in the fireplace lounge. At this occasion, he answered the question of how he came up with the method in the following way: "Very simply. During World War Two, I was commander of a US Navy weather observation ship and had two frequencies at my disposal. On one frequency, I transmitted my location, on the other the weather report. Each time I transmitted my location, we came under fire by the Japanese. We concluded that the Japanese had had 'cracked' the code for this frequency. So, we came up with something that we thought could prevent the Japanese from continuing the attack on us. We decided to send the weather report on the frequency with which we had previously transmitted our location. Immediately, the fire seized. The reason was that the Japanese were also interested in the weather report of our location and in this way, they saved their own weather observer." In this way, Roger Fisher and his crew discovered the significance of exploring the interests of the opposite side and of finding a solution for them. In a certain way, this was the birth of the Method of Harvard Principled Negotiation. "Si non è vero, è bon trovato", as an Italian saying goes.

The Principles of the Method of Harvard Principled Negotiation

This approach is a rational negotiation based on firm principles and structures. It is neither soft nor hard, but factual, apposite negotiation. In the book 'Getting to Yes: Negotiating Agreement Without Giving In', the three following three options are illustratively contrasted by means of some examples:

Soft	Hard	Principled Negotiation (fact-related)
Making concessions to improve relations.	Demanding concessions as prerequisite to the relations.	Dealing with people and problems separately. No factual concessions for the improvement of the relations.
Putting up with unilateral concessions.	Demanding unilateral gain.	Looking for mutual gain.

Fig. 1: Examples of soft, hard and fact-based negotiating (Source: Fisher / Ury, 2013).

To make it easier to apply, the authors of the book 'Getting to Yes: Negotiating Agreement Without Giving In' have developed concrete instructions for conducting a negotiation:

1. Do not focus on objective facts but on the perception of these facts (as a subjective point of view)!

Each negotiation partner views the objective of the negotiation from their perspective, a perspective that is based on feelings, previous experiences, belief systems, values and their environment. Hence no such thing as the 'correct' view exists. And yet, each negotiating party tends to believe that their own perception is the correct one. Therefore, disqualifying the view of the other party is harmful to the relationship.

A much better approach is to understand the point of view of the other party and to explain one's own. As a conclusion I can give the following recommendations: clarify the points of view of the negotiating partners! Point out matching perceptions! Understand and accept differing perceptions!

2. Differentiate between the object of negotiation and the relationship of the parties to the negotiation

Mixing up factual and relational problems is harmful to a functioning relationship, and a functioning relationship is the foundation for solving factual problems efficiently. Granting non-factual concessions to improve the relationship is a mistake. The heads of government of Great Britain and France, Neville Chamberlain and Édouard Daladier, learnt this lesson after they had given their consent for the incorporation of the Sudenteland to the dictator Adolf Hitler in the Munich Agreement of 1938. They had hoped that their concession would improve relations and Hitler's 'hunger for conquest' would be satiated. However, this non-factual concession did not slow Hitler down. Less than a year later, after the attack on Poland, WW2 began.

3. Do not focus on positions but on interests!

Hiding behind most positions is an interest (motive, reason), the legitimate issue of each individual negotiation partner. Different interests are easier to reconcile than differing positions. This is because interest-based negotiations are open with regard to the outcomes of the negotiation; this creates a multitude of possible solutions.

The classic example of a position is the prayer for relief at court, where one party demands a concrete action or omission on the level of conduct from the other party. The demand for a sum of money can be compensation for pain and suffering, retaliation, need for liquid funds, desire for an apology, instruction from the board of directors etc.

By making their interests transparent, the negotiating partners step up to a higher level and from this higher level, they will develop different options which will satisfy the interests of both sides.

Therefore, the following recommendations conclude:

- Disclose your own interests without taking up position!
- Explore the position of the other side to find out the underlying interests!
- Highlight mutual interests!
- 'Park' conflicts of interest for the time being and look for solutions for these interests in the next step!

Image Source: stock.adobe.com/fizkes

4. Develop as many options as possible whilst assessing and deciding later!

A problem resolution that meets the interests of all parties involved requires the creative development of ideas when working out options for solutions. This creativity is often blocked by passing quick verdicts, by the search for the 'right' solution, by the assumption that the 'cake' is limited, or by the opinion that the others should solve their problems on their own.

This insight leads to the following recommendations:

- Answer the 'creative question': "Which solution exists for my and your interests?"
- Do not go for the first suggestions but look for further options (e. g., in a so-called 'brainstorming')!
- Wait with the evaluation of the options until the creative potential of all parties involved has been exhausted!

5. Solve conflicts of interest by including 'objective criteria' and 'neutral procedures'!

Conflicts in themselves tend to be the result of opposing, contradicting interests. You can arrive at an appropriate decision not only by ruthlessly asserting your own interests but potentially also by searching for generally valid norms, values and legal principles that can be used as objective decision criteria because they are independent of the interests of the negotiating partners and valid for all parties involved. Examples are expert opinions, local customary prices, statistics, industry standards, mean values etc.

If such objective criteria cannot be found in a specific case, the solution can also be developed by mutually agreed neutral procedures. These procedures mostly consist of a third party joining to work out a solution with the parties involved by means of an agreed course of action, for example: lottery, 'divide and choose', having the decision made by a third party, auctions etc.

6. Decide for or against an outcome of the negotiation by comparing it to the best alternative available to you!

A negotiated agreement is a success if it is better than the best alternative you can achieve outside the respective negotiation (Fisher / Ury, 2013). The best alternative constitutes an independent decision criterion for the other side that they resort to decide for or against a negotiated outcome.

The following recommendations derive:

- Develop alternatives to a possible outcome of the negotiation before the negotiation begins!
- Only agree to a negotiated resolution if it is better than your best alternative outside of the negotiation framework!
- Do not threaten the other side with your better alternatives but communicate it as your own problem in your decision-making process!

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Reiner Ponschab

Reiner Ponschab worked as a lawyer for 30 years before concentrating fully on his work as a mediator, business coach and lecturer in negotiation, mediation and communication. In recognition of outstanding achievements in the fields of conflict management and mediation, he was awarded the Socrates Prize in 2005. In 2011, 2012 and 2013 he was awarded 'Best Lawyer' for Germany in the field of mediation and arbitration (Handelsblatt / Best Lawyers International).

Sustainability – How do we decide on a sustainable basis?

By Adrian Schweizer

A few years back, I was travelling with my daughter Sofia in Australia. We went hiking in the Blue Mountains, a world heritage site west of Sydney, and met a Spanish / German couple. He was a forestry engineer and she was an environmental scientist. What were they doing there? Along with a group of international specialists she had been invited by the government to consult in a fairly large-scale project what one could do to prevent the fishing industry from taking extravagant amounts of fish from the seas around Australia. He worked for the woodworking industry and was involved in a similar project.

Sustainable thought and action ap-pear to be rather in demand here in the southern hemisphere! But not only here! Sofia was studying environmental sciences at the ETH in Zurich and, once a week, she received an offer to report to one of the major consulting firms, such as McKinsey, Boston Consulting Group or Roland Berger. The overall drift: "We need consultants who have not only learned to develop effective and efficient strategies, but also to examine their sustainability." Why? Because environmental issues have now become so important that investors are no longer able to ignore them! If a company willfully cares not one jot for the environment and contaminates the air, soil and water at will or – what nowadays almost appears to be even worse – does not care about sustainable products, it loses favour among the general public: its goods are no longer sold, its share price falls and its investors see their dollars disappearing down the Volga. It is not only American automobile manufacturers which can tell you a thing or two about that! But what do we understand by sustainability and, more particularly, how can we check whether or not our daily decisions as managers and leaders are sustainable? But first, whence does the concept of sustainability originate in the first place?

The term sustainability was "invented" at the famous Rio Conference in 1992: The major Swiss industrialist Stephan Schmidheiny had invited the international business leaders to Rio to attend a world economic forum in order to discuss the future of the global economy. The conference was, as is evident today, a huge success. They launched ideas whose implications are only now becoming evident.

What precisely is to be understood by sustainability and particularly how it can be implemented in day-to-day decisions long defied my comprehension. It all seemed too philosophical to me until Ken Wilber's "All Quadrants, All Levels" (AQAL) model came into my possession which, once I had fathomed its complexity, appeared extremely applicable to me, not least for the day-to-day decisions which we need to make. I would therefore like to outline this model here.

But who is Ken Wilber? He is an American philosopher who has been working on a cosmology for years, in other words, on a sort of "universal field theory" for philosophy. His most famous books are "Up from Eden" and "Grace and Grit" and his opus magnum is entitled "Sex, Ecology and Spirituality".

In his most recent work he introduces his "AQAL Model" which is as follows:

	Internal		External	
Individual	Truthfulness		Truth	
	Psychology, spirituality		Natural science	
	Freud, Buddha, Jung		Newton, Einstein, Locke	
	Subjective		Objective	
	Intentional	1st position	3rd position	Behavioural
Collective	Cultural	2nd position	4th position	Social
	Inter-subjective		Inter-objective	
	Weber, Kuhn, Kant		Wiener, Marx, Foucault	
	Philosophy, religion, law		System theory	
	Justice		Functional fit	

Fig. 1: AQAL Model (Source: Author, adpated from Ken Wilber's "All Quadrants, All Levels")

What do the individual quadrants stand for? Vertically, Wilber distinguishes between the individual (individual) and the group (collective); horizontally, he distinguishes between observation from the outside and observation from the inside. The positions mean: 1st position: feeling, 2nd position: sympathizing, 3rd position: thinking, 4th position: reconsidering.

The first quadrant thus depicts the inner life of an individual ("loves his mother!"), whereas the third quadrant depicts the inner life of a group ("everyone raves about Bayern Munich!").

The second quadrant depicts what can be observed from the outside in the case of an individual ("picks his nose!"), while the fourth quadrant shows what can be observed from the outside in the case of a group (everyone goes wild when Frank Ribéry scores a goal!).

A solution which has been found and which wishes to be a sustainable decision must, I think I have now discovered, be in keeping with all four quadrants! First and foremost, such a solution must be recognized by all those affected as truthful, just, true and functionally fitting!

Therefore, when evaluating the solution, prior to making a decision we ask ourselves:

1. Does this solution feel good for us? (truthfulness, 1st position)
2. Do we feel that the other parties will also feel good with this solution? (justice, 2nd position)
3. How will one be able to tell that this solution will have solved the problem? (truth, 3rd position)
4. Will the system continue to fulfil its allotted function in conjunction with this solution? (functional fit, 4th position)

Let me demonstrate this using an example: Let us assume it is the 1950s and you are faced with the question of how you could produce electricity in Egypt in order to meet the needs of the up-and-coming industrial sector. One idea is to dam the Nile at Assuan. Let us now examine this solution using the above schema:

1. **Does this solution feel good for us? (truthfulness, 1st position):** If we imagine that we will now have electricity in Alexandria or Cairo and be able to watch television, this gives us a good feeling!
2. **Do we feel that the other parties will also feel good with this solution? (justice, 2nd position):** If we imagine that we are farmers, factory workers or government officials who can now also use mixers and radios or electric heating in winter, then that also feels good for us. In addition, there does not appear to be any Spirit of Light which would be spooked by the electricity.
3. **How will one be able to tell that this solution will have solved the problem?** (truth, 3rd position) One can tell by virtue of the fact that, for example, the fire risk has been averted in Cairo because the streets no longer need to be illuminated with torches.
4. **Will the system continue to fulfil its allotted function in conjunction with this solution? (functional fit, 4th position):** Inter alia, it is the function of the Nile to fertilize the fields in the delta by means of its floods. If this function can be replaced then the dam is sustainable, if not, then it isn't.

In exactly the same way it is also possible to examine minor decisions, such as:

1. Is it sustainable to replace the associate Lakeburger with the associate Miller?
2. Is it sustainable to resign from one's government job and move into the private sector?
3. Is it sustainable to remove one's daughter from her state school and send her to the Waldorf School?

The solutions lie in the quadrants!

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InMEDIATE – International mediators trained in Europe

A new EU Erasmus+ programme envisioning a Pan-European vocational profile in mediation offers new opportunities to international mediators. During the 30-month InMEDIATE project, seven organisations from Germany, Italy and Poland are coming together to develop to establish EU-wide standards for mediation expertise. Complementary trainings, open-source information and free of charge accessible learning content will be published online to improve local, regional, national and cross-border mediation services.

By Jonathan Barth & Juhi Priya Yati

Civil mediation in international disputes is yet to see the kind of upswing it deserves, despite a number of previous EU initiatives. One of the main challenges is the lack of uniformity in mediation training standards and selection procedures. Various studies conducted in the field highlight that even expert mediators need specialised training to face the challenge of mediating international civil disputes, where conflict dynamics and intercultural issues are at stake. The heterogeneous national regulatory frameworks across the EU pose significant hurdles for mediators to conduct cross-border mediation.

The development of EU standards for mediation skills and training would contribute to improve the quality and foster the uptake of regional, national and cross-border mediation services.

Developing EU standards for mediation training

Based on the key aspects mentioned above, InMEDIATE intends to create a European vocational profile of the International Mediator by establishing EU-wide standards for mediation expertise.

Led by Steinbeis Consulting Centre Business Mediation, the 30-month-project has been developed by a consortium of multinational organisations and is fully funded by the Erasmus+ programme of the European Commission.

The project partners aim to achieve their goal by designing, implementing and delivering an outcomes-oriented training curriculum for mediation practitioners.

The kick-off meetings of the project were held online, in compliance with the current Covid-19 measures. Representatives of the project consortium partners mapped out the subsequent stages of the task. Having already finished the benchmarking of mediation standards in different European countries, the InMEDIATE research findings will help to draw comparisons across the continent, filtering out the best practices and most practicable specifications that could be applied in all EU countries to promote cross-border mediation practice and more comprehensive mediation standards.

The trainings will be provided free of charge to 36 mediation practitioners in several cohorts. The participation of interested mediators is petitioned through a variety of media.

The assessment and validation of the learning outcomes gained by the trainees on completion of the course will jointly be developed by all three universities cooperating in the project. Quality control management processes will be carried out to ensure and guarantee quality standards of the validation process.

The Steinbeis Consulting Centre Business Mediation and project partners intend to establish a comprehensive set of certified qualifications that will enable trainees to act as international mediators in cross-border civil disputes.

Image Source: stock.adobe.com/Rawpixel.com

Free of charge and publicly available complementary trainings, open-source information and educational resources – the InMEDIATE E-Platform.

Additionally, InMEDIATE is setting up an online platform with learning resources accessible publicly and free of charge. This will not only generate unprecedented interest in this field, but also provide a much-appreciated resource for all.

Lastly, the experiences and learnings of this project will be turned into a toolkit for future reproducibility for other mediation training centres.

At a glance: InMEDIATE Mission, Goals, Target Groups and Project Partners

Project Objectives

- Promoting cross-border mediation, improving cooperation and networking in the field, fostering high quality standards in the mediation training system
- Designing, implementing, delivering and validating a outcomes-oriented training curriculum
- Consolidating online education resources in a single platform and making them available free of charge publicly
- Disseminating knowledge and educational materials
- Creating tools to replicate the InMEDIATE certification system

Project Outcomes

- InMEDIATE Training Curriculum for International Civil Mediators
- InMEDIATE e-Platform
- Toolkit for the reproducibility of the InMEDIATE certification system

Target Groups

With the main focus cohort being mediation practitioners, other groups of will also benefit from the project, including but not limited to:

- Legal professionals, including lawyers, notaries and other
- Academics and research scientists who might be interested in the topic of mediation
- Decision makers at local, regional, national and European level
- EU citizens requiring mediation services or wishing to learn about the domain
- Other relevant stakeholders who may potentially be interested in adopting and replicate the InMEDIATE training model

Various forms of media are also envisaged as effective tools for promoting mediation and cross-border conflict resolution.

Making it happen – the InMEDIATE consortium

Having started in September 2020, seven multinational partners have come together to carry out the project. The project partners bring extensive experience in the fields of education, mediation, training and certification to the table. They have individually and jointly to delivered international projects in the past. They are:

Steinbeis-Beratungszentrum Wirtschaftsmediation Leipzig – Stuttgart – Wien – Budapest	Steinbeis Consulting Centre Business Mediation (Germany)
RESOLUTIA Gestione delle controversie	Resolutia Gestione Delle Controversie (Italy)
mediatorzy.pl	Mediatorzy.Pl Spolka Z Ograniczona Odpowiedzialnoscia (Poland)
Prodos European funds & projects	Prodos Consulting srl (Italy)
Università degli Studi Firenze	Universita Degli Studi Di Firenze (Italy)
Uniwersytet SWPS	SWPS Uniwersytet Humanistycznospoleczny (Poland)
Steinbeis Hochschule	Steinbeis-Hochschule Träger GmbH (Germany)

Make the most of InMEDIATE-Resources:

www.inmediateproject.eu
Check for updates regularly.

Disclaimer: The views expressed herein are of the involved organisations, and do not necessarily reflect those of the European Union Commission or the ERASMUS+ programme.

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Project Management for InMEDIATE. She received her Master in Business Administration degree from Leipzig University. She has worked in design technology and product lifecycle management for Dassault Systèmes and Jaguar Land Rover.

Singapore convention on mediation

A fresh breeze on the international mediation stage

On 7 August 2019, 46 countries signed the Singapore Convention on Mediation. Since then, more states have joined the Convention, bringing the total number of signatories to over 50. Although Germany is not yet one of them, the development is also very noteworthy from a German perspective.

By Christian von Baumbach Christoph C. Paul

Mediation as a professional dispute resolution process has developed at an astounding rate over the past few decades. It has become more and more popular in many countries and is also increasingly employed in cross-border disputes. Despite its undeniable success, however, mediation still has much more potential as many mediators and other professionals hope for an increase in cases.

A major argument against mediation is that many agreements reached during mediation are not legally binding, which distinguishes it from arbitration or court proceedings. If you invest time, money, and energy to come to an agreement, it should be recognized by all pertinent bodies – not only by the parties themselves but also by courts and third parties. The recognition and enforceability are of utmost importance to the further development of mediation, both nationally and internationally.

The Singapore Convention on Mediation

This is where the Singapore Convention on Mediation (hereinafter referred to as the Singapore Convention or the Convention) enters the mediation stage. This convention was signed by 46 states on August 7, 2019. Since then, the number of signatory states has grown to 53. Though Germany is not yet one of them, the development is also quite remarkable from a German perspective.

On September 12, 2020, the Convention came into force and was duly celebrated in a virtual event. The Singapore Convention is a significant milestone for the establishment of mediation in international commercial disputes. It regulates the mutual recognition of mediation agreements in cross-border commercial disputes, as well as the enforceability of agreements in all contracting states, without the need for further court proceedings.

The large number of signatories to the Convention clearly shows that mediation plays an increasingly important role in international trade relations. The Singapore Minister for Justice made this clear in his keynote address at the Entry into Force Celebration (*https://www.singaporeconvention.org/events/scm2020*): "Mediation is effective, efficient, and affordable. It allows parties to retain control, provides opportunities for innovative solutions, offers confidential non-adversarial ways for parties to settle disputes amicably."

Mediation is particularly relevant and meaningful because of the Coronavirus disease. Businesses are facing an increasing level of instability and uncertainty. The expected increase in the number of parties who have difficulties complying with existing contractual obligations in the short term will result in a higher number of commercial disputes. Companies not wanting to face expensive and time-consuming litigation and legal proceedings increasingly turn to mediation, which provides a cost- and time-effective alternative in a confidential setting.

In the past, the potential of mediation was limited because most agreements were not enforceable. However, with the Sin-

Image Source: stock.adobe.com/Akhilesh Sharma

gapore Convention entering into force, companies now have a greater certainty that they can rely on mediation to resolve cross-border commercial disputes. This will potentially stimulate the growth of international trade and foster the use of mediation worldwide.

The key aspects of the Singapore Convention are:

- It provides a universal, efficient and harmonised legal framework for the enforcement of international agreements resulting from mediation in cross-border commercial disputes.
- Mediation agreements serve as evidence that a dispute has been resolved.
- The Singapore Convention is the missing third piece in the international dispute resolution and enforcement framework, which includes the 'Convention on Choice of Court Agreements' for litigation and the 'New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards' for arbitration.
- Disputes in the field of family, inheritance and employment law are expressly excluded from the Convention.

The Singapore Convention gives all kinds of companies the option of relying on mediation to settle cross-border commercial disputes. They will benefit from greater flexibility and control over the outcome. Good will and long-term business relationships can be preserved. Another important merit is the lower cost of mediation in comparison to litigation.

The broad definition of mediation agreements is noteworthy. The Convention is valid for any agreement reached with the assistance of an impartial third party. The mediators do not have to be lawyers. And: there is no obligation for a court to review the agreement.

From our German perspective, we observe this development with amazement and enthusiasm. It clearly shows that mediation is becoming increasingly popular and significant. In Germany, the mediation process has not yet gained the importance that many had hoped for and predicted. Perhaps the Singapore Convention will inspire and encourage us to think big when it comes to mediation.

Besides the positive influence this Convention has on the implementation of mediation, it also shows that the international stage can be an interesting field of action for mediators.

It is not surprising that this convention was signed in Singapore. Quite similar to our situation in Europe, there are many countries in the ASEAN region with differing legal systems. The convention with a uniform set of rules for the recognition and enforceability of agreements resulting from mediation provides a reliable framework for an increasing use of mediation. Indeed, the popularity of the mediation process depends to a large extent on the fact that any settlement which has been worked out by the parties in mediation is enforceable in all countries involved.

The reason that Germany has not yet entered the Singapore Convention is quite simple: it follows the tradition within the European Union that all member states sign international conventions uniformly so they may come into power within the entire EU (and not only in one of the European states) simultaneously. Such procedures take time.

The EU-project AMICABLE

Family disputes are expressly excluded from the Singapore Convention. This opens the field for an EU project filling this gap: the so-called AMICABLE project is an EC co-financed project conceived of by the German NGO MiKK as project coordinator, which aims to provide assistance for recognition and enforceability of mediated cross-border family agreements in the EU. It also seeks to promote a tried-and-tested

Fig. 1: Signing ceremony and conference of the Singapore Mediation Convention on 7 August 2019 (Source: Ministry of Law, Singapore).

model for incorporating mediation into international child abduction proceedings in the EU. It is hoped that the results of the AMICABLE project will thus help to promote mediation in cross-border family disputes. The Project Consortium involves partners from three other EU Member States: the University of Wroclaw (Poland), the University of Milano-Bicocca (Italy) and the University of Alicante (Spain). The AMICABLE project is supported by a Steering Committee consisting of the Central Authorities and Hague Liaison Judges from the EU Member States involved, the Hague Conference of Private International Law (HCCH), Prof Paul Beaumont and the EU Parliaments Office of Children's Rights. For details on the Consortium and Steering Committee and the project Conferences please refer to the AMICABLE website *www.amicable-eu.org*.

The AMICABLE project's specific two objectives are:

- The creation of a legal 'roadmap' in the form of a Best Practice Tool for judges, legal practitioners and mediators which will assist parents with the cross-border enforceability and recognition of mediated family agreements. An EU general Best Practice Tool as well as four country-specific tools for Spain, Poland, Italy and Germany have been developed in the course of this project (in English and the relevant national language).
- The introduction of a Best Practice Model for incorporating mediation into the tight six-week timeframe of child abduction proceedings under the 1980 Hague Child Abduction Convention with the support of the presiding judges in the Hague proceedings.

The results of this European project could be a blueprint for other international projects focusing on the recognition and enforceability of mediated agreements. Where the Singapore Convention will promote mediation in cross-border commercial disputes, the AMICABLE project will promote mediation in cross-border family mediation.

Interview with Professor Nadja Alexander, Singapore

Profile: Nadja Alexander is recognized as an international thought leader in the field of mediation. She is currently Director and Professor of Law at the Singapore International Dispute Resolution Academy at the Singapore Management University (SMU). Nadja's books include 'The Singapore Convention on Mediation: A Commentary.' For more information see *www.nadjaalexander.com*.

1. What has been the impact of the Singapore Convention on Mediation so far?

Nadja Alexander: "The Singapore Convention has raised the credibility, legitimacy and visibility of international commercial mediation to a new level. The more than 50 countries that have signed on to the Convention include big economies such as the USA, China and India as well as many developing countries with small and transitional economies for whom mediation offers an accessible and affordable dispute management path."

2. What are the main difficulties in implementing the Convention?

Nadja Alexander: "One of the biggest challenges is misinformation about mediation and over-identifying mediation with arbitration. While the Singapore Convention on Mediation has parallels to the New York Convention on Arbitration, mediation and arbitration are fundamentally different processes and therefore need to be regulated differently. It is essential NOT to view mediation through an arbitration lens. Another challenge will be getting the EU on board – it is possible that the EU is distracted by other matters at the moment. But it is important to have this major trading bloc onboard."

3. What do you expect from the Convention in the next 1–2 years?

Nadja Alexander: "The Convention will influence international dispute resolution practice in direct ways, just by its presence. For example, in the context of investor-state dispute settlement reform, the Singapore Convention has put mediation on the table as key option for the reform of ISDS practice and investment treaty terms. Third party funders are getting more involved in funding international mediations than before, and this is due in large part to the impact of the Singapore Convention. I also expect to see more ratifications in the next 2 years and the rolling out of a broader enabling framework for mediation in more and more jurisdictions."

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