

Mediation of Conflicts – a Viable Solution for Surpassing Communication Barriers. President-Mediator in the Conflict between the Government and the Syndicate’s Organizations from the Education Field

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Abstract

The premises of this project are that approximately 90% of the conflicts in the modern society and not only, are based on poor communication.

Any type of miscommunication (due to cultural, linguistic, politic or religious differences) can and will generate conflicts of various intensities going from simple quarrels to diplomatic incidents and all the way to wars.

The mediator has the role to solve any existing conflict and to help repair the breaches from the communicational system between parts, in order to preserve the relationship.

The article presents a case study on the involvement of the President of Romania, proclaimed to be a mediator by the Constitution, to settle amicably conflicts triggered during October-November 2005, between the Education Unions and the Government of Romania.

The involvement of the President as a mediator in the conflict triggered by the wage claims of teachers and students while our budget was not able to support those claims followed almost all the theoretical recommendations regarding the amicable settlement of conflicts through the intervention of a third part.

Keywords: *communication, conflict, mediator, dispute resolution, education*

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1. Introduction

According to the most common definition, mediation is the art used by an individual specialized in the procedure of alternative solving of conflicts and called mediator- helping the parties involved in a divergence to turn the disagreement in an agreement. From this perspective and having this objective, the mediator is the one that helps the parties involved in a conflict to consider their position in regard to the disagreement, to generate options, to identify potential ways to remedy the friction context, choosing from the generated options formulated starting considering that everyone has a different point of view. The following, in a context

when in the majority of cases, the main cause for provoking a conflict, juridical or not, is the absence of coherent communication, which should attenuate the conflict situation and to re-establish the collaborating one, the enormous number of law suits being caused, generally by vanity, but also by the idea of victimization. Each part involved in a law suit considers itself to be a victim of the other part, the previous being seen as the source of all possible negative actions; the dreadful fight for obtaining a favourable final judicial decision is primarily determined by the image one has about the adversary, a fact that represents a continuous and permanent source of stress, disappointment and fights with a rather fictive enemy. All this cases show that the duty of the mediator is to determine the parties to get to an agreement and to a decision that is favourable for the both, using not only the vocational training and professional experience, but also exploiting the communicational skills, adapting them to the interlocutor and his personality. The first core task of the mediator is identifying each parties expectations and bringing them to a convergent point, also means discovering each parties fears in order to avert the groundless and false ones by dialoguing.

Sometimes, the inefficient dialogue between the parties involved in a conflict determines a tenser dealing; meanwhile, an efficient communication may generate the most unexpected solutions. For example, there can be cases when individuals being in a long and high estate of tenseness get to extinguish a conflict after a more or less spontaneous dialogue, but being supervised, coordinated and guided by a professional mediator. This happens when every mediation process has a key-moment, in which the parties are in the closest point to getting to an agreement and it's the duty of the mediator to infer and to correctly speculate that moment in order to arrive at an agreement between the parties. Apparently, all conflicts are unsolvable, but all depends in fructifying the key-moment of the specific mediation.

In these circumstances, it is obvious that the mediator can contribute to solving a conflict only if he understood the real and objective causes of that particular conflict. The conflict source must be established after collecting as complete as possible information about the parties, thing which is possible only when the mediator succeeds to gain each partie's total trust.

Historically speaking¹, the mediation process appears from early times, being mentioned even in the Bible, where Jesus Christ seems to be a mediator between God and the people.

The mediation is presented as a process which transcends the cultural differences and geographical frontiers; some of the most interesting examples can be brought as arguments:

- Long time ago, religious leaders took into account the principles of mediation as a method to manage conflicts. Starting with the Renaissance period, Romano-Catholic Church played a major role in the mediation of conflicts. The clergy mediated family disputes, trials and diplomatic conflicts between nobles. Jew rabbis have a related

¹ Petelean, Adrian - *Mediation - a method of solving conflicts*, Polirom, Bucharest, 2004

tradition too, as well as multiple oriental religions which are based on social consensus, moral conviction and harmony.

- Even during Middle Ages and after the creation of national states, the diplomats used mediators as third part
- Mediation is practiced at large in China, during Popular Committee of Conciliation, it is used in many other countries in Africa for solving neighbour conflicts, and in the South Pacific area, there are counsellors and comities which gather regularly “for maintaining disciplined debate conditions” among those who have something to discuss.
- Some religious sects, who helped the colonization of North America, were involved actively in solving the disputes among their members. One of them in particular, the *Quakers*, or Friends as they are also called, have a tradition related to pacifism and involvement of the community in conflict management. *Quaker's Program for conflict handling* is one of the largest programs of mediation from the United States, and their mediation manual, issued 1982, was used for the instruction of mediators from over six continents
- Mediation is more and more used in Western countries for solving civil and community disputes. Hereby, there were created numerous mediating centres for community conflicts, where mediation is applied to a large range of problems, from family conflicts, to the attempt of solving commercial disputes etc. Some states even introduced mediation courses within elementary school, starting with 7 years old pupils.”²

Even though it has no impressive tradition or a cultural basis to brag with, in the field of amicably solving conflicts, and especially in mediation, we might say Romania made a first remarkable step in this regard. This does not refer to legislation concerning mediation, but to the fundamental law of the country: the Romanian Constitution that dictates the Institution of Presidency as being a mediator among state's authorities. So, according to the 80th article, 2nd line from Romanian Constitution: “The President of Romania watches over the abidance of the Constitution and the well functioning of public authorities. In this purpose, the President exercises the function of mediation among state authorities and also between state and society.”³

When talking about the essential and basic ethic conditions of the mediator profession - impartiality (towards the two parties involved in the conflict), independence and neutrality (towards the case they are handling) – we can say that, in the case of the Institution of Presidency, we are dealing with quasi-mediation. This affirmation is based on a series of characteristics gathered by the President of Romania that could make him renounce, in a certain way, at being impartial and neutral. For sustaining this statement it could be mentioned, on one hand, the political provenance of the President of Romania, thing that could determine him to

² Petelean, Adrian - *Mediation - a method of solving conflicts*, Polirom, Bucharest, 2004

³ The Romanian Constitution 1991, modified in 2003, Art. 80, alin 2

favour one certain side in the process of mediation between two institutions or state authorities, each one having a particular orientation given by their leaders. On the other hand, when being the third part in a case of solving conflicts involving the executive authority and civil society, the president confronts himself, at least from the point of view of the other prerogatives established by the Constitution, with at least one deontological dilemma related to impartiality and neutrality: leading, according to the Constitution, the sitting where he takes part, the president identifies himself in a certain way with its beliefs and politics.

Ideally speaking, it is clear that the mediator-president should make any effort to get closer to the ideals of neutrality, impartiality and independence. One first step has already been made by the constitutional obligation of resigning and taking distance from any political structure, when elected president. On the other hand, this objective of neutrality, impartiality and independence can be reached by being aware of the major role played by the mediator in the amiable solving of conflicts, and also by reaching a high level of commanding and controlling the negotiating and mediation techniques, and, of course, the efficient communication techniques.

In this case, generally, any communicational barriers (cultural, linguistic, political or religious), are the source of some conflicts whose intensity can fluctuate from simple inter-human relation tensions, to complex diplomatic tensions and military conflicts.

The role of mediation is precisely surpassing communicational barriers pursuing to solve the potential or existent conflict with saving/keeping the relationship, not destroying it.

One of the most relevant contexts when the President of Romania acted according to the articles of the Constitution that confirm his mediator position among state authorities, is the presidency institution involvement in the amiable solving of the conflicts initiated by the syndicates from the education field and the Romanian Government, between October – November 2005.

The president's involvement as a mediator of the conflict started by teachers and students because of salary vindications, in the context of budgetary incapacity, at least at a declaration level, followed almost entirely the theoretical recommendations concerning the amiable solving of conflicts through the interference of a third party.

2. General context

The tensions which involved the executive and the unionist authority started because of a level of budgetary allocation below the pretensions claimed by the unionist side. In this context, the Education syndicates went for radical forms of protest, launching an official strike for about four weeks long, asking for the appliance of various budgetary allocations increasing formulas, especially for the salary ones.

Involving the state budget for 2006, the protests started because of the allocation of 3,6% from GDP to Education, in the context of an existent stipulation from the Government program, which stipulated a 6% allocation (from the GDP) for Education until the year of 2009⁴ and some previous negotiations made before the budget finalization, which stipulated for 2006, the allocation of 5% of GDP for Education.

“An unprecedented lasting protest and with dramatically accents, after one of the protestant teachers chose an extreme way to put forth his discontent – hunger strike. Reasons of concern for the Government, who doesn’t seem to accept a more consistent raise of salaries, bringing as argument the fact that such claiming would bring a general standard of living decrease. Over 80% of the unionists affiliated at the four education federations – National Education Federation, Educational Syndicate Federation "Spiru Haret", Free Syndicates of Education Federation, University Syndicates "Alma Mater" Federation – pleaded for continuing the unlimited term protest, until the solving of their matter. Mainly, the unionists ask for a real 5% from GDP for Education and for a doubled salary till January 1st 2007. The four unionist leaders stated that they are opened for dialogue and that they are waiting for an offer from the Government, which shall offer them a decent living.”⁵

3. Specific context

The intervention of the mediator-president took place from 26 to 28th of November 2005, after almost three weeks of general strike in the pre-university and university educational system, in the context of a surmounting conflict determined by the apparition of new pressure and impossible to handle governmentally elements, caused by severe budgetary incapacity.

“Government’s new proposal from yesterday (November 24th 2005 – n.r.) stipulates a medium increase of salaries with 11,83% - comparing to the 8% offer made until Saturday (November 19th 2005), and to the 11,5% offered Saturday, the 3,8 percents addition represent supplementary budgetary funds valuing one thousand millions LEI (previous currency). Teacher’s salaries are supposed to grow in two steps: 5,5% addition until 1st of January 2006 (not December 2005 as initially) and 6% more from September 1st 2006 (not August 2006). The real increase is by 4,5% because the rest is represented by the inflation value. Of this rise will benefit not only the teachers, but also the auxiliary didactic personnel. Also, the stipulations from the previous concluded agreement, stipulations which refer to infrastructure investments in Education, are still available, so the grant of some back pay.” said the vice- prime minister Gheorghe Pogea, at the end of the debate.

After these increases, the medium gross wages of 10.600.000 LEI (previous currency) is supposed to grow, first with 530.000 LEI, from January 1st, and after, with 723.450 LEI, from September 1st. The average gross pay rise will

⁴ *Government Program for 2004-2008*

⁵ Jitea, Mihaela, *Teachers don't give up*, Ziua, November 24, 2005

reach 1.253.450 LEI, up against 860.000 lei increase proposed initially. The Government proposes also, that these additional sums to be given according to a differentiating system, which should permit the rise of the small salaries, in particular those of the debutants and reduced professional experience ones. If the Government's proposal will be approved by the syndicates, an education debutant who has no more than two years experience in teaching, could receive an extra amount of about 1.075.000 LEI, meanwhile a 1st degree teacher, with a six to ten years experience, would benefit of an extra gain of almost 1.700.000 LEI. ⁶

4. The process of mediation. The involvement of the mediator-president in the reestablishment of the communication channel between the parties and in the relationship tension release

Starting from the classic stages and the consecrated characteristics of a mediation process, we can firmly state that the involvement of the president in the conflict which evolved from October to November 2005 between the executive authority and the syndicates from the Education field, complied with the demands of a mediation process.

Most certainly, the conflict between the Executive authority and the Education syndicates was based on the impression of a lack of want, first, from the part of the Executive by not wanting to satisfy the exact demands of the teachers, and second, from the syndicates part who refused to understand the budgetary difficulties involved by their specific demands and not wanting to appreciate the governmental efforts which meant negotiating according to the budgetary forecast.

This perception of incapacity or more, the impression of lack of strong will from the other partie to get to an acceptable, reasonable, sustainable and satisfying solution financially speaking, determined, in a first phase, the apparition of a tense estate between the two parties, tension which evolved into a conflict that reached several stages, from the written one (presentation of the demands, formulating the union's and governmental claims), to the threat with starting the labour conflict, till the actual start of the conflict with all its stages (Japanese strike, the warning strike, general strike), and also reaching the extreme form of street protests from the unionists and formulating the legal action by the governmental partie directly involved, namely the Ministry of Education and Research.

At this point, it is clear that the conflict meets all the traits and necessary conditions of mediation:

1. The dispute is displayed (the parties are over the correspondence stage and they are in the radical protests one, like street protests and the threat of blocking the school year) and the contradictory element concerning the objectives of both sides is obvious (whilst the protests aim the allocation of supplementary funds from the state budget for the Education, the intentions shown by the Government evoke a concern

⁶ Scarlat, Corina, Jitea, Mihaela, *Marathon negotiations*, Ziuva, November 25, 2005

for their complaints but according to the general resources and forecasts).

2. The parties stopped communicating because of the hard feelings and the emotional dispute, thing which makes impossible any direct contact or solving by negotiation – in a certain measure, we are dealing here with a direct communication, but it's a tense one, insufficiently constructive, when the dispute and pride level is so high that the existence of an efficient communication becomes almost impossible.
3. The parties are interested in keeping the relationship together or stopping its worsening – this because the constant and efficient communication between the Government and unionists is essential for solving the social issues. Also, appealing at mediation, both parties try to avoid a deeper emotional dispute and a subsequent degradation of their relationship, pursuing the constant communication in order to maintain the social dialogue.
4. The parties consider necessary the presence of a neutral part, not implied in the conflict, not having any interests in their difference, but having a strong knowledge of the domain here and a significant experience in this kind of disputes, reason why they have required this intervention, the person who plays the mediator role necessarily being an at least moral authority over the parties. Besides, the conscious, asked for and approved involvement of a third partie in solving the conflict, has to facilitate the identification of an acceptable average bond for the both disputants.
5. The two actors involved in the conflict wish to identify an exit from the tensioned estate and, none the less, to be parts in the outlining of an acceptable solution and to actively participate at the conflict solving process.
6. Not last, the parties wish to avoid the dispute prolongation and the increase of its costs, by rapidly finding a mutual satisfying and approved compromise, which is meant to preserve their relationship for further collaborations.

As the conflict reached every possible stage, the involving of a third partie, here – the mediator-president, started from 25-26 November 2005, when all the parties involved in the conflict were firmly prepared for this intervention, they realised the need for an alternative method in order to solve the dispute, and not least, they unanimous accepted the presence and person of the mediator.

In this case, the intervention of the mediator-president takes place after and follows all the rules of a typical process of mediation, reaching all its **stages**, complying with all accepted and known **deontological** guidelines.

The preparation step of the mediation process was strongly covered by a profound conflict and background of the parties analysis. After more than 30 days since the first conflict stages advanced, the president of the country had multiple interventions concerning this situation, all this state interference showing the

constant surveillance over the conflict evolution and debates on this matter, and also the analysis of any existent solutions for unblocking the situation and re-establishing the collaboration.

Also in this stage, was identified each partie's position in the conflict, the analysis of the causes that determined the dispute, this analysis comprising not only the motivation of the conflict, but also the points of view and objectives from both sides involved in this case.

So, concerning the Presidency institution as a mediation factor, there were analysed the starting points of the conflict, more exactly the budget proposal for 2006 sent by the Government to the Parliament in October 2005, which specified that total allocations directed to Education raised to 3,79% from GDP, while unionist demands aimed at least 5% from GDP, level which have permitted a minimum 11% salary raise in comparison with September 2005, as well as some investment considered necessary for the quality increase in Education, from the curricula point of view, and as well from the educational infrastructure perspective.

The second step in the mediation process, the **introduction or the first meeting between the mediator and the parties**, primarily comprised the president's presentation of conflict mediation intention.

The introduction of a new element among the tense negotiations between the Executive and the syndicates took place during one of the meetings whose purpose was to lead to a compromise, more precisely in a moment of extreme tension, when presenting the advantages of dispute mediation by a state authority, which is being neutral from the stake conflict point of view, is at least morally impartial towards the organizational members in the conflict, and independent towards any conflict and solving aspect.

The first „mediation meeting” between the mediator-president and the parties involved in the dispute, was a meeting meant to create a favourable mediation atmosphere, especially for re-establishing the dialogue, by explaining the process, and more precisely, the role played by the mediator-president and the other parties and their responsibilities, explaining the rules of communication and the mediation process objectives: reaching an agreement whose final result should be the ending of the conflict and restarting the educational process.

In this context, each partie – syndicates and the Executive – presented the financial/salary demands, on one hand, and the possibilities offered by the 2006 budget, on the other hand. The first clearest conclusion is that the friction and the reactions of the parties to one another's opinions are able to block any organised communication system and to permanently deteriorate a collaboration relationship, one of the unionist demands being, at a particular moment, en bloc resigning of the Executive as a key to conflict ending. The solution identified in a critical moment by the governmental part was sanctioning, through Court, the members of the syndicates organisation which participated to the general strike, stopping the didactic activity and affecting the education process.⁷

⁷ Gâtej, [Iuliana](#) - *Paloma blows the peace obtained by the Govern*, Cotidianul, November 14, 2005

The mediator-president's decision was in this case to build his credibility by outlining the neutral and impartial character concerning the involvement in this conflict, choosing to resume briefly, prioritized and objectively the opinions expressed before, so that these could be perceived objectively by the parties involved in the dispute.

Taking benefit from the state authority he is representing, the mediator-president tried opening the communication channels by establishing clear rules for debating the problems which caused conflicts between the two parties.

Surpassing the typical role of a neutral third party, the mediator-president, having the same authority, presented the negative consequences of a potential conflict extension, trying to accelerate the discussion rhythm which meant to get to an agreement: if maintaining a hardliner position from the Government part – the school year shall be blocked and massive protests from the affected groups (parents, students) could take place; if making a concession from the Government part could lead to depleting, in short term, the budgetary resources, to payment incapacity of the educational system and profound system crisis.

After **exploring attentively the differences** (increase allocations vs. budgetary economies), there has been tried to **identify the common points** of the two parties, this being the will to unstop the collaboration relation, to increase the educational quality system from the infrastructure, curricula and human resources point of view.

Prioritising of problems was absolutely necessary, so that, by the mediator-president guidance and presence, it was built a proposal of phased program for salary increase dedicated to didactic representatives. At the same time, the same conditions were applied for a differentiated system depending on the age, experience, degree, actual income, activity field, and performance. Secondly, there were identified the necessary priorities concerning reorganising and rethinking the educational curricula, no matter the study level; as well the prioritization regarding the educational infrastructure.

Also, there were identified the immediate **blocking** aspects concerning the relationship tension release process between the Executiv and the syndical organizations, their elimination proposal being formulated. The first and most obvious blocking situation for obtaining the syndicates approval in the conflict conclusion was the law suit initiated by the Education and Research Ministry against the members of the education syndicates who participated and adopted the general strike solution. Another similar example, raised by the Government, is the one related to the manner of recovering the lost classes during general strike, and also to the way of paying the teachers who interrupted their education activity during the protest.

At this point, the mediator-president demanded separate discussions, very brief ones, with each party, hereby, closing the first intervention as a neutral third party in the conflict between the Government and the education syndicates. It is to mention that mediation process has been resumed the next day with a common meeting.

The second common meeting which started in the assistance of the mediator-president had as main objective outlining and highlighting the common points of the two parties, in order to permanently rehabilitate their communication system, and to build an agreement based on each part's benefits, and also on objective criteria, by making a separate agreement for each debated problem coming from the governmental side, or the unionist one.

After identifying the feasible solutions for the conflict tension release, the two parties and the mediator-president passed to **validity and realism testing**, and also to drafting a resume of the essential points of the potential agreement: the phased and category-like salary increase, the allocation of an extra percentage for the projects in the education system, so that the final allocation reaches 5% from GDP, the infrastructure investments, elaborating a governmental strategy for education, recovering the classes lost during strike, renouncing at the law suits initiated by the Education and Research Ministry.

This stages, whose main result was a total remove or significant reduction of communication barriers and re-establishing of a coherent communication system, being over, putting over the agreement was the next step. This meant outlining the progress, highlighting the consequences of not reaching harmony, elaborating punctual suggestions, and obtaining commitment towards the mediated solution.

The result of the mediator-president involvement, but also as an effect to keeping step by step the procedures and mediation techniques, was the rehabilitation - after two common mediation sessions which took place from 25 – 26 November 2005 - of mutual trust, of the will to quench the conflict provoked by the lack of communication, and also concluding November 28, 2005 a final agreement between the Romanian Government and the syndicates from the education system⁸, concordance which had as immediate effect the work conflict suspension and retaking classes, on one hand, as well as withdrawing the law suits initiated by the Education and Research Ministry, and drawing up the first romanian education strategy based on competitive projects which aim to attract budgetary and extra-budgetary funds, either intern or extern ones.

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⁸ See Annex 10 – The agreement concluded between Romanian Government and education syndicates federation from November 28, 2005

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