

Round table discussion, 18 th June 2015, Symposium business mediation Linz, interpreter: Ana Uzelac

Q: In today's times of an extreme cost cutting, companies have to think twice before investing. They have to deliberate if the investments actually bring something. How do they perceive the conflict costs, how do they quantify them?

**Christine Hödlmayr-Gammer:** Well, there are two types of facts: the hard facts, that are actually measurable and calculable, and then there are the soft facts, that do not have this quality. Conflicts belong to this second group.

Maybe in the future we will have some kind of conflict KPI, but for now this is not the case. We can, however, measure the conflicts indirectly, using the fluctuation analysis.

Q: This profession, even though fairly young, already has about 2500 practitioners in Austria. It is perceived as a profession here, don't you think? And what is your opinion on conflict costs?

**Mag. Sandra Thaler:** Yes, we've pioneered in this field and I suppose it is acknowledged. Still, there is enough room for improvement.

To your other question, in my opinion there are two types of conflict costs: the visible ones and the hidden ones. The visible conflict costs can be calculated based on (costs for) legal advice, litigations, absenteeism and fluctuation. The hidden costs arise as a result of employee's discontent or demotivation.

From my own experience I can say that small and medium companies have a big decision to make when it comes to company handovers. Because of, for example, tax reforms they have to consider the pros and cons and decide whether it is cheaper to sell now or later. And conflicts are, as we saw, almost inevitable in handover processes, but they can be quite expensive. And that is something no one dares saying out loud.

Q: One would think that the more mediators there are, the less work there will be for lawyers. But in my interview with Sandra Thaler I learned that the complete opposite is the case. This situation encourages co-operation. How do you see that?

**Mag. Christian Raidl:** I neither see a problem in it, nor do I fear the economic consequences. I am both lawyer and mediator.

The actual problem lies in the conflict costs. I differentiate between the explicit (direct) and implicit (indirect) costs. The direct costs are evident and include, for example, fluctuation costs and legal fees. The implicit costs are, like the previous speakers said, costs of fluctuation and dissatisfied employees. I

speak from my own experience when I say that people mostly do not associate these indirect costs with conflicts!

If there are some problems/conflicts between two companies the managers will chose to solve them in a cheap and efficient way – using mediation. But, if there are problems within the company itself, for example between Department A and Department B, they will consult a mediator when it's already too late. Those costs are still not visible.

Q: We have seen that conflict costs are not that easy to calculate. Still, every company, no matter how big or small, wants to know how much money it spends on arguing. Do we need to rethink our approach to this topic?

**Dr. Erhard Prugger:** I have seen some very successful companies – the small ones, the medium ones and the big ones. I have noticed a positive change in their approach to this topic. Companies either chose to avoid or to carry out the conflict. It is all a question of the atmosphere of constructive debate. But the costs only emerge when people chose to violate against it.

In every dispute (argument) emotions prevail and the facts are lost. But for a decision-making it is essential to gather and analyze the facts. It is wrong to let an employee or a client go because of a disagreement.

If an employee is frustrated with the situation, we have to ask ourselves – how will he do next time? Is he going to try hard?

In a litigation, one never knows how a process is going to end. I can say if it is going to raise costs, but I cannot say how it is going to affect the company. The judge has to warn the parties and make sure they know what they want. Is this the only problem or are there other conflicts involved? The legal fees are high, but the parties can never know what (harm) a legal dispute can do to their companies.

**Dr. Karl Pramhofer:**

It is important that the parties can choose the right conflict resolution process for themselves.

In order to reduce the conflict costs, the parties have to understand following:

- The legal process is going to last much longer if parties chose to solve their dispute in the courtroom.
- A litigation can damage your reputation.
- Many prefer to shift the responsibility upon the judge, because it is easier. This is where the judges have to act as conflict manager and try to persuade the party(s) to try a different option (mediation!).

The best way to cut costs in a company dispute is the direct dialogue with an organized distribution of roles.

There are many neutral, solution-oriented professionals that can help in these situations. Repeat it over and over in order to get attention!

Q: Many people compare mediators to psychotherapists, because of the fact that you also show interest in human minds. How do you feel about it?

That is true, but pointing out the problems is not exclusively a mediator's task, lawyers and consultants also do it. The most important task is to recognize the problem early and not to let it escalate.

Equal communication between all parties is essential.

**Mag. Raidl:** Conflicts can be both positive and negative. You do not have to avoid them per se, but you have to manage them. I, for example, include mediation clause in contracts I prepare. I advise the clients to include them in the contract, since mediation is much cheaper than a litigation. It is also an additional stimulus for the companies – people often ask me to explain what mediation is.

Q: Can a contract enact a mediation session?

No, it cannot make it legally binding, but it can propose it as an option, which both parties have to accept.

Q: How do you recommend business mediation to your clients? How do you "sell it"?

**Mag. Sandra Thaler:** Handovers are mostly well insured, so that insurance pays for the legal costs (including mediation). I have had a situation, where we were able to finish a handover in 3 sessions and the insurance paid for it.

There are also so-called internal mediator pools, a method used in many companies. It promotes communication in team and is used as a teambuilding method.

Another interesting stimulus for the companies are mediation trainings. These deal, for example, with the question: Whose responsibility is it to notice a conflict between employees? Mediation trainings are, nevertheless, a sensitive topic, because external mediators are perceived as "alien". That is why an external mediator needs to be well prepared and show sensitivity to certain topics.

Q: What stimuli are there in the company itself?

Most companies are, as you know, consultant-resistant and the common reaction an external advisor is "Oh, there he is, another one". Our goal should be to sensitize the managers, not to make them into mediators. Nevertheless, a training could be more than beneficial, because they would learn different mediation tools/methods, which could help seeing the conflicts in the company and stop looking away.

Q: What does the future hold for mediators? What shall happen in 20 years?

**Christine Hödlmayr-Gammer:** In my opinion conflict management will become a common thing, like HR these days. I believe in a positive development in this field.

Q: Could mediators become an integrated part of the company structure?

Yes, absolutely.

**Mag. Sandra Thaler:** I believe that the future still holds many problems for mediators because of, for example, different corporate cultures (Asia/USA). Nevertheless, it is important to keep working on it, because of our youth and positive social developments.

Q: Does every lawyer in the future also work as mediator?

**Mag. Christian Raidl:** No, I surely hope not. Not every person is suitable for this job (especially not among lawyers). I also do not think that obligatory mediation classes in the course of education are the right thing to do. They should be offered, but not obligatory.

I hope that in the future mediation will be sold better. Even though it has many benefits over litigation (e.g. parties make their own decision, they do not have to give in their power), when I as a lawyer propose it, people won't listen. But when a judge proposes/would propose it, they do listen! There could be much more mediation cases.

**Dr. Prugger:** Mediation has a big potential. It reconciles different opinions and different interests.

I believe there is a potential for mediations in Austrian Economic Chamber too. We had a big conflict while negotiating over rights of the apprentices. It was impossible for a long time to fire an apprentice ahead of schedule. We had a huge conflict and had to call in an expert, a third party to solve our problem.