

COMMUNICATION IN MEDIATION

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Abstract

The purpose of this study is to establish a communication model between the parties to the conflict in mediation based on the research of communication, information, mediation and conflict approaches and definitions. The main methods of communication for finding a solution to a conflict are dialogue between the parties to the conflict and non-violent communication. The model has been designed and practically used to achieve the results of mediation –resolution of a conflict, as well as education of the parties about conflict-free communication for their future relationships. The study/article offers a method for measuring the effectiveness of mediation using the proposed communication model.

Keywords: Dialogue, information, communication, mediation

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Introduction

The world does not live in post-modernism at its last phase of capitalism, but is already moving towards meta-modernism, when new economic models and diverse management methods are sought after, in combination with formation of complex non-linear net thinking, when the combination of institutional and informal thinking is changing in society, and along with the development of the natural human intellect, the emergence of quantum computers allows to create a wholesome artificial intelligence. This process is affected by all controversies accumulated in the previous development stages, the specific manifestations of those are:

- general signs of demographical changes in developed countries, which manifest as decline in birth rates and the proportion of the national (local) population, transformation of the family institution, increase of separated families, that exceeds 50% in several countries (The United Nations Statistics Division, 2024).
- increase in the number of institutional norms. It leads to events, when complying with one rule, we may violate another. Thus, a possibility of conflicting interpretation of these norms may arise. The emergence of 'rules', formulated and applied by selected countries, which leads to armed conflicts (Köchler, 2017).
- emphasis is laid on informal practices, which often do not coincide with institutional norms.
- existing politics leads to economic crises in the development of leading countries, causing total debt of many of those to exceed the annual GDP. Additional money injected into economic circulation and sanctions imposed on specific countries conditioned by political decisions lead to decline in economic growth and decrease of the standards of living (A World Bank Group, 2024).
- conflicts and political instability in the world.
- worsening of the quality of the leading elite as it is seen from government actions in many countries and international organizations characterized by many irrational actions and in some case adoption of decisions under the impact of destructive external forces.
- increase in availability, speed of processing and the amount of information, occurrence of its excess and increase of wrong choice of information and risk of interpretation in relation to the information revolution.

These accumulated controversies create conflicts in development, that is, they impede development and become destructive. The rise in the number of conflicts increases the importance of mediation and the type of constructive mediation as a measure of conflict resolution and prevention. The important part of constructive mediation process is the communication of conflicting parties. This thesis is dedicated to the research of this process, the methods and their components used by various researchers for the creation of a model that is used practically in constructive mediation.

Materials and Methods

The method of the study is the theoretical analysis of a conflict, of the communication during conflict resolution, of the mediation process and years of mediator practice. The empirical methods are a group interview and a survey of the parties on the mediation process and conflict. The survey was conducted with close ended structured questions, which means the possibility of choosing more than one answer .

Mediation is a process in which a mediator organizes and conducts communication between the parties to find a solution to a conflict. N. Luhmann asserts that, "like life and consciousness, communication is an emergent reality, a sui generis fact. It arises through a synthesis of three different selections, namely, selection of information, selection of the utterance of this information, and a selective understanding or misunderstanding of this utterance and its information" (Luhmann, 1995). According to N. Luhmann, it is understood that communication is not only the transmission of information in the form of a message, its perception, realized through sensory organs or by means of technical devices identifying the information, but also its understanding which provides for its interpretation. None of these components can be present by itself, and only together they create communication. According to P. Vaclavik (2000) we can consider communication more directly as a category that includes further actions resulting from the results of communication. Communication in mediation under terms, when the parties deliberately, with a specific mediator, limit their actions, reaching an agreement in the existing conflict between them, is perceived and analysed in a more general sense - as a category that also covers the subsequent actions related to it, that is, the behaviour of the communicating person.

In understanding the meaning of communication in constructive mediation, using some of the statements by P. Vaclavik (Vaclavik et al., 2000) and the practical experience of constructive mediation, the following communication axioms may be distinguished, which are of practical importance in organizing correct communication in mediation:

- impossibility of lack of communication,
- each communication has informational value (possible, when all parties have equal understanding about the semantics used),
- communication encourages a certain action, which determines behaviour,
- each communication contains the content aspect and the relationship aspect,
- characteristics of relationship between the parties depend on punctuation of communication order,
- communication will be symmetrical if the parties are equal and complementary, if they are different,
- communication may be planned or casual,
- communication may be internal or interpersonal.

Participants of communication exchange information, which is one of the main basic concepts of science and modern philosophy and has been used in science since fifties of the twentieth century. This concept is increasingly considered a third component of existence, along with matter and energy. According to the statements by N. Wiener, one of the founders of cybernetics: "Information is a name for the content of what is exchanged with the outer world as we adjust to it, and make our adjustment felt upon it" (Wiener, 1954). The current standardized definition of information (the International Organization for Standardization and the International Electrotechnical Commission) is "knowledge about objects such as: facts, events, items, processes or ideas, including concepts that have a certain meaning in a certain context" ("ISO – ISO /IEC 2382:2015 – Information technology – Vocabulary," 2015) is highly generalized. For our purposes, we will use the definition of information, which explains it as "any features, genes of inheritance, results

of the activity of the brain and consciousness, the results of the activity of a hypothetically existing higher mind (signals, thoughts), the order of processing of the incoming information fixed in the form of constructs (algorithm)"(Portere & Morevs, 2020b).

To investigate the communication model of constructive mediation, we will explain the terms "sign", "noise", "personal constructs" and dialogue. As a component of information perception and transmission during communication in constructive mediation, a sign will be examined, namely, material, sensually perceivable (including by means of technical devices), an object, a phenomenon and an action which is representation of another object, phenomenon, or action. A sign is a piece of information that is only available to us with the help of the sensory organs.

One of the founders of semiotics - the science of signs, C.S. Peirce describes the sign as follows: «...the sign consists of three inter-related parts, when recognizing an object in mind. There simply may be a connection between the sign and the object to be signified; in this case, the sign is an icon. Or purely physical connection may exist; in this case the sign is an index. Or a connection may exist, which involves, how the mind links the sign with this object; in this case the sign is a word [or symbol] » (Peirce, 2008, CP 1.372).

The signs to be transmitted in communication allow us to understand the meaning of the message, emotions, mood, character of the person who conveyed it. Research in the field of semiotics, especially in the field of sign interpretation, can be used to analyse the content of information to be provided in communication (Лотман, 2000). Codes that significantly reduces the amount of information to be transmitted are used for the transmission of sign during the communication process, and thanks to certain rules for the application of codes (algorithms) one can correctly understand its content.. Both the language codes and the codes of the participants' facial expressions, intonation and gestures are used. For a certain part of them who use the language code, the lexicodes have a different meaning of codes related to the cultural traditions and habits. During the communication process a sign is transmitted with the help of message, which becomes a coded equivalent of the sign. The message is expressed as a series of conditional physical symbols (alphabet) which form a structured set. The material embodiment of a message (sign) in the transmission, processing and storage of information is a signal. When we exchange signs, we communicate, whether in dialogue or monologue.

Something that prevents the parties from communicating and reaching an agreement can be defined as a communication noise. It is important to carry out a theoretical analysis of noise (barriers)(Shannon, 1998). Physical noises are related to interference with the information transmission channel, but in a face-to-face meeting the physical condition of the participants and the conditions under which the meeting is conducted should be conducive to a positive dialogue. The channels of communication should be checked in advance by the mediator, and the process of the face-to-face meeting should be thought through in terms of respect for norms, convenience for the participants and their emotional state. The psychological noise is the dynamics and escalation of the conflict, the excessive emotionality of the parties. The presence of these noises requires additional preparation by the mediator for joint sessions with the parties to the conflict, through individual sessions with each of the parties.

Considering the main goal of mediation is to reach consensus between the parties to a conflict, codes and constructs can become noise in the mediation process and interfere with the purpose of communication. That is, transmitted and received codes are interpreted differently, based on different constructs or different goals of the parties. In such a case, the mediator should work to reconcile the codes, constructs, and objectives.

The communication model also uses the concept of a personal construct. The concept of a personal construct was first introduced by J. Kelley, who used it as a way of interpreting the world: "People look at the world through transparent patterns or templates which they create. We shall call these patterns, which are empirically applied to the actual state of things, constructs"(Kelly, 1991). The constructs are an integral part of knowledge and experience. By knowledge we mean the information stored within us, the information received through the sensory organs, the rules (algorithms) derived to process this information. Experience is the body of knowledge and skills acquired through interaction with the world around us, as well as through our feelings. It is by helping to transform the constructs that have brought

the parties into conflict that the mediator contributes to finding the necessary and useful solution for the parties in constructive mediation.

For conflict resolution the dialogue in communication takes place in a language previously agreed upon by the parties according to its syntactic and semantic laws. To understand the dialogue used in communication during the mediation, let us highlight the philosophical concept of dialogue by M. Buber, which is necessary for the formation of the communication model of constructive mediation: "I know three types of dialogue: the genuine, which can be expressed in words or in silence; the technical, evoked only by the need for objective mutual understanding; the monologue disguised as dialogue" (Buber, 2010). Bohm's definition of dialogue is also important, where he considered it as a free flow of meaning between people in communication, in the sense of a stream that flows between coasts (Bohm, 2004). It is necessary to dwell separately on the more complex form of dialogue used in the model, discourse, using the approach of J. Habermas, the author of discourse ethics or communicative ethics, who pointed out that discourse is a way of testing the relevance of conflicting claims by providing arguments aimed at reaching a workable universal consensus (Habermas, 1981).

To develop a model of communication between the parties in constructive mediation, the existing communication models of Claude Shannon, Wilbur Schramm, Charles Osgood, and Umberto Eco were used (summarised). The classical model of communication by C. Shannon (1998) was complemented by the feedback model of W. Schramm and K. Osgood (1971), the content processing of the transmitted information based on codes and lexicodes provided in the communication model of U. Eco (Эко, 2019). Additionally, a third-party mediator is introduced to organise and facilitate communication between the conflict parties.

Results

Summarising the communication models highlighted above and the communication through dialogue in the constructive mediation facilitated by the mediator, the model is schematically illustrated in Figure 1, in which the mediator participates in the communication of the mediation process:

- the Sender (participant A) transmits the information to the Recipient (Participant B), which is simultaneously received by the Mediator.
- the Receiver (participant B) and the Mediator shall decode the communication by receiving the information to be conveyed via the signal conveyance channel. In preparing the communication, the Mediator shall ensure that possible noises are excluded and that both participants in the communication have a common and unambiguous understanding of the signs to be used and, if necessary, shall teach their use.
- based on the use of information and constructs that have arisen for the participants because of previous communication and experience, the Recipient (participant B) interprets the signs (information) received. The Mediator also receives the results of the interpretation and can help to adjust them, if necessary, but in case of stability of the existing constructs, which does not allow to achieve a positive mediation result, he/she further prepares the communicating participants for the dialogue to reach an agreement.
- based on the interpretation of the received information, the set goal, the adjusted constructs, the receiver (participant B) uses signs to formulate a response and provide feedback (Porter, 2021a).

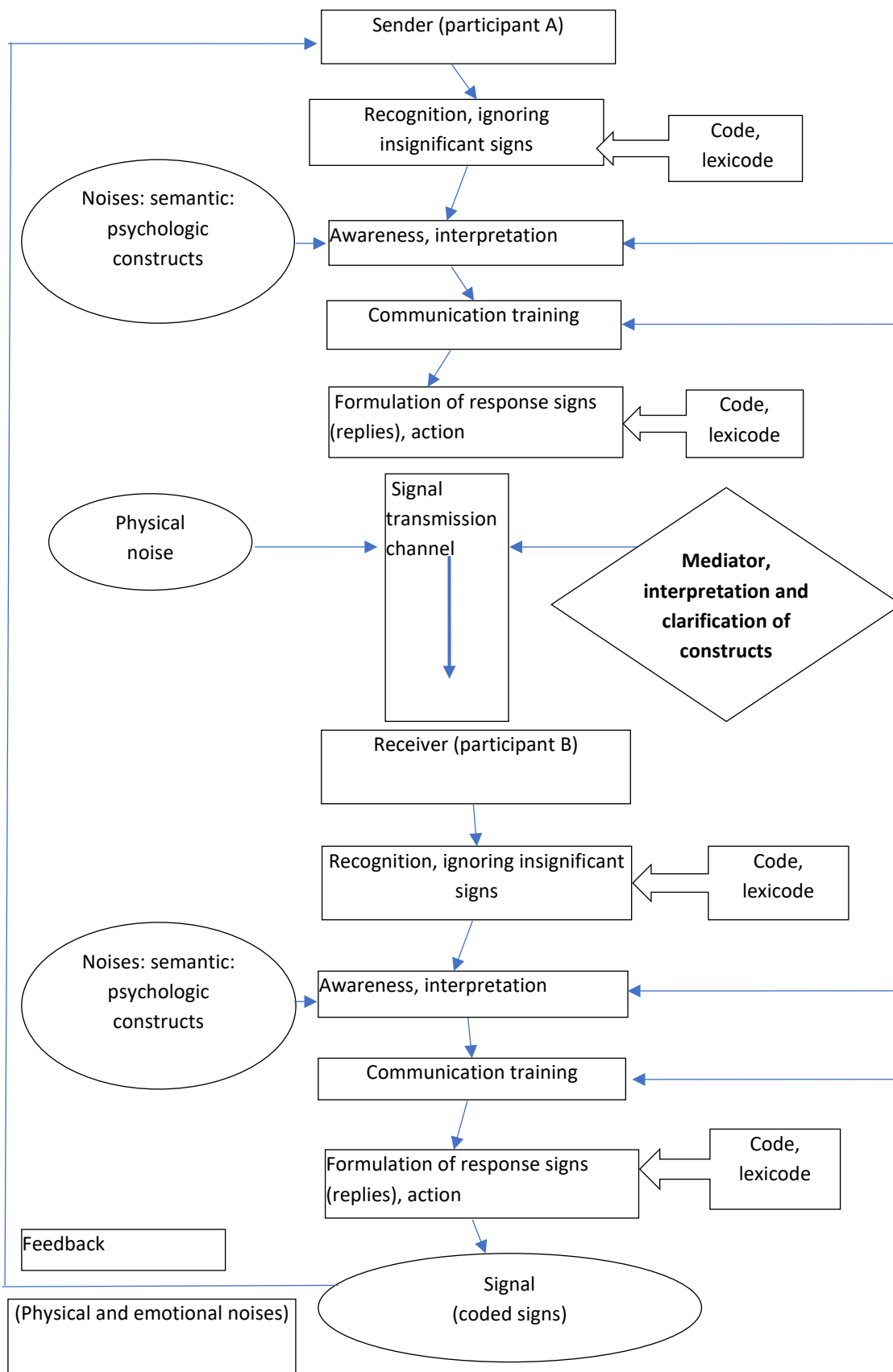


Figure 1. Communication model (Portere, 2021a)

When organizing communication, the mediator uses Rosenberg's (2015) strategy of non-violent communication, which calls for directing the light of reason to those places where there is hope of getting what is wanted and this is facilitated by distinguishing observation from evaluation. Mediators, on the other hand, need to treat the parties with the utmost respect, without in any way emphasising the differences in their positions, education, and cultural level. In organising a safe space for mediation, the mediator seeks to create a bond between the parties and to ensure the honest self-expression of views, where thoughts, feelings and needs are complementary; claims are formulated in the form of a request with affirmative, clear, and concrete statements describing actions and showing the true wishes of the parties.

While adjusting the personal constructs, the mediator can also use V. Frankl's logotherapy, which is based on the search for and analysis of the meaning of life, removing the feelings of meaninglessness and emptiness that V. Frankl himself called the existential vacuum (Frankl, 2006). According to this theory, three approaches can be used: 1) experiential values, i.e. the experience of something; 2) through creative values, "doing action"; 3) relational values include virtues such as compassion, courage, a good sense of humour, etc. When organising communication, the mediator relies on dialogue as the main method of communication to reach agreement.

Following D. Bohm (Bohm, 2004), the mediator uses the rules for conducting a dialogue: in a dialogue group there is no obligation to find or decide, there must be freedom to speak or not to speak, and expressions of assumptions and judgements must be avoided. The dialogue should be as honest and transparent as possible, the reflection should be based on the reflection expressed. Experience shows that in mediation, especially in cases of acrimonious conflict, dialogue is a complex process. The sender of the communication conveys information about the factual part of the communication, about his sensual state (self-revealing), about his attitude towards the receiver of the communication and his offer to act (motive for the message). The addressee, in turn, receives the information sent, forms his attitude towards the sender and evaluates the message as a content of appeal or want (Schulz von Thun, 1981). Parties need a wide range of skills to negotiate in a mediation process in a dialogical way: the ability to listen and hear, the ability to trust the world and other people, an inner commitment to the world around them, strong experience of and responsiveness to the dialogical situation, a keen sense of self, a high level of development of rational thinking and reflection, the ability to act independently as individuals, the ability to establish a personal position and to question it, the ability to articulate and defend their position, the willingness to change, the ability to admit their ignorance or weakness, to ask for help from another person, to accept this help, etc. (Bubers, 2010) (Wegerif, 2006) (Matusov & Miyazaki, 2014). The mediator is the one who creates the safe space of mediation, where these skills can be expressed to facilitate finding a solution.

Discourse, as a more complicated form of a dialogue according to J. Habermas, is based on the following rules:

- participation in a discourse open to any subject capable of speech, on a basis of full equality with all other participants in the discourse.
- discourse prohibits any coercion in the pursuit of coherence.
- discourse participants are entitled to act reasoned only based on the cooperation and on common motive (Habermas, 1981).

The inability to communicate in dialogue can become an obstacle (noise) for communication in mediation. The following obstacles to dialogue can be identified which may exist between the parties to a conflict and which the mediator needs to address to some extent:

- lack of time for dialogue,
- partners' individual priorities,
- fear of dialogue,
- fear of information and new knowledge,
- fear of lack of knowledge,
- disrespect for the partner,

- unwillingness to change one's position,
- incompatibility of values and/or intellect,
- lack of empathy,
- lack of understanding of the non-verbal and verbal communication of the partner's message,
- phobias,
- lack of concentration in the process, various external distractions (Portere & Briede, 2019).

The following types of dialogue can be identified in the process of constructive mediation:

- mediation dialogue aimed at creating a spirit of cooperation in the mediation process.
- exploratory dialogue, in which the mediator and the participants explore the informational aspects of the conflict, arrive at a common understanding of its nature and legal basis, disputed and undisputed facts.
- discursive dialogue (discourse), which is the main instrument for resolving a given conflict, for achieving a given goal.
- crisis intervention dialogue - the aim is to identify, verbalise and analyse emotions.
- transformative dialogue aimed at clarifying and sharing (reconciling) the views, opinions and worldviews of the parties to a conflict.
- provocative dialogue, in which the views and thoughts of one or both parties to a conflict are provoked, to gain confidence in the stability and veracity of thoughts and judgements, or in the need to revise and change them (Portere & Morevs, 2020a).

To test the efficiency of constructive mediation, the methodology for its evaluation was developed. Based on a survey of the parties involved in the mediation process, the mediator determines the mediation's efficiency ratio and its permissible values. The evaluation and analysis of the ratio, when a low value is obtained, allows the mediator to improve the next mediation process, to understand how to improve communication, which phase of the mediation needs more attention and to introduce additional elements of the process.

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Main terms used:

- 1) the criterion (effectiveness criterion-e) is a list of mediation objectives and outcomes, formulated based on experience and adjusted based on a survey of experts, practitioners and parties to the conflict:
 - conflict resolution.
 - satisfaction with the agreement reached.
 - better understanding of conflict law and its resolution
 - adjustment of personal constructs for a conflict-free life.
 - maintaining relations with the parties to the conflict.
 - learning to communicate without conflict.

- learning dialogue skills.
- awareness of one's role (self-actualisation).

The indicator of significance (significance-s) shall be assessed between 1 and 5, determined by the mediator, with 5 being the highest score and 1 the lowest score. It is determined according to the methods applied by the mediator in the mediation process and the need to improve them. It may be set by the mediators' organisation if there is a need to assess the level of qualification required of its members.

The following estimates have been made:

- 1- does not improve the quality of mediation.
- 2- not significant.
- 3- significant.
- 4- very significant.
- 5- significant and may help for parties later in life.

The evaluation of usefulness (usefulness - u) is the grade awarded in the questionnaires completed by each party to the conflict after the mediation and is determined according to the International Baccalaureate (IB) ("International Baccalaureate (IB)," 2024) Common Grading Scale:

- 1-no.
- 2-no, but I got benefit
- 3- no, but additional assistance from the mediator is necessary.
- 4- yes, but additional assistance from the mediator is necessary.
- 5-yes, partially.
- 6- yes, and I know how to resolve conflict myself.
- 7-yes.

2) mediation effectiveness ratio (effectiveness ratio - ER)

The percentage of the result of the effectiveness ratios obtained from the mediation participants for each criterion, adjusted for its importance from the maximum effectiveness ratios determined by the mediator, considering its importance, will constitute the effectiveness ratio.

$$ER = \frac{\sum_{e=1}^8 (S_e / S_{max} * u)}{\sum_{e=1}^8 (S_e / S_{max} * u_{max})} * 100$$

Where:

- e - is an effectiveness criterion (e1, e2, ..., e8)
- s - is evaluation of significance of the criteria (s1, s2..., s8)
- u - is evaluation of the usefulness of the criteria (e1, e2, ..., e8)
- S_{max} - maximum significance indicator
- e_{max} - maximum effectiveness indicator

Considering the mediation experience, a survey of 64 mediation parties (32 pairs of conflicting parties) and based on its results, a minimum effectiveness ratio was defined, which is acceptable to achieve during mediation and in case of a lower value, the mediator analyses the mediation process to improve it or to improve the quality of a specific phase of the mediation. Mediations has been performed within projects for the resolution of such out-of-court, as well as dispute in court proceedings, involving a child, financing in accordance with contracts No. 1-6.1/75- 2021, No. 1-6.1/75- 2022, No. 1-6.1/81- 2023 between the Council of certified mediators and the Ministry of Justice of the Republic of Latvia.

Discussion and Conclusions

The communication model is an essential component of constructive mediation and, together with the methodology for assessing the effectiveness of mediation, is used in practice by the author to assess the

quality of a particular phase of mediation. We have an acceptable effectiveness ratio of 55%. The results were obtained based on an analysis of the results of studies of communication theories, signs and sign systems (semiotics), information, personal constructs. The table below shows specific mediations (see Table 1) that were conducted using the communication model described above and evaluated the usefulness of the mediation. Each mediation allows the mediator to improve the results of future mediation, including based on an analysis of the resulting effectiveness ratios.

The effectiveness ratio may be individual for each mediator, based on his/her experience in previous mediations, and may also set specific limits on the admissibility of the value of the efficiency ratio when a group (association) of mediators uses such a method for its members.

Table 1. List of conducted mediations with a communication model for constructive mediation.

Cons. No.	The essence of mediation	Duration of process in hours	Result of mediation
1.	Dissolution of marriage	6	Full agreement reached
2	Determining the child's place of residence	3	Full agreement reached
3	Fulfilment of obligations	3	Full agreement reached
4	Inheritance distribution	10	Full agreement reached
5	Neighbour dispute	6	Full agreement reached
6	Labour dispute	7	Full agreement reached
7	Child maintenance	5	Full agreement reached
8	Interaction with children	5	Full agreement reached
9	Improving couple communication	6	Full agreement reached
10	Child-upbringing issues	5	Full agreement reached
11	Child's contact with grandparents	5	Full agreement reached
12	Debt payment issues	4	Full agreement reached
13	Dissolution of marriage	5	Full agreement reached
14	Distribution of joint property	10	Full agreement reached
15	Communication between parents	2	Terminated without agreement
16	Determining the child's place of residence	5	Full agreement reached
17	Interaction with child	5	Full agreement reached
18	Preserving marriage	1,5	Full agreement reached
19	Divorce issues	5	Terminated without agreement
20	Interaction with child and distribution of joint property	3,30	Full agreement reached
21	Separation	3	Full agreement reached
22	Dissolution of marriage	2,5	Terminated without agreement
23	Dissolution of marriage	10,5	Full agreement reached
24	Interaction issues	6,5	Full agreement reached
25	Divorce issues	9,5	Full agreement reached
26	Couple communication	2,5	Full agreement reached
27	Couple communication	5	Full agreement reached
28	Dissolution of marriage	1,5	Terminated without agreement
29	Inheritance distribution	4	Full agreement reached
30	Couple relationship	5	Full agreement reached
31	Couple communication	2	Full agreement reached
32	Couple communication	4	Full agreement reached

It is to be noted that the communication model described above could, with some improvements, also be used to resolve inter-state conflicts. In addition, the following nuances should be considered:

- it is necessary to investigate the conflict, the degree of independence of the parties and their ability to take steps to resolve the conflict; if necessary, a third party is sought on whom the resolution of the conflict depends.
- it is important to develop a psychological portrait (identify the constructs) of the person(s) with the necessary powers, within a time frame sufficient to resolve the conflict.
- it is very important to find a conciliator who is authoritative on both sides of the conflict and who agrees to play this role. Such a conciliator will not necessarily have mediation skills, but he or she must be sufficiently authoritative for the parties on the conflict.
- in cooperation with the mediator, a plan is drawn up to start the negotiations.
- the first meeting of the authorised representatives of the parties to the conflict should end with a specific instruction to develop proposals in the presence of the mediator and the conciliator. These proposals shall include the issues on which the parties agree and the issues on which further negotiations are necessary.
- the degree of confidentiality of the negotiations (mediation) is determined on a conflict-by-conflict basis.

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