

Mediation in the Enterprise. A New Approach Needed?

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Abstract

Values set the desired course of action in an enterprise. They are a kind of bonding and expression of the corporate culture, which determines how conflicts are understood, resolved, and managed. A problem that negatively affects the enterprise's productivity is the lack of effective conflict prevention and resolution mechanisms. Thus, mediation as a non-confrontational method of diagnosing and resolving conflicts should be a key element of the corporate culture in the enterprise. Does this mean that a new approach to the institution of mediation is needed? To answer this question, the subject of conflicts in the enterprise is discussed first. Then, the need is indicated to have internal dispute resolution procedures operational in the enterprise, which should also include a system for preventing the occurrence of disputes and dealing with possible court proceedings. In the last part, the issue of the mediator is presented, considering the role that the mediator plays, which is to provide professional assistance in the amicable resolution of disputes arising in the workplace.

Keywords

workplace mediation • organizational conflict • labour disputes • mediator

Introduction

Conflicts in the work environment are immanently and inevitably linked to most businesses' inner areas of operation. CPP Global Human Capital Report shows that nine out of ten employees under the survey have experienced an escalating conflict in their workplace, with an average of 2.1 labour hours per week, or one day per month spent to resolve issues.¹ Moreover, 51% of personnel in Human Resources departments spend between one and five hours a week managing disagreements.² There is no doubt that the occurrence of conflicts within an organisation that has not developed effective mechanisms to support how they are resolved has a negative effect on the atmosphere in the workplace, affecting employees' interactions, attitudes and level of responsibility and motivation in carrying out their duties. It also translates into an overall work ethic and generates several costs on the employer side. According to the ACAS report, the estimated annual cost of conflicts by employers in the UK is GBP 28.5 billion, representing just under GBP 3,000 per year for each person involved in a conflict.³ In addition, according to the ACAS report, 485,800 employees resign each year due to a conflict, which generates costs associated with the need to recruit replacement staff of GBP 2.64 billion per year. The employers' cost of reduced productivity, associated with the need to deploy new staff, is GBP 12.23 billion, totalling GBP 14.9 billion per year.⁴

The problem adversely affects organisational efficiency; therefore, it is caused not so much by internal conflicts, which are inevitable, but rather by the lack of effective prevention and resolution mechanisms. Conflicts that are marginalised, paved over and therefore unresolved tend to escalate, destroying the organisational culture. This, in turn, translates into a decrease in employee productivity and the effectiveness of the work provided, which, consequently, affects the organisation's overall performance. According to the ACAS report, 40% of employees under the survey who experienced conflicts became less motivated, and more than half (56%) reported stress, anxiety or depression.⁵ Therefore, management of disputes within the organisation is now one of the key pillars on which the harmonious development of the organisation should be based, a component of the values contributing to the company's identity.

1 CPP Global Human Capital Report, "Workplace Conflict and How Businesses Can Harness It To Thrive," (2008): 5. Available at: https://shop.themyersbriggs.com/Pdfs/CPP_Global_Human_Capital_Report_Workplace_Conflict.pdf [accessed 10.11.2024].

2 Ibid, 4.

3 ACAS. "Estimating the costs of workplace conflict," (2021). Available at: <https://www.acas.org.uk/research-and-commentary/estimating-the-costs-of-workplace-conflict/report> [accessed 10.11.2024].

4 Ibid.

5 Ibid.

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The benefits of proper dispute management, including prevention and resolution, are indisputable.⁶ Building a working environment that stimulates personnel integration based on the ability to resolve mutual problems contributes to increased motivation, productivity, and the formation of the right attitudes. This is evidenced, for example, by the results of the CPP Global Human Capital Report survey, in which it was indicated that positive conflict outcomes in the workplace contributed to higher team productivity among 21% of respondents, and levels of motivation increased in 18% of them. In comparison, 29% of respondents stated that effective conflict management contributed to the generation of better solutions to their challenges. An organisation's culture based on the ability to manage disputes, therefore, not only contributes to the creation of an appropriate working environment but can also be a driving force in the sphere of building proper relationships, accountability and integrity of a team of employees while remaining correlated with the productivity of the organisation. In the CPP Global Human Capital Report, 76% of employees under the survey felt that conflict led to positive solutions, and 41% stated that it contributed to a better understanding of other people. In comparison, 33% admitted they experienced improved relationships at work.⁷

The institution of mediation as a voluntary, confidential, and deformed way of solving disputes in the process of interpersonal communication has been working in the Polish legal system for many years. In the course of it, the parties, assisted by an impartial and neutral mediator, search together for a satisfactory agreement to conclude a mutually acceptable settlement.⁸ This institution allows, inter alia, the proper management of interpersonal relations in an enterprise and resolving conflicts that have already arisen. It is a good channel of communication between employees as well as with trade union organisations and stakeholders, forming a space for building lasting relationships based on dialogue and trust. It fosters a sense of influence and responsibility for decisions in employees since it makes it possible to recognise the real interests of each participant in a dispute and their own proposals for a solution. Thus, mediation as a non-confrontational way of resolving conflicts should be a key element of the organisational culture of an enterprise as it makes it possible to increase its productivity by reducing or preventing the risk posed by the destructive effects of conflicts.⁹

Conflict is a natural part of the operational process of any enterprise, but an unresolved conflict can have a negative impact on its growth and success. This is why it is so important for enterprises to have a system for effective conflict prevention and management. The modern working environment cannot be deprived of space and opportunities for dialogue and non-cooperation in resolving disputes between employees and between employees and the employer, and it has been positive that more and more enterprises recognise the need to create mechanisms to resolve disputes amicably for the organisation's benefit. According to a survey conducted by the Niagara Institute, 87.8% of respondents agreed that they were willing to compromise on a conflict in the workplace to break a deadlock and bring about a resolution¹⁰, which is a positive indication of a willingness to resolve disputes amicably. The readiness here should also be reciprocal in the relationship between employees and the enterprise, the organisational culture of which should include readiness and openness of the organisation, including superiors, to resolve disputes with employees while observing the principle of equality of the parties to the dispute. Therefore, the objective of this article is to present a new perspective, taking into account the proposals of good practices about the institution of intra-enterprise dispute resolution, particularly including the mediation procedure and the shape of guarantees relating to the mediator. The article presents potential solutions that may be an encouragement to raise awareness of how important it is to resolve disputes within an enterprise and provide a stimulus to revise in-house regulations in the field of amicable dispute resolution.

The Subject of Disputes within the Company

Disputes are an inherent part of the operation of an enterprise. Every entity taking part in business transactions is exposed to conflict arising from specific objective-subjective internal or external conditions. The subject matter of disputes that may arise in an enterprise is extremely broad and may affect every component of the organisation's operation. Therefore, it is not possible to exhaustively identify all possible subjects of disputes that may arise in an enterprise. This is because they depend on many

6 See Tonny Bennet. "The role of workplace mediation: a critical assessment," *Personnel Review* 43, no. 5 (2014): 769-71.

7 CPP Global Human Capital Report, "Workplace Conflict and How Businesses Can Harness It To Thrive," 15.

8 Tomasz Cyrol. "Teoretyczne i praktyczne aspekty zdatności mediacyjnej spraw cywilnych z uwzględnieniem wykorzystania e-mediacji" [Theoretical and practical aspects of the mediation feasibility of civil cases, including the use of e-mediation] In *E-mediacja w rozwiązywaniu sporów gospodarczych i pracowniczych* [E-mediation in resolving business and employment disputes], ed. W. Broński (2023): 81-82.

9 Magdalena Tabernacka, "Aksjologia mediacji z udziałem przedsiębiorców – refleksje" [The axiology of mediation involving entrepreneurs – reflections], *Acta Universitatis Wratislaviensis* [Acts of the University of Wrocław] 334, no 4101 (2022): 197.

10 Niagara Institute, "Workplace Conflict Statistics: How We Approach Conflict at Work," (2022). Available at: <https://www.niagarainstitute.com/blog/workplace-conflict-statistics> [accessed 10.11.2024].

factors, particularly those related to the industry's specific nature, the business's size, the number of employees, and social and economic development.

An enterprise may face any conflict systematised source-wise by Christopher Moore, who distinguished between value, relationship, structural, interest, and data conflicts.¹¹ It should also be considered that some of the conflicts occurring within an organisation remain legally irrelevant, as not all contentious areas have been subject to normative interference.

From the point of view of conflicts of an internal nature, one of the most important levels of definition is their subjective classification, which consists of defining a dispute in terms of its participants. Subject to this criterion, a distinction is made between conflicts based on the specific arrangement of interdependence relations within the enterprise associated with the personal provision of work services under the employer's supervision. Sources of disputes occurring in this area are diverse and may result from different approaches to and prioritisation of goals of the organisation and may also be the result of individual entities seeking a certain position of independence of their organisational unit or directly of these entities in the implementation of the enterprise tasks entrusted to them¹². They can also arise from communication misunderstandings at every level of the organisation and the need to manage limited resources¹³. Research indicates that the most common causes of conflicts in the work environment are differences in employees' personalities or styles of work¹⁴.

Subject-related internal disputes most often occur at three levels and can arise in relationships between the superior and the subordinate, between people taking equivalent positions and between employees¹⁵. What is interesting is that the area where conflicts occur most frequently is the relationship between employees of the same level, and the second in terms of frequency are disputes between employees and superiors¹⁶. Such conflicts may involve individuals or entire groups. Therefore, internal disputes can be divided into personal (individual) disputes and collective disputes¹⁷.

An area that can be a source of conflict is the differing assessments of whether the duties arising from the employment relationship are performed correctly. In this area of disputes, attention should be paid to conflicts based on economic issues, that is, individual employees' remuneration, workplace atmosphere, working conditions and employee rights¹⁸. However, the source of the conflict is not only the employee's behaviour but also a certain behaviour of the employer towards the employee. Disputes involving discrimination or mobbing also occur in this area. These issues remain of noticeable interest to the legislator who undertakes measures to ensure that the protection of employee's rights in the enterprise is maximised. For example, it should be pointed out that a systemic regulation of these employee rights and their protection has been implemented, devoting many provisions in the Act of 26 June 1974 - Labour Code to this issue¹⁹.

Collective disputes may involve various groups operating within a given organisation. Broadly speaking, a collective dispute will be referred to whenever more than one entity is involved. It can be, *inter alia*, a dispute that arises within an organisational unit of an enterprise, that is, an intra-group dispute involving members of a particular organisational unit or department. It will usually concern issues relating to prioritising tasks and how they are carried out. However, an intra-group dispute may also involve different organisational units operating within a single organisation. These conflicts may arise from limited resources of the organisation or the assignment of tasks and the independence of the individual teams in carrying the tasks out.

A collective dispute in terms of legal regulations should be pointed out that it concerns the relationship between employees and the employer, and its subject matter, in principle, includes elements related to the protection of group interests and rights. It is a dispute that concerns a conflict between an employer and trade unions²⁰. In the Polish legal area, the legislation uses a narrow

11 See Christopher Moore, "Mediacje. Praktyczne strategie rozwiązywania konfliktów" [Mediation: Practical Strategies for Conflict Resolution] (2016): 76-77; Małgorzata Torój, "Psychologiczne aspekty rozwiązywania konfliktów w postępowaniu gospodarczym" [Psychological aspects of conflict resolution in economic proceedings] In *E-mediacja w rozwiązywaniu sporów gospodarczych i pracowniczych* [E-mediation in resolving business and employment disputes], ed. W. Broński (2023): 29-31.

12 Oladosu Omisore and Ashimi Rashidat Abiodun, "Organizational Conflict: Causes, Effect and Remedies". *International Journal of Academic Research in Economics & Management Sciences* 3, issue 6 (2013): 123-124.

13 Anna Gembalska-Kwiecień, "Conflict in work environment – its causes, prevention, methods of solving". *Scientific papers of silesian university of technology 2022 organization and management series*, no. 155 (2022): 64-65.

14 Chartered Institute of Personnel and Development (CIPD), "Managing conflict in the modern workplace" (2020):14-15. Available at: <https://www.cipd.org/uk/knowledge/reports/managing-workplace-conflict-report/> [accessed 14.11.2024].

15 Iwona Salejko-Szyszcak, "Klasyfikacja konfliktów w przedsiębiorstwie" [Classification of conflicts in the company], *Acta Universitatis Nicolai Copernici* [Acts of Nicolaus Copernicus University] 38, no. 404 (2011): 140-141.

16 CPP Global Human Capital Report, 8.

17 Eugene McKenn and Nick Beech, "Zarządzanie zasobami ludzkimi" [Human Resource Management] (1997): 236.

18 Zdzisława Janowska, "Dysfunkcje i patologie w sferze zarządzania zasobami ludzkimi" [Dysfunctions and pathologies in human resource management] (2013): 3.

19 Journal of Laws of 2023, item 1465.

20 Jarota, Maciej. "Mediacja pomiędzy pracodawcą a pracownikiem w sporach odszkodowawczych i płacowych. Wybrane zagadnienia prawne" [Mediation between the employer and employee in compensation and wage disputes. Selected legal issues] In *E-mediacja w rozwiązywaniu sporów gospodarczych i pracowniczych* [E-mediation in resolving business and employment disputes], ed. W. Broński (2023): 194.

meaning of the term collective dispute, defining it in Article 1 of the Act of 23 May 1991 on the resolution of collective disputes as a dispute, the subject matter of which covers working conditions, remuneration conditions, social benefits and trade union rights and freedoms²¹.

In the environment of an enterprise, the organisational structure can also be conflictogenic, which is also a direct or indirect cause of disputes of a subjective nature within the organisation. This is because disagreements often arise in this area as a result of a specific arrangement of hierarchical dependencies within an enterprise or the assignment of tasks among individual, organisational units of an enterprise and individual groups²². Disputes can be caused, inter alia, by wrong work organisation and incorrect procedural solutions implemented within an enterprise.

An enterprise may also find itself in an external dispute arising because of factors beyond the organisation's control. Sources of external disputes include the enterprise's legal environment, the social and economic situation, and all elements related to the functioning of the local environment²³. It should also not be overlooked that relationships of a legal nature involving an enterprise as a business entity may also be the subject of conflict. All civil and economic disputes that largely concern the performance of contractual relations in which the enterprise appears as a creditor or debtor deserve special attention in this respect. Matters relating to protecting an enterprise's trade secret or know-how may also be the subject of dispute. Depending on an enterprise's organisational and legal form, the dispute may concern the relationship between shareholders or business conduct rules.

Internal Company Dispute Resolution Procedures

The above considerations unequivocally confirm the wide range of disputes that arise in an enterprise. There is no doubt that the tools used in effective conflict management in an enterprise require an analysis of the internal needs of the organisation, which depend on the scope of the business, the internal structure of the company or the number of employees and trade union organisations. On the other hand, the choice of means to resolve a dispute depends on its subject matter (civil, business, labour case, etc.) and subject matter issues (internal/external dispute).²⁴ Hence, the assessment of internal dispute resolution procedures should consider not only mediation but also other amicable dispute resolution methods. In addition, dispute resolution procedures should include a system for preventing disputes and dealing with possible court proceedings. This is all the more important given that literary sources confirm the link between an organisation's positive attitude towards alternative dispute resolution (ADR) methods and the introduction of internal dispute resolution procedures.²⁵

First of all, the importance of a system for preventing the occurrence of conflicts within an organisation should be emphasised. Its function is both to prevent the occurrence of internal conflicts²⁶ and to extinguish them at an initial stage before they reach a level where they adversely affect employees' performance of their duties. The general principle is that parties are more likely to resolve a dispute at an early stage, which is why the availability of mediation is especially important at the initial stage of development of the disputes.²⁷ This is especially true in internal disputes, i.e. disputes between employees and between employees and their immediate superior or, more broadly, the employer.²⁸ It is a good corporate practice to regulate dispute resolution procedures through internal rules or sets of good practices.²⁹ However, specific ADR tools may also be used to prevent the occurrence of disputes with external entities, as exemplified by the operation of customer service centres, which are to clarify any doubts of business partners to prevent a legal dispute.

21 Journal of Laws of 2020, item 123.

22 Ariani, Fadillah, "The Role of Conflict Management in Resolving Conflicts in Organizations." *Transforma Jurnal Manajemen* [Transformation Management Journal] 2, no. 1 (2024): 2-3.

23 Marek Bugdol, "Gry i zachowania nieetyczne w organizacji" [Games and unethical behaviours in organizations] (2007): 67.

24 See Truijens, Douwe and Marcel Hanegraaff. "The two faces of conflict: how internal and external conflict affect interest group influence." *Journal of European Public Policy* 28, no. 12 (2021): 1909-31; Ariani, Fadillah, "The Role of Conflict Management in Resolving Conflicts in Organizations." *Transforma Jurnal Manajemen* [Transformation Management Journal] 2, no. 1 (2024): 2-3.

25 Lipsky, David B. and Ronald L. Seeber. "The Appropriate Resolution of Corporate Disputes: A Report on the Growing Use of ADR by U.S. Corporations." (1998): 22-23.

26 For more on the use of ADR to avoid disputes, see International Chamber of Commerce (ICC), "Effective Conflict Management Guide." (2023): 29-30. Available at: <https://iccwbo.org/new-report-and-guide-to-drive-thought-leadership-in-dispute-prevention-and-resolution/> [accessed 8.11.2024].

27 International Chamber of Commerce (ICC), "Facilitating Settlement in International Arbitration. Report." (2023): 11. Available at: <https://iccwbo.org/new-report-and-guide-to-drive-thought-leadership-in-dispute-prevention-and-resolution/> [accessed 8.11.2024].

28 Stipanowich, Thomas J. and J. Ryan Lamare. "Living with ADR: Evolving Perceptions and Use of Mediation, Arbitration, and Conflict Management in Fortune 1000 Corporations." *Harvard Negotiation Law Review* 19, no. 1 (2014): 60-61.

29 For an example of intellectual property management see Broński, Włodzimierz et al. "Zarządzanie i ochrona dóbr niematerialnych poprzez metody ADR w relacjach wewnętrznych" [Management and protection of intangible assets through ADR methods in internal relations] In *Własność intelektualna i jej efektywne wykorzystanie w działalności przedsiębiorstwa. Aktualne problemy* [Intellectual property and its effective use in business operations: Current issues], eds. Włodzimierz Broński and Katarzyna Melgiesz (2019): 313-20.

Apart from the dispute prevention system, the operation of specialised units dealing with dispute resolution is particularly important. In practice, within enterprises, particularly large and medium-sized ones, separate entities are established within the internal structure with dispute resolution attempts among their tasks. These tasks may be entrusted to the legal departments of the organisation, although the Human Resources department may handle the dispute. Many enterprises have dedicated entities or even teams tasked with dispute resolution. They are usually responsible for receiving information about a dispute from an employee or a superior (in case of internal disputes) and from the legal department (in case of internal disputes) and for choosing appropriate methods to conclude the dispute.

The choice of a body handling dispute resolution in the organisation depends on its internal structure and the specific nature of its business. In large enterprises operating numerous trade union organisations, entrusting the tasks to a single person may not be sufficient. It should be noted that the assessment of the performance of the body responsible for dispute resolution will generally depend on its commitment and ability to undertake quick actions that are favourable to the resolution of a dispute in a friendly environment. Overloading of this entity, particularly evident when the dispute resolution responsibility is only one of many tasks entrusted to such a person (e.g. when an OHS officer is additionally entrusted with the responsibility of an ombudsman), may cause the performance of such a person to be negatively assessed by the parties to the dispute. Trust in such a person is a key motivation for reporting and resolving a dispute constructively³⁰.

As indicated above, the responsibilities in the field of dispute resolution within the organisation may be assigned to a specific person as part of this person's other duties, particularly when the organisation's business is not large, or it is reorganising its internal structure as a result of the implementation of the internal dispute resolution system in the organisation. In the case of larger enterprises, it will usually be justified to establish a separate body to resolve a dispute within the organisation, which may be one person or a whole team. Within the scope of organisational aspects, it should be emphasised that for effective dispute resolution in the organisation, it is important, on the one hand, to implement internal dispute resolution procedures. On the other hand, the management and employees must be aware of the content of these procedures and the very existence of a dispute resolution entity in the organisation. Therefore, internal procedures should be commonly available, e.g. on the intranet or in another way adopted by the organisation. As part of the internal training, the need to supply information about the existing internal rules or sets of good practices in the field of dispute resolution should undoubtedly be noted. Similarly, managers and employees should be aware of a person or team that deals with dispute resolution and know how to contact them to initiate an appropriate procedure.

It should be noted that raising a dispute, particularly one arising from the inappropriate behaviour of a superior or manager, may be associated with a fear of retaliation, which may result in negative consequences in the workplace or even a disciplinary dismissal. Internal dispute resolution procedures (including a system for the prevention of disputes) should provide safeguards for those who cannot openly report the occurrence of a dispute for fear of losing their jobs. This circumstance also seems to be covered by the obligation to protect the so-called whistle-blowers. So, internal dispute resolution procedures should also specify the procedure for reporting violations of law and taking follow-up actions within the meaning of Article 24 of the Act of 14 June 2024 on the protection of whistle-blowers.³¹

The last significant aspect of the internal dispute resolution system is a thorough evaluation of the arising dispute in the context of the economic viability of pursuing claims at the stage of court proceedings; the evaluation is often neglected in practice by Polish entrepreneurs.³² It seems important for the legal department to conduct a proper analysis of a given dispute before taking specific actions related to a request for payment, a pre-litigation attempt to resolve the dispute and finally, the initiation of court proceedings. For example, in the practice of the common law system, the Early Neutral Evaluation (ENE)³³ procedure is applied, which consists in assessing a specific dispute in the context of a foreseeable court ruling, which can prevent claims from being raised at the pre-court stage when the claims are highly likely to fail in the court of law. There is no obstacle to entrusting the pre-court assessment of a dispute to external parties. However, within the internal structure (especially within the responsibilities exercised by the legal departments), it is reasonable to distinguish entities, the responsibility of which will include the initial evaluation of the dispute preceding subsequent legal actions. This evaluation should include not only the actual likelihood of winning the case in court, based on an assessment of the evidence and the legal status but also the cost-effectiveness of the court and enforcement proceedings since it may turn out that winning in court will not bring the expected financial effects as a result of ineffective enforcement of the claim. The task assigned to such an entity would be to select the

30 For more on types of trust, see Fells, Ray, "Effective Negotiation. From research to results." (2012): 27.

31 Journal of Laws of 2024, item 928.

32 On optimising the use of ADR see Balzer, Benjamin and Johannes Schneider. "Managing a conflict: optimal alternative dispute resolution." *RAND Journal of Economics* 52, no. 2 (2021): 415-45.

33 Interestingly, the ENE originates from a judicial procedure, see Nolan-Haley, Jacqueline M. "Alternative Dispute Resolution. In a Nutshell." (2001): 232.

appropriate dispute management means³⁴, which could result in the avoidance of any actions³⁵ (for example, when information about a dispute may have negative consequences for the reputation of the company), the selection of pre-judicial dispute resolution tools or finally the initiation of a procedure aimed at resolving the dispute before an arbitration court or a state court.³⁶

Mediator in the Company Structure

As mentioned above, the design of solutions to prevent, manage and resolve conflicts within an organisation should be based on mechanisms adapted to the model of the organisational structure of a given organisation, including, inter alia, the scale of its operations, geographical area and level of employment, becoming an element of the process management. The key is not so much to formally implement mechanisms aimed at the amicable resolution of disputes but rather to guarantee appropriate standards for their performance, included in the internal rules, ensuring, on the one hand, easy, transparent, free, universal and worry-free access for employees and, on the other hand, constituting such safeguards as voluntariness, confidentiality, impartiality, neutrality³⁷ and, at the same time, independence of the person conducting the proceedings to resolve the dispute. A method that corresponds to the aforementioned standards while being extremely versatile and highly flexible and is based on the principle of voluntary participation is mediation proceedings. It is, in fact, a set of safeguards that provides a framework and a model for the proceedings in which a properly prepared mediator plays a key role. The tasks assigned to the mediator as an entity operating within the organisation can include education of employees to make them familiar with the dispute resolution mechanisms, education on the course of the proceedings and activities aimed at building trust in the institution of mediation, shaping employees' awareness and skills in the area of conflict resolution, including the ability to resolve minor disputes and misunderstandings without having to resort to procedural solutions. The company should also be responsible for implementing an information policy, including promoting the employer's willingness to resolve employee disputes and promoting a culture based on amicable resolution. This is aimed at promoting the right attitudes of employees and shaping an organisational culture geared towards preventing and solving problems to resolve conflicts in both an efficient and cost-effective way.³⁸ However, the key task of the mediator is to professionally assist in the amicable resolution of disputes between employees and between employees and the employer. Therefore, from the perspective of formally building trust in the mediator and the reliability of his or her function, it is important to establish safeguards of impartiality, neutrality and independence by, inter alia, appropriately positioning the mediator in the organisational structure of the company and providing formal and legal protection to enable the mediator to act freely and under no pressure.

It is important to emphasise the clear need to separate the mediator's function from personal links with employees and persons holding managerial and executive positions to meet the requirement of impartiality, understood as the absence of personal links with employees. Both in the case of the desire to ensure impartiality and neutrality or safeguards relating to the mediator as a person who does not advocate any of the parties in the dispute and who has no interest in a particular way of resolving it, the mediator mustn't be a person who is responsible for the execution of the process of management of employees and the duties carried out by them. Contrary to the solutions that sometimes work within an organisation, the mediator should not be the manager³⁹ in charge of a subordinate department of the company and, at the same time, the direct or indirect superior of employees. It also does not seem appropriate for a mediator to be a person who holds managerial functions in another department of the enterprise's organisational structure than the one in which the dispute has arisen. The mediator will always be a person who may become involved in helping to resolve the dispute on an ad hoc basis and, to some degree, by way of a function that he or she holds. This solution creates a risk of low efficiency, if only in the context of insufficient professional preparation requiring continuous personal development in dispute resolution and the risk of failure to guarantee appropriate quality standards of the assistance provided to an entity not exclusively established for this purpose. The impact of combining the functions of the mediator and manager that translates into a decrease in work efficiency, in terms of the basic duties carried out by the manager in a situation of his or her involvement in dispute resolution activities, should also not be overlooked. In

34 The catalogue of measures that can be used in the management of a dispute is presented by the Moore, Christopher W. „The Mediation Process.” (2014): 5-18.

35 See Neveloff Dubler, Nancy, and Carol B. Liebman. “Bioethics Mediation. A Guide to Shaping Shared Solutions. Revised and Expanded Edition.” (2011): 24.

36 Sherman, Naser and Bashar Talal Momani. “Alternative dispute resolution: Mediation as a model.” *F1000 Research* (2024): 9-10. Available at: <https://f1000research.com/articles/13-778> [accessed 8.11.2024].

37 See Kimberlee K. Kovach, *Mediation. Principles and practice* (Thomson West, 2004), 212-17.

38 Bollen Katalien and Euwema Martin, “Workplace Mediation: An Underdeveloped Research Area,” *Negotiation Journal* 29, no. 3 (2013): 332.

39 See Hannah Bowles Riley, “What Could a Leader Learn from a Mediator? Dispute Resolutions Strategies for Organizational Leadership,” In *The Handbook of Dispute Resolution*, ed. M. L. Moffitt and R. C. Bordone (Jossey-Bass, 2005), 411-12.

fact, as estimates by OU Human Resources University of Oklahoma City show, managers spend at least 25 per cent of their time on conflict resolution in the workplace, which translates into decreased work productivity.⁴⁰

To maintain independence, understood as the autonomy of action and lack of functional and organisational subordination in undertaking and carrying out activities, the mediator should occupy an independent and autonomous position in the organisational structure of the company with a maximum limitation of the subordination relationship, being solely accountable to the head of the Human Resources department or the management of the company. Sometimes, companies decide only to establish internal regulations for the amicable resolution of disputes, and when disputes arise, they employ external organisations to provide mediation services.⁴¹ This solution can be assessed positively from the point of view of guaranteeing independence, neutrality, and impartiality, but it has drawbacks. They are related to the need for greater transparency in reporting the dispute by the employees, often payment on the part of the employer, concerns about the disclosure of internal problems outside the enterprise, even if the proceedings are conducted confidentially, and sometimes also concerns about the external amicable dispute resolution service providers do not know the specific nature of the work in the particular organisation where the dispute has arisen. From the point of view of establishing a safeguard of the mediator's independence and excluding potential doubts about his or her independence, despite him or her being employed in the enterprise, it is worth considering providing the mediator with protection equivalent to that of trade union representatives while excluding the permissibility of trade union membership. This solution would aim at establishing a safeguard of job security and specific independence from the employer or the trade unions, excluding the potential risk of pressure and fears limiting the mediator's activity in connection with attempts to resolve disputes and problems that would be "undesirable" from the point of view of the employer or the trade unions. For employees, safeguards should be put in place to exclude the risk associated with the fear of disciplinary dismissal and negative consequences due to reporting and participating in a dispute.

In addition to the aforementioned safeguards that make up the canon of rules for the mediator, it is also important to make arrangements to ensure the confidentiality of the mediation proceedings from the moment when the dispute is reported through the process of resolving it to the outcome, with respect to persons not directly involved in the dispute. Confidentiality should, therefore, cover not only the stage of the formal initiation of the mediation proceedings but also the possibility of consulting the mediator anonymously and individually to assess the dispute and the mode for its resolution before the parties get formally involved and without any risk of adversely affecting the mediator's impartiality. As a person obliged to maintain confidentiality, the mediator should, therefore, have specific procedural arrangements in place that enable him or her to bring the aforementioned principle into effect. They should include not only guarantees of confidentiality of all information and documents exchanged during the mediation proceedings, excluding the need to collect documents and the results of the mediation, and, if the parties so wish, allow for the confidentiality of the fact of mediation being conducted. Therefore, this includes excluding the need to report the number, nature, subject matter, and, even more so, the persons involved in the dispute, thus eliminating the risk of marginalising the importance of disputes for fear of potentially having to report them. The safeguards of confidentiality should also be supplemented by solutions of an organisational and technical nature related to the place where mediation is conducted, allowing for the maintenance of confidentiality, including, for example, the possibility of using the mediator's assistance beyond working hours, without the need to use holiday leaves and breaks or seek the superior's permission to participate in the mediation during working hours while at the same time ensuring the possibility of contact and participation in the mediation using distance communication. It is also associated with the common availability of the mediator, which is not limited to the central headquarters of the enterprise but allows direct contact in the company's branch offices, which, in the case of companies with an expanded organisational structure, requires enough mediators to be recruited to guarantee speed and easy availability and, of course, the absence of any fees.

As far as the mediator's level of preparation is concerned, he or she should undoubtedly distinguish himself or herself by professionalism⁴² in terms of qualifications backed by experience and the need to continuously improve one's knowledge and skills. The mediator's level of professionalism should correspond to the requirements set for the professions of public trust that require high qualifications, appropriate character traits, and compliance with ethical standards.⁴³ The mediator should be distinguished by impeccable character and respect among employees. As already mentioned, the function of a mediator should not be combined "by the way" with the occupation of other positions in the enterprise. Still, it should be strictly and exclusively

40 See OU Human Resources University of Oklahoma City, "Resolving Conflicts at Work: Employee Information." Available at: <https://hr.ou.edu/Employees/Career-Development/Resolving-Conflicts-at-Work> [accessed 11.11.2024].

41 Lourdes Munduatea, Francisco J. Medinaa, and Martin C. Euwema, "Mediation: Understanding a Constructive Conflict Management Tool in the Workplace." *Journal of Work and Organizational Psychology* 38, no. 3 (2022): 166-67, <https://doi.org/10.5093/jwop2022a20>.

42 See Yana Korneeva, Liudmila Shahova and Nina Skripchenko, "Mediators' professional competence and personal qualities in conducting conciliation processes with varying degrees of success," *SA Journal of Industrial Psychology* 48, no. 1 (2022): 3-11, <https://doi.org/10.4102/sajip.v48i0.1870>.

43 See Phyllis Bernard and Susan M. Yates, "Ethics for ADR provider organizations," in *Mediation Ethics*, ed. E. Waldman (Jossey-Bass, 2011), 339-67.

aimed at providing professional assistance in resolving disputes and providing education in this field with due diligence while respecting all standards relating to the mediator and the mediation proceedings. Undoubtedly, in addition to being adequately prepared for the mediator's function, the mediator should have knowledge in the field of the operations of the enterprise and the specifics of the working environment that exists therein, along with the knowledge of labour law and applicable in-house regulations.

The placement of the mediator in the organisational structure of the enterprise, the establishment of safeguards for the observance of the standards of the mediation proceedings and the mediator and the provision of protection for the mediator as well as safeguards of security for the participation of employees in the amicable resolution of disputes will usually take the form of an intra-organisational legal act which, on the one hand, should contain a general catalogue of standards and, on the other hand, contain precise safeguards for their observance. However, the willingness of the enterprise to participate in mediation and the development of a working environment driven by values based on the amicable resolution of disputes with employees should become a permanent part of the corporate identity and manifest the implementation of business social responsibility in employee relations.

Conclusion

Today, disputes are an inherent part of an enterprise's operations. It is not possible to enumeratively catalogue possible conflict situations that may occur in the enterprise. Disputes depend on many factors, particularly those related to the industry's specific nature, the business's size, the number of employees, and social and economic development.

The enterprise, which is also a workplace, cannot be deprived of a space for dialogue in resolving disputes between employees and between employees and the employer. The tools used for effective conflict management in an enterprise require an analysis of the organisation's internal needs. They should be based on mechanisms adapted to the model of the organisation's structure, including, inter alia, the scale of its operations, geographical area and level of employment. Conflict management is currently becoming an element of process management. Therefore, there is no doubt that a new approach to understanding the position of mediation in dispute resolution in enterprises is needed. A good direction for change is the introduction of dispute resolution procedures in the form of internal rules or sets of good practices that manifest enterprises' preventive commitment to resolve conflicts.

The mediation proceedings, which form a set of specific standards for dealing with a conflict within an enterprise, with a properly prepared mediator playing a key role, are particularly noteworthy. This procedure can be used both in the initial phase of a dispute and when it is already more advanced. Given the mediator's role to professionally assist in the amicable resolution of disputes, enterprises should position him or her appropriately within the organisational structure, maximising the protective safeguards of his or her impartiality, neutrality and independence.

An enterprise that demonstrates a willingness to resolve disputes in an amicable way, particularly through mediation, should become a new standard for developing an economy driven by values that are based on dialogue. This also affects the development of Corporate Social Responsibility (CSR), which should be a permanent component of the operation of any enterprise. The new approach in corporate management should be oriented towards managing conflict as a fundamental and one of the most important components of corporate interest. Consequently, strategic conflict management should be a fundamental element of the modern organisational culture, while an efficient amicable dispute resolution system should be one of the basic hallmarks of a modern enterprise.

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