

AN INNOVATIVE METHOD IN HANDS OF HUMAN RESOURCE PROFESSIONALS

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Abstract

The subject matter of this article is related to a so-called alternative dispute resolution method. Based on the ADR techniques mediation also contains a really big decision making competency for the parties. The neutral mediator helps for the procedure to be able to stay between peaceful frames. Nevertheless the parties work out a common solution conception, and the mediator only facilitates the process in most cases. At the same time mediation, mediators' skills and characteristics of the conflicts or dispute illustrate that the human resources professionals can use this toolbar successfully, too. This article demonstrates some Hungarian labour mediators' notices and a company labour dispute with win-win solution due to mediation and its techniques continuously following up what kind of skills needed to be a HR 'mediator'. The HR professionals concerned surely recognise that mostly it is about similar situations to those occurring in their business environment and their role inside of a company. Hopefully this tool helps them to settle conflicts and disputes on their workplaces.

Key words: mediation, conflict, dispute, HR mediator.

Classification JEL: M12 – Personnel Management.

1. Introduction

The paper is based on studying different conflicts and disputes extensively for sixteen years. The reason for this research is finding out whether there exists an adequate method to restore deteriorated human ties at least partially. Due to the deep investigating alternative dispute resolution (ADR) procedures, there was recognized that although mediation is not a 'jolly joker' card or a receipt for everyone, excellent results can be achieved due to its application.

The hypothesis is that as the role of a mediator, for example in case of a labour mediator is similar to those of a human resource professional nowadays. A so-called HR mediator has the opportunity to resolve conflicts and disputes by mediation and some techniques of this method.

First there will be briefly demonstrated a few characteristics of domestic labour situation. After then the author intends to illustrate in different aspect, how labour mediation works, where an HR mediator has an opportunity to settle conflicts and disputes or simply to refer to that it is worth using different mediation techniques like e.g. non-violent communication.

Research methods in connection with this article are based on short illustration of partial results of questionnaires for Hungarian labour mediators' notices relating to the social parties and parties in labour disputes involved and a claiming model concerning mediation improved by myself. After then a demonstration of a case study follows where it is about a company taken part in a labour mediation process because of a typical labour dispute between the employer side and local and sector trade unions representing interests of whole employees occupied at the company, and finally the reached a consensual agreement. I would like to emphasize the role of company's HR professionals highlighting some aspects through which mediator attitudes can be achieved also by a HR professional. Through a company case study it will be seen how the HR professional get from the closed or refusing behaviour to the open-minded and mediation techniques using situation. Finally I turn to a secondary analysis of a two documents dealing with a research carried out in circle of big multinational companies

situated in Hungary occupied high educated employees and HR professionals has a highlighted role in resolving conflicts and disputes in these organizations.

Aim of this paper is to illustrate skills and situations where HR professionals have an opportunity to work as mediators. With demonstrating and/or analysing the results of different researches mentioned above examination of the hypotheses hopefully brings convincing relevant results.

2. Conflicts, disputes, mediation and their companions

I use two expressions when it is about problem solution. I agree with the terminology of F. Tóth (2003, pp. 230–243) and R. Kántor (2006, pp. 13–15, 24–27). According to their definitions there is a remarkable difference between conflicts and disputes in the world of work. In the first situation the parties just notice that there is a problem, eventually they also talk about their experiences. It can occur that they only feel frustration they feel that something is not in order. In case of a dispute the parties concerned clash their views, they express their expectations and aspects related to the situation in institutionalized frame. Finally they try to find out a solution, too. Other reason for using rather the express of dispute in labour context than conflict is that the latter one is mainly accepted definition and expression you can find in the legal environment in case of labour issues: collective disputes, labour disputes, legal disputes etc. However the professionals dealing with labour statistics, proceeds or mediation process often use both as similar expressions (Berki, 2008, p. 10; Kovács, 2012, pp. 397–409, 428). The borderline isn't so strict as it seems to be.

On the other hand in case of a HR mediator it occurs also conflicts (workplace situations) and disputes where he 'mediates' or at least 'facilitates'. Hereinafter I use both terms, but not in the same sense.

During mediation a neutral third party whose involvement was mainly requested by the parties attempts to reduce tension in order to steers the stakeholders towards a consensual agreement. This agreement is elaborated by the parties.

The Hungarian Labour Mediation and Arbitration Service (Munkaügyi Közvetítői és Döntőbírói Szolgálat) provided by the state is entitled to resolve labour disputes by means of arbitration, conciliation, mediation or simply coach activity. Although the asymmetrical power relations between the social partners, employers and employees is a general phenomenon, and there are several other factors which can prevent demanding mediation due to the counterbalanced power relationships established during these procedures LMAS reports reveal that 93% of the mediation procedures were concluded with an agreement. Even so 5 – 10 cases each year are being dealt with by mediation (Kovács, 2012, p. 428).

For example in 2008 the LMAS perceived 7 labour disputes.² In order to resolve those the LMAS offered to help the parties. The parties concerned asked mediation in 3 cases, coaching in 2 cases. During the whole year here has been 5 mediation procedures on enterprise and sector level. There had been worked out a consensual agreement in 4 cases and one process took place more than 15 months.

The needs are met in a consensual agreement and parties leave satisfied the meeting room. Hopefully the relationship between the parties will not deteriorates further later, on the contrary, such a negotiation has the potential to be improve the parties' ties (Barinkai, Herczog & Lovas, 2003, pp. 65–69)³. The parties' inclination to cooperate, which is essential

² In original text there was the expression conflict, but according to the terminology of legal regulation and in labour aspects those were disputes.

³ They refer to the results of a longitudinal survey, carried out in England and in Wales, (Report on Family Mediation, Council of Europe, Strasbourg, 2000, p. 29).

for the company's operation and efficiency, suffers no harm and may even improve therefore the negative developments are not expected to occur. Based on these phenomena it is worth choosing mediation rather than another strategy to settle disputes. (Lovász, 2009a, p. 14; Lovász, 2009b, p. 6)

Social partners at each level of labour disputes (for instance on company level) demonstrate a complex set of factors in case of using or rejection mediation. There can be seen a multiple logical relations between those and cause-and-effect relationships in the model drawn up by myself. In general 'social partners' expression can be replaced simply with 'parties' from any organizations as the experience shows that similar obstacles or just factors contributing may arise in conflicts among employees, within groups, between supervisors and subordinates and between different departments (Lovász, 2012, pp. 2–3).

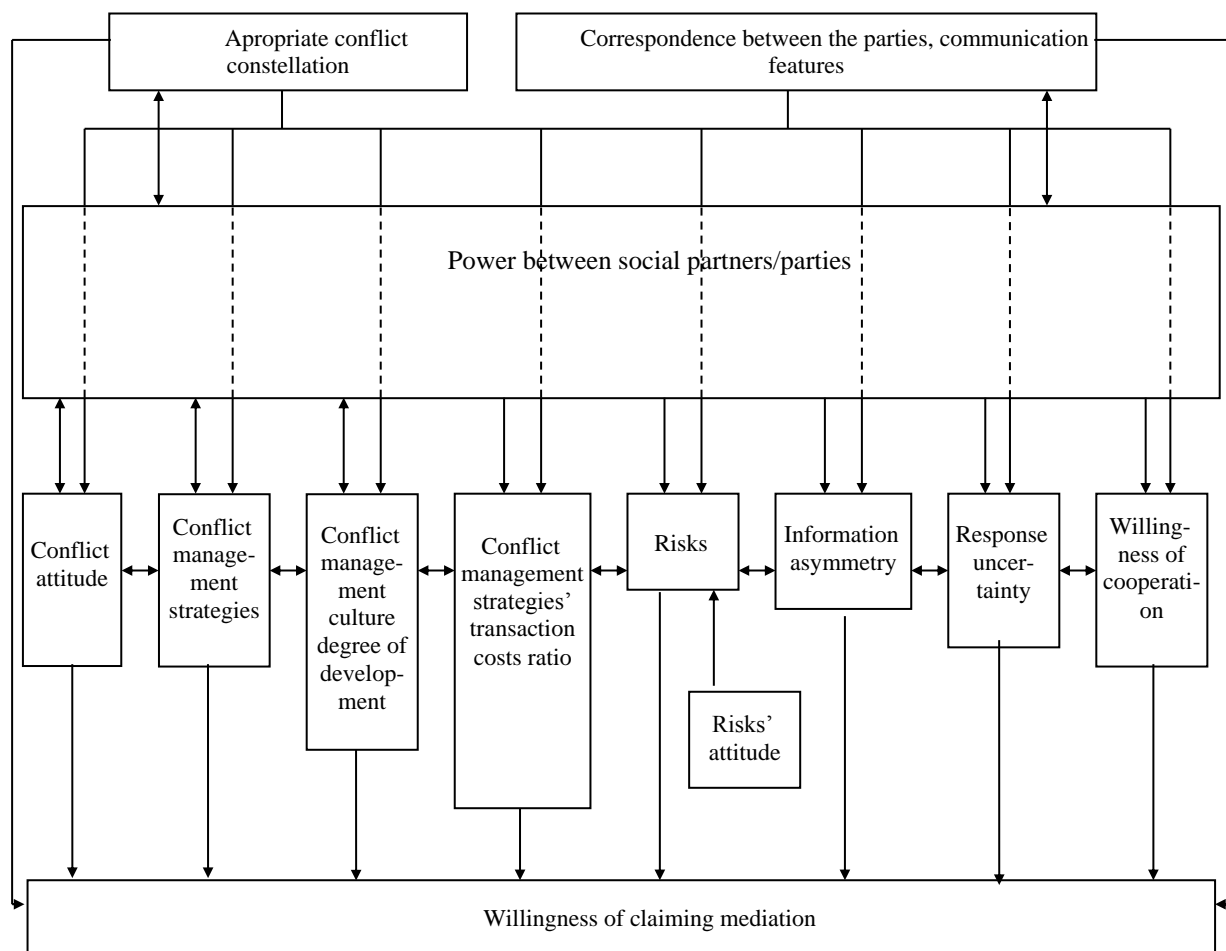


Figure 1: Claiming model of labour mediation (own model of author, PhD. thesis, 2009, p. 83)

„Information asymmetry and risks interact, for example. The model elements mostly directly result in the use of mediation (e.g. conflict constellation) but some do only indirectly (risk attitude). Whether the parties invoke the mediation to the dispute, many items themselves and are jointly determined starting from the inaccurate stereotypes from the mediator until the quality of communication between the parties. Examples for the element first mentioned: „What is that the mediator will not represent my interests? Doesn't he/she want to help? Does he/she side with the other party then?” The latter factor demonstrates a rather low level in case of social partners and in some cases of interpersonal conflicts.”

(Lovász, 2009, p. 83) These elements of distrust or information asymmetry will not emerge in case of a HR mediator if he becomes a really neutral party in conflict resolution.

The new Labour Code extends the scope for works councils. Due to this positive change these organizations can eventually represent employees' interests more widely. At the same time the scope of trade unions meaningfully decreased.

Additionally there is no form of representation of employees' interests in more than three-quarter part of workplaces (78%) as it was mentioned relating to a research for „Workplace employment conditions – 2010”. The study finds that according to the results of research neither trade unions nor works councils are represented in the workplace in case of more than two-thirds of employees working on sites with at least 10 people (Neumann, 2011, p. 2). So the HR mediators has perhaps their duty to use mediation techniques in their labour and business environment. In practice the themes typically handled in mediation cases are: wage disputes, privatization cases, collective redundancy and issues of a collective agreement.

In recent years we have heard about social partners protesting or going to court in order to determine the level of sufficient services during a strike, or for courts to establish the unlawfulness of the announced strike or the employer's conduct (Lovász, 2009, p. 11). Since escalating the global economic crisis we have been hearing a lot about deteriorating working conditions, closed and reopened enterprises, and increasing unemployment and further direct actions in 2013 and 2014 like strike readiness at BKV, the Budapest Transport Company, the threat of strike at MÁV, the Hungarian Railway Company, or frustrations related to wage issues in electric sector.

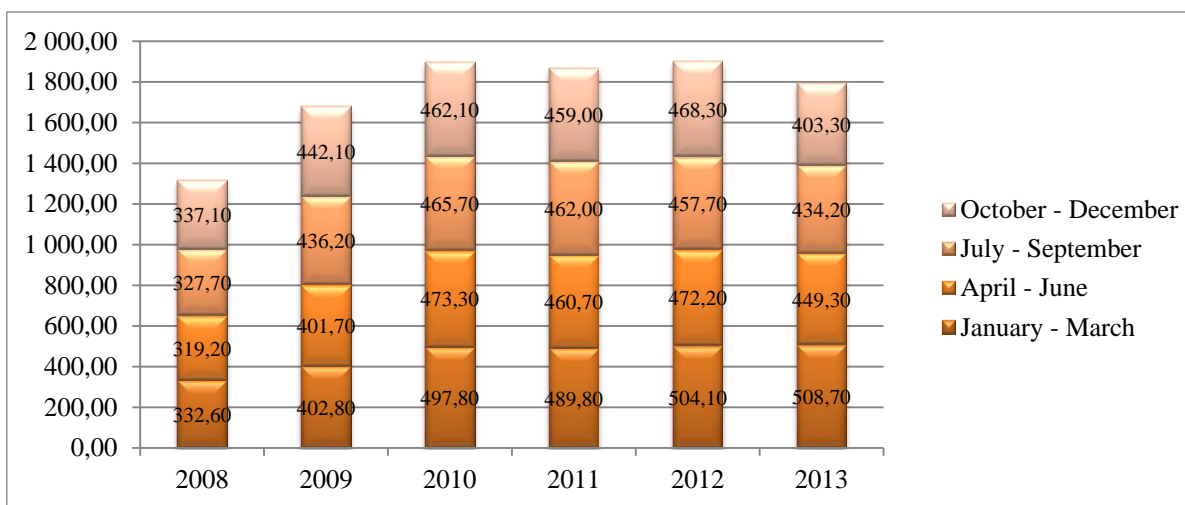


Figure 2: Unemployment data 15 – 74 aged (1000 persons),
(based on First release to the latest CSO data; Hungarian Central Statistics Office; pp. 1–2)

However, the employment statistics of the about last few years in Hungary and more than 40 strategic agreements between the state and important companies in order to preserve the workplaces are encouraging. These agreements were established with big companies like Glaxo Smith Klein, Waberers' International, Hungarian Telecom which are significant in aspect creating jobs – 5500 workplaces – and investing – 650 billion forints new investments (Hungarian Gazette 2014a, p.4516; Hungarian Gazette, 2014 b, p. 2473.; MNO 2014; HVG 2014; MHO 2014).

It is important to notice that a part of total employment data contains the number of people employed due to so-called public employment. These people were mostly long-term

unemployed earlier and their salary is just enough to keep body and soul together if at all. On the other hand the data of first release of CSO can be seen till 74 years. At the same time the retirement age was increased from 62 years and 183 days to 64 years and 183 days between 2010 and 2013. From 2014 it is 65 years for everyone who was born in 1957 or later. Furthermore there is an opportunity to be employed after the age of 65 or the actual retirement age depends on different sectors. Additionally nowadays employees have to choose between a pension salary and a salary at the workplace. The employment data are influenced also due to the opportunity that someone has already 40 years duty time before reaching retirement age (Ado.hu, 2013, p. 1).

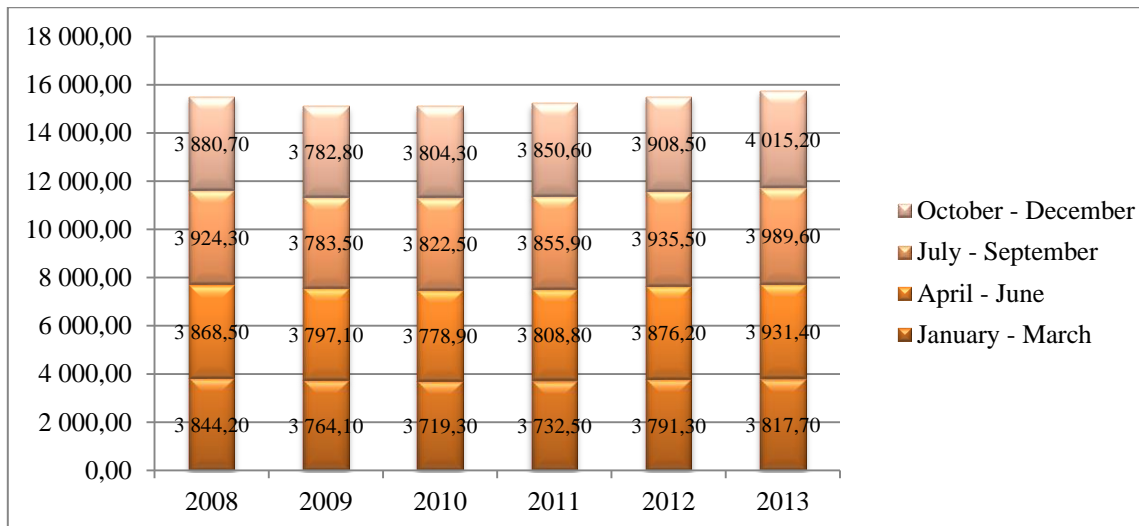


Figure 3: Employment data 15–74 aged (1000 persons),
(based on First release to the latest CSO data; Hungarian Central Statistics Office; pp. 1–2)

The factors mentioned above may cause serious frustration at workplaces which increases the chance of occurring conflicts and disputes between the employees and/or employers. A conflict is destructive when it has very serious consequences and when there is a danger that the relationship between the parties deteriorates (Barcy & Szamos, 2002, pp. 16–17). Mediation may be used not only in the so-called segregation phase of the conflict – where there is no communication between the parties yet – but subsequently at the hate-based destructive phase stage as well where they seek to deteriorate their relation by destruction of reputation for example. In the former phase „the parties are either unwilling or unable to communicate directly,” (Göncz, Geskó & Herbai, 1998, pp. 23–24).

The labour disputes are often based on disagreement about employees' wages. On the other hand there are conflicts where it would be needed to solve the frustrating situation at micro-level. In case of conflicts inside of working groups people can argue with each other because of personal or organization-related problems like different values and interests, scarce resources, optimal working conditions, etc.

To resolve these conflicts or disputes the parties often give preference to traditional strategies, looking for a compromise without satisfaction, rivalry, avoiding and/or refusing the conflict, litigation, direct actions, etc., which have negative externalities and huge transactional costs for all the parties concerned. Transaction costs may contain in the case of litigation, choosing and contracting legal representatives and experts, preparing for the cases, otherwise the organisation of a strike, assessing the willingness to take part in direct action, furthermore preparing for collective dispute. Selecting the mediator and taking part in the

procedures also takes up time and energy. The win-lose situation negatively affects the relationship and company prestige at the market and in business ties. The HR mediator has to recognize these dangers and to try to prevent serious damages or at least to hinder escalating destructive conflicts.

The HR mediator is partially a neutral outsider and works like a coach whose exercise is to diagnose the conflict, define its type and try to reduce the tension and steer the parties toward a resolution or eventually find a solution (*Mastenbroek, 1987, p. 166*).

3. The initiates – Mediators' notices

The research in connection with this topic contained two questionnaires, one with 59 questions for mediators with labour mediation practice collected inside of LMAS, theoretical knowledge and labour relations experiences (23 people) and one with 16 questions for those without practice, but collected experience in labour relations and had deep theoretical knowledge about labour mediation (20 people) and interviews with the first group. The questions for the experienced mediators were related to e.g. the constellation needed claiming mediation and how was conducted the mediation process. Due to the useful responds the author managed to get a wide spectrum about the labour mediation's and labour relations' situation in Hungary.

Based on the labour mediators' experience⁴ collected in labour relations and labour mediation processes the level of continuous communication between the social partners is basically acceptable or hardly acceptable. In much less cases it is good or poor or underdeveloped. Except of the nine code and lack of data or responds, the majority finds it weak. Let's have a look at the clarity of communication. Based on the results it can be concluded that it is mostly classified as acceptable or hardly acceptable, too. The code of nine and lack of data occurred with the same number and with the same mediation procedures as in the first aspect. The level of confidence was found acceptable or hardly acceptable in most cases. The mediators perceived total distrust between the parties. The cooperation attitude is similar to the other considerations (*Lovász, 2010, pp. 56–61*).

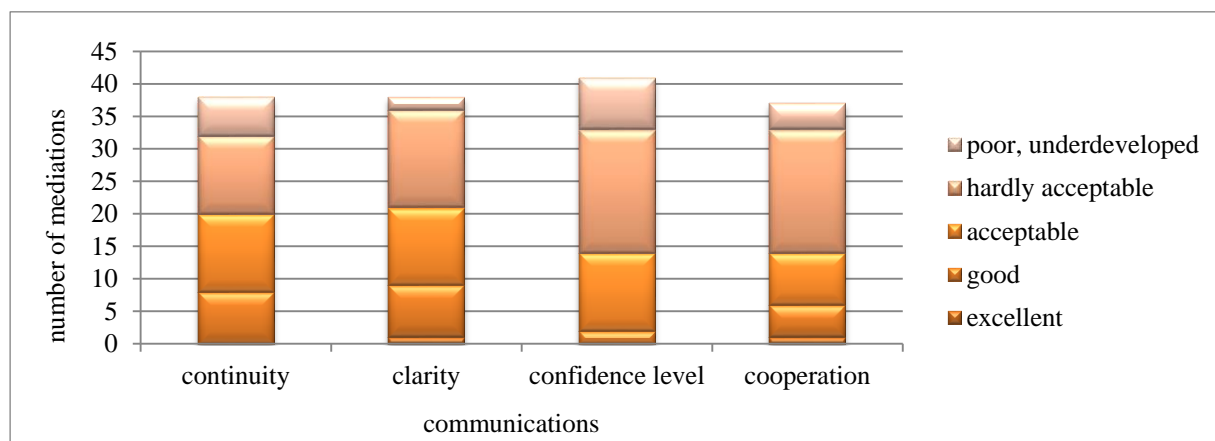


Figure 4: The relationship of social partners (*Lovász, 2004–2009, pp. 15–17*)

Ten mediators among those who were interviewed experienced that power relations of social partners had been unbalanced and generally employers had more power. This was explained by, inter alia, that it is difficult to reconcile the interests on the trade union side.

⁴ Based on the answers of about 43 labour mediators taken part in a research investigated the relations of social partners, information asymmetry between them etc. between 2007–2009.

Trade unions are weak or employers are able to prepare for the expected conflict due to the advantages from this situation, for example referred to the information (Lovász, 2010, pp. 60–61). The overall conclusion is the mediators found the communication of social partners weak. This statement is in accordance with findings of social partners interviewed inside the same research that their labour relations are not well organized at all (Lovász, 2010, p. 61).

The investigation of prestige factor was realized by these questions for example: „Do you know a conflict where the parties could claim mediation, but they didn't?” and „What was the reason for that?” The questionnaire for mediators who had real practice in this procedure (23 people)⁵ nine responders gave an answer „Yes.” Among them three mediators gave the next pieces of information which clearly refers to the fears relating to the prestige:⁶

- „Do not take out our affairs to others.”
- „The most typical reason is that social partners are afraid of getting dirty on the streets and the problem reflects badly on the employer or the trade union in aspect of mediator and this issue will be known for others, too.”
- „We do not turn to the third party. The indinstinctive trade union's fear relating to the authority,” (Lovász, 2009a, p. 139).

In interviews it has shown that prestige means an obstacle in claiming mediation. This factor occurs on both parties. Mediators believed in equal proportion (6–6 people) that the issue of prestige appears on the side of employers and the trade unions, too (Lovász, 2009a, 139). In general, both sides overrate reputation and seek to maintain their good reputation and authority by trying to settle the conflict inside the organization. This phenomenon occurs enhanced in case of employers. The author's opinion is that a HR mediator could get more opportunities to intervene in these situations than an 'outsider' mediator.

4. Once upon a time...⁷

The organization is a multinational wholesale company. The number of its employees was about 5000 people nationwide. There has not been any collective agreement. The reason for that was the relatively unsettled labour relations and the local trade union taken part in mediation was not representative and the redundancy was not typical. It occurred labour litigation in case of individual issues.

The relations between social parties were active. If it was needed collective negotiations relating to wage issues was organized for example. The human resource director always took part in these negotiations. The general manager also participated in the most important turning points. In case of cooperation agreements the financial director was also involved. According to the management people could directly ask them their questions. The wage dispute that will be demonstrated covered almost the 85% of the whole workforce staff of the company.

The employer did not find the local trade union suitable negotiating partner because of the lack of representativeness. During this expression the employer understood the magnitude of union membership. The employer later negotiated with the local and sector unions together.

The union did not start the strike before the mediation but maintained strike threat almost during the whole process. After the procedure direct action did not take place, either.

5. Mediation process in a company in private sector⁸

⁵ The number of responds contains all mediators' reflections, who had mediation experience and arbitrators', too, because the questions did not refer to the issues where they took part as a third party, e.g. in an arbitration.

⁶ Here it can be identified as good reputation and authority.

⁷ The demonstrating of case study is based on a part of author's doctoral research (Lovász, 2009a, pp. 147–150).

The subject matter of the dispute was annual wage increase and fringe benefits.

The opportunity of the mediation was suggested by a lawyer to the employer who trusted him which helped to accept mediation procedure. As an outsider, he was able to see that the parties reached an impasse. According to the employer the confidence had an important role in claiming mediation. Next step was that the employer conciliated with the trade union about the potential mediation. They accepted the recommendation because the sector union already knew the mediation activity of LMAS.

The director of the Service has offered mediation to both parties as their conflict became well known. Finally a mediation negotiation was started. The Hungarian HR leader and one officer of the sector union were present continuously. Several times the HR director from abroad, the lawyer, officers of the local trade union and sometimes one more person from the sector union were attached. This phenomenon illustrates the open/minded attitude of HR professionals in this issue.

The HR professional had an opportunity to conciliate with his superior if it was needed, or in the issue that the trade union should not start the strike yet.

As the employers did not have any previous experiences related to an ADR procedure and did not know the mediator personally, initially there were doubts as to whether there will be an impartial party. If the parties trust the person who recommended the mediator, they will give the mediator the benefit of doubt. In author's interpretation the degree of satisfaction with the mediator's professional experience and his/her authority in the specific area where he/she works are factors determining confidence.

During the mediation process the mediator developed trust towards the employer side. In time, they could trust that everything what has not been authorized to disclose the mediator really will not communicate to the other party. „We just received that when he wanted to check some data in detail he assured us that only he deals with or if he wanted to use it toward the other party he asked us whether he can do it. He also clarified the parts in question,” said the HR manager. Actually the HR professional took a look inside to the mediators' behaviour which he will be able apply by himself in a similar situation.

According to the employer side the mediator helped them to find common platform to communicate. According to the trade union (sector and micro level together) they were able to move beyond the stress raisers. Due to the mediator the parties could clarify what are the expectations.

In the first part of the mediation there was strike alert there. Finally the union announced that it was withdrawn and replaced with the strike threat. The parties managed to agree with the annual wage increases and fringe benefits. They promised organizing and formalizing labour relations. An agreement was concluded at the end of the mediation process. After the procedure there was no retaliation from the employer side. After this, the mediation co-operation between the parties returned to normal. A co-operation agreement was reached years later as an indirect result of the mediation case.

The employer's preference for mediation over court case accompanying one-year wage increase strike. This is because, in his view, mediation is faster and more effective than the judicial way. The employer side is satisfied with the national mediation institution while with the court much less. Despite this the employers' side did not wish to claim mediation at all later. They are willing to do everything to avoid this procedure because they do not want to spread out the laundry. This is consistent with mediators' comments relating to the reason for rejection mediation from employers' side. In this case there is an opportunity for the HR

⁸ The demonstrating of case study is based on a part of author's doctoral research (Lovász, 2009a, pp. 150–161)

professional to participate in the dispute as an 'inside' mediator! The union's opinion was that mediation was good for the parties to overcome personal problems and dissolve the accumulated tension. They considered that direct negotiations are the best solution in bargaining but if the disputants reach an impasse or employers proposes to do so, of course, the union agree to mediation as a mean.

The union and the employer were gradually opened to the mediator and each other, too. They could talk about their problems, clarified misunderstandings, shared important pieces of information and improved their relation. Due to these factors they reached an agreement (Lovász, 2009a, pp. 147–161).

6. Mediators within circles

According to the experience of a research carried out by dr. Judit Vincze Lux the main factor which is worth taking into account is an open-minded attitude in case of HR professionals. They work as so-called inside mediators between the owners and employees or trade unions. They have an important role preventing or resolving conflicts (it is not definitely about collective bargaining). In the sample she collected factories dealing with manufacturing of unique products and occupying higher educated employees. The Jolly Joker „HR becomes the shaper of labour and human relations,” (Kertész, 2013, p. 1; Lux, 2013, pp. 1–13).

Recognized this new tendency there are organizations focusing specially on trainings which combine the two professions: human resource management and mediation. In case of HR the key characteristics are through a modified version of mediation if there is no trade union and work council either. It is a usual duty in order to lobbying, influence and mediation (e.g. information), (Kiss, 2010). The special interest for training improvement of intellectual capital of companies including coaching activity is also enhanced in circle of employees in SME environment according to a Polish survey conducted in 2012 (Sokół, 2013, p. 128–136). The innovation is not only a way of development but surviving the global economic crisis according to different Hungarian companies (ÓU – Student case studies 2013–2014). Mediation or its techniques are really innovative ones giving an opportunity for companies to preserve market position and simply to survive in accordance with comprehensive definition of innovation relating to creativity, openness and procedural flexibility (Matuska, 2011, pp. 1–13). A HR professional instinctively tries to bring the parties on a common platform where it is a natural part of his activity.

The HR professionals have big experience in conflict management and due to the qualifications focused on coach approach ideally seek to show more empathy and try to be sensitive to the problems. The different education methods for leaders included HR professionals, for example ADR for HR professionals, change management, servant leadership etc., help them to change their attitudes.

According to the results of the research carried out into the area of HR professionals' attitudes in a big company environment there is a generational change in the area of HR. The human resource management is particularly focused on keeping in touch with trade unions and other organizations representing interests of employees. The social partners included HR professionals seek to resolve disputes as mediator or peacemaker (Kertész, 2013, p. 1; Lux, 2012, pp. 1–13; Lux, 2013, pp. 4–7).

The researcher investigated eleven foreign-owned companies with high educated workforce which requires special attitude from employers' side. These employees cannot be easily replaced, are more open for further trainings and have a rather partner relation to the employer. These factors help social partners to establish more counterbalanced labour relations. According to the results of the research it was find out that HR professionals take a part more often in preventing and resolving conflicts. It is more typical in case of higher

educated employees, the larger trade union organization, the co-operation between each partners and different levels of organizations representing interests also in case of work councils. Concerning the employer side a change in attitude can be experienced. The human resource is involved into strategic issues like redundancy and kind benefits more deeply. In general according to the owner the human resource department is responsible for people and competent in these issues. The investigated companies very often qualified the decision makers. These trainings were partially suited for helping them to become a special expert who can handle a situation as an outsider almost like a mediator or a coach although the two terms are not the same (*Kertész 2013, p. 1; Lux 2012. pp. 1–13; Lux 2013, pp. 4–7; Lovász & Krén, 2011, pp. 11–33*).

7. Conclusion

Similarly to the mediators' skills needed to be the labour mediators, a 'HR mediator' is suggested to have such skills to be able to settle conflicts or disputes successfully. The requirements to become a mediator in labour environment are as follows:

- Psychological capacity;
- Diplomacy;
- EQ;
- Objectivity;
- Empathy;
- Social skills;
- Excellent communication skills;
- Creativity;
- Flexibility;
- Negotiation skills;
- Composure;
- Balanced Personality;
- Stress Tolerance;
- Sense of humour;
- Ability to comply with boundaries;
- Free of the cynicism, revenge, manipulation; etc.

Naturally a labour mediator does not behave like an angel nor as a HR professional. Based on social partners' notices related to the prestige issue mediators' feedbacks and case study mediation techniques for HR professionals seems to be worth learning. Nevertheless HR professionals seem to be combining and undertaking the roles of mediators, trade unions, as well as work councils. The question is, is there any reason for worrying about whether they will be able really neutral persons in a conflict, where the side of employers and employees are concerned, or vice versa, how can they represent the interests of both sides while HR professionals are not independent of the company and the owner, either? Ideally the HR mediator should correctly and objectively judge the situation. Then he should make a decision if an intervention is needed. If yes, the HR mediator should explore the real needs and expectations as a neutral party on an adequate level of empathy for both parties depending on the situation and type of communication between those involved the dispute.

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