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Trade magazine for Conflict Resolution – Leadership – Communication

Mediation from the Perspective of Ukraine and European Union



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Issues and What Are the Prospects?

Family Mediation
in the Time of War

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International Mediation and Negotiation Skills Will Foster Amicable Conflict Resolution on All Levels

Welcome Readers!

It is indeed a pleasure to begin the year by sharing the second global English language edition of *The Mediation*. This publication brings a dynamic and diverse range of articles and inputs from professionals around the world, focussing on mediation developments, legislation, trends and experiences.

Russia's invasion of Ukraine in February of last year continues to elicit deep sadness and global outcry. With gratitude to our Ukrainian colleagues, we proudly share a series of articles providing nuanced insights into mediation in the country.

French colleagues relate their personal experiences of war and conflict in an inspiring piece highlighting the role mediation can play in restoring dignity to parties and contributing to peace in the world. From Poland, we receive a compelling entry on mindfulness in mediation. Practical and accessible exercises make the possibility of integrating the concept into any mediation both real and achievable.

Authors in Italy and the UK contribute their thoughts on mediation legislation and the uptake of mediation services in their respective countries and across the EU, exploring some of the challenges and triumphs in the field. Digitisation of mediation in the United States and the use of 'AI' technology invites readers to imagine the future of mediation.

In 2020, the EU funded InMediate Project began with the aim of establishing a European International Mediator professional profile through the development of an international training curriculum. Designed and delivered by partners in Germany,

Italy and Poland, the project comes to a close in the spring. On March 2, 2023, the InMediate conference will take place, sharing learnings and outcomes from the programme and offering a terrific line up of presentations on a range of mediation topics. Also the developed curriculum will be presented to the public as an open source document. Furthermore experiences in international mediation and negotiation will be shared. Please join us in registering for this free event!

Thank you for your interest and we hope you enjoy your reading! Feedback and engagement with this work is both welcomed and encouraged as we continue to strengthen and enhance collaboration across our global mediation community.

With best wishes for a happy, healthy and peaceful New Year ahead!

Yours,

Allison Malkin

Jonathan Barth

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Editor-in-chief Allison Malkin

“In a world of continuous rapid changes, struggle for power and scarcity of resources around the globe, the ability to mediate internationally is needed more than ever.”



Editor-in-chief Jonathan Barth

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**MULTI-TIERED OR MULTI-STEP
CLAUSES FOR DISPUTE RESOLUTION**

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Korian Mediation: What are the Issues and What are the Prospects?

Following the commitments made by the Korian group concerning the implementation of its Social and Environmental Responsibility policy, Claude Czech, honorary magistrate, was appointed Independent Mediator for Korian France. Former president of the tribunal de grande instance of Avesnes-sur-Helpe and vice-president of the Regional Institute of Mediation of Occitanie (IRMOC), he explains to us how he hopes to be able to restore dialogue between families, residents, the nursing staff and management in accommodation establishments for dependent elderly people (EHPAD) managed by Korian.

Interview with Claude Czech, the Korian France Mediator, conducted by Tine Roth

November 2022

Tine Roth: Mr. Czech, can you tell us how your appointment at Korian came about?

Claude Czech: My appointment at Korian is the result of a recent process and also the fruit of a life story. Contacted beforehand by Thomas Prétot, Director of Mediation at Korian, I was appointed in June 2021 as an independent Mediator of Korian in France for a period of three years by a college made up equally of representatives of the company and consumer protection associations after the assent of its Stakeholder Council.

I received a mediation degree from Paul Valéry University in Montpellier in 2017, and arrived at mediation through conciliation, which I usually practiced in my functions as a magistrate. Since 2001, I ordered mediations in family matters. Today, the office of the judge comprises three missions which are to settle the dispute by a judgment, to attempt the conciliation of the parties or, to have recourse to mediation. In 2018, I organized the Assises of the European Grouping of Judges for Mediation (Gemme) in Bordeaux on the theme “Developing a culture of mediation”. It is based on this experience and that of having been a guardianship judge, that I was sensitive to Korian’s wish to introduce mediation in nursing homes in order to provide a reasoned and appeased response to the tensions arising between families and professionals who work there.

Mr. Czech, you say “introduce mediation to Korian”. Why do you think this method of amicable conflict resolution is not more widespread in the business world?

Indeed, France seems to be a country of conflict and not of compromise. This is, in my opinion, the main reason why mediation as an alternative method of conflict resolution is slow to become part of the French landscape. I conducted a survey on the factors of resistance to mediation for my dissertation,

entitled “Societal resistances to mediation”. It turns out that despite a legal framework which is favorable to mediation, reluctance persists and is essentially cultural. The legal framework for mediation is very important here because it must reassure litigants. However, the law of February 8, 1995 and its decree of application nevertheless established a framework preserving the rights of the parties. They list the principles of both judicial and conventional mediation, namely the impartiality, independence, competence and diligence of the mediator, and provide all useful guarantees.

However, if the process seems to be stagnating in the judicial world, it is experiencing real growth in the spheres of civil, social, economic and administrative life. Since the order of August 20, 2015 relating to the out-of-court settlement of consumer disputes – which is the transposition of the European directive of May 21, 2013 – mediation also benefits from an additional space allowing disputes to be resolved between professionals and consumers, during the execution of a contract selling or providing services.

Work is a place where different or even divergent points of view necessarily coexist – in our case, that of dependent elderly people, families, caregivers and financial matters. How do you restore dialogue in the event of a disagreement?

Absolutely. The challenge is to be able to listen to the families, the residents, but also to the professionals working in these establishments. Families need to be reassured. The elderly need attention and to be listened to, sometimes with the difficulties that this implies in terms of availability or capacity. The working conditions of the staff are to be taken into account. What constrained choices does he face when he is understaffed? The lack of staff, “irregular covers”, and training, are crucial in terms of operation and organization of work in nursing homes and clinics. Like other sectors, these structures are experiencing

The Chance of Misunderstanding in Mediation

The moment that often leads to desperation in a dispute is a situation where the disputants do not understand one another. In fact, this is sometimes the moment when a quarrel starts. It is difficult to develop a common approach to find a solution when individuals do not understand their opponents. It is precisely this mutual lack of understanding that offers a mediator the opportunity to take the proverbial wheel and guide disputants through the conflict.

Antonia Voit

My name is Antonia Voit and I am a 23-year-old law student at the University of Vienna. I participated in the IBA – VIAC Consensual Dispute Resolution Competition (CDRC) Vienna in July 2022 and won second place as a mediator. During this mediation and negotiation competition, where I had the privilege to represent the University of Vienna, several moments occurred when the two parties involved failed to understand each other. I specifically remember one of these moments due to the complexity of the project.

With one side already engrossed in the details and a busy conversation taking place on both sides, at first glance it seemed as if an agreement could be imminent. Yet to be honest, I did not understand what the parties were actually talking about and so I found myself in a dilemma.

Shall I raise a question to clarify what we are actually discussing, or allow the dialogue to continue uninterrupted, so as not to endanger a potential agreement? Without further ado, I trust my gut feeling and inquire openly and honestly, “What are we talking about when we speak about this project?”. For a short time, everyone is silent. Then one party explains once again what it is all about, while the other smiles and later says, “Thank you for clarifying that – I wasn’t quite sure myself what we were talking about”.

In the world of business, it is quite possible that agreements and projects are often completed without the parties involved knowing exactly what work they are agreeing to do. The example in the competition illustrated this well, highlighting that the disputing parties are often already so entrenched



in their positions that they themselves are unable to shift their perspective and explore the opposite side. The task of mediation is namely to ensure that both sides understand each other and have space to express their views. In mediation it is important to constantly ask questions and if mediants are not able to do so, the mediator has to intervene and clarify the situation.

The Secret Language of Emotions in Mediation

Emotions are an important aspect of everyday life, and are a frequent topic in business mediations in particular. This arises not only because people are sitting face to face, where their emotions can be showcased, but they may be part of entire companies where the expression of emotions are not common. From the social point of view, emotions are undesirable in the corporate world. Instead, objectivity is required. However, a company could not exist without people and their emotional realities, which makes emotions an integral component of any company. For this reason, it is crucial to provide a stage where the emotions of those involved can be present.

Emotions can be used constructively, especially when it comes to finding a suitable solution. Behind emotion is usually an interest, and when this is properly illuminated, the essentials of the issue can be discussed. Therefore, an important realization is that emotions are very important in mediation and must be communicated.

In the mediation mentioned above, it was probably the case that the disputing party did not want to admit not knowing all of the complications of the project. After all, the company was active in the same field. Behind this proudly lies the interest to look

The Biased Mediator

Mediators are 100 % impartial! They are not passive observers of a conflict, of course, but actively support all parties equally to express their views and needs and come to solutions that are in their best interest. Most definitions of mediation emphasize the role of the mediator as a neutral or impartial third party. Impartiality is a key principle of mediation.

Christian von Baumbach

But is this really true? Probably not, at least not 100 %. Biases are a natural and to some extent unavoidable part of human nature. Our biases help us to navigate through our daily lives without having to think too much about every action and encounter.

What about our professional lives? Can we leave our biases at the door when we enter the mediation room? Maybe to some extent, but probably not completely. To be honest, even in my professional role as mediator I am influenced by my biases. My biases are keeping me from being truly impartial. In most mediations I feel closer to one party than the other or feel that the arguments of one party are more reasonable than the other.

This can be a problem if this influences me in a way that I favor one party more than the other. As the mediator I am responsible for leading the process, and the process naturally has an impact on the outcome. I could, for example, lead the conversation in a way that helps party A at the expense of Party B. I could repeat or visualize some arguments in greater detail while neglecting others. Or the parties simply feel the greater sympathy towards one side. All of this would probably happen unconsciously and therefore would be difficult to avoid.

So, it is very important to be aware of our biases, train our perception and develop skills to stay as impartial as possible. How can we achieve this?

Seeing Through Cultural Lenses

Our perceptions and values are strongly influenced by our surroundings and our peer groups, especially at young age. Our family members, friends, classmates and others have an impact on how we perceive the world around us and how we judge others. This cultural background shapes our perception and influences our judgement. Most of the time we are not even



aware of the cultural lenses that we look through.

We believe that our view on the world is real, and therefore opposing, unexpected behavior must be somehow wrong or mischievous.

But we can train to view the world through different lenses, to look at the world from different angles. This is, of course, what mediators always pursue, but not all mediators take cultural biases into account. To do so we need to achieve knowledge about cultural dynamics and reflect on our own cultural background, as well as on other cultural aspects. We also need to develop an attitude of respect and interest towards people from other cultural backgrounds. Culture is complex and there is always something new to learn. It also helps to talk a lot to people from very different social and cultural backgrounds to understand how they perceive the world. Through these theoretical and practical experiences we gain intercultural competence that helps us to understand and deal with our biases (Bertelsmann Stiftung & Fondazione Cariplo, 2008).

One important aspect here is that culture is by no means limited to national culture. Modern cultural theories like the concepts of open culture and multicollectivity by Professor Bolten apply non-binary concepts to culture (Bolten, 2011). Professor Bolten points out that all humans belong not only to one culture, but instead to multiple collectives. Each collective has an influence on us and therefore on our own biases. These concepts may help us to understand our own diverse cultural background as well as that of others. It supports a view that is less black and white and more colorful.



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