

GOOD GOVERNANCE/HUMAN RESOURCES MANAGEMENT

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There are several different interpretations of where mediation belongs to. However, the closest business line is Good Governance and the Conflict Management in particular. This topic also nicely fits to the Community Policing due to the ongoing need to solve the conflicts daily, but in this case the scope of mediation will be reduced to the police work which is limiting the scope of application and assistance in general, which should not be the case. This issue is still open and subject to discussions and agreement to the central level of Ukraine authorities. Nevertheless, it is obvious that EUAM as an advisory mission is capable to fulfil demand and assist MoIA Universities and other organisations in building mediation capacity due to the fact, that Martins Tols is graduated lawyer, certified mediator, trainer, leadership and management practitioner and can provide added value not only in theory, but in practice. Train the trainers approach is a part of potential way forward.

Mediation as a tool/method is used widely in the European Union countries not only by police but also by courts and other state organisations. For instance, in the Danish Police and in the court system, and as such in the country in general, it is a part of a general toolbox in training programs of police academies and other universities. In Finland mediation is widely applied by state organisations, including police, as an alternative conflict resolution in courts. In Latvia mediation skills are applied widely and promoted (trained) in many universities, non-governmental organisations (associations) and in private sector (e.g. arbitration).

Conflict Management promotion in Odesa

1) how it started;

The Conflict Management Initiative was launched by Martins Tols in Odesa in February 2020. Initial beneficiaries were Odesa University of Internal Affairs (MoIA) and Odesa Free Legal Aid Centre with their request to assist in promoting the mediation in the view of the upcoming adoption of the draft Law on Mediation by Verkhovna Rada. Within this initiative the EUAM Field Office (FO) Odesa provided webinar in March 2020 and number of workshops on mediation in 2020 and 2021. Closer cooperation was established between FO Odesa, MoIA University and Odesa Free Legal Aid Centre in this regard. A formal working group was created by FO Odesa and MoIA University with a purpose to elaborate joint work plan and promote the

topic. The work plan was created and is being implemented. Among planned activities there were workshops, round tables, a conference in Autumn 2021 and elaboration of training curricula for different levels, including the publishing of a Manual.

Professional standards for education in Ukraine contain *inter alia* also conflict management and mediation in particular. It means that Universities have to insert mediation in their master degree study programs. In this regard MoIA University in Odesa aims to begin their first mediation training program. Workshops serve as a pilot platform to build this capacity. To illustrate this, there are numerous examples when managers and employees are not aware of all spectrum of conflict management tools and instruments, therefore conflicts often are hidden instead of solving. Such unsolved situations create tension in organisations and among employees. Therefore conflict management and mediation knowledge and skills along with the principles should be in toolset of every modern manager and employee.

2) how mediation and it’s principles is linked to Good Governance (GG) principles;

Mediation as a management approach and conflict-resolution tool has clear linkages to GG principles. For instance, by involving conflict parties into the mediation process it improves participation and by reducing the use of human resources needed for resolution of conflicts it promotes efficiency in justice. The principles of mediation are very close in essence to the GG principles. This is clearly recognized by the Ukrainian authorities. For example, on 26.5.2020 the President of Ukraine approved the Annual National Program under the auspices of the Ukraine-NATO commission for 2020. In the program, mediation of conflicts without trials is named as performance indicator concerning the goal of effective and responsible local government under the strategic goal that all governance levels would be based on principles of justice, inclusiveness, integrity and accountability.

Council of Europe and EUAM GG Principles	Official comments to the Council of Europe GG principles	Relation to Mediation and it’s Principles
1. Participation . Representation, Fair Conduct of Elections	Local elections are conducted freely and fairly, according to international standards and national legislation, and without any fraud. Citizens are at the centre of public activity and they are involved in clearly defined ways in public life at local level. All men and women can have a voice in decision-	Although in a broader sense, mediation clearly is mentioned in the comments to Council of Europe GG principles as legitimate and one of the most respected and advanced methods to deal with different interests. Mediation principles are explained in

	<p>making, either directly or through legitimate intermediate bodies that represent their interests. Such broad participation is built on the freedoms of expression, assembly and association. All voices, including those of the less privileged and most vulnerable, are heard and taken into account in decision-making, including over the allocation of resources.</p> <p>There is always an honest attempt to mediate between various legitimate interests and to reach a broad consensus on what is in the best interest of the whole community and on how this can be achieved.</p> <p>Decisions are taken according to the will of the many, while the rights and legitimate interests of the few are respected.</p>	<p>comments below and the main of them are:</p> <p>Voluntarity Confidentiality Equality Neutrality Non-adversarialism Responsiveness Self-determination Party autonomy</p>
2. Responsiveness	<p>Objectives, rules, structures, and procedures are adapted to the legitimate expectations and needs of citizens. Public services are delivered, and requests and complaints are responded to within a reasonable timeframe.</p>	<p>Mediation is meant not only to solve the conflict but to save time, money and nerves of the ones concerned as it is considerably faster and emotions saving exercise in comparison to the court proceedings. Participants arrive at the decisions jointly and together. Court decisions are seldom entirely <u>satisfying both sides</u>.</p>
3. Efficiency and <u>Effectiveness</u>	<p>Results meet the agreed objectives. Best possible use is made of the resources available. Performance management systems make it possible to evaluate and enhance the efficiency and effectiveness of services. Audits are carried out at regular intervals to assess and improve performance.</p>	<p>Mediation is more efficient and effective than usual court procedure. In a long run it ensures sustainability due to the fact that parties reach agreement by free will and with the sense of ownership.</p>
4. <u>Openness</u> and Transparency	<p>Decisions are taken and enforced in accordance with rules and regulations.</p>	<p>Privacy of mediation ensures trust since it</p>

	<p>There is public access to all information which is not classified for well-specified reasons as provided for by law (such as the protection of privacy or ensuring the fairness of procurement procedures).</p> <p>Information on decisions, implementation of policies and results is made available to the public in such a way as to enable it to effectively follow and contribute to the work of the local authority.</p>	saves parties from third persons eyes.
5. Rule of Law	<p>The local authorities abide by the law and judicial decisions.</p> <p>Rules and regulations are adopted in accordance with procedures provided for by law and are enforced impartially.</p>	<p>Mediation, it's principles and mechanism is stipulated by the law.</p> <p>The law may provide the parties an option to enforce the mediation agreement by other means, especially in cases when the court refers the case to the mediator.</p>
6. Ethical Conduct	<p>The public good is placed before individual interests.</p> <p>There are effective measures to prevent and combat all forms of corruption.</p> <p>Conflicts of interest are declared in a timely manner and persons involved must abstain from taking part in relevant decisions.</p>	<p>Ethical conduct is provided and ensured by professional associations of mediators who typically issue the Code of Conduct.</p>
7. Competence and Capacity	<p>The professional skills of those who deliver governance are continuously maintained and strengthened in order to improve their output and impact.</p> <p>Public officials are motivated to continuously improve their performance.</p> <p>Practical methods and procedures are created and used in order to transform skills into capacity and to produce better results.</p>	<p>The law and associations of mediators ensure proper qualification and conduct of professional mediators.</p>
8. Innovation and Openness to Change	<p>New and efficient solutions to problems are</p>	No direct relation

	<p>sought and advantage is taken of modern methods of service provision. There is readiness to pilot and experiment new programmes and to learn from the experience of others.</p> <p>A climate favourable to change is created in the interest of achieving better results.</p>	
<p>9. Sustainability and Long-term Orientation</p> <p><u>Coherence</u></p>	<p>The needs of future generations are taken into account in current policies. The sustainability of the community is constantly taken into account. Decisions strive to internalise all costs and not to transfer problems and tensions, be they environmental, structural, financial, economic or social, to future generations.</p> <p>There is a broad and long-term perspective on the future of the local community along with a sense of what is needed for such development. There is an understanding of the historical, cultural and social complexities in which this perspective is grounded.</p>	<p>Coherence in application of mediation tools and principles is reached by the whole set. The main difference with any authoritarian decision making including court ruling is due to the fact that mediator works out not only material and legal aspects, but what is most important, emotional side of conflicting parties. This means that any agreement reached in mediation does not leave negative feelings and bad aftertaste.</p>
<p>10. Sound Financial Management</p>	<p>Charges do not exceed the cost of services provided and do not reduce demand excessively, particularly in the case of important public services. Prudence is observed in financial management, including in the contracting and use of loans, in the estimation of resources, revenues and reserves, and in the use of exceptional revenue. Multi-annual budget plans are prepared, with consultation of the public. Risks are properly estimated and managed, including by the publication of</p>	<p>No direct relation except the fact that mediation expenses parties cover equally.</p>

	<p>consolidated accounts and, in the case of public-private partnerships, by sharing the risks realistically.</p> <p>The local authority takes part in arrangements for inter-municipal solidarity, fair sharing of burdens and benefits and reduction of risks (equalisation systems, inter-municipal co-operation, mutualisation of risks...).</p>	
11. Human rights, Cultural Diversity and Social Cohesion	<p>Within the local authority's sphere of influence, human rights are respected, protected and implemented, and discrimination on any grounds is combated.</p> <p>Cultural diversity is treated as an asset, and continuous efforts are made to ensure that all have a stake in the local community, identify with it and do not feel excluded.</p> <p>Social cohesion and the integration of disadvantaged areas are promoted.</p> <p>Access to essential services is preserved, in particular for the most disadvantaged sections of the population.</p>	Mediator covers these aspects with full respect, equally and neutrally as part of his/her duty of care.
12. <u>Accountability</u>	<p>All decision-makers, collective and individual, take responsibility for their decisions.</p> <p>Decisions are reported on, explained and can be sanctioned.</p> <p>There are effective remedies against maladministration and against actions of local authorities which infringe civil rights.</p>	All decisions are made not by mediator but by the parties themselves thus ensuring full accountability not only in front of each other but also towards mediator.

3) how interagency cooperation is facilitated due to the mediation promotion;

Promotion of mediation facilitates closer interagency cooperation between the NPU (police officers are one of the key groups to receive training in mediation) and MoIA universities. However, after the draft law on mediation is adopted by the Parliament (Verkhovna Rada) and the regulatory framework for wider use of mediation is provided for more agencies are expected to deal with mediation (courts, local self-governance etc.).

4) how mediation fits into the Human Resources Management (HRM) and Training;

Mediation is one of the managerial tools to deal with conflicts in pairs or teams and as such it facilitates development of human resources management system. As the whole initiative is about promoting the topic and delivering training of mediation principles and tools in mediation for target groups, it also fits very well into Training and HRM practice. As a result employees and managers will be equipped with knowledge and skills on how to better prevent conflicts and when they occur how to deal with them professionally.

Mediation is a structured, interactive process where an impartial third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. Mediation is a «party-centered» process that it is focused primarily upon the needs, rights, and interests of the parties. The mediator helps the parties find their optimal solution. Mediation is evaluative in the sense that the mediator analyzes issues and relevant norms («reality-testing»), while refraining from providing prescriptive advice to the parties (e.g., «You should do...»). Parties may mediate disputes in a variety of domains, such as commercial, legal, diplomatic, workplace, community, and family matters.

The process is private and confidential, possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process. Mediation can be used to resolve disputes of any magnitude. Mediators purpose is to create trust and safety, open and improve the dialogue and empathy between disputants, aiming to help the parties reach an agreement.

Cost. While a mediator may charge a fee comparable to that of an attorney, the mediation process generally takes much less time than moving a case through standard legal channels. While a case in the hands of a lawyer or a court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours. Taking less time means expending less money on hourly fees and costs.

Confidentiality. While court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediator knows what happened. Confidentiality in mediation has such importance that

in most cases the legal system cannot force a mediator to testify in court as to the content or progress of mediation. Many mediators destroy their notes taken during a mediation once that mediation has finished. The only exceptions to such strict confidentiality usually involve child abuse or actual or threatened criminal acts.

Control. Mediation increases the control the parties have over the resolution. In a court case, the parties obtain a resolution, but control resides with the judge or jury. Often, a judge or jury cannot legally provide solutions that emerge in mediation. Thus, mediation is more likely to produce a result that is mutually agreeable for the parties.

Compliance. Because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high. This further reduces costs, because the parties do not have to employ an attorney to force compliance with the agreement. The mediated agreement is, however, fully enforceable in a court of law.

Mutuality. Parties to a mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to «move» their position. The parties thus are more amenable to understanding the other party's side and work on underlying issues to the dispute. This has the added benefit of often preserving the relationship the parties had before the dispute.

Support. Mediators are trained in working with difficult situations. The mediator acts as a neutral facilitator and guides the parties through the process. The mediator helps the parties think «outside of the box» for possible solutions to the dispute, broadening the range of possible solutions.

Principles. Principles of mediation typically include voluntariness, confidentiality, equality, neutrality, sharing of costs, non-adversarialism, responsiveness, self-determination and party autonomy.

Voluntariness means right of a party to enter into mediation process based on a free will and to exit mediation process whenever the party feels the mediation agreement is not possible to reach.

Confidentiality means no party or mediator may disclose to anyone else what was discussed and what was agreed without prior consent from the other party.

Equality means both parties are entirely equal in their rights and obligations as well as from mediator's perspective.

Neutrality is the main principle of a mediator who should treat both sides with respect and without prejudice.

Non-adversarialism means treating the parties as collaborating in the construction of an agreement. By contrast, litigation is explicitly adversarial in that each party attempts to subject the other to its views. Mediation is designed to conclude with an agreement rather than a winner and loser.

Responsiveness reflects the intent to allow the parties to craft a resolution outside of the strict rules of the legal system. A responsive mediation process also is informal, flexible and collaborative.

Self-determination and **party autonomy** allow and require parties to choose the area of agreement, rather than ceding the decision to an outside decision-maker such as a judge. This turns the responsibility for the outcome onto the parties themselves thus increasing the likelihood that the promises in the mediation agreement will be kept.

Workplace mediation. The implementation of HRM policies and practice has evolved to focus on the individual worker instead of delegating all issues to the third parties such as unions.

A great variety of disputes occur in the workplace, including disputes between staff members, allegations of harassment, contractual disputes and workers compensation claims. Police is not an exception. At large, workplace disputes are between people who have an ongoing working relationship within a closed system, which indicate that mediation or a workplace investigation would be appropriate as dispute resolution processes. However the complexity of relationships, involving hierarchy, job security and competitiveness can complicate mediation.

Party-directed mediation is an emerging mediation approach particularly suited for disputes between co-workers, colleagues or peers, especially deep-seated interpersonal conflict, multicultural or multiethnic disputes. The mediator listens to each party separately in a pre-caucus or pre-mediation before ever bringing them into a joint session. Part of the pre-caucus also includes coaching and role plays. The idea is that the parties learn how to converse directly with their adversary in the joint session. Some unique challenges arise when organizational disputes involve supervisors and subordinates.

The negotiated performance appraisal is a tool for improving communication between supervisors and subordinates and is particularly useful as an alternate mediation model because it preserves the hierarchical power of supervisors while encouraging dialogue and dealing with differences in opinion.

Community mediation. Disputes involving family members or neighbours often have no official resolution mechanism. Community mediation or police mediation generally focuses on neighbourhood conflict, with trained mediators from police or other organisations. Such organizations often serve populations that cannot afford to utilize the courts or professional service providers. Community programs typically provide mediation for disputes between family members, neighbours, landlords and tenants, members of homeowners associations and small businesses and consumers. Many community programs offer their services for free or at a nominal fee.

Peer mediation. A peer mediator is one who resembles the disputants, such as being of similar age, attending the same school or having similar status in an organisation or business. Purportedly, peers can better relate to the disputants than an outsider.

Peer mediation promotes social cohesion and aids development of protective factors that create positive school climates. This approach can help significantly reduce such phenomenon as bullying and promote pupil achievement.

Peer mediation helps reduce crime in schools, saves counsellor and administrator time, enhanced self-esteem, improved attendance and encouraged development of leadership and problem-solving skills among students.

Commercial disputes. The commercial domain remains the most common application of mediation, as measured by number of mediators and the total exchanged value. Commercial mediation includes but not limits to the work in finance, insurance, ship-brokering, procurement and real estate. In some areas, mediators have specialized designations and typically operate under special laws. Generally, mediators cannot themselves practice commerce in markets for goods in which they work as mediators.

Procurement mediation comprises disputes between a public body and a private body. In common law jurisdictions only regulatory stipulations on creation of supply contracts that derive from the fields of State Aids (EU Law and domestic application) or general administrative guidelines extend ordinary laws of commerce. The general law of contract applies in the UK accordingly. Procurement mediation occurs in circumstances after creation of the contract where a dispute arises in regard to the performance or payments. A Procurement mediator in the UK may choose to specialise in this type of contract or a public body may appoint an individual to a specific mediation panel.

Global relevance. Understanding of fundamental mediation principles points to the unlimited potential of mediation. Mediators explicitly address and manage cultural and language differences in detail during the process. The principle of voluntariness applies to the right of parties to self-determination once they are in the mediation—not to the mechanism for initiating the mediation process. Much mediation also results in a form of mutual consent because they are non-binding and they encourage the exploration of interests and mutual benefits of an agreement. Because the parties, themselves, create the terms of agreement, compliance with mediated settlement agreements is relatively high. Any compliance issues can be addressed by follow-up mediation or regular compliance monitoring. In those countries where mediation is part of legal system and court process there is potential U-turn possible reversing the case back to the court.