

PROS AND CONS OF MEDIATION

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OVERVIEW

- Mediation
 - Definition
 - The mediator
 - Fields of application
 - Phases of a mediation process

- Pros

- Cons

MEDIATION: DEFINITION

Mediation is a dispute resolution process wherein a neutral and impartial third party, assists the parties in conflict in their search for a suitable, satisfactory solution. Mediation is a voluntary and confidential process in which it is the parties who determine the goals they wish to achieve as well as the possible alternatives

MEDIATION: THE MEDIATOR

- Impartial and unbiased.
- Does not judge, does not advise and does not provide solutions.
- Role = to facilitate communication between the parties → important that the Mediator
 - create a "venue" a "platform" where the parties feel not only welcome but also acknowledged and accepted and where they feel free to express themselves
 - listen attentively and actively

MEDIATION: FIELDS OF APPLICATION

Practically any type of conflict, e.g. family disputes, business conflicts, employment issues, intercultural conflicts, conflicts in school and/or at the workplace

MEDIATION: PHASES OF A MEDIATION PROCESS

1. **The Introductory phase:** the mediator:

- establishes contact with the parties,
- explains to the parties the mediation process
- clarifies roles and responsibilities
- sets out the fundamental ground rules

2. **The Identification Phase – Storytelling:** The objective of this phase is to gather information regarding the conflict by allowing each of the parties to “tell their story” and to convey their views and positions

MEDIATION: PHASES OF A MEDIATION PROCESS

3. **Processing the conflict:** : The objective of this phase is to:

- identify conflict patterns; points of disagreement and conflict
- understand the different views (of the parties), the points of disagreement and conflict
- clarify the needs and the interests of the parties

→ This phase should lead to a deeper understanding, by the parties, not only of the other parties' perspectives, priorities, and concerns, but also of their own

4. **Brainstorming – Development and Evaluation of Options:** Once the parties (and the mediator) have acquired a better understanding of the whole situation they will be able to create and shape mutually acceptable solutions that reflect their personal, business, and economic interests

5. **Drafting of an agreement**

PROS

- Rapidity and Economy
- Active Participation of the parties in the resolution of the dispute
- The parties maintain control over the process and have the final say
- More creative remedies are available to the parties than in litigation
- Does not jeopardize the possibility of resorting to other forms of dispute resolution in the event the mediation doesn't work
- Preservation of the relationship between the parties
- Puts an end to the dispute

LIMITATIONS

- The level of the conflict is too intense
- An issue of law needs to be ruled
- A party might want or even need the ruling of a court or an arbitral Tribunal

CONS

- Voluntary process → the parties must agree to mediate
- Waste of time, energy and money
- All parties involved must agree to solution
- It might not be possible to find an experienced mediator



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Thank you for your attention.

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