

MEDIATION AS A CONFLICT MANAGEMENT TOOL IN COMPANIES

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Abstract

The paper describes situation of alternative dispute resolution, namely mediation, in the Czech Republic. Mediation has been known in the Czech Republic since 1990s and is used for all types of disputes including those in company life. Yet Mediation Law was passed only in 2012.

Research on mediation was conducted in 188 companies in the Czech Republic. Research showed both Czech and internally owned companies have experience with this dispute settlement tool and apply it for various type sof disputes.

Though mediation as a conflict management tool has been utilized in the Czech Republic and many companies in the Czech Republic are subsidiaries of companies based in countries where mediation has been successfully used, it has not been fully implemented by mother companies in the Czech Republic yet. Czech owned companies also know mediation and work with it.

Mediation is still young in the Czech Republic therefore companies tend to use traditional tools to settle conflicts and disputes, arbitration and litigation.

Key words: mediation, alternative dispute resolution, conflict, management

JEL Code: J50, J52, K40, M12

Introduction

Managing company brings many challenges to managers. Not only delivering expected results, running day-to-day operation with all responsibilities, but also managing people of various backgrounds. As problems sometimes occur, the very same issue may be perceived differently by people involved. That being so leads to conflicts and even disputes.

There are many ways how to tackle discrepancies in opinions depending on maturity of company and its executives. Mediation as a means of alternative dispute resolution can be used in numerous aspects of company systems and processes.

1 Mediation

Mediation has been used to help parties to come mutual agreement with a help of third person - mediator - for centuries.

Mediation helps to increase and develop person's potential to solve one's own difficulties. (Holá, 2003)

1.1 Benefits of Mediation

Fortune 1000 conducted research in 2008 that showed 86% companies listed in Fortune 1000 have direct experience with mediation, 24% use mediation regularly and prefer it. Mediation can save costs of disputes up to 60%, helps to build and maintain good relationships. (Potočková, 2013)

Various potential benefits of mediation tend to be well understood by lawyers in litigation or dispute resolution departments. These benefits include a high degree of control by parties and counsel over process and product, with the assurance that a binding result will only occur in the event the parties reach agreement. The results are not limited to the typical forms of adjudicated relief, but may even extend to overcoming communication and cultural barriers, and adjusting or transforming personal or institutional relationships. Mediation also holds out a realistic promise of a reduction in dispute cycle time and related costs, coupled with more creative, durable solutions and relatively minor risks. (Stipanowich, 2010).

1.2 Mediation in the Czech Republic

Mediation has been present in the Czech Republic since 1990s. Though it was unknown and not much trusted at the beginning, it proven good results over the time and became part of legal system in 2012 when Mediation Law 202/2012 Sb. was passed. Mediation is used for all types of disputes – from family law to labour law.

1.3 Hypothesis

This paper dwells on hypothesis there are conflicts in companies and all parties involved in conflict seek solution of dispute:

1. There are conflicts/disputes in the companies in the Czech Republic.
2. When mediation is used as a means of dispute it results in agreement more frequently than disagreement.

2 Human Resources Management

There are six stakeholders and their objectives related to human resources management. Employees seek fair pay and fair treatment, good quality of work life and long-term employability. Customers want quality service and products, speed and responsiveness, low cost, innovation, convenience. Investors look into shareholder return, return on assets, return on investments, corporate reputation. Organization with free key parameters productivity, profitability and survival. Strategic partners (suppliers, unions, alliance partners) aim for reliability, trustworthiness, collaborative problem-solving. Society requires legal compliance, social responsibility and ethical management practice. (Baker, 2004)

With social changes in 1989 in the Czech Republic and following foreign investment and further changes in society, human resources management learnt to incorporate new systems, tools and processes. Mediation became one of them.

Change, development and dynamics are words that more than ever characterize the present. All social changes have a huge impact on the managerial discipline of human resource management – new challenges that need to be addressed and incorporated into the concept of working with people keep emerging. Such challenges include the fact that the workforce in the labour market is becoming more and more diversified, while employers themselves often seek diversity for economic or ethical reasons. Holders of competencies appropriate for a job are no longer represented by a particular type of person; they rather complement their skills and education with a unique combination of characteristics of individuals and their personalities. These characteristics are expressed e.g. as sex, age, health status, experience, family or social background, native language, way of thinking, cultural patterns of behaviour, personal values, psychological characteristics, and so on. In a team of different types of people and personalities employers then need to learn to work with such diversity – and thus master diversity management. (Legnerová, Fučíková, 2014)

When management of differences is not mastered, conflicts and disputes arise and they need to be dealt with, therefore managers must focus not only on what have to accomplish but also on how they have to think. (Gosling, Mintzberg, 2003)

3 Mediation Research

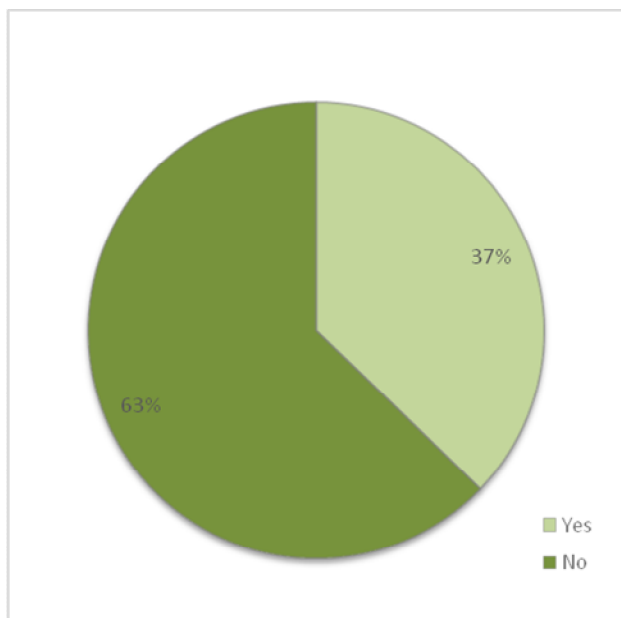
The research on mediation was conducted between 15th of February 2015 till 31st of March 2015 in the Czech Republic within 188 Czech and internationally owned companies across all industries. Chief executive officers, members of management and human resources professionals received on-line questionnaire with set of twenty-two questions on size of company, ownership (local vs. international), industry in which their company is in, demographics of company (gender, age, employees country of origin), internal process or policy for disputes, types of conflicts and means of their solution and use of mediation (internal vs. external). 7 questions were yes/no answers, 15 questions had multiple-choice answers.

3.1 Focus of Mediation Research

The research focused on whether or not companies have internal procedures for dealing with conflict, how are conflicts managed and solved, whether mediation is used and with what results, and if companies intend to implement mediation in their internal process.

3.2 Results of Mediation Research

Fig. 1: Does your company have dispute resolution internal process in place?



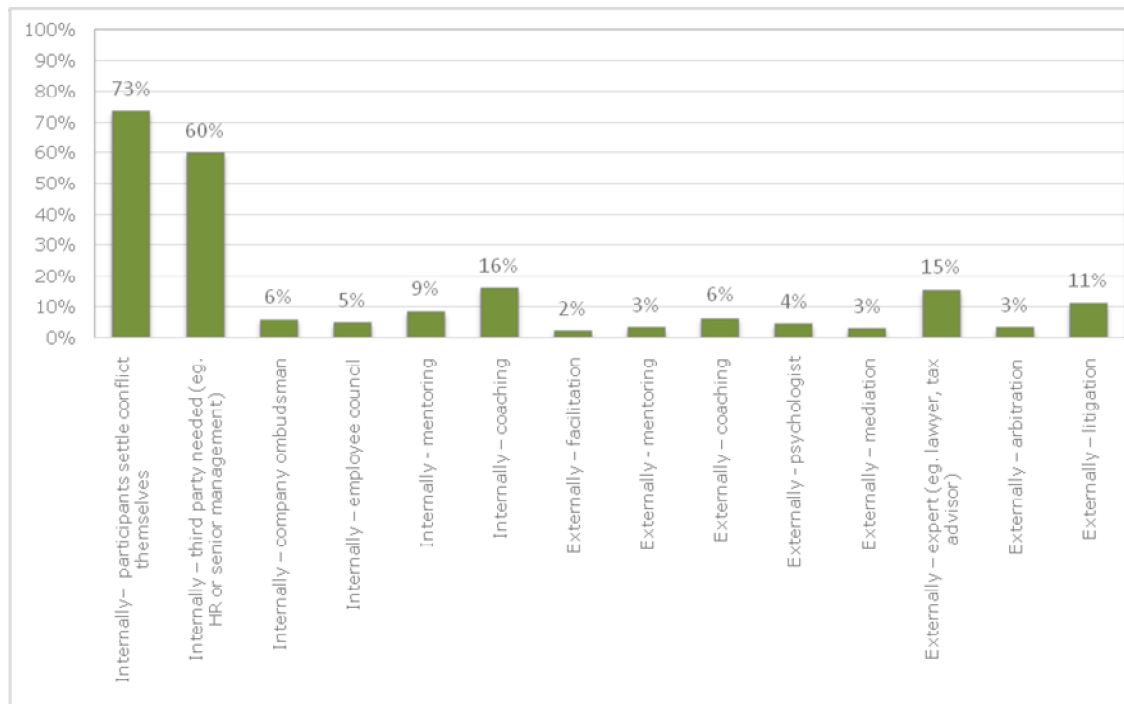
Source: own calculations

70 companies have internal process dedicated to disputes. The most common process was designed for whistle blowing policy. 118 companies do not have any internal policy or procedure for such a process.

Specific policy insights are offered at multiple levels, for different stakeholders, and associated with both behavioral biases and social interactions. (Gazheli, Antal, van den Bergh, 2015). The question for further research remains why only 37% of companies formalize internal process for conflicts/disputes.

After scandals and wrongdoings in companies whistle-blowing policy found its place in many companies as whistle-blowing mechanism reduces the frequencies of cheating. (Berentsen, Bruegger, Loertscher, 2008)

Fig. 2: How are conflicts/disputes managed and solved?



Source: own calculations

Corporate reputation is a valuable intangible asset for companies, yet is increasingly difficult to manage in an era with hard-to-control online conversations. (Dijkmans, Kerkhof, Beukeboom, 2015).

Respondents had multiple choice answer for this question. Results show companies are in favour in internal settling argument for reasons that include good reputation, costs saving, time saving and also good relationships.

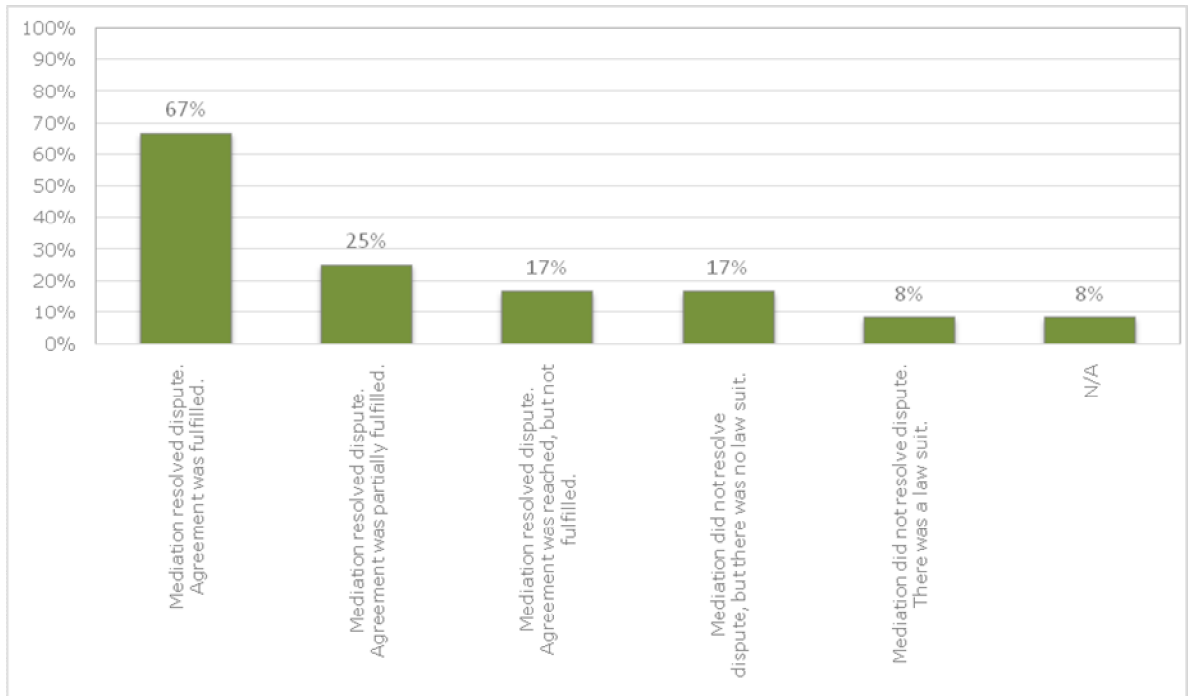
As results show strongly preferred is the way when parties in conflict manage to discuss and resolve it themselves – 138 answers, followed by involvement by managers 113 answers (HR Managers, top managers) and coaching 30 answers. Involvement of HR professionals is very frequent due their direct assignment to heads of the different departments of the company (Stříteský, 2013), while CEOs produce the best firm performance, particularly with respect to business performance and organizational effectiveness. (Hart, Quinn, 1993)

Individuals adjust their motivational strategies on the basis of context. (Johnson, Smith, Wallace, Hill, Baron, 2015) Employees will only contribute their discretionary effort to problem-solving if they believe that their individual interests are aligned with those of the company, and that the company will make reciprocal investment in their well-being. (Macduffie, 1995)

External arrangements are the likes as experts – legal and tax consultations are leading 29 answers, litigations 21 answers, coaching 12 answers.

Internal solution far exceeds external as scores for internal are 73% (directly between participants) and 60% (using third party as a mediator) and for external 15% (expert in the field) and 11% (litigation).

Fig. 3: Outcome of mediated disputes



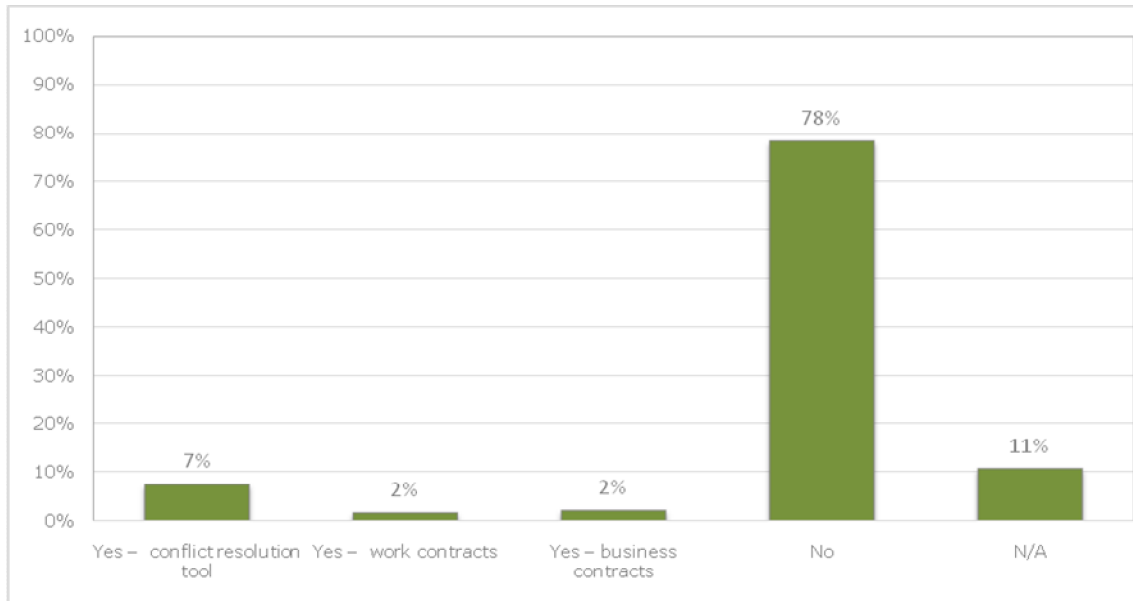
Source: own calculations

Respondents had multiple choice answer for this question. The reason was to find outcomes of mediated disputes. 12 companies applied mediation for their 22 disputes. 164 has not had any experience with such settling tool and 12 did not answer the question.

Out of 22 disputes, 10 were resolved and agreement fulfilled. 4 disputes were resolved and agreement was partially fulfilled, 3 were resolved, agreement was reached, but not fulfilled, 3 were not resolved, but there was no litigation, 1 was not resolved and dispute required litigation, 1 case was not described.

Overall result proves hypothesis that application of mediation leads to agreement and settlement of dispute – 67% vs. 8% when dispute required litigation despite previous attempt to use mediation as a solution tool.

Fig. 4: Do you intend to implement mediation in your company?



Source: own calculations

14 companies stated they plan for mediation to become conflict resolution option, 3 intend to mediation as part of their work contracts, 5 plan to include mediation as part of their work contracts, 147 do not plan to incorporate mediation and 20 did not answer the question.

Further research will be required to answer question why 78% of companies do not intend to implement mediation in their internal process. There may be various reasons from low level of disputes to preference of litigation over mediation.

Conclusion

Mediation in company life in the Czech Republic is present, yet now widely spread. Mediation has been part of Czech Republic legal system since 2012 therefore is still new, not as well-known and experienced with as litigation or arbitration.

Results in research prove hypothesis there are conflicts within companies in the Czech Republic. The research showed strong preference to solve conflicts internally, primarily directly between the parties. Escalated disputes are dealt with by senior management, either human resources manager or chief executive officer.

If internal negotiations fail, companies hire external solutions, firstly experts in their field. Should this consent-seeking process not be successful they tend to choose litigation over mediation.

Hypothesis was confirmed in outcome results of mediation - when mediation is used to settle disputes it leads to common agreement, parties either fully or partially fulfil agreement. Minimum cases end with litigation.

Companies that had positive experience with mediation are open and willing to use it again in the future either as conflict resolution tool, or integral part of their company documentation such as work contracts and business contracts.

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