

USE OF MEDIATION IN BIG AND SMALL COMPANIES IN THE CZECH REPUBLIC

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Abstract

The paper describes use of mediation, one of means of alternative dispute resolution, in companies in the Czech Republic. Mediation was officially introduced to legislation in 2012 and since then has been used by companies to settle various disputes both internally and externally.

Research on mediation was conducted in 188 companies in 2015 in the Czech Republic. Research showed differences in application of mediation depending on size of the company.

Conflict management is a part of management tool and research shows different attitudes in big and small companies.

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

JEL Code: J50, J52, K40, M12

Introduction

Regardless size of company – small or big – both employ individuals with different personalities. Diversity brings good factors to companies, but also can create tensions, misunderstandings and therefore conflicts.

When conflicts arise there are various ways how to settle them. Ideally, parties in conflict manage to solve the issue themselves. It may not be possible in all cases and the third party is needed. This paper studies differences between occurrence of conflicts and disputes in different sized companies and use of mediation as a resolution tool.

1 Mediation

1.1 Mediation in the Czech Republic

Mediation as such has been brought to the Czech Republic after social changes in 1989. At the beginning it was unknown and to a certain extent still is. Mediation has been adopted into Czech legal system in 2012 when Mediation Law 202/2012 Sb. was passed. Mediation is used for all types of disputes – labour law, business law, family law etc.

1.2 Mediation Process

Mediation is an alternative dispute resolution tool which helps settling conflicts and disputes. “Mediation process is, at least in theory, cooperative and voluntary, not coercive. It rejects an objectivist approach to conflict resolution, and promises to consider disputes in terms of relationships and responsibility.” (Grillo, 1991)

It gives parties a chance to come to best possible solution for them without interference of external mechanisms. Solutions are often times creative and allow parties come to an agreement which would not be possible in the court which has to strictly follow legal system.

“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).

“Mediation brings informality into the matter which reduces stress for parties. In this manner, the process is said to enable the parties to exercise self-determination and eliminate the hierarchy of dominance that characterizes the judge/litigant and lawyer/client relationships. Emotions are recognized and incorporated into the mediation process.” (Grillo, 1991)

1.3 Mediator

There are formal and informal mediators. Formal one is called “registered mediator,” needs a formal training and has to pass state exam to be able to be registered.

Informal mediator in company world is a person who either has a talent for settling conflicts and is asked by others to help them, or it comes with a job. The research showed informal mediators are human resources managers, chief executive officers and members of senior management.

In both cases mediator is there to help parties to reach agreement, or at least to end their conflict. “The mediator does not make a decision; rather, each party speaks for himself. Together they reach an agreement that meets the parties' mutual needs.” (Grillo, 1991)

2 Research and Methods

2.1 Research question

There have been determined two research questions the following wording:

1. Do small companies have strong tendency to solve their conflicts internally?
2. Do big companies choose to solve conflicts in more ways than smaller ones?

2.2 Research

The article is based on analysis of research on mediation which was conducted between 15th of February 2015 till 31st of March 2015 in the Czech Republic within internationally owned companies across all industries.

The selection of respondents through sectors was carried out by a random selection of LinkedIn members who had to meet one of the three criteria in their job titles:

1. chief executive officers
2. members of top management
3. human resources professionals (HR Managers)

Respondents were contacted directly via LinkedIn. Questionnaire was also placed into LinkedIn group HR News.

2.3 Methods

Chosen method was quantitative - CAWI - Computer Assisted Web Interviewing. On-line questionnaire contained twenty-two questions about 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 closed with only option of yes/no answers, 15 questions were open and had multiple-choice answers.

The research contains data from 188 companies from all regions in the Czech Republic, all industries, sizes and ownership – Czech-owned as well as Czech subsidiaries of international corporate.

The analysis was performed using the Microsoft Excel, outcomes are charts below. Data was analysed based on frequency in files – absolutely and relatively in percentage description. For each question or combination of answers to a questions in case of multiple choice answers

was first found number of individual answers out of which was percentage formed related to total number.

3 Research Results

Respondents were from various industries, ownership (100% Czech owned vs. Czech subsidiary of international company) and scales of enterprises.

To be able to compare relevant samples companies were divided into six categories based on their size – 0 – 50 employees, 51 – 100 employees, 101 – 500 employees, 501 – 1000 employees, 1001 – 5000 employees and 5001 and more employees as these sizes were the most frequent ones.

Fig. 1: Means of conflict solution chosen by companies of different size

Conflict solution/Company size	0 – 50 empl.	51 – 100 empl.	101 - 500 empl.	501 - 1 000 empl.	1 001 - 5 000 empl.	5 001 and more empl.
Internally– participants settle conflict themselves	84%	71%	68%	71%	58%	100%
Internally – third party needed (eg. HR or senior management)	36%	59%	71%	79%	79%	60%
Internally – company ombudsman	0%	6%	7%	0%	17%	40%
Internally – employee council	2%	0%	2%	13%	17%	0%
Internally - mentoring	11%	0%	4%	13%	8%	40%
Internally – coaching	16%	0%	14%	21%	21%	40%
Externally – facilitation	0%	0%	0%	4%	13%	0%
Externally - mentoring	2%	0%	0%	8%	8%	20%
Externally – coaching	2%	0%	2%	21%	13%	40%
Externally - psychologist	2%	0%	5%	8%	4%	20%
Externally – mediation	7%	0%	0%	4%	0%	0%
Externally – expert (eg. lawyer, tax advisor)	8%	12%	14%	29%	25%	20%
Externally – arbitration	2%	6%	4%	0%	8%	0%
Externally – litigation	5%	18%	7%	17%	21%	40%

Source: own calculations

3.1 Internal solutions

The chart shows strong preference of all companies to have participants of the conflict to settle it by themselves without any involvement (neither formal nor informal mediator). Main issues are purely work conflict and difference in personalities.

The highest score showed the largest companies which employ wide range of personalities who perform required jobs needed by the organisation. „As work group diversity increases, communication within the group may become more difficult, resulting in greater conflict.” (Lawrence, 1997) The bigger company the more diverse it naturally becomes. Work group diversity, the degree to which there are differences between group members, may affect group process and performance positively as well as negatively. (Knippenberg & Schippers, 2007). If not mastered and managed, place for conflicts can be found. 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)

Large companies because of their size and therefore operation need to employ people for specific job roles from juniors to seniors in their fields, various nationalities become integral part of company either because mother company sends managers to oversee the owners' interests, or simply because there is not enough local work force and hiring must be done abroad. Diversity includes also age, religion, race, sex, education, social and family background, culture. In general, these demographic attributes may be relevant categories that individuals use to derive their self-identity in the context of a given organization. (Tsui, Egan, & O'reilly, 1992). 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)

Large companies were followed by the smallest ones. While big companies expect their employees to deal with problems, small enterprises described themselves as families and therefore their cohesion is strong and participants of conflicts feel pressure from other colleagues around them to bring harmony back to place.

Third were the second smallest (51 – 100 employees) and 501 – 1000 employees. These two companies are an example of impact of size. While 51 – 100 employees company has two more internal solutions and if they do not succeed, they seek external help, the company with 501 – 1000 employees knows and actively uses all options except company ombudsman which is not typical HR tool in such a size of a company.

When comparing small and medium sized companies (0 – 500 employees), results show more progressive in tools for conflict settlement are enterprises with 0 – 50 employees and 101 – 500 employees than 51 – 100 employees. Why it is so will be a question for further research.

Having evaluated large companies (501 – 5001 and more employees) results clearly show large variety of means which are actively dealt with. Research also reveals not only there are more tools but they are also lot more and frequently used.

Research brings to light that when parties fail in managing their dispute third party from within is asked to step in and help to end it. Primarily this role is taken by direct superior should the parties be from one department. If superior fails top management takes over - chief executive officers, other top managers and especially human resources managers. Involvement of HR professionals is very frequent due their direct assignment to heads of the different departments of the company (Stříteský, 2013)

Coaching both internal and external are the third most popular conflict resolution tool. This indicates companies are willing to invest money in their people in order to teach them how to prevent conflict in the future.

3.2 External solutions

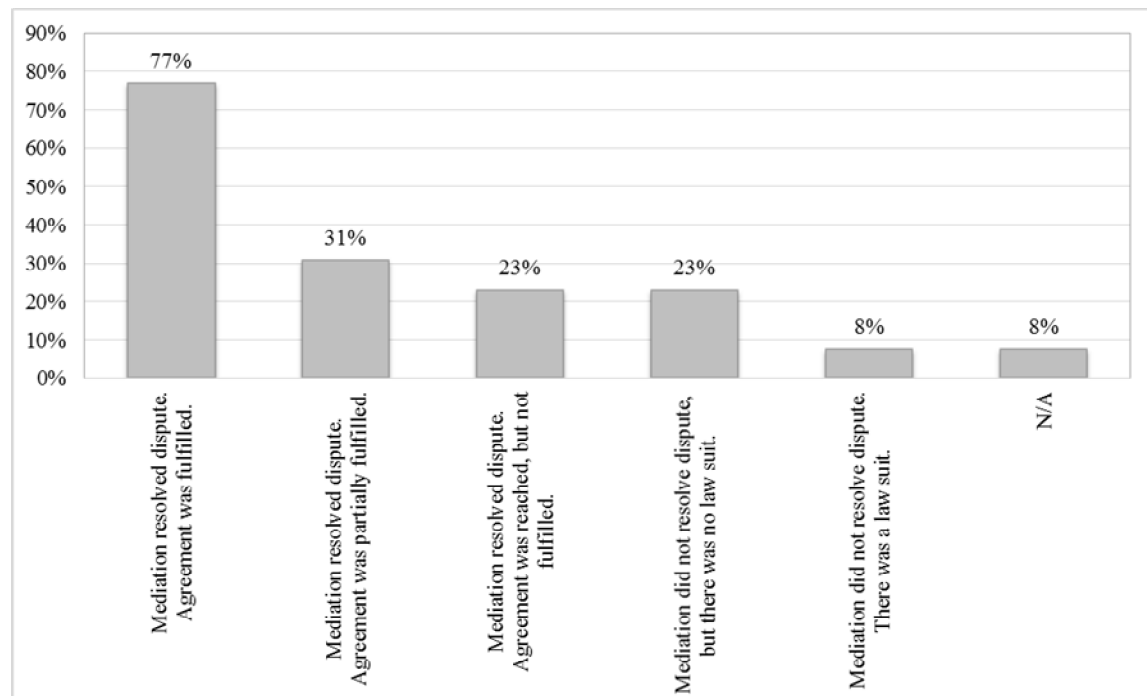
As mentioned in the first chapter Mediation, it is still not well-known and therefore not used. Mediation as an alternative dispute resolution is actively sought as help only by companies 0 – 50 and 501 – 1000. Further research will be conducted to explore why particularly this sized companies see the advantage of it unlike the biggest ones which would benefit mediation most. Strategic partners (suppliers, unions, alliance partners) aim for reliability, trustworthiness, collaborative problem-solving. (Baker, 2004)

Mediation saves time, money, relationships and reputation. 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).

Companies typically and stereotypically see bigger advantage in law suits than in mediation, the reason for that is they go to court for decades and many of them do not have any experience with mediation at all. The only exception is the smallest companies – 5% went for litigation vs. 7% for mediation. Largest companies (5001 and more employees) on the contrary claimed 40% law suits vs. 0% mediation.

Large companies (501 – 1000 and 1001 – 5000 employees) reveal they like help from experts such as tax advisor or legal advisor to go to the court. Company 501 – 1000 employees 29% experts vs. 17% court, company 1001 – 5000 employees 25% experts vs. 21% litigation.

Fig. 1: Outcome of mediated disputes



Source: own calculations

3.3 Mediated disputes

Only two sizes of companies (0 – 50 and 501 – 1000) put their belief in new resolution tool and as charts show it worked for them. 77% of cases were not only solved but reached agreement fulfilled. 31% cases came to an end and agreement was partially fulfilled, 23% dispute resolved but though agreement was reached, agreement was not fulfilled. 23% cases did not resolve the case, but there was no need for a law suit. Only in 8% of cases mediation did not help and parties met themselves in front of the judge.

Conclusion

The paper worked with two questions. First that small companies have strong tendency to solve their conflicts internally. Research proved this. However research showed this tendency goes across all sizes of companies regardless their region, industry and ownership. Largest enterprises require such a solution in 100% percent, the smallest in 84%. Parties in conflict are encouraged to take their full responsibility and end what they started.

In cases when the parties involved in a conflict do not succeed to resolve it themselves, superiors take over and become informal or formal mediators and try to help parties to find

solution to their problem. The highest score of this process is in medium-sized companies approximately 80%, the largest companies 60% and the smallest 36%.

Second question was that big companies choose to solve conflicts in more ways than smaller ones. This was also proved to be right. The larger the organization the more tools needs and uses. Partly because they implement locally what is a norm in headquarters of their mother companies – therefore mentoring (40% in companies 5001+ employees versus 11% in companies 1 – 50 employees), coaching (40% in the largest companies opposite to 16% in the companies up to 50 employees), psychologist (20% in 5001+ employees versus 2% in 1 – 50 employees) are more likely to be used by large companies than by the small ones. One of the reasons is financial investment in such experts and also development stage of companies. While the big companies are in the market for a long time and had to deal with many obstacles, the small companies did not have to do it as yet therefore were in no need of such experts. Specific is role of a company ombudsman that is rather new in the Czech Republic and only companies with 5001 employees and more have them.

The only exception of scores in used method of settling a dispute is mediation which is applied more in companies with 0 – 50 employees 7% while 501 – 1000 employees used in 0% according to the research. Mediation became part of legal system only in 2012 so it is still new and it is a reason why the percentage is low – 7% mediation versus 40% of both internal and external coaching. When mediation is used, in majority of cases it brings desired results and helps to resolve disputes and therefore no further legal actions are needed. Findings of research suggest it will take time to implement it into business world as a common tool for solving disputes.

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