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MEDIATION: FRAMING A CLIL COURSE

Abstract. Mediation in a legal sense is a means of alternative dispute resolution (ADR). Having evolved in the USA in the last half of 20th century the procedure is growing in popularity and proliferation all over the world. Many countries enacted particular legislation, and others included relevant articles into Civil and/or Criminal Procedure Codes. Howbeit, lawyers are to be aware of mediation and roles they may play within the process. Law school curriculum drafters face the challenge of including a new up-to-date course in mediation into busy and very full academic programmes. Analysis of existing instructing practice showed that in Anglo-American law schools mediation teaching is a part of clinical legal education. As for European countries, there is a broad range of scenarios and no established experience. Recognition of communicative skills as key skills for mediators prompts the use of a CLIL approach in structuring such a course. Listening, reframing, summarising, questioning are skills to be mastered by law-students both in a foreign language and their mother tongue. Language teachers are in charge of this part of the course while law teachers can work out text contents built on the branches of law mediators deal with more often (family law, employment law, contracts, etc.). Moreover, some texts may cover mediation law in a home country and abroad. Another important factor to take into account is a career path chosen by a law-student – if s/he is going to become a mediator or a lawyer securing clients in mediation. Role plays and scenarios are an integral part of the course. Moreover, the course developed can serve as an introduction to internship in a law clinic.

Keywords: mediation, CLIL, Legal English, professional communicative competence.

Introduction

Mediation in various forms has existed since the dawn of civilisation. One can find references to mediation in the Bible, in ancient Greek or in Chinese history. In a broad sense, mediation is “a process where an impartial person assists others in reaching a resolution of a conflict or dispute” (Kovach, 2003, p. 16). In a legal sense, mediation is a way of alternative dis-

pute resolution (ADR), and in its modern forms it has returned to Europe from the United States.

Mediation was initially mentioned in US legislation in 1862 and by the mid-twenty century it “was used primarily in the collective bargaining arena” (Kovach, 2003, p. 19). At the end of the 1960s experimental mediation programmes appeared and in 1976 the Pound Conference gave start to the “Modern Mediation Movement”. Mediation spread beyond labour dispute resolution and in 1998 the Interagency ADR Working Group was established in the US.

In the United Kingdom the Conciliation Act of 1896 was the first document to introduce mediation as a way for resolving labour disputes and since then this way of ADR has expanded to other areas of legal disputes.

After passing the Mediation Directive in May 2008 which was to be implemented by May 2011, many EU countries enacted particular legislation, and others included relevant articles into Civil and/or Criminal Procedure Codes.

For many countries mediation, as a way of alternative dispute resolution, is a rather new phenomenon and such questions as “Who can become a mediator?” and “How to train mediators?” have arisen.

A mediator is not necessarily a lawyer but, as dispute resolution is concerned, lawyers are to be aware of mediation and roles they may play within the process. So, law school curriculum drafters face a challenge of including a new up-to-date course in mediation into busy and congested academic programmes.

The aim of this paper is to present an experimental CLIL course in mediation. At the beginning of the paper a brief overview of ways of teaching mediation in different countries is given, and the utility of using a CLIL approach to creating a course in mediation is shown. Then the structure of the course is presented and in conclusion remarks on efficiency and effectiveness of the course are given, and recommendations made for using this approach in developing similar courses.

Background

Analysis of existing instructing practice showed that in Anglo-American law schools mediation teaching is a part of clinical legal education but it took about fifty years to create and implement “educational programs that ‘prepare its [Law School] graduates to deal with current and anticipated legal problems’” (Cooper, 2003, p. 31). American law schools have different me-

diation programmes but in essence they have similar goals and structures: “to participate in the mediation clinic the students must have completed the Mediation course, or an equivalent training course and be in good academic standing with the law school” (Chapman University, n.d.) or “once applicants are accepted for training, each new trainee is required to attend 32 hours of basic mediation training and required to mediate every other week for two semesters in a small claims session in a local court in metropolitan Boston” (Harvard Mediation Program, n.d.). British universities offer courses in mediation at graduate and post-graduate levels, e.g. “Mediation and Conflict Resolution” (University of Strathclyde, n.d.) or “Negotiation and Mediation” (University of Kent, n.d.), where practical experience in a Mediation Clinic is an integral part of a course.

As for European countries, there is a broad range of scenarios and no established experience. The Mediation Directive (2008) “places mediation at the centre of European cross-border dispute resolution” (Friel and Toms, 2011) and Member-States legislations are to be compliant with it. A brief study of the issue showed that there are different types of mediation and various ways of training mediators. For example, in Germany there are extra-judicial and judicial mediation procedures. All mediation procedures are regulated by the Mediation Act of 2012 where Section 6 provides for certification of mediators. As for judicial mediation judges involved in the process are called conciliation judges, not mediators, and are usually trained in a short training programme conducted by mediators, psychologists and judges. Some universities offer master programmes in mediation. (Moltmann-Willisch, 2016)

In Austria mediator training and qualification requirements are very demanding and are codified by law, a completion of a training course at a Ministry of Justice approved training facility being a must (Feasley, 2011, p. 347). The “Mediation in Member States” website provides information about the current situation in each Member State and its analysis shows that in most countries training is offered by professional mediators’ associations or private companies (https://e-justice.europa.eu/content_mediation_in_member_states-64-en.do). There are many summer schools offering courses in mediation as professional development and mastering communicative skills is an integral part of these courses.

Communication skills are usually formed and mastered within language courses. However, much more often it is foreign language teachers who deal with this educational task and not native language teachers, both at the secondary and tertiary levels. Such skills as active listening, reframing, summarising, acquiring information, are recognised to be crucial for a mediator

and mastering them in a foreign language will definitely enhance communicative competence in a mother tongue. So this is one of the reasons to create a CLIL course in mediation. Another is the aims of the European Union Directive on Mediation, one of which is to resolve civil and commercial cross-border disputes so mediation is to be conducted in a language foreign/second to one or both parties – and in most cases it is English, so creating a CLIL course in mediation again seems reasonable.

Analysis of the literature shows that CLIL courses are more often used and most successful at the secondary level of education. (Scott and Beadle, 2014) One of the reasons of poor implementation of CLIL courses in university curricula is the complexity of subject matter. But in this particular case – developing a CLIL course in mediation – the competence of communication is at the heart of the course, and the issue of challenging content is taken off the table.

Moreover, such general goals of CLIL as developing intercultural communication skills and oral communication skills as well as increasing learners' motivation (Scott and Beadle, 2014, pp. 3–4) entirely agree with the teaching goals of mediation. Other CLIL aims – preparing for internationalism, acquiring subject-specific target language terminology – also coincide with the task of preparing a good mediator.

Coyle's four C-s – content, cognition, communication, and culture – which are usually used to describe CLIL aims, prompt on how to distribute tasks between language and subject teachers. So language teachers are in charge of that part of the course which deals with communicative and cross-cultural aspects of mediation while law teachers can work out the content, i.e. prepare the texts connected with the branches of law mediators deal with more often, for instance: family law, employment law, contracts. Furthermore, some texts should cover mediation law in a home country and abroad.

Course Structure

The following course syllabus is not a final version and it is being tested. The model offered presupposes that the course is taught by a language teacher. It is an optional course and one of its aims is to train students for international mediation competitions which are conducted by International Academy of Dispute Resolution (INADR, n.d.).

Educational goals of any course cover knowledge, skills, and professionalism, all should be fulfilled in order to prepare a qualified specialist but only

one area should be in focus in a particular moment of teaching (Greenebaum 1999, p. 139). Thus the course can be divided into two parts: ‘theory’ and ‘practice’. The former is similar to typical foreign language lessons where texts, which are the basis of the classes, are devoted to Alternative Dispute Resolution, specifically mediation, and related topics. That way the students acquire the necessary applied knowledge. The latter consists of role plays and scenarios as well as some supplemental reading and such work develops practical skills and professional competences.

A ‘bank’ of texts is being accumulated and includes such titles as “Litigation and Arbitration” from Introduction to International Legal English, Mediation in Context, Understanding Conflict, Mediation Process and so on. At the beginning of the course language learning tasks are: developing reading skills, acquiring and mastering topical vocabulary, developing speaking skills (e.g. a presentation of Law on Mediation in a home country), mastering writing skills (legal correspondence – letter before action, request). Topical vocabulary should be given special attention because legal terminology has always given rise to difficulties of translation and interpretation conditioned by cultural differences (Sierocka, 2014). Moreover, the interdisciplinary character of mediation makes its terminology system complicated due to the extra-linguistic characteristics in this field of study (Vyushkina, Khizhnyak, 2017, p. 35). Students are offered various ways of mastering vocabulary, one of which is *memrise*, an online educational tool, used in accordance with Dr. Łuczak recommendations (Łuczak, 2017).

Turning to the subject matter, the students learn about different forms of dispute resolution, unique features of mediation, types of conflicts and ways and styles of their resolution. At this stage the students are supposed to realise that there are two options for a lawyer within a mediation process: either as a mediator or a lawyer securing clients in mediation (Greenebaum, 1999, p. 141). And although they will have an opportunity to try both roles within the course the emphasis is given to developing a mediator’s skills.

To develop critical thinking, students are given a task to make a list of crucial mediator’s skills and they are usually able to prepare a comprehensive list. The students realise that to become a good mediator they need 1) to learn how to understand conflicts and methods of conflict resolution; 2) to master negotiation skills because mediation to some extent is a facilitated negotiation; 3) to practice problem-solving and generating potential solutions; and 4) to become effective listeners and good communicators. Communication skills are extremely important because mediation is a collaborative process.

Mediation is a structured process and the stages are the following: orientation; identifying issues and understanding parties; problem-solving; and writing the agreement (Mediation Skills and Process, 2015, pp. 21–22). Each stage is studied and trained consecutively. Any real life first mediation session always begins with an opening statement of a mediator. This statement, in general, reflects the mediation definition: “Mediation is a *process* in which an *impartial* third party *assists* disputants in finding a *mutually acceptable solution* to their conflict. It is both *voluntary* and *confidential*.” (Mediation Skills and Process, 2015, p. 18). The primary goal of the stage is explained to the students: developing trust in the mediator and in the process.

It seems appropriate to use video to introduce a beginning of a mediation session. The students are given a sample opening mediator’s statement and asked to prepare their own openings as a home assignment. Later in class they practice their opening statements in pairs.

In fact, video can be used at any stage of training. It gives a teacher an opportunity “to focus on a specific behaviour”, e.g. handling an offer, to demonstrate good practice, to compare mediators’ styles (Golann, 2007, p. 8). Moreover, the teacher can give video as a home assignment and save classroom time. On the other hand, using video in class “can provide a nice break from the intensity of extended mediation sessions” (Smith, 2012).

The main goal of the second stage of the mediation process is to get the issues and perspectives on the table. At this stage students are taught such communication skills as active listening, asking questions, paraphrasing, summarising, reframing.

In regard to active listening, it is necessary to note that, in fact, students are not taught to how listen at all, even though in mediation “listening is of the paramount importance” (Australian Mediation Association, 2012, p. 5). At the beginning of the second stage of the mediation process a mediator should listen silently, not interrupting, encouraging the speaker by open questions only when necessary. A short overview or a review of the types of questions and the purposes they are used for is given and then the students start practicing. Here both pair and group work are used. The students take turns to tell stories on the one side and to summarise on the other.

It is important to explain when to summarise during the mediation procedure. Key points of the first party story should be summarised before speaking to another party whose presentation should be summarised as well; then there should be a summary at the end of the second stage when issues are identified. In the Problem-Solving stage, summarising is vi-

tal when the parties are identifying possible options. The language of summarising should be neutral and students-mediators need to avoid providing advice, evaluation or judgments. Compiling lists of synonyms is a good home assignment.

Training in paraphrasing and reframing is also provided at this stage. Under reframing we understand restatement of ideas, phrases and words using neutral, non-emotive, even positive language. Reframing helps a mediator to make parties see and conceive the situation from a different point of view. It also underlines mediator's impartiality. The students are given examples of reframing different statements: e.g. from negative to positive (he/she never does... – you want him/her to help ...), from a complaint to a request (he/she doesn't listen to me – it sounds like you want to be heard), etc. (Mediation Skills and Process, 2015, p. 61). Then they are asked to reframe different statements given in a list.

The third stage of the mediation process – problem solving – is trained through scenarios and role plays. Its main goal is to generate agreement upon solutions. General and confidential information is provided to 'parties and mediators' as a home reading assignment and then the scenario takes place in class. The way it is performed depends on the number of students in class. Six is a good number for effective work: two lawyer-client pairs and two co-mediators. It corresponds to a competition format. As for general purposes there might be one mediator in a session which is true in real life.

The main difficulty at this stage is preparing scenarios. The Internet is the main source of material. Moreover, textbooks on negotiations can be used: adding one more role and shifting emphasis to a cooperative negotiation style to a given problem allows it to be used in a mediation scenario.

If there is an opportunity to invite a practicing mediator to join teaching at this stage, or at least to observe some scenarios and comment on them, it will greatly enhance students' experience.

Working with document templates and mastering writing skills take place when training for the fourth stage of the mediation process. Its main goal is to record the selected solutions into a written document. Each scenario ends with writing an agreement if the parties have come to it. It does not matter what role students perform, all of them have heard the final summary and should be able to draft the agreement. Moreover, there are templates available on the Internet and in textbooks on mediation, so the solutions the parties reached in writing are applied to the task.

As a consequence, practicing scenarios will prepare students for an internship in a mediation clinic if there is such clinic in a law school and this course can serve as an introduction before starting such an internship.

If there is no mediation clinic, the course, in any case, gives the students a general idea of mediation and provides training in important communicative professional competences.

Conclusion

Developing a CLIL course is a complicated task and teaching such a course is a challenge both for a foreign language teacher and for a subject teacher. In case of a subject teacher instruction there is a risk in shifting to using EMI (English as a Medium of Instruction) instead of CLIL. On the other hand, if a language teacher is a CLIL course instructor there is a concern that the subject matter could be covered insufficiently. In the context of a CLIL course in mediation the latter is not crucial because the main goal of the course is to teach how to communicate effectively and it is the skill that language teachers exercise in their everyday practice.

No doubt that additional teacher training is necessary but in this particular case self-study will fulfil the task and there are a lot of materials available on the Internet for additional reading. Moreover, this course is offered as an introduction to mediation, and students are supposed to master the skills which they will acquire during the course, in a mediation clinic or any other means of internship.

Feedback received from students who took this course via a testing regime is not enough to draw serious conclusions but, in general, it is positive. The students underline that such skills as active listening, summarising, paraphrasing, reframing, are very important and helpful and they use them in their studies and practice. Some of them mentioned that they would think of studying ADR in depth and choosing that career path. Gaining fifth place in the Individual Mediator's Award at the 2017 INADR International Law School Mediation Tournament can serve an illustration of the efficiency and effectiveness of the course (<http://www.inadr.org/2017-inadr-ilsmt-results/>).

Communication skills are an integral part of professional lawyer's competences and CLIL courses in the spectrum of a lawyer's activities are closely connected with communications such as client consultation, and negotiations can be developed on the basis of the described model. One part should be based on texts explaining the subject area and providing necessary vocabulary, and another part aimed at mastering the necessary communicative competences.

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