

MEDIATION - CURRENT AND FUTURE ASPECTS

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Abstract

In this changing society, characterized by conflicts which generate high danger situations which directly influence each of us, mediation must gain an important place in the economic, political, legal, but also social environment due its possibilities.

Contrary interests have become a way of living and the pace of world evolution is becoming increasingly more rapid, and these negatively influence us all. Our tradition and culture are barbaric, we are glad something bad happened to someone, we gossip a lot, we complain about everything and, of course, "we" are never to be blamed, our excuse being "the government, the prime minister, the president, the manager, the doctor, the judge, the teacher etc". Analyzing the phenomenon more closely, I see that we actually face a single problem - "the lack of education", phenomenon that drove Romanians on the verge of a state of continuous tension, which generates irritation and lack of discernment, all leading to the perpetration of rather serious offences with unfortunate consequences for us all.

Every time, regardless of the discussed subject, we tend to make comparisons with other states and the way they implement various laws and ordinances. I think we need to understand that each country is unique through its geographical location, climate, traditions, culture and not everything that works in another state can also be applied in our country. We are in the midst of an ongoing transition and the pace of the implementation of laws is quite slow, and when adopted, their legal power does not last long and they suffer changes.

Mediation is a way of amicably resolving disputes, with the help of a third party specially trained as mediator, in conditions of neutrality, impartiality, confidentiality and with the free consent of the disagreeing parties.

Key words: mediation, amicably resolving disputes, procedure of mediation,

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Legally regulated as early as 2006 through Law 192/2006, subsequently amended and supplemented, which transposed into national legislation the provisions of the Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, the procedure of mediation brings clear and essential benefits to the parties in a dispute

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and, at the same time, can extensively contribute to the relief of judicial proceedings.

Mediation is based on the trust that the parties confer upon the mediator, as competent person to facilitate the direct negotiations between them and to support them in resolving their dispute, by reaching a mutually convenient, efficient and sustainable agreement. The mediator has no power to decide on the contents of the agreement that the parties will reach, but can guide them to reach a common denominator.

One of the specific elements that mediation brings is the creation of optimal conditions for mutually motivating the parties in reaching an entirely satisfactory and lasting agreement, following a common approach to identify the issues in conflict, to clarify them in open discussions held in a private, civilized setting, at the end of which the parties will discover on their own the concrete solution to their problem.

In a wider context, mediation can be seen as preventing conflicts or developing the mechanisms to address them after they occur. It seems important to emphasize, first, that mediation results in a win-win solution. In mediation each party wins as the solution is accepted by all parties only if it is satisfactory to all parties. Also, one must emphasize the simplicity and clarity specific to the procedure of mediation. It is preferable for the involved persons to reach a consensus and not to have to accept a solution imposed by a judge, who may not know the depth of the issues to the same extent as the involved parties.

Confidentiality is a major advantage; the mediator is bound to maintain the confidentiality of the discussions and he cannot be summoned as a witness on documents or facts disclosed during mediation. On the other hand, the parties cannot either use as evidence in trial the information found out during mediation.

Saving time and material and financial resources is another advantage of mediation, due to the reduced duration of this procedure (it may take from a few days up to a maximum of 3 months), but it also requires flexibility – the parties may agree with the mediator on the date, hour and even the location they wish mediation to take place.

Mediation has evolved from a procedural standpoint, so that today mediation sessions can be made via various virtual communication channels - "exclusively online mediation". In these circumstances, mediation is becoming a challenge for mediators as they have to think in "geographical" terms, metaphorically speaking, from the point of view of communication, competence and legislation.

That is why we need to remove the barriers standing in the way of our development by being as creative as possible. Online mediation, even if it is not that idyllically romanticized mediation, enables availability and access to the farthest corners of the world, bringing together people and situations that otherwise could not have access to such a procedure, the material benefit being a real one for all the involved parties.

Another important aspect: the amicable settlement of disputes through the procedure of mediation, by its typical manners and underlying principles, is likely to mend the relationships between the parties and not allow for their destruction.

The areas in which mediation can be successfully applied are:

- civil: division of assets, inheritance, division of inherited assets, limitation of land property, claims etc.
- family: spousal misunderstandings regarding the continuation or ending of marriage (divorce), division of assets (voluntary division), child custody, parental plan on raising and educating the minor children etc.
- commercial: constructions, procurement of goods, transportation, bank loans, auto/real estate leasing, technology transfer, consulting, insolvency, foreclosures, orders of payment;
- criminal: when prior complaint is necessary to trigger criminal investigation;
- consumer protection;
- copyright protection;
- environmental protection;
- cases of malpractice;
- cross-border disputes;
- other disputes concerning rights in respect of which the parties may decide.

The steps of the mediation procedure:

1. Choosing a mediator. The mediator can be chosen by the parties out of the Mediators List, www.cmediere.ro, www.just.ro, the lists displayed in courthouses etc. Mediation can be carried out by one or more mediators.

2. Information. The parties are informed on the procedural aspects of mediation and the advantages it provides.

3. The mediation contract. The mediation contract states the agreed aspects necessary to conduct mediation and the mediator's fee.

4. Conducting mediation. Only the people in conflict participate in mediation. With the consent of the parties, lawyers, experts or other persons may participate in mediation.

5. Concluding the mediation process. The minutes of conclusion of mediation is written and signed by the parties and the mediator. The

conclusion of the procedure shall take place if an agreement has been reached, or if it is noted that the parties could not reach an agreement, or if one of the parties does not wish to pursue the mediation procedure anymore and terminates the contact.

6. The mediation agreement. It is concluded when the parties have reached a settlement. It may be a written agreement, containing the agreed settlement. The mediation agreement as a document under private signature; it can be certified by a notary or approved by the court, only at the request of the parties.

Mediation is a procedure one can resort to both before going to trial and during any stage of the judicial proceedings, including during appeal, recourse or foreclosure.

It's high time the Romanian society saw mediation more openly and understood that there is another way of resolving disputes, and that it is not going before a court.

The concept and procedure of mediation should be implemented in all structures of society. Therefore, through vision, new ideas and active involvement, we must embark on projects that address all citizens, businesses environment, legal authorities, magistrates, disseminating information about this alternative method of resolving disputes.

CONCLUSIONS

The future lies in establishing cohesion between those who really want to support the implementation and development of the concept of mediation and direct beneficiaries of this procedure. We are in a continuous development process because we are in a period of continuous transformation. It is worth educating the litigants, because through education we can inform correctly and instill the true values by which we should live our lives.

Looking at the bigger picture with an open mind, we can consider that mediation is a *necessity*

and it should be seen as a different method that provides support to categories of different people.

The concept of mediation is also a way to help the traditional legal system, mediators being trained to help both the litigants and the courts.

I believe that mediation is a pragmatic way through which we have the possibility not only to solve our disagreements, but often to save our personal and business relationships.

The future of mediation is something more than a device for resolving conflicts; it is "the Chinese drop" that, in time, will produce beneficial effects for all.

An old Japanese proverb says "Vision without action is a daydream. Action without vision is a nightmare."

IT IS IMPORTANT for all mediators to really want to have as few citizens going to the courts as possible, and this could be an interest point for our budget also!

I think the real questions are now being born, knowing everything we know, and it depends on us to find efficient manners to use mediation to further improve our way of living.

I am confident and I hope to stimulate new thinking in every reader and to have mediation taken over and put into practice.

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