

THE UTILITY OF MEDIATION IN ROMANIA

ANA DANIELA BOBARU

Constantin Brancusi University of Târgu-Jiu, Faculty of Juridical Sciences, Romania

Abstract:

The Law nr.192 on mediation and the mediator profession entered into force in 2006, but many Romanian have recourse to this procedure since 2003 and they could perceive the benefits and the utility of mediation. All the people were aware that the misunderstandings have arisen between them as a result of deficiencies or lack of communication and found that the mediator is the person who facilitated the restoration of dialogue and finding solutions widely accepted.

Key words:

Mediation; Romanian Law nr.192 on mediation and the mediator profession; lack of communication.

The study of the conflict and of it`s solve through alternative ways may be the most important study of all.

Economic and social situation in Romania is not very different from other Community countries, so that referral attention to alternative methods of resolving conflicts is the desire to waive the lengthy and expressive trials in court hearings.

Because of how rapidly interaction, people may not always hold control over the relationship and often there is the risk of conflict situations in which the results are not expected. Concern for the establishment of criteria balancing gains and losses must overcome the barrier of their own interests. Therefore, mediation as a method of alternative dispute resolution offers the possibility of introducing in the conflict a third party, neutral and impartial, which sets general, in an attempt to identify a solution.

The occurrence of mediation in Romania is the solution for a large part to interpersonal conflicts. An institution that does not judge and does not act, but succeeds to bring the two parties to decide by mutual agreement, will not generate any pride to the winner or frustrations to the defeated. Thus, aware of the agreement reached, which benefits both parties, social life will be natural, the inter-fragment is left. [2]

The conflict has multiple causes and is initiated by one, against the background of a long accumulation. Obviously, this is not true for conflicts that are spontaneous favored by some state or experience of the moment.

The most important causes that lead to conflict are:

- a. poor communication (providing insufficient information, or truncated using inadequate means and channels);
- b. the amounts (disagreement focuses on the ethical aspects and the ways in which power should be exercised - taking into account the moral probity and fairness,

disputes affecting choice of objectives and methods, dialogue between the deaf - the principle that results in degradation genre who's not with us is against us);

- c. the existence of different purposes (parties tend to be differentiated in terms of priorities, even when they pursue the same thing);
- d. ambiguous style (fight to strengthen positions causes a distortion of reality, until incompetence treatment situation);
- e. limited resources (in case of failures, the development of structural elements is affected);
- f. mutual dependence (a response to the needs of other parts depend on the proper attitude, there is a blockage or distortion of information, needs overvaluation or mistrust);
- g. complaints (against the honorable status, ideas - find naive, resistance to new, complex problems, advice – ignored, charges, etc. [3])

This are the countless situations in which the Ombudsman finds its applicability and usefulness.

In the mediation session, one thing is very important, which is a first step in resolving the conflict: the parties to communicate again.

By using the mediator of communication techniques, and active listening, they gradually become confident that is where I can resolve the conflict.

Even if the top (in joint session) tonality and intensity of discussions between the parties seems to hide irreconcilable positions, during, and especially in separate meetings, the parties begin to generate options to resolve the conflict. These are points which may lead to a final intersect interests to stakeholders and the birth of a solution to resolve the conflict, mutually accepted.

Resolving conflict is in some cases impossible, but the communication between the parties may want to reduce, with the mediator.

Perception of the Romanian society on conflict management can not be assessed by the number of conflicts that arise, but by the efficiency with which they are addressed.

In addition to lack of efficiency with which conflicts are resolved in our country, calling on the courts, paradoxically, is observed and a crisis response to mediation, both in terms of the community in general, and parties who may be interested advantaged and mediation in particular.

The concept of the idea of mediation and amicable settlement of conflicts are closely linked to the cultural identity of a people, and their implementation has involved a long process even in countries with traditional mediation.

The institution of mediation was born in the U.S. and then was taken and the Europe, because of outstanding results obtained, as a voluntary and amicable. Founded as a way of reduction

of the courts of numerous pending cases, the mediation has become a usual practice with regard to resolving conflicts amicably. Both in America and in Europe, where it became a habit to call the mediator, that pending the court were significantly reduced, so that only 5% of the conflicts come to be settled by court.

The mediation is a novelty for our country, Romania is not a tradition in this field.

Law nr.59/1968 can not be considered a precedent in respect of mediation committees established by the court at that time being vested with powers to prosecute effectively, not mediation. Moreover, these meetings were public commissions, and decisions by the judge could impose sanctions, ranging from reprimand to a fine of warning.

Law nr.192/2006, its content includes the principles that guided the mediator, and confidentiality, neutrality and impartiality. None of these are found in Law nr.59/1968 .

Association with the mediation committee hearing is an error and as such it should be avoided.

The first project in Romania was developed through a partnership of U.S. Embassy, the Ministry of Justice and Bar Dolj, which aimed at establishing a Pilot Mediation Center in Craiova, which will carry out training of mediators and promotion of mediation in Romania. Since 2003 until now Craiova Mediation Center has held a promotion and training of mediators along with them voluntarily engaging in mediation related to the local courts. [4] Therefore, in a period of years aprox.5 who called to mediate in the center saw the usefulness of particular elegance that can resolve a dispute in a civilized society. [5]

Dispute resolution through mediation clearly brings benefits on many levels. Contribute before any argument to the improvement of justice - the courts are relieve , moving the weight on the quantitative criterion of pending cases to be dealt with celerity, based on quality of the solutions adopted, individuals have an alternative system Legal and their defenders represent or assist them in mediation proceedings.

Currently those who are in dispute, rather choose the court in resolving the conflict rather than an alternative method. And because we are facing a lack of information public about the procedure. Public opinion in general, individuals in particular, although have heard of the procedure of mediation and mediators choose the halls of the court to resolve conflicts. We believe that this procedure is a procedure which will need time to be known and understood in particular and the profession is at the top of the road and its fate depends on many factors who strike destiny in general practitioners in the market were decide, through the mechanism of demand and supply. It is natural, knowing the traditions and mentalities Romanians things to be done slowly and safely.

Communication advantages resolve conflicts through mediation must be in the future one of the concerns of professionals to conduct ongoing program of transmitting information locally and nationally. Along with these activities to practice the profession with dignity, conducting training programs and ongoing expressions of interest for advanced mediators confers prestige of the profession and lead mediator by default win the confidence of civil society in the mediation.

In our opinion, the usefulness of mediation can be charged only when you're in the middle of this procedure, either party or lawyer or mediator.

Literature:

- [1] Şuştac Zeno, Claudiu Ignat, alternative means of conflict resolution (ADR), University Publishing House, Bucharest, 2008, pag.121-122;
- [2] Gabriel Here, authorized the Ombudsman and social construction, Review Romanian Mediation nr.1/2009, Publishing Consensus, Craiova, pag.8;
- [3] Eugene Gherga, Gabriela Gherga, Conflict Mediation, printed paper in the package antirasist in 2000, pag.11;
- [4] In the Craiova Mediation Center were about 800 trained mediators, who from all socio-professional categories: lawyers, professors, judges, notaries, economists, legal advisers, priests, teachers in pre-university education, engineers, psychologists , doctors and journalists. It notes the formation of a variety of professional people who have chosen and another opportunity for training, part observable in the current economic context, when many are thinking of Romanian professional reorientation;
- [5] During this period were almost resolved. 400 cases through mediation.

Reviewer:

Jiří Valdhans

Contact – email:

danielabobaru@yahoo.com