

RESEARCH ARTICLE:

Interdisciplinary analysis on mediation in Romania

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ABSTRACT

This article aims to present and highlight the role and importance of mediation in resolving conflicts and its place in the judicial system.

The article examines the subjects that can be mediate, the general principles by which it is guided and which are set out in the Code of Professional Ethics and Deontology of Mediators.

The article contains also a set of SWOT analysis about the process of mediation, training and promotion of the mediation profession in Romania.

KEYWORDS: *mediator, mediation framework, alternative conflict resolution, trends in mediation.*

1. Introduction

Legislative framework

On the background of an unprecedented growth recorded in the number and complexity of disputes and conflicts in the Romanian society, it was felt a growing need to support active and participatory the justice system in Romania. The mediation institution is still in the crystallization step, a difficult process because it was not consistent integrated in the legal mechanism were mediation is also acting. "This dose of official relativity dented the importance of mediation as a legal alternative for dispute resolution" (Gorghiu, 2011). The mediation was regulated by Law no. 192/2006, adopted by Parliament and subsequently amended by Law no. 115/2012 and GEO. 90/2012.

By this regulation is established the mediation place in the judicial system, while also putting the legal basis of a new organization and exercise professional occupations. At the Article 7 of the Law of Mediation, it is provided the cumulative meeting of several conditions for a person to carry on the profession of mediator. These conditions are linked to the graduation of university studies, a working experience of at least three years, graduating mediator training according to the law, or graduate a master level program in the field, which must be accredited and approved by the Mediation Council. The mediator can be authorized only according to the Law of Mediation.

Subjects defined in Article 60 of the Mediation Law introduced by Law no. 115/2012 are:

a) field of consumer protection, the consumer invokes the existence of damage, abusive clauses included in contracts between consumers and traders, or violation of other rights under national law or EU consumer protection.

b) family law when occurs the situation of misunderstanding between spouses on divorce, division of joint property, exercise of parental rights.

c) litigation regarding possession, neighbourly relations.

d) the professional liability, in which may be incurred professional liability and malpractice cases.

e) labour disputes that may arise from the execution and termination of individual employment contracts.

f) for the offenses for which prior complaint or withdrawal of reconciliation of the parties removes criminal liability, after having made the complaint.

2. Code of Professional Ethics and Deontology of Mediators

Code of Professional Ethics and Deontology of Mediators (Official Journal no. 581, 2011) was adopted on 17 February 2007 by the Mediation Council and is based on the European Code of Conduct for Mediators. Along with Law no. 192/2006 and the Rules of Organization and Operation of the Mediation Council, these are the main regulations that guide the work of mediators from Romania. This code aims to establish principles and rules of professional conduct that any mediator is obliged to assume moral and to respect.

According to this code: Mediation is a voluntary way of resolving conflicts between two or more persons, amicably, with the assistance of a neutral third party which must be qualified and independent, through an activity in accordance with laws and rules of this code (Code of Professional Ethics and Deontology of Mediators, 2011).

The mediator mission is defined as that one of trying to resolve conflicts amicably, in terms of neutrality, impartiality and confidentiality, while the mediator duty is one of prudence and

diligence and not the one of outcome (Gorghiu et al, 2013).

The general principles underlying the mediation process set out in this Code of Professional Ethics and Deontology of Mediators are: the principle of freedom of the parties to use mediation and make a decision, principle of non-discrimination, principle of independence neutrality and impartiality of the mediator, the principle of confidence and moral integrity, the professional-secret confidentiality principle, the principle of conflict of interest, the principle of setting fees, the liability of the mediator, incompatibility and also the quality of the mediation process.

In order to promote and develop mediation, the Ministry of Justice in Romania has developed a strategy based on such principles as:

"1. Strengthening mediation profession and developing the relationship between mediation procedure in judicial proceedings and ensure prerequisites of relieving the courts of numerous causes;

2. Reassessment of the responsible organization institution with attributions in organizing, functioning and applying the mediation, in order to improve it;

3. Establishment of the possibility to introduce a mandatory mediation session in certain categories of cases, after consultation with interested stakeholders with responsibilities in the organization, operation and application of mediation;

4. It is necessary a careful prior analysis of all aspects raised at national and, if possibly, the first statistically significant data showing the application of mediation during the onset of the law;

5. Promoting mediation as an alternative dispute resolution by informing the population about the advantages of this solution "(Gorghiu, 2013).

3. The profession of mediator in Romania

According to the Mediator Training Standard (Decision 12 / 07.09.2007), the quality of mediator is acquired by a persons who meet the conditions listed in Article 7 of Law no. 192/2006. Such mediators are accredited by the Mediation Council, following the mediation training graduation or master level program graduation, which must be approved by the Mediation Council. These training courses are organized by authorized mediators training providers and lasts at least 80 hours. The training program comprises a minimum of 70% practical exercises and 30% theoretical elements. Training methods are varied and consist of: presentations, group discussions, demonstrations, simulations, case studies, multimedia materials. These specialized courses are intended to form professional skills in mediation.

Article 4 of the Mediator Training Standard requires that training ends with a graduation exam. After graduation it will be release a certificate which is issued together with the " Supplement Certificate ".

Following the completion of training, the mediators can get specialized in the fields mentioned in the Article 60 of the Mediation Law. Article 37 (Decision 12 / 07.09.2007) details the content of the training program of mediators such as: theory and conflict analysis is discussed for a period of 16 hours, for alternative dispute resolution are allocated 8 hours, for theory and practice of mediation are allocated 48 hour and for the organizing mediators activity, 8 hours.

With regard to working conditions and challenges facing mediators in Bucharest after Romania joined the European Union, the author Daniela Sarau conducted a study based on interviews by analyzing the problems faced by mediators - from the rivalry between lawyers and mediators, expectations of beneficiaries of mediation, but also reflected the influence of Romanian culture in the mediation process.

As regards working conditions, most

mediators are lawyers by profession. According to the analysis in Romania, there is no official framework conditions governing the negotiation fees for mediators. Thus, different mediators set their fees ranging between 50 RON and 1000 RON. As there is no standardized prices, the cost of mediation is determined by mediated unity and not per hour. The final fee is established after analyzing the complexity of the case (Sarau, 2013).

The study results indicate that because of the profession they exerts, as lawyers, mediators are finding it easier to obtain mediation cases through the information they hold. Although there are also professional associations, mediators do not feel attracted to join them because they would not bring significant advantages. Another aspect relates to the collaboration with co-mediator. This has advantages when the co-mediator has a legal training and is preferred in cases of mediation in labour, commercial, for example in areas where mediators are not specialized.

Regarding the training of mediators, a significant number of mediators have attended only the base course, although the profession in this field become more complex and cases require to follow continue courses to be properly prepared (Sarau, 2013).

Table 1. SWOT analysis of the mediation process

Strengths	Opportunities
Mediation and mediator profession are regulated by law. There is a growing interest in the profession of mediator (4902 individuals were accredited as authorized	The permissivity of EU legislation. Monitoring by the Council of Europe and European Commission justice reform. The role of magistrates into recommending mediation to the

mediators). Mediators are professionals with higher education (lawyers, economists, engineers, academics). Disputes are resolved in a shorter time than during a process. The parties are in control of decisions throughout the mediation process.	parties in conflict. The efficient time settlement in mediation hearing compared to the court.
Weaknesses The insufficiently clear provisions regarding the manner of exercise of the profession, particularly as regards the profession of lawyer and mediator; The Statute of Mediation Council is multivalent - regulatory body of the profession, and defender of the interests of mediators; The unformed marketplace on charges of mediation services.	Risks Low level of public education. There are no resources allocated from the state budget to support mediation. Misunderstanding the benefits of mediation by public institutions.

Table 2. SWOT Analysis on the development and promotion of the mediation profession in Romania

<p>Strengths</p> <p>The initiation of the Mediation Council who has a plan to promote the profession of mediator.</p> <p>Increasing the number of information sources on the internet regarding mediation.</p> <p>Mediator profession is a liberal profession in Romania.</p> <p>Regulatory clearly support the provision of mediation in Romania.</p> <p>Standards on training mediators.</p>	<p>Opportunities</p> <p>High demand for the courses on the mark.</p> <p>The existence of Mediators Bulletin Board.</p> <p>Existing occupational standard for the mediator.</p> <p>The existence of a Code of Conduct and Ethics for Mediators both at European and national level.</p> <p>Overcrowding courts.</p> <p>The existence of numerous media channels.</p>
<p>Weaknesses</p> <p>Failure to adapt master programs with mediation law requirements / procedures for approving this programs;</p> <p>Large number of mediation cases "pro bono" to promote the profession.</p> <p>Lack of specialization / improvement in different areas of mediators.</p>	<p>Risks</p> <p>The risk of low quality training services because the demand is bigger than supply.</p> <p>The Statute of Mediation Council is ambiguous (it represent the public authority for regulating the profession of mediator and also the defender of their interests).</p> <p>Mediation is perceived more</p>

Lack of covering success stories.	as a specialisation than as a profession.
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4. Trends and guidelines of mediation

Starting from the general to the concrete, we can say the following:

Factors such as globalization have rapidly increased democratization of society and intensified the need for streamlining the interactions between individuals. Such alternative dispute resolution methods, as negotiation or mediation, are increasingly used to avoid specific procedures of national jurisdictions.

Regarding the dispute settlement, "an important rule of modern international law speaks about the optional nature of the rule" (Cocosatu, 2012). Based on this principle, states are free to choose the political-diplomatic means of conflict resolution, such as negotiation, good offices, mediation, international conciliation or international investigation.

In international disputes, the mediators are not only leading the negotiations but also get involved in solving the dispute through seeking and finding solutions. Numerous mediation actions were initiated both within the frameworks of UN and on the regionally area.

The reason why mediation was extended so much and is reflected in the culture of an impressive number of states, is the adaptable character to the specific circumstances of a conflict or a dispute.

In Romania, mediation by Law no.192 / 2006, is recognized as public interest activity. Through this recognition, the guidelines of this process will increase the quality of justice, empowerment of citizens about the conflict, but also a collaboration between mediators and bodies state responsible for justice.

5. Conclusions

In Romania, mediation has been integrated into the legal system from the need to reduce the number and complexity of disputes in Romanian society.

Subjects bounded by mediation law are: consumer protection, family law, civil litigation, employment litigation, professional liability field.

Training and certification of mediators are the tasks assigned by the Mediation Council.

Mediator's mission is to try to resolve conflicts amicably, respecting the principles of neutrality, impartiality and confidentiality.

The Code of Professional Ethics and Deontology of Mediators, establish general principles that are underlying the mediation process: the principle of freedom of the parties to use mediation, non-discrimination principle of trust and moral integrity, confidentiality, conflict of interest principle, setting fees, mediator liability.

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