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MEDIATION - AN ALTERNATIVE TO JUSTICE

Abstract

Mediation – appears in our country for the first time, with the emergence of Law 192/2006 – and is an alternative to court.

Optional is a way of settling conflicts on the amicable way in which an appointed mediator, trying to parties with which it mediates to find a solution convenient, efficient and sustainable accepted by them that would end the conflict.

It is a voluntary process, optional, and can trigger only at the express request of the parties.

As an alternative to conflict resolution between the parties, presents many advantages :

- Is fast and that takes time, much less than the court itself,*
- Involves fewer expenses than the process,*
- Is confidential,*
- Implies respect,*
- Mediation, the parties are not adversaries,*
- Mediation, the parties are those who take decisions,*
- Mediation, all parties win, even when they make compromises.*

Mediation can be used to solve a broad areas of conflict.

The procedure for mediation ends when the parties have reached an agreement with a report of mediation, which if necessary, will be sent to court or the notary login to become enforceable.

Brief history.

Switching to a market economy, Romania's accession to the European Union to reform its justice, harmonization of domestic legislation with European legislation, increasing conflicts, the need to resolve them as rapidly, are only part of the conditions which have led and made possible the emergence of the institution mediation in our country.

If the U.S. and European countries developed strong, mediation, as a means of resolving disputes, and has found place in the legal system a long time

ago, our country has emerged as a necessity, since the entry into force of Law 192/2006.

Law 192/2006 - governing mediation and the occupation of mediator, has made possible the establishment of the Mediation Centers in Romania, the representative body of mediators, consisting of the Mediation Centers in all counties of the country.

Although talk of the existence of specialists trained in mediation, although talk of the existence in each county of an association of mediators and the existence of a law in the field, things are quite difficult in the sense that they have not released any up to the current authorizations operating for those trained in the profession as we can not speak of any real willingness to courts or lawyers, that he would like mediation as an alternative to justice.

This situation is the organization in a swoon, but also a certain mentality which still is not proper application of law mediation as soon as possible.

If you were to customize the only city in Galati have already established an association of mediators who are founding members of a number of 10 (ten) lawyers from the Bar of Lawyers Galati, the Association is only symbolic, on paper and although it is not working Expected much impatience with many of those interested.

What is mediation ?

„According to law 192/2006 - mediation - is optional how to resolve conflicts through amicable, with a third party specialist, as a mediator in conditions : neutrality, impartiality and confidentiality”.

„In another words, mediation is an alternative method of settling disputes in which an appointed mediator assists the parties in conflict, trying to find a deal acceptable to the parties, to achieve a solution mutually convenient, efficient and sustainable”.

Mediation is being done equally for all persons, irrespective of race, sex, age, religion, nationality.

Particularities of mediation.

Mediation is :

- An alternative to the judiciary, to resolve conflicts between parties;

- Voluntary, the parties come to mediation, if they so wish:
- An optional way of settling conflicts through amicable, the parties can not be forced to resort to this procedure, no law, no court, but neither of their lawyers, calling her if they so wish.

The object of mediation :

Mediation can be used to solve a wide area of conflict :

Civil Law :

Claim, share claims, evacuation, the obligation to make, etc.

Family law :

- Divorce, shared common goods, minor conviction, separate maintenance, etc.

Comercial law :

- Claims, notice of payment, etc.

Criminal law :

- Criminal cases for which the law provides criminal complaint prior existence and reconciliation parties : Tapping, dirt, etc.

Labor law :

- Financial entitlements, selling contract work, imputatii decision, etc.

Other subjects :

Can not be subject to mediation :

- Strictly personal rights relating to the status of the person and any other rights of the parties, according to the law, may not have the understanding or any other manner permitted by law.

When we can address mediation ?

To are situations where we can address mediation :

- Between the parties there is a state conflict and to prevent and put an end to trigger a process, we can resort to mediation;
- Conflict between the parties is already deducted judgment, there were already pending before the court hearing a record.

Towards resolving the dispute mediation may take place :

- At the request of the parties in the process;
- On the recommendation of the court, a recommendation to be followed by acceptance of the parties in dispute.

How much is mediation ?

Mediation is not an activity performed free of charge. It assumes spending, but much lower than what we have to make towards resolving the conflict judgment.

The parties will have to pay a fee Ombudsman, which will be determined through negotiation with the mediating parties, and will be fixed depending on the nature and complexity of the case subject to mediation.

Along with these expenses, the parties will incur attorneys' fees, lawyers and what comes to mediation, and where appropriate, expert and notary fee.

What does a mediator ?

- Explains the parties to mediation procedure and answer their questions;
- Ensure that mediation should be done with respect for freedom, dignity and privacy of the parties;
- Diligentele to make all the parties to reach a settlement conveniently within a reasonable time;
- Helps the parties to discuss open issues and to identify the real needs;
- Helps the parties to understand and simplify the misunderstandings between them;
- Helps the parties to control and feelings, emotions, so that they could make mutual compromises;
- Helping the parties negotiate to resolve and achieve a result convenient to them;
- Helps the parties to find lasting solutions to resolve the conflict, avoiding lawsuits, expenses, stress, etc.;
- Helps the parties to see if unpleasant aspects of disagreement, such as the risk of losing, the risk of winning, process costs, emotional stress, etc.
- Preserve the confidentiality of information received from the parties throughout the mediation;
- Uses various techniques to interact with the parties and to help them reach an agreement, such as neutrality, impartiality, optimism, questions neutral, etc.
- Deontologiei professional rules.

Why should not make a mediator ?

- Decide son who is right;
- Do not judge what happened and not seek guilty;
- Parties not give solutions;
- Do not oblige them to negotiate;
- Not intimidating;
- Do not mind;
- No trick;
- Can not be heard as a witness in connection with the acts and deeds of which is aware of the proceedings in Mediation;
- Does not represent or assist in any of the parties to mediation.

The Ombudsman is elected by the parties in conflict and it can be any person owning knowledge of law, medicine, sociology, psychology, etc. Person possesses specific techniques and methods base don communication and negotiation.

Qualities of a good mediator.

An effective mediator, is the one that meets the following qualities

:

- Sensitivity;
- Flexibility;
- Optimism;
- Creativity;
- Persistence;
- Conviction;
- Sense of humor;
- A modest behavior, etc.

Why choose mediation ?

Mediation presents many advantages. The most convincing of these are :

- Is fast and saves time;
- Saves money;
- Implies respect;
- In mediation, both sides win;
- In mediation, the parties in conflict are not adversaries;
- Mediation is voluntary;
- Mediation is confrontational;

- It makes sense, the idea that the parties have control, they take decisions;

- Mediation work, meaning that although they have failed in mediation, the parties are winning, they got o the negotiating table, knowing more about their dispute, and so it's closer to original positions.

Technical procedure of mediation.

Mediation can take place at a time or more time, may involve a single joint session ar a joint session with several separate session, or more sessions joint and several separate sessions.

The date and time fixed, the mediator should be the meeting room ready.

In the joint session, the mediator :

- Meets with the parties and as appropriate with their lawyers;
- Make welcomes, which took place after the presentations;
- Inform the parties about the dispute and the purpose of mediation;
- To record advantages of mediation;
- Signals about the neutrality and impartiality;
- They warn that it can not give solutions, verdicts, but they can help to find themselves the most convenient and sustainable;
- Inform the parties that can no tuse him as a witness;
- Reminds the parties of the mediation that they are then invited to sign it;
- Clarifies the position of parties;
- Decide which party will discuss first.

In a separate session, the mediator :

- Meets separately with each side;
- Seek further information about the conflict;
- Clarifies desires, needs of the parties;
- Explains the realities;
- Develop options;
- Obtain a position of one of the parties that transmit the other party;
- Gives a task with which the party discussed.

After the separate session, the mediator meets again in joint session with the parties and lawyers, and as appropriate :

- Establishes result purpose;
- Tries to overcome the deadlock;
- Encourage future attempts to resolve;
- If the case is complex, with the agreement of the parties can appeal to the authoritative opinion of an expert, without disclosing their identity.

The procedure for mediation ends as appropriate :

- The completion of an agreement between the parties, after settling;
- By finding FAILURE OF ESSENTIAL mediation by the mediator;
- By submitting the contract mediation by a party.

Minutes of mediation - is the final act of this procedure, which attests to act and resolve the case by way of mediation, which act as appropriate, will be submitted to the court hearings, or will go to the notary for authentication, with a view to transforming it into enforceable.