

Penalties for the non participation in mandatory report sessions on the mediation benefits

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If I look back 10 years ago I can notice that mediation has had an evolution which at that time, we could but hope for. From the random pilot projects and the search "laboratories" of this activity, in the year 2013, mediation has become a freestanding profession and even a social and professional phenomenon.

Mediation is a conflicts resolution method and humanity has begun to become more and more aware of its efficiency. This process has determined remarkable progress at the legislative, institutional, and professional construction level. We can notice that mediation has been integrated by Governments, corporations or by people in their own conflicts resolution policies.

Pursuant to article 5 of Directive 2008/52/CE, „a court before which an action is brought may, when appropriate and having regard to all the circumstances of the case, invite the parties to use mediation in order to settle the dispute. The court may also invite Parties to attend an information session on the use of mediation if such sessions are held and are easily available.”

In enforcing this provision, pursuant to provisions of article 2 of Mediation Law in Romania (no. 192/2006), Parties, either natural persons or legal entities, have the duty to participate in the report session on mediation advantages, including, if applicable, after a lawsuit filing before the relevant courts, in view of settling by this method conflicts in the following matters: civil, family, penal, as well as in other matters whatsoever.

Thus, as per the same article, beginning with August 01st 2013, the courts shall reject the sue petition as inadmissible in case of non compliance by Claimant with the duty to participate in the report session on mediation, prior to filing the sue petition, or after the trial filing until the deadline assigned by the court for this purpose, for litigations from the following matters: consumers, family, malpraxis, civil/commercial (under approx. 10.000 Euro).

This legal provision has gained the attention of the audience in general and of justice in particular. Mediation has become a topic on the agenda of lawyers, magistrates, companies and of potential suppliers or mediation services users.

We are speaking about over 1.5 million people who annually must pass by an authorized mediator's office for the report session. Benefits are obvious considering the educational purpose of this provision but also, risks meet benefits. It is about the jamming that can occur as result of the system overload (approx. 5000 authorized mediators) or of the fact that mediators cannot request a fee for this activity as the law provides (and yet, they have a direct interest in this activity).

Last but not least, it is to monitor the reaction of legal professions to this legislative experiment which by the end of the year 2013 it shall present the first partial conclusions.

Eventually, it is mediators' reaction which shall make the difference or not. We'll see.