
Kluwer Mediation Blog

Can parties vote in mediation?

Constantin-Adi Gavrilă (ADR Center Romania) · Wednesday, December 14th, 2016

This article was prepared by [Rasim Gjoka](#), [Merita Bala](#) and [Constantin-Adi Gavrilă](#), mediators and company-community facilitators.

The idea to write about this topic came up after a meeting of community and company members, discussing on finding solutions to sensitive issues -related to environment, safety, investment and employment.

After the interactive communication and dialogue, and sometimes debate, between the parties, by the end of the meeting one of the participants, who was a stakeholder but not a permanent member of the dialogue group, among others expressed interest to attend other meetings, particularly in the meeting when the parties will agree and vote on the solutions to the issues of the dialogue agenda.

Vote in mediation? We were faced with an interesting question, which at first sight could be seen as one of those dilemmas that are encountered in many cases while mediating disputes that are complex and involve many stakeholders, like the disputes between investing companies and communities affected by the investment. Put differently the question, which needs to be considered, could be phrases like "Could parties' voting be used in dispute resolution and mediation processes, as an instrument to reach the settlement, to satisfy the parties involved or to overcome any deadlock?"

The situation is an interesting one and it deserves to be a topic for conversation that can be informed by different areas of dispute resolution and mediation.

We started by reviewing our own cases, looking for any case where, as an agreed process, the parties had voted to agree on the solution. We did not find any case to refer

We then searched for any reference or example in training manuals on mediation and in international guidelines or legislation of certain countries, whether voting has been provided for or recommended to the parties to be considered during the mediation process. We did not find such reference or example, as well.

Voting, a democratic instrument, is widely and frequently used in finding solutions to social and economic problems faced in our lives; it is used in electoral processes as

well as in the political discourse, but it is not used as an instrument in the disputes resolution and mediation process.

Although it is a democratic instrument it carries on the right of one party, the majority, to impose to the minority, therefore opposing the will of the latter.

Mediation, as a dispute resolution tool, is a voluntary process, in which a third natural and impartial party (the mediator) helps the parties in a dispute to communicate and achieve an acceptable solution by them.

Mediation strives for the agreement of all the parties, of every single person involved, and even if one doesn't agree, no solution is archived. Mediation should consider everyone equally important.

Mediation, conceived and assessed as communication process, an interaction between the parties, is developed and works on the bases of principles like self-determination, the neutrality and impartiality of mediators and process confidentiality. The question is how voting fits in, if ever?

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The image shows a promotional graphic for Kluwer Arbitration Practice Plus. On the right, there is a blue background with a white checkmark icon and the text "Explore Practice Plus". Below this, two overlapping screenshots of the software interface are shown. The top screenshot displays a profile for "Gary S. Binn" with a photo, name, and various statistics. The bottom screenshot shows a "Relationship Indicator" dashboard with three donut charts and a list of results based on cases within Kluwer. At the bottom of the graphic, there is a dark blue bar with the text "Kluwer Arbitration" on the left and the "Wolters Kluwer" logo on the right.

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