

Mandatory “mediation attempt”

Kluwer Mediation Blog
September 14, 2018

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Please refer to this post as: Constantin-Adi Gavrilă, “Mandatory “mediation attempt””, Kluwer Mediation Blog, September 14 2018, <http://mediationblog.kluwerarbitration.com/2018/09/14/mandatory-mediation-attempt/>

Four years after Romanian Constitutional Courts’ Decision no. 266/2014 has put mediation in Romania to freeze, this year the Parliament has adopted a set of amendments to the Law of Mediation. It included a mandatory „mediation attempt” clause in order to revitalize this activity. But the President of Romania has already challenged these modifications at the RCC.

The mediation activity took off vigorously in Romania with donor funded projects in 2000s and a good mediation law adopted in 2006. Unfortunately, the mediation law suffered almost 15 amendments that were aiming to strengthen mediation and create a real platform for conflicting parties to prevent legal proceedings by using facilitated dialogue and building consensus.

One of these amendments introduced the sanction of case inadmissibility for parties that would take their claims to the courts of law without attending cost-free mandatory information sessions about mediation benefits. The Constitutional Court then decided in 2014 that this sanction is not constitutional and the Romanian Parliament has failed to adjust the mediation law to this date, although there were a number of unsuccessful attempts.

In the meantime, thousands of mediators lost their enthusiasm and closed their mediation firms, as natural mediation referral was not enough in most cases for a sustainable mediation practice.

On June 26th 2018, the Romanian Parliament finally adopted modifications to the mediation law that are based on the same opt-in model, labelled as “mandatory mediation attempt”, but with a less drastic sanction. Also, according to the adopted modifications, the cases pending in the Romanian courts for more than 18 months should be automatically referred to mediation. A number of incentives were included in the modifications, like making the agreement an enforceable title if parties’ attorneys are present and sign the agreement.

Of course, the adopted modifications were received with hope by the supply side of the industry. However, the President of Romania sent a petition to the Romanian Constitutional Court, on the ground that contains provisions contrary to the constitutional norms and principles. The opposition party in Romania has sent a separate objection of unconstitutionality.

We can look at some of the arguments raised in a future post. Until then, it seems that the domestic legal framework in the field of mediation became scope for disagreement and discussion in the political spectrum and that Romanian Constitutional Court is expected to shed light and to adjudicate on the constitutionality of the proposed model. This decision should inform the conversation around what is a reasonable effort to mediation and could be useful within and outside the borders of Romania.

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