

Public Policies In The Field Of Mediation Between Appearance, Necessity And Opportunity

Kluwer Mediation Blog
November 14, 2018

Constantin-Adi Gavrilă (Craiova Mediation Center Association) and Marin Padeanu (Pro Pact Mediation Association)

Please refer to this post as: Constantin-Adi Gavrilă and Marin Padeanu, 'Public Policies In The Field Of Mediation Between Appearance, Necessity And Opportunity', Kluwer Mediation Blog, November 14 2018, <http://mediationblog.kluwerarbitration.com/2018/11/14/public-policies-in-the-field-of-mediation-between-appearance-necessity-and-opportunity/>

At present, the project called "Mediation-Effective Public Policy in the Civil Dialogue" aims to explore options for a public policy in Romania in the field of mediation. The project is funded by the European Union under the Operational Program Administrative Capacity 2014-2020, Priority Axis 1 – Public Administration and Efficient Judicial System, Component 1 – "Increasing the capacity of NGOs and social partners to formulate alternative public policies".

A policy paper refers to concentrated actions of public authorities, central or local, as a response to problems experienced by the society. The policy paper to be discussed and drafted will have the vision of transforming mediation into an instrument meant to contribute to the development of the culture of dialogue in Romania. It also encourages the empowerment and the self-determination of the parties involved in disputes and in other difficult situations to discuss and decide for themselves on possible solutions going forward.

Through the activities and results of the project, the Beneficiary – the Center for Mediation and Arbitration ProPact from Craiova – has proposed to create a partnership relationship between the associations of mediators in the country, the trade unions, citizens and public authorities, in order to carry out an extensive consultation process which will form the basis of the drafting of the public policy document.

The opportunity of this approach is fully justified by the following points:

- More than 12 years ago, the Romanian Government (through the Ministry of Justice) initiated, following a stakeholder consultation process, the adoption of the Mediation Act, creating the legislative framework for mediation and the practice of the mediator profession;
- Subsequently, the law has undergone twelve amendments, some of which are the consequence of some decisions of the Constitutional Court, as a result of complaints about the unconstitutionality of some articles in the law. The changes made have not led to any progress in the field and have not encouraged citizens, businesses, institutions and authorities to turn to mediation. None of the changes to the law has resulted from a professional consultation process with all the stakeholders, not only with mediators, so that the proposed changes respond to real social needs.
- Relatively recently, the Constitutional Court of Romania reiterated two new complaints regarding the unconstitutionality of some texts amending the mediation law. The reports came from a large group of parliamentarians, but also from the President of Romania. In its judgment, the Court upheld a number of exceptions, so that the Mediation Act will return to Parliament and, for at least a while, mediation will be debated.

In this context, the first challenge we were struggling with, was to answer the question of whether at Government level there is a state public policy on mediation as an alternative way of resolving conflicts among its citizens. First, it was necessary to develop an instrument for monitoring and evaluation of the current public policy in the field of mediation, establishing a set of principles that will underpin the alternative proposals that will result in the end of the project. It is not much to monitor, as the Romanian Government did not adopt a policy paper on mediation.

In a simple approach, a public policy of the Government in the field of mediation would consist of a set of applied elements defining the attitude and behaviour of the institutions in the field of mediation. It should include validation statements, legal regulations, funding programs, etc. It materializes the attitude and behaviour of the government towards mediation, respectively, towards the issues faced by mediation.

On the other hand, the elements that would define / demonstrate the existence of a public policy on mediation should include many, including declarations of values or principles (e.g. transparency, participation, dialogue), legislative framework, identified financial resources, the existence of specific structures (ex-entities with explicit attributions regarding mediation within public institutions), tools for monitoring and evaluating the implementation of mediation, the results obtained and the impact created.

Last but not least, it could include the nomination of an internal Governmental structure that has the task of drafting its public policy on mediation and its implementation, as well as the annual achievement of the document "Government Policy on Mediation in Romania".

In our analysis, we have not found such elements so far, except maybe for the Mediation Law that is only slightly harmonized with the rest of the Romanian legislation.

The next challenge is to see to what extent other countries in Europe or the world, have adopted and implemented public policies on mediation and what are the elements of these policies.

We consider that some level of global synchronization of this type of public policy could create real benefits for all stakeholders of the mediation activity, including mediators, providers, users, advisors, referrals and influencers.

Any reference to policy papers adopted by Governments in the EU and the world will be greatly appreciated.