

Kluwer Mediation Blog

The mediation agreement is enforceable title in Romania too, if signed by parties' lawyers

Constantin-Adi Gavrilă (ADR Center Romania) · Thursday, August 15th, 2019

Two weeks before the Singapore signing ceremony of the UN Convention on International Mediated Settlement Agreements Resulting from Mediation, the Romanian Parliament adopted modifications to the Romanian Mediation Law according to which, among many other new provisions, the mediation agreement will be enforceable title in Romania if signed by parties' lawyers.

With this modification, it is hoped that there will be more certainty (and the perception of certainty) with regard to the outcomes of the mediation process and to mediation in general. Therefore, in Romania, in the near future is expected a confidence boost in mediation and mediators, coming from users, lawyers, referrals and the society in general.

The long-overdue modification is aiming to improve the legal framework for mediation and to stimulate the use of mediation, given the [terrible impacts](#) of the Romanian Constitutional Court Decision no. 266/2014 who left mediation Romania in a 5-year "Long Night", although the Romanian Constitution provides for a 45-day timeline.

The policy

The provisions of novelty included in this regulation refer to a number of areas: the mediation agreement will be enforceable title if it will be signed by parties' lawyers, a notary or a lawyer or notary chosen by the mediator; the court sanctioning of the mediation agreement will be done without parties' citation and will be eminently written; the court fees will be refunded for the mediation that have the object of litigation before the courts, if the mediation agreement is submitted to the court file (existed in the past in a slightly different form); the initiation of mediation suspends the limitation period; at the request of the mediator or any of the parties, the psychosocial investigation may be initiated within the mediation process in the case of family conflicts.

The actual article referring to the enforceability of the mediation agreement reads as following: *"The mediation agreement verified and attested by the parties' lawyers, by the notary public or by a lawyer or notary public chosen by the mediator with the agreement of the parties is an enforceable title"*. In addition to the above-mentioned article, the parties can also ask the court to make a decision, pending prior verification that the mediation agreement complies with the law.

Here are three points regarding the new policy.

The Italian inspiration

First, this development was inspired by the recent results of the Italian model. Hopefully, more elements could be picked-up from the Italian policies, such as the required initial mediation session or the collaboration between the mediator profession, the legal profession and the Government.

Quality assurance

Second, the collaboration between the two professions and the Government is essential. The key word here is “quality”. There should be high interest from the mediator profession and the legal profession to collaborate in order to develop capacity building programs, monitoring mechanisms, data gathering and statistics development processes that should ensure the successful implementation of this policy. Moreover, the Government should be interested to keep an eye on this policy and how it works because it will understand its impacts, good or bad, on the activity of the judiciary, will therefore have the ability to act, develop, adjust and adapt, as necessary.

Public awareness

Finally, with this provision, there is hope that the number of mediations will increase, and that more and more people should better understand the mediation process and its benefits.

Feel free to add other comments and ideas to the list above. They will certainly be appreciated.

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