

# Kluwer Mediation Blog

## Partition of Inheritance – the Mediation Option

Constantin-Adi Gavrilă (ADR Center Romania) · Friday, October 19th, 2012

Over the years, the Romanian people got used to the transition state. We are now crossing a difficult period for all of us, that of financial deprivation. People divide what they have left, dreaming to become exclusive owner of each inch of land, of each piece of wood of their old houses, of every brick and tile that make up the “property” of their deceased parents.

The lawyers are asked to help and the trials dealing with inheritance division increase their number every day. These cases were „the bread” of many lawyers, but, given their duration (“1 to 3 years” that sounds as a punishment for all the people involved), we tend, naturally, to get rid of them quickly in a more efficient manner. But how is that possible without affecting the quality of the professional benefit of the lawyer and therefore the customer satisfaction?

Mr. B. sought legal advice to debate the succession of the two deceased parents and what was most important to him, he wanted to quickly cease his sister’s possession of the assets that comprise the legacies: a house with annexes, land and ... some wood boards from the attic of the parental house from the 1970-1980.

For about two and a half years, the siblings did not speak to each other, although they were living in the same house.

Mr. B. wanted to remain the sole owner of the parental house and his sister, Mrs. C. wanted a sum of money to finish building a house. It was apparently a typical case of division between siblings, which threatened to take 6-8 months to the first instance court, after an optimistic estimate.

Mr. B. was directed to mediation by the court and he agreed to initiate a procedure in this matter, being aware of the consequences of a judicial approach that involved spending unnecessary resources. The mediation activity is regulated in Romania by Law 192/2006 on mediation and the profession of mediator published in the Official Gazette No 441/May 2006.

Mrs. C. came to mediation and requested that her husband and their one year and three months old child will join in. Mr. B. agreed as he also came with his spouse. Gradually, the communication between the two siblings was restored, in order to solve their problems together.

The parties also came to mediation accompanied by lawyers, who had paid the fee for legal advice and assistance to the mediation. The mediation was held in confidence from third parties; all the information shared by the participants cannot be used outside the mediation, including legal proceedings. The parties signed the mediation agreement in this regard.

Mr. B. and Mrs. C. met in a second mediation session, needing some time to do research about the amount of money that their father would be charged in successive sales of land, thus clarifying the information that was not known entirely and that led to the misunderstandings between them. They agreed to discuss sensitive issues concerning the amounts of money that each received from their parents prior to their death just to get to the “brotherly division” that they wanted.

The money issue could not be resolved in front of a judge because both parties said that they had not had written evidence for what they both knew that had to be taken into consideration for an agreement.

The third mediation meeting took place when the parties have almost agreed on a concrete division and yet a small sum of money separated them. The parties wanted to settle, but the pride, the ambition and the lack of an open and efficient dialogue blocked any action for this step to happen. The reality testing proved to be a very appropriate technique because the parties managed to reach an agreement and received the exclusive ownership documents (Mr. B.) and money to complete construction (Mrs. C.).

The lawyers, through the expertise they offered, helped their clients to get things that the court could not grant. The mediator helped the parties communicate in record time to reach the solution that provided immediate needs, due to the lack of communication which increased over time.

Lawyers have charged fees for professional performance in mediation, negotiation and a success fee, thus equalizing the amounts that would be obtained for representing their clients in the court, in a much greater period of time, with many more restrictions and in a procedure that followed strict rules.

The recent years have brought significant changes in the practice of law in Romania, both for the substantive law and for the procedural framework available to litigants. Compared to the 90’s or before, dispute resolution options are becoming more available and professionalized.

If once, the only institutionalized alternative to a negotiated agreement was the courtroom, today the individuals have the opportunity of a rational choice between several options that can be selected individually or in various combinations. Mediation is certainly one of these options.

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