

# Kluwer Mediation Blog

## Latest mediation development in Geneva, Switzerland: hope for (better) future ?

Christophe Imhoos (Esprit d'entente) · Monday, January 7th, 2013

In previous posts I had pointed out how difficult it is in my area to make mediation taking off and despite the fact that Switzerland has been known as a “neutral” country with a long standing practice of promoting peace in the settlement of dispute, at least viewed from an international perspective.

A figurehead of the Swiss History, Nicolas de Flue, was influential in bringing peace through mediation at the time when the people from the Swiss Confederation were fighting between themselves for religious reasons.

Nowadays, it has been the express intent of the Swiss Federal Council (the Swiss Government) to promote amicable dispute resolution (ADR) within the Judiciary. When enacting the (first in history) Federal Code on Civil Procedure (CPC) which unified the 24 former cantonal codes of civil procedure, the Federal Council stated that “ADR has priority over judicial proceedings”.

Since the entry into force of the CPC, on 1st January 2011, the Swiss mediation community was full of hope and had been prepared to what it saw as a significant change in dealing with dispute resolution. Awareness to mediation was made to judges, lawyers and, of course, to litigants across the country.

As of today and two years later, this same community faces reality: mediation is still confidential in terms of practice. Even out-of-Court mediation (contractual mediation), save as family disputes, is not practised significantly and a great amount of (well) trained mediators are seeking cases desperately.

Considerable efforts were spent to promote mediation and make it known into the public. In Geneva, for instance, with the support of the local Bar association, a “Mediation Desk” has been opened to the public, twice a week, half a day each, to provide to anyone information about mediation and the mediators’ activity. Unfortunately and despite the press campaign made to launch this project, it actually lacks real audience. It has now been decided, after two years of existence, to reduce its activity to a half a day per week. One cause for such a lack of enthusiasm may be seen in the absence of a real intent of the Courts (except the Youth Court actively engaged in Restorative Justice) to promote mediation as an alternative mean to conciliation and judicial proceedings. At least, one would have expected that Judges sent litigants to the Mediation Desk in order to gather information about ADR without affecting their will to enter or not in such a

process.

Nevertheless, all efforts have not been spent in vain, at least in Geneva. In 2009 the Canton of Geneva has undertaken a review of its (cantonal) Constitution. The author of this post with the president of a local mediation association and under the lead of a well known retired Judge that had advocated for mediation over the past decade, were heard by the Board of people elected to review the Constitution of the Canton of Geneva.

Relaying the message that had been previously given by the Swiss Federal Council whereby ADR has priority, mentioning Article 44 paragraph 3 of the Swiss Federal Constitution which provides that “disputes between Cantons and the Confederation shall, to the extent possible, be settled by negotiation or mediation”, we submitted to the Board a draft text which contained the following proposals:

- ADR has priority over the Judiciary;
- Public Authorities shall promote dispute settlement by negotiation, conciliation and mediation; information, awareness and educational programs shall be set up to this effect;
- the State (Canton), the Communes and Public Foundations shall favor the use of negotiation, mediation or conciliation prior to resorting to Courts;
- Judges shall encourage litigants, at all stages of the proceedings, to consider negotiation, mediation or conciliation;
- mediation shall be introduced in schools;
- adequate training in dispute management shall be provided in the education of judges and lawyers.

Following this hearing and after debates on this issue and on the whole project of constitutional review, the Constitutional Board finalized last year a new draft Constitution which was submitted in last October to the people of the Canton of Geneva and eventually approved by 54% of them.

Regarding mediation, fortunately, the essence of our various proposals was retained. Now the new Constitution of the Canton of Geneva establishes the following grounds for mediation:

- the State encourages mediation and other modes of out-of-Court dispute resolution (Article 120 of the new Constitution); this is especially addressed to the Courts as the related provision is embodied in the section of the Constitution which deals with the Judiciary Power;
- the State Council (Government of Geneva) shall set up an independent mediation board to deal with out-of-Court disputes between Public Authorities and the people (Article 115 of the new Constitution);
- freedom to constitute Labour and Trade Unions is guaranteed; negotiation and mediation shall be favored in the the settlement of related disputes.

It will be now, again, up to the mediation community in Geneva to take the opportunity of this new and important local legislative change to continue to advocate for mediation and ADR in general in the hope of a future that will, soon or later achieve a change of paradigm in the management and resolution of disputes.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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