

# Kluwer Mediation Blog

## How long is your average mediation?

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### Question

How long it takes before your average mediation is concluded? You may have experience with the mediation process as a mediator, party, advisor, or referral. Or not, and you may simply wonder how much time is needed for a mediation process to be concluded.

### Theory and practice

It's interesting if we think about the foundation mediation training. In short, one gets to learn and understand the mediation principles and theory, and to then develop the required skills to manage the mediation process and to deploy needed mediation techniques. All these would help the parties to design the framework that will guide the process, to agree on the issues which the mediation process will be designed to address collaboratively, and to identify and agree joint solutions in consideration of their needs and interests. It looks good in simple in theory, but we live "in practice", where theory becomes more fluid. Therefore, a strong understanding of principles, together with numerous practice opportunities will develop one's intuition, and capacity to adapt the principles to different situations.

### Court-annexed practice

In my case, after getting the principles from amazing DC based mediators and trainers, I could apply the principles right away in a court annexed program. We mediated family, civil and commercial cases, and meetings were scheduled for a couple of hours, and would take more than that in a few cases. The success rates and the parties' satisfaction were significantly high, given the pilot nature of the project that was established in early 2000s for a few years by the Romanian Ministry of Justice. This laboratory was created to test mediation for the local culture, without any costs for the parties, and with the support of volunteer mediators. The preparation phase was limited or even non-existent in some cases, and that parties would be in the story telling stage five minutes in the meeting.

### Private practice

The purpose of the pilot project was also to inform the mediation legislation drafting process that was concluded with the law adopted by the Romanian Parliament in 2006. Then, since the mediation law provided for private mediation services, the Romanian mediators had to develop their approach to the process, with a closer look in the preparation phase, process design, and mediations started to need more time than a few hours. The initial joint meeting would be scheduled for minimum half a day, and at least two or three meetings were needed to conclude an average case. Usually, preparatory meetings or at least preliminary communications would have

been scheduled, parties' case briefs, analysis and all that. This would still be a family, civil or commercial case, domestic or cross-border, although sometimes we could look at more complex cases, involving many parties and multiple issues.

#### The company-community space

Then, after starting to facilitate conversations in the accountability space in the last couple of years, where concerned communities would manifest interest in communicating with companies about the environmental and social impacts of their development projects, I learned that the mediation processes can take months and years before they're concluded. Some of the "reasons" for a lengthy process in this space are: the diversity of the parties and stakeholders; power imbalances; the role of government and media; role of local authorities; communities' capacity to communicate and negotiate effectively, or to understand and process technical information; companies' sensitivity to local culture; multiple and complex issues; disputes over complex facts that sometimes require lengthy joint fact-finding processes; multiple languages and working with interpreters; the agreements implementation; the lengthy monitoring stage.

#### A perspective

So, from hours and days, a mediation can take days and weeks, or even months and years. To wrap it up, my answer to the question of the length of the mediation process is this: It depends. Some of the factors that may determine the length of a mediation could include:

- Past "habits" (the processes that already worked for the parties or their advisors for similar cases);
- The type and complexity of the case (i.e. the number of parties, the number of the issues, parties' weak alternatives);
- The needed preparation process (for the parties and the mediator);
- The mediator's experience (flexibility and ability to provide the parties with an opportunity to influence the process);
- The mediation fees and expenses (pro-bono practice, mediation fees and expenses covered by all or some of the parties, or a third party is supporting the fees).

#### Additional topics for consideration

I leave you with a few questions. What is your experience? How long is your average mediation? And what other factors could influence this length in time? Is this discussion informing the wider one about mediator competence?

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