

Kluwer Mediation Blog

Reasons to mediate

Constantin-Adi Gavrilă (ADR Center Romania) · Wednesday, March 14th, 2018



This post was inspired by conversations with a group of people that I've joined last weekend for an amazing field trip in Southern Carpathians.

In addition to breath-taking landscapes, mountains are teaching us many lessons, including listening, patience, hope and diversity of paths and destinations. Therefore, mountain walks are not only excellent opportunities for exercises and workout, but also great platforms for discussions about everything and nothing.

It was not a large group of people and I didn't know most of them; everyone introduced themselves to me and shared brief information about what they do – salesmen, professors, public servants, doctors, business owners – all “regular” jobs that don't require explanations about what is their purpose and when they could be useful, as professionals. Moreover, none of them was knowledgeable about mediation and conflict resolution, as their personal life and work didn't include opportunities to develop such knowledge or related experience.

You can only imagine their surprise when I introduced myself as a mediator, and that this is actually what I do for a living. This has created a lot of curiosity around and questions about what is it that I do, in what types of situations a mediator could be useful and if anyone is every willing to pay for such services. Probably it would have been easier to explain that I was an alien. Ok, most of them have heard about mediation, that is part of the vocabulary, but it was beyond anyone's expectation that you can meet a mediator during mountain hiking and that there are many, many mediators trying to operate not only internationally but also in the domestic spaces.

In short, since I was asked for reasons to mediate, I thought initially about using this post to share a summary of the points I've made, but I realize now that it would not be a blog post anymore, but rather an article.

I would rather share two comments from two of my acquaintances that prompted perception I have seen in the past about mediation. After discussing about the different situations and contexts where mediation could be useful, internationally and domestically, court related or not, to build peace, to promote collaboration and dialogue, for reasons that include prevention, transformation, management or resolution of conflict, one person said, "But why would the parties use mediation, why wouldn't they just deal with the conflict themselves? This is what I do and I never needed a mediator". Someone else replied "I know, if they involve a mediator, they don't need lawyers anymore."

During the discussion that followed, we touched on points related to the fact that mediation could be useful for all sorts or reasons, for example in complex cases, with multiple parties, or when communication needs improvements, or when consensus is preferable over alternative routes that otherwise may involve authorities, when parties value their relationship and would like to protect it, when is just more time and cost effective to settle and is worth to try and so on. We also discussed about the fact that in mediation, parties develop not only the outcomes, but also the process, and that informed decision making requires the parties access to trusted and competent advice, including legal advice. Sometimes, they need their own advisors and sometimes, in addition to their own advisors, they develop joint fact finding processes to access independent advice that could build their trust in the advice through a transparent process developed, managed and owned by all parties.

Interestingly, I have identified in the comments received a perception according to which the existence of mediators in the process would somehow replace the parties' need for lawyers. Also, interestingly, the perceptions are that the lawyers' presence in the room would affect parties' ability to collaborate. I have verified these perceptions with the authors of the comments and received their confirmation.

I believe that these perceptions are not correct and a number of factors and actions could contribute to their clarification. These are related to an ongoing conversation about access to information and learning that could come from education, including legal education, outreach and so on. Moreover, you get to really understand mediation if you get to taste it, so practice can also provide real opportunities.

When the weekend was over, after intense discussions that included our preferred topic and we've said good bye, I was thanked and told that mediation could actually bring hope in our families, at our workplaces, in our cultures and beyond. I was really pleased to receive this comment.

To extrapolate, it may be that the fine air of the mountains was a perfect opportunity for an honest conversation reflecting a culture that we, as mediators, are trying to operate in. This story doesn't end with a phone call from one of my new friends, asking my support as mediator, so I am not sure how effective I was in sharing information; this could be a learning.

Even so, another good learning piece for me is that in addition to top-down systemic approaches based on development of education programs or improvements in the legislations, we, as individuals, providers, users, advisors or influencers, have access to a handier bottom-up approach,

with some influence at the individual level, but with a significant collective impact towards a culture with greater emphasis on listening, compassion, and cooperation. And the nature will always be there to inspire us and to support our efforts.

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