

# The Mediation Profession in Romania

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*Profesia de mediator în România devine mai complexă și generează o cerere în creșterea de adaptare proprie la noi domenii, cum ar fi disputele din cadrul comunității, cele medicale și cele legate de asigurări, disputele din școli sau în dezvoltarea organizațională, etc. Este extrem de important să se adapteze sistemul pentru a se putea răspunde noilor provocări, fie din interiorul sau exteriorul României, fie că e vorba de domeniul public sau cel privat.*

*Deși utilizarea serviciilor de mediere crește în toate sectoarele publice și private, România are o experiență redusă în furnizarea serviciilor de mediere. Totuși, sutele de mediatori formați în fiecare lună pot contribui la o mai bună înțelegere a conceptului medierii și la sporirea încrederii societății în transparența și adaptabilitatea sistemului.*

*Proveniența mediatorilor români este foarte diversă, începând cu avocații și până la foști judecători, de la psihologi până la profesori, ingineri, doctori, economiști sau polițiști, de la diplomați la oameni de afaceri. Unii dintre ei participă la cursuri de mediere doar pentru a înțelege mai bine conceptul și de a decide dacă pot să aibă încredere în mediere și punerea la punct a sistemului de către Consiliul de Mediere. Alții privesc medierea ca pe o alternativă ce ar putea aduce o mai mare satisfacție profesională decât cea anterioară. Indiferent de motiv, toți acești oameni îmbrățișează o metodă diferită de a soluționa disputele, una mai constructivă și mai creativă.*

**A** ccording to the Romanian Mediation Law, the mediation is based on the trust the mediator is invested by the parties, as a third neutral party able to facilitate the

negotiation among them. The trust goes worldwide, as the are mediators share the same values, their work is regarded as vital by the society and the mediation is expected to enjoy a high

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social status, regard and esteem. However, a question remains. Does mediation arise or should arise to the world as a profession?

It is true to say that since 2006, mediation is defined by law as an independent liberal profession in Romania and its development is highly dynamic. This article is about the lessons learned so far and about the question if mediation should develop or not as a liberal profession by itself.

### **The Legal Framework**

After ten years of ADR programs mostly conducted by NGOs, in May 22<sup>nd</sup>, 2006, the Law no. 192/2006 on mediation and the organization of the mediation profession was published in the Romanian Official Journal as a part of the judicial reform strategy in the attempt of increasing the quality of the juridical system. The mediation law define mediation as voluntary and create the legal framework for the mediation as a liberal profession, including criteria for acquiring, suspension and ceasing of mediator capacity (three years of work experience, university degree, training requirements etc.). It also set the floor for establishing of a regulatory body - the Mediation Council, therefore creating the premises to organise the basic training and continuous professional development of the mediators. The Law establish the framework for mediators to organise themselves in professional associations and their practice, the creation of disciplinary rules, the mediation procedure and special provisions regarding court related cases.

The Romanian mediation law adopted important incentives for the

use of mediation. For example, if parties settle through mediation an agreement regarding a dispute that is also pending in a court of law, they receive a full reimbursement of the fee initially paid to the court. Moreover, the judicial and arbitral bodies, as well as other authorities with jurisdictional competences, are encouraged to inform the parties on the possibilities and advantage of using mediation and to advice them to use to settle through mediation any existing disputes among them. A latter law regarding the public support for judicial assistance in Romania stated that if one of the parties will not try mediation or other form of ADR to settle a dispute, the application for public support might be denied.

### **The Regulatory Body**

The Mediation Council is the national authority in the field, established as an autonomous body, independent from any public or private organization and a public interest legal entity. The Board Committee of Council comprises nine members, all mediators. For setting up purposes, the first members of the Board Committee have been nominated in 2006 by the organizations established in the mediation area, based on cumulative criteria regarding the number of years of activity in mediation and the number of specialized members, as well as mediation training background and practical expertise. Starting with spring 2009, the members of the Board Committee of the Mediation Council are elected every two years by the mediators.

Some of the main functions of the council are \* to promote the mediation activity and to represent the interests of the authorized mediators in respect

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to the need to ensure the quality of services in the field of mediation; \* to elaborate training standards in the mediation field based on the best international practices; \* to authorize the basic training and continuous professional development programs, as well as those for the specialization of the mediators; \* to prepare and update the list of the training courses providers who have obtained their required authorization; \* to authorize mediators and to prepare and update the Romanian Roster of authorized mediators; \* to issue the documents certifying the professional qualification of the mediators; \* to adopt the Professional Code of Ethics and Conduct of the authorized mediators, as well the disciplinary rules; \* to formulate proposals to add or, as the case, to correlate the legislation regarding mediation. The members of the first Board Committee of the Mediation Council started the building up process the system from the scratch, without any public many to support their work, no offices and no personnel, and only the mediation law in their hands.

The first major task was to create the mediator's code of ethics, then the standards for mediation training (minimum 80 hours of mediation training followed by independent assessment) and authorization procedures. The procedures covered

the recognition of the qualification as mediator also that of the trainers and training courses providers. Since, according to the law, the mediators are free to choose from or establish any professional association, the council established a Register of the Romanian Professional Associations of the Mediators.

The second task was to initiate the fast track authorization of the mediators who completed their training before the adoption of the mediation law and also of those trained abroad. Step by step, the system became functional and trustworthy and other people attempted to become professional mediators. In less than 3 years, from the original four training courses providers, the system grew to twelve, and over 30 professional associations around the country.

The Mediators Roster was already published twice in the Romanian Official Journal, and is monthly updated on the Mediation Council's official website (see <http://www.cmediere.ro>). It was distributed to all Courts, as well as to other institutions interested in mediation, national and local administration. The Mediators Roster is updated on monthly basis, after meeting of the Council on approving new mediators. According to the official data provided by the Council, in June 2010 there were about 4000 people trained as mediators, but only 1325 applied and received the authorisation for practice. The training programs are currently conducted by thirty-five trainers working with twelve training providers, and the completion of the training courses is assessed by twenty-six assessors accredited by the Council.

### **The Professional Associations**

The mediators are free to establish professional associations or to join any existing local or national existing one. The benefits of the membership are mostly related to a better representation of their professional interests and being part of a more efficient framework to promote and support a high-quality mediation service. The Mediation Council has still the responsibility to issue the standards for a best practice in mediation, as mediation is a pretty new concept for the Romanian society. There are over thirty local and national professional associations registered at the Mediation Council, and, as the profession grows, the Council invited them to build -up a consultative committee with the aim to advice and make recommendations to the Council. Similar consultative committees were established to address the topics regarding the training quality, the service providers' ethnics, the public awareness and the need to educate the public and the court related system, as mediation services consumers.

According to the Strategy on mediation and mediator profession development in Romania for 2008-2013- approved by the Mediation Council in 2008 -, the major priority is to increase the professional training standard of the mediators, in order to improve the quality of the mediation services and to create a favourable frame for the dialogue development in the Romanian society.

As the goal of the Mediation Council is to develop mediation as an efficient alternative to justice, therefore to increase the mediator's professional reputation, the Strategy lead to the following 5 strategic directions to develop the profession: 1) to increase

the quality of mediation services; 2) to improve the training level of mediators; 3) to increase the Mediation Council capacity of regulating the profession; 4) to correlate the legal framework; 5) to promote mediation and the profession in Romania.

In this very complex endeavour of the Mediation Council, the professional associations are perceived as playing a fundamental role to address the many challenges the new profession is facing and to significantly contribute to clear the path for mediation service in a society that still has a poor understanding of the concept as such. There is the expectation that, through dialog among them and with the Council, the professional associations to formulated mutually accepted answer to questions related to respect for ethnics, need for further professional development and specialisation of the mediators, or field to explore for practice, other then the court related disputes. To increase the number of the authorised or even only trained mediators is also important; it is estimated that the court existing cases can be diminished by 5% only if a minimum of 3500 mediators are authorised and active. Also the increasing number of the professional mediators being trained and authorized, the more professional associations are actively engaged in directly support and promote mediation locally, regionally or nation-wide. Their actions are continuing to expand in scope and number, opening up new opportunities, and greater need, for collaboration.

### **Lessons Larned So Far**

The Romanian mediation profession becomes more complex and

generates an increasingly demand to adapt itself to new fields, as community, medical and insurance disputes, school or organisational development disputes, etc. It is crucially important to adapt the system in order to be able to react to new challenges, either from inside or outside Romania, from public or private.

Although the use of mediation services is growing throughout the public and the private sectors, Romania has a scarce experience in providing mediation services. However, the hundreds of mediators trained each month can contribute to a better understanding of the concept of mediation, and to increase the society trust to the system transparency and adaptability.

The background of the Romanian mediators is very diverse, from lawyers to former judges, from psychologists to teachers, engineers, doctors, economists, or policemen, from diplomats to business people. Some of them are taking mediation courses just to better understand the concept and to decide either to trust mediation and the system build-up by the Mediation Council. Some others are looking at mediation as an alternative that might bring more professional satisfaction than the previous one. Regardless to the reason, all these people are embracing a different way to solve disputes, a

more constructive, more creative way. For the mediation as a profession, is a big plus to include mediators with various professional backgrounds as more “pressure points” will contribute to the mediation growth. The less productive aspect is that the various background influences the activity and behaviour in the new profession and there is more difficult to protect the common values shared around the world by the mediators. However, the Mediation Council, within its legal rights and obligations, made structural efforts to create, promote and defend the image of an unitary profession and different than any other existing one with all the characteristics that come with it.

Finally, mediation is a profession that needs independence through framework, time for implementation and self-consciousness for the awareness of the general public, respect and esteem from the society in order to achieve a significant impact in Romania and worldwide.

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