

## ASPECTS FOR THE NECESSITY TO ESTABLISH TRAINING INSTITUTE IN THE MEDIATION COUNCIL

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**ABSTRACT.** IMPROVING THE ACTIVITY OF MEDIATION IN THE MEMBER STATES OF THE EUROPEAN UNION IS A NECESSITY AND THE SAME TIME A CHALLENGE ASSUMED. IN THIS CONTEXT, THE INITIATIVE TO ACHIEVE INSTITUTIONAL FRAMEWORK FOR THE CONDUCT OF TRAINING ACTIVITIES SPECIFIC TO THE PROFESSION OF MEDIATOR AND MEDIATION SERVICES, WHICH LIE TO EUROPEAN STANDARDS OF PROFESSIONAL COMPETENCE IS NECESSARY. THE ASPECTS PRESENTED WERE SENT TO MEDIATION COUNCIL AND CONSTITUTE JUSTIFICATION NOTE FOR THE CREATE THE TRAINING INSTITUTE, REGULATION WILL COMPLETE ARTICLE 9 OF MEDIATION LAW, ABOUT THE TRAINING OF MEDIATORS. THE PROPOSAL AIMS PRIMARILY TO ESTABLISH THE PLACE OF TRAINING IN MEDIATION IN THE TRAINING SYSTEM AT NATIONAL LEVEL, IN THIS WAY THE PROFESSION SITS AMONGST OTHER LIBERAL PROFESSIONS, ENSURES PROFESSIONAL MEDIATORS COMPETITIVENESS WITH OTHER LIBERAL PROFESSIONS. ALSO, SUBMITTED PROPOSAL SETS OUT THE ROLE AND IMPORTANCE OF VOCATIONAL TRAINING IN THE PROFESSION OF MEDIATOR, PROVING EXIGENCY AND PROFESSIONALISM.

**KEY WORDS:** TRAINING INSTITUTE, MEDIATION COUNCIL, MEDIATOR, TRAINING, MEDIATION LAW, CONTINUOUS TRAINING.

### 1. Description of the current situation.

Mediation activity is an activity of public interest and mediator performing research, organization and planning, reporting, and specific activities, which consist in facilitating communication between parties, analysis of information, conflict analysis and facilitating agreements to resolve the conflict.

In particular, professionals who mediators working together (judges, lawyers, notaries) complains modest training of mediators, their lack of professionalism, and a multitude of trainers and training providers, and until recently a lack of organization in a Professional Body distinct, which sit institutional profession amongst the other professions.

Moreover, improving the activity of mediation in the Member States of the European Union is a necessity and the same time a challenge assumed, including leadership Mediation Council.

In this context, the initiative to achieve institutional framework for the conduct of training activities specific to the profession of mediator and mediation services, which lie to European standards of professional competence is necessary.

**At national level**, it the continuous training of mediators is optional, though the law stipulates the obligation it, this is determined on one hand by the considerable number of initial training providers and the modest presence of the continuing training on the other side of absence of a provisions to sanction mediators for the non-compliance.

Therefore, mediators should be aware that their training is conducted in an organized manner, established by law and one institution is established for this purpose.

Another aspect met at national level is to participate in various seminars, conferences more or less professional, some with the opinion of the Mediation Council most of without opinion in diverse parts of the country, events involving a mediator and, after completion of the action returns home with several certificates of participation, for colleagues who contributed to pay to the event, accommodation and meals. The absence of monitoring of these activities creates such situations, unprofessional, mislead the Mediation Council, alter the moral profile of mediators, produces professional prejudices by modest training of mediators, although if we find that participation certificates mediator has achieved continuous professional training.

Or, vocational training is a learning process that involves the accumulation of knowledge, refining of skills, concepts, rules or changing attitudes and behaviors to improve performance in the workplace mediators, but also in everyday life, in relations with law professionals and the litigants.

Referring to continuous training of mediators in institutions of higher education in Romania, respectively postgraduate masters level programs in mediation,we must make some clarifications.[1]

On the one hand masters graduate programs, provided currently in the Law no.192 / 2006 and the statutes of the mediator are no longer topical since 2008 the higher education system in Romania is part of the Bologna system, which takes place on three levels of training: Bachelor's degree, Master's degree and Doctoral's degree.

On the other hand, academics using training techniques as methods of child education (pedagogy) while preparing mediator training methods enforce as the basic principles of education for adults (andragogy).

Before filling teaching positions in universities the holders or partners, they must hold a Diploma of graduation from course in pedagogy (pedagogy and teaching practice) or if they did not complete such a course, job keeping or promotion is conditional upon the completion of the course in pedagogy (pedagogy and teaching practice).

Or, delivery (as named in andragogics teaching) is the training of adults, the process by which they acquire new knowledge and skills. The studies have shown that delivery of adult education must come up with a different approach because they learn differently from students, her featuring a broader set of knowledge or work experience and life experience which leads to dissect their own information through a filter before assimilate. Adults learn better and faster if they are created premises for potting own experience in the educational process, if they become the protagonists of hypothetical situations, but feasible inspired by everyday life. In such hypothetical situations they can connect newly acquired information with other older this type of association is the main way of assimilation in adult education.

Currently are universities that run programs Master's degree in mediation (from exemple Alexandru Ioan Cuza University from Iași - Master Program Probation, Mediation and Social Assistance to Victims of Crime, Ecological University from Bucharest - Master Program

Mediation, Negotiation and Communication in Conflict Resolution, Dimitrie Cantemir University from Bucharest- Master Program Conflict Mediation, Titu Maiorescu University from Bucharest - Master Program Conflict Mediation in Law) and compared to the above are far from transmission professionally master theoretical and practical knowledge, which then presents the Mediation Council graduation diplomas for professional recognition and quantification professional points.

It should be mentioned that, the approval and after the accreditation of these master programs the decisive role plays the ARACIS, the only institution in Romania that approves and monitors programs of undergraduate, masters and PhD, and which is subject only to Education Law.

In this context, it is important that one institution of mediation training to operate like other training institutions and other liberal professions, so that mediators have access to education and training in a professional manner, with trainers specialized in disciplines included in the curriculum, from admission to the profession and to graduation in terms of both initial and subsequent, conduct of business throughout the mediator, respectively continuing training.

The presence of institutions and other legal entities, which place training programs for mediators under Article 9 of mediation law, mediators induce the idea that, at this moment the quality of the trainer is an easy way to have a consistent income from initial training organization. In this way it creates inequity amongst mediators in a consistent manner participating in training activities which are not trainers there are currently more mediators training consistent with national and international competence in ADR-mediation which are not trainers in mediation, as mediators meet with a modest training, but they are trained in mediation.[2]

More, the ease with which any NGO can organize training courses for the profession of mediator, created a marathon in recent years regarding the training in mediation, mediation services have been decreasing in comparison with initial training in mediation profession, training providers and competes, created at national level among both practitioners, and among individuals in Romania opinion that mediation does not work, instead training providers are most advantageous. Therefore, the necessity of regulating an organized training it must at this moment.

Considering that, the profession of mediator was seated in the moment, from an institutional perspective amongst the professions, should be considered and the settlement amongst liberal professions training, in line with European standards and other professions. On the one hand, the importance of working professional secondly confidence in ADR mediator professionals, and thirdly the opportunity development professional mediators seeking continuous improvement of high quality.

Placing the profession of mediator alongside the professions implies the a multitude of commitments. Therefore, mediators organized into professional body will working together with judges (rigorous in training), public notaries (exacting), lawyers (always prepared). In this context must as mediators to associate themselves to their training standards by formation of a single institution, which effectively manage this area.

**At european level**, given the speed of technological change and scientific progress, Lifelong education is of particular importance for a large number of professions. In this context, EU Member States' responsibility to establish conditions under which, following a suitable

ongoing training, professionals will keep abreast of progress in all areas, but especially in their field.

So, any profession exercised on the basis of relevant professional qualifications, personal capacity, his own responsibility and legally independent professional providing intellectual and conceptual services in the client's interest is exercised in Member States, in accordance with union rules, under the obligation based on national legislation and regulations laid down, independently, in this context the professional representative bodies, guaranteeing and improving their professionalism quality and confidentiality of client relationships.

Union legislation referred to term training regulated, in this regard by the legislature shows that the union means: any training which particular exercise of a particular profession and which consists of a course of study completed as the case, the professional training, a professional internship or professional practice.

So, the objective continuing training is that people who have completed their studies can follow the progress of their profession to the extent necessary to ensure permanently safe and effective professional benefits.[3]

Therefore, professional development continue contribute to the safety and effectiveness for professionals benefiting from automatic recognition of their professional qualifications. It is important to encourage the further strengthening of continuing professional development for professionals.[4]

In Europe professional training continue is considered an engine of social development based on knowledge and innovation, reason why benefiting from greater attention from policy makers, the subject of many strategic documents, policies and development priorities.

In this case, preparation and delivery of relevant education and training, correlated with increased access to opportunities facilitating the development of skills for lifelong learning constitute the key elements of the strategy education and professional training of the European Union.

## **2. Expected changes by setting up Training Institute.**

The proposal aims primarily to establish the place of training in mediation in the training system at national level, in this way the profession sits amongst other liberal professions, ensures professional mediators competitiveness with other liberal professions. Also, submitted proposal sets out the role and importance of vocational training in the profession of mediator, proving exigency and professionalism.[5]

Amendments to the Statutes aimed at increasing the level of training of mediators, by correlating of the text on training with text of the referring to the introduction of assessment exam, the crossing a professional internship, training courses and exam 'profession [6].

The proposal submitted envisages that the training of mediators comply adult professional training, therefore must have the following main objectives:

a) facilitate the social integration of mediators in line with their professional aspirations and labor market needs;

b) training of mediators in order to help to increasing their competitiveness in the labor market;

c) updating knowledge and improving professional mediator profession, as well as the related professions;

d) acquisition of advanced knowledge, modern methods and procedures required to perform specific activities mediator profession;

e) promoting lifelong learning.[7]

In order to ensure quality the training of mediators must taken into consideration a number of principles:

a) quality assurance is an integral part of the internal management of adult vocational training institutions;

b) quality assurance include regular evaluation of institutions, their programs or quality assurance systems by external monitoring bodies;

c) the bodies responsible for external control quality assurance subject to regular review;

d) quality assurance include context, input, process and output dimensions, while giving emphasis on effects on learning outcomes;

e) quality assurance initiatives are coordinated at national and county levels to ensure supervision, coherence, synergy and system-wide analysis;

f) quality assurance is a cooperative process involving all levels and systems of education and training and all stakeholders at national level.

Quality assurance systems including the following:

a) clear and measurable objectives and standards;

b) guidelines for implementation, including stakeholder involvement;

c) adequate resources;

d) consistent evaluation methods, associating self-assessment and external review;

e) mechanisms and procedures for improvement;

f) evaluation results widely available.[8]

In this regard, the proposal to focus Mediator training activities at the Institute must be a priority the Mediation Council.

So, the mediator training in the Training Institute ensures mediation profession seriousness training in an organized manner, professional, as we find professional training in the other professions at with mediators working together: magistrates by INM, notaries public by INR, lawyers by INPPA, etc.

In this regard, the proposal by Statute and Regulation of organization and functioning of the Institute will be correlated with other institutes mentioned above (General Dispositions, Institute targets and forms of activity that they performed, the organizational structure of the Institute, patrimony, cessation of activity and dissolution of the institution, final provisions).

In order to harmonize the training institutions mentioned above, Training Institute will have following main tasks:

1. organizes continuous training courses mediator trainee mediators definition authorized mediators until the entry into force of this law, mediators employees with individual employment contract under Article 21 (1) of the Statute of the profession of mediator, and specialized personnel employed in the offices of mediator and the non-governmental organization, which has the objects of mediation services, Professional Body of Mediators of the county and the Mediation Council;

2. organizes theoretical courses and practice that will follow mediators interns admitted since 2016, during the internship, as stipulated by the Regulations for the internship, Mediation approved by the Board;

3. prepare and approved courses and continuous training programs for mediators interns and definitively, those authorized to entry into force of this law, Mediators employees with individual employment contract under Article 21 (1) of the Statute of the profession of mediator and specialized personnel employed in the offices of mediator and the non-governmental organization, which has the objects of mediation services, Body of Professional Mediators County and the Mediation Council;

4. realizes studies, documentation, guides, papers of speciality etc. It provides the mediators and other national and international institutions, in order to shape a unified practice in mediation and a specialized doctrinal views;

5. formulated at the request of mediators and public institutions views ADR and opinions in the media, together with the Legal Department of the Mediation Council, be endorsed by the Mediation Council;

6. establish a common database the Legal Department of the Mediation Council, contributing to the unification of mediation and the elaboration of a collection of Practice;

7. organize professional symposia, conferences and other scientific sessions at county level nationally and internationally;

8. publishes own on matters of doctrine and practice in mediation and organize a documentation center in ADR mediation and related fields;

9. establish relations of cooperation, domestically and internationally, institutions and organizations with responsibilities in improving professional professions system requiring training in ADR- mediation.

It is important to mention that, specialized personnel employed in the offices of mediator and the non-governmental organization, which has the objects of mediation services, Body of Professional Mediators County and the Mediation Council continuous training must show specific posts, under the Labour Code, The Institute will be organized in this regard courses that prepare them to take into account in areas: mediation, law, ethics and professional deontology, personal development, etc.

In the context of harmonization specific training standards for other professions which cooperates with the mediation profession, it must to consider the quality of trainers in the Training Institute.

The trainers of mediators must demonstrate a high level of content knowledge appropriate discipline subject to their training programs and at the same time possess specific knowledge skills, skills and attitudes enabling them to guide and facilitate the learning of others. Also, these must have a high quality personal profile, because they are representatives of the system and its institutions.

In recognition of their essential role and difficulties within of their work trainers must demonstrate a continuing professional development to acquire and maintain the skills and knowledge as trainers, trainers specializing in a particular discipline by ensuring that they maintain that level expert through its continuous updating knowledge theoretical and practical.

In order to respect these objectives, the trainers of Institute must satisfy following professional standards:

- a) the ability to assume the role of mediator training and specialist staff employed in the office of mediator and the non-governmental organization, which has the objects of mediation services of the Professional Body of Mediators County and Council Mediation;
- b) the ability to assess the knowledge and skills of trainees;
- c) ability to set goals, formulate goals and plans and study programs;
- d) the ability to design training sessions and facilitate active learning;
- e) ability to identify and select appropriate training methodology;
- f) knowledge of methods and approaches to training activity;
- g) the ability to develop and use reference materials for the training session;
- h) the ability to organize learning environment.[9]

So, institution will provide training by trainers full time employees and part time trainers.

The full-time trainers will be selected from among the mediators, which must fulfill the conditions stipulated in the Statute and Regulations of organization and functioning of Training Institute.

The part time trainers will be selected from among professions which cooperates the profession of professional mediator, in this respect shall meet conditions stipulated in the Statute and Regulations of organization and functioning of the Training Institute.

For the training activity, they will sign agreements on cooperation with the Institute, under conditions by Director College of the Institute.

The proposal refers and the organizational structure of the Institute, in this regard Statute and Regulations of organization and functioning stipulated: Director, College Director, Scientific Council, Department of Initial Training, Continuous Training Department, Research and Documentation Department, Administrative Service.

Important, All aspects mentioned were sent to Mediation Council and constitute justification note for the create Training Institute, the proposal will complete the Article 9 of mediation law, on the training of mediators.

### **3. Conclusions.**

Given the above, effective establishment of the Institute will organize professional training of mediators, as well as personnel employed in the offices of mediator, the CPMJ and Mediation Council centralizing and coordinating professional training at county level (this level CPMJ will keep a record of the training, will be forwarded Institute) this can create a double monitoring, from county and to national and vice versa.

Also, the proposed changes are identified and an advantage economically, because the fees charged for training, income from publishing activities, etc. are collected in a own budget. Thus, the income and expenditure of the Institute will be administered more efficiently, distinct from the Mediation Council budget (Institute allocates at Mediation Council only a percentage, to be determined by the Board of Directors).

Creation Institute Training presents and social impacts, such proposal on training activities of mediators will ensure a correct perception amongst professions, and litigants about the professionalism of mediators, benefits society and encourages the development of competitiveness, which will ensure increased credibility mediators and therefore a greater

inclination on promoting mediation procedure, which eventually makes a significant contribution to streamlining the administration of justice, respectively relieving the courts.

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