

of view concerning the modesty of a mediator. Conceptually, a mediator only mediates to help the parties to reach a negotiated settlement, therefore he should give credit to the parties to have settled the dispute to get the best deal. Sometimes parties desire to bring in outsiders into the mediation proceedings, it is not necessary to declare their presence undesirable. Most of the time, in the family disputes, they bring their relative along. Some of them show a great deal of commitment in resolving the dispute between the parties. If they can be of help in reaching the settlement, they can be welcomed.

As a conclusion, for me, as a young apprentice, the qualities needed are first a deep understanding and appreciation of the rich variety of human personalities and a gratitude for the different social and cultural contexts in which we are all fashioned and developed. The second one is the ability to listen attentively, with care and compassion, to those with whom we are working. There is, I think, a great need to have an ability to continually learn, for me to consider that each case is unique, each individual is unique and to be able to come to each person and each situation and each relationship and to learn from that, and to integrate the new learning with what one has learnt in the past. Mediation is so special because it offers the opportunity for continually learning from people and about people.

Can a case settle at mediation without all of these factors present? The answer is “maybe”; but an awareness of these keys and the consistent application of them during mediation will greatly increase the likelihood of resolving the case, and maybe future articles will find out more factors which influence the quality and success in the mediation process.

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ROMANIA. THE USES OF MEDIATION TO SOLVE PUBLIC DISPUTES

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Abstract. *While working on my dissertation to reveal to what extent mediation is suitable as an alternative dispute resolution method when it comes to community conflicts, the analysis of the conflict chosen as a case study has also shown the necessity of having a mechanism which can facilitate the access to mediation.*

A newly formed community around a long-existing chicken farm has shaken the grounds of the social relationship between the members of the community, the local administration and the management of the farm. The goal of the present paper is to identify the features of a mechanism which can, in reality, be implemented so that people and institutions will prefer mediation as a first mean to solve their conflicts, rather than the traditional way of going to court. Sketching such a mechanism will eventually make it possible to imagine a viable approach.

The particular case study is somehow specific to a certain reality of the Romanian life, nevertheless some aspects can be found in other countries as well. Therefore the mechanism which will be envisaged in this paper aims to serve, first of all, the specific needs of this nation.

Keywords: *Mediation, Public Disputes, Mediators, Floresti Farm, Development, Decision-Making Processes.*

Presentation of the Case Study

The conflict which I analyzed in my dissertation is situated in a small town named Florești, at approximately 12 kilometers West from the city of Cluj-Napoca.

Florești has long been known for its industry of chicken breeding and slaughtering, dating back from the communist regime. Even though economic activities changed in general throughout the country after the fall of the communist regime 22 years ago, chickens are still being bred today.

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Florești has experienced a significant growth in population starting with 2005, mainly because of the low prices of the apartments and houses and its proximity to the city of Cluj-Napoca. The economic features of the early 2000s contributed to the progress of Florești. It was very easy to get loans from the banks for both companies which wanted to use the money as an investment and normal people who wanted to buy a house. For individuals, the trend back then, was either to get a loan and buy as many houses or apartments as they can, or to sell the properties they already owned in Cluj-Napoca and buy something cheaper in Florești or other nearby towns and keep the rest of the money for other expenses or investments. This trend was born due to the constantly increasing prices on properties. Some people saw in it a possibility to gain money, while others, generally the ones who didn't own a house, were living under a constant stress that prices will increase so much that they will never afford to buy their own home.

Numerous real estate developers considered Florești as the perfect place to develop their business. Florești offered them almost everything which Cluj-Napoca couldn't. The flat and extensive land was perfect for constructions. The prices for the land were far lower than the ones in Cluj-Napoca and getting authorizations for constructions was far easier. The real estate developers found great support for their business in the Mayor's Office. They could easily get construction approvals, even if their projects would violate the laws. Hence they could build anything anywhere, even around the Amareto Chicken Farm, owned by Mr. Niculae Coborzan, who used to be a member of the Executive Office of the Social Democrat Party of Florești and a councilor at the town Hall. According to his income statement from 2012, he owns half of the chicken farm (SC Brav Invest SRL, also known as Amareto) and half of a construction company called SC Vialin Invest SRL.

The real estate developers built houses for people who couldn't afford or barely afforded to live in Cluj-Napoca and also provided quick access to this city. The accessible price of the flats and their proximity to Cluj-Napoca represented a big advantage. However, the existence of Amareto chicken farm was a challenge for the successful selling of the newly built assemblies. In order to overcome this obstacle, the strategy used by the real estate developers was to mislead potential buyers that once the area becomes populated, the farm will be obliged to shut down. Their statement was never actually based on any law which could be enforced in this situation and the buyers never investigated this before deciding to buy. Of course, there is also the possibility that the real estate developers truly believed that this is what's going to happen and spread the word.

According to the statements of the Mayor, Mr. Ioachim Vancea, the farm has been there for a very long time, dating back from the communist regime. When it was initially built, the existing law at that time regarding the establishment of the farms, was broken. Back then, a distance of 150 meters should have been respected between the farms and the households surrounding it. When these industrial halls were built, there were houses in their proximity which were closer than 150 meters. Then, after the communist regime

fell, the halls were split and sold to private company owners. At the present moment, the chicken farm Amareto is the biggest one and the one which has intense activity, hence blamed for the uncomfortable smell. There are three other private companies owning halls in that particular area, but their activity is insignificant to the issue in contention. The Mayor also says that when the real estate developers started building around the farm six years ago, they have also broken the law issued in 1997 which regulates the distances between farms and domestic establishments. The Ministry of Health Order no. 536 from 1997 clearly states that in the cases of chicken farms the distance between the farms and human establishments needs to be of 500 to 1000 meters according to the number of birds. Law number 204 published in the Official Monitor no. 734 from the 30th of October 2008 states that the farms can take legal measures for demolishing the buildings which do not respect these distances.

The majority of the people moved into the flats built around the farm between 2005 and 2008. Directly observing the number of houses and blocks of flats situated in an area of 200 meters surrounding Amareto, there are nearly 1450 families constantly affected by the smell, which is considered unbearable by these people. It was this part of community that made the first step towards defending their interests of breathing fresh air, claiming that the farm must shut down because industrial activities are not allowed inside the town. As community or neighbour-like ties began to form between the people who recently moved around Amareto, the conflict slowly emerged. People have been complaining to one another for years about the smell coming from the chicken farm and made individual complaints to several authorities which they believe could have intervened in this situation. According to Mr. Jitian's statement, one of the representatives of the local community, the Mayor's Office got involved in this conflict without anybody asking them to do so. In the summer of 2011, when the smell became unbearable, the first ad-hoc meeting between the members of the affected population took place in one of the parking lots. People working at the town council alerted the Mayor, who quickly sent his representative on site, asking the people to join him at the Town Hall and discuss the issue of the smell there.

Several meetings were held at the local Council during the second half of 2011 in order to find solutions for the smell, but all the suggestions coming from the experts invited at these meetings, implied updating the existent technology of the farm with features that will diminish the intensity of the smell. The costs of these processes would have been sustained by the farm, so the management rejected almost all the suggestions as they were not willing to make any investments for this purpose. In parallel, the Town Hall and the County Council tried to find ways to move the farm, on public money or European Funding outside the town, an idea which Mr. Coborzan looked very interested in. The results of the meetings held at the Town Hall were: the farm now uses straw instead of wood chips for the bedding of the birds, Mr. Coborzan accepted to diminish the breeding cycle of the birds with one week (as the smell intensifies when birds reach

maturity) and the Mayor's Office financed the planting of Thujas around the farm in May 2012 following the advice of the experts.

Nowadays, the issue of the smell still stands, the farm being authorized to conduct its specific activities until 2018. The management of the farm considers that if anybody should leave the area, then those should be the individuals who bought apartments and houses around the farm. While the management of Amareto claims that the authorizations for building the domestic establishments have been issued by the Local Council without respecting the law, which clearly states the distance that needs to be respected when building around farms, the local community asked for an impact study to be made, in order to find out if the activity of the farm has any negative effects on the health of the population. This measure was actually suggested by the Environmental Clearance at one of the meetings with the parties and the Mayor. Since the Local Council plans to expand the General Urban Plan (GUP), the impact study has to be done anyway, so its costs are going to be covered from public money. According to the Mayor, a study concerning the gases coming from the farm has been performed already at the request and on the expense of a real estate developer, who wanted to build at a distance of over 1300 meters away from the farm. The conclusions of the study showed that the construction can safely be built there as there are no gases which will affect the health of the inhabitants.

Laws and Culture

The analysis performed on this conflict revealed a number of aspects which could point into the right direction for creating a mechanism for getting to mediation. These aspects are related to the characteristics of the local culture and social behaviour. Without carefully paying attention to them, the development of any mechanism would be artificial and its natural adoption would most likely fail.

In other cultures, mediation has been practiced for centuries as a part of the tradition. Well, in Romania we don't have such a tradition. So the question is, how can we create it? How can the transition towards the alternative dispute resolution methods can be made?

So far, numerous attempts have been made in order to make mediation binding for parties seeking to put an end to their conflict. Proposals for amendments to the national law regulating mediation were made in this sense, the European Commission is also discussing this possibility and yet this may not be the right way to do it.

In Romania, mediation became regulated by law very recently, in 2006, as an attempt to align with the rules and regulations of the European Union. Without having a background in the Romanian culture, the few years which have passed were obviously not enough to raise awareness on what mediation is and how people can make the most of it. Just as in many other cases, the Romanian state considered that issuing a law would be enough. There were practically no efforts in promoting mediation for the great public.

What the law did serve for was to form mediators, a body which controls and supervises their activity and to open the possibility for a new business, which is the organization of training courses one needs to graduate in order to become a mediator, by accredited private companies. So far, so good, however the actual purpose of such a law has been left aside. The population doesn't make use of this law, because first of all, the majority doesn't even know it exists and second of all, even if they know about it nobody bothered to explain it. As a result, Romania now has a couple of thousands mediators, which find it hard to practice their profession because their work is not understood and therefore not valued by the people.

The greatest challenge a mediator faces is not the mediation process itself, but getting people to mediation. Sometimes, their frustration, lack of imagination and exasperation that they can't make a living out of their new profession determined mediators to put pressure for changing the law and make mediation obligatory. Fortunately, that hasn't happened yet. What did happen though, is that for a number of categories of conflicts, the law states that parties need to attend an information session on mediation before deciding to go to court. Although this will be a free service provided by mediators, it represents a great opportunity for them to raise awareness on mediation and how it can help the parties in contention and if they present this cleverly, they may even get some cases to mediate. The downside of this law amendment has a lot to do with that very first step a person makes when they find themselves in a conflict situation and decides to put it to an end.

Romania was under the communist rule for little over 40 years. The last communist dictator, Nicolae Ceaușescu, has been removed from power and killed in 1989. People got the wrong idea that communism, in its entirety, died along with Ceaușescu. Unfortunately, the changes our culture suffered throughout the four decades of communism are still being felt today. One of the reasons why mediation doesn't work in Romania resides in consequences of this particular ideology. We came to believe that the best way of solving the conflicts is by going to court. In a democratic state, which Romania thought it became over night, one goes to court and seeks or demands the protection and recognition of their rights, rights which have been systematically denied for generations by the communist regime. Today, 23 years after the communist regime fell, we still act the same because this is what we saw our parents and even our grandparents do and because society has developed mechanisms to serve this sort of demands. Moreover, we are thought to think and behave in terms of rights (which of course, cannot be negotiated), when in fact, most of the conflicts which burden our daily lives are actually based on interests. The court will always defend the rights and not the interests.

This particular type of decision making behavior leads us to a wrong path and sometimes does more harm than the conflict itself. Even now, when we have the opportunity to make decisions upon what is the best way to put an end to a conflict, being informed

about mediation, we may still end up in court. The reason for that is quite simple: we don't visit the mediator first, but instead we go to a lawyer because this is the way we know it has to be done. Then the lawyer will tell us we need to go the mediator so that we can prove in court we were informed about mediation, but we're not interested and then onwards, he (i.e. the lawyer) will take care of everything. So, the free information session on mediation may not represent such a great chance for the mediator to get himself some clients, but rather it can build up some new kind of frustration.

The same applies to the cases when the judge, obliged by law, informs the parties that they can solve their case through mediation. There are very few chances for the people who have already gone through the whole process of suing somebody, spending time and money on this, to go back and mutually agree upon a solution for their dispute.

The Decision Making Process

The way people decide what is the best course of action in a given situation depends on a great number of factors, which sometimes lead for the result to be considered irrational. Maybe it is because we never truly use our consciousness when it comes to making decisions.

The people interviewed in the case of the conflict with the chicken farm said that they knew there was a smell issue before they bought the apartments. However, for some reason, they believed the real estate sales people when they confidently assured them that the issue will be solved once the area gets populated. So the buyers gave away their tens of thousands of Euros to a person whom they have never met before and who, without any real basis, promised them that the situation will definitely change. Moreover, those who believed the real estate sales person, didn't even bother to question his statements at least for the sake of curiosity. Of course, easy obtained money, such as loans, is more likely to be easily spent than savings. If we add this to people's need to secure a home near Cluj-Napoca, the faulty logic they have about how things work within the society they are part of and their lack of interest to be informed properly before taking action, here we have the result: people consciously moved towards the conflict, only that they haven't noticed it from the beginning.

On the other hand, knowing exactly what's going to happen once people will move in the apartments around the farm, the owner of the farm, who was a councilor at the Mayor's Office and supposedly a man who should serve his community by the nature of his position, did nothing about it. He just placed a banner on the fence of the farm stating that this unit is authorized and it will not shut down. However this was an action taken by Mr. Coborzan the owner, not by Mr. Coborzan the councilor. As he refused to participate in this research, we would never know how much he agreed with the constructions of those buildings around his farm or if he had some other interest there.

Judging by his actions as a councilor, he didn't do anything. So if he was not defending the interest of the community, whose interest was he defending? Judging the Mayor by his actions throughout the period of demographic increase, would tell us pretty much the same thing. The chaotic manner in which the block of flats and houses were built, the fact that the pipe infrastructure is updated every summer and public money is pumped in repairing the roads after each operation, indicates a poor management of resources as well as corruption. The strategy the Mayor had, before the local elections, to get more involved in the conflict with the chicken farm trying to act as a third party when he was directly involved in it, was not that bad in the sense that he opened the dialogue between the parties. As mentioned before, Mr. Coborzan is quite reluctant in having a discussion with regular people about the smell issue. Only when his colleague, Mr. Vancea, who allegedly understands his business and interests, asked him to talk to the representatives of the community about how to solve this situation, Mr. Coborzan accepted and important de-escalation steps have been taken.

The discussions and the small, but systematic, decisions which have been taken by both parties in order to solve this conflict, made the parties realize that not always it's the other who is being unreasonable. As Mr. Coborzan found out himself, the community doesn't want the farm to close, but it was willing to talk about what options the management of the chicken farm has for solving the issue of the smell. On the other hand, the representatives of the local community found out that a dialogue with a person they believed to be arrogant is possible. The fact that both parties opened their eyes in terms of how they perceive each other helped them to move forward. If such dialogues would be encouraged in other conflict situations, a healthy behaviour could eventually be transmitted as part of the culture. Preconceived ideas are probably one of the most elementary social defense mechanism. However not having the ability to recognize them and not trying to get beyond them for our own sake, can keep us trapped in conflicts.

There are two aspects to be considered about the local community when trying to understand the reasons behind the way they behave. One of them is related to the fact that the members of the community are not constant when it comes to defending their interest. As noticed from the analysis conducted on this conflict, people seem to react and defend their interest of breathing fresh air only when it smells. Then is when they meet to debate what is to be done and then is when they complain to authorities. There were no actions taken to secure the future of their fresh air days. People react almost instinctively to this stimulus, which is the smell. Even though following the traditional routes of complaining to different institutions about this problem, proved on numerous occasions that these actions are pointless as there is nobody breaking any rules or laws, people keep on being stubborn and follow the exactly same routes. They believe that there is someone who needs to pay for this, as that will definitely solve their issue with the smell, which doesn't necessarily have to be true. Most of the conflicts are not pure and this is one good example. The interviewed local representatives acknowledged

the social and economical role such a facility has in their community and they too are interested in keeping it running. Having and discovering the common interests they have with the management of the farm imposes that the conflict itself is handled in a proper manner, so that these interests are preserved and defended. Enforcing a traditional win-lose result by going to court, will put an unnatural end to this conflict and could possibly make room for frustration on both sides. Another detail which determines the local community to act as it does is its lack of organization. At some point, one of the representatives of the local community said that he somehow assumed his role of representative without being elected by the community. There was a need for someone to go and discuss with the management of the chicken farm and other authorities and experts invited at the Mayor's Office. And even though there were over 50 people discussing the smell issue in the parking lot, by the time they reached the Mayor's Office, there were just a couple of people left. The rest just disappeared along the way, saying that talking is not something that they are good at.

When asked why don't they organize themselves better so that they can be seen as more powerful, the representative told me that they don't have enough resources such as money, energy and time and that people would like, if possible, to have someone to decide these things on their behalf and do all the work that needs to be done. Therefore, it seems that people are not actively involved in the community life and they don't feel comfortable when they need to take responsibility for the decisions they make. Probably it is easier to always blame someone else for the fact that things in your life are not how you would like them to be. Understanding that sticking together in such a non-violent conflict is as important as sticking together when going to war. The cohesion of a group doesn't lie in its ability to overwhelm the adversary, but in its ability to manage the conflict and the interaction with the other, as well as with any other parties which are systemically integrated in the network of those having the dispute. Considering that each person is part of multiple social networks in the same time, the numerous the members of a group are, the better and higher the chances they have to draw power from different other entities.

Expecting for others to act and decide on your behalf, in such cases as the conflict referred in this paper, determines lawyers to seize the opportunity and "take care" of everything. Therefore, there is a possibility that whenever a group becomes cohesive, to contract the services of a lawyer rather than electing and sending a representative to have a dialogue with the other party.

Building a Feasible Mechanism to Get to Mediation

I have attempted to prove, in my dissertation, that the need for mediation is out there, that people feel it and that this type of conflict resolution method can be far more effective in some cases, especially in community conflicts, than the traditional way of

settling disputes in court. But who can bring parties together in a country where:

- a. people have almost no clue about what mediation is;
- b. people are culturally set up to think only in terms of rights (which they can democratically defend now);
- c. people don't know how to see beyond their preconceived ideas;
- d. people make decisions based on prefabricated facts, without questioning their truth value.

When designing a feasible mechanism to get people to use mediation as a method of settling their dispute we should consider the four points mentioned above, at least.

There have been a number of projects developed throughout the country between different associations of mediators and local councils, usually under the name of Mediation Centers for Community Conflicts, which provide free mediation, to some extent, to parties involved in community conflicts. People have started to use them but the lack of advertising doesn't generate that many cases to mediate. Romanians are still uninformed or misinformed about mediation. Since the experience has proven that Romanians are lacking the interest of getting informed, there must be developed a way for this information to reach them without them having to lift a finger. Maybe some sort of social TV spots financed by the state, similar to the ones telling us each time there is a commercial break that eating too much salt, sugar and fat is bad for our health, would be helpful. Not only that people will know that mediation exists in Romania and that it is accessible for everyone, but such a message repeated over and over again can change, in time, the behaviour of choosing the best way to handle a conflict. Transmitting such a message through television, nation wide, it would reach everybody and for sure there will be citizens with a high taste for curiosity because of their age, such as children and teenagers, who hopefully will stimulate the curiosity of the adults, by asking them what mediation is. Or maybe they will look it up for themselves on Internet and tell their parents and grandparents what it means.

A complementary national program financed by the state which would inform opinion leaders about how mediation can be of use, may also create a change in behaviour and can even get people like Mr. Coborzan, the owner of the chicken farm to try it. People like him, always on the run with business, opened to opportunities, with a slight air of superiority need to hear an explanation about mediation from someone of their own kind in order to react to it.

Nevertheless, once people start experiencing mediation, information will spread on its own and probably in a reasonable amount of time it will become part of our culture. Hopefully, through mediation, we will become more open and understand that even though it is natural not to feel love for everyone, we can still work together as a society and evolve.

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