

Popular Tradition - The Premise of the Occurrence of Mediation in Romanian Judicial System

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Abstract

Of all the social norms the custom is one that best identifies with the concept of social norm, due to its specific features. Custom or popular tradition is a creation of society, being born of the desires and aspirations of every people, the pains, sorrows and his experiences in the struggle waged for survival, the defeats and victories held by history.

The custom is what was intended, along a story more or less tumultuous, to reveal all the qualities and defects due to its conservative nation, a perfect identification with where was born and formed and especially, the extraordinary possibilities to adapt to hardships weather, which showed ("the forest is brother with Romanian" poet observes, that "eternity was born in the country", and Romanians do not let their ancestral land whatever the vicissitudes of history).

Keywords: Popular tradition, conflict, justice, mediation

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1. Introduction

The custom can be characterized as a rule of behavior that was born in a society which is based on a voluntary repetition of the people, to a behavior a relatively long period of time. Created voluntarily the custom is not based on an obligation of the state and, more so, does not entail a violation of state sanction, the only sanction that can come from being the society that created and can not take than a verbal reprimand or contempt of the form: *it's better for you do!*, up to isolating or banishing the guilty (*if you do not doing the right thing, you do not talk to me!*).

Born in society, reflected the custom initially observe how primitive man and imitate nature, adapting it to the needs of its growing and complex, and subsequently how it behaves in society with others or animals in the household.

And today, in the rural world, where the custom still exists, many human activities are conducted according to the interpretation of natural elements (sky, stars, birds' behavior, etc.) and not by calendar or after information from state institutions.

The custom or popular tradition is the man accompanying the lifetime, marking, using songs, whether of grief, outlaw or army, doinas, poems, ballads, proverbs and dance at the important moments as birth, marriage and death.

Round dances is held on holidays, stories and tales of grandparents, carols, traditional costumes and practices specific to each event were the means by which custom was handed down from generation to generation, so everyone can enjoy "folk wisdom" (our language is treasure ") acquired by his predecessors.

2. Archaic forms of justice

Moreover, archaic forms of justice, and judgment function was for legal conflict resolution in certain forms of society and not a specialized lawyer.

Both the Greek cities and in ancient Rome, the forms in which people (directly or through its representatives) participate in the trial in the public market are numerous, as it is a manifestation of the adversarial process type (criminal trial with obvious aspects of a private process) where the focus is on safeguarding, with priority to the interests of those directly involved in the case.

Massive intervention of citizens in solving criminal case constituted by democracy forms a safeguard against abuse and arbitrariness the official bodies and security climate in which everyone feels protected by that justice is dispensed by his peers.

After the collapse of the Roman Empire during the formation of the new state formations in place after numerous migratory movements of peoples and even in the developed feudal society, the role of conflict resolution by non-specialists declined (Radulescu, 2013).

The function of law is a component of political power by the princes, monarchs and other rulers and feudal by each within its possession.

However, in a large part of Europe, in accordance with local legal traditions were maintained in legal forms of participation of persons without legal knowledge representing:

- ✓ be community because no concept that the offender liable to the community, the community thus assuming the right to rule on a simple problems on offense was committed by the accused, which can be easily solved every man of common sense aware of its rights and obligations without having to resort to a specialist;
- ✓ be having personal status equal to that judgment, rule feudal hierarchy that reflects so well established in a stratified society, as was the feudal.

And in our country meet system of judgment by community, led by an elected chief, often called counties (magistrates), assisted by a council of village elders, those "good and old people" (boni homines et veterans) which were based on practice with a long application (actus plures continue uniformes), in the belief that they were the law (opinio iuris et necessitatis).

Worst punishment was not death, but banishing the offender in the community, so that the role of public opinion,, "has resulted in a number of forms vis-à-vis the offender (eg thief was worn by village work stolen to be shown and despised civil contempt equaled its death and automatic exclusion and without appeal among the congregation, etc.).

Various forms of punishment were starting to cry over the village or dance or cry at different nicknames given to those who break the rules of social life to the story around the

village in order to remain whole life insults village: "not escape the village gossip" (Firoiu, 1993).

Besides the villages are preserved in the Middle Ages courts composed of old people of the village, while the towns and cities have șoltuzii (magistrates) with 12 pârgari (peasants) over which overlapped state agencies, governors, chief magistrates of management districts and provinces, administrative districts judges and magistrate with great competence in parts of the country under their control.

All had general jurisdiction - civil and criminal - plus the expertise of governors, as the nobles and monasteries, the documents specified in the royal court to delegate to them.

The parties to the dispute could choose, by mutual agreement, several landowners-judges to hear the case. The conception that underlies the court proceedings was that judgment to be made by law and justice, in accordance with moral epoch.

Legal Consciousness is therefore supposed to enforce morals at fair interpretation and application of the law for righteousness, judgment be without hypocrisy and honor.

The higher courts have made clear that no appeal or other legal process steps, but the parties dissatisfied with a decision once they reopen the same court or superior state bodies, including the royal council and the king of the country.

Also there is still no principle of *res judicata*, which maintains a state of uncertainty in legal relations. Lords tried to hinder the reopening process, giving judgment stating a fine - *zavească*, tribute - by challenging the decision (Cernea, Molcut, 1992).

As shown reflect the custom traditions that today no longer have the same value and the same meaning. Furthermore, due to its conservative and transmission through "verbally" from generation to generation, extremely hard the custom changes, and, although it should help you identify as part of a people, a nation, is more a tourist attraction than a social reality that is part of each of our lives.

3. Using mediation as social and economic necessity

Conflict resolution was seen as a unitary on social welfare, the rules to be respected in the community and the need for disputes to be settled amicably, in order not to waste vital resources (often missing altogether) processes the courts.

More today in rural areas, are tried this form of conflict mediation by "pressure" exerted by the community to find an amicable solution cessation of conflicts between community members. Some existing minority in our country (as is the *rromanes*) developing even true parallel court proceedings (*stabor*) to resolve existing conflicts in the minority.

Currently, in Romania, in terms of legislation, mediation is regulated by Law no. 192 of 16 May 2006 on mediation and the mediator profession, published in Official Gazette no. 441 dated May 22, 2006 as subsequently amended.

Mediation representing, according to art. 1. 1 of Law 192/2006 "a way of resolving conflicts amicably, by a third party as a mediator specializing in conditions of neutrality, impartiality, confidentiality and having the free consent of the parties".

Stating that "mediation is based on the confidence that Parties to the mediator, as a person able to facilitate negotiations between them and support them to resolve the conflict through to a solution mutually convenient, efficient and sustainable" (Article 1 of. 2 of Law 192/2006). Mediator is "any person called to lead the mediation in an effective, impartial and competent, regardless of name or third party profession in that Member State and the way in which the third party has been appointed or was asked to conduct mediation".

Mediation can be used to resolve disputes in civil (inheritance, division of property, property claims, cancellation of contracts, or other monetary claims, conflicts with neighbors, the obligation to make rescission or termination of contract enforcement, etc.) in family law (conflicts between spouses, disputes between parents and children or between adult members of the same family) in trade (claims, order of payment, termination of contracts, claims, evictions, disputes between partners or termination of enforcement, etc.) in labor (labor disputes arising between employees and employers, financial rights, individual employment termination, etc.) in intellectual property law or malpractice (Radulescu & Co, 2013).

Mediation can also be used in consumer if the consumer invokes the existence of damage due to improper purchase products or services, the contract failure or guarantees provided, the existence of unfair terms contained in contracts between consumers and businesses, or the violation of other rights under national law or EU consumer protection (Radu, 2014).

A special situation arises in criminal law, where mediation is useful both to resolve civil action in criminal proceedings and to resolve the criminal case, where the action is initiated upon prior complaint or the reconciliation of the parties removes criminal liability.

More on the period of the mediation procedure, criminal law in force, ordering the suspension of prosecution, under the mediation contract submitted by the parties (Radu, 2014).

It should be noted that mediation may not be strictly personal rights, such as those concerning the status of the person and any other rights of the parties under the law, not by the Convention or has any other manner permitted by law.

4. Conclusions

Mediation is based on the cooperation of the parties and used by the mediator, methods and techniques, based on communication and negotiation, which should serve only legitimate interests and objectives of the warring parties, the mediator can not impose a solution on the parties subject to conflict mediation.

The mediator does not represent the interests of any party, with mediation throughout a position equidistant from the other participants in mediation sessions, its role is to facilitate communication between parties that mediation contrary views so bring them to a common denominator in order to eliminate the state of conflict.

The mediator is not a judge, and has no decision-making power, so can not decide on conflict resolution and can not impose a result of mediation parties, watching throughout the procedure of mediation that no party is disadvantaged or feel that is disadvantaged, avoiding carefully any form of manipulation, intimidation or threat.

It is noted that mediation is a solution of dialogue and tolerance, understanding each other and the desire to resolve conflicts beyond satisfaction at any cost, to their interests.

In European culture mediation is required due to Christian doctrine, which was the basis of European civilization, and who preached forgiveness neighbor as a form of conflict resolution and tolerance as a way of life.

Currently mediation is appropriate, as a means of resolving conflicts due to people awareness of the benefits that this method has to process a classic, winning time and, especially, confidentiality and low cost.

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