European Policies in Mediation as an Alternative in the Courts of Law

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Abstract: The aim of this article is to synthesize the importance of mediation as one of the most used methods regarding the alternative solutions to courts of law. The approach is qualitative and is focused on the increasing trend of mediation in Europe, an evolution of the related European policies and the medium and long-term perspectives of mediation.. For this purpose we used the case study regarding countries such as Italy and Romania, countries that have introduced mandatory mediation before opening a judicial process. The study is important for those involved in the justice act (attorneys, lawyers, magistrates) and the novelty of the study dwells in the analysis of mediation in the various European government systems.

Keywords: mediation; European Union; legislation; alternative

1. Short History of Mediation

Mediation is a relatively new[3] settlement method of conflicts/litigation from different public or private social relations. The institutionalization of mediation as litigation settlement procedure is materialized in the U.S. (Ancheş, 2010, p. 102), in the second half of the 20th Century. The institutionalization included the strengthening of certain specific procedure stages and techniques and of certain requirements and capacities from a third party – the mediator – as a person able to run the mediation process toward a maximum efficiency, settlement of litigation by finding the most advantageous solutions for each party involved into the conflict.

Historically, we can say that mediation existed before the legal systems, as the legal systems occurred only after a certain type of organization in

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[3] We refer to mediation as an institution attached to the modern law system. Mediation as a phenomena existed from the ancient times, in different forms and traditional systems.

communes/states/emperies. Before such forms of organization, the patriarchate or the tribal organization were the habituating ways of living.

We cannot deny the inherence of conflicts in social relations of any kind and at any time, regardless of level. Either on the intra-familial level or inter-familial level, or in different social groups, conflicts occur in different degrees and forms. Related to such considerate, people were parties in conflicts since the ancient times. As people had not yet established a legal system, the leaders of groups or tribes, or elderly people in a community were considered to hold the principles of equity, based on which they settled their conflicts. We can say that they were mediators whilst people were not subjected to trials in the meaning we give today to this, there were no principles of criminal or civil law, as the person or persons empowered to settle such conflicts settled them listening, in a first stage, the point of view on the conflict of the parties; after that stage they addressed and assessed the causes and effects of facts, presenting an equitable solution, taking into consideration the previous settlements.

After communes, states or empires were established, due to increase rate of occurrence of conflicts, the need of a judgment system and settlement of conflicts appeared. Therefore, the law system was established, as a whole system improved in time, a system that was at most materialized and strengthened during the Roman Empire, a law system which is the essence and root of the present law systems.

With the occurrence of this law system, mediation of conflicts or amiable settlement, becoming the second choice, people willing more a sentence imposed by a judge, willing for a trial, as the states considered only this trial method related to the true-false, guilty or not guilty, punished or not punished, punishable or not punishable dyadic.

The issues of the classical law system, which made the amiable conflict systems as inexistent, started to appear with the technical and technological development, when the social relations grew considerably, the legal systems were stuffed with new problems or conflicts, growing in number. The courts of law could not cope with the high number of litigation cases, the quality of the legal act was questioned, the time needed for the settlement of a case was high, and the work of each judge was overstressing.

Under such conditions, the need of alternative methods for the settlement of conflicts had already appeared. Although the conciliation or mediation existed as methods in traditional forms, there was no procedural and material frame necessary

for activating such methods. In the 20th century, especially mediation caught the eye of judges and attorneys in the U.S., who, equally made the necessary efforts and diligences to consolidate a mediation frame, a normative and procedural frame, to materialize a maximum efficiency method in settlement of conflicts/litigation. Mediation as a method appeared in the '70s when such mediation processes take place, organized by attorney. Subsequently, an increased number of attorney participated into classes to address this procedure, each U.S. state promoting this procedure which started to show results. A large number of litigation entering the mediation processes were settled by this method. According to some, approx. 60-80% of the conflicts mediated were settled by finding a solution agreed by the parties in conflict. (Gheorghiu, p. 113)

In Europe, mediation is noticed mainly after '90s, also as a remedy to the classical judicial systems which became increasingly suffocated by the large number of cases affecting the quality of justice (Anches, 2010, p. 113). At the same time, having already the example of U.S. where mediation not only reflected the settlement and solving the conflicts (Ilie, 2013)[1], however, a side effect of mediation was noticed, as people were more opened to dialog and rebuild of social relations, by opening the communication canals between the parties, "mediation establishes the future behaviors and maintains relations among them" (Stoica, 2004, p. 278). Willingness and good faith of people was reiterated precisely due to dialogue within the mediation process, dialogue within the mediation process, a dialogue where mediator generates together with the parties discussions related strictly to the conflict analysis (causes, history, effects, solutions), and exclusively for an extinctive solution to the conflict. "Communication is an instrument of human action; people are using it to act on their fellows and of situations" (Muchieli, 2005, p. 246). Thus, the mediation procedure is also important in the European states, especially France, UK, Germany, Netherlands, Spain, and Belgium etc., where it becomes increasingly active and prolific. Promoting the mediation by the states and judicial actors (attorneys, judges, prosecutors, legal counselors) and mainstreaming of mediation as settlement method of a conflict situation has led to increased confidence in mediation, especially in the mediators, as people able to intervene effectively into a conflict.

In Romania (generally in former communist states), mediation appears a decade later, any discussions on a mediation law starting after 2000. Among the conditions

[1] This material is available at the address http://www.juridice.ro/280558/efectele-medierii-in-sua.html, accessed in 29.01.2014.

of Romania's accession to the European Union was the elaboration and enactment of mediation as a procedure able to include and resolve many of the disputes on the dockets of courts, in order to avoid overcrowding them and to increase the quality of justice. Therefore, in 2006, Law no. 192 was adopted on mediation and mediator's profession, law that has been and still is permanently improved by the Romanian law-maker.

2. European Norms until Directive 52/2008

The European Union materialized the benefits of mediation for the society in general and for people in special. The mediation addresses the settlement of conflicts on amiable way by structured dialogue. Promoting the mediation does not mean anything else than promoting the dialogue and peaceful discussions to find an amiable solutions. The benefits for society are building a more peaceful climate between members of a society, promoting an amiable environment; at the same time an increase of the quality of justice by decreasing the number of cases assigned to a judge was a main indicator of European policy related to mediation. For each citizen under conflict, mediation brings important savings in terms of money and time, creates the conditions of reconciliation, of a social harmony. At the same time, it is a binder between social relations, and certain types of conflicts as the family conflicts and those related to the neighbor relations, is a true remedy by dialogue.

In criminal law relations, where the social hazard degree is reduced, mediation is not only possible, but also encouraged in the new systems of criminal law, taking into consideration the policies of the rehabilitation criminal law[1], polices emphasising the rehabilitation of the perpetrator in the society, his/her reintegration, rather than blaming and publishing him/her in terms of criminal law, which proved to be useless and without any integrative role. Although within such rehabilitation policies, the role of the victim in the criminal process is more emphasised, the psychological, physical, social consequences he/she has to bear are mainly taken into consideration when criminal causes with law social hazard cases are settled, and where the parties in conflict have certain relationships – friendship,

[1] The frame of the rehabilitation law can be also analysed from the documents to be found at http://www.restorativejustice.org/university-classroom/04restorative%20justice%20theory. The rehabilitation dialogue of the criminal mediation is one of the instruments of the new criminal law systems which emphasises not the punishment and oppression, but the reintegration, education and prevention of criminal behaviour and facts.

neighbouring, kinship or affinity. All those were taken into consideration by the leaders of European policies and thus, a series of consultative and guidance regulations were issued, as Recommendations in the areas of mediation, civil and commercial, concerning family relations, administrative relations, in areas related to criminal law. All such recommendations were expressly meant to guide the states in legislation related to mediation, therefore, they were first of all meant to develop and promote the mediation. The European recommendations related are: Recommendation no. 1 dated 1998 related to family mediation, Recommendation no. 19 dated 1999 related to criminal mediation, Recommendation no. 9 dated 2001 related to alternative means to settlement of litigation by the administrative authorities and individuals, Recommendation no. 10 dated 2002 related to civil mediation.

3. Recommendation no. 1 din 1998 related to Family Mediation

Family mediation relates to interfamilial conflicts concerning the separation of parents (divorce) or in fact (their separation after a period of living together without being married), conflicts concerning shared custody of children, conflicts concerning the division of shared good obtained during the marriage, other conflicts between the husbands/former husbands. One of the main European values, acknowledged and protected even by the European Convection of Human Rights is family[1], considered not only the main cell of the society, and a cohesion element and inclusion into the society. Mediation of conflicts deriving from family reports are meant to, as provided in the preamble of the Recommendation that it referred to:

- to improve communication among the members of family;
- to reduce the dimensions of the conflict between the parties under litigation;
- to lead to an amiable settlement;
- to provide continuity of connections between parents and children;
- to contribute to reducing the economic and social costs produced by separation or divorce, both for the parties and for the State;
- to reduce the period of time necessary for the settlement of the conflict.

[1] Title I ART 8 of the convention "Everyone has the right to respect for his private and family life, his home and his correspondence". To find out more on this analysis of this issue, Georgescu, Violeta Elena, material available at the address http://fs.legaladviser.ro/4caa2a7a9cfd670527e9d32483d0dc2a.pdf, accessed in 29.01.2014

The Recommendation of the Council of Ministers considered the mediation as a factor able to facilitate the consolidation of family relations. By its nature, mediation is a procedure which emphasises the human nature and emotional substance of relations between persons under conflict, being, from our point of view, the most appropriate method to settle the differences within a family. This opinion also comes from the fact that the causes of family conflicts which mainly concern the lack of communication or deficiencies in communication, the lack of trust between the husbands, different emotional reasons. Under such conditions, certain states as France or Great Britain (Costea, 2013[1]), seeing the benefit of mediation for the family relations regulated this procedure as a previous compulsory stage, before the appeal to the court of law. This trend was closely followed by other states too, not only for the family litigation, but for other types of litigation too.

According to the same Recommendation, related to the promotion, accessing and participation into the family mediation, the possible measures, which the states can take, are:

a. states must promote the development of family mediation, especially by public information programs, for a better understanding of this means of amiable settlement of family litigation.

b. states have the liberty of determining, in specific cases, the adequate methods of information, related especially to the mediation as an alternative process for the settlement of family litigation (e.g. providing a meeting between the parties and the mediator), and allowing the parties to decide if it is possible and indicated for them to proceed to mediation on the matter of such litigation.

c. likewise, states must involve to take the necessary measures to allow access to family mediation, including international mediation and thus, to contribute to the dissemination of this means of amiable settlement of family litigation.

At this moment, family mediation in Romanian is still young. The provisions of the New Civil Code related to the family relations and exercising the joint parental authority, and the settlement of family conflicts mainly by mediation, by amiably of such discussion, are still in the implementation stage. Persons facing a divorce come to a mediator in a reduced number compared to the cases related to family

[1] This material is available at the address http://www.medierenet.ro/2013/08/23/experiment-in-dreptul-civil-francez-medierea-obligatorie-in-domeniul-familial/#.Uu6Fwz2Szpw, accessed in 30.01.2014.

matters – divorce and shared custody. Family mediation in Romania has slow progresses, however, it is supported by the state and the mediation bodies, preconizing an increase of the conflict cases deferred to mediation.

4. Recommendation no. 19 din 1999 related to Criminal Mediation

Criminal mediation is connected to the rehabilitation policies in the criminal area, policies that especially emphasise the social inclusion of the perpetrator, his/her rehabilitation in front of society, emphasizing the non-punitive aspect a low social hazard fact and, at the same time, on the amiable settlement of conflict by remedying the damage of his/her facts. Activating the process power of the victim and introducing him/her in the development of the criminal trial is more complex in the new criminal vision. Attenuation of the criminal fact consequences regarding the victim are considered by the new criminal legislation even more clearly and complex. In most of the European states, criminal mediation is possible and it is used in case of low social hazard offenders, generally where the criminal liability of the perpetrator/ perpetrators is thus eliminated by the reconciliation with the damaged party or by the revocation of the complaint. Generally, such crimes are classified depending on certain rapports between the perpetrator and victim, with a low social hazard ratio or circumstances that make the criminal fact not to be classified as offence.

In Romania, the hypothesis leading to the apparition of the criminal mediation concerned the introduction of the victim in the first plan of the criminal conflict settlement, his/her right to receive apologies in due time and equitably, principles of social reintegration and reinsertion of the perpetrator. In another words, it was concluded that the detention of the person could not settle the problem after the detention period, related to the reintegration into the society after the detention, contrary, "exaggerated the criminal character of the perpetrator and consequently, the oppressive punitive system brings damages to the society" (Zecheru, 2013)[1]. Adding to all these the fact that the financial means necessary to support a prisoner are considerable, about 2,400 lei (Dollorez, 2013)[2] - and usually that person is incarcerated again within only few months, we notice that the imprisonment could

[1] Material available at the address http://www.editura.mai.gov.ro/documente/biblioteca/2013/Medierea/medierea.pdf, accessed in 30.01.2014

[2] Material available at the address http://cursdeguvernare.ro/sistemul-penitenciar-din-romania-cat-costa-un-detinut-si-de-ce-nu-munceste.html, accessed in 30.01.2014

be too costly for the state. Out of such reasons, the house confinement was introduced in the new Romanian legislation as a punishment in between the detention in the Prison and conditional remission of sentence.

The European Recommendation for the criminal mediation imposes the implementation of a legal stable fundament for the mediation procedure development. The ethics and procedure of the criminal mediation shall be undergone to the parties under conflict, as well as their rights and roles into the mediation, and the effects of mediation. Training and qualification of mediators practicing in the criminal area must be supervised by a competent body. According to the Recommendation, mediators should receive an initial training before being appointed, as well as in-depth training during their activity. Their training should concern a high level of competence, taking into account the skills to resolve conflicts, specific exigencies involved in the work with victims and offenders, main knowledge of the criminal legal system. The skills to mediate a criminal conflict bring about serious matters in practice. The nature of the conflict, nature of the relation between the parties of the conflict (who are seen *ab initio* as victim and offender), complexity of the criminal cause, are major differences noticed by the mediators, referring to the civil code. Mediators should accept the mediation of a criminal matter only if they have the capacity and the skills to understand the conflict and its substance, as well as its criminal features, which shall make the mediation difficult, as well as reaching a final extinctive solution.

5. Recommendation no. 9 din 2001 related to the Alternative Means to Settle Litigation between the Administrative Authorities and Individuals

Conditions of this Recommendation concern the rapprochement of administrative authorities to the citizens, faster settlement of administrative conflicts, de-solicitation of the courts of law of causes which can be settlement on amiable way, reducing the costs and reducing the settlement time, recurrence and the principle of equity, not only the principle of the law.

According to the Recommendation, the regulation of the alternative means must:

a. provide for the parties a proper information related to the possibility to use the alternative means;
b. to provide the independence and impartiality of the conciliators, of mediators and arbiters;

c. to guarantee equitable procedures to provide the observance of parties' rights and of the principle of equality;
d. to guarantee, as much as possible, the transparency in using the alternative means and a certain degree of discretion;
e. to ensure the execution of the solutions found by using the alternative meas.

Conciliation and mediation can be initiated by the parties involved, by a judge or can be considered compulsory by the law, at the same time, conciliators and mediators must provide separate entrances for each of the parties, or at the same time, to find a solution, conciliators and mediators can invite the administrative body to cancel, retract or amend the administrative document, on opportunity and legality grounds.

As compared to these guidelines present in the Recommendation, we shall make a difference between the administrative recourse regulated in present in Romania and the amiable settlement means. The administrative recourse is a preliminary form of trial, however, it does not have the type of an amiable method of settlement, but it is considered as a law feature. It is proved by the procedural and material frame. The request/petition done by a person who considers damaged by an administrative deed or a decision is submitted to the issuing body, which, following an assessment, decides on its rectification or maintains it as it is. An amiable procedure as mediation, would mean that the mediation application is done by the person that considers himself/herself damaged related to his/her rights by the same administrative deed directed to the mediator – a neutral, equidistant and impartial third party toward the situation, a mediator that shall call the parties to a mediation meeting. The mediation meeting of an administrative conflict shall be the discussion between the petitioner and the representative of an administrative body/institution in order to identify the incident problems to find an amiable solution by the mediator. It can see a clear difference between the procedure of the administrative recourse and the procedure of the administrative mediation. A direct meeting in front of the mediator of the parties in the administrative conflict seriously increases the likelihood and potentially the settlement of the respective different. Although now the administrative mediation is not regulated in the Romanian legislation, it is possible, as, according to the general rule in the mediation matters, it can take place if the parties of a conflict can dispose of the rights/goods on which the conflict occurred, according to art. 2 para. 3 of the Mediation Act 192/2006.

6. Recommendation no. 10 din 2002 related to the Civil Mediation

Civil mediation boasts the largest possibility of being developed due to the diversity and multitude of conflicts. All social relations can generate conflicts by themselves. Civil mediation presupposes that any conflict in any activity line, labour conflicts, commercial conflicts, conflicts related to property, conflicts related to possession/delimitation of property boundaries, conflicts of debts, etc. Civil mediation is aimed to decrease the number of litigation on the dockets of courts, thus increasing the quality of justice, and to lead to a peaceful social environment based on dialogue and respect between the persons that were or have a conflict. The interception and settlement of certain conflicts by civil mediation is beneficial also for the persons in conflict who shall be thus educated toward an efficient management and prevention of any eventual conflicts that may occur.

All European policies in the civil mediation offer an opening toward a new vision of advantageous administration and management of conflict exploring solutions by the parties helped by the mediator.

Within the process related to the mediation, the states must decide if and to which extent the clauses related to mediation can restrict the right of the parties to turn to justice. The mediator should act impartially and independent and to supervise the observance of the equality principle during the mediation. The mediator cannot impose a solution to parties. The information acknowledged during the mediation is confidential and they cannot be used afterwards unless the parties agree or in cases permitted by the national law. During the mediation, the parties should be allowed sufficient time to examine the problems raised and to find an eventual solution to this litigation.

Mediation, although it is an informal procedure, involves a lot of attention from the mediator both in the preparation of the process and of the parties for the mediation as well as during the final discussions and negotiations. The complexity of a case shall make the mediation even more complex and difficult. In such cases, the presence of two mediators (the procedure being called co-mediation) is welcomed. Examining the issues in discussion, assessment of the progress of mediation, generating as much options as possible by the capitalization of dialogue, are key elements of the mediation.

Related to the restraint of the litigants to turn to justice, the Constitutional Court of Romania decided that a previous procedure as the direct conciliation does not hinder unrestricted access to justice, as the “law-maker intended to transpose into

practice the principle of celerity of litigation settlement between the parties – more event in the commercial law – and to relieve the activities of the courts of law"[1]. To promote the mediation, the states must provide the public and stakeholders in the civil litigations general information on mediation. The states must group and share information in detail on the mediation related to civil matters, including the costs and efficiency of mediation. Measures should be taken in compliance to practice and national law to create a network of regional and/or local networks, where individuals can obtain an impartial opinion and information on the procedure of mediation, even by phone, by letter or by e-mail. The states should inform the professionals involved in the operation of justice on the mediation related to civil matters.

7. European Directive 52/2008 related to Civil and Commercial Mediation

All recommendations above, together with all the discussions and pilot projects developed by the European States (in Romania the pilot project related to the mediation took place in Craiova) starting with 2000, lead to the need of a directive related to the mediation of conflicts, as a stringent need of the judicial area, as a viable alternative for citizens. It was also possible due to the fact that most of the European states already have had a frame or a law of mediation more or less functional, which the Directive brought as a novelty being a principled note of mediation and equalization of the implementation and promotion of this procedure on the European Union.

The courts from the European states were almost suffocated by the high number of litigation which increased very much also due to the economic crisis, of the need of regulating and activating the alternative settlement frame was imposed by itself, in order to avoid a legal blockage. Mediation is the break that was need. When we refer to judicial blockage we do not have in mind strictly the physical impossibility of judging the cases on the dockets of the court, but the large period needed for judgments. If a term is established after 12 months following the registration of the request is in fact, in our opinion, a judicial blockage. The Directive wanted to establish a less staffed judicial frame using the mediation in the cases that could be mediated, where the intervention of the judge was not so necessary. Thus, for

[1] Decision of the Constitutional Court no. 335/2004

mediation of such litigation, the Directive imposed on the States Member to promote the mediation by national programs, by informing the public, but especially by practitioners of law as persons already working on the files including conflicts between the citizens. Offering incentives to parties that are willing to use the mediation was also an important point of the Directive, meant to stimulate the use of such method.

The experience of Western states in the mediation and the success of such procedure encouraged the European Union in regulating its frame and principles. The success this procedure started to enjoy was considerable. The Directive was aimed to increase the number of cases mediated, the amiable settlement of as many cases of litigation as possible and an ease on the judicial system. The states could impose a certain modality to use the mediation before and after a legal trial, as a condition.

To create a filter of cases of litigation brought to court is still a concern of the European Institutions. The increased number of cases on the dockets of the courts, high period of judgment, determined the European policies in the ADR (Alternative Dispute Resolution) but especially mediation to be more dynamic, prompt and concrete.

According to art. 5 of the preamble of the Directive, "the objective to provide a better access to justice, as a part of the policy of the European Union of implementing a freedom space, security and justice, should include the access to methods for the settlement of litigation both on the judicial way and extrajudicial. This Directive should contribute to a better functioning of the internal market, especially related to the availability of the mediation services".

Related the mediation concerning family matters, the Directive refers to the Regulation EC no. 2201/2003 of the Council dated November 27, 2003, which provides in art. 55 para. e: States should be involved to facilitate the conclusion of agreements between the people responsible in terms of parental liability, using the mediation or any other means and to facilitate for such purpose the cross-border cooperation".

The Directive also comprises frame mentions to provide a control of the mediation activity. "Members States encourage, by any means considered appropriate, drafting of voluntary codes of behaviour and accepting them by the mediators and organizations providing mediation services, as well as of other efficient quality control mechanisms related to the provision of the mediation".

Related to the revision and analysis of the effects of the Directive, "no later than May 21, 2016, the Commission shall present to the European Parliament, the Council and Economic and Social European Committee a report on the implementation of this Directive. This report shall analyse the evolution of the mediation in the European Union and the impact of this Directive in the Member States. If it is necessary, the report shall be accompanied by proposals in order to adapt this Directive".

The Directive was successfully implemented in the Member States of the European Union, some of them amplifying the mediation process within the judicial system, other have not proliferate this niche yet. Although the large majority of states have implemented a frame for the provision of mediation services, the litigants do still not know this procedure enough, and there are few people turning to this method for the settlement of litigations they are facing.

Promoting a first mediation meeting before going to court seems to be the most prolific procedure up to now, implementation that is still in force in Italy until 2017. There are also other states where the obligation of a meeting with a mediator before going to trial was regulated for certain types of litigation.

In Italy, during the period when mediation was compulsory amount 200,000 litigations were settled by mediation, unlike other European countries where the total of cases settled by mediation was of 500 disputes (Trascu, 2012)[1].

In Romania, the Act of Mediation no. 192/2006 was improved year by year. The number of mediators increased during this period, and the legislative progress was done gradually, at this point the obligation to conducting a meeting with a mediation before a trial was introduced by Law no. 115/2012, a law that sanctioned the parties under conflict for failure to observe this condition as the trial request was not accepted, a very severe legal sanction. As the obligation together with the sanction was implemented staring with the 1st of August 2013, the results of this law can be measured only in 1-2-3 years. At this time, mediation in Romania is not largely used by people, although the number of people informed about this procedure increased. The evolution of mediation is good taking into account the new criminal legislation which broadens the frame of mediation into the criminal

[1] Report on mediation: below 1% of all cases from the UE, material available at the address http://www.juridice.ro/304477/bilantul-medierii-sub-1-din-toate-cazurile-din-uniunea-europeana.html.

area too, offering the parties the right to choose a mediator for the amiable settlement of certain crimes[1].

In January 2014, within the Commission for Legal Business of the European Parliament, the impact study was introduced under the title "Restart" of the Directive related to mediation: assessment of the limited impact of its implementation and measure proposal to increase the number of mediation in the EU. For a significant increase of the number of people choosing mediation in the European Union, the proposal resulting from the study is as follows: legislative intervention which may introduce, not only to allow, a minimum model of compulsory mediation, at least for certain types of cases, the information of public by different national or regional programs.

In case of Romania, related to the incentives, we can think first to a reduction by 50% of the duty stamp which could be due in case of litigations related to the transfer of property or of another real property on one or several real estate assets or division of property, in case the conflict of settled by mediation. Such an incentive would be an important element under the conditions of the economic crisis, however, it cannot be considered as the single element generating the mediation.

The analysis of the legal frame of mediation into the 28th Member States of EU indicates significant variations in the implementation of the directive. Some of them created two types of mediation – domestic and cross-borders.

The following date for the assessment of directive's effects into the European space is established for 2016, when the implementation of this Directive shall be addressed too, in terms of unification of certain procedures at the European level, both related to the settlement by mediation of certain types of conflicts (family, neighbouring relations, commercial) by imposing a preliminary compulsory meeting, both in the way of evaluation and authorization of mediators, for the act of mediation and services of mediation not to have a doubtful quality.

At the level of each country, mediation had to face difficulties especially from practitioners of law. In all states where the mediation was implemented in pilot centres, the first to be reticent were the attorneys that viewed the mediation unfavourable. Fear and reticence of new has been and still is one of the reasons for which mediation is implemented and it did not earn a place in the management of

[1] Art. 83 para. g of the New Criminal Procedure Code.

conflicts. Although the rejection is not a general phenomenon, it is still detrimental to a normal evolution and judicial and fast implementation into the society.

8. Conclusions

European policies related to mediation are under development; however the progress is not so fast as the judicial system and social realty need. In Romania, year by year, conflicts grow in number, a fact also indicated by the CSM Report[1]; the problem lies with each European state. Under the conditions that mediation has the capacity to intercept and filter a certain type and number of conflicts, promoting the mediation and facilitating the access of litigants to it, offering incentives, appear as important and necessary steps for the strategies of the legal system for the interval 2014-2020.

The European Union promotes the mediation and alternative methods for settlement of litigations, however each state has the liability to choose its domestic policies related to this matter, which incentives for litigants offers, which quality of mediation services it guarantees. The example of Italy, which, by introducing the compulsory mediation, had a considerable number of conflicts mediated and settled – 200,000, which should be a favourable precedent to have implemented a form of obligation of an amiable frame of discussions, before the matter is taken to court and opening the judicial process. Thus, we can impose into the market an advantageous and appropriate management of conflicts as a maxim efficient procedure. The perspectives concerning the obligation of mediation could be subjected to a unitary regulation in the European states, involving the points of view of litigants, attorney, judges and mediators.

Implementing the culture of dialogue and mediation had a considerable evolution, however the appeal into the settlement of differences by mediation is still low due to the reticence to novelty, the increment of using the old ways, lack of vision on the factors involved in the enactment of the mediation methods.

Offering the incentives shall be still considered the best and attractive stimulus for litigants, to turn to this alternative. Either as the exemption from the duty stamp for the approval of Mediation Agreements, or as the non-judiciary pubic support

[1] CSM Report material available at the address http://curieruljudiciar.ro/2012/04/03/csm-a-publicat-raportul-privind-starea-justitiei/ accessed in 1.02.2014.

(initiatives in this regard existed at a given time in Romania[1]), settlement of mediation fees when the mediation was not successful in offering an extinctive solution to a conflict, can be forms of financial support for the parties trying to settle a conflict by mediation. At the same time, the sanctioning of parties refusing the mediation without any justification (this practice is implemented in Hong Kong[2]) could by an element in planning a compulsory mediation frame.

9. References

Anches, Diana-Ionela (2010). *Medierea în viaţa social-politică/Mediation in the social and political life*. Bucharest: Universitară Publishing House.

Benezic, Dollorez (2013). *Sistemul penitenciar din România, Cât ne costă un deţinut/Penitentiary System in Romania, How much a prisoner costs us*, material available at the address http://cursdeguvernare.ro/sistemul-penitenciar-din-romania-cat-costa-un-detinut-si-de-ce-nu-munceste.html, accessed in 1.02.2014.

Costea, Corina (2013). *Experiment în dreptul civil francez – medierea familială obligatory/Experiment in the French Civil Law – Compulsory Family Mediation*, material available at the address http://www.medierenet.ro/2013/08/23/experiment-in-dreptul-civil-francez-medierea-obligatorie-in-domeniul-familial/#.Uu6Fwz2Szpw, accessed in 1.02.2014.

Georgescu, Violeta Elena, *Respectarea dreptului la viaţa familială în unele situaţii speciale în jurisprudenţa Curţii Europene a Drepturilor Omului /Observance of the right to family life in certain special situations in the jurisprudence of the European Court of Human Rights*, material available at the address http://fs.legaladviser.ro/4caa2a7a9cfd670527e9d32483d0dc2a.pdf, accessed in 1.02.2014.

Gorghiu, Alina (2013). La nivel mondial medierea are o şansă de 60-80% de reuşită/Globally, mediation has 60-80% success rate, in the column *Piaţa de Capital/Capital Market*, available at http://www.bursa.ro/piata-de-capital/la-nivel-mondial-medierea-are-o-sansa-de-reusita-de-60-procente-80-procente-198416&articol=198416.html, accessed in 1.02.2014.

Gorghiu, Alina (2013). *Ordinance on the legal public support should also provide the support related to mediation*, material available at the address http://www.medierenet.ro/2013/10/31/alina-gorghiu-ajutorul-public-judiciar-ar-trebui-sa-prevada-si-beneficierea-de-asistenta-cadrul-procedurii-de-mediere/#.Uu6QSj2Szpw, accessed in 1.02.2014.

Ilie, Dorin (2013). *Efectele medierii în SUA/Effects of mediation in the U.S*., material available at the address http://www.juridice.ro/280558/efectele-medierii-in-sua.html, accessed in 1.02.2014.

[1] Alina Gorghiu, Ordinance on the legal public support should also provide the support related to mediation, material available at the address http://www.medierenet.ro/2013/10/31/alina-gorghiu-ajutorul-public-judiciar-ar-trebui-sa-prevada-si-beneficierea-de-asistenta-cadrul-procedurii-de-mediere/#.Uu6QSj2Szpw accessed in 1.02.2014.

[2] Mediation in the world, different forms – common issues, material available at the address http://www.clubmediatori.ro/2014/01/09/medierea-pe-glob-forme-diverse-probleme-comune/?lang=ro accessed in 1.02.2014.

Muchielli, Alex (2005). *Arta de a Comunica/Communication Art*. Bucharest: Polirom.

Stoica, Constantin Anca (2004). *Conflictul interpersonal/Interpersonal conflict*. Bucharest: Polirom.

Trascu, Diana (2014). *Bilanțul medierii: sub 1% din toate cazurile din UE/Report on mediation: below 1% of all cases from the UE*, material available at the address http://www.juridice.ro/304477/bilantul-medierii-sub-1-din-toate-cazurile-din-uniunea-europeana.html, accessed in 1.02.2014.

*** CSM Report material available at the address http://curieruljudiciar.ro/2012/04/03/csm-a-publicat-raportul-privind-starea-justitiei, accessed in 1.02.2014.

*** *Medierea pe glob, forme diverse – probleme commune/Mediation in the world, different forms – common issues*, material available at the address http://www.clubmediatori.ro/2014/01/09/medierea-pe-glob-forme-diverse-probleme-comune/?lang=ro, accessed in 1.02.2014.

*** http://www.restorativejustice.org/university-classroom/04restorative%20justice%20theory, accessed in 1.02.2014.