BABEȘ BOLYAI UNIVERSITY
LAW SCHOOL

DOCTORAL THESIS

PENAL MEDIATION - AN ALTERNATIVE WAY TO RESOLVE CRIMINAL DISPUTES

(table of contents and summary)

English abstract

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TABLE OF CONTENTS

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Mediator judge, penal mediation, restorative justice, mediator, mediation agreement, informal mediation meeting, alternative dispute resolution, conciliation, arbitration, debate circles, judge of peace.

Summary

Classical penal justice is no longer the only way to resolve conflicts between peoples. In addition to penal justice, an alternative system of conflict resolution (restorative justice) has been developed, a system in which penal mediation is an important component. Today, however, restorative justice is still in its infancy. Also, the theoretical perspectives in this field are also still insufficient.

This thesis is intended to join these theoretical perspectives, with the aim of contributing to the knowledge of this new field.

This thesis has the following objectives:**:**

- Evaluation and deepening of knowledge on the resolution of disputes in penal law through mediation.
- Analysis of international rules regarding the resolution of conflicts through mediation adopted within various international organisations, including the European Union, as well as the assimilation of comparative law knowledge.
- Developing a model of mediation disputes in penal law for all the stages of the penal trial.
- Proposing legislative solutions aimed at ensuring the rapid assimilation of mediation into penal law.

Considering that today we live in a ultramodern society where conflict often dominates relations between people, rather than fair competition, a society where often the way of relation is deficient and tolerance is often replaced by dispute, traditional justice no longer responds effectively to society problems. Society very easily reaches a stage of conflict, conflict that develops, in such a way that it comes to a conflict with a much larger dimension than it actually was. Thus, the dispute resolved by the judge is only a legal translation of a situation at a particular time. This situation creates a winner and a loser, each side being concerned to defeat the opponent side. Each side defends its case by accentuating what is negative and causing the opposite side to support what it wants. In this situation where everyone presents their version, everything sounds false and the parties move away from finding out the truth and solving the case. The dispute is not only made up of legal

terms, but is based on a mass of feelings, emotions and feelings of the parties to the conflict. Where the resolution of a dispute is translated into impersonal terms of the law the voices of the parties disappear from the trial debates. But a human being, part of the legal process, cannot be transformed into a legal formula. When the judge takes the decision, he will not take into account that part of the emotions and needs of the parties that is most significant but invisible. Therefore, the judge's decision resolves only a small part of the conflict, most of the conflict remaining unresolved that will reappear in the near future and create new disputes between the same parties.

Therefore, the classic judicial process, by classifying the parties as adversaries, creates a psychological barrier between the parties involved in the conflict. Once the decision has been delivered, only one party will be successful, with the other party being 'defeated'. Even if the court continues to award compensation to one of the parties, the interests and needs of the parties are ignored.

In general, the state is not concerned with the needs of the injured party, but with punishing the crime committed by the offender. Although there is a possibility that the injured party, as a civil party, may resort to a separate civil lawsuit against the offender seeking compensation for the damages caused, this, in addition to causing the victim an expense of money and time, there is a possibility that the court order may not be applied because the offender does not have income. After the conviction of the offender, he will end up in the prison system where he will not be re-educated, but there is a possibility that he will specialize in other types of crimes. Thus, apart from the expenses that the state incurs for the maintenance of the offender in prison there will be additional expenses in the future when he recidivates. This scenario happens every day in the courtrooms.

Observing this, we come to the conclusion that the justice pursued by addressing individuals to the courts can only win sometimes but cannot convince or satisfy the involved parties. The relationship between the parts is irreparable, reaching the degree of the enemy relationship.

In this context, in this over-stressed society, we wonder why we turned to the court which has failed to provide the most appropriate solution to the involved parties, while the parties could approach a mediation process themselves, as an elegant and accessible alternative to conflict resolution, and thus through mediation, the parties will focus on finding a common favourable solution**,** based on their interests.

Today, in the world, the legal system of law is in a complete change and always tends towards more modernity. In the past, most conflicts were resolved within the family, or

within a community representative. Today we ask ourselves the question**:** Have we become incapable of resolving our conflicts without going to a judge?

Penal mediation allows the involved partie to free themselves from the legal terms of the dispute and to do everything possible to reach a mediation agreement in accordance with their interests. While the solution to the dispute, by applying the rules of penal law, is harsh, inflexible, the solution obtained through the mediation procedure is flexible, constructive and thus better adapted to the interests of the parties. We wonder what is the point of giving decisions that are not enforced because they are not accepted and that will give rise to other conflicts in the future? One answer is the use of restorative justice and especially penal mediation as an alternative means of conflict resolution.

Thus, penal mediation allows a favourable mediation agreement for the parties to the conflict, which will lead to much faster and more effective justice. Mediation also allows for an saving of time and money, in addition to organizing a concrete dialogue between the victim and the offender on the event that occur. During the mediation procedure the mediator can discuss with each party separately, which contributes to lowering the tension between the parties and increasing the flexibility of the process. This flexibility cannot exist in a classic penal trial. Thus, criminal mediation offers a modern response to the problems existing in our society and in justice.

Therefore, in the justice system we need mediation in penal matters, as an alternative way of resolving penal disputes, because through mediation there is a possibility that both parties will win, without the injured party losing its rights, wins the whole society. The main approach in the field of criminal justice are the prevention of committing crime, the removal of the consequences of the crime, the recovery of injury and the restoration of the victim.

The penal justice system works in a difficult way in many countries. This system is expensive and requires difficult and timely procedures. Victims rarely get compensation for the damage they have suffered, and the recidivism of offenders is high. For these reasons, a new perspective on criminal justice was born to remedy these shortcomings. The results of the criminal justice act are quantified by the moral and material restoration of the injured person and not by the severity of the punishment imposed on the offender.

In the classic criminal system, in reality, no party wins the trial, the injured person does not receive compensation and public safety in society does not improve because you cannot keep the offender in prison forever. In criminal proceedings, the person who has committed a crime will be particularly concerned proving his innocence and persuading the judge to apply a light sentence. Courts focus on punishing the offender, not rehabilitating

him, and victims are often ignored. That is why it is necessary as classical justice to become a liberal, reparative and restorative justice.

Thus, mediation in the penal field is an alternative to classical justice and a restorative way of resolving the conflict, both for the offender and for the victim, offering a new way of thinking about criminal justice. Criminal mediation acts on the cause of the conflict and its effects extend not only to the victim by repairing the damage, but also to the offender by being awaew of the crime committed and understanding the crime act. Moreover, in the case of the penal mediation process, the crime is not considered an action against the laws of the state, but a crime against individuals and the community.

The purpose of criminal mediation therefore is to empower offenders and repair the harm caused to the victim, reintegrate the offender into society and avoid recidivism. At the current stage of the development of society, given the complexity of social relations, an optimal solution must be found for conflict resolution, characterised by efficiency, fast and satisfaction of the demands of all parties involved and of society as a whole. We must keep in mind that human society is a conflicted society, and conflicts are a natural part of our lives. The present existence is stressful, which makes people too easily tense, dissatisfied and in this way, it easily enters into dispute with its relatives, and this also contributes to the accelerated pace of human life, as contemporary society is characterized by a rapid pace of growth and development in short time intervals. In our opinion, as long as the crime commited is based on a previous conflict between the offender and the victim, this conflict must be taken into account and every effort must be made to resolve it. As long as the conflict between the parties is not resolved, the case remains unresolved. Where the crime against a foreign person is based on the characteristics of a conflict, a solution that does not exist in criminal proceedings is required.

The scientific novelty and originality derives from the way of approaching the problem, from the nature of the researched field and consists in the research, from new positions, of the institution of mediation – one of the most innovative causes that removes criminal responsability. The purpose of the research is to formulate a model of mediation, conclusions and recommendations for the qualitative and continuous improvement of criminal legislation.

In conclusion, conflicts represent an inevitable component of each person's life. Conflicts occur every day, that is why people are tense, dissatisfied and often get into an contradictory situation with other people. The evolution of conflicts has experienced different perspectives and angles of approach. Thus, the conflict is no longer considered only

as a negative thing that must be eliminated without delay, but even under certain conditions it can become a positive factor in stimulating the involved parties to reach a situation of conflict resolution. Therefore, we must not think that some of the parties to the conflict must lose, but we must think that there is a posibility to resolve the conflict in such a way that all parties win. In this way we will turn the conflict into a chance for progress. In this regard, it is very important to identify and understand conflicts in order to find effective ways to address them.

Therefore, this legal scientific research of penal mediation is a fairly popular topic both theoretical and doctrinally. The thesis aims to capture how penal mediation is reflected in state law by presenting the legislation and ways of resolving criminal disputes through penal mediation. Following the research, we have concluded that the mediation of conflicts in criminal law responds to a need in a field of obvious relevance and major importance both at the scientific level and at the level of procedure and legal practice. Mediation could become an alternative to justice or, moreover, admitting that it can be completed with a just solution, it could represent an alternative justice, more pragmatic and closer to the expectations of litigants and with extremely important effect for the whole society.

Penal mediation, as a dispute resolution procedure, occurs when a conflict has to be resolved, without the dignity of one of the parties being harmed. Even in cases where conflict resolution practices do not reach an ideal result, an improvement in the existing situation is achieved, leading to the situation where the development of the conflict is no longer possible. Also through mediation, the crime is not mediated, but the conflict between the parties is resolved. Only through communication and dialogue will the parties be able to express their needs, wishes, opinions. The dialogue between the parties will lead to the creation of a favourable solution for both parties.

In view of the importance of penal mediation in society, it is necessary to pay greater attention to the legislative measures followed by the mediation procedure in the field of criminal and criminal proceedings and to restructure the institutions guarantee criminal mediation.

Therefore, conflicts being an integral part of our lives cannot be ignored, so researching this field in relation to the legal institutions of reconciliation, understanding, emphasizes conflict prevention and resolution. Thus the theme is important and current not only because it is a novelty, but because it must be promoted and popularized. What is new is in efforts to find new solutions and effective means of conflict resolution.

This thesis consists of five chapters. Chapter I is dedicated to the evolution, historical as well as the institution of mediation, in general terms, but also to the preliminary legislative of penal mediation in which we analyze the European norms that have recommended the implementation of penal mediation in the legislation of states as an essential condition of the modernization of the criminal legislative and criminal procedural system. Thus we concluded that the European recommendations, resolutions, regulations, directives were implemented in national legislation according to their own realities and opportunuties. We also included a sub-chapter in which we highlighted the evolution of criminal mediation in Romania until the adoption of mediation legislation in 2006.

Chapter II is dedicated to the study of penal mediation legislation in the various states of the world based on the need to implement and (re)build restorative justice.

From the analysis we have observed that while some countries have managed to place criminal mediation in a prominent place in other criminal proceedings and in the practice of criminal justice, other jurisdictions have struggled to move criminal mediation to the margins of the criminal justice system, reflected for example by setting strict criteria for offenders or offering penal mediation only in certain geographical areas of that country.

Therefore, penal mediation is not yet applied to all offenders at all stages of criminal proceedings, in all countries as recommended by Article 4 of Recommendation R. (99) 19. Access to the penal mediation procedure is usually limited depending on the crime committed or the age of tht offender. In this way, penal mediation tends to be limited to minor offences and in this way many victims do not fall under the conditions for an opportunity to receive compensation for the damage they have suffered. Once penal mediation is reserved in particular for minor offences, criminals who are in prison and their victims do not have the opportunity to participate in a victim-offender mediation because of the crime committed.

We affirm that it is necessary to implement some forms of restorative justice to resolve conflicts between offender and victim in the case of more serious crimes with the help of community involvement and conferences .

With all the limitations, mistrust and some legislative incoherence, we conclude that mediation is still more widespread throughout Europe, although so far there is no mediation model accepted by all countries, so the practice of penal mediation seems to be the result of a improvisation rather than a practical and coherent development of a theoretical model. It is also not clear whether the current practice of penal mediation is able to achieve its

objectives or the victim's requirements, to respond more quickly to delinquency, and to respond to the victim's feelings of insecurity.

However, mediation and restorative justice in general are not used to their full potential. Many countries do not want to allow victims and offenders the right of access to restorative justice. Countries using restorative justice do not inform victims and offenders about the possibility of joining a restorative procedure. Moreover, many jurisdictions have adopted some restoration practices, allowing victims and offenders to participate in processes described as restorative but which offer no possibility of dialogue between the parties or are not designed in accordance with the fundamental principles of restorative justice.

Indeed, as mediation programmes and policies are developing in the context of restorative justice across the globe, there seems to be a strong tendency to devise new restoration practices. But this requires time and a modernisation of international policies to ensure that the new restorative practice reflects the new concept of restorative justice in order to maximise its benefits. However, the place of restorative justice in the criminal justice system continues to be a subject of academic and political debate.

In our opinion, we argue that this study is likely to facilitate knowledge in the field of penal mediation and in the wider field of restorative justice. We consider that a effective model of penal mediation cannot be developed than if the characteristics of mediation are analysed in as many countries as possible because the historical evolution of criminal mediation and the philosophy behind the introduction of penal mediation was somewhat different.

We also point out that criminal justice is not the only way achievement the classical objectives of criminal law: compensation, prevention, rehabilitation and deterrence, is not a monopoly in resolving the criminal conflict. Instead, restorative justice allows for a dialogue between the involved parties so the approach to restorative justice has also increased amid the disappointment of the punitive justice approach which has demonstrated its inefficiency in preventing the criminal phenomenon and reintegrating offenders into society. Furthermore, the criminal justice applied by the state institutions seeks to punish the offender, the crime being considered as an action against the state, therefore the main concern of the state is to find the guilty person and individualisation of the punishment. There is no dialogue between the offender and the victim, the offender being interested in receiving an easy sentence, while the victim is exposed to testifying and is often revictimized, so the interests and needs of the victim are ignored. The purpose of the

punishment imposed on the offender by the court cannot therefore meet the needs of the injured party. Punishment has the role of re-education the offender beign an example for the members of the society so that they do not commit crimes.

In our opinion, the punishment should not be limited only to a payment of the harm that has been committed, but should be a punishment that influence post-crime behaviour by understanding the consequences of its actions which will lead to compliance with the law in the future, but the offender and the injured person being isolated, this purpose of punishment is not achieved, the offender often not know these aspects which could lead to his responsibility, re-education and integration into society. Restorative justice gives the offender and the victim a leading and active role during the restorative procedure, they have the opportunity to express their emotions and feelings, to conduct a dialogue and to find together a restorative solution for the healing of the wounds produced. The offender is aware of the reasons for the commission of the crime, as well as the effects of the behaviour on the injured person. In this way, the offender has the chance to take responsibility directly in front of the victim, a significant step in his re-education. Restorative justice offers the parties a space that allows them to regain self-esteem, accountability, their active involvement in order to build a suitable solution, analyze the situation and understand the sets of values.

Chapter III is dedicated to the study of penal mediation legislation in Romania and Israel, in which we analyzed the mediation legislation in these states, but also comparatively, starting from the hypothesis that the legislation in these states belongs to different systems of law. But as mediation legislation is a new type of legislation, we have assumed that there are legislative similarities in the two states. In order to modernise the criminal system of the two states, we have introduced sub-chapters with various proposals.

Following an analysis of the application of penal mediation in Romania, we have noticed several problems that lead to the reality that the penal mediation procedure cannot be applied. The first issue concerns the fact that according to the jursprudence of the Constitutional Court, penal mediation is constitutional in conditions in the agreement of mediation for crimes suitable to reconciliation is signed up to read the act of referral to court, then comes a requirement to limit the time such as is stipulated in the institution of reconciliation.

Following this decision, we stated that we do not understand the rationality of the Decision of the Constitutional Court, which on the one hand declares constitutional the article establishing that the mediation agreement is a separate cause from the reconciliation procedure and at the same time applies to the mediation agreement a feature which belongs

to the reconciliation procedure. We also argued that while in the old Criminal Code reconciliation was possible throughout the criminal process, at present this procedural limitation of mediation leads to the blocking of the right of victims to recover their damage as a result of the crime committed.

The second problem refers to the fact that according to article 478 of the C. pr. pen, the prosecutor and the defendant can reach an agreement recognizing the guilt. However, the agreement recognizing the guilt according to article 478 C. pr. pen is different from the recognition of guilt according to the concept of penal mediation, becausw it has as object the recognition of the commission of the act, the acceptance of the legal classification and includes the type, the amount of the punishment and the form of its execution. In the doctrine it was argued that the phrase **"**acceptance of the legal framework**"** it is incompatible with the negotiation process between the prosecutor and the defendant, because the defendant is obliged to accept the legal framework established by the prosecutor. Furthermore, as we know, in accordance with article 478 of the C. pr. pen, the injured party, the civil party or the civilly responsible party may not participate in the conclusion of a plea agreement.

The third issue refers to the entry of the O.U.G. 24/2019, following which, para. (2) in art. 67 of Law no. 192/2006 was amended by establishing that the mediation procedure applies in the case of offenses for which the withdrawal of the prior complaint or the reconciliation of the parties removes criminal liability, only if the offender acknowledges the criminal act before the courts or, in the case provided in art. 69, in front of the mediator.

In conclusion, with regard to the application of penal mediation in Romania, we have stated that the recognition of the act before the judicial body, prior to the use of a mediation procedure, together with the limitation of penal mediation at the time of the trial of the reading of the document of referral of the court (Law 97/2018), lead to the fact that penal mediation in Romania is almost forbidden.

Also, following the analysis of the application of penal mediation in Israel, we have noticed that the penal mediation procedure is in fact a plea-bargaining procedure in which the Supreme Court rejected the victim's participation in this procedure. The Supreme Court also rejected the use of restorative elements of justice based on empathy and subjective understanding of feelings during the procedure.

In Israel there is not actually a law of mediation, but in Romania although there is a law of mediation, we can observe certain conditions and limits that have led to the fact that criminal mediation cannot be applied.

In Israel, penal mediation was not defined by law, but by jurisprudence. Penal mediation is in fact a plea bargaining procedure that is a negotiation of guilt between the prosecutor and the accused person in exchange for advantages such as changing the legal framework of the crime and obtaining a promise from the prosecutor to ask the court for a lighter sentence.

Following these conclusions, we considered it necessary to form a mediation procedure as a special hybrid criminal procedure, which would combine the advantages of the plea-bargain procedure and the advantages of restorative justice, thus forming a procedure that will improve the act of justice.

I appreciated that in the reality that most criminal disputes reach a plea-bargain procedure, it increases the interest of improving the role of judges in promoting dispute resolution. We argue that in the context of the analysis of the criminal process, conflicts have several effects: emotional, economic, medical, criminological aspects that need to be addressed and that may affect the intervention of the judge in resolving the case.

In our opinion, these problems can be solved by using a hybrid model that requires the judge to promote a creative strategy in the negotiation between the parties. Therefore, in this special criminal procedure, a mediation process can be implemented in the plea-bargain procedure and thus, together with the authority of the judges, mediation elements will be merged. In our opinion, the introduction of restorative elements of justice in the plea bargaining procedure in classical criminal justice will lead to the creation of a more pluralistic criminal procedure system. This special penal procedure, while taking into account the expression of the emotions and needs of the parties together with the legal aspects of the conflict, will lead to a constructive resolution of the conflict between the parties.

Chapter IV is dedicated to the institution of penal mediation, the study of objectives, forms of mediation, the values of penal mediation, the advantages of penal mediation for the victim, the offender, the state, society, the mediation models, the ECHR jurisprudence in penal mediation, penal mediation in prisons, we have also included a comparative study of the institution of the recognition of guilt, as a condition of the recognition of the crime and as a condition of the success of penal mediation. We also analyzed the way to popularization of penal mediation is achieved as an alternative to classical justice. In this case, we have also included a sub-chapter dedicated to proposals to popularize penal mediation in which we proposed that : the judicial body must contribute to the popularization of penal mediation, the judge must recommend the parties to turn to mediation, must provide them with

information on how to conduct mediation, its advantages and where they can find the mediators' table. The Ministry of Justice has the important role of bringing to people the advantages of penal mediation in conflict resolution, in bringing them the existence of penal mediation. I also argued that roundtables should be held with the participation of mediators together with judges, prosecutors, lawyers in radio-TV broadcasts to show the public that mediation is an alternative of resolving disputes supported by important functions of the state.

We have also analyzed other forms of alternative conflict resolution, as well as alternatives to detention that currently exist in a number of countries of the world. I included a sub-chapter in which I proposed a model of a restorative prison.

In our opinion, we stated that if the offender was in a restorative prison, he would have an active way of taking responsibility, encouraging and helping the offender to think about how to repair the damage caused to the victim and society, and in this way it would ensure that upon release he would be less complicated in criminal acts.

I argued that if conflicts and penitenciary crimes are resolved with restorative justice, prisoners will become more aware that inappropriate behaviour is not just a violation of prison rules but is a crime that has traumatic effects on another person.

The rationale for this approach is that by treating the offender of prison offences as a person with responsibilities and obligations, he will become responsible in the future.

Chapter V is dedicated to a proposal for a model of penal mediation, considering the gaps of the legislative system in matters of mediation, the gaps and limits of penal mediation. We thought of a model of penal mediation that combines some elements of classical justice with elements of restorative justice, a model that can be applied at all stages of the criminal process, including in the detention phase and in the resolution of prison disputes between prisoners so that upon release from detention, the former prisoners should no longer be encouraged by the idea of revenge and the recurence of old or new conflicts during detention as an important condition for preventing various forms of crime and reintegration in active life.

In developing the model we took into account the European regulations in the field, the provisions published in the criminal codes of the countries analyzed. That is why, from the analysis of doctrine and jurisprudence, we come to the conclusion that it is necessary to develop an effective model of penal mediation to improve the act of criminal justice. In developing the model, we started from the European Convention on Human Rights and the

jurisprudence of the European Court of Human Rights which is the basis for the elaboration of the proposed model of penal mediation, in order to ensure a fair penal mediation process.

At the heart of the thinking of the proposed model was the MAN as a HUMAN BEING because, regardless of its role in a penal mediation process **:** accused, defendant, convicted, victim or injured person, the human being is the basis and centre for the elaboration of this model having regard to its interests, desires and limits. We considered that only in this way the proposed penal mediation model can become a real alternative to the criminal process for certain crimes.

The ultimate goal of the proposed model is to restore social peace by repairing and reintegrating all parties who have suffered as a result of the crime.

The following were established **:**the principles of the proposed mediation model, the position of the victim in the mediation process according to the model, the preliminary conditions for the application of mediation in the criminal trial, the crimes to which it can apply, the stages of mediation according to the proposed model, the communication skills necessary for the mediator to reach an effective mediation process.

According to the proposed model, criminal mediation is available at any stage of the criminal process and a case can be reported to a criminal mediation at each stage of the criminal process.

We have proved that the proposed model of criminal mediation does not constitute a violation of ECHR jurisprudence by ensuring respect for the right of access to the court and the right to a fair trial.

The parties involved in the mediation process may have the right to legal aid, may request the services of an interpreter. If one of the parties is a minor, he may have all the rights granted by criminal law by being assisted by legal representatives. The offender's presumption of innocence will not be affected. According to the principle of confidentiality of mediation, the parties and the mediator cannot order data that have become known to them in the mediation process. Penal mediation does not prevent the person from giving up the criminal mediation procedure at any time and from resorting to classical criminal justice.

In conclusion, I said that the current criminal justice system is not effective and leads to increased crime and recidivism. Another problem is that the criminal justice system denies the victim and the offender. In our opinion, the solution is to reconsider them again as people with rights and needs and facilitating a way to regain their dignity through a process of restoration. In a process of penal mediation, the existence of a dialogue between the parties

will reduce tension, thus allowing the possibility to seek solutions and accept restorative measures as a way to compensate for the damage caused. Thus, despite the existence of inherent limits, penal mediation should be clearly considered an alternative to conflict resolution in its entirety compared to the other forms of retributive resolution on which the criminal system is currently based.

Confrontation directly beyond a court of law requires great courage for both the victim and the offender. The parties are concerned about this meeting. The mediator has a significant role in the effective conduct of a penal mediation process. States must take the necessary measures to support financial and legislative penal mediation in order to create a social environment conducive to its development. For their part, academics and researchers must carry out multidisciplinary scientific research and scientific evaluations in this field.

Performing a quick trial is the essence of criminal justice and there is no doubt that a long criminal trial constitutes a denial of justice. Prisons around the world are full of prisoners exceeding their original capacity and thus violate fundamental human rights. State governments spend enormous amounts per day on each prisoner, and annual spending in difficult to imagine. It is well known that a solution granted by a judge does not always solve the real problem of the parties. As mentioned above, penal mediation as an alternative of resolving criminal disputes, allows the parties access to alternative justice with simple, clear, fast and inexpensive procedures. I argue that for these reasons it is necessary to act in all possible areas to encourage the parties to resort to a penal mediation procedure even before resorting to classical criminal proceedings.

Also,in our opinion, at any stage of the criminal process, judges and prosecutors must also encourage the parties to resort to a penal mediation procedure. Thus, penal mediation will also help to reduce substantive cases.

An alternative justice such as restorative justice is a solution that entails lower costs for both the citizen and the state, a faster and more efficient solution, while combining the interests of the state with those of the citizen.

In the penal mediation procedure, the victim and the offender actively participate in the resolution of the confict, and the involvement of the community in the criminal proceedings, has an important role in the recognition by the offender of the facts produced and ultimately directly contributes to the decrease of recidivism and the social reintegration of the offender. Due to the advantages of penal mediation for the victim, the offender and society, penal mediation as an alternative form of criminal dispute resolution can represent a significant progress over the classic criminal system.

We believe that mediation will have more significant effects as it is used in the early stages of the criminal process, thus avoiding the negative psychological effect on individuals. It is also important that the restoration of damage is achieved as soon as possible by the victim. The resource savings are also important in the case of recourse to mediation after the criminal conflict has occurred.

In the long term, penal mediation can bring an improvement in the social climate through an improvement in communication between people. Therefore, the parties will jointly seek solutions that can resolve the conflict, that preserve the relations and not the solutions that divide them, as in the court. Using mediation as a way of resolving conflicts on the widest possible scale will improve communication between people in society, create an atmosphere of mutual respect and trust between members of society.

From the above, it appears that the institution of mediation used rationally can be a viable alternative to the traditional method of conflict resolution, but for this it is necessary to act to stimulate the public, change the attitude of the cadres involved in the criminal process, strengthen the institution of penal mediation, create a real alternative for resolving the penal process within the judicial system.

We believe that the people who will resort to the procedure of penal mediation and will be satisfied with the benificiations of this institution, will prefer in the future, in the event of this involvement in a criminal conflict situation, communication and negotiation, instead of the classical procedure.

In this way, it will develop a society that will have as its basic rule of conflict resolution, dialogue. We can say that mediation can bring back into society the dialogue that has long been missing in our society. We lack communication not only at the institutional level, but also at the basic interpersonal level. Dialogue is the result of thinking represents the single path to development of a person, an institution, a society.

Therefore, penal mediation is not only a modern institution of criminal law but is also an institution that reflects the level of development of a modern society.

In conclusion, we argue that today we need a new approach to victims problems, offenders and crime. The centre of gravity must be moved out of revenge to the offender for repair so that the offender will recognize the acts committed and repair the damage caused to the victim as a result of the crime. Restorative justice leaves little space for revenge.

The objective of the criminal process is not only to punish the offender with detention but to repair the harm caused to the victim and to integrate the offender as quickly as possible. It should be noted that the social integration of the offender is a complicated,

lengthy procedure and part of the funds saved in the judicial system by addressing criminal mediation must be directed towards the re-education of the offenders and their social reintegration from the very stage of the application of alternative punishments with educational and remedial effect.

Thus, penal mediation will not only contribute to a saving of the state budget, but will enable to invest this budget saved in order to reduce the number of crimes committed. We argue that each state must develop a national strategy for the implementation and development of penal mediation. The state must encourage a culture of mediation based on effective dialogue and communication between people, with positive effects for the state, citizens and social order.

We argue that a change in the paradigm of justice is needed in order to improve the act of justice. In this context, we considered that new methods of conflict resolution and the formation of new roles for judges should be developed while they carry out their main activities.

In our opinion the ideal situation in a society is for the courts to resolve conflicts that only a court decision can resolve or conflicts in which the court decision is most appropriate. In all other conflicts – which represent the vast majority of disputes brought before the courts today – decisions must be obtained following a mediation process.

In conclusion, we argue that penal mediation must be the natural way of resolving the criminal conflict, while the classic criminal process will be the last procedural step to which the parties will only go in cases of failure of dialogue, when a mediation agreement has not been reached.

Finally, let me conclude this thesis with the following quote of the writer George Bernard Shaw:

"There are those who look at things as they are and wonder why? I dream about things that don't exist and I wonder why not? "