MEDIATING SEXUAL ASSAULT CASES IN ROMANIA: AN APOCALYPTIC SCENARIO OR PROPER VICTIM-OFFENDER MEDIATION?

Ciprian SANDU

Abstract. *In today's traditional system, rape is probably the easiest crime to allege and the hardest to prove. According to the Romanian Police, every four seconds a rape takes place. Unfortunately, only a few of them are known and even fewer brought in front of a court. The reasons are many and will be presented in this article. Another subject will be the last modification of the mediation Law in Romania. It caused a long debate between NGO's and mediators backed by the Government about the introduction of rape between the disputes that must be brought to an informative meeting about mediation before going to court. This article identifiedthe outcomes and risks of this procedure in order to find out if the mediation procedure can be used in Romania for such cases.*

Keywords: *mediation, victim-offender mediation, restorative justice, rape, criminal justice system.*

Ciprian SANDU
Mediator, Transylvanian Institute of Mediation
Email: sandu@ultrasilvam.ro

Conflict Studies Quarterly
Issue 8, July 2014, pp. 73-85

According to EO 90/2012, any person who wanted to report another person, whether they were involved in a car accident, victim of a theft, was beaten by their partner or raped, was invited to consider the possibility of reaching an agreement with the aggressor through a mandatory informative, free of charge, meeting. According to the law, after the meeting occurred, the mediator must issue a document which proves the attendance of the parties (together or separately). Without this document, the victim cannot take the case to court, the action being dismissed as inadmissible.

Under this law, both conflicts that fall under the umbrella of the civil code (misunderstandings in sales contracts, heritage, or light accidents) and those that fall under the umbrella of penal law (injury, trespassing,

violation of the secrecy of correspondence, rape, theft punished at prior complaint) will be accepted in court, if the authorities do not take notice and start an investigation on their own initiative, only on the basis of the complaint filed by the victim after she attended the informative meeting. In fewer words, if a conflict emerged between two parties and one of them wanted to settle things before a judge, they had to attend an informative meeting about the mediation procedure and receive a document from the mediator that provedt heir attendance. Without this document, their complaint would be dismissed as inadmissible.

Last year, a lot of articles and comments were written about the implications of including rape in the mediation law. A lot of them pointed at the negative effects of this provision because it provides anextra chance for the aggressor to escape without punishment, it discourages the victims from taking the case to court, prompting them to relive the traumatic experience, and increases the risk of committing other similar offenses by relapse. In the same time, voices from the legal and civil society criticized the law online at that time, talking about violation of the free access to justice and the unconstitutionality of the law (the procedure was declared unconstitutional at the beginning of May).

Their main argument was the obligation of the parties to present the document issued by a mediator which proved the attendance at an informative meeting. They said that even if the procedure was free of charge, if it was not met, the action would be dismissed as inadmissible, meaning that the free and constitutional access to justice was violated. Being a constitutional principle, and also a principle from the Universal Declaration of Human Rights, no other law can restrict the exercise of this right. More specifically, the informative document was considered to be a gate between the parties and the justice that could be opened only by the attendance at the informative meeting.

On the other hand, the proponents of this law argued that the state should seek to relieve the courts. Regarding this aspect and specifically the use of mediation in penal disputes, the same proponents argued that the prosecutors were the ones who proposed the idea that the victims of an abuse be passed through the informative meeting. Alina Gorghiu, a deputy in the Romanian Parliament and one of the proponents of this law, said at that time: "the fact that the informative meeting is compulsory does not seem at all disturbing, especially since it is free. Someone in Romania should bother to make some efforts to bring a breath of fresh air in the system because otherwise, courts will have terms of a year and will file and will finalize a case in ten years. Concerning mediation in penal cases, the prosecutors suggested the idea that the victims of abuse attend the same informative meeting in order to facilitate their work. This solution was agreed both by the Supreme Council of Magistracy and the Ministry of Justice".

Organizations and activists for women's rights draw attention to the discrepancies in the law and the violation of the abused victims' dignity, which legislators have not taken into account in promulgating this law. In the same time, NGOs' representatives argue

that the introduction of rape cases in the mediation law does nothing but minimize the seriousness of the offense, making rape a negotiable crime. Tudorina Mihai, an activist for women's rights, wrote at that time on her blog: "this decision is outrageous! Since the rape or family aggression victim is under pressure from all sides to withdraw all the claims, she would now be discouraged by the mediator, too, not to go further with the complaint. With the help of this law, the State helps the aggressor, giving him an extra chance to get away with his actions". According to the ARTEMIS association, based in Cluj-Napoca, retelling the story in front of the family and close friends, continuing with specialists, police officers, prosecutors and finally the judge, often makes the victim to believe that her declaration is not taken into consideration, meaning that she is the one who is guilty: "to introduce during the legal approach another procedure – mediation, and another person – the mediator, in front of whom the victim will be exposed to her suffering, means an additional trauma, humiliation, and a denial of her fundamental right to have justice done by conditioning her access to justice or/and moral and social repair, with the proof of the informative meeting".

I can understand up to a point the dose of subjectivism from her words but I want to be as clear as possible in this regard: mediation is not the one that removes the punishment in cases of rape. The punishment is dispensed by the reconciliation of the parties, or the withdrawal of the prior complaint by the victim, and this provision was included in the criminal code since 1968, so I do not agree with the blame thrown on the mediators' shoulders that we encourage rape and the offenders to continue their crimes because they can escape by using this procedure. It takes two players to play this game so their free-will is more important than any other small-talk around the subject.

Knowing both sides of the story and how the subject is perceived by the media, mediators, and by civil society, I asked myself if it would be a right thing to do to mediate a rape case, and if so, to identify potential threats and outcomes of this procedure in such a delicate case. In order to answer my question I started from general to particular, more exactly from the principles of restorative justice, through victim-offender mediation, in order to conclude with the discussion about the particular case of rape.

In today's traditional system, rape is probably the easiest crime to allege and the hardest to prove. This happens mostly because rape can happen in many ways, all with their particularities, which makes it hard for the prosecutors, lawyers and parties involved to prove something. For this article it is enough to discuss about the aggravated form of the rape and its simple form, which is the main subject of the article. If we discuss about the incidences of the former, our system for the most part is swift and efficient inachieving justice. This is because it is very easy to prove it. Legally, the following condition must be met in order to prove the aggravated form of a rape:

- The victim is a close member of the family;
- The victim was in the aggressor's care;

- The victim is under the age of 16;
- The rape was produced by two or more people;
- The rape happened with the goal to produce pornographic materials;
- During the rape, the victim suffered injuries;
- After the rape the victim committed suicide.

But when we focus on the non-traditional rape (or rape in simple form), those incidences involving non-strangers, less force, no beatings, and no weapons, the ability of prosecutors to achieve convictions is greatly diminished. This happens because in a case of rape the prosecutors focus on the relationship of victim and offender, the amount of force used by the offender and the resistance used by the victim, and the existence of corroborating evidence (Sauter, 1993). If we examine the above factors in the context of simple form rapes, we can see why these types of cases currently do not lead to prosecution and conviction: the victim and the offender may have already established a relationship before the incident occurs, the amount of force used to overpower the victim is usually not as great (in most cases the offender use psychological force, so without physical evidence such as bruises or injuries the prosecutors have a hard time proving the rape), and the existence of corroborating evidence is less than it would be in other crimes such as assault, burglary, or murder. This is mainly because the victim, having already been acquainted with the offender, will normally not be fearful of being alone with the offender (Sauter, 1993).

The above factors are helping to change attitudes toward the crime of rape but in the same time we can see that there is still something missing in the manner in which simple rape cases are handled by the criminal justice system – without a conviction or compensation. This is why more and more countries started in the last four decades to use the principles of restorative justice in this type of offences. These principles are used more and more with success and efficiency mainly because they are very clear and simple: the victim's support and healing represent a priority, the offender takes responsibility for what he did, the existence of a dialogue between the victim and offender that leads to understanding and agreement, the offender is trying to repair the damage he did, the offender identifies what he can do in order to prevent relapse and most importantly, the community helps both the victim and offender to reintegrate into society (United Nations Office on Drugs and Crime, 2006). These principles are the result of the antithesis between traditional justice (or retributive) and the restorative one:

- The former says offenses violate the state and its laws, while the latter says the offense is harm done to people and their relationships;
- The main goal of the formeris to establish guilt; the main goal of the latter is to resolve the problem;
- The former is based on the confrontation between the prosecutor and the lawyer; the latter is based on the victim and offender as main actors of the conflict;

- The former punishes the offender, while the latter makes/helps the offender to repair the damage he did by being emphatic;
- The former deals with the past, the latter with the future;
- The former is a rational and logical way of debate, while the latter is informal and more flexible in order to make the parties express their emotions;
- The former is a "zero-sum" game, while the latter represent a benefit and a gain for all the parties involved.

Restorative justice refers to a process for resolving crime by focusing on repairing the harm done to the victims, holding offenders accountable for their actions and engaging the community in the resolution of that conflict (United Nations Office on Drugs and Crime, 2006). Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender. At the same time, most restorative approaches try to create and achieve a specific interaction among the parties involved.

The goal is to create a comfortable and safe environment in which the interests and needs of both the victim and the offender can be addressed. The process is characterized by respectful treatment of all parties. It is also one that promotes the participation and, to a varying extent, the empowerment of all parties concerned. Restorative justice has its roots in the traditional ways of solving conflicts used all over the world from the early ages.

In their work *West Africa*. *A Comparative Study Of Traditional Conflict Resolution Methodsin Liberia And Ghana*, Chereji and Wratto presented some traditional ways of dealing with conflicts in Western Africa, all of them being forms of restorative justice. One method presented by them was Sassywood – the belief in ancestral spirits by indigenous Liberians and a tribal justice system that has been in practice for generations. In one form of this practice the accused is given a mixture of bitter indigenous plants to drink. If he pukes, that demonstrates that he is not guilty. If he doesn't, in case of theft for example, the accused is shamed in public, he acknowledges responsibility for what he did, he makes restitution and asks for forgiveness, and he pays a compensation to the victim, or, if he is unable to pay, he is required to help the victim with different chores (Chereji & Wratto, 2013). The most important thing about Sassywood is the fact that the accused is reconciled with the victim, the victim's family and the community, thus being able to reintegrate into society.

On the other side, the Western European legal approach emphasizes the establishment of guilt and punishment (physical and material), without taking into account either the victim's interests and needs, or the future reintegration of the accused in society. This approach encourages the aggressor to deny responsibility for the harm done, while the traditional method is co-operative with the goal to make the accused to take

responsibility for his actions, to repair the harm done and to continue his life inside the community (Chereji & Wratto, 2013).

Restorative approaches to crime date even earlier than Sassywood. For example,in Sumer, the Code of Ur-Nammu (c. 2060 BC) required restitution for violent offenses. It is the oldest known tablet containing a law code surviving today. For the oldest existant law-code known to history, it is considered remarkably advanced, because it institutes fines of monetary compensation for bodily damage, as opposed to the later lextalionis ("an eye for an eye") principle of Babylonian law. Speaking of Babylon, the Code of Hammurabi (c. 1700 BC) prescribed restitution for property offenses.

In Israel, the Pentateuch specified restitution for property crimes. Exodus 22:1-14, Lev. 6:5, cf. H5:24. In cases of theft or misappropriation of property, restitution of the stolen property was demanded. Additional penalties varied depending on the degree of penitence shown by the thief. If they were penitent, they restored what they had stolen plus a fifth (Lev. 6:5, cf. H5:24). If they were caught with the goods on them, they had to restore their double. If theyhad already disposed of the goods by sale or other means, they had to restore four- or five-fold their value.

In Rome, the Twelve Tables (449 BC) compelled convicted thieves to pay double the value of stolen goods (Law VII). In Ireland, under the Brehon Laws (first recorded in the Old Irish period), compensation was the mode of justice for most crimes. In Gaul, tribal laws promulgated by King Clovis I (496 AD) called for restitution sanctions for both violent and nonviolent offenses. For example, if afreeman stole, outside of his house, something worth 2 dinars, he was sentenced to pay 600 dinars, which make 15 shillings. But if he stole, outside of his house, something worth 40 dinars, and it was proved, he was sentenced, besides the amount and the fines for delay, to pay 1,400 dinars, which make 35 shillings. If a freeman broke into a house and stole something worth 2 dinars, and it was proved on him, he was sentenced to 15 shillings. But if he stole something worth more than 5 dinars, and it was proved on him, he was sentenced, besides the worth of the object and the fines for delay, to 1,400 dinars, which make 35 shillings (Title XI Concerning Thefts or Housebreakings of Freemen).

In many countries, dissatisfaction and frustration with the formal justice system or a resurging interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder (United Nations Office on Drugs and Crime, 2006). Many of these alternatives provide the parties involved with an opportunity to participate in resolving conflict and addressing its consequences. Restorative justice programs are based on the belief that parties to a conflict should be actively involved in resolving it. They are also based, in some instances, on a will to return to local decision-making and community building (Chereji & Pop, 2014). These approaches are also seen as means to encourage the peaceful expression of conflict, to promote tolerance and inclusiveness, build respect for diversity

and promote responsible community practices. Restorative justice has brought awareness about the limits of the traditional justice and the punishment it involves, simply because punishment is not real accountability. Real accountability involves owning up to the consequences of one's actions, it means encouraging offenders to understand the impact of their behaviour and the harm they did, and to take steps to make amends as much as possible. This accountability, it is argued, is better for all the parties involved, including the community (Chereji & Pop, 2014).

At the same time, we should have a proper understanding about the procedures and outcomes of restorative justice. From the beginning we can say that restorative justice is not magic and not the best way to deal with every type of conflict. Also, restorative justice is not primarily about forgiveness or reconciliation. Some victims and their advocates react negatively to restorative justice because they have the impression that the goal of such programs is to encourage them to forgive or reconcile with offenders (Gavrielides, 2006). The last example in Romania was during last February and March, when numerous NGOs and feminist groups argued against this procedure. It is true that restorative justice does provide a context where this might happen, some degree of forgiveness or even reconciliation does occur much more frequently than in the adversarial setting of the criminal justice system. However, this is a choice that is entirely up to the participants. There should be no pressure to choose this option.

Also, restorative justice is not mediation. Like mediation programs, many restorative justice programs are designed around the possibility of a facilitated meeting or encounter between victims, offenders, and perhaps community members (Zehr & Gohar, 2003). However, an encounter is not always chosen or appropriate. Moreover, restorative approaches are important even when an offender has not been apprehended or when a party is unwilling or unable to meet. Even when an encounter occurs, the term "mediation" is a problematic description. In a mediated conflict or dispute, parties are assumed to be on an equal moral playing field, often with responsibilities that may need to be shared on all sides. While this sense of "shared blame" may be true in some criminal cases, in many cases it is not. A victim of a rape or even a burglary does not want to be known as a "disputant" (Zehr & Gohar, 2003). In fact, they may well be struggling to overcome a tendency to blame themselves. At any rate, to participate in most restorative justice encounters, a wrongdoer must admit to some level responsibility for the offense, and an important component of such programs is to name and acknowledge the wrongdoing. The neutral language of mediation may be misleading and even offensive in such cases (Brookes & McDonough, 2006). But even so, mediation is used more and more in such cases in the form of victim-offender mediation (VOM). Victim-offender mediation programs (also known as victim-offender reconciliation programs) were among the earliest restorative justice initiatives. These programs are designed to address the needs of crime victims while insuring that offenders are held accountable for their offending.

The first Victim-Offender Reconciliation Program began as an experiment in Kitchener, Ontario in the early 1970's (Peachey, 1989) when a youth probation officer convinced a judge that two youths convicted of vandalism should meet the victims of their crimes. After the meetings, the judge ordered the two youths to pay restitution to those victims as a condition of probation. The Kitchener experiment evolved into an organized victim-offender reconciliation program funded by church donations and government grants with the support of various community groups (Bakker, 1994 at 1483-1484). Following several other Canadian initiatives, the first United States program was launched in Elkhart, Indiana, in 1978. From there it spread throughout the United States and Europe. While VOM was not initially viewed as a reform of the criminal justice system, those involved in it soon realized that it raised those possibilities and began using the term restorative justice to describe its individualized and relational elements.

Victim-offender mediation is a process that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime. With the assistance of a trained mediator, the victim is able to tell the offender about the crime's physical, emotional, and financial impact, to receive answers to lingering questions about the crime and the offender, and to be directly involved in developing a restitution plan for the offender to pay back his or her financial debt. This process is different from mediation as it is practiced in civil or commercial disputes, since the involved parties are neither "disputants" nor of similar status – with one aproven offender and the other the victim (Umbreit, 2006). Also, the process is not primarily focused upon reaching a settlement, although most sessions do, in fact, result in a signed restitution agreement. The mediation process is more likely to fully meet its objectives if the victims and offenders meet face-to-face, can express their feelings directly to each other, and develop a new understanding of the situation. With the help of a trained facilitator, they can reach an agreement that will help them both bring closure to the incident.

In fact, the facilitator usually meets with both parties in advance of a face-to-face meeting and can help them prepare for that occasion. This is done to ensure, among other things, that the victim is not re-victimized by the encounter with the offender and that the offender acknowledges responsibility for the incident and is sincere in wanting to meet the victim (Umbreit, 2006). When a direct contact between the victim and offender is possible, it is not uncommon for one or both of them to be accompanied by a friend or supporter (in many cases it is very useful). The latter, however, do not always participate in the discussion. Finally, notwithstanding the merits of a facilitated face-to-face meeting, direct contact between the victim and offender is not always possible or desired by the victim. Indirect mediation processes where the facilitator meets with the parties successively and separately are therefore also widely used (United Nations Office on Drugs and Crime, 2006).

In essence, VOMs involve a meeting between the victim and offender facilitated by a trained mediator. With the assistance of the mediator, the victim and offender begin to resolve the conflict and to construct their own approach to achieving justice in the face of their particular crime (Van Ness and Strong, 1997). Both are given the opportunity to express their feelings and perceptions of the offence (which often dispels misconceptions they may have had of one another before entering mediation) (Umbreit, 1988). The meetings conclude with an attempt to reach an agreement on steps the offender will take to repair the harm suffered by the victim and to find other ways to "make things right".

Participation by the victim is voluntary. The offender's participation is usually considered voluntary as well, although it is advisable that offenders "volunteer" in order to avoid more onerous outcomes that would otherwise be imposed. Unlike binding arbitration, no specific outcome is imposed by the mediator. Instead, the mediator's role is to facilitate interaction between the victim and offender in which each assumes a proactive role in achieving an outcome that is perceived as fair by both (Umbreit, 1988).

Briefly, this is the simplest way to describe victim-offender mediation in order to understand what it is and how it can improve the way people deal with this kind of offences, but for this article's purpose I have to add a few more observations, mostly from my academic and professional experience.

Firstly, mediation is not therapy. The goal of mediation is to effect behavioural change. In the case of rape, the goal would be to help correct the behaviour of offenders by showing them the hurt which they have inflicted on the victim. Once the offender sees the damage he has done, perhaps he will feel remorse and begin to reform his behaviour.

Secondly, mediation provides an informal atmosphere where parties can resolve their conflicts. The mediator simply brings the parties together; he has no higher authority to make findings of fact or decisions about blameworthiness, and let the parties establish their own rules, their own way to negotiate things and let them reach their own agreement. However, the mediator does insist upon certain ground rules, proper for this kind of disputes, in order to create a safe and comfortable environment.

Third of all, the nature of the parties' participation is controlled by the mediator. If the parties are having difficulties in communicating, which is likely in a case of rape, the mediator will work with the parties extensively in joint sessions with the hope of promoting useful communication between the parties. However, in most cases, the mediator does most of his work in individual sessions with the parties. A common misconception of mediation is that the process is a three-way discussion between the mediator and the two disputants. Although it is true that mediation involves joint sessions with the parties, much of the work is done in individual sessions where the mediator tries to facilitate eventual communication between the parties (Sauter, 1993).

Fourth of all, mediation is largely a voluntary process but that does not necessarily mean both parties must be 100 percent willing to go through the mediation process in order for it to be successful. Some elements of coercion, such as the prospect of further police action or the possibility of a reduction of the sentence, can bring the parties together (Sauter, 1993). Although there may be some point where the pressure to participate in mediation is so overwhelming that the process will not be effective, some amount of coercion will not generally destroy the effectiveness of mediation.

Fifth of all, mediation relies on an approximate equality of bargaining power between the parties. If one side dominates the other, there is less likelihood that the agreement reached between the parties will be the result of cooperative participation rather than fear of retribution. The notion that mediation is only appropriate in situations of equal power results from mediation's lack of reliance on rules of law and procedure, precedent, or legal rights and protections.

On the other hand, not every rape case is appropriate for mediation. In fact it may only be in a relatively small number of cases where a victim-offender reconciliation meeting will be appropriate. In deciding whether to mediate a rape case, two important factors must be considered. First of all, both the victim and the offender must be willing to participate in the mediation sessions. Mediation will not work if either the victim or the offender is overly coerced into engaging in the program. Secondly, the offender must be a suitable candidate for mediation. Offenders withlengthy arrest records suggesting a sociopathic character will not make good candidates for mediation (Sauter, 1993). Also, mediation will not work if the offender's characters such that he is incapable of feeling any remorse for the terrible damage he has inflicted upon someone else's life.

There are some problems that can influence the course and outcome of the mediator. For starters, there is the problem of getting the offender to participate in the mediation. In many instances of non-traditional rape, he does not believe that a rape has even occurred. He views the intercourse as having been entirely consensual. It is clear that in such a case an alleged offender is not going to submit to mediation. Furthermore, any pressure that the prosecutor's office would put on the alleged offender would be wasted (Sauter, 1993). The threat of criminal prosecution in cases of non-traditional rape will not strike one ounce of fear in offenders because it is well-known that these types of cases are never brought to trial.

Moreover, even if the alleged offenders would agree to participate in pre-trial mediation, the problem of a power disparity between the victim and the alleged offender still persists, making mediation ineffectual. The offender will still believe in many instances that no rape has occurred. Without the question of whether or not a rape occurred being resolved, there is a danger that mediation would result in the victim being re-victimized by an offender who denies any wrongdoing.

Finally, evidence tells us that non-traditional rape complaints are not well received by prosecutors in Romania. Prosecutors know how difficult it is to get a conviction in these types of cases, and therefore many prosecutors would just as soon steer clear of acquaintance with rape cases. By creating a system of pre-trial mediation for rape cases, we would be giving the prosecutors an avenue to dispose of unwanted cases. This is not the proper message to be sent to prosecutors' offices throughout this country. Instead, the message should proclaim that, with changes in rape law and changes in people's attitudes toward the crime of rape, there will eventually come a time when it will be possible to obtain more convictions in non-traditional rape cases.

No matter how close the criminal justice system comes to bringing rape laws and rape attitudes closer to reality, one glaring problem will still remain: the legal process will still be unable to give proper attention to the needs of the victim (Sauter, 1993)**.** This is precisely where a program of post-conviction mediation would be beneficial. Mediation could work within the legal system as a vehicle for promoting the needs of both victims and offenders.

A review of the criminal process in Western-Europe and the US will lead observers to the conclusion that there are two points in time during the processing of a rape charge where it would be possible to implement the mediation strategy in Romania. Either the mediation would be conducted pre-trial as a means of possibly circumventing the criminal courts, orthe mediation would be post-trial and used as a tool to work alongside the traditional criminal process. Post-trial mediation of rape cases would fill in the gaps where the criminal justice system does not presently provide for the needs of both rape victims and offenders.

As mentioned earlier, the present criminal system does not adequately prosecute instances of so called non-traditional rape. The wide range of problems which exist with these types of cases makes many prosecutors wary of even pursuing a criminal conviction in instances of simple rape complaints. It has been suggested that mediation could be implemented in these types of cases as a means of avoiding the criminal process in total, so the offenders would be given the choice of either the victim's complaint being investigated for possible prosecution or submitting to a mediation session with the rape victim and having the matter dropped by the prosecutor's office. I firmly believe that this type of mediation would be an undesirable method of dealing with rape complaints.

In conclusion, among the reasons why some victims would accept a face to face meeting with the offender, in the presence of a mediator, the following should be addressed:

- in many rape cases, the abuser is part of the victim's network – a colleague, friend, lover, or acquaintance;
- on average, about half of the victims of rape cases registered in the world don't tell the family or the authorities about the crime because of the fear of being stigmatized, or accused, and avoid talking publicly about the trauma that changes their lives forever;

– in court, during a formal process, with rigid rules, the victim can't shout out the pain, suffering, shame, and humiliation the offender has done to them; if they did, they would risk being ejected from the courtroom. In the mediator's office, the victim can tell her story and her emotions and feelings can be freely expressed and explained;
– in court, the offender is focused on himself, trying to prove his innocence; his story is the one heard and analyzed. He is the one who is asked for comprehensive circumstances or evidence that he was „provoked". In the mediator's office, the offender can't ignore the victim anymore, he stands in front of her; he hears how much the victim was affected and how her life has changed radically.

Given this minimum information necessary to talk about the opportunity to use mediation in cases of rape, I want to express some personal views on the discussions that arose in public during last year:

– Rape is not negotiable! In mediation, before the parties negotiate, they are expressing feelings and identifying interests. Mediation is actually „assisted communication and negotiation by a trusted neutral party", performed in a comfortable, safe and confidential, only with the agreement of the parties and according to rules agreed between them and the mediator. If the victim wishes not only to be heard but also understood by the offender, it is her choice. If she wants the offender to take responsibility for the wrong committed, she may request this. If she considers to be entitled to a financial compensation for the suffering, she can ask and discuss this with the offender, who can accept it or not. Whatever the decision, it shall be taken only by the parties, by mutual agreement, without the mediator's suggestions or solutions.
– Both sides can be assisted not only by lawyers, who can ensure that their clients' rights are not violated by the approved agreement, but also by family members or friends who can provide aid and emotional support if needed.
– If an agreement is reached, the parties are legally bound to appear before the court to confirm that it is their freely consented will.
– If mediation fails, the victim can address the court, her right is not restricted in any way.
– Mediation is not and is not intended to be a recipe that cures anything. It is an approach that can open a channel of communication and may be a chance for those who voluntarily, and after correct information about the advantages and disadvantages, decide to follow this procedure. Prepared, managed, and deployed correctly and professionally, mediation between victim and offender can help overcome the trauma and manage the evil that was done.

References

1. Brookes, D., McDonought, I. (2006). *The differences between Mediation and Restorative Justice/Practice,* UK: Consultancy.

2. Chereji, Ch.R, Pop, A. (2014). *Community Mediation. A model for Romania*, Transylvanian Review of Administrative Sciences.
3. Chereji, Ch.R., Wratto, K., (2013). *West Africa. A Comparative Study of Traditional Conflict Resolution Methodsin Liberia and Ghana,* Conflict Studies Quarterly: Babeș-Bolyai University, Issue 5.
4. Gade, B.N. (2013). *Restorative Justice and the South African Truth and Reconciliation Process*. Christian Department of Culture and Society, Aarhus University.
5. Gavrielides, T. (2006). *Restorative Justice Theory and Practice: Addressing the Discrepancy***,** European Institute for Crime Prevention and Control, Helsinki.
6. Peachey, D. (1989). *The Kitchener Experiment*, Mediation & Criminal Justice 14, 14-16, Martin Wright & Burt Galaway eds.
7. Sauter, M. (1993). *Post-Conviction Mediation of Rape Cases: Working within the Criminal Justice System to Achieve Well-Rounded Justice*. Journal of Dispute Resolution, Issue 1.
8. Umbreit, M. (1988). *Mediation of Victim Offender Conflict*. Journal of Dispute Resolution, Issue 1988.
9. Umbreit, M. (2006). *Victim Sensitive Victim Offender Mediation Training Manual*. Center for Restorative Justice & Peacemaking.
10. United Nations Office on Drugs and Crime (2006). *Handbook on Restorative Justice programs*, United Nations: New York.
11. Van Ness, D. and Strong, K.H. (1997). *Restoring Justice*, OH: Anderson Publishing, 2 edition.
12. Zehr, H., Gohar, A. (2003). *The Little book of Restorative justice*, Good Books Intercourse: Pennsylvania.
13. Ancient History Encyclopedia (2014). Definition – Ur-Nammu. Retrieved at the 20th of June 2014 from http://www.ancient.eu.com/Ur-Nammu/.
14. Common Law website (2014). Code of Hammurabi. Retrieved at the 21st of June 2014 from http://www.commonlaw.com/Hammurabi.html.
15. Constitution.org (2014). The laws of the twelve tables. Retrieved at the 20th of June 2014 from http://www.constitution.org/sps/sps01_1.htm.
16. Fordham education website (2014). Medieval Sourcebook: The Law of the Salian Franks. Retrieved at the 20th of June 2014 from http://www.fordham.edu/halsall/source/salic-law.html.