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Contents

Iustin MUREȘANU-IGNAT
The Summer Crisis in Iraq: Causes and Triggers 3

Roman-Gabriel OLAR
Peace and Power Sharing in Sudan 17

Ofelia ZAHA
Roșia Montană – A Step Towards Peace 26

Ciprian TANUL
ADR and ODR in Romania – Future Challenges 54

Ciprian SANDU
Mediating Sexual Assault Cases in Romania:
An Apocalyptic Scenario or Proper Victim-Offender Mediation? 73

THE SUMMER CRISIS IN IRAQ: CAUSES AND TRIGGERS

Iustin MUREȘANU-IGNAT

Abstract. *The aim of this paper is to present an overview of the current conflict taking place in Iraq by analyzing some of the structural and immediate causes, or triggers, that led to the events unfolding in Iraq. In addition, our article tries to establish how the conflict in Iraq constitutes an international crisis, and the relations between conflict and crisis for this particular case study.*

Keywords: *Middle East, Iraq, ISIS, Shia Islam, Sunni Islam, crisis, conflict, war, the United States, Russia, Saudi Arabia.*

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Introduction

The events currently unfolding in Iraq since early June, when a violent extremist group launched an all-out offensive against the Iraqi Security Forces, capturing large swathes of land in the western and northern parts of the country, have surprised the entire world.

Numerous fears of break-up of Iraq along ethno-sectarian fault lines increased sectarian violence, regional escalation of the conflict to Iraq's neighbors, hundreds of thousands of refugees, threats of disruption of Iraq's oil supply, all seem toconverge simultaneously upon an international community awash with troubles in Eastern Europe, the South China Sea, Libya and so on.

In this paper, we are trying to present an overview of the current events taking place in Iraq, by looking at some of the structural and immediate causes (or triggers) that have paved the way for the current armed

conflict. Understanding the troubles that are currently haunting this Middle Eastern country is the first step in any attempt at creating a lasting peace. It is also worth to take a look at the triggers that have initiated the current conflict, in order to prevent them from ever occurring again in the future or to be better prepared should they occur again.

The causes of the conflict are only a part of the current problems which Iraq and the world are facing. The ISIS offensive in Iraq and its lightning speed advances are more than just a simple military offensive or a daring raid across the sands of Iraq. The group has allied itself with various other opposition movements and is taking advantage of the terrible relations between the Iraqi government and the Sunni Muslim minority, trying to achieve what was called a "Sunni revolution" in Iraq.

As such, it is attacking the very fabric of the Iraqi society and statehood, while at the same time it presents a formidable challenge for the entire region, as well as for the international community in refusing to acknowledge long-accepted realities, such as the region frontiers.

In this article we shall explore the way in which the current conflict in Iraq represents a crisis not only for the country of Iraq, but also at an international level, one that could have dire consequences for the entire Middle East region, as well as for the world.

Timeline of ISIS

The current events in Iraq cannot be fully understood without a thorough look at the group's history and actions before the June 2014 offensive.

Initially under the name of Al-Qaeda in Iraq (AQI), it emerged in the country after the 2003 US-led invasion, fighting the coalition soldiers and the Shiite population of the country, with two major aims: to free the country of the Western military presence and to incite Iraqi population to a sectarian war, in which it would raise to prominence within the Sunni minority. Its methods of choice for attacks were terrorist bombings, often by suicide, and kidnapping and murder of foreign workers in Iraq.

In 2006 it changed its name into The Islamic State of Iraq, with the aim of seizing power and establishing a Sunni Islamic state in the country, but its extreme Islamic fundamentalist doctrine and the violent methods used, including against the Sunni minority, prevented it from gathering enough supporters and the attempt was generally unsuccessful.

By late 2007, the indiscriminate attacks against Iraqi civilian population led to further loss of support and it became isolated. Driven out of Baghdad in early 2008 and from Diyala and Anbar provinces in the following months, it was eventually attacked and defeated in Mosul, its last foothold in Iraqi cities, and forced to go underground.

As the US-led coalition began to withdraw from Iraq in 2009, ISI reappeared as a terrorist threat and began attacks against the new Iraqi government institutions and attempt-

ing to sabotage the Iraqi 2010 political elections (Reuters, 2009). In this resurgence it appeared to have become more "national" by losing the core of foreign fighters and its leadership being comprised an Iraqi majority. During 2010-2011 it focused mainly on attempts of undermining the Iraqi government and trying to provoke sectarian tensions and violence. But these attempts were also largely unsuccessful, and ISI continued to remain at the fringes of Iraqi society, without enough popular support.

But ISIS benefited by the eruption of the Arab Spring throughout the Middle East and North Africa and the subsequent turmoil in which the countries in the region descended. The group's most notable successes were achieved in the Syrian Civil War (2012-), where it became the most powerful opposition group in Northern Syria, and conquered large swathes of the country, including the Ar-Raqqah province and its capital, in March 2013.

In April 2013, the group released an online message in which announced that the other Al-Qaeda in Syria affiliated group Jabhat al-Nusra (also known as al-Nusra Front) was but an extension of ISI and that the groups were thereby merged under a single name, that of the "Islamic State of Iraq and Al-Sham" (Islamic State in Iraq and the Levant, or Greater Syria – ISIS) (MEMRI, 2013). The merger was later rejected by both Al-Qaeda leader Ayman al-Zawahiri and the al-Nusra Front leader al-Joulani. Despite this rejection, the group retained its new name. ISIS main objective, of establishing an Islamic Caliphate in Iraq, was now extended also to Syria.

During 2012-2014 the group kept an operational presence in both countries. While in Iraq it continued to undermine the Iraqi government by numerous suicide bombings, it focused its main strength in Syria, where it increased in strength by recruiting both Syrian nationals and foreign fighters to its cause.

In the war-ravaged Syria the group achieved two successes. Firstly, it rose to prominence among the opposition factions, both by severe discipline and fighting skills and by brutality. In Northern Syria it is considered to be the most powerful among the widely fragmented Syrian Opposition (CNN, 2013). Secondly, the group successfully managed to restore basic services in the territory it holds in Syria and honed its administrative skills, in preparation for the moment when it will attempt to declare its Caliphate (Al Monitor, 2014).

While ISIS continuously worked towards the completion of its goal, the legacy of brutality which undermined its actions in Iraq also followed it in Syria. Enraged by various excesses committed by ISIS, other opposition groups allied themselves against ISIS and fought it throughout Northern Syria between December 2013 and March 2014, until they forced the group to withdraw from Idlib and Aleppo regions in Northwest Syria. ISIS managed to retain a presence only in Raqqah and Deir Ezzor provinces, in the Northeast (Al Jazeera America, 2014).

In late December 2013 it profited by the unrest in the Anbar province in neighboringIraq and when the Iraqi Army withdrew from Anbar cities on December 30th, ISIS swiftly moved in and occupied Fallujah and Ramadi by December 31st.

During the spring of 2014, efforts by both Iraqi Army and Sunni tribes in the Anbar governorate to expel the group from the region were largely unsuccessful, the group maintaining a presence in the region, especially in Fallujah.

In early June 2014 it went on offensive and captured Samarra to the north and again Ramadi to the west of Fallujah. On June 7th they began launching attacks on the city of Mosul, in Northern Iraq. After skirmishes during June 9-11, the city fell to the ISIS control in the early hours of June 11th, much to the dismay of the entire international community.

In Mosul ISIS militants captured large quantities of military equipment, including small arms, combat vehicles and helicopters, together with around $430 million from the Mosul branch of the Iraqi National Bank. The Iraqi Nineveh province, of which Mosul is the regional capital, was largely occupied by ISIS, threatening the Iraqi northern oil fields and the Kurdish Regional Governorate (KRG).

The capture of Mosul also generated large numbers of refugees, about 500,000 fleeing to the north and east (BBC, 2014).

Following the dissolution of the Iraqi Army units facing them, ISIS militants pushed south towards Baghdad, capturing Samarra again, then Tikrit, Jalawla, Saadiyah, closing to less than 100 kilometers from the Iraqi capital by June 15th. The news of their advances generated extreme emotions throughout the world, given the group's aura of combat effectiveness and brutality.

By the 16thof June, though, their advance was gradually halted, with fresh units of the Iraqi Security Forces attacking the group's positions north of the capital.

Although the ISIS advances towards Baghdad was checked, the group continued its attacks on various Iraqi objectives, of both military and civilian importance. In the north it pushed towards the town of Tal Afar, in which heavy fighting took place in the last few days, with Iraqi Security Forces (ISF) managing to hold their positions. In eastern Iraq, though, various border crossings between Iraq and Syria fell under ISIS control, most notably al-Qaim. In central Iraq, ISIS is currently (June 17-22nd) battling for the control of the largest oil refinery in the country in Baiji.

The threat of ISIS advances was perceived to be so great, that by June 18th Iraq officially requested the United States to provide air strikes against ISIS positions (BBC, 2014). US president Obama postponed the air strikes, but sent instead 300 military advisers to further train the Iraqi Army (CNN, 2014). Also, it is believed that Iran sent a small force to protect various Shiite shrines in southern Iraq (Al Arabiya, 2014).

Methodology

Our paper aims to identify some of the main causes and triggers of the current crisis in Iraq, while trying to achieve a comprehensive overview of the events that led to the current emergency situation. The research method used in our paper was document analysis, attempting to produce a detailed examination of various news articles for the time period selected, followed by analysis of specialized reports, opinion articles and various official international reactions.

Further, we have used the crisis definition model created by Michael Brecher from the databases of International Crisis Behavior (ICB), applying it to the events currently unfolding in Iraq. The model was fully applied, modification as to fit the case study being unnecessary.

In addition, the International Network for Education in Emergencies (INEE) model of conflict analysis was also used, in order to achieve a better identification of some of the structural causes that led to the course of events currently unfolding in Iraq, and also some of the triggers that led to the recent outbreak of violent conflict between the Iraqi government and the ISIS. Furthermore, following the INEE model, welooked at the possible trends of escalation from the current level of violent conflict and their potential consequences.

Iraq's strategic importance

The role of Iraq in the Middle East region is of extreme significance for a plenitude of reasons: geopolitical position, strategic resources, impact upon neighbors, to name just a few.

In the second half of the twentieth century Iraq used to play a pivotal role between the Near and Middle East or, in other words, between the eastern Mediterranean coast, with its Arab-Israeli conflicts, and the Persian Gulf, with its long geopolitical rivalry between the Shia Iran and Sunni Gulf Cooperation Countries.

Since the eruption of the Arab Spring in 2011, though, the two sub regions have even more interactions with one another. The increasingly acute religious struggles in Libya, Egypt, Lebanon, Syria and recently Iraq are more and more in tune with the Sunni-Shia divide across the Persian Gulf.

But the religious identity struggles between the Sunni and Shia Muslims, which is constantly pushing and pulling Iraq to and from Iran, is only one of the many rifts crisscrossing the region. The ethnic "Kurdish problem" opposing the Arab identity is also significant.

Iraq is also an important country because of its measurements. With 31. 9 million inhabitants Iraq dominates its southern and western neighbors. Although in the last two

decades its GDP was minimal, if given the opportunity it can skyrocket, based upon the hydrocarbon resources within its soil.

With around 143 billion barrels (bbl) of proven oil reserves, Iraq has the world's fifth largest reserves (around 9%). In 2012 Iraq was the world's sixth largest exporter of crude oil. Equally important, Iraq has 126.7 trillion cubic meters of gas, the 12th largest in the world (EIA, 2013).

In the Gulf region, between 1950 and 2003 Iraq divided Iran from the Arab Gulf States, and played the role of a strategic bulwark between Iran and the rest of the Middle East countries. But in 2014 Iraq's Shiite government has had more important links with the fellow Shia Iran, rather the neighboring Sunni Arab states. Equally, its military might is reserved for the history books for the foreseeable future and no longer plays the role of a military buffer.

The Iraqi Shia majority is slowly, but constantly pushing the country towards Iran, making it a very important piece in the "Shia Crescent" stretching between Iran, Iraq, Syria, and Lebanon. Efforts by the United States and its allies to isolate and contain Iran during 2003 to 2013 were based in no small part on the importance of Iraq as a springboard towards the Mediterranean coast. Iranian efforts to provide aid to the embattled Assad regime in Syria since 2011 made full use of this springboard.

In a region which is increasingly unstable and consumed by tensions and civil war, a weakened Iraq is also a threat to its neighbors, should it implode and break up along sectarian and ethnic lines. If civil war occurs, Iraqi Shiites will be further pushed towards Iran and Syria, Iraqi Kurds will make a bid towards independence threatening Iran, Syria and Turkey, while Iraq Sunni neighbors will increase their efforts to provide aid to the Sunni minorities or majorities in Iraq, Syria, and Lebanon, and at the same time further oppressing their Shia minorities (Cordesman, 2013).

Structural causes of the current conflict

For a comprehensive understanding of the events currently unfolding in Iraq it is important to analyze some of the underlying causes that contributed to their development. Among the most important such structural causes are the weakness of Iraqi government, the profound disaffection of Iraqi Arab Sunni minority with the policies of Shia-dominated government in Baghdad, recent memories of the terrible sectarian violence that ravaged US-occupied Iraq between 2006 and 2007 and which left profound and yet unhealed scars in the Iraqi population, the increasingly sectarian nature of the politics and policies in the country, the weakness of the Iraqi state institutions such as the Iraqi Army, and last but not least, actions by Iraq's neighbors in providing large aid to the non-state actors involved in the current course of events, namely ISIS.

The first of these causes, the weakness of the Iraqi government, is due in large part to the very recent and rather new constitution and political system. The current constitution was approved only in October 2005, and since then the country has held elections only three times, latest round in April 2014, with the new Parliament originally scheduled to convene in late June. By the time of the first parliamentary elections, in 2006, the country was ravaged by sectarian civil war, which killed more than 1,000 people a month (Iraq Body Count, 2014).

Although the violence subsided in the following years, it made a powerful mark upon the political spectrum of Iraq, with political parties aligned more along religious and ethnic fault lines, rather than common political ideologies. Also, it is important to understand that the sudden introduction of democratic principles of government in a country ravaged by a despotic dictatorship and four major wars in three decades was unlikely to offer so soon a stable and functioning governing system. The partially democratic political structure that emerged, dominated by the Shia majority in the country, is still searching for an appropriate balance between the religious and ethnic components of the country (Kissinger, 2010).

During 2012 and 2013, the Sunni Arab minority of Iraq rose and led countrywide protests against the Iraqi government led by Prime Minister Maliki. The main reasons for discontent were the claim of their marginalization in the post-Saddam Iraq, government abuses of the anti-terrorism law with many arrests and harassments against the Sunni minority, abuses in the implementation of the de-Baathification laws with illegal confiscation of property of former Baathists (Al Arabiya News, 2013).

The Maliki government repressed these protests with a heavy hand, thousands of Iraqis being killed in clashes with the Iraq Security forces (ISF) throughout 2012-2014. While the government claimed that the protest camps in the Anbar province cities were becoming a hotbed of Al-Qaeda supporters, the general lack in addressing the legitimate grievances of the population led many to eventually really grant their support for violent measures. This can be measured by the number of suicide attacks occurring in Iraq between 2012-2013, which saw a spike in the number of deaths, approaching the 2006-2007 levels (Iraq Body Count, 2014).

After initially disbanding the Saddam-era Iraqi Army in 2003, the United States rushed to recreate it during the insurgency years of 2004-2007. The rapidly rising level of violence led to an equally rapid effort to rebuild an Iraqi Army that would take on some of the burden of maintaining security. The hurried attempt led to a rapid recruitment process, most likely without sufficient background or qualification check, with its own set of problems. The increased sectarian and ethnic divisions present after 2003 were also present in the new army, affecting the promotion process, for example. The emphasis on speed also led to a insufficient training process, and to an underdeveloped, or rather poorly developed, military doctrine (International Crisis Group, 2010).

The battles in the Iraqi political arena after 2006 also translated to the new Iraqi Army. The officer corps actively searched for political patronage in order to obtain promotions, turned to profiteering and neglecting their responsibilities, while generally lacking in moral integrity (Nasser, 2014).

Also, outside political meddling in the Iraqi Army by the Prime Minister Maliki did not help. One of his main fears was of a coup by former officers of the Saddam-era. In order to protect himself from such a threat, he took control of the office of the commander in chief of the army and tried to build it on loyalty, rather than professionalism (IISS Voices, 2012).

Given these realities, it is no surprise that the Iraqi Army dissolved when it confronted the ISIS in Mosul.

Last, but not least, the question of ISIS and its sources of support must be addressed. In this respect, the connection to the Syrian Civil War raging in the neighboring country since 2012 is paramount.

The support given by the kingdoms and sheikhdoms of the Gulf Cooperation Countries, notably Saudi Arabia and Qatar, for the Syrian Insurgency since 2012 is by now an open secret. What is less known is the preference of these powerful and rich states to direct their aid to the religious extremist end of the opposition spectrum (Kenner, 2013). For example, in December 2013, Saudi Arabia used its influence among the Syrian Opposition in order to coagulate a number of factions under the banner of the Islamic Front, an organization which is different from ISIS only by the fact that is not yet affiliated to Al-Qaeda (Ali, 2013).

Regarding the direct aid, the situation of September 2013 can be presented, when Saudi Arabia stepped up its efforts to deliver weapons towards the Syrian rebels, in expectation of US strikes against Syria (Barnard, 2013). But, since the very beginnings of the Syrian Insurgency, it was revealed that opposition groups cooperated with one another, either trading weapons, or by joint actions (Farwell, 2013), which left no doubt that there was no real option of arming *only* the "moderate Syrian rebels" (Reuters, 2014).

In addition to these underground arms transfers, which were known since the early days of 2012, the rise of the extremist factions of Jabhat al-Nusra and ISIS to prominence among the other factions in the Syrian Civil War shows that they were, deliberately or not, the main recipient of the aid that the US, Great Britain, France and Gulf Cooperation Countries gave in money, weapons, and training (Fisk, 2014).

In this respect, one important structural cause of the current situation developing in Iraq can be undoubtedly traced to Saudi Arabia and Qatar's efforts to undermine Iran's influence in the neighboring countries of Iraq, Syria, and Lebanon (Rogin, 2014). We believe that ISIS could have had the role of an intelligence asset which was probably

used against Iraq (Henderson, 2014). We should not forget that Iraqi Prime Minister Maliki blamed Saudi Arabia and Qatar twice for funding and aiding ISIS, both in March (Reuters, 2014) and again in June 2014, after the latest ISIS offensive (Reuters, 2014).

Furthermore, it should be noted that in its assault on Mosul during June 7-9, ISIS allied with an extensive underground network of former Saddam-era army officers, members of the disbanded Baath Party. The leader of these Baathists is a former strongman of Saddam Hussein, Izzat Ibrahim al-Douri, who became the leader of the Baath underground in 2007. The aid of this network was essential in staging the capture of Mosul in such a short time and was the prime cause of the dissolution of the Iraqi Army units defending the city (Arango, 2014).

In early January, 2013, a YouTube video was released depicting al-Douri encouraging the Anbar protests against the Iraqi government and asking them to oppose Iranian influence in Iraq (The Daily Star, 2014). Analysis of the message also revealed al-Douri praising Saudi Arabia for its actions throughout the Middle East, especially those directed at undermining the Iranian influence (al-Fass, 2014).

Triggers

There are a number of immediate causes that we believe have determined ISIS to engage in the current military offensive operations in northern Iraq. Although no direct evidence exists for any one of them, we believe that they could be ranked among the ones with the highest probability.

First of all, the current Prime Minister Maliki's political coalition won the largest number of seats in the Iraqi Parliament, 94 compared to his rivals who obtained 28 and 29, following the recent general elections in April, and he will most likely obtain a third term as Prime Minister (Rasheed, 2014). The election results were published on May 19th, and the new Iraqi Parliament would have had a few weeks to officially begin its session and to elect the new Iraqi Prime Minister. The ISIS offensive began on June 5th, with the attack on Samarra (Ghazwan, 2014), a few days just before the beginning of negotiations for the formation of Parliamentary majority and designation of a new Prime Minister (Benraad, 2014).

Secondly, for the purpose of its latest military offensive in northern Iraq, ISIS has allied itself with a number of other organizations, among which the most prominent is the Naqshbandi Army, comprised of former Saddam-era military officers, former Baath Party members, organized in underground networks, and other obscure Islamist groupings present in Iraq (Hamas of Iraq, Islamic Army in Iraq etc.) (Sherlock & Malouf, 2014). This alliance was probably concluded for both a better military and administrative cooperation in the recently conquered territories, as well as for creating a broader image of an Iraqi Sunni Insurgency, rather than that of a simple conquest by ISIS. (Hassan, 2014).

We believe that another trigger for the recent offensive operations by ISIS is the successful completion of these alliances, which allowed the coalition to increase its support base among the Iraqi population.

The Crisis in Iraq – the threat of escalation

The events that are currently unfolding in Iraq have all the characteristics of a crisis, according to Brecher (1997), from the perspective of the highest level of individual actors involved:

1. The offensive that ISIS, together with its allies, is pursuing is a threat to the basic values of the various leaders involved in managing the course of events: the Iraqi Prime Minister Nouri al-Maliki, the President of the United States Barack Obama, the President of Iran Rouhani, the Grand Ayatollah Sistani etc.
   Given that ISIS and its allies are attempting to break the state of Iraq, destroy its frontiers and divide its population along sectarian lines, it is a very real threat to any modern statesman, regardless of their country, religion, etc. The concepts of national state sovereignty, self-determination of people, or various freedoms (of choice, to worship etc.), which are basic tenets of our world, are threatened by a religious extremist group renowned for its violence and brutality.

2. This offensive has a very high probability of future involvement in military hostilities, either by Iraqi attempts to defeat ISIS and its allies, or by the prospect of the state of Iraq to break-up into three distinct parts: a Shia Muslim south and center, a Sunni fragment to the west, and a Kurdish part to east and north.

3. The attempts by ISIS and its allies to portray their actions as a Sunni Revolution carry the risk that the crackdown on such a revolution by Iraq's legitimate government would be seen as revenge or reprisals by the Shia majority, further dividing the Iraqi population.
   In addition, there are risks of the current conflict of engulfing Iraq's neighboring countries like Iran, Jordan or Turkey. Besides Iraq's neighbors, the recent redeployment of a US Navy aircraft carrier to the Persian Gulf and the request by Prime Minister Maliki to the United States to aid with targeted air strikes against ISIS militants may very well draw in the United States and its allies.
   Given the developments in the international arena in the recent months, the fact that Russia's President Vladimir Putin has expressed its support for Prime Minister Maliki, while the United States have made overtures for his resignation also contains the risk of Iraq becoming a pawn in a proxy war between Great Powers.

4. All the actors involved are fully aware of the very limited time they have at their disposal to manage the current situation.
   Should the solutions be found after great or time-consuming debates or negotiations or should there not be enough speed in their implementation, the risk of a wider

ethno-sectarian conflict within Iraq is very real. This includes the even greater risks of foreign actors, such as neighboring countries being involved into the existing conflict, escalating it even further.

Given the assumptions presented above, we believe that according to Brecher's model of international crisis definition, Iraq is currently in a crisis that it has not created, but the emergence of which have been facilitated by its own state actions. The current crisis has a very high probability of engulfing Iraq and eventually its neighboring countries into an extremely violent and protracted conflict.

Conclusions

Our paper attempted to explain some of the structural and immediate causes that facilitated the current armed, violent conflict in Iraq.

A majority of the structural causes can be traced back to the 2003 US-led invasion that took power away from Saddam Hussein, and its aftermath. The Iraqi population did not have enough strength, resources, or willingness to create a pluralist society in which both religion and ethnicity would be in equilibrium. Instead it rebuilt Iraq along ethno-sectarian fault lines that today are wider than ever.

Concerning the immediate causes, or triggers, that led to the current conflict between ISIS and its allies on the one side, and the Iraqi government on the other, we did not have enough information available. As such, we tried to present to the reader a few assumptions on the possible motives that could have been considered by ISIS in launching their military offensive in the last few days.

We also tried to see if we could apply a theoretical model of international crisis definition to the conflict currently taking place in Iraq. We believe that this is an important part in understanding the situation in Iraq and the risks that it carries for the country itself, for the Middle Eastern region or for the world. The definition of international crisis from Brecher's model was successfully applied to our case study in all three of its steps.

Although the two concepts of crisis and conflict seem to be different and not entirely related, their direct connection in international relations is not only assured, but one might say there is an almost symbiotic relation between the two. International crises are almost always carrying the threat of international conflict, while, at the same time, international conflicts can escalate to regional or global crises, threatening the entire world.

We believe that this is the case of Iraq, where a rather non-threatening mix of internal discontent and bad governmental policies was set ablaze by the intervention of a third party, and now threatens the entire Middle East.

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PEACE AND POWER SHARING IN SUDAN

Roman-Gabriel OLAR

Abstract. *The Comprehensive Peace Agreement (CPA) between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) brought an end to Africa's longest civil war. Although received with great enthusiasm, many were skeptical on how well its provisions would manage to thwart the resurgence to war and to lead to the independence of South Sudan. The current paper analyzes the interim period of the Comprehensive Peace Agreement and tries to answer the following question: how did the power-sharing agreement design of the CPA contribute to avoiding the resurgence of the civil war? The main argument of the paper is that power sharing agreements create interdependent relations between adversaries and the different levels of power sharing (political, economic, military and territorial) helped keep a fragile peace. The conclusion is that pragmatic power sharing agreements can bring peace under the most severe conditions.*

Keywords*: power-sharing, conflict resolution, Sudan, South Sudan, peace building.*

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Introduction

The signing of the Comprehensive Peace Agreement (CPA) on the 9th of January 2005 between the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A) brought an end to Africa's longest civil war. Sudan's civil wars have been characterized assome of Africa's "most intractable conflicts" (Deng, 2005, p. 245). Sudan has known only a period of relative peace between 1972 and 1982 since its independence in 1956 from the Egyptian-British rule. The CPA was the result of years of international action and mediation to bring about peace in Sudan, something that for many seemed unlikely to happen (WWICS, 2008). This paper aims to answer the following research question: howdid the power-sharing agreement design of the CPA prevent the resurgence of

the Sudanese civil war? In other words, it will try to explain how a power-sharing agreement was the most appropriate method to end this peculiar civil war, and how it made Sudan work toward peace rather than "opt to fight with itself" (Deng, 2005, p. 245). The paper will analyze the 6-year interim period provided in the CPA and it will argue that the power-sharing provisions laid by the CPA helped manage the conflict, and mitigate the tensions between the warring parties during the interim period. In the first part, the paper will present the main theoretical arguments and rationale behind a power-sharing agreement, and will introduce the working hypothesis of this paper. In the second part, it will analyze the main power-sharing provisions of the CPA and their role in engaging the warring parties.The final part will present the theoretical and policy implications and will conclude the analysis.

Power Sharing in Peace Agreements

Power sharing peace agreements have become an ever increasing practice in the last 20 years. Jarstad and Sundberg (2008) showed that between 1989 and 2004, 70 out of the 83 peace agreements signed included power-sharing approaches. The usefulness of the power sharing agreements is commonly accepted by the literature. Walter (2002) argued that power-sharing is a mechanism that can display commitment problems in a situation of extreme mistrust. Furthermore, she foundt hat parties' likelihood to sign an accord that has power-sharing provisions is increased by 38%. Jung (2012) went on the same line of argumentation and claimed that a power-sharing agreement between the incumbent and rebels can reduce the security dilemma, while solving the problem of a credible commitment to peace. Hartzell and Hoodie (2007) strongly endorsed power-sharing elements in peace agreements. They argue that power-sharing agreements work when they include all the four types of power-sharing: political, economic, territorial, and military. They consider power-sharing institutions to be crucial because they engage former adversaries in activities of co-operation which can create a sense of security or can increase the trust between the warring parties.

However, most scholars make a clear distinction between the short-term and the long term objectives of power-sharing agreements. Rotchild and Roeder (2005) argued that power-sharing can be a short term compromise between adversaries because it reflects their military capabilities and can mitigate the security dilemma. However, the shift from short-term to a long-term perspective is challenging because the expectation parties have in the initial phase make the consolidation part more difficult. Jarstad and Sundberg (2008), after empirically examining the implementation of power-sharing agreements, found that political pacts start to become more common in peace agreements and they also argue that power-sharing agreements are more likely to be implemented. Furthermore, the implementation period of military and territorial pacts was longer compared to the political ones. Wandeginste (2011) claimed that power-sharing agreements are relevant when segmental cleavages in society are reflected in the leadership

of the armed opposition and when the armed struggle is driven by grievances of one or more societal groups. Furthermore, I would argue that a power-sharing agreement is a double-edged sword in the cases of peace agreements. It is useful in the cases of stalemate when none of the parties managed to gain a strategic advantage over their adversary, and so a power-sharing agreement can join the demands of all the parties.

On the one hand, in a power sharing agreement, stability triumphs over justice; the flip-side is that it helps the incumbent government keep hold of power while the opposition receives some leverage over the government's policy options. On the other hand, when the issue at stake is the government, a power sharing agreement cannot completely fulfil the grievances of the opposition. Furthermore, the incumbent government is offered the chance to reinforce its position which could lead to a recurrence to war. However, when there is a situation in which the opposition fights over territory and the secession is a viable opportunity, a power sharing agreement can bring stability because opposition demands are easier to meet than in the former case of fight over government.

The main hypothesis of this paper stems from the power-sharing arguments of peace agreements: *the CPA has stopped the recurrence to war during the interim period due to its power-sharing nature, which engaged the two parties in close collaboration*.

The following section will test this hypothesis by examining and analyzing the provisions of the CPA.

Power-sharing in the CPA

The CPA and its power-sharing provisions need to be understood in the broader context of the violent recent history of the country. Sudan has experienced two failed attempts at peace in 1983 and 1997 (Ahmed, 2010). The dishonouring of peace agreements has been present in the minds of southern Sudanese, having stemmed from the dual nature of the Sudanese state and the imbalance inherited from colonial times (Ahmed, 2010). The prolonged period of fighting between the two sides brought about a hurting stalemate (Zartman, 2001) which made the moment ripe for a peace agreement. Brosche (2009) argued that the hurting stalemate was induced by the international pressure applied by the United States. Woodward (2011) argued that in the 1990s the government forces seemed to seek an outright victory, but then there was a brief moment when the SPLM/A could become victorious. He continues by claiming that, beside the US pressure, the mutually hurting stalemate was influenced by Chinese penetration of the oil fields in the South, which transformed Sudan into an oil exporter and increased the stakes in the conflict.

Medani (2011) identified another element that contributed to the stalemate. The internal rupture in the National Islamic Front (renamed the National Congress Party with the signing of the CPA) between the pragmatic Bashir and the ideological founder

Hassan al-Turabi contributed to the pressure applied by the United States and created the window of opportunity for brokering a peace agreement. Brosche (2009) claimed that the CPA had been in danger because the hurting stalemate of the parties had begun to vanish during the implementation phase, because the international actors had eased their pressure on Sudan. He argued that this happened because very often the international mediators focused on reaching an agreement and tended to lose their commitment after the agreement had been reached.

Political Power-sharing

The political power sharing provisions of the CPA created four administrative levels of governance: federal, southern Sudan, state, and local (Kalo, 2010). The Government of National Unity (GNU) was created, in which both the SPLM/A and NCP received legislative and executive powers throughout all the levels of governance. The NCP had a dominant position in the government in northern Sudan, South Kordofan and Blue Nile State, while the SPLM/A dominated all the 10 states in the South (Kalo, 2010). According to the Protocol on Power Sharing, the SPLM/A had 70% of the seats in the Government of South Sudan (GoSS) and the NCP had 15% while other southern parties had the remaining 15%. At national level, leader John Garang was appointed First Vice-President and SPLM/A received 28% of the seats in the National Assembly, while the NCP received 52% of the seats (Brosche, 2009).

The main purpose of this political arrangement was to make unity attractive for the people of Sudan, an aim that was stipulated in the CPA (Brosche, 2007; Medani, 2011). The objective of this provision was to make the two main parties work together and engage them into dialogue and mutually assuring activities that would stop them from going back to war. However, this possibility was blown away with the death of John Garang. His successor, SalvaKiir, did not see unity as anattractive option, which only led to increased tension between the parties.

April 2010's elections were the main test for the political power sharing in the new Sudan. For the NCP, the objective of the elections was to keep control over the country's resources and the Northern society, while for the SPLM/A the election were a test of their ability to lead the voters for the referendum on self-determination that took place in January 2011 (Thomas, 2010). Furthermore, SPLM/A faced the difficult challenge of transforming from an armed force to a political party. On top of that, SPLM/A lacked the money, structures and qualified individuals to turn into a viable political party. Roque (2010) argued that it was fundamental that these elections happened because, even if deficient, they would begin to open up the space in which democracy could flourish. Furthermore, I would argue that the elections were well timed because a long-enough period had passed since the end of the armed clashes between the two parties. The power-sharing agreement offered them the time to prepare the elections and to build the trust they needed.

Moreover, the recent history of Sudan shows that politics had been Clausewitzian. For them, war was the continuation of politics by other means, but now they were in the exact opposite position in which they had to exercise the political process after a long period of war. I dare claim that, in spite of the various tensions between NCP and SPLM/A, within SPLM/A, and claims of fraud, the fact that all parties accepted the results of the elections was a success. The UN's and EU's declaration of the elections as being relatively fair has contributed to this outcome.

Territorial and Economic Power-sharing

The territorial and economic power-sharing provisions of the CPA are highly intertwined and while the former could have determined the parties to go back to war, the importance of the latter stopped the return to war. The matter of Abyei was complicated from the very beginning when it was addressed during the negotiation for the CPA. This area was considered vital because of its oil wells (Brosche, 2009; Ottaway and El-Sadani, 2012). The CPA stipulated that a special commission would be put into place and it was given the task to decide the belonging of the Abyei region based on historical evidence. Brosche (2009) argued that the main problem with this provision was that this matter had not been addressed during the negotiations when the level of trust between the parties was higher. Nonetheless, given the delicacy of this issue, a further push for this matter could have brought down the negotiations.

The Abyei Boundaries Commission (ABC) was established in 2005 and it was composed of 10 representatives from NCP and SPLM/A. ABC would also be comprised of 5 independent international experts appointed by international mediators. The commission decided that Abyei was part of the old nine Dinka chiefdoms, including the Heglig oil fields. Khartoum was given a tremendous blow because it meant that Abeyi and GoSS would retain most of the oil revenues. The case was taken to the Permanent Court of Arbitration (PCA) from The Hague, which decided that the Heglig oil fields were a part of Sudan and were transferred back to South Kordofan state.

Furthermore, the situation is complicated by the ethnic heterogeneity that exists in the region. Abeyi is permanently inhabited by the Ngok Dinka, which is the largest ethnic group in South Sudan, but the nomadic Misseryia use the pastures in Abeyi for their cattle (Ottaway and El-Sadani, 2012). The two tribes have a long history of sharing the land, but they also have a historical rivalry which often led to wrestles over cattle and land (Ryle, 2011).

The complicated issue of the Abeyi region and the Heglig oil fields needs to be understood in the context of the economic power sharing. Sudan is highly dependent on its oil exports, a fact highlighted by the fact that in 2009, 90% of Sudan's exports consisted of oil and it accounted for 50% of the total revenues of GoNU (James, 2011). The signing of the CPA brought about an increase in the Foreign Direct Investment, which peaked

in 2006 with 3.5 billion dollars,while an increase of 10% in the GDP was also possible because of the oil boom (James, 2011).

One of the root causes of the conflict was the economic and political marginalization of the periphery by the centre (Medani, 2011; Deng, 2005). The CPA tried to solve this problem by stipulating that oil revenues would be split between GoS and GoSS, while the producing state would receive 2% of this revenue (Brosche, 2009). During the interim period, GoSS's revenue was 95% dependent on oil revenues (James, 2011). Furthermore, the key between the collaboration between the two parties was the fact that GoSS's only way to ship its oil was through the pipeline going North to the terminal in Port Sudan (Ottaway and El-Sadani, 2012). Given the importance of oil revenues for both parties and their dependence on it, the two parties were forced to collaborate and engage in making sure that the oil flow would remain constant and both of them would get the much needed revenue. Consequently, I believe that the economic power-sharing between the two made peace a more attractive option during the interim period.

Military Power-sharing

The military power-sharing provisions in the CPA clearly stipulate that there should be only two armed factions in Sudan: the SAF and SPLA, while all the other smaller factions should be incorporated in either of the two. As it was expected, the disarmament, demobilization, and reintegration of former militia members was an uphill challenge in a environment of low trust between the parties, where none of the warring parties was willing to give up their weapons (Wolff, 2012; Arnold, 2007).

The reason for the refusal of the demobilization and disarmament process was two-fold: first, it was the lack of trust between the militias and the security dilemma continued as there were few insurances and incentives to trust each other. Secondly, weapons were helping tribes protect themselves against other tribes given that communal violence was a common feature of Sudanese society. Wulf (2004) argued that Security Sector Reform in post-conflict situations is a subset of wider political and economic reform, hence it has to address the underlying causes of violence, and an unreformed security sector can be an instrument through which warring parties can recur back to war. In trying to engage and integrate the South Sudan Defence Force (SSDF), which is an amalgamation of armed militias in the South, the GoSS and PaulinoMatip of SSDF signed the Juba Declaration, according to which most of the SSDF forces joined SPLA, and Matip became SPLA's deputy commander in chief (Arnold, 2007).

With the signing of the Juba Declaration, the SPLM/A gave a tremendous blow to the strategic calculations of the GoS by restricting their access to SSDF. By integrating GoS' former proxy militia, they have managed to reduce the risk of spoilers. Furthermore, there was another factor that contributed to the enhancement of the security environment in the interim period. Offering amnesty to former combatants meant that, once

again, stability was preferred over justice. The decision to offer amnesty stemmed from the fact that the CPA was the result of a military stalemate. Trying to bring about justice could have prolonged indefinitely the political negotiations and could have created more spoilers than it was trying to avoid (Zambakari, 2012).

Implications and Conclusion

The present analysis offers one theoretical and one policy implication. The theoretical implication is that power-sharing agreements can work in post conflict situations because they favour stability over trying to bring justice or make things right. Power-sharing agreements are not necessarily moral or the best choice when trying to bring justice and reconciliation, but they seem to be effective in stopping the recurrence to war. However, a cross-national empirical analysis should be done in order to see to the extent to which the recurrence to war has been influenced by power sharing agreements.

The policy implication of this analysis comes to reinforce the idea that economic factors play an important role in civil wars (Collier and Hoefler, 2004; Collier, 2009). Economic provisions in power-sharing agreements should play a pivotal part in the aftermath of the conflict and international actors involved in the negotiations should keep a constant presence in the post-conflict situation. They should use both their knowledge and financial capacity both to pressure and to incentivize parties to keep their part of the deal. Economic leverages are the least costly way through which international actors could make sure that their efforts in mediating the conflict were not in vain.

The current paper tried to analyze to what extent the fragile and tense peace during the interim period until the 9th January 2011 referendum lasted. The power-sharing provisions of the CPA apparently managed to create a working relationship between the North and the South. The road to peace in Sudan is nowhere near completion; suspicion and tensions remain high, given the complicated and multilayered nature of Sudan's conflict. However, power-sharing did its part during the interim period, even though it was not easy or straightforward. Delays in the implementation of the provisions and accusations on both parts show that peace is an uphill challenge in the war-torn Sudanese society.

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ROȘIA MONTANĂ – A STEP TOWARDS PEACE

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Abstract. *From an anonymous village in the Apuseni Mountains, Roșia Montană has managed to capture national and international attention not because of its gold, beauty, history and cultural value – there are many places that are better in these departments, but because it awakened an entire nation to reconsider its priorities. This conflict has brought on the biggest manifestations since the revolution and thus cannot be ignored. The situation has been approached in many ways by both parties through essays, research, and studies. Presentations have been made, books have been written, and movies have been shot; always, however, with an ulterior motive and never from a neutral perspective. The moment has come to put aside the drama and pursue an objective angle. This study takes a tour through all the major conflict analysis tools, which are combined with field research in order to bring light and clarity to the dispute. Much like a mediator, the paper intends to guide the parties on a resolution path by giving them insight about each other.*

Keywords: *Roșia Montană, conflict, protests, Romanian manifestations, environmental revolution, gold mining, neo-liberalism, conflict resolution, structural causes*.

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The roots of the issue

Emergence

Before we can even begin to analyze the conflict and search for solutions, we must take a step back and look into the past. A lot of mines were built in Romania, a few of them survived, no major conflicts arose and there isn't any other example of such nature in our country. Furthermore, each event that has had a long term effect will be illustrated along with those activities which added fuel to the fire.

According to uncovered confidential documents (RISE, 2013) it all seems to have started in the autumn of 1995 on the 5th

of September, when „Regia Autonomă a Cuprului-RAC" from Deva published an article on the eighth page of the newspaper *Adevarul*, which stated that it was interested in signing a partnership with a foreign company in order to process tailings with precious metal content from old ponds, and a mix of gold-silver mines from Roşia Montană and Gurabarza-Brad. This Romanian company mentioned that they would wait 30 days for offers after publishing the article RAC. However, Jurnalul Naţional claims that it has documents indicating a collaboration signed by RAC Deva and Gabriel Resources one day before the announcement was published, on September 4, 1995. Also, RAC claimed it received several offers, including from another Australian company, Lycopodium Pty Ltd., however that company has denied RAC's claim.

Gabriel Resources was founded by Frank Timiş (a Romanian with Australian citizenship). According to the newspaper *Jurnalul* (Radu, 2005), Timiş started his own transport company in Australia, which owned only one truck driven by him. It went bankrupt in 1986 with debts of 15,806 AUD. Another fact about the owner is that he failed to declare this information in the CV he published when he listed the company Gabriel Resources on the Toronto Stock Exchange, as required by law. Timiş founded two other companies with the same name – an Australian one founded in 1995 and an English one, founded in 1996.

On the 3rd of March, 1997, the company Euro Gold Resources SA was founded with the stakeholders: Gabriel Resorurces Limited (65%, with contribution in cash of – 2,5 billion old lei currency or 357,500 USD), Regia Autonomă a Cuprului Deva (33,8%, in kind –the company's headquarters), and three other small companies because the law 31/1990 demanded a minimum of five stakeholders: Minsexfor SA (0,5%), Cepromin SA (0,5%) and Upsrueem SA (0,2%) (Popescu, 2011).

The first modification appeared on 11th of June 1997 when the three small companies were replaced by even smaller ones: Cartel Bau SA Cluj-Napoca, Foricon SA Deva and Comat-Trading SA Bistriţa, which received 0.4% shares each. Moreover, the company changed its name to Roşia Montană Gold Corporation (Popescu, 2011).

It is important to consider the fact that when the issue appeared, Romania as a country was in a vulnerable state in many domains, from social to economical and of course governance.

On the economical side, because of the delicate shift from communism to capitalism, chaos was brought in the private sector because of the border opening and lack of knowledge in this domain. Although, in the previous regime, the financial situation was stable, the previous restrictions led the public to focus on spending. The fall of numerous public sector industries led to a lack of workplaces, and so, the citizens, used to a certain way of life, became desperate to work and this type of lobby influenced the government's decisions.

The politicians of that period were also unprepared and desperate for acceptance. This led to quick and irrational decisions in investments all over the country. Another issue which comes to mind is corruption. This malign disease was brought from the previous regime and adapted to the current situation. This led to a lack of transparency in decision making encouraged by the fact that no one had anything against such behaviour, which was considered normal in our society.

On the social side, the new possibilities brought by capitalism caused euphoria among the public. The change came from the West and was encouraged by Americans. They became positive symbols of abundance, freedom, and democracy, in comparison with the previous Russian oppression. Everyone became lenient and naive regarding such actors' intentions, failing to realize that capitalism only works in a culture of equality and Romania was never equal to such major powers. In this respect any investment that came from the corporation was a good choice as it brought new justice and prosperity in the minds of politicians and citizens. The state followed its own interests and the population failed to notice the issues that arose in the continuous privatization process.

The fact that the one that started the whole story is a Romanian in origin shows how important it was to be aware of the system in order to manipulate change in your direction. This company is not a singular case of questionable acquisition, as in Romania in that time many made millions in a short period of time because of the acute corruption.

At the beginning, the mining company had no opposition and so we cannot consider the existence of a conflict until 2000, when an opponent started surfacing and made its identity public and official by the name of Alburnus Maior, a local NGO. According to the website www.rosiamontana.org, which contains the entire history of the campaign, in 2000, this association was represented by 350 locals and land owners with the purpose to stop the mine project proposed by RMGC. However, in time Alburnus Maior managed to gather supporters and at present there are over 100,000 active volunteers supporting its mission; it is representing the interests of 300 families from Roşia Montană village and 100 families from the near village Bucium.

In the same year the environmental NGO was founded, another one appeared to support the project and the interests of the miners who were left without a workplace. Its name is Pro Roşia Montană (www.prorosiamontana.ro) and it has 475 members who donate a fee each month. It has 1700 supporters so far and says that the goal is a clean environment through modern mining which is quite contradictory.

Evolution

Further we will focus on the major escalation events, which offer an overview of the process.

According to the Alburnus Maior website, the company gave the Environmental Impact Study to the Ministry of Environment in May 2006. There were 16 public consultations,

14 in Romania and 2 in Hungary, where the public was supposed to ask questions on the topic and make suggestions. These consultations were criticized by leaders of opinion, experts, and the public, who said that it was all a charade to promote the mine exploitation. On the other hand, the company declared in its reports that up to that point, in the environmental sector, it had conducted 1262 individual interviews, 500 questionnaires with positive answers, 18 group meetings and 65 public debates.

In 2007, the company answered 5600 questions regarding the Environmental Impact study and a new session of analysis began with 4 meetings of the Committee of Technical Analysis. RMGC also started building a new neighbourhood in Alba Iulia called Remetea for the families that had to move from Roşia Montană.

A cyanide accident that happened at Baia Sprie in 2000 made the public question the project further. This also influenced the suspension of the EIS by the Ministry of Environment because the Urban Certificate presented by the investor was legally inadequate. The company's appeal against the decision was rejected.

A referendum was held on the 9th of December 2012 in 35 villages from Alba County to see if the locals were in favour of restarting the mine. This referendum was not valid because of the absence of quorum. It has been said that the company tried to bring illegal voters in order to convince the population of the country that the locals are in favour of the project.

On 22nd of June 2013 the UNESCO Committee visited Roşia Montană. The footage shows how the representatives ignored the opinions of those against the project and acted verbally aggressive towards the environmentally friendly representatives.

On 27th of August 2013 the Government voted in a session the Law project regarding measures during the exploitation of gold and silver resources from Roşia Montană and stimulating the development of mine exploitations around the country. This document was sent to Parliament in order to be voted upon. After this event, thousands of citizens took the streets as a manifest against the project, and a few miners also protested underground to prove the necessity of workplaces in the area. The numbers have been increasing each week at the Sunday meetings. Additionally, the TV programs started bombarding the population with debates about the project.

On 19th of November, the Senate rejected the law project concerning Roşia Montană with 119 votes for, 3 against and 6 abstentions.

Field research

The field is extremely important as it offers first hand information even though the subjects are cursed with frog-eyed vision, as they only see the conflict from the inside with very little attention to structure, context, and connections. In February and March 2014, I have chosen key actors from both sides and persuaded them to answer

the questions of an interview which would be the basis of my future analysis. It is this type of information gathering which has made me realize how tangled the situation is and why an outside person should intervene. Another important fact to be considered is that the aim of the interviews was to offer an overview of the relationship between the parties, the way they see each other, regardless of the fact that this situation was built on wrong information received by the actors. The questions were built in such a manner to research in-depth perception and not so much the hard facts, as we have documents and archives for these.

The number of persons who participated in the analysis was eight with three from the group which supports the project and five from the other team which is against it. The aim was to have an equal representation; however, after the first interviews it became clear that the company representatives show a homogeneous opinion which would not add value to the research. Moreover, the representatives in the campaign Salvaţi Roşia Montană proved to be quite heterogeneous in their views regarding the nature of the dispute and so the representation was intentionally made unequal.

Because the conflict was in an escalation phase and the parties were facing tensions, the analysis was a delicate subject for the participants. In order for them to speak freely, none of the interviews was recorded. Four were conducted in person, two on the phone and two on the internet. The information was recorded on paper. From the company's side, the participants were Cătălin Hosu – press relations at RMGC, Claudia Buruiană – social responsibility manager, at Community Relations Department RMGC and Andrada Almăşan – former resident of Roşia Montană. On the other hand, from the environmental side the participants were: Buta Bogdan – activist, president of Ecoruralis and member of Alburnus Maior, Sorana Olaru – activist, member of Alburnus Maior and AEFC organization, Adrian Dohotaru – researcher at UBB, journalist and former member of the Romanian Academy, Marius Harosa – lawer of Alburnus Maior in the cases against RMGC and Sorin Jurcă – Roşia Montană resident and founding member of Alburnus Maior and Fundaţia Culturală Roşia Montană.

The first thing which stood out is the fact that the parties did not have a united front when it came to defining the main actors involved. Five participants considered that the main opponents were the citizens from the area with pro and con opinions, and the other entities were just annexes which supported one or the other without having any decision-making power in the matter. However, two of the interviewees from both sides had the same answer, confessing that the struggle is actually against the authorities and the government. For them, the party manifesting contradictive views is just background noise without any say in the matter. The lawyer interviewed is the only one which included the company RMGC as a main actor and defined the opposing party as the ecologists. Because the definition of the actors is so diverse, the representatives of each side are either defined as entities, such as NGOs (Alburnus Maior, Pro Roşia

Montană, SCRM etc.), authorities (The City Hall of Alba Iulia or Roşia Monatana, the Senate, the government), or campaigns (Salvaţi Roşia Montană), persons (Eugen David, Stefanie Roth), companies (RMGC, Gabriel Resources, other Wall-Street tycoons). This is actually the most important question the actors should ask themselves before they continue, because being uncertain about the real decision maker and representative of each side makes communication futile.

Each member interviewed was asked about their opinion regarding the interests of the other party. From the environmental side, we got three answers which focused strictly on the correlation between winning the project and gaining economical power and statute. Other two participants which were involved since 2002 went further to say that this economic power was not actually related to winning, but actually to postponing the project and playing with the gold price fluctuation over the years, which in turn causes gains on the stock market. Going back to the question about each party's interests, we observe that out of three representatives of pro mining one abstained from any answer. The other two either said that the games were played at an international level involving George Soroș and hidden motives which would explain the fact that although 80% of the region wanted mining and the project was still postponed, or that the NGOs used the public opinion to prolong the conflict in order to support their own private companies. Again these are only opinions which are not supported by any facts. This proves how the other side demonizes the opposition without reconsidering gathering more proof.

Regarding the interaction between the parties, most of the members in the Salvaţi Roşia Montană Campaign, namely four, have had direct confrontations which have either been peaceful in the case of the journalist, as he only spoke with the local residents and took a few interviews, either mixed in the case of the other three. They have described the attitude as peaceful and communicative at the beginning of the project, and, as things started to become more pressing, they were faced with verbal aggression (in the form of telephone and live threats, insults, swear words etc.) and physical violence from the locals and police force. However, the first meetings took the form of bribe in the case of the Sorin Jurca and Marius Harosa, and only after this was refused the manipulative tactics became more extreme (this information however cannot be proven). On the other side, the participants specified that the company has had numerous attempts to negotiate with the parties; however, they refused every time. Their attitude in this sense was, at least at a declarative level, more directed towards conflict resolution, which was made difficult by the fact that the opposition was making false statements and accusations towards them (Cătălin Hosu and Andra Almăşan).

Although in the present situation the relationship between the parties is compromised, the questions tried to take into account any attempts at solving the conflict during its history, as they could represent pillars for future resolution. The participants from the Salvaţi Roşia Montană Campaign either had a firm „no" answer, like in the case of the

two activists ("because the project cannot be implemented in the current state without causing damage and any other type of exploitation would not bring profit" – Sorana Olaru), either said that if there had been any discussions they were not aware of them, as only the business tycoons pulled the ropes on the matter. Another opinion was that even if there were discussions, they were in the form of bribery and manipulation to accept the project without any intention of changing its variables to fit everyone.

This lack of communication is seen by only one member as a problem and as a possible solution for the future. RMGC supporters declare that, on numerous occasions, the company has tried to inform, debate, answer to complaints in order to satisfy everyone. Claudia Buruiană has even mentioned that the project sketches and plans were modified to make the protection area larger and reduce the impact perimeter and the Minister of Economy has a special committee to discuss upon the sustainability on the financial side. Another representative from RMGC (Cătălin Hosu) specified that he would agree with mediation or negotiation on the matter and would suggest all parties to be present including the government and objective experts. All in all, there seem to be little chances of negotiation in the near future coming from the extreme representatives; however, there are forces which could militate in this direction under different circumstances, as the journalist Adrian Dohotaru and activist Sorana Olaru said that 80% of the properties in the area belonged to RMGC and their use in the future needed to be put into question in order to develop the area.

The parties were also asked about the way they perceived the present state of the conflict. Three mentioned that it was in decline for RMGC as 400 people would be fired in April. The environmental militants were trying to get the government to take a firm stand on the matter and then include the area in the UNESCO heritage. Also, they considered the uncertain silent situation a result of the future elections. The local resident from Roşia Montană said that in Toronto the company was facing problems because "A girl from the region is now living there and bought shares to participate at a meeting. There she declared the representatives from Romania told lies about how the project is approved and on its way to be implemented. This was not believed anymore and somehow this motivated the dismissal of so many employees". The still atmosphere is, however, not the case in the judicial department, where trials are held and decisions taken.

Regarding the future, both sides are more inclined to believe that the project will not happen; however, this is long term, as the company is not ready to quit just yet. Because of the public opinion, the actors believe the government will not decide anything and thus prolong the situation until RMGC quits. Even if the project is somehow approved, Sorana Olaru considers it will not be implemented because the real money comes from the stock exchange and probably another company will buy it, Gabriel not having enough resources. In any case, a negotiation is mandatory – consider three members, in the future, as there is too much land in the property of the company for it to be ignored.

Actor shaping

The interviews have brought to light the fact that the parties are not aware who they are fighting against. Even if the actors manage to identify components present in the conflict this is not enough for a proper communication. Moreover, the lack of solidarity in this department causes major problems in the way the goals are pursued. Therefore, in the next pages the actors will be described in terms of composition, structure, motives, and interaction.

Main actors

It is fascinating to see how the parties define the main actors as the local residents who are pro and against mining. If this would be true, the conflict would have arisen before the company had any plans of exploitation. However, here the situation is different and we shall see how the balance of power was very weak for one side at the beginning.

First of all, the main actor who started the entire controversy is RMGC, without any doubts on the matter. Moreover, a closer look at the company's composition will surface the other components which have not been taken into consideration. The shares of RMGC, as I have presented earlier, are split in the following manner: the state owned Minvest Roşia Montană S.A. – with 19.31%, and Gabriel Resources – with 80.69%. This proves that the state, as the interviewed subjects have specified, is actually a primary party in the dispute, having a financial interest in the matter. It created this new entity Minvest Roşia Montană in 2013 with the purpose to have a specialized company which can deal with the matter. It functions under the subordination of the Minister of Infrastructure Programs of national interest and foreign investment, Minister Dan Şova. This meant the reorganization of the National Copper, Gold and Iron Company Minvest Deva through partial division which would allow separate management in the case of this particular project. As the main player, RMGC includes the government as a key component, it is safe to say that a few public officials have over time influenced the course of events given their leading position. At the beginning of the project, the president was Ion Iliescu. He declared in numerous terms that he was in favour of exploitation. During his presidency, Nicolae Văcăroiu was the prime minister and it is rather suspicious that no material regarding his opinion on the matter could be found. Victor Ciorbea, the second prime minister involved in the matter, stated that the protestors were manipulated to think the exploitation was bad and declared that he was on the company's side (Video News, 2013). The exploitation license was approved by the Radu Vasile government (Cotidianul, 2013) and Mugur Isărescu, the prime minister that followed, was also in charge of Romania's National Bank and managed to send a large quantity of Romania's gold to foreign countries (Vasilescu, 2013). The president from 1996 to 2000, Emil Constantinescu declared that even though he had a geology background he never expressed any opinion regarding the matter during his seat. Only

now he has offered the idea of creating an institute which would allow a better negotiation (EVZ, 2012).

Next, the Prime Minister Adrian Năstase deliberately let some private information slide towards the company with the pretext that it would help Romania to adhere to NATO. This was followed by a neutral approach of Calin Popescu Tariceanu and Emil Boc (Romania Libera, 2012). The current president and prime minister on the other hand have made it clear in their declarations and through their actions that they were in support of the project; however, due to public opinion and the number of actors involved their influence could not reach a high level of intensity.

Furthermore, as the environmental impact creates most of the problems in the area, it is obvious that the Ministers of Environment and Climate Change have a say in the matter. So far Sulfina Barbu, who was in charge from 2004 until 2008, brought accusations towards the current prime minister and the person in charge of analyzing the project saying that they didn't have the national interests in mind. However, she was accused by the president of Alburnus Maior of being on the company's side so her implication is considered in a grey area (Ruscior, 2013).

The following minister Nicolae Nemirschi delegated the responsibility of taking a decision towards the experts in the area (Realitatea, 2009). László Borbély took the company's side stating that the project was a priority and that exploitation through cyanide is legal in the EU (R.M., 2011). Attila Korodi refused again to take any responsibility stating that a certain procedure should be followed in order to authorize the project (R.P., 2014). The current minister Rovana Plumb decided to go with the former representative's statement and said that she would support the Parliament's decision (Neagu, 2013). Regarding the question whether she could stop the project through legal mechanisms, the minister responded that she did not know at that time. There is an air of confusion floating in the environmental department as the sides have not been clearly decided.

The National Agency for Mineral Resources, responsible for giving licenses for exploitation has had a crucial role in the process. Its president from 2006 to 2009, Bogdan Găbudeanu declared after his mandate that he was a supporter of exploitation and he also wanted to reassure the ecologists that everything could be done with care so that pollution was not a problem (Realitatea, 27th of July 2012). The one who followed in 2009, Gelu Agafiel Mărăcineanu, was a firm advocate against the project as he considered it brought too much environmental damage and the final products were being sold at a low price which made the business unprofitable for Romania (Bărbătei, 2012). Alexandru Pătruţi, in charge from 2009 to 2012, stated in numerous interviews that this type of exploitation was the only solution and that the company was a blessing for the country (Video News, 2013). The current president Gheorghe Duţu, in an interview held by Agerpres on the 24th of September 2013, explained how the respective technology

was the only one which could be used, and the benefits the country would have were numerous, being thus an advocate for mining.

Last but not least, given the importance of the patrimony from Roşia Montană and the attempt to include it in the UNESCO heritage, the Ministry of Culture has also been involved in the decision process. Kelemen Hunor, the minister from 2009 till 2012, and Mircea Diaconu, minister from 2012, have taken a firm stand against the project, as the former declared that the priority was including the area in the heritage and the latter that exploitation in the area would be similar to killing for money (Mediafax, 2011). The next two ministers who followed, namely Puiu Haşotti and Daniel Constantin Barbu, supported RMGC as they decided to ignore any attempt at including Roşia Montană in UNESCO. The current representative of the Ministry of Culture Gigel Sorinel Ştirbu has taken a vow that he would not allow any damage to be done to the patrimony even if this meant the end of the project.

On the other hand, Gabriel Resources is also owned by Paulson&Co 16%, Electrum Global Holdings 16%, BSG Capital 16%, Newmont 13%, Baupost Group 13%, Free-float 26%. The first company Paulson&Co, is an investment management firm specializing in event-driven arbitrage strategies, including merger arbitrage, bankruptcy reorganizations and distressed credit, structured credit, recapitalizations, restructurings, and other corporate events. Its goals are capital preservation, above average returns over the long-term and low correlation to the markets (Paulson & Co., 2013). The second, Electrum Global Holdings contains Electrum Strategic Resources LLC and Electrum Strategic Holdings LLC, which are based in New York, and members of the privately-owned Electrum Group of Companies which, through Electrum Ltd, in 2009, reportedly had one of the largest and most diversified portfolios of precious metals' exploration projects in the world (From Money to Metal – Tracking Global Mining Deals, 2013). BSG Capital is a part of the privately owned holding company BSG Resources which has a large global footprint. It focuses, through family trusts and foundations, on four major sectors, namely Natural Resources, Real Estate, Capital Markets and Diamonds (BSG Resources, 2013). Newmont Mining Corporation is primarily a gold producer, with significant assets or operations in the United States, Australia, Peru, Indonesia, Ghana, New Zealand, and Mexico. Founded in 1921 and publicly traded since 1925, Newmont is one of the world's largest gold producers and is the only gold company included in the S&P 500 Index and Fortune 500 (Newmont, 2013). Baupost Group is an employee owned hedge fund sponsor founded by Seth Klarman. The firm primarily provides its services to pooled investment vehicles. It launches and manages equity mutual fund and hedge funds for its clients (Bloomberg BusinessWeek, 2014).

The rest of the shares representing 26% are left to be traded by others. These descriptions above were made in order to get an idea about those who are granted power in case of a decision inside the company. It is interesting to take into account that only

one of the companies mentioned above is directly involved in gold mining and has only 16% of the shares, while the others mainly handle money trading. The management team who has been given the operational tasks by the General Assembly has Jonathan Henry as the president and CEO of Gabriel Resources and Dragoș Tănase as director of Roșia Montană Gold Corporation S.A. The former has quite a background in the resource exploitation area, while the latter has been working for telephone companies like UPC and Astra Telecom and was a financial consultant within the Ministry of Finance. The other vice-presidents are Romanian and in charge of operational details.

On the other side, at the beginning there was but a small and insignificant actor. Although the NGO that first represented the opposition was founded on the 8th of September 2000, to represent the rights of the local residents in the negotiations with the company regarding the land, on the 28th of July 2002, after ecologist Stephanie Danielle Roth appeared in the picture, the mission took on a different target. This activist is quite an important component in the equation as her implication in the cause determined the mobilization of the local community. It is fair to say that if she hadn't appeared the situation would have taken a different turn. Before the Roșia Montană Campaign, she was involved together with the civil society from Sighișoara in blocking the Dracula Park project – which she succeeded. She was born in Switzerland and she grew up in Germany and England. Before becoming an activist, she was an editor for the international publication The Ecologist (Dulamiţa, 2010).

The locals started thus militating against the project since 2002 and had as leading president mister Eugen David and as vice-president mister Călin Caproș. At the beginning there were 350 local members in the organization and at present the numbers have fluctuated, as many of the residents have left the cause and other external volunteers have joined it.

Secondary actors

The primary actors have managed to gather important support in time, as the conflict grew and this in turn brought the secondary actors into the scene. They were the ones who added structure and expertise to the dispute.

In the case of the mine company, first there are the visible parties on the company's website, which have affiliations like the Chamber of Commerce and Industry of Bucharest Municipality, the Foreign Investors' Council, the American Chamber of Commerce Romania, PATROMIN, EUROMINES, CBA, and the British Romanian Chamber of Commerce. Moreover, the company created a few NGOs, which come to support the industrial development and offer the supporters legal leverage to voice their opinions. These are all presented on the http://sustinemrosiamontana.ro website. It is obvious that these actors have different levels of involvement; however, as they are mostly present and support any type of manifestation that is pro mining we can consider them a force in the project.

Because of their impact on citizens' opinion, the partner experts and institutes which have voiced their opinion in studies and analyses can also be qualified as secondary actors. They are the following: British architects Dennis Rodwell and David Jennings, Director of York Archaeological Trust – who conducted a patrimony study, Terry Mudder, an American chemist, the International Group of Independent Experts (IGIE), Prof. Paul Whitehead from Reading University, Dr. Suzanne Lacasse, NGI (Norvegian Geotehnical Institute), Patrick Corser, engineer and director at MWH Americas, SRK International Consultancy Company in Mining, Dr. Christian Kunze, AMEC director, and the Democracy Institute, which conducted environmental analyses.

Moreover, we have other national and international representatives, which have facilitated expertise in the field, such as British MP Edward O'Hara, 1st of December University, Alba Iulia, IPROMIN Raw Materials Group, Sir Martin Sorrell CEO WPP, Alan Roe – Director and Economist at Oxford Policy Management, James Otto, an international fiscal expert, Alex Burger – Strategic Counsellor at TEHNOSERVE Extractive Enterprises Partnerships (NGO), and Stephan Theben, an independent auditor. In Romania, there are also local leaders of opinion, like Ion Năstăsescu – President of Nuclear and Radioactive Waste Agency, Bogdan Baltazar – financial consultant and ex BRD president, Daniel Apostol – TV producer, Gheorghe Negoescu – PhD in economy and university professor.

Finally, the law firms that have represented RMGC's interests in court can be considered secondary actors as well. Their identities have been revealed by Alburnus Maior representative Marius Harosa (lawyer) and they are the following, in a chronological order: Muşat şi Asociaţii, NNDKP (Nestor Nestor Diculescu Kingston Petersen) and Ţuca Zbârcea & Asociaţii. The mining company has switched representatives due to their inability to win trials. However, these three law firms have a very good reputation in Romania.

The government has no relevant secondary actors as the decisions are usually taken by the primary ones and the others have no interest in the matter.

On the environmental team, it is very hard to distinguish the secondary actors from the third parties, as they switch positions depending on their implication. Being important members of society and culture, the Romanian Academy, the International Council on Monuments and Sites, ARA, the Order of Romanian Architects, the Union of Romanian Architects, the International Bank Group and the Royal House are firmly involved in promoting the preservation of the historical, ecological, and cultural heritage of the area which would be under threat if the mining project were approved in the current form. They made a strong lobby during the UNESCO inclusion process.

In this category we can include the Hungarian government as a firm pillar against mining exploitation in Romania, as their citizens fear a natural hazard coming their way in case of the project approval. There are even some international groups which have become

affiliated, like the Académie des Inscriptions et des Belles Lettres, l'Institut de France, l'Associazione Internazionale di Archeologia Classica, and the European Association of Archaeologists (Cotidianul, 2011).

In terms of NGOs which have offered support to Alburnus Maior, they can be characterized as either extremely dedicated or moderately implicated. The first group contains the ones which have provided help in all the domains from research, lobby, event organizing, and so on; they are the following: Greenpeace Romania and International, Asociaţia Salvaţi Bucureştiul, Centrul Independent pentru Dezvoltarea Resurselor de Mediu, Fundatia Culturală Roşia Montană, L'Alliance Belgo-Roumaine, Centrul Independent pentru Protecţia Mediului Sebeş, Asociaţia Frontului Negustoresc Obor, Asociaţia Eco-Civica, NUCA, ActiveWatch, RPER-Romania, RPER-Fr – Rencontres du Patrimoine Europe-Roumanie, Asociaţia Heritage, Asociatia pentru Dezvoltare Urbană, Asociaţia Odaia Creativă, Asociaţia Bucureşti, Organizaţia pentru Promovarea Transportului Alternativ în România.

The second group consists of NGOs that have also participated in the actions mentioned above, but with a lower frequency, as the blockage of the project was not their main goal as associations. So far in this group there are over 70 Romanian NGOs that have signed a declaration which expressed their disapproval regarding the project (Mitchievici, 2010). Additionally, according to the Ecomagazin website (2011), 77 Hungarian NGOs from Transylvania issued a declaration against the exploitation on 3rd of August 2011, 240 Hungarian NGOs have sent an open letter to the Romanian Minister of Environment, 116 NGO's from the European Union (Greenindex, 2010) empathized with the anti-cyanide cause after the Baia Mare incident and solicited the European Commissary on Environment Janez Potocnik to take measures regarding the EU vote on using cyanide in mining, and 33 Christian Romanian NGOs have recently been active in the protests promoting patriotism towards our culture and history (Capsali, 2013).

Universities have been active in supporting, through articles and studies, the anti-mining cause. Some of the most involved, according to Alburnus Maior website, are ASE Bucharest with a special group for saving Roşia Montană, the Ecological University of Bucharest, the Law University of Bucharest through the ELSA NGO, the Babeş-Bolyai University of Cluj-Napoca, and an international one, Basel Universitat, which has the Institut fur Natur, Landschafts und Umweltschutz , Biology.

Being pillars in society and having their research analyzed, experts have also made efforts to raise awareness about the cause and bring arguments that would prove that the RMGC exploitation plan was not the right solution. These professionals are all mentioned on www.rosiamontana.org website.

In the judicial department, Alburnus Maior was represented by the following barristers: Andreea Szabo, lawyer, specialized in environment, from Sibiu, Marius Liviu Harosa,

lawyer PhD and associate professor from Cluj-Napoca, Anaïs Berthier, lawyer of the organization Client Earth, Brussels, Tim Malloch, environmental lawyer of the organization Client Earth, London, and Stefania Simion counsellor in judicial matters in the Salvaţi Roşia Montană Campaign.

Third

When distinguishing the third-level actors involved, things get messy, as they are numerous and of different intensities of involvement. The Court of Alba, the Court of Cluj-Napoca, and Court of Appeal from the same city all have been present and have inter-mediated the process.

As some of the active environmental NGOs are funded by a businessman named George Soroş through the CEE Trust and Open Society Foundation, he can be added to the list of indirect participants (Adevărul, 2013). The people who were temporarily present at the protests and events (Fân Fest, meetings, movie presentations, debates etc) organized by the primary and secondary actors represent a part of the public that forms a coalition against RMGC. Public figures like Maia Morgenstein and Dragoş Bucur, who have participated punctually in the campaign by making short movies about their position regarding the exploitation, can also be considered third parties (Realitatea, 2012).

According to the campaign website (www.rosiamontana.org) the Transylvania International Film Festival (TIFF), through the movies and speeches it allowed during its event course, promoted the environmental supporters' viewpoint. In the international sector, the European federation of Green Parties has voiced its support; however, because it has failed to bring concrete measures to the table, it falls under the third actors' category. In the financial field, the International Financial Corporation has withdrawn its support for RMGC, and so has Allianz General Group after a meeting with the protesters. By rewarding the campaign with the Goldman Environmental Prize, the Ecologist and Civil Society Gala have made the cause worth fighting for.

On RMGC's side, the third-level supporters are represented either by the sponsored press or by the sponsored companies. First of all, television as a media device has shown more publicity towards the implementation of the mine exploitation. Some of the TV channels that have shown commercials which promoted the need for workplaces are Pro TV, Antena 3, Antena 1, Kanal D, România TV, B1, TVR 1 (Obae, 2013). Also, the news and debates that are shown on this means of communication are biased, as they show intolerance towards the protesters and stereotype their behaviour by calling them hippies, anarchists, hooligans etc. However, an international channel, namely National Geographic, has stopped showing advertisements that support RMGC.

Secondly, the written press was largely bought by the company. For example, according to Forbes, RMGC has spent 5,443,663 euro on publications in the last three years

alone. The publications received money as follows: *Evenimentul Zilei* – 183,900 euro, *Libertatea* – 154,200 euro, *Jurnalul Național* – 140,500 euro, *România liberă* – 106,950 euro, *Ziarul Financiar* – 88,000 euro, *Adevărul* – 78,000 euro, *Gazeta Sporturilor* – 75,600 euro, *Capital* – 68,400 euro, and *Click!* – 61,900 euro (Barbu, 2013). On the opposition part, a newspaper called *Apusenii Liberi* was founded, which informs the locals from the area about the damages that mining could cause.

Thirdly, the online medium is full of third parties, as there are numerous websites, blogs, Facebook pages, and twitter messages, which empathize with both sides and try to get more followers.

In terms of sponsored companies, the ones which created controversy were the football team CFR Cluj and the basketball team "U" Mobitelco. In 2011, the former a partnership with the company and promoted it during the matches; however, due to the fans disapproval in 2012, the contract was cancelled. The second had the same result after the crowd protested at one of the games (Șchiopu, 2013).

Interests

If we look at the issue from an economic point of view, there are contradictory views from the two opposing sides. The ones against the project consider that the revenue/royalties of 6% and the increase of the national shares to 25% is rather low taking into consideration the damages the area will suffer and the long term problems that might appear because of the exploitation (Ionașcu, 2013). As mentioned in a study conducted by ASE University Bucharest, the problems include the environmental part, meaning 12,000 ha of forests destroyed, 4 mountains, water pollution, soil pollution with dangerous substances in 1,581,760 tons quantity, the largest known lake of cyanide, left behind; the economical part, meaning miners left without a job when the company leaves causing recession, economic instability because of the destruction of entrepreneurial initiative in the area, decrease in tourism because of the pollution and lack of appeal of the area (Roșca, 2010).

RMGC, on the other hand, states that the benefits include taxes on profit, salaries, properties, excises, exploitation taxes etc. According to RMGC, in 2013 the total estimated money that would come to Romania amount to $2.1 billion, 2300 workplaces during the construction period, 880 direct workplaces, logistics-including roads, infrastructure, houses, schools, public service and utility buildings. The money dedicated to greening amounts to 135 million USD. However, the cost estimated by the Australian researchers is 100,000 USD/ha meaning 600 million USD, more than 5 times higher than the one offered by the company.

Regarding the areas affected, RMGC sustains the fact that it will plant 1000ha to replace the damaged ones and the decantation dam will be able to support twice the annual

precipitations predicted (Roşca 2010). Taking into consideration what the company has done so far, it is only natural that it sees the investment in terms of cost and benefit. The company has purchased land not only in the area, but also built an entire neighbourhood in Alba Iulia for the people that have been dislocated. It has had numerous expenditures with lobbying (campaigns, events etc.), document drafting, and court representations against the NGO's. In conclusion, all of this will have been a waste of money if the project is to be rejected, leaving the company bankrupt.

All in all, the protesters are motivated to stop the natural disaster that would happen regardless of the money taken in by the state. The interview participants have declared that the issue is non-negotiable in the money department as the future of the generations cannot be bought or sold. However, the company and the state have strict financial interests in the matter as a company's purpose is to make profit and a government must help a country develop through any means. Because of the numerous variables involved in the process, it is difficult to actually know RMGC's limit of bargaining and for the environmentalist there is a saying: everything and everyone can be bought for the right price.

There are numerous issues from a social viewpoint, as well. The local population is split into those who want a salary from mining and those who do not want to lose their native land, friends, and community. The relocation process is causing depression among citizens as they feel a lack of belonging and are forced to change their entire lifestyle. A high amount of traditions and customs are lost in the process. Also, those who have managed to make a living in the area by cultivating the land and using crafts are in danger of losing their only source of income as 34 small and medium businesses will be impacted.

The estimated changes are 2,921 residential and non-residential relocated properties, 975 houses destroyed, out of which 41 are patrimony, 7 churches demolished and covered in cyanide, 12 cemeteries relocated (RMGC, 2004). Romania is a laic country where religion is important so this drastic change is also seen as a blasphemy. Furthermore, the company that wants to exploit the resources is foreign, which brings along the feeling of colonial oppression. The interests in this case are more related to the locals as they will be the ones to suffer and this is mainly why the NGO Alburus Maior was created in the first place. The secondary and third-level actors cannot empathize completely with this issue and neither can the opposition. So, the primary actors of the environmental side are put in a delicate position because in case they lose, they will face a zero-sum situation.

The cultural issue is a rather smaller one, but could also be introduced in the analysis, as there are old mines from the pre-roman and roman period that are under the threat of becoming extinct. As the UNESCO committee has been biased in analyzing the value,

this problem remains and brings the support of numerous historians, architects, and researchers. The mining company promises 70 million USD for restoration of the monuments destroyed; however, their authenticity will be under question. Here is where the interests of the secondary and third-level actors come into place, as they are motivated to save the country's patrimony, which is not only related to a location but to the national pride. The opposition has no interest in this matter, as the social and cultural issues are only obstacles in the way of exploitation.

Close to the environmental and social problems are the judicial ones. There have been numerous contested discrepancies so far between what the legislation states and what the company was allowed to do. The fact that the Urban Plan was suspended and the Environmental Impact Scheme had to be redone offers only a couple of examples of averted damages. There have been numerous trials between the two sides, and this is an example of how a conflict can be good, as it brings to light the possible mistakes and encourages avoiding them. At present, the government is trying to come up with a special law for RMGC that will help the company move past the procedures without being contested. This has added a lot of fuel to the conflict and it is an issue worth taking into consideration. In this department there is a strong lobby from the environmental group as a victory would set a precedent for future conflicts and would prove that money and power do not matter in justice. RMGC has the goal to speed up procedures and receive leverage.

Last but not least, there are power interests, which are related to state representatives. The situation in this case is difficult as they, on one hand, want to please the public opinion or at least give the impression of doing so, and on the other, they would like to profit from the financial rewards offered by the company. This is a game played by anyone in a top position in the government.

Goals

In terms of strategies used by actors to pursue their goals, there are two different approaches. The environmental side uses juridical, research and advocacy mechanisms. The first offers the campaign legal leverage and the second provides objective arguments against the project. The third combines aspect from the first and information regarding why the interests are pursued in order to inform and raise the awareness of the public and draw as many supporters as possible. Moreover, the third mechanism takes the problem out of the office and brings it into the street where people are free to observe and choose.

RMGC approached the goals differently as its main focus was on political lobby and public brainwashing through press partnerships. Also, money was the key tool used as it bought research papers, publicity, miners, institutes, public officials and so on. Its main problem is that even though the information it presented might be documented

and is not all lies, its background in the bribe department is so controversial that the public has become suspicious.

The politicians involved pursue their goals through evasive contradictory statements that make them difficult to blame for a certain position and so both the other actors are encouraged to turn to them for a strict decision and accountability.

Positions

The solutions presented by the actors are quite extreme. Alburnus Maior and its secondary actors see tourism as a solution in the area. This, however, can only be achieved if the company leaves completely. The current issue stopping them from pursuing the goal is the Urban Plan of the area which has declared it mono industrial. This in term makes it impossible to make any other type of investments which are not related to mining. Also, if the region will be exploited no tourist will choose it as a destination due to the pollution and health dangers. In order to protect it and promote it further another tool used is the inclusion of Roşia Montană in the UNESCO Heritage. The activists want to save future areas from mining projects so they have attempted to overturn the mining law which mentions that anyone can be expropriated if resources are found on their property and the state has allowed a company to exploit them. So far all of these solutions have not been implemented completely and the continuous objective is to raise awareness among as many citizens as possible about the possible project damages in order to attract supporters and take advocacy to the next level of political lobby.

The company advocates mining with cyanide as the only solution. After all the contestations and debates nothing was changed from the initial exploitation plans, the only efforts made were in terms of explaining the project sketches and legal documents. On the financial side, the royalty was raised from 4% to 6%. Moreover, in any type of negotiation held by the company, money was involved in order to convince the other party that no modifications should be made from the initial plan.

The government officials declare that they want the economy to be boosted and the environment protected. A solution mentioned by the president in 2014 was exploitation with sodium thiosulfate, a substance found by Jack Goldstein from Baia Mare, which was presented to the Parliament Special Committee in October (Simina, 2014).

Capacities

Power is given by resources which can take numerous forms: economical, juridical, social, political etc. In our conflict the types mentioned are at numerous times interconnected as those who have economic or social power gain political or juridical strength. Nevertheless, power can also come from the fact that a side has an exquisite Best alternative to a negotiated agreement (BATNA) or the other side is not aware of the hidden capabilities of its enemy. Given the fact that the Roşia Montană conflict has the lack of

transparency as a cause it will be difficult to discover the real amount of resources the actors have.

Economy is a visible domain as the companies are obliged to give information about their turnover. In this manner we have come across the fact that Gabriel Resources has a volume of number of shares traded in the last 30 days from November of Vol/Avg= 289,002.00/484,087.00, return on average assets of -1.14% on June 2013, return on average equity of -1,17%, 490 employees (Google Finance, 2013). The market capitalization which shows the value of all of a company's outstanding shares is 326.5 million. The investment community uses this figure to determine a company's size, as opposed to sales or total asset figures. The earnings per share are -0.03 and of course there is no profit yet as the company did not start running. According to Wall-Street (2011) the major actor in the project has financial back-up from a few of the world's billionaires like John Paulson with a net worth of 11.4 billion dollars, number 36 in top Forbes 2013, Beny Steinmetz with 4.1 billion dollars and number 316 in Forbes 2013, Thomas Kaplan with 1.3 billion dollars, number 386 Forbes 2013 and last but not least Newmont which is now listed as number 179 in Forbes as market value and has a market capitalization of 12.82 billion dollars.

The Romanian shareholder Minvest Deva is at a minor partner, as the profit in the last three years has been negative. However, if we look at the new plans for the partial division of the firm in order to introduce another company called Minvest Roşia Montană which will represent the state, we can see that this will have a social capital of 69.510.733 RON (Bursa, 2013). This hybrid will also take a loan of approximately 30 million euro from Gabriel Resources.

On the other hand, there is the environmental initiative which as its name says, is a non-profit organization. Nonetheless, these organizations are also financed by business tycoons, other wealthy popular international NGOs, the population through donations and most of the time through active participation, which could also be quantified into money. We will only analyze the economic situation because later on we can count the participation as social power.

A rather significant funding of 53,729 RON came from The National Cultural Fund Administration and was directed to Alburnus Maior for the project "Roşia Montană Patrimony in images" (Ghilezan, 2012). The initiative was implemented by the Architecture Restoration and Archaeology association which once worked for RMGC. There are conspiracy theories that point out that the sum was too large to be used only for photography workshops.

The NGO that are most active in planning and organizing the protest have admitted to being funded by CEE Trust and Open Society Foundation founded by the philanthropist George Soros. According to journalist Trent (2011), Soros began underwriting civil so-

ciety projects in Central and Eastern Europe in the late 1980's through the Polish Stefan Bathory Foundation and other Soros funds. By joining forces with the region's other large sponsors, he created a power base rivalling the European Union or individual governments in the region. The Trust for Civil Society in Central & Eastern Europe (CEE Trust), founded in 2001, has the goal to support the long term sustainable development of civil society and non-governmental organizations in Central and Eastern Europe, including cross-border and regional activities in which they may engage. It also helps the transition from large organizations funded by donors to small independent ones that activate in the public sector promoting solidarity, advocacy, community mobilization and investigative journalism. This group received through Soros organizations funds amounting to 75 million dollars to support NGO's from Romania, Bulgaria, Czech Republic, Hungary, Poland, Slovakia and Slovenia (Forumul Donatorilor din România, 2013).

According to a report made by journalist Braţu Iulian (2013) the following funds were given to Romanian NGOs by parties that are in connection with Soros:

- The CEE Trust together with The Foundation for Partnership gave 249,000 dollars to Centre for Juridical Resources to conduct investigations on a local and regional level and supervise the public administration procedures.
- Active Watch is another organization which received a donation of 170,000 dollars from CEE in order to promote a correct press monitoring through its activities.
- The Civic Movement – Spiritual Militia which is said to be actively involved in organizing protests has been funded with 105,000 dollars by CEE. Two more active associations are Principesa Margareta with the purpose to promote solidarity and young activism sponsored with 300,000 dollars and Terra Mileniul III, an environmental initiative which wants to promote sustainable development with 200,000 dollars.

Other donations from CEE trust that should be noted are $350,000 for the Romanian Academic Society and of course for Alburnus Maior which was given $216,000 in 2002, $1,000 in 2005, $34,000 in 2006, and $52.000 in 2007.

The sums in discussion in the second part are relatively smaller (as we can only talk in millions of dollars) compared with the ones involved by RMGC, which amount to a few billion.

Moving on the study will focus on juridical power which shows which of the parties have managed to present their case better and have an upper had through fairness.

As mentioned on www.rosiamontana.org juridical history page, the battle on this field was initiated by Alburnus Maior in the autumn of 2003 when it initiated the first case in the Court of Alba Iulia. The issue was regarding the mining activities in Cârnic Massive. The purpose was to stop any type of exploitation in that mountain area. The case was won in February 2005 as the court admitted to the illegal nature of the exploitation.

In 2002 the Local Council of Roşia Montană voted the General Urban Plan and the Zonal Urban Plan for the industrial development initiated by RMGC. This meant that the population from 4 villages that were in the 1600 ha perimeter had to be relocated until 2004. Alburnus Maior attacked this issue and in 2007 the urban certificate was suspended and then annulled by the Cluj-Napoca Court and in 2008 the Alba Iulia Court of Appeal declared the Urban Plans illegal.

Regarding the commercial contract between RMGC and the City Hall of Roşia Montană, the Court of Appeal of Alba Iulia pronounced it irrelevant in 2007. The contract stated that the village would support the company in its actions to get licenses and approvals. As a result of the numerous issues that arose in 2007 the Minister of Environment suspended the procedure for Environmental Evaluation. RMGC had some attempts at the Court of Appeal of Alba to get the suspension annulled; they were unsuccessful.

In 2009 The Local Council of Roşia Montană emitted another decision to approve the new Urban Plan for the mining project. Alburnus Maior filed another court complaint and in 2011 the Court of Alba annulled the action. In 2010 the Minister of Environment resumed the procedure for environmental authorization which was seen as illegal because without a proper urban plan the environmental impact had no legal stand.

However, in 2011, RMGC managed to get the approval from the Ministry of Culture and the County Directive for Culture and Patrimony of Alba for another certificate of archeological discharge regarding Cârnic Massive.

The counter attack came on 5th of April 2012 when Alburnus Maior won the case and managed to stop the Local Council decision from 2009 and so the Urban Plan was cancelled once again. The Court of Appeal from Alba published a juridical analysis which recommended the stoppage of the environmental impact evaluation.

So far we can see that there are a few irregularities in the way justice is being imposed. The fact that two procedures have been approved and another which is strongly dependent on the first two has been annulled proves the lack of consistency in legislation implementation. Moreover, Alburnus Maior has filed a complaint with the number 789/117/2012 in which it is against the archaeological discharge of the Cârnic Massive.

The score is almost level in this domain as every action of one actor brings a reaction. The fact that the NGO won so many trials in court brings light into the fact that the project plans have numerous flaws. On the other hand, the fact that the mining exploitation is still in question of being approved shows that there have been either improvements made or bribes given to authorities.

The political field has a blurred vision as the representatives have contradictory declarations. On one side, they are supporting the project through statements that advocate for economical development, job creation, prosperity of the country and other propaganda.

On the other side, in order to please the public opinion they take opposite decisions like postponing the project, declarations of patriotism towards the country, rejection of the law regarding the project. The Prime Minister Victor Ponta is as elusive as the former representatives, who have neither confirmed nor denied receiving any money or supporting the project. However, the president of the Senate Crin Antonescu, who has been a candidate for presidency in the past, has formally declared his position against in order to attract supporters in the next elections even though his actions have not come in support of his statements. This type of power can also be measured and analyzed from the TV channels' most aired opinions as these channels are backed up by the political parties. The higher percentage of the news and talk shows are in favour of RMGC and explain in detail the benefits while on the other side bash the protesters.

Speaking about social and civic support we can clearly see from the actors' statistic that the environmental cause has managed to create a high number of suporters in the public sector. It can be considered a success that the opposing party has not managed to mobilize such a large number of protesters. This can be considered the strong point of the initiative against mining as political power is a strength of RMGC. The conflict can be considered in this way one between the leaders and the citizens, between the economic titans which pull the strings when it comes to resources and the legal system which is bound to take the decisions.

Relationship

Taking into consideration the fact that there are many actors involved in the process the relationships between them are extremely tangled. In order to shed light we will proceed by taking each two parties separately and analyze their interaction.

First of all, for the company and the anti-mining team there are no records which show proof of actual meetings between the leaders for negotiations. The channels of communication are not 100% direct as it is being done by all the type of actors: primary, secondary and third on the protestors' side and only by secondary and third parties on the company's team. Some examples of such confrontations are: negotiations for land sale, public consultations regarding the environmental impact from 2007, the UNESCO meeting from 2012 when the two parties became verbally aggressive and at the referendum where they spied on each other to see if they are conducting a fair procedure. This in a way induces the environmental team to feel inferior because the ones with actual decision power do not offer them any attention. A more fair form a communication is done at the court trials where the layers representing each side compete against each other for a better verdict. The media is a facilitator as it aired interviews where each side had a delegate supporting its case and insulting the opposition. The campaign messages addressed against each other were present on numerous channels: TV, radio, press, online media, offline activities: workshops, meeting, protests, events etc.

Secondly, the government and company communicate through official representatives and thus primary actors. The main decisions are taken behind closed doors and the other party has little control over the process. Proof is very difficult to find and suspicion leads to adversity. There have been numerous news of politicians being bribed by RMGC and there have also been articles which simply state that the two sides discussed the future of the project without any clear outcome. There is also an innocent form of information sharing as the firm sends different documents for approval. Lately, due to the government's schizophrenic behaviour the company's attitude became antagonist at is started threatening with international law suits in case of a further postponement.

Thirdly, the environmental team and the government interacted peacefully at the beginning. Written requests were sent to prove the cultural, environmental and historical value of the area. Law proposals were forwarded and different studies conducted by specialists. The actors against mining declared that the attempt was only one-sided as the answers came slow and with vague content. This determined the process to be taken one step forward in the form of actions: manifestations in front of institutions, public humiliation of politicians and verbal threats. The government has responded through the media insulting the protestors and stereotyping them.

There has been one record, however, of a direct confrontation between all the parties which took the form of a debate. This happened during a live aired show on the national TV program TVR1 "Judecă Tu: Războiul aurului la Roșia Montană" (Youtube, 2012). The participants were eight primary actors (4 environmentalists, 1 company representative and 3 politicians) and the balance was maintained as the government representatives are said to be on RMGC's side even though their answers are not quite concrete. The attitudes manifested portrait the descriptions given so far about the parties and come to support the research's veracity.

What's next?

Looking at the future with optimism and it is necessary to say that negotiation would be possible if more variables are introduced in the equation. These could be: new techniques of exploitation in an environmental friendly way which also produces profit, the modification of the percentage of extremist entities in both parties with centrist visionaries, more funds directed toward the area, new contract proposals in terms of revenue, new technologies for preserving the cultural heritage, social reintegration plans for the area, prolonging of exploitation period so that it produces lower economical shocks after closing. Brainstorming and collaboration are the key words in the process. Each side should understand that the enemy is not quite what they expect and there are common points which could be discussed. As long as there is gold in Roșia Montană there will be conflict; the purpose is to turn this into an opportunity for added value and collaboration. Even if the company leaves, Romania does not have the means and

proper governance to exploit the area. Another actor will appear in the picture and our duty is either to face the music and solve the current situation with RMGC or be better prepared for what is to come.

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ADR AND ODR IN ROMANIA – FUTURE CHALLENGES

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Abstract. *In 2013, new EU legislation came into force in the area of consumer protection by means of alternative dispute resolution and online dispute resolution. The Directive 2013/11/EU (Directive on consumer ADR) and the Regulation (EU) no. 524/2013 (Regulation on consumer ODR) are both legally binding acts. However, if the Directive needs transposition into national law for its applicability – the deadline for adoption of the necessary provisions by laws, regulations or administrative acts being 9th of July 2015, the Regulation is directly applicable in all Member States. Some of its articles are already applicable and binding, others shall apply from 9th of January 2016. This present paper aims to present the evolution of ADR and ODR in the EU law and some of the challenges which the Romanian authorities but also the Romanian enterprises and citizens may encounter in order to make good use of these particular pieces of legislation.*

Keywords: *Directive on consumer ADR, Regulation on consumer ODR, Out-of-court dispute settlement, Directive 2013/11/EU, Regulation (EU) no. 524/2013.*

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Background

In order to trace back in time the evolution of the European Union`s interest in alternative dispute resolution mechanisms (ADR), both from the political and legal perspective, it is necessary to monitor two tracks: first would be the "area of freedom, security and justice", mainly the "judicial cooperation in civil matters". The other one is the more specific domain of "consumer protection". That is not because the European legislation is overlapping, on the contrary, but because there is a certain degree of parallelism in regulating different domains using the same tools. For example, searching on Google for "ADR" and "EU", one link goes to the page of DG Health and Consumers of the

European Commission. The dedicated subpage "EU action on ADR/ODR" deals only with the documents adopted by the EU in that specific area. The "calendar" tab starts with the 1st Commission Recommendation of 1998 *on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (EC 1998)*. Nevertheless, that was not the first initiative of the EU, not even of the European Commission, dealing with ADR.

According to the *Green paper on alternative dispute resolution in civil and commercial law*, "Many of these [grass-roots initiatives] date back a long time, such as the establishment in 1994 of a European Economic Interest Grouping to network arbitration and mediation centres in France, Italy, Spain, and the United Kingdom. This "**European Network for Dispute Resolution**" (ENDR) enjoyed financial support from the Community, managed by the Commission's Directorate-General XXIII (Small and Medium-sized Enterprises)" (EC 2002, p. 7, footnote 9). Oddly enough for a project financed with public funds, the ENDR does not seem to have a functional website. However, it seems that ENDR was formed at Lille (France), in November 1994. Its registered address is in Bordeaux. The members of ENDR were: Camera Arbitrale del Piemonte (Turin), CAREN (Lille), CARMED (Marseille), CEDR (London), Centre d'Arbitrage de Bordeaux Aquitaine (CABA), Centre d'Arbitrage Rhone-Alpes (Lyon), Chambre Arbitrage de Toulouse, Chambre de Commerce de Trevise, Chartered Institute of Arbitrators (London), Corte de Arbitrajede (Murcia), Tribunal Arbitral de Barcelona, and Tribunal Arbitral de Commercio de Bilabo (and the Centre des Arbitres des Avocats, Bilbao). Its role is "to facilitate the resolution of cross border disputes within the European Union". Its own members have rules and systems for settling large international disputes. ENDR does not see its role to promote these well-established services, nor to attempt "harmonisation" of procedures in this area. Its main area of interest seems to be the "simple, economic and efficacious systems for the resolution of small cross-border disputes. These will typically be between smaller companies (PME's, 'petites et moyennes enterprises')" (EA 1996).

We have to go back in time up to the 1980s to track the **first EC initiatives** in the field of consumer redress using out-of-court mechanisms. The first Commission Communication took into account that "[s]ince traditional legal proceedings prove too cumbersome, too slow and too expensive for dealing with disputes involving small sums, some countries have sought other, less costly, procedures that are more easily accessible to consumers. Of these, the introduction of conciliation and arbitration bodies has often given satisfactory results." (EC 1984, p. 27, annex 3 paragraph 3.01). Among other issues, the Commission emphasized in the same document the **importance of information** as an essential condition of the new mechanisms' efficiency , stating that "[t]he existence of new dispute resolution procedures must, in general, be publicized if consumers are to know and take advantage of them"(EC 1984, p. 11).

The first Communication on consumer redress was followed by a supplementary Communication dated 7 May 1987 (EC 1987). On that occasion, the Commission mentioned that the Economic and Social Committee suggested, in its report on the "Producer-Consumer Dialogue" of 1984 that the Commission should examine setting up [extra-judicial schemes for conciliation and arbitration] in connection with codes of conduct negotiated between business and consumer organizations at Community level, since "such codes, where they exist at the national level, often provide for such schemes in order to settle consumer disputes". The Commission`s conclusion, however, was that "there remain substantial difficulties in the way of establishing such a dialogue [...]" (EC 1987, p. 13).

The European Parliament, in its Resolution of 11 March 1992 on consumer protection, called on the Commission "to urge the Member States *to develop in cooperation with trade and industry nationwide networks of mediation centres*, using existing national institutions (such as ombudsmen and mediation bodies), which could be brought in to settle disputes before involving the courts, without curtailing in any way the consumer's right to turn the matter over to the proper courts" (EP 1992, point 11).

In the Green Paper "*Access of consumers to justice and the settlement of consumer disputes in the single market*", the Commission took note of the situation in a series of Member States concerning, among other themes, "out-of-court procedures especially devoted to these disputes [...], including mediators and ombudsmen (and similar structures) which have recently been created in various economic sectors" (EC 1993, p.15).The main objective of the Green Paper was to "trigger a discussion between all the interested parties on the basis of the approaches outlined [in the document]". Two of six themes for discussion were related to "promotion of *codes of conduct* at Community level, whose minimal criteria might be the subject of a Commission recommendation with a view to improving the functioning and transparency of the private "Ombudsman" systems" (point 4 of the Conclusions) and "closer contacts between different consumer arbitration bodies with a view to exchanging experiences on this subject" (point 5 of the Conclusions). In this context, the Commission recommended "exploring ingreater detail the role of certain bodies (such as chambers of commerce and industry)in the creation of voluntary arbitration systems, either at sectorial or regional level" (EC 1993, p.86).

Following the Green Paper, the Commission presented an *Action plan on consumer access to justice and the settlement of consumer disputes in the internal market*. The importance of out-of-court procedures is outlined in this document for multiple reasons, such as (i) the rapid evolution of markets which happens more swiftly than legal codes or negotiations between Member States; (ii) the spectacular growth of such procedures which may be interpreted as a response to challenges in adaptation of legislation or as a "filter" to overcome the court backlog and (iii) the experience gained by several Member States which has proved that the "selective encouragement of out-of-court procedures for set-

tling disputes – providing certain essential criteria arc respected – has been welcomed both by consumers and firms (by reducing the cost and duration of consumer disputes) and is currently supported by all sides concerned" (EC 1996, p. 14).

Regarding **the minimum criteria** necessary for the creation of out-of court procedures applicable for consumer disputes, the Commission identified six such criteria, presenting them in the annex II of the Action Plan as a working outline for a future recommendation: (1) "The **impartiality** of the body responsible for handling the disputes", which has to be guaranteed "by all appropriate means" and especially by guarantees of professional independence of mediators; (2) the **effectiveness** of the procedure; (3) the **transparency** of the existence and scope of the procedure, of the maximum time limit and of the possible cost of the procedure for the consumer, as well as of the criteria governing the "decision" of the body responsible for handling the dispute and the legal "status" (binding or non-binding) of such a decision – in the first case, also of the sanctions for non-compliance; (4) in case of cross-border disputes, the **information of each party,** in writing and in an official language of the Community about the decision of the dispute and its grounds; (5) and (6) ensuring in any case **free access to justice** of the consumer according to the law of his/her country of residence and **the protection** afforded to the consumer by the mandatory rules of law (EC 1996, p. 22).

In its Resolution on this Communication, the European Parliament expressed its support to the objectives set out in the action plan and called, among others, on the Member States "to make every effort to promote the creation of out-of-court procedures to settle disputes in consumer matters and to simplify further the formalities for access to them" (EP 1996, point 10).

The minimum criteria presented above have become **principles** in the *Commission Recommendation 98/257/EC*. The recommendation is limited to procedures "which, no matter what they are called, lead to the settling of a dispute through **the active intervention of a third party who proposes or imposes a solution**" (mainly arbitration). It does not concern procedures that "merely involve an attempt to bring the parties together to convince them to find a solution by common consent" (EC 1998). **Therefore**, **direct negotiation, conciliation, and mediation fall outside the scope of the Recommendation**.

The principles of the Recommendation, which must be respected by all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes, are the following: (1) **independence** – guaranteed by guaranteed by four measures, including (i) the abilities, experience and competence, particularly in the field of law, required to the person appointed in order to carry out his function and (ii) a period of office of sufficient duration to ensure the independence of the person appointed his action and shall not be liable to be relieved of his duties without just cause, (2) **transparency** – ensured by two sets of measures, namely provision of

specific information, in writing or any other suitable form, to any persons requesting it and publication by the competent body of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified, (3) **adversarial principle**; (4) **effectiveness** – "ensured through measures guaranteeing that the consumer has access to the procedure without being obliged to use a legal representative, that the procedure is free of charges or of moderate costs, that only short periods elapse between the referral of a matter and the decision and that the competent body is given an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute" (EC 1998, principle IV), (5) **legality**, (6) **liberty** – "the decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this" (EC 1998, principle VI), and (7) **representation** – the procedure must not deprive the parties of the right to be represented or assisted by a third party at all stages.

In its *Resolution on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes*, the Council of the European Union noted, among other things, the rapid development of electronic commerce and the existence in Member States of out-of-court bodies which fall outside the scope of Recommendation 98/257/EC, but which also play a useful role for the consumer. Therefore, the Council invited the Member States to encourage the activities and the setting-up of such bodies, on the basis of Recommendation 98/257/EC. The Council also invited the Commission to "assist Member States […] in the promotion of activities of existing out-of-court bodies and in the establishment of new bodies" and, more importantly, to "develop in close cooperation with Member States common criteria for the assessment of out-of-court bodies falling outside the scope of Recommendation 98/257/EC". The mentioned criteria must ensure the quality, fairness, and effectiveness of such bodies (Council 2000, point 11).

Directive 2000/31/EC ("Directive on electronic commerce") provides that each Member State "should be required, where necessary, to amend any legislation which is liable to hamper the use of schemes for the out-of-court settlement of disputes through electronic channels; the result of this amendment must be to make the functioning of such schemes genuinely and effectively possible in law and in practice, even across borders" (19). Its article 17 (Out-of-court dispute settlement) additionally stipulates that "Member States shall encourage bodies responsible for the out-of-court settlement of, in particular, consumer disputes to operate in a way which provides adequate procedural guarantees for the parties concerned" (EPC 2000).

Taking into account the *Council Resolution of 25 May 2000,* the evolution of electronic commerce and, notably, the evolution of electronic dispute settlement systems, as well as the necessity to apply the principles formulated in *Recommendation 98/257/EC* to **mediation, but also to Ombudsmen and Consumer Complaint Boards** (described

as "any other third party procedures, no matter what they are called, which facilitate the resolution of a consumer dispute by bringing the parties together and assisting them, for example by making informal suggestions on settlement options, in reaching a solution by common consent"), the Commission has adopted a 2nd *Recommendation on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes*. The principles set out in this new Recommendation are more or less the same, namely: **impartiality**, **transparency**, **effectiveness,** and **fairness** (EC 2001).

The evolution of ADR and ODR (the latter as a "form of web-based cross-border dispute resolution") as instruments for improving the access to justice persuaded the Commission to respond to the specific request of Council by drafting in 2002 a *Green paper on alternative dispute resolution in civil and commercial law*. After an inventory of political and legal evolution of out-of-court settlement of disputes, both at the European Union and at Member States level, the Commission used the opportunity to raise 21 questions in order to establish the future approach of field development. The inquiries in question dealt with the political and legal implications of the initiatives that might be undertaken (Q.1-4), ADR and access to justice and, more specifically, the scope of contractual clauses regarding the recourse to ADR (Q.5-8), the limitation periods (Q.9), minimum quality standards, especially confidentiality (Q.10-16), the validity of consent and the effectiveness of ADR (Q.17-18) and, finally, the status, the training, the accreditation and the liability of third parties (Q.19-21) (see EC 2002).

For the purpose of the present article, we will mention only the question concerning ODR, namely Q.3: "**Should the initiatives to be undertaken deal separately with the methods of online dispute resolution (ODR) (an emerging sector which stands out because of its high rate of innovation and the rapid pace of development of new technologies) and the traditional methods, or on the contrary should they cover these methods without making any differentiation**?"

A *Summary of responses to the Green Paper on alternative dispute resolution* was published by the Commission on the 31st of January 2003. The Commission received more than 160 responses from governments of Member States and third countries, providers of ADR, providers of training and information in ADR, academia, judges, bar associations and solicitors' firms, chambers of commerce, professional federations, commercial companies, and consumers' associations. The diversity of responses demonstrated the complexity of the subject and the variety of approaches: technical, social, legal, and political. Summarizing the answers for Q.3, the Commission stated that **"[w]hile some consider that it is too soon to judge, given the slow development of ODR, most take the view that ODR and other types of ADR should be dealt with in exactly the same way, with only the technical requirements of ODR being considered separately**" (EC 2003, p. 3).

On the 27th of January 2003, the Council of the European Union adopted the *Directive 2002/8/EC* on legal aid for cross-border disputes. The Directive provides, both in its recital (21) and in the article 13, that "legal aid is to be granted [...] for out-of-court procedures such as mediation, where recourse to them is required by the law, or ordered by the court" (Council 2002, recital 21).

The *European Code of Conduct for Mediators* was launched at a conference in Brussels on 2 July 2004. It has been developed with the assistance of the European Commission and "sets out a number of principles to which individual mediators can voluntarily decide to commit, under their own responsibility. It is intended to be applicable to all kinds of mediation in civil and commercial matters"(EC 2004). The Code of Conduct contains a series of provisions regarding **competence, appointment and fees of mediators and promotion of their services** (chapter I), **independence and impartiality of mediators** (chapter II), **the mediation agreement, process and settlement** (chapter III) and **confidentiality.**

As a direct result of the consultation conducted through the *Green Paper on alternative dispute resolution,* the Commission submitted for approval to the Council and the European Parliament, on 22nd of October 2004, the *Proposal for a directive on certain aspects of mediation in civil and commercial matters* (EC 2004a). The proposal was adopted four years later, with a series of amendments, and become*Directive 2008/52/EC* (EPC, 2008).

The objective of the directive is facilitation of access to ADR and promotion of such methods by "encouraging the use of mediation and by ensuring a balanced relationship between mediation and judicial proceedings" (EPC 2008, article 1). Its scope is limited to cross-border disputes of civil and commercial matters with the exception of the rights and obligations which are not at the parties' disposal. The directive is not also applicable to the revenue, customs or administrative matters or "to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*)" (idem). The term for transposition of the directive into the legal system of the Member States was 21st of May 2011. According to its article 11, until the 21st of May 2016, the Commission have to submit to the European Parliament, to the Council, and to the European Economic and Social Committee, a report on the implementation of the directive. The report must present the development of mediation throughout the European Union and the impact of the directive in the Member States plus a series of proposals to adapt the directive, if necessary.

For the purpose of the present article it is worth mentioning that at the point (9) of the preamble, the directive clearly states that "[it] **should not in any way prevent the use of modern communication technologies in the mediation process**" (EPC 2008, recital 9).

The *Directive 2004/39/EC on markets in financial instruments* provides that "Member States shall **encourage the setting-up** of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes […], using existing bodies where appropriate" (EPC 2004, article 53).

The *Directive 2006/123/EC on services in the internal market* imposes an obligation of information of the recipient by the provider if the latter is "subject to a code of conduct, or memberof a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement" (EPC 2006, article 22). The provider must also "specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement" (idem).

The article 83 (Out-of-court redress) of the *Directive 2007/64/EC on payment services in the internal market* provides an obligation for the Member States to **put in place** "adequate and effective out-of-court complaint and redress procedures for the settlement of disputes between payment service users and their payment service providers […] using existing bodies where appropriate" (EPC, 2007).

Article 19 of *Directive 2008/6/EC (Postal Services Directive)* stipulates an obligation for the Member States to "encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users" (EPC 2008a).

The *Directive 2008/48/EC on credit agreements for consumers* provides, in its article 24 ("Out-of-court dispute resolution"), the same obligation for the Member States as Directive 2007/64/EC, namely to **put in place** "adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements […] using existing bodies where appropriate" (EPC 2008b).

The *Directives 2009/72/EC concerning common rules for the internal market in electricity* and *2009/73/EC concerning common rules for the internal market in natural gas* provide the same obligation for the Member States, namely that an independent mechanism such as an energy ombudsman or a consumer body be put in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements (EPC 2009 art. 3 p. 13, respectively EPC 2009a art. 3 p. 9).

Finally, the *Directive 2009/136/EC on electronic communications networks and services* stipulates that Member States have **to ensure that** "transparent, non-discriminatory, simple and inexpensive **out-of-court procedures are available** for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services" and they have to adopt measures to ensure that "such procedures enable disputes to be settled fairly and promptly" (EPC 2009b), while *Directive 2009/140/EC* provides, regarding the cross-border disputes, that Member States **may make provision** "for the competent national regulatory authorities jointly

to decline to resolve a dispute where other mechanisms, **including mediation**, exist and would better contribute to resolving of the dispute […]" (EPC 2009c).

In 2007 and 2009, two separate studies were conducted on the usage of ADR throughout the European Union, at the request of the European Commission. The first study, actually a research project conducted by the University of Leuven, was dedicated to the "analysis and evaluation of alternative means of consumer redress other than redress through ordinary judicial proceedings". The research was conducted in the 25 (then) Member States of the European Union, as well as in Australia, Canada, and the United States of America and it was published on the 17th of January 2007 (Leuven 2007). The second study was published on 16 October 2009 by the Civic Consulting of the Consumer Policy Evaluation Consortium. It was commissioned by the DG SANCO and it provided an overview of existing ADR schemes in the EU, their work, identifies the main challenges, while it also evaluated the conformity of ADR schemes with the Commission Recommendations of 1998 and 2001 (Civic Consulting 2009).

In May 2010, the European Union`s strategy *Digital Agenda for Europe*(EC 2010) was launched aiming to contribute to sustainable economic growth by making use of the new digital technologies. Its action 14, called "Explore the possibilities for Alternative Dispute Resolution", provided a legislative proposal for consumer ADR in the EU by the end of 2011 and an EU-wide ODR system for cross-border electronic transactions by 2012. The main problem identified being the difficulty to resolve online cross-border shopping disputes due the involvement of different legal systems and procedures, EU action was considered necessary in order to make the most of the current ADR schemes.

In November 2011, after the consultation procedure conducted in the same year, the European Commission launched the proposals for a *Directive on alternative dispute resolution for consumer disputes* (Directive on consumer ADR) and for a Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR). The proposals were approved after two years by the European Council and the Parliament, becoming the *Directive 2013/11/EU on alternative dispute resolution for consumer disputes* (ECP 2013) and the *Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes* (ECP 2013a).

The legal framework – a brief presentation

On 29 November 2011, the European Commission submitted to the European Parliament and the Council two legislative proposals aimed primarily at ensuring that all the EU consumers would be able to settle their disputes with the traders out of court, regardless of the type of product or service purchased and no matter if the purchase took place in their country or abroad, directly or via the Internet. Thus, the Commission aims to eliminate the main obstacles to the effectiveness of alternative dispute resolution (ADR): insufficient geographical coverage, insufficient knowledge of ADR and improv-

ing the quality of ADR procedures. Also, it is estimated that this possibility of resolving consumer disputes will help consumers to save about 22 billion Euros/year (EC 2011).

According to article 288 of the Treaty on the Functioning of the European Union, a regulation has general application, it is binding in its entirety and directly applicable in all Member States, while the directive is mandatory for each Member State only concerning the result to be achieved, leaving at the discretion of national authorities the choice of form and methods.

As time frame, the Commission expects that Member States will implement the ADR/ODR rules by July 2015 and that the ODR platform will be operational in January 2016 (see the Commission web page at the address http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm).

The general objectives of both acts are the proper functioning of the internal market and a high level of consumer protection by recourse to high quality ADR procedures (the Directive) and by providing a European ODR platform facilitating high quality out-of-court resolution of disputes between consumers and traders online (the Regulation).

The specific objectives of the Directive and the Regulation, as formulated in the impact assessment document (EC 2011a) are the insurance of access to ADR procedures, a better information of consumers and businesses about the existence of these procedures, the insurance of quality ADR services, and the existence of a reliable ODR mechanism for cross-border disputes arising from the electronic commerce.

In order to achieve these objectives, the Directive imposes three major types of obligations on the Member States: a) obligations to access to ADR entities according to a series of requirements and principles regulating such entities and procedures (art. 5-12); b) obligations related to information and cooperation (art. 13-17) and c) obligations for monitoring the ADR entities and notification (art. 18 to 20). The Regulation provides the establishment of a European ODR platform (art. 5-14).

It should be noted that the Directive is applicable only to the out-of-court proceedings for resolution of contractual disputes by a third entity (a natural or a legal person such as a conciliator, a mediator, an arbitrator, an ombudsman, or a Board of Appeal) who proposes or imposes a solution orbrings the parties together in order to facilitate an amicable solution. Such procedures exclude the resolution of disputes through the departments of complaint settlement of companies, the settlement of disputes by persons employed exclusively by traders, the direct negotiations between consumers and traders, whether or not they are represented and the judges attempts to resolve the dispute in legal proceedings. Moreover, the Directive shall not apply to: non-economic services of general interest; disputes between traders; procedures initiated by a trader against a consumer; health services and public providers of further or higher education.

Next, we will summarize the main provisions of the Directive having in mind the obligations imposed on Member States.

a) **Obligations of Member States on access to ADR** involve that they have to ensure the possibility that disputes may be submitted to ADR entities that meet a series of conditions. ADR entities may be, as noted above, both legal entities – private or public persons, since Member States have the possibility to create them if they do not exist yet – as well as individuals.

The principles on which the fulfilment of these obligations relies are the following: expertise, independence and impartiality (art. 6), transparency (art. 7), effectiveness (art. 8), fairness (art. 9), liberty (art. 10) and legality (art. 11).

Thus, individuals must have an expertise in the field of ADR or judicial resolution of consumer complaints, and a general understanding of law. Member States must ensure that such persons possess the necessary knowledge and skills plus an adequate experience in ADR procedures and that they are impartial (they cannot be dismissed without good reason and they are not in a situation of conflict of interest with either party to the dispute).

Regardless of their form, ADR entities should have a web site allowing online submission of complaints and exchange of information by electronic means. Also, the site should contain, among others, information on the financing sources, the rules of procedure used, the working languages, the costs incurred by the parties (if applicable), the approximate duration of the procedure and the legal effect of the outcome of the ADR procedure. Annual activity reports must be published, in both electronic and printed form, encompassing a range of information on the number and types of complaints handled, recurring problems arising between traders and consumers, the success rate of the procedure, the average necessary to resolve disputes etc.

Furthermore, Member States shall ensure that ADR procedures are effective, easily accessible to both parties wherever they are located, free or available at moderate costs for consumers, and the dispute is settled within 90 days of the date on which an ADR entity has received the complaint. The 90 days term may be extended for more complex cases.

Regarding the fairness of the ADR proceedings, Member States must ensure the existence of the possibility of expressing the views of the parties, the knowledge of the evidence, of the arguments and of the outcome of these proceedings. In particular, consumers should be informed before accepting the proposed solution about the option they have to accept it or not, the legal consequences of a possible agreement and the fact that the proposed solution may be less advantageous than a judgment based on applicable law.

The principles of **liberty** and **legality** (art. 10 and 11) were added during the lawmaking process. They were not part of the initial proposal of the Commission. According

to article 10, an agreement to submit complaints to an ADR entity "is not binding on the consumer if it was concluded before the dispute has materialized and if it has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute". On the other hand, according to the same article, in the ADR procedures concluded with an imposed solution, such a solution is binding on the parties only if they were informed in advance about its compulsory nature and if the parties expressed their agreement. According to the legality principle stipulated in article 11 of the Directive, an imposed solution on the consumer cannot result in its deprivation of the protection afforded to him by the law of its Member State of residence (in a situation of conflict of laws) or by the law of the Member State where the consumer and the trader have their residence (in a situation where there is no conflict of laws).

b) Obligations of Member States on information and cooperation are probably the most sensitive point of the Directive, since for their fulfilment all traders have to inform consumers about the competent ADR entities to settle eventual disputes, by posting the relevant information on their website, and to include such information in the contracts and general terms and conditions. ADR entities are encouraged to associate in European networks in order to better approach the cross-border litigation in a particular field and to cooperate with national entities responsible for the implementation of EU legislation on consumer protection. The cooperation includes mutual exchange of information on trade practices of traders about which consumers have lodged complaints, with the compliance of applicable rules on protection of personal data under Directive 95/46/EC.

In our view, the fulfilment of such obligations, as they are regulated by the Directive, has a double impact: on one hand, it definitely provide an advantage for ADR entities that traders will choose and propose to consumers, on the other hand the Directive, unlike the Commission's proposals, stipulates the compliance of ADR entities with the principle of confidentiality. This is one of the pillars on which the recourse to out-of-court settlement of disputes lays. One of the main reasons for choosing mediation or arbitration over court is precisely the certainty that what is discussed in mediation or arbitration room "remains in that room", including the identity of the parties, data concerning the dispute or documents which the parties use in order to support their cause. This is a major improvement of the Directive in the law-making process and it will certainly have a positive effect on its effectiveness.

c) Obligations of Member States concerning the monitoring of ADR entities involve the appointment of a competent authority to verify that such entities comply with the scope of the Directive. In this respect, it is necessary that ADR entities communicate to the competent authorities a series of information concerning their identification and contact data, including those of the individuals responsible for the settlement of disputes, the structure and sources of funds, the procedural rules, the fees charged, the average length of procedures, the language of procedure and other information neces-

sary in order to establish the competence, as well as a statement on whether the entity qualifies as and ADR entity falling within the scope of the directive. Also, every two years, ADR entities must submit to the competent authorities statistics on the number of disputes submitted and types of complaints on which they were related, the success rate, the average time for the settlement, the rate of compliance with the outcomes of ADR procedures, an assessment of effectiveness of cooperation within networks of ADR entities and an assessment of the effectiveness of ADR procedures offered by the entity.

Based on information received, the competent authorities shall assess whether ADR entities fall within the scope of the Directive and make-up a list with which they further notify to the European Commission.

Although the Directive does not expressly provides so, from the structure of the text results that only those ADR entities included on the list will be proposed by traders to consumers for settling any disputes. Moreover, only such entities will be able to operate within the framework of Regulation no. 524/2013 (Regulation on consumer ODR) (ECP 2013a, article 5).

Concerning the Regulation on consumer ODR, the obligations of Member States are the following: they have to inform the Commission about whether or not their legislation allows for some disputes (namely, the disputes concerning contractual obligations stemming from online sales or service contracts between a consumer resident in the Union and a trader established in the Union, which are initiated by a trader against a consumer) to be resolved through the intervention of an ADR entity and which ADR entities deal with such disputes (ECP 2013a, article 2), they must designate ODR contact points and communicate their name and contact details to the Commission (ECP 2013a, article 7), they must ensure that ADR entities, the centres of the European Consumer Centres Network, the competent authorities defined in the Directive 2013/11/EU, and, where appropriate, the bodies designated in accordance with the same directive provide an electronic link to the ODR platform (ECP 2013a, article14) and they have to encourage consumer associations and business associations to provide an electronic link to the ODR platform and, finally, the competent authority of each Member State must assess whether the ADR entities comply with the obligations provided by the Regulation (ECP 2013a, article 15).

The impact on Romanian legislation – future challenges

The *Study on the use of Alternative Dispute Resolution in the European Union* of 2009 pointed to a number of problems, such as gaps in the coverage of ADR (both geographically and by sector), lack of awareness by consumers and businesses, failure to respect the core principles laid down by the two Recommendations and incomplete offers of ADR schemes to solve consumer disputes related to e-commerce transactions.

According to the Romanian Council of Mediation, in Romania there are almost 10,000 registered mediators in the roster of authorized mediators (the exact figure is 9,150, both active and inactive mediators) (RCM 2014), 118 professional associations in the field of mediation (RCM 2014a), 11 organizations which provide mediation services (RCM 2014b), and 110 certified training providers (RCM 2014c). However, both the study of 2009 and the Impact Assessment accompanying the proposals for the Directive on consumer ADR and for the Regulation on consumer ODR indicates that **few ADR schemes exist – namelytwo:** The National Authority for Consumer Protection (ANPC) and The National Authority for Management and Regulation in Communications of Romania (ANCOM) (Civic Consulting 2009, p. 88), the latter being "to date the only scheme notified to the European Commission". They are both public ADR schemes and no private ADR provider is notified to the Commission.

The same study shows that "according to the European Consumer Centre (the only responding stakeholder organisation), there are gaps in most sectors of industry, i.e. banking, insurance, investment/securities, transport, postal services, package travel/ tourism, energy, water supply and heating, food services/products, non-food consumer goods, construction, games of chance, as well as scams and pyramid schemes. No data concerning geographical coverage is available" (Civic Consulting 2009, p. 89).

The EU studiesalso show that there is a strong correlation between the development of ADR in a specific country and the level of consumer trust in the ADR methods, that is in the countries where ADR is already well developed (Denmark, Sweden, Finland, Germany, Luxemburg, the Netherlands, and Czech Republic) an average of 56% of consumers report having obtained a satisfactory redress from traders, while in the countries with the least developed ADR (Bulgaria, Cyprus, Lithuania, Slovenia, Romania, and Latvia) satisfactory redress was obtained only by 23% consumers (EB 342, p.75)". (EC 2011a, p. 31)

The confidence of the Romanian public in ADR methods was not measured yet, and the continuously changing legislation in the field has a rather confusing effect. For example, the Law no. 192 on mediation and organisation of the profession of mediator, issued 16 May 2006, was amended 9 times – by Law no. 370/2009, Government Ordinance no. 13/2010, Law no. 202/2010, Law no. 76/2012, Law no. 115/2012, Government Emergency Ordinance no 90/2012, the Government Emergency Ordinance no 4/2013, Law no. 214/2013, and last time by the Government Emergency Ordinance No 80/2013. Recently, the Constitutional Court ruled that the norm making compulsory the information session on mediation in certain civil and commercial disputes infringes the Romanian Constitution (CCR 2014). Making the attendance at an information session on mediation a preliminary condition for having access to a trial by a judge was regarded as a measure to boost the usage of mediation by the litigants. However, mediation is not a free of charge procedure and there are no public funds available to cover the

administrative costs of such a procedure, therefore the access to justice was somehow hampered by imposing an additional fee to the litigant.

Nevertheless, concerning ODR, there are no provisions in the Romanian legislation insofar. It is not expressly forbidden, nor is it encouraged or even mentioned.

In order to implement the provisions of the Directive and the Regulation, Romanian authorities will have to change the recently adopted legislation again. Apart from the Law on mediation already mentioned, some other provisions need revision, such as the **arbitration law** (Law no. 335/2007 on Chambers of Commerce in Romania), **specific legislation on consumer protection, in particular in the field of electronic commerce** (Government Ordinance no. 21/1992 on consumer protection, republished, Law no. 365/2002 on electronic commerce, republished, Government Ordinance no. 130/2000 on the regime of distance contracts, republished and amended, Law no. 363/2007 on combating unfair practices of traders andLaw no. 193/2000 on unfair terms in contracts concluded between traders and consumers, to mention only a few.

There is a multitude of possible choices for the Romanian authorities in order to give an impetus to ADR schemes, since "the obligation of ensuring that all consumer disputes can be referred to ADR (i.e. full coverage), does not imply that Member States have to set up separate ADR schemes for each market sector" (EC 2011a, p. 47). One is the possibility to establish **one public ADR scheme covering all consumer disputes in all sectors** – the centralized approach (see also EC 2011a, p. 48). The National Authority for Consumer Protection is already in place, **but the perspective that it would be the only ADR and ODR scheme to settle the consumer-trader disputes is not a very appealing one for the Romanian mediators**. In our view, that would be the first option, considering the financial aspect. The efficiency of such an approach, having in mind the lack of qualified personnel, is strongly debatable.

Another option would be **to create separate ADR schemes for the sectors that are not already covered**, or **to encourage private ADR schemes already in place to organize in umbrella entities for the exposed sectors** (idem). As I mentioned before, there is already a series of organizations active in the field of mediation and a large number of individuals trained and active in the field of mediation. Probably, the never ending debates among the professionals (namely the rivalry between mediators and lawyers, public notaries,other law-relatedprofessions) about better regulation of the field and the continuous clash among different interest groups will continue and will influence future legislation.

Finally, **the notification of existing – but not notified – ADR schemes** (idem) should be taken into account for the obligation ofensuring full coverage of ADR. The general public, the private actors, and the public authorities are still poorly informed on the notification procedure, its steps and requirements.

The costs incurred by Romania will depend on the way the authorities choose to meet the obligation of full coverage. Time, however, is running short, since the deadline for adoption of the necessary provisions by laws, regulations, or administrative acts in order to comply with the Directive is 9th of July 2015. The Regulation is already in force and directly applicable in all Member States. Some of its articles shall apply from the 9th of January 2016, after the set-up of the ODR platform.

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

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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.*

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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.

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