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MEDIATION DURING THE SERVING OF A SENTENCE?

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Abstract: *The legislator has defined mediation, in Article 1, paragraph 1, of Law No. 192/2006 on Mediation and the Organization of the Mediator Profession, as a method of amicably resolving conflicts with the assistance of a specialized third party acting as a mediator, under conditions of neutrality, impartiality and confidentiality, and with the free consent of the parties. The same law provides that mediation may also be used in criminal cases, covering both civil and criminal aspects. In the latter case—that is, on the criminal side—mediation takes place under the expressly stipulated conditions, up to a certain point, namely the reading of the court complaint. In this context, we believe it is necessary to analyze the institution of mediation in light of the legal provisions in force, with reference to the protocol between the Mediation Council and the National Prison Administration.*

Keywords*: mediation; sentence; alternative dispute resolution; criminal matters*

1. Mediation—a Way to Resolve a Conflict

Mediation, as an alternative method of resolving a conflict between two or more parties, may also be used in criminal cases. From the perspective of the parties involved in the conflict, the purpose of resorting to this voluntary procedure is to resolve the conflict; however, unlike when a case is tried in court—where one party loses and the other wins—resorting to mediation leads to a mutually acceptable solution, with both parties benefiting from this procedure. From the perspective of law enforcement authorities, the purpose of resorting to mediation is to reduce prison overcrowding. This objective was established as early as 1999 at the European Union level, when the Committee of Ministers adopted Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation. This document emphasized mediation between the victim and the offender as a necessary measure to avoid imprisonment, in an effort to replace criminal sanctions with community sanctions and measures (Recommendation No. R (92) 16). The latter expression is defined as "sanctions and measures which maintain suspects or offenders in the community and involve some

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restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment" (Recommendation CM/Rec (2017) 3). Even then, mediation was viewed as a "measure of diversion" (Recommendation CM/Rec (2017) 3), alongside victim compensation, aimed at reducing incarceration and focusing on the use of community sanctions.

We must also not lose sight of Recommendation (99)19—concerning mediation in criminal matters, adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies. In recital 1 of the Preamble of this latter recommendation it is established that mediation in criminal matters is "a flexible, comprehensive, problem-solving, participatory option complementary or alternative to traditional criminal proceedings" (Recommendation (99)19).

Under Romanian law, Law No. 192/2006 on mediation and the organization of the profession of mediator is in force; this law provides a definition of mediation and also emphasizes that the procedure is voluntary and may be used to resolve any dispute, including those of a criminal nature—in the latter case, even if a case is already pending before a court. Article 1(1) of Law No. 192/2006 provides that: "Mediation is a method of resolving conflicts amicably, with the assistance of a third party who specializes as a mediator, under conditions of neutrality, impartiality, and confidentiality, and with the free consent of the parties".

2. An Overview of Mediation at the International Level

Article 33 of the United Nations Charter provides for mediation, along with "negotiation, enquiry, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice, as the primary means for the parties to settle any dispute between them when the continuation of the dispute is likely to endanger the maintenance of international peace and security" (United Nations Charter, 1945).

In this regard, nowadays there are two global pillars in the field of mediation, namely: International Mediation Institute (IMI) and International Organization for Mediation (IOMed).

IMI is non-profit, public interest organization located in The Hague, Netherlands, that is "setting practice standards for mediators on a global scale" (About IMI - International Mediation Institute , 2026).

IOMed is an independent intergovernmental organization, established by China and other several countries, on August 29, 2025, with the entry into force of the IOMed Convention. It is desired to be "a key mechanism to apply mediation as a peaceful means to settle international

disputes enshrined in the UN Charter" (https://www.iomed.int/about-us/, 2026), although it is not one for the UN agencies.

At the level of the EU countries, there are differences between the bodies responsible for mediation, the matters in which it applies and the costs.

For instance, in the Czech Republic, there is the Probation and Mediation Service responsible for mediation in criminal matters, this service being subordinated to the Ministry of Justice. Mediation is possible in every area of law and for criminal matters it is free of charge for those involved, being paid by the state (https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/cz_en, 2026).

In Spain, mediation in possible in different areas such as: civil and commercial matters, the labor field, the family field, the contentious administrative field, the criminal field. In the latter field it applies most often to petty offences and sometimes to serious offences and it is strictly prohibited in the gender-based violence cases. Mediation is carried out by different bodies depending on the local authorities. In terms of cost, for instance, mediation in criminal matters offered by public bodies is free of charge (https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/es_en, 2026).

In Poland, there is the Division for Victims of Crime and the Promotion of Mediation within the Ministry of Justice and different Polish associations for mediation. District courts, non-governmental organizations and universities provide lists of permanent mediators. The most common matters in which it is used are civil, commercial, family law, criminal, minors etc. In criminal matters the mediator is appointed by the court and the procedure is voluntarily and free of charge (https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/pl_en , 2026).

In Slovakia, mediation is possible in civil, family, commercial contract and labor law and it is a paid by the hour service with no fixed price (https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/sk_en , 2026).

In France, there is no government authority for the regulation of the profession of Ombudsman and no official website for mediation. Mediation is carried out in different fields among which criminal matters. In this last matter, criminal mediation is carried out under the provisions of the Code of Criminal Procedure, by a criminal Ombudsman appointed by the public prosecutor, to ensure compensation for the victim and ensure the rehabilitation of the perpetrator. Mediation is prohibited in cases of domestic violence. Mediation is free of charge in criminal matters (https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/fr_en, 2026).

In Latvia, although there is no government body to regulate the profession of mediator, mediation is possible in different areas, such as: civil disputes, family law, commercial law and criminal matters. There are two organizations to carry out mediation in criminal matters, as follows: Mediation and ADR and Integration for Society. The latter's main objective is the

support of the victims of offences. Mediation is not free of charge except for criminal matters and cases involving children's rights (https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/lv_en, 2026).

At the EU level, there is the Council of the Notariats of the European Union (CNUE), the official body to represent this profession in the relation with the European institutions. This body is promoting notarial mediation, given the fact that in many EU countries notaries can also be mediators. At the same time, CNUE wants to create the common framework for the notarial mediation across Europe and in this regard, they have published the Practical guide to cross-border mediation in 2018 (https://www.notariesofeurope.eu/en/notaries/mediation-notaries/, 2026).

We can see from the information presented above that, at the international level, there is an increasing emphasis on alternative dispute resolution through mediation, including in criminal matters. To encourage this practice, we note that, in criminal matters, the procedure is free of charge in various European Union member states.

3. Mediation in Romania—The Current Situation in Criminal Matters

In Romania, mediation is governed by Law No. 192/2006 on mediation and the organization of the profession of mediator. This alternative dispute resolution method may be applied in any field, except for those prohibited by law. In the latter case, we refer to the provisions of Article 2, paragraph 4, of Law No. 192/2006, according to which "strictly personal rights, such as those relating to a person's status, as well as any other rights that the parties, by law, cannot dispose of by agreement or by any other means permitted by law, cannot be the subject of mediation. "Thus, mediation may also be used in criminal cases, both in the civil aspect—where applicable—and in the criminal aspect. While mediation may be used for any type of offence on the civil side, on the criminal side, the legislator has expressly provided in Article 67(2) of Law No. 192/2006 that mediation may be conducted only for offences where the withdrawal of the prior complaint or the reconciliation of the parties precludes criminal liability, under the conditions set forth in the law.

In 2014, it had been noted the lack of reports on mediation agreements in criminal cases during the criminal investigation phase (Mihai, & Teriș, 2014). We might add that there are also no statistics on mediation agreements in criminal cases concluded prior to this phase.

There are statistics compiled by the Prosecutor's Office attached to the High Court of Cassation and Justice regarding cases that were resolved through mediation in 2017 (Mediation Council, 2018). Of the total 415,919 cases dismissed, 113 were based on mediation agreements. The statistics indicate that this latter figure is 20% higher than the number of cases resolved through mediation in 2016. Although more than nine years have passed since these statistics were presented to the public, we note that, on the one hand, there are currently no more recent statistics, and, on the other hand, there were operational issues even within the

Mediation Council itself—issues that culminated in the suspension (https://consiliuldemediere.ro/, 2026) of this body's activities for a period of nearly seven months, from October 2025 to May 2026. According to Article 17(1) of Law No. 192/2006, the Mediation Council is "an autonomous body with legal personality, acting in the public interest," which organizes all mediation activities at the national level.

We agree with the opinion expressed in the specialized literature (Mihai, & Teriș, 2014) that, to promote mediation as an alternative to conflict resolution through the courts, state intervention is necessary to inform people of their option to resort to this alternative. We also believe that it would be appropriate, following the example of other European countries, as we noted in the previous section of this paper, to consider making the mediation process into criminal matters free of charge. This would encourage the use of this alternative to avoid wasting time and financial resources.

One encouraging development in terms of promoting mediation as an alternative means of resolving conflicts in criminal matters is the fact that the Mediation Council has signed two memoranda of understanding (https://consiliuldemediere.ro/protocoale, 2026): one with the Prosecutor's Office attached to the High Court of Cassation and Justice, and one with the National Prison Administration.

With regard to the Protocol concluded with the Prosecutor's Office attached to the High Court of Cassation and Justice (https://consiliuldemediere.ro/lib/pgajux/Protocolul20incheiat20cu20Parchetul20General-m4o6ctvp.pdf, 2026), signed in 2016 and automatically extended to the present, we note, from Chapter II of the document under review, that its purpose was to inform citizens about the mediation procedure, from the perspective of what this method of conflict resolution entails, as well as the role of mediators, awareness of the advantages of this procedure, and the Register of Mediators, the ultimate goal being, in essence, to relieve the public prosecutor's office and, consequently, the courts, of all cases that can be resolved through mediation.

The protocol sets forth obligations for both parties. For the Mediation Council, one of these obligations is to provide the necessary materials for participants from the prosecutor's office during professional training sessions. Accordingly, the Prosecutor's Office attached to the High Court of Cassation and Justice is required to invite representatives of the Mediation Council to the professional training sessions it organizes, whenever issues of mutual interest are discussed. At the same time, it is important to note the obligation that the General Prosecutor's Office has undertaken, namely, to provide, on a semi-annual basis, a report on the mediation agreements concluded and the cases resolved through mediation at each prosecutor's office.

More recently, specifically on March 26, 2024, with a term of three years and the option to extend it through an addendum, the Mediation Council entered a protocol (https://consiliuldemediere.ro/lib/pgajux/SKM_C22724072313430-m4o6dvnt.pdf, 2026) with the National Prison Administration. One might wonder what the purpose of this latter

protocol is, given that, on the one hand, mediation may take place, in the criminal aspect of the case, until the complaint is filed with the court, and in the civil aspect until the case is finally resolved. The question naturally arises when considering Article 1 of the Protocol in question, according to which its purpose is "institutional cooperation for the implementation of the mediation procedure" (https://consiliuldemediere.ro/lib/pgajux/SKM_C22724072313430-m4o6dvnt.pdf, 2026). In this context, with regard to persons held in pretrial detention in prison, mediation on the criminal aspect of the case, when the time limit set forth in Law No. 192/2006 is met, may take place, as well as during the criminal proceedings, until their conclusion, on the civil aspect of the criminal case. With regard to individuals who are incarcerated to serve the prison sentences to which they have been sentenced, the question arises as to whether mediation can still be considered a *sui generis* (H.C.C.J Decision No. 9/2015) ground for exemption from criminal liability, given that criminal liability has been definitively established by the court and the individual is incarcerated. We are not considering the case of individuals sentenced to life imprisonment because, in accordance with the provisions of the Criminal Code and Law No. 192/2006, in what the criminal aspect of the case is involved, mediation cannot intervene because none of the offences for which the law prescribes life imprisonment are subject to prosecution based on a prior complaint by the victim, and none of them provide for reconciliation as a ground for exempting the perpetrator from criminal liability. Examples of such offences include: aggravated murder (Article 189 of the Criminal Code), treason by aiding the enemy (Article 396 of the Criminal Code), acts endangering national security (Article 401 of the Criminal Code), surrender (Article 421 of the Criminal Code), genocide (Article 438 of the Criminal Code), crimes against humanity (Article 439 of the Criminal Code), etc. Furthermore, we do not consider sentencing to the enforcement of a fine because, even though there are offences for which the alternative penalty provided by law is a fine, and the conditions of Law No. 192/2006 are met, the enforcement of such a penalty does not require the person to be incarcerated and, consequently, it is not covered by the protocol in question. We can consider two aspects, namely: one relating to the fact that, in both criminal and civil aspects of the matter, mediation can no longer take place because the final resolution of the case and the conviction of the offender leave no room for mediation, rendering it moot, as the conflict has been resolved by the court; and another regarding the awareness among convicted individuals that there is a voluntary alternative means of resolving conflicts, including those of a criminal nature, and that they may choose it should they ever find themselves in the situation that led to their conviction.

From the perspective of the protocol in question, this second aspect—informing persons deprived of their liberty about mediation—is paramount, as it is the protocol's purpose; however, Article 7, paragraph 3, of the Protocol also addresses the authorized mediator's access to the correctional facility in cases where the conclusion of a mediation agreement is intended to result in the release of the person deprived of liberty. This latter provision validates the first working hypothesis we expressed earlier in this paper.

At the same time, there may also be a third situation in which mediation is possible, even if the person is currently serving the prison sentence to which they were sentenced. This is the case of a person sentenced to imprisonment who is subsequently charged with committing another offence prior to the commencement of the sentence; for this offence, mediation is possible either in the civil aspect of the case or in the criminal aspect, in accordance with the express provisions of Law No. 192/2006.

Through the points mentioned above, we have demonstrated that the answer to the question in the title is yes, and we have also explained under what conditions.

Upon analyzing recent case law in criminal matters (Decision No. 1046/2026 of Bucharest Sector 5 Court, Decision No. 804/2026 of Tulcea Court of First Instance, 2026), we note another important aspect regarding the effects of a mediation agreement concluded in the civil part of a case. Thus, a mediation agreement reached with the civil party during the trial on the merits—which demonstrates that the convicted person has fully discharged their civil obligations or will discharge their obligations within a time limit of one year—constitutes proof of fulfillment of one of the conditions required by law for the granting of conditional release to the convicted person.

4. Conclusions

Although there is not a great deal of data on the number of criminal cases resolved through mediation as a voluntary alternative means of settling a dispute, the combined efforts of various institutions to promote mediation and the recent decisions handed down by the courts, based on the existence of a mediation agreement, lead us to believe that mediation will become a solution used more frequently to resolve conflicts. Although in our country mediation in criminal matters is not free—as we have shown in this paper is the case in other countries—the costs are not as high as those of conducting a criminal trial over a period of several years. We believe that the campaign to inform litigants about their rights—including the right to resort to mediation—should continue, as this would achieve two objectives: resolving the conflict in accordance with the wishes of the parties involved, at a lower cost and within a reasonable time frame and reducing the workload of prosecutors' offices and courts.

5. Bibliography

United Nations Charter, the founding document for the United Nations, signed on June 26, 1945, entered into force on October 24, 1945, online, available at: https://www.un.org/en/about-us/un-charter/full-text, accessed: 06.05. 2026.

Recommendation No. R (92) 16 of the Committee of Ministers addressed to member states European Standards on Community Sanctions and Measures, adopted by the Committee of Ministers on 19 October 1992 at the 482nd meeting of the Ministers' Deputies, online, available at:

https://search.coe.int/cm#{%22CoEIdentifier%22:[%2209125948801c4d51%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}, accessed: 05.05.2026.

Recommendation (99)19—concerning mediation in criminal matters, adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies, online, available at: https://search.coe.int/cm#{%22CoEIdentifier%22:[%220900000168062e02b%22],%22sort%22:[%22CoEValidationDate%20Descending%22]} , accessed: 05.05.2026.

Recommendation No. R (99) 22 of the Committee of Ministers concerning prison overcrowding and prison population inflation, adopted by the Committee of Ministers on 30 September 1999 at the 681st meeting of the Ministers' Deputies, online, available at: https://rm.coe.int/168070c8ad , accessed: 05.05.2026.

Recommendation CM/Rec (2017) 3 of the Committee of Ministers on the European Rules on community sanctions and measures, adopted by the Committee of Ministers on 22 March 2017 at the 1282nd meeting of the Ministers' Deputies, online, available at: https://rm.coe.int/168070c09b , accessed: 05.05.2026.

Law No. 192/2006 on mediation and the organization of the profession of mediator, published in the Official Gazette of Romania no. 441 of May 22, 2006, as subsequently amended and supplemented.

Law No. 286/2009 on the Criminal Code, published in the Official Gazette of Romania No. 510 of July 24, 2009, as subsequently amended and supplemented.

The Decision No. 9/2015 of the High Court of Cassation and Justice, issued to resolve a point of law, published in the Official Gazette of Romania No. 406 from June 9, 2015.

Mihai, A.V., Teriș, E., 2014. *Ce mai mediem? Statistică și întrebări/ What else are we mediating? Statistics and questions*, available at: Ce mai mediem? Statisticășiîntrebări - JURIDICE.ro, accessed: 12.06.2026.

Mediation Council, 2018. Statistics from the High Court of Cassation and Justice (PÎCCJ) on the number of cases resolved through mediation in 2017, online, available at: https://www.universuljuridic.ro/consiliul-de-mediere-statistica-piccj-referitoare-la-numarul-cazurilor-solutionate-prin-mediere-anul-2017/, accessed: 08.05.2026.

Decision No. 1046/2026 of April 28, 2026, issued by the Bucharest Sector 5 Court, case number RJ 9dg92d37g, online, available at: https://rejust.ro/juris/9dg92d37g, accessed: 13.06.2026.

Decision No. 804/2026 of May 22, 2026, issued by the Tulcea Court of First Instance, case number RJ e9662966e, online, available at: https://rejust.ro/juris/e9662966e, accessed: 13.06.2026.

International Mediation Institute (IMI), online, available at: About IMI - International Mediation Institute, accessed: 06.05.2026.

International Organization for Mediation (IOMed), online, available at: https://www.iomed.int/about-us/, accessed: 06.05.2026.

https://e-justice.europa.eu/topics/taking-legal-action/mediation/mediation-eu-countries/, accessed: 07.05.2026.

https://www.notariesofeurope.eu/en/notaries/mediation-notaries/, accessed: 07.05.2026.

https://consiliuldemediere.ro/, accessed: 12.06.2026.

https://consiliuldemediere.ro/protocoale, accessed: 12.06.2026.

Protocol with the Prosecutor's Office attached to the High Court of Cassation and Justice, signed in 2016, online, available at: https://consiliuldemediere.ro/lib/pgajux/Protocolul20incheiat20cu20Parchetul20General-m4o6ctvp.pdf, accessed: 13.06.2026.

Protocol with the National Prison Administration, signed in 2024, online, available at: https://consiliuldemediere.ro/lib/pgajux/SKM_C22724072313430-m4o6dvnt.pdf, accessed: 13.06.2026.