

## MY STORY

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### Explanation

*To change from law enforcement officer to mediator, in just a few years, may seem like a... surprising transformation. Yet it is possible if one doesn't rush to label and judge, but rather listens, understands, believes in communication and people's ability to reach those decisions that will generally satisfy their interests.*

The first time I wondered about the possibility to solve conflicts outside the criminal justice system was in 1997. Back then I was a specialist working for the Romanian National Administration of Penitentiaries, and during a visit of a Juvenile Detention Center happened to talk, among others, to a 16-year old minor who was serving a two-year sentence for theft. In fact, he had stolen a boxful of tile kept in storage in the neighbour's yard because he had wanted his own parents' kitchen to look just as nice as the neighbour's.

I then imagined a scenario where the police officer/prosecutor/judge, alerted by the wronged party, would talk to all the parties (the child and his parents, the neighbour), order the box of tile to be returned or the corresponding amount to be paid, ask the child to apologize for his action, have the parents express regret for the trouble caused and pledge to watch their offspring more carefully in the future, and also warn them of the consequences should such a thing happen again. Simple, efficient, not wasting time nor resources.

This scenario remained a fiction for at least 10 years after that, given that Romania was not ready in terms of legislation, procedures and attitudes to allow recourse, in certain cases, to restorative justice methods, namely mediation between the victim and the offender.

So I waited patiently and keenly for the moment when such an approach would become possible in Romania as well. In 2006 Law no. 192 was adopted with the aim to regulate mediation and organize the profession of mediator, thus creating the premises for using mediation in judicial cases, including criminal ones; later on, the updated Criminal Code and Criminal Procedure Code that came into force in 2014 expanded and developed the legal framework to promote mediation as a real alternative in settling certain criminal cases.

Since 2009 when I became an authorized mediator, I had the opportunity to mediate a number of cases in the criminal field – from theft, swindling, property damage to bodily harm and attempted rape. By facilitating the communication and negotiation between the victim and the offender (facilitative mediation), in separate or joint sessions, I was able, in most cases, to help both parties identify and meet their needs and interests in a short time compared to a trial in court, and with less of a financial and emotional drain. Every time, the parties expressed their satisfaction with how civilized and efficient the mediation was, and I was impressed by the emotion and gratitude families felt (parents, especially) for having avoided the painful, sometimes traumatizing, consequences of a criminal trial leading to imprisonment.

All the while, I understood when practitioners – lawyers, police officers, prosecutors and judges – who ought to be interested in alternative ways to solve disputes were showing reluctance and I tried to diminish it by being professional and by communicating. They play an essential role in informing clients/citizens about the possibility to use mediation, which is something of a novelty in a society where, traditionally, people's mentality is to go to court to solve a dispute.

The case I wish to refer to herein after is a case recently closed and the only one in my career where I felt the limits of facilitative mediation. The parties were a mother who was feeling threatened by her son and the son in question, a young man of 29, a school dropout, an alcohol and drug abuser; between them they had a 13-year history of family tension, misunderstandings and diverging opinions concerning the young man's life choices. The young man had also received punishments: since he was a child he had been punished with... isolation (bread and water, kicking him outside the family home at night) for having jumped on the couch and locking his grandfather on the balcony!

The young man possesses an IQ above average, he is a chess champion and passionate about computers, but his first year of high school, he chooses to drop out and begin experimenting with drugs, then ethnobotanicals, then alcohol. He lives with his parents and sister, and makes money by writing and selling computer programs.

At the end of 2015 he gets a 3-year prison sentence for illegal deprivation of liberty. His claim is that, under the influence of alcohol, he prevented a minor from leaving the public place they were at because he wanted to explain a particular situation to that minor. The court suspended the sentence and referred him to the Probation Service for supervision. Several conditions were imposed, including an obligation to attend social reintegration programs planned by the Probation Service or in cooperation with community organizations.

In spring 2016, after one of the usual fights about his drinking habit, the family no longer lets him enter the home he was living at. Angry and frustrated, he sends his mother a threatening SMS and kicks the door several times to gain access inside. The family calls the police and the young man who is in an extreme state, is taken and admitted in a psychiatric hospital for rehab.

While the young man is in hospital, the family goes to the police, presses charges for threat and, gets a restraining order that forbids him to return to his domicile for a period of 6 months. As he is not made aware of this, upon his discharge from hospital, the young man goes home, but again the family calls the police. He is charged with failure to follow a court order and placed under judicial supervision while his two crimes are being investigated.

Three months after all this, the young man's father dies of an incurable disease. The family deems the young man guilty of his father's health deterioration and cuts any contact with him whatsoever.

Left without a home and family, he gets help from Probation: he is offered a spot in a night shelter, enrollment in a psychological counseling program that treats alcohol addiction and he is put in touch with a non-governmental organization that provides assistance and jobs for people facing difficulties. He goes to an interview and gets hired by that NGO; he also decides to continue his education and enrolls in high school, in a low-attendance program.

For the first time in many years, he seems confident in himself and determined to appreciate the opportunities in front of him. He wishes to find a way to communicate with his family so, upon advice from his probation counselor, he calls a mediator to facilitate the dialogue with his mother and sister, thus complying with the restriction order.

The mother and daughter accepted my invitation to an information session on mediation, its stages and effects in criminal cases. They presented their view of the facts leading them to refuse any contact with the young man and said that while they did not want him in prison, their own safety and tranquility came first. They asked for time to reflect and consult with their attorney before deciding whether to accept mediation and asked who will guarantee that the young man will never bother them again and how.

I continued the dialogue with the mother over the phone, providing all the information she requested on the mediation procedure and its effects after the agreement is presented to the judge for approval. She repeated she needed time to think and that she would make a decision by the date of the court trial.

The day before the trial date she texted me to say she couldn't meet with the mediator because "she would be late getting home and her lawyer was very busy".

At the trial the next day, the young man was sentenced to 2 months in jail for the crime of threat and 1 month for his failure to follow a court decision. The jail sentences were merged, the harshest, of 2 months, being the applicable one, with a 10-day penalty increase. In addition, the court canceled the suspension under supervision of the 3-year prison sentence for deprivation of liberty and ordered that sentence to be served in full together with the 2 months and 10 days jail time.

The young man was incarcerated and he is now serving his sentence in a closed-type prison. If it had been 3 years or less, he would have been placed in a semi-open prison and could have kept the job he got only a week before and could have continued his education.

From the moment the mediator first made contact with the young man and his family until the date of the final conviction, we had less than 6 weeks. I felt that time was much too short for the mother to make a decision without the pressure of the approaching trial date. I sensed that the long period of misunderstandings and the recent tragedy of losing a husband and father are heavy, if not impossible, obstacles in the way of communication. There were big discrepancies in the "stories" of the two parties and I came to realize the limits of facilitative mediation in such complex cases. I believe that, in order to get different results, the parties would have needed the time required to go through a transformative mediation procedure, which would have allowed them to reach a mutual understanding of the situation, to accept a common "story" and, based on that, to identify possible realistic solutions.

I felt disappointment, but also the need to improve. Considering that, after incarceration, both the mother and the young man continued to communicate with the mediator, I have reason to hope solutions can still be found. And I will keep preparing for new challenges!