SOME CONSIDERATIONS REGARDING MEDIATION IN CRIMINAL PROCEEDINGS: HARMONIZING THE BENEFIT OF THE DOUBT WITH THE TENETS OF SECTION 67, SUBSECTION (2) OF LAW NO. 192/2006

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Abstract

Within the annals of Romanian legal practice, the mediation process has long been entrenched, holding its ground as a voluntary recourse for resolving conflicts entangled within criminal matters, alongside other mechanisms designed to absolve criminal culpability. This paper endeavours to scrutinize the milieu wherein this legal framework may encroach upon the sacrosanct principle of the benefit of the doubt, surveying the jurisprudence of the European Court of Human Rights and the prevailing domestic judicial ethos.

Keywords: *mediation, benefit of the doubt, European Court of Human Rights, European Court of Justice.*

1. Succinct preliminary reflections on mediation as a legal fixture

Per observations by legal pundits, the incorporation of mediation into the Romanian legal landscape transpired in the wake of the new millennium. A prerequisite for Romania's accession to the European Union entailed the codification of mechanisms facilitating alternative dispute resolution. Such measures were envisaged to bolster the efficacy of judicial proceedings and forestall the inundation of the legal apparatus[1].

In line with the directives[2] outlined by the European Commission for the Efficiency of Justice (CEPEJ) to enhance the implementation of recommendations concerning mediation in criminal matters, a fresh action plan has been earmarked for prioritization by the Council of Europe. Its aim is to streamline the effective enforcement of the instruments and regulations therein pertaining to alternative dispute resolution methodologies.

It has come to light that these nations have encountered sundry deficiencies in the domain of mediation between victims and wrongdoers, stemming from hurdles such as a dearth of awareness regarding restorative justice and mediation, alongside the absence of mediation procedures between victims and delinquents—both pre- and post-adjudication. Furthermore, the authority to steer parties towards mediation was vested solely in a solitary criminal entity, mediation costs proved substantial, and there was an

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[1] Ilie Dorin, Parascheva Dorin, *Procesul de mediere – conflict – comunicare - acord*, University Publishing House, Bucharest, 2018, p. 13-18.

[2] CEPEJ(2007)13, see entire article on https://rm.coe.int/comisia-europeana-pentru-eficacitatea-justitiei-cepej-ghid-pentru-o-ma/1680747ba2.

inadequacy of specialized professional training, resulting in mediators with markedly disparate academic credentials.

To this end, the aforementioned guidelines highlight the importance for member states to recognize and champion both existing action plans in the realm of mediation and newly formulated strategies. Such support can be extended through financial contributions or other means of assistance. Member states were encouraged to boost accessibility by raising awareness, promoting professional training, and exercising suitable oversight. The same guidelines underscore the pivotal role of magistrates and other legal bodies in the sphere of criminal law in facilitating procedures dealing with various disputes arising from criminal offenses. This assistance entails furnishing information and arranging awareness-raising sessions for both victims and offenders concerning the available avenues. Furthermore, the guidelines stress the significance of legal representation, proposing the implementation of an obligation or, at the very least, a recommendation for solicitors to advise parties on the potential benefits of engaging in mediation procedures. Naturally, the CEPEJ guidelines also cover directives pertaining to the quality of mediation action plans, confidentiality, the professional credentials of mediators, the involvement and safeguarding of children and minors, codes of conduct, international mediation, victims' rights, offenders' rights, mediation expenses for the parties, and other associated aspects.

In 2006, following several prior attempts, Law No. 192 was enacted and published in the Official Gazette No. 441 on May 22nd, 2006. Over the years, Romanian legislators have endeavoured to refine the legislation pertaining to this legal institution.

Mediation is elucidated as an alternative and discretionary approach to resolving disputes amicably, employing third-party individuals accredited as mediators. These mediators are obligated to maintain a stance of neutrality, impartiality, and confidentiality (Section 1 of Law No. 192/2006).

Sections 67 through 70 delineate specific provisions of note, as they regulate the mediation process within the sphere of criminal law.

The Romanian legislature has determined that mediation operates akin to the withdrawal of a prior complaint and the reconciliation of the parties in cases where such legal institutions are applicable. Consequently, we deduce that the same conditions required for these two institutions will similarly apply, with necessary adjustments, to mediation for it to be efficacious. It is also imperative to note an aspect derived from Decision No. XXVII of September 18th, 2006, of the High Court of Cassation and Justice, which entertained a motion for an appeal in the interest of the law. Thus, in the application of the provisions of Article 11, paragraph 2, letter b, with reference to Article 10, paragraph 1, letter h, second thesis of the former Code of Criminal Procedure, the judicial authorities did not adopt a uniform standpoint. It was observed that in the case of offenses for which reconciliation of the parties eliminated criminal liability, disparate solutions were pronounced. In this respect, certain courts held that the desire for reconciliation expressed by the aggrieved party through a request could be recognised, resulting in the cessation of criminal proceedings, even in the absence of both the defendant and the aggrieved party from the proceedings. Others opined that the conclusion of criminal proceedings subsequent to the reconciliation of the parties could occur even without the defendant present, deeming that they implicitly consented to the desires of the

aggrieved party. A third viewpoint pertained to the stance of other courts, which held that for the cessation of criminal proceedings, the parties must genuinely convey their agreement regarding complete and unequivocal reconciliation.

The High Court of Cassation and Justice deemed the latter perspective as accurate, contending that in accordance with the stipulations of Article 132 of the erstwhile Penal Code, 'the reconciliation of the parties in cases provided by law eliminates criminal liability and extinguishes the civil action.' Conversely, Article 10, paragraph 1, letter h) of the former Code of Criminal Procedure asserts that criminal action cannot be instigated, and if initiated, cannot be pursued if the prior complaint has been retracted or if the parties have reconciled.

From the aforementioned legal texts, it follows that reconciliation of the parties, in addition to eliminating criminal liability, also extinguishes the civil action exercised within the criminal proceedings, which constitutes an accessory to the criminal action.

The High Court also highlighted that unlike the withdrawal of the prior complaint, which is a unilateral act of volition, the reconciliation of the parties constitutes a bilateral action, inherently requiring the agreement of both the aggrieved individual and the defendant. It's worth noting that reconciliation is individual and must be conclusive, unambiguous, clearly demonstrating the agreement of the parties who have opted to reconcile. Consequently, unlike the scenario of the prior complaint, where the withdrawal applies universally and impacts all involved parties, reconciliation operates on a personal basis, absolving criminal liability solely concerning the defendant with whom the aggrieved person has reconciled.

From this standpoint, it has been observed that, as per the stipulations of Article 11, paragraph 2, letter b), in conjunction with Article 10, paragraph 1, letter h), second clause of the former Code of Criminal Procedure, the closure of criminal proceedings may only be decreed when the court directly confirms the consent of both the defendant and the aggrieved party to reconcile, as expressed in the courtroom, either in person or through duly authorized representatives, or when evidenced by notarized documents.

For the reasons stated, the Supreme Court accepted the appeal in the interest of the law filed by the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice and decided that the termination of criminal proceedings in cases where the reconciliation of the parties eliminates criminal liability can be ordered by the court only when the judicial panel directly observes the total, unconditional, and definitive consent of the defendant and the aggrieved person to reconcile, expressed in the court session by these parties, personally or through persons with power of attorney, or through notarised documents.

2. Mediation in Criminal Proceedings and the Presumption of Innocence from the Perspective of Article 67, Paragraph (2) of Law No. 192/2006

By means of Government Emergency Ordinance No. 24/2019, amending and supplementing Law No. 211/2004 concerning certain measures to ensure the protection of victims of crimes, as well as other regulatory enactments, issued in the Official Gazette No. 274 dated 10th April 2019, the provisions of Article 67, Paragraph (2) of Law No. 192/2006 concerning mediation and the organization of the mediator profession have been revised.

Consequently, the current rendition of the law reads as follows: *concerning criminal proceedings, the provisions relating to mediation are applicable solely in instances involving offenses for which, in accordance with the law, the withdrawal of the prior complaint or the reconciliation of the parties absolves criminal liability, provided the perpetrator has acknowledged the offence before the judicial authorities or, as stipulated in Article 69, before the mediator*.

From the preface of the Emergency Ordinance, it is discernible that the impetus behind the formulation of this regulation was to transpose a succession of provisions originally found in Directive 2012/29/EU of the European Parliament and of the Council dated 25th October 2012, instituting minimum standards on the rights, support, and protection of victims and superseding Council Framework Decision 2001/220/JHA, which was published in the Official Journal of the European Union, Series L, No. 315 dated 14th November 2012.Mediation in Criminal Proceedings and the Presumption of Innocence from the Perspective of Article 67, Paragraph (2) of Law No. 192/2006.

Before making assessments regarding the national legislator's choice regarding the transposition of the provisions of the directive into domestic law, it is important to underline that the entire content of the European legislative act is focused on the rights of the victim in criminal proceedings. In this context, Article 12 of the directive expressly provides for the minimum guarantees that must be afforded to persons who have the status of victim of a crime and who opt for restorative justice services[3], such as mediation. These include: *the victim's predominant interest, under conditions of safety and with their freely given and informed consent, which may be withdrawn at any time; complete and objective information provided to the victim prior to initiating any procedure;* ***the acknowledgment of the offence by the perpetrator****; the voluntary nature of any agreement reached; the consideration of such agreements in subsequent criminal proceedings; and the confidentiality of discussions within restorative justice procedures, which do not take place in public, with mention of exceptional situations in which disclosure may occur*[4].

It's undeniable that the directive's intent was to establish a set of principles aimed at bolstering the protection of the rights and interests of victims of crime by the authorities of the Member States, rather than burdening individuals accused of committing crimes excessively in order for them to avail themselves of the benefits of mediation. We acknowledge that, considering the directive's objective, the condition outlined in Article 12 pertains to an admission of the offence by the accused individual, within the private realm of mediation, which facilitates mutual understanding between the parties and the amicable resolution of the conflict. Notably, there's no provision mandating that mediation be contingent upon an admission of guilt before the judicial authorities. Supporting this interpretation, we also highlight the directive's provision explicitly stating that the victim's rights don't encroach upon the rights of the perpetrator of the crime, along with a similar provision in

[3] The term r*estorative justice'* is defined within the Directive as *'any process whereby the victim and the perpetrator of the offense may, if they freely consent, actively engage in resolving the issues arising from the offense with the assistance of an impartial third party*'.

[4]https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32012L0029&from=HU, [Last accessed: 18.11.2022].

Recommendation (99)19[5], which posits that while the mediation process should ideally commence with both parties acknowledging the primary facts of the case, participation in mediation shouldn't be construed as evidence of guilt in subsequent criminal proceedings.

However, in the process of transposing the directive, by amending the provisions of Article 67, paragraph (2) of Law No. 192/2006, the Romanian legislator has, in our opinion, unjustifiably departed from the principles outlined in the directive and has reconfigured the institution of mediation in criminal proceedings by complicating the situation of the accused person, conditioning the effects of mediation on the criminal side of the process on the acknowledgment of the offence before the judicial authorities, but imposing this obligation only on the perpetrator of the offence.

Firstly, we note an initial error on the part of the legislator, who incorporated the notion of ’author of the offense’ into Article 67, paragraph (2) of Law No. 192/2006, disregarding the definition provided for the phrase in the directive, where it is specified that the term refers to a person who has been convicted of committing an offense, but also to a person suspected or accused before any finding of guilt or conviction, with the express clarification that the phrase used does not affect the presumption of innocence.

Although the legislator's intention was likely aimed at the perpetrator, the term ’author’ utilized in the current regulation fosters a distinct and unjust legal disparity among individuals involved in the commission of a crime. We observe that, pursuant to the stipulations of Article 83, section g) of the Code of Criminal Procedure, the attribute to appeal to a mediator, in cases sanctioned by law, is a lawful entitlement extended to the accused, irrespective of the role in which they are suspected of partaking in the act proscribed by criminal law, whether as an author, co-author, instigator, or accomplice. The principle of legal parity in treatment among participants in the commission of an act also emanates from the provisions delineated in Article 49 of the Criminal Code. These provisions stipulate that the penalty applicable to participants aligns with that prescribed by law for the author, with each individual's contribution to the offense's commission and the general criteria for customization delineated by law being considered in the customization process.

Therefore, under such conditions, we consider that the current content of Article 67, paragraph (2) of Law No. 192/2006 is likely to create a discriminatory and disadvantageous situation for the accused - the perpetrator in terms of substantive criminal law who opts for the conclusion of a mediation agreement, compared to the accused - instigator or accomplice, for whom the legislator has not established the condition of acknowledging the offence in order to benefit from the effects of concluding a mediation agreement. Although the principle of equality does not require legal uniformity, a violation will be noted when differential legal treatment is applied to similar factual situations that do not justify differentiation, without there being an objective and reasonable justification, as is the case here.

At the same time, the principle of equality of treatment, provided for by

[5] The Recommendation No. R(99)19 of the Committee of Ministers of the Council of Europe, addressed to the Member States on mediation in criminal matters, adopted by the Committee of Ministers on 15th September 1999 at its 679th meeting of ministers' representatives, is available at https://irdo.ro/irdo/pdf/539_ro.pdf, [Last accessed: 19.11.2022].

European Union law, which member states must respect even in the process of transposing the Directive, requires a uniform regulation of all similar situations because, otherwise, differential treatment could also be applied to persons who have fallen victims of crimes and who would have the opportunity for unconditional mediation with the instigator and accomplice, but not with the perpetrator, who is conditioned by the acknowledgment of the offence before the judicial authorities. However, the less attractive the mediation procedure is for the accused, the less likely it is that the victim will benefit from the advantages of mediation, should they opt for it, and so the method of regulation chosen by the national legislator is in disagreement with the purpose pursued by the Directive.

It becomes self-evident that the provisions of Article 67, paragraph (2) of Law No. 192/2006 are likely to infringe upon the equality of rights, as provided for by Article 16, paragraph (1) of the Romanian Constitution, as well as upon the provisions of Article 124, paragraph (2) of the Romanian Constitution, which stipulate that judicial is unified, impartial, and equal for all, to the extent that the said regulations will constrain the court to withhold from conferring the effects provided by Article 396, paragraph (6) and Article 16, paragraph (1) letter g) of the Code of Criminal Procedure to the mediation agreement if the accused - perpetrator has not acknowledged the deed before the judicial authorities, even though they participated in the mediation procedure together with the aggrieved person, and this was finalized through a mediation agreement that constitutes the expression of the parties' agreement to amicably resolve the conflict so that the accused is no longer held criminally liable.

Secondly, from the corelation of the provisions of Article 16, paragraph (1), letter g) final clause of the Code of Criminal Procedure with those of Article 396, paragraph (6) of the Code of Criminal Procedure, it follows that the court, as it verifies whether the mediation agreement was concluded in accordance with the law, is also called upon to verify the condition of the acknowledgment of the deed by the perpetrator before the judicial authorities. Such an analysis may entail several procedural difficulties, which we will further address in the continuation of this exposition.

A first issue that arises is to what extent must the acknowledgment of the offence, referred to in the provisions of Article 67, paragraph (2) of Law no. 192/2006, meet the same conditions as in the case of the expression of the will of the defendant who opts for the simplified procedure of acknowledging the indictment, the legal provision being devoid of predictability in this regard. Thus, it is worth recalling that the procedure for acknowledging the indictment entails, among other conditions, the defendant's full acknowledgment of the offence attributed to them by the court's filing act, and the acknowledgment must be total and unconditional in all factual aspects[6]. Consequently, judicial investigation is compressed, meaning that no evidence is admitted other than written documents, leading to a reduction in the duration of judicial procedures and lower costs associated with the administration of justice[7].

[6]Victor Văduva, *Judgement in the case of an admission of the indictment, Section 320[1] of the Criminal Procedure Code, Commented Jurisprudence,* Hamangiu Publishing House, Bucharest, 2013, p. 65.

[7]Bogdan Micu, Radu Slăvoiu, Andrei Zarafiu, *Procedură penală*, Hamangiu Publishing House, Bucharest, 2022, p. 615; see also Andrei-Viorel Iugan, *Procedură penală – partea specială*, C.H. Beck Publishing House, Bucharest, 2024, p. 247.

Additionally, in judicial practice, it has been considered that in the case of criminal participation, the defendant can benefit from the provisions regarding the simplified procedure only if the acknowledgment also concerns the contribution of other persons involved[8].

Delving into the tenets delineated in Decision no. 397 of June 15, 2016, by the Constitutional Court[9], let us consider a scenario where the parties engage in the mediation procedure subsequent to the culmination of the criminal investigation phase, which ended in an indictment, with the defendant adopting a somewhat evasive stance, exercising their right to remain silent, or disclaiming involvement in the offense during the criminal investigation phase. However, when faced with the court, the same defendant opts to admit to the offense, presumably aiming to avail themselves of the mitigating ramifications of mediation. Yet, envisaging the procedural framework wherein such an admission could transpire proves to be rather perplexing. This is owing to the stipulation that the acknowledgment of the offense must immediately succeed the procedural juncture of perusing the indictment, specifically, the notification of the accusation and procedural entitlements.

In that very same hypothetical scenario, the compulsory attendance of the defendant afore the court to admit to the deed flies in the face of the ruminations set forth in paragraph 39 of the aforementioned decision. Here, the Constitutional Court dissected the modus operandi by which the court acknowledges the existence of a mediation pact and observed that, pursuant to the provisions of Article 70 paragraph (5) of Law no. 192/2006, it suffices for the mediator to furnish the mediation pact and the mediation closing report in their original guise, sans the necessity of trotting out a notarised document or corralling the parties afore the court, as is the wont in the case of reconciliation.

Although Law no. 192/2006 posits that the sealing of a mediation pact vis-a-vis the criminal charge constitutes a cause that absolves one of criminal culpability, courtesy of the amendment proffered by Law no. 97/2018, it behoves us to regale in this discourse the ruminations espoused by the Constitutional Court in paragraph 35 of Decision no. 397/2016. Therein, it is opined that the sealing of a mediation pact regarding transgressions amenable to reconciliation essentially serves as a conduit for reaching amity, as a causative agent for the remission of criminal liability.

Unlike a reconciliation inked afore the bench, contingent purely on the mutual agreement of the defendant and the aggrieved party to settle matters entirely, unreservedly, and irrevocably, absent any procedural prerequisite mandating the defendant to explicitly concede to the

[8] High Court of Cassation and Justice, Criminal Chambre, Decision 2479 of September 8th 2014, www.scj.ro Bucharest Court of Appeals, 2nd Criminal Chambre, Decision 2515/R of December 15th 2011, unpublished, Bucharest Court of Appeals, 1st Criminal Chambre, Decision 1063/A of August 4th 2022, unpublished.

[9] By Decision No. 397 of 15th June 2016 regarding the exception of unconstitutionality of the provisions of Article 67 of Law No. 192/2006 on mediation and the organization of the mediator profession, in the interpretation given by Decision No. 9 of 17th April 2015 of the High Court of Cassation and Justice — the Joint Panel for the resolution of legal issues in criminal matters, and of Article 16 paragraph (1) letter g) final thesis of the Code of Criminal Procedure, published in the Official Gazette No. 532 of 15th July 2016, the Constitutional Court admitted the exception of unconstitutionality and established that the provisions of Article 67 of Law No.192/2006 on mediation and the organization of the mediator profession, in the interpretation given by Decision No. 9 of 17th April 2015 of the High Court of Cassation and Justice — the Joint Panel for the resolution of legal issues in criminal matters, are constitutional to the extent that the conclusion of a mediation agreement concerning offenses for which reconciliation is possible shall have effects only if it occurs before the reading of the indictment by the court.

offence, the stipulations delineated in Article 67 paragraph (2) of Law no. 192/2006 posit the prerequisite that the perpetrator must own up to the offence before the judicial authorities. This provision, however, is apt to engender a rather thorny predicament, in terms of criminal culpability, for a defendant who enters into a mediation accord, in contrast to another who strikes a reconciliation pact before the bench, **albeit the desired denouement of both being identical, with the cessation of criminal proceedings being pronounced in either scenario.**

We also view the requirement for the 'author' to admit to the offence as encroaching upon their presumption of innocence and the safeguards afforded by the benefit of doubt, namely the privilege to remain silent and the liberty not to incriminate oneself, acknowledged for any individual facing criminal allegations.

As elucidated by scholars[10], this principle gained independence and assumed statutory form during the 18th century, subsequent to its initial proclamation in the French Declaration of the Rights of Man and of the Citizen of 1789. The right to remain silent and the presumption of innocence constitute two legal and societal assurances automatically granted to those accused of perpetrating criminal transgressions[11].

In the realm of national law, the presumption of innocence is governed by Article 23, paragraph (11) of the Romanian Constitution, which dictates that an individual is to be presumed innocent until proven otherwise by a definitive ruling rendered by a criminal tribunal. This principle is also echoed in Article 4, paragraph (1) of the Code of Criminal Procedure, wherein it is stated that every individual is to be deemed innocent until their culpability is established by a conclusive verdict in a criminal court.

Within European legislation, the presumption of innocence finds sanctuary in Article 48, paragraph 1 of the Charter of Fundamental Rights of the European Union. Moreover, in the European Convention on Human Rights[12], it is delineated as a safeguard for the right to a just trial, as articulated in Article 6, paragraph 2 ('Every individual accused of a criminal offence shall be presumed innocent until proven guilty in accordance with the law')[13].

The nexus between the presumption of innocence and the right against self-incrimination is a fundamental aspect of criminal jurisprudence, prominently highlighted in the jurisprudence of the European Court of Human Rights. The Court has consistently found breaches of Article 6(2) of the Convention when the onus of proof has unjustly shifted from the prosecution to the defence.

Similarly, within the realm of Romanian law, Article 99(2) of the Code of Criminal Procedure explicitly enshrines the presumption of innocence for suspects or defendants, affording them the right not to prove their innocence and the privilege of remaining silent in order to avoid self-incrimination.

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[10] Ion Neagu, Mircea Damaschin, *Tratat de procedură penală – partea specială*, Universul Juridic Publishing House, Bucharest, 2022, p. 96.

[11] Doru Pavel, 'Reflecții asupra prezumției de nevinovăție', *Revista Română de Drept,* issue 10/1978, p. 10, quoted by Ion Neagu, Mircea Damaschin, *op. cit.*, p. 99.

[12] Judgement by the ECHR of March 20th 2001, *Telfner v. Austria*.

Judgement by the ECHR of December 17th 1996, Saunders v. the United Kingdom of Great Britain and Northern Ireland.

[13] Laura-Cristiana Spătaru-Negură, *Protecția internațională a drepturilor omului*, course notes, 2nd edition, Hamangiu Publishing House, Bucharest, 2024, p. 203.

To invert the presumption of innocence requires the prosecution to establish, beyond a reasonable doubt, both the existence of the offence and the culpability of the accused. Consequently, conditioning the invocation of any impediment to prosecution or initiation of criminal proceedings—such as mediation—on the admission of guilt by the accused, especially when other legal impediments take precedence under the law, amounts to a violation of the accused's entitlement against self-incrimination.

In the jurisprudence of the European Court of Human Rights, it has been established that the right to silence is fundamental to the essence of the right to a fair trial and entails that in a criminal case, the prosecution must build its case without resorting to evidence obtained from the accused against their will, through coercion or pressure[14]. It is our opinion that unquestionably, in the present case, the accused person is subjected to a certain pressure to admit to the offence, considering that otherwise, they will be deprived of the benefits of mediation, even in the absence of guarantees regarding obtaining a legal and secure benefit, given that any potential mediation agreement is hypothetical, with no assurance for the accused.

Therefore, it is observed that in an analysis through the lens of constitutionality, the amendment to the provisions of Article 67 paragraph (2) of Law no. 192/2006 through Emergency Ordinance no. 24/2019 seems to infringe upon the constitutional principle of equality before the law, the principle of equal treatment, as well as the procedural rights that both national legislation and the Strasbourg Court unconditionally recognize for individuals accused in criminal matters.

3. Proposals for Legislative Reform

Following the analysis presented earlier, we propose, as a matter of law reform, that the provisions of Article 67(2) of Law No. 192/2006 should contain the following formulation: '*In the criminal aspect of the process, the provisions regarding mediation shall apply only in cases concerning offences for which, according to the law, withdrawal of the prior complaint or reconciliation of the parties removes criminal liability, if the offender has admitted the deed before the mediator.'*

Additionally, we suggest specifying in a new paragraph of Article 67 of Law No. 192/2006, *that the statement made by the perpetrator for the purpose of concluding the mediation agreement cannot be used, against their will, as evidence in the criminal proceedings, for the purpose of resolving the case according to the common law criminal procedure.*

4. Conclusions

Until a legislative change is made in line with the aforementioned proposals, the role of the national judge in applying the principle of conform interpretation, as established in the case law of the Court of Justice of the European Union, should not be overlooked. This principle entails interpreting national law in light of the text and purpose of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, in order to identify a solution consistent with its intended purpose.

[14] Judgement by the ECHR of July 11th 2006, *Jalloh v. Germany*.

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