Abstract
Community mediation takes all forms and shapes all over the world. In order to better understand its limitations in adapting to different contexts, we have compared the evolution of community mediation services in two totally different systems, USA and Sri Lanka. Based on this analysis and the results of a research conducted in Cluj-Napoca in the fall of 2013, we have recommended a community mediation model suitable for the current Romanian social, economic and cultural framework.

Keywords: mediation, community mediation, Romania, alternative dispute resolution, community mediation model.
1. Introduction

Community mediation has been one of the fastest-growing institutional developments in the last five decades. It has started in the United States as a radical concept – the settlement of disputes by citizens within their own communities, without the direct involvement of the formal judicial system – and rapidly spread across the world, in many countries of Western Europe, through Latin America, Africa, parts of Central Asia, and even in countries of Eastern Europe and many former republics of the Soviet Union (Shonholtz, 2000).

The premise of community mediation is simple and generous: to provide the public with the voluntary way to resolve conflict in a collaborative manner that relies primarily on self-determination. Community mediation can have a large community impact such as increases in self-reliance, in citizen participation in community matters, greater involvement in issues of social justice, as well as reductions in violence and crime (Corbett and Corbett, 2011). Different models have been used to implement community mediation around the world or even in the same country. Model variation has been generated by ethical considerations, principles of community development and empowerment or, in some situations, simple pragmatism (McDonough, 2008a).

Our exploratory paper compares two of these models of community mediation, ranging from the US neighborhood justice centers to the more rigid mediation boards in Sri Lanka. Our goal is to design a model of community mediation suitable for the social and legislative framework of Romania.

2. Conceptual background

There are several ways to approach conflict resolution. Conflicts may be solved using a wide range of techniques that imply different degrees of persuasion and coercion, starting with avoidance, continuing with negotiation, mediation, arbitration, litigation, executive and legislative decisions, and going all the way to use of violence. Negotiation, mediation, arbitration, and a range of other less-known methods are grouped under the acronym ADR – alternative dispute resolution – which is described as ‘a range of procedures that serve as alternatives to litigation through the courts for the resolution of disputes, usually involving the intercession and assistance of a neutral and impartial third party’ (Brown and Marriot, 2012, p. 12).

2.1. Mediation

According to Chereji and Gavrila (2014), mediation is defined as ‘a negotiation process facilitated by a trusted neutral person having no power of decision’. In other words, mediation is an ADR process in which an impartial and neutral third party intervenes in a conflict with the consent of the disputants and assists them in negotiating a consensual agreement. Simply put, mediators provide a safe environment for the parties involved in a conflict in order to allow them to negotiate freely and openly. In an ideal situation, the process of mediation empowers the peoples by providing them communication and conflict resolution skills so that the next time they encounter a dispute, they can solve it on their own (Ray, 1997).
As a process, mediation holds some important characteristics:

– Mediators must be impartial and neutral – they do not represent the interests of neither one of the parties. Their role is to help everyone reach a consensual agreement and to increase mutual understanding.

– The mediation gives all the parties involved the opportunity to be heard and to hear all sides of the story.

– Mediation is a voluntary process, based on self-determination. Mediators do not impose a solution and do not pass judgment – mediators will offer skilled assistance and support to the people involved voluntarily, taking responsibility for finding a practical way forward.

– Mediation is a private process, involving only the mediator and the parties to the dispute, where the mediator acts under a detailed policy of confidentiality.

– Mediation agreements are aimed at long-term solutions – one of the most important roles of the mediator is to identify and help resolve the underlying causes of the conflict, as well as its symptoms.

– While mediation usually involves discussion of issues around past events, its main focus is on what is going to happen in order to avoid future disputes and how people will behave towards one another in the future.

– Mediation is an informal process, whereas parties are encouraged to explore all areas and issues of dispute, not only the legal aspects; being informal, the mediation process can be designed to suit the parties and their specific needs.

– Being an informal process, mediation is a relatively cheap method of resolving disputes comparatively to other more formal tools of the legal system.

– As parties are generally asked to participate in person, mediation can be cost-effective and can get to resolution faster than going to court (McDonough, 2008b).

2.2. Community mediation

We have already defined and explained the term mediation. Let us explore now the possible meanings of the second term, community. Following different paths of thinking, we can identify two opposite perspectives: real and imagined communities. In this meaning, Ferdinand Tönnies (2001), a classical reference in sociology (Saunders, 1995), defines community based on the notions of social and moral cohesion, and unity of the will, while Benedict Anderson (1991) argues that communities are the result of the imagination, and such imagination binds people together. Pragmatically, community can be understood either as a locality, understood as a network of relationships, or as a particular kind of relationship and a sense of collective belonging. Next to mediation, both perspectives can coexist at the same time; community can refer to a neighborhood and to an imagined, positive, shared and pleasant feeling of belonging to a collectivity (Neves, 2009).

Defining community mediation can be a difficult task, due to the high variety of social systems in which the different community mediation models have developed. Even in culturally related and closely connected systems, the United Kingdom and
the United States, we can identify very different approaches. In the United Kingdom, community mediation refers mainly to the process involving an impartial third party who assists people located in clearly circumscribed areas (hence the term neighborhood mediation) to find a mutually acceptable solution to their dispute. In the United States, community mediation may refer to a much wider range of fields of application, including family disputes, school and juvenile matters, victim-offender mediation, hospital collections, inter-group conflicts, conflicts with the new religious congregations or business and nonprofit entities (Jacobs, 2011), intervention in the criminal justice system, environmental issues and even public policy design (Mackay and Brown, 1999). Community mediation can also be considered as a process of ‘devolving the judicial power from the state to the people for a meaningful response to the social problems’ and as a democratic approach to settle the disputes (Sangroula, 2013).

Nevertheless, regardless the variety of services provided, community mediation programs have common characteristics, first stated by the National Association for Community Mediation (NAFCM) from the US, commonly shared by all the different approaches (Ray, 1997):

- The use of trained community volunteers as providers of mediation services, with the practice of mediation open to all persons;
- Sponsorship by a private, nonprofit or public agency or program, with mediators, staff and a governing and/or advisory board representative of the diversity of the community served;
- Providing direct access of mediation to the public through self-referral and striving to reduce barriers to service, including physical, linguistic, cultural, programmatic and economical.
- Providing service to clients regardless of their ability to pay;
- Advocating, initiating, facilitating and educating for collaborative community relationships to effect positive systemic change;
- Engaging in public awareness and educational activities about the values and practices of mediation;
- Providing a forum for dispute resolution at the early stages of the conflict; and
- Providing an alternative to the judicial system at any stage of the conflict.

3. Community mediation models of practice

For a brief comparison of the different community mediation practices, we have chosen two forms from very different countries: United States and Sri Lanka. All the practices share the same basic characteristics, functions and principles, are institutionalized, and follow some formalized regulations and quality standards, but they evolved in different social, economic, and cultural environments. The community mediation programs developed in US represent a widely accepted standard, at least in the Western culture. The Sri Lankan model is an adaptation to another set of social and cultural values, and has been replicated all over the Asian continent.
3.1. Community mediation in the US

Community conflict management has its roots in traditions from around the world and across generations, but the first development as a formal field of practice occurred in the United States in the late 1960s, in response to the explosion of lawsuits following the Civil Rights Act (1964) which overwhelmed the courts and generated the need to reform the justice system (The Institute for Environmental Negotiation, 2001). As Scott Bradley and Melinda Smith (2000) note ‘community conciliation mechanisms were viewed as an opportunity for citizens to participate in the prevention of conflicts as an alternative to institutional mechanisms’. Social trends of the 1960s and 1970s set the stage for community mediation. As the young generation moved away from the traditional structures and social patterns of conflict resolution, became urbanized and highly mobile, their use of formal justice to solve disputes exponentially increased the number of lawsuits (Hedeen and Coy, 2000, p. 102). The attendant delay and high costs of the courts led to popular frustration with the functioning of the justice system and many judges, scholars, and other observers began to question the appropriateness and effectiveness of the court case process for certain type of disputes (McGillis, 1997).

Community mediation in the US has evolved along the two different paths that diverge philosophically even if, occasionally, they overlap (Bradley and Smith, 2000). The perceived inefficiency of the court system led, in 1965, a presidential Commission on Law Enforcement and Administration of Justice to focus Americans’ attention on the overburdened judiciary (President’s Commission on Law Enforcement and Administration of Justice, 1967). Its findings helped building consensus around the need for reform in the court system, with particular focus on minor criminal cases involving neighbors, relatives, and other acquaintances. Later, in 1976, Chief Justice Warren Burger petitioned the courts to support alternative dispute resolution programs for the purpose of lightning court dockets and placing some aspects of the justice back into the hands of the people (Corbett and Corbett, 2011, p. 461). These experimental programs, called Neighborhood Justice Centers, began not only as mediation facilities, but also as sources for other ADR and conflict intervention services. Later, many programs changed their philosophy, often due to pragmatic reasons, as funding and case sources, and switched to a more community-based approach that will be presented further on. They renamed themselves Community Mediation Centers (or some other derivatives like community dispute resolution centers or programs), accompanied by appellations representing varying programmatic focuses, geographic designations, or accepted regional dialect (Wahrhaftig, 1984, pp. 1463, 1465).

The report of the Justice Department from 1983 outlined five goals of these courts reform programs that are still in use today (DeJong, Goolkasian and McGillis, 1983): (1) increasing the efficiency of case processing; (2) reducing court system costs; (3) allowing judges to provide added attention to cases on the regular civil docket; (4) improving the quality of justice; and (5) improving collection of judgments.
The second path, more community-focused, namely to community mediation centers, organized itself around a different perception and understanding of the community-based conciliation mechanisms, seen as an opportunity for citizens to participate in the prevention of an early intervention in conflicts as an alternative to institutional mechanisms. At the very heart of the early community mediation movements were the principles of democratic participation, civil rights and responsibilities, and involvement of networks of community organizations (Shonholtz, 2000). Basically, all can be reduced to community building through citizen empowerment, and mediation can be a promise of empowering ‘communities and individuals to develop their own solutions in informal, convenient meetings with minimal involvement from the justice system’ (Hedeen and Coy, 2000, p. 355). Even if these programs shared some of the same goals with the court reform programs, they developed more accessible and appropriate forms of dispute resolution. They went even further, searching to achieve the following goals: (1) translate the control of decision-making processes from government and court to communities, (2) create a parallel, community-based justice system that addresses disputes well before they enter the formal legal system, (3) develop indigenous community leadership, (4) work to reduce community tensions by strengthening the capacity of neighborhood, church, civic, school, and social service organizations to address conflict effectively, and (5) strengthen the ability of citizens to participate actively in their local democratic processes for effective self-governance (McGillis, 1997).

The growing number of community mediation centers confirmed the success of these programs, and in 1993 the National Agency for Community Mediation (NAFCM) was setup in order to support the development of the field and to represent the interests of the centers at national level (Hedeen and Coy, 2000). At the beginning there were approximately 150 community mediation centers, but according to statistics from the NAFCM, in 2001 the number increased to near 550 community mediation programs, with 19,500 active volunteer mediators, 76,000 citizens trained in community mediation programs, 97,500 disputes (cases) referred on an annual basis, and 45,500 disputes (cases) mediated on an annual basis. The typical community mediation program had 1.5 staff members, 30 active mediators, operated on a $40,000 annual budget, received 150 referrals per year and mediated 70 cases (The Institute for Environmental Negotiation, 2001, p. 7). Ten years later there was no great difference concerning the number of community mediation programs and the number of volunteer mediators (approximately 400 community mediation centers and 20,000 mediators in 2011), but there was a significant difference regarding the number of case referrals and service recipients (400,000 case referrals/year and 900,000 service recipients/year). The average budget per community mediation program has also increased up to $200,000/year (Corbett and Corbett, 2012).

The social movements of the US and especially the justice reform also inspired the debate about the civic justice and consequently the evolution of the ADR in the United Kingdom. Even if it had a late start, as the ADR methods came into general use
in UK only in the 1980s (McThenia and Schaffer, 1985), mediation and especially the community mediation centers (or neighborhood centers, as they are known in UK), developed into a nationwide service with more than 12,000 disputes solved annually (Gray, 2002). The particularity in UK is that the main force for the enhancement of ADR was mostly lawyers involved in commercial litigation, a few academics, and the courts (Robertshaw and Segal, 1993).

3.2. Community mediation in Sri Lanka

In Sri Lanka, the community mediation services have quite a different approach. There are voices saying that the tradition of mediation as a form of dispute resolution is very much a part of Sri Lankan culture (Gunawardana, 2012, p. 10). For example, in the practice of Gam Sabha, village elders used to ‘hear complaints and do the justice among neighbors’ (De Zoysa, 2006, p. 222). These councils of the village elders had persisted several centuries, even during the Dutch and Portuguese colonization, but they disappeared under the British rule.

Over time, various alternatives to the formal court system have also been used in Sri Lanka, like the attempt of the British to enhance the village communities to deal with local disputes by creating a sort of tribunals, named Rural Courts, which had, however, a limited effect (Gunawardana, 2012, p. 10). Later, in 1958, they were replaced by the so-called Conciliation Boards which were also not very successful and not well accepted by the public, being widely understood to be politically corrupted bodies (Vaters, 2013).

The Mediation Boards of today emerged in 1988, after the failing of the Conciliation Boards, which were repealed in 1978. They are under the administration of the Ministry of Justice, and their goal is to facilitate a voluntary settlement of minor disputes, using interest-based mediation (Gunawardana, 2012, p. 10). However, the idea that any previous ADR structures performed mediation is contested, since these mechanisms were often closer to forms of arbitration (Vaters, 2013). As Woolford and Ratner (2008, p. 40) show, there is often a tendency to ‘reach back into diverse cultural milieux, and to claim a definite continuity between justice practices in small-scale communities and modern forms of mediation’. From this point of view, Valter (2013) claims that while Sri Lanka may have a history of ADR, the interest-based professionalized approach was new to the country when it was introduced.

The program was initiated by the Community Mediation Boards, the Ministry of Justice, which decided upon the general institutional framework, while legal experts and staff from CDR Associates and US-based organizations, experts in mediation and conflict resolution, collaborated to clarify the specific interest-based type of mediation that should be implemented in Sri Lanka (CDR Associates, 2001). The Ministry of Justice is currently responsible only for direct administration of the mediation boards program along with mediator training and performance monitoring, and a significant power is given to an independent Mediation Board Commission which appoints and dismisses the mediators. However, the role of the mediation boards has been delib-
erately limited since the beginning, partially due to the resistance of the Sri Lanka Bar Association (Vaters, 2013). Along the way, the program of Community Mediation Boards was fully supported by Asia Foundation which was involved in strengthening the technical capacity of the mediators and the trainers, with the help of international donors like USAID and the British High Commission (Gunawardana, 2012).

It is also worth mentioning that the evolution of community mediation in Sri Lanka was directly influenced by the political, social and cultural factors. Until 2009, Sri Lanka has gone through a devastating twenty years internal armed conflict caused by the Tamil insurgency (Goodhand, 2012). There are still areas in the country unreachable by the state justice mechanisms, and where the establishment or extension of mediation boards could provide a new avenue of justice provision in these unstable regions (Centre for Policy Alternatives, 2012).

Currently there are more than 300 community mediation boards operating across Sri Lanka. There are just over 7,000 mediators, handling on average of 112,000 cases each year, with the settlement trade ranging from 53% to 60% during the last 15 years of operation (Gunawardana, 2012).

3.3. The field of community mediation

Community mediation programs may take many forms, especially in the United States, based on specific local needs and centers’ own vision of conflict engagement. Traditionally, mediation services represent the bulk of most centers’ activities, and the types of disputes handled varies from civil small claims, minor criminal matters, family and custody issues, landlord-tenant matters, neighborhood concerns, school related issues (truancy and ganged mediation) to victim offender disputes (Hedeen and Coy, 2000, p. 108). Beyond the types of cases referred above, community mediation programs have also found innovative applications of mediation, involving prison, AIDS, race relations, boycotts, clean air and water rights, employment, wages disputes, farm grazing rights, and even large group concerns around public policy, environmental and community issues (The Institute for Environmental Negotiation, 2001).

Scholars have included community mediation programs into one taxonomy or another. One of the largely accepted classifications is that of Shonholtz (2000) which describes two models: the neighborhood justice center and the community mediation center. The first ‘serves as a diversionary channel for cases considered by justice and similar governmental institutions as more appropriate for informal, nonbinding, local dispute settlement mechanisms’, while the latter is ‘organized around a different perception of need and a different understanding of the opportunities provided through community-based conciliation mechanisms’ (Shonholtz, 2000, pp. 331-332). These opportunities include building community capacity to prevent and de-escalate conflicts among its members through the efforts of its members (Hedeen and Coy, 2000, p. 105).

When analyzed from a different perspective, based more on funding sources and less on the scope of the centers, we can identify two additional models: independent
community mediation service and in-house community mediation service. The former involves a service set up as an independent charity, either in its own right or as part of a larger organization. The service usually utilizes a mixture of paid staff and volunteers from the community it takes its referrals from. Funding typically comes from local or national government, other services provided or charitable sources. The latter is housed within a court or a local authority. The staff is directly employed by the housing entity, while the mediators are usually volunteering, even if there are some cases when the mediators can be also employed. The service is directly funded by the housing authority (McDonough, 2008a).

In the US, the vast majority of community mediation programs are nonprofit entities (86%), either stand-alone centers or programs under the umbrella of a larger nonprofit organization, while the rest are public agencies, typically housed within courts or local government facilities (11%) (Hedeen and Coy, 2000, p. 105).

Regardless of the community mediation program design, a substantial proportion of the cases are referred by the courts. Mediation programs are dependent on strategic partnerships for a constant case flow. Over three quarters of programs in US accept referrals from court programs and/or judicial staff (91%), government agencies (88%), schools and educational organizations (84%), nonprofit organizations (81%), and legal representatives (79%). With varying frequency, additional referral relationships are connected with police departments (72%), housing agencies (62%), religious organizations (45%), probation departments (42%), and other local institutions. In fact, the average community mediation program maintains a productive network of nine referral partners at any given time (Corbett and Corbett, 2012).

Funding of community mediation centers has always been one of the most difficult tasks in sustaining such programs. Some studies have demonstrated that mediation programs may adjust their processes and practices, mimicking those of their primary funding and referral sources (Morrill and McKee, 1993). Most centers seek funding from a diversity of sources: government grants (49%), fees for services (15%), foundations (12%), training revenue (10%), charitable giving (8%) and other sources, such as special projects or individual donation (up to 6%) (Corbett and Corbett, 2012).

All community mediation centers rely on volunteer mediators to do the work. Ideally, when recruiting mediators for a community mediation center, a wide range of criteria should be considered, in order to reflect the characteristics of the community in which the volunteers will activate. In reality, research indicates that mediation centers generally rely on volunteers who, on average, are white female, middle-class, older, and well-educated (Cole, McEwen and Rogers, 2009, supra note 35). There is also a variety of professional backgrounds among the community mediators including educators, psychologists, business people, and clergy (Cole, McEwen and Rogers, 2009, supra note 56).

The potential volunteers pass through a screening process, ranging from a very simple request to an elaborate application and interview process (Jacobs, 2011). In the United States, no state currently requires mediators to be certified or licensed to prac-
tice privately (Mediation Training Institute International, 2013), but the courts can impose minimum requirements for mediators who seek court referrals or even some additional training for certain types of mediation, like child custody.

Most mediation centers offer an initial training program for their volunteers, but the numbers of hours of training vary widely from twenty-two to fifty (Jacobs, 2011, p. 493). Despite the significant diversity of the training programs, a remarkable fact still remains: community mediators are among the most trained dispute resolvers. A comparative assessment of training requirements imposed by state legislatures, courts and community mediation centers shows that volunteer mediators with the community centers acquire more hours of training (through basic training, apprenticeship, mentorship and continuous education) than almost any other group of mediators or arbitrators (Hedeen and Coy, 2000, p. 117). Currently in the US there are an estimated 20,000 active volunteer mediators who contribute an average of 35 hours per year by mediating local disputes (Corbett and Corbett, 2012).

In terms of effectiveness, an analysis of community mediation programs for a period of ten years has shown that more than 70% of mediated cases settle. Also, studies on community mediation demonstrate high levels of satisfaction with the mediation process, the disputants indicating that they will use the process again in over 80% of the cases (Cook, Roehl and Sheppard, 1980).

The practice of mediation, and community mediation specifically, in Sri Lanka is quite different from the same services provided in US. The particularity of the Sri Lankan community mediation model is the need to address the considerable grievances among the population related to effects of the war and to be an active part of the post-war reconciliation process.

If, in the United States, there are no limitations in using one model of mediation or another, in Sri Lanka the Mediation Boards have to follow the norms of the interest-based mediation, which is defined as ‘a process that tries to get to the real issues and the role of the conflict, identify the needs or interests of the parties, and finally find a solution that is acceptable to both sides’ (Moore, Jayasundere and Thirunavukarasu, 2011).

The Mediation Boards are coordinated by the Minister of Justice and are integrated into the justice system, but implemented by community members (Vaters, 2013). By law, the Mediation Boards are mandated to address a specific range of disputes. These disputes are of criminal or civil nature, and they cannot reach the courts until they are mediated through the Boards and fail to generate settlement. The most common types of disputes mediated by the Boards are (in order) loan and debt, land disputes and domestic issues (Siriwardhana, 2011, p. 3). Special mediation boards with a different mandate – for example, state entities could come to mediation – were used in 2005 to solve tsunami related disputes, demonstrating the belief that the process of mediation can also be used to address some major problems (Vaters, 2013, p. 12).

There is also a deliberate disconnection between the courts and the Mediation Boards in Sri Lanka model. Lawyers or other legal practitioners are not allowed to
participate as representatives during the community mediation process, and the settlement reached before a Mediation Board is not legally binding and therefore cannot be enforced following formal judicial procedures (Gunawardana, 2012). Yet, court cases in Sri Lanka can be very expensive and a full legal process can take many years, so the court system is often out of limits for the poor. On the other hand, the mediation boards are more accessible for the population, either geographically and financially.

For these reasons, while some cases request a mandatory mediation process, it is commonly understood that the community mediation in Sri Lanka is a mechanism for the poor (Dias, 2003).

While initial steps of community mediation in Sri Lanka were funded by various foreign donors like USAID and, more particularly, the Asia Foundation, currently the mediation boards run on governmental funds. Even if there is an accessible fee for some types of disputes, the community mediation program in Sri Lanka still relies on volunteers. The mediators are selected from diverse backgrounds, including teachers, surveyors, engineers, government servants, clergy and native physicians. The criteria for selecting them are that they should be respected members of their community, that they should possess the necessary skills to be a successful mediator and that they should be resident in that community (Vaters, 2013).

A mediation board consists of three mediators selected from the local panel based on the preference of the disputants. A panel of twelve to forty mediators is appointed to each mediation board area, which coincides with the administrative units of Sri Lanka, and every community mediation board is confined to a particular area. In order to ensure total independence, the mediators from a given board must be nominated by an NGO, a religious dignitary, a head of school, the chairperson of the mediation boards or a government official. The volunteer mediators are given a forty-hour training in mediation techniques and skills and, after completing the course, they are officially appointed by the Mediation Commission for a three year term. After the completion of the three-year term the mediator has the chance to be nominated for reappointment, but they must go through the interview, training and evaluation process again. Their activity is permanently monitored, and they also receive specific trainings for particular types of mediation (Gunawardana, 2012).

Since the beginning of the program, the mediation boards have had more than 2 million cases, and over 50% of them have been successfully settled. Among the users of mediation services there is an overwhelming percentage of satisfaction (90%), including marginalized groups like women and minorities (Gunawardana, 2012, p. 22).

As the cases of US and Sri Lanka illustrate, the community mediation process is scalable to a high degree of social, cultural, economic or political frameworks. Different models can coexist freely within the same system, as seen in the US, and can produce exceptional results, or a single, state controlled model, as in Sri Lanka, can assume the same social role with high degrees of satisfaction.
4. Methods

In order to recommend a model for a community mediation program in Romania, we started by identifying the main issues that an illustrative Romanian community has to address when faced with conflict. This was further operationalized using the items of ‘community disputes typology’ and ‘mechanisms currently used in solving disputes’.

The items were then translated into focus group questions, conducted in the city of Cluj-Napoca; we carried out four focus groups, involving representatives of the main community stakeholders: householder associations, local police, self-managed public companies, public authorities, and mediators’ associations.

4.1. Participants

Each of the four focus groups concentrated on the same issues, but with different participants. The first one involved 6 representatives of various householder associations from Cluj-Napoca (they total more than 4,000 households), the second involved 9 representatives of the different departments of the local police (urban planning, environmental protection, traffic, public safety, commercial investigation and the legal department), the third involved 5 representatives of the local self-managed public companies and of the local public authorities (Public Domain Authority, The Water and Heating Authority, The Natural Gas Company and Local Council), and the last included 7 representatives of the four local mediators’ associations (they total up to 300 mediators within the city of Cluj-Napoca). Invitations to the focus groups were sent to all entities mentioned above using the database and the resources of the Cluj-Napoca Mayor’s Office, in order to assure a high attendance. 27 people participated in the focus groups, out of which 12 were women and 15 were men.

4.2. Results and discussions

4.2.1. Community disputes typology

While asked about the disputes they perceive as regarding community issues, the stakeholders identified quite a wide variety. The householders’ associations have to deal with two categories of conflicts: internal conflicts and conflicts resulting from the relationship between the householders’ associations and service providers or local authorities. The first set ranges from unpaid water and heating bills, landlord-tenant disputes (the representatives agreed that more than 20% of the flats from their associations were actually rented, mostly to college students or young families), noise, pet issues, to disagreements between neighbors regarding shared responsibilities inside the association. The last set of disputes was regarded as being a consequence of ambiguous laws and local regulations, confusing procedures established by the local authorities, and financial debts to the providers of public utilities.

The local police representatives shared their concerns regarding their field of work and the relationship with the citizens. About the disputes they encounter on a daily
basis, they pointed at traffic, urban planning and environmental violations, conflicts between bars or restaurants and neighboring residents due to excessive noise, incompliance with the local authorities’ regulations of small business owners and household’ associations (e.g. building maintenance), and small quarrels between neighbors (e.g. perceived property violation, noise).

The representatives of the self-managed public companies referred to inconsistencies in the public policy decisional mechanism as a source of conflict between them, the local authorities and the citizens. Specifically, they addressed the need of coordinating their actions regarding local public policies for infrastructure development (e.g. all the companies should schedule the maintenance of their infrastructure in a certain area at the same time, in order to reduce costs, durations and to limit the inconveniences for the citizens). They acknowledged the existence of a coordination board at the level of the Mayor’s Office, but they all agreed that this mechanism is inefficient.

In terms of relationship with the citizens, the representatives considered that most of the disputes are related to unpaid bills for the provided services.

Moreover, the mediators could not agree on a common typology of community disputes, but they all shared the idea that a larger debate on this matter, involving all relevant actors in the community, should be put into place. Also, some of the mediators expressed their concerns regarding a potential competition between the services provided by a community mediation center and the private practice.

4.2.2. Mechanisms currently used in solving disputes

Most of the parties invited to the focus groups stated that they use the same basic two step mechanism when dealing with disputes. First, there is an attempt to negotiate, and if an agreement is not reached, then the dispute is settled in court. In the case of the local authorities, including the local police, and of the self-managed public companies there is also another intermediary step: fines or other financial penalties as means of coercion, in order to force the compliance of previously binding contracts and local or national laws. This step is established through a set of internal procedures meant to deal with small disputes and citizens/clients complaints.

A problem acknowledged by all representatives of the households’ associations was that if an internal dispute occurs it is more likely that the association’s administrator is called to solve it, even if his duties are limited and refer mostly to accountancy issues. The participants’ opinion is that the association’s president, which is the legitimately assigned person to deal with all association’s problems, should rather perform this role. The administrator, in many cases, does not even live inside the householders’ community or it is not even a person, but a small business hired to deal with the financial situations of the association.

The use of mediation as an instrument of conflict resolution in community related issues was limited to a small amount of cases, as these householders’ associations, self-managed public companies, local authorities, and mediators agreed. Even so, the
mediation procedure was initiated by the citizens or the householders’ associations. The local police and local authorities’ representatives emphasized that they cannot use mediation services unless there is a formal procedure that would allow them to do so.

The analysis of the focus groups led to the following conclusions:

- The community stakeholders use some basic mechanisms for preventing and solving the conflicts within the community that generate asymmetric solutions with a low degree of satisfaction for the disputants;
- There is a limited efficiency in preventing the conflicts caused by the decisional mechanism used when generating new local public policies;
- There is a lack of coordination of the strategies of the different community stakeholders involved in urban and infrastructural development.

4.2.3. Limitations of the study

In our research, the focus was on identifying the typology of conflicts that influence the relations among its members and also the mechanisms used by the different community stakeholders when dealing with conflict. We are aware that further development of studies is necessary in order to also consider other variables related to conflicts that can emerge within a community.

Being an exploratory study, it was conducted only inside one community, the city of Cluj-Napoca, but we may assume that it is representative to some extent to similar communities in Romania. Further explorations, involving other type of communities, like small towns or rural areas, would be useful in revealing additional comparative elements. In addition, larger scale studies and the use of complementary methodology would help us get a better understanding of the potential of community mediation in Romania.

5. Designing a community mediation model for Romania

5.1. Mediation in Romania

The first step of mediation in Romania was made in 2003 when, with the support of the US Embassy, a mediation center was created in the city of Craiova, to work as a pilot project. The Craiova Mediation Center trained 440 mediators, exclusively recruited among lawyers, and spread its activities over the country (Craiova Mediation Center, 2013).

The institutionalization of mediation in Romania started for real with the adoption of Law no. 192 by the Parliament in 2006. The Law defines mediation and the profession of mediator (Romania is one of the few countries in the world that defines and regulates mediation as a profession), stipulates the principles, the fields of application, the rules and procedures of mediation, the training and certification of mediators and the relationship between mediation and the courts.

Since 2006, mediation in Romania has grown as a stand-alone professional field, coordinated by the Mediation Council, an autonomous body of 9 members elected
from the national roster of mediators. Currently, there are more than 7,760 mediators and more than 360 professional associations for mediators (Mediation Council, 2013). Unfortunately, there is no empirical data on the number of cases mediated in Romania, the types of cases and the settlement rate other than that of the Supreme Council of Magistrates which coordinates the activity of the courts (and that set of data is itself incomplete and outdated).

Though no specific provisions are made by the law concerning the models of mediation to be used, the practice of mediators in Romania tends to go along the main lines of the facilitative model. All mediators have to be certified by the Mediation Council in order to practice mediation, following a mandatory eighty-hour initial training in mediation techniques and skills. The training providers have to observe some formal criteria in order to be accredited by the same Mediation Council. Only the certificates issued by accredited trainers are accepted by the Mediation Council as proof of mandatory training. Mediation in Romania is exclusively a private practice and the mediators are free to choose their cases and apply their own model of mediation, within the framework provided by the Law (Mediation Law, 2006).

Use of mediation in Romania is voluntary, but for certain types of disputes, parties are mandated to attend an orientation session on mediation before submitting their cases to courts.

5.2. Community mediation model

When proposing a community mediation model suitable for Romania, we have to take into account the Romanian legislative and social particularities, in order to identify its goals, its organization and its activities.

Any tentative to establish a community mediation center in Romania has to pay attention to several issues that can have a direct impact on this endeavor. First, mediation is still in its infancy in Romania and there is a need to inform and educate the population about the process, its advantages and limits. Second, the Romanian law clearly stipulates the right of the parties to freely select their mediator – this means that cases cannot be allocated to mediators by the administrative officers of the center. Third, to be acceptable to local government, mediation services have to be provided on a free of charge, meaning that the certified mediators (the only persons that can legally mediate in Romania) have to volunteer their hours and services to the center. As a consequence, support of the mediators is crucial for the program and it can be achieved only if the selection of cases referred to the center will not conflict with their own practices. Therefore, there should be a clear definition of the range and types of cases that can be mediated as part of the program, in order to not compete unfairly with the mediators’ private practice. Taking into account this last condition, the Romanian model would be closer to the Sri Lankan model (with its circumscribed range of cases that can be referred to the center) than to the American one, with its all-encompassing load of cases.
5.2.1. Type of disputes

In view of previous analysis, a community mediation center should provide mediation services in the following situations:

- Neighborhood disputes (e.g. tenant-landlord disputes, householder associations’ issues, debts to householder’ associations, noise, pet issues);
- Disputes between citizens and self-managed public companies (utility services providers run by local government) regarding service provision and unpaid bills;
- Public disputes involving citizen organizations, public authorities and public policy decisional mechanisms.

5.2.2. Structure

We consider that the in-house community mediation service model would be more appropriate. This model, also known as ‘agency-managed service’, is typically run by a local authority, but this does not imply that the service is necessarily limited to tenants of the managing agency, or that the independence of mediation is compromised by its relation with the running agency (Gray, 2002).

Particularly, in Romania, the managing agency can be the Mayor’s Office, the Local Council or the County Council. One of the main reasons is that this type of managing agency can also be an important source of case referrals because they handle most of the complaints concerning neighborhood disputes.

An independent community mediation center, as a private NGO, would face difficulties in ensuring consistent funding. The possibilities of offering other services, besides mediation, are quite low. For example, mediation training is highly regulated and can be provided only in particular conditions unlikely to be met by an organization like a community center.

5.2.3. Mediators

The core of every community mediation service is presented by the volunteer mediators. Due to the mediation regulations imposed by the Romanian mediation law, only a certified mediator can provide mediation services in Romania. A partnership between a community mediation center and a professional association of mediators can supply the needed mediators.

A screening process, involving experience as a mediator or expertise in a particular type of disputes, can assure some service quality. Attracting skillful mediators can be a concern. In Romania, the numbers indicating volunteering are not very encouraging: under 13% of the Romanians are involved in volunteering activities, and most of them are between 18 and 30 years old (European Commission, 2013). It is more likely that a beginner mediator will be more interested to volunteer in a community center, as a form of apprenticeship.

A mentorship scheme would be helpful as well as additional trainings, provided either by academics or licensed professional mediator trainers. This can also be an incentive to volunteer, because, by law, every certified Romanian mediator has to continually develop its knowledge and skills in conflict management.
6. Conclusions

The community mediation has a bright future. The various models we have analyzed in our study demonstrate its extraordinary adaptability to all sorts of different social contexts, ranging from a totally independent, community-rooted model to a carefully state-controlled one. This flexibility allows the maintaining of the core principles, while the shape follows the changes imposed by more pragmatic constraints.

In Romania, mediation exists, in a formal manner, since 2006. As community mediation evolution is closely connected to the developments within a social system, we consider that now the Romanian society is ready to take this next logical step in dispute resolution. Regardless of the model that should be adopted, a strong support from all the community stakeholders is required.

References: