FOUNDATION FOR DEMOCRATIC CHANGE
FUNDATIA PENTRU SCHIMBARI DEMOCRATICE

PROMOTING ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS INTO THE ROMANIAN JURIDICAL SYSTEM

EVALUATE INTEREST AND NEEDS ASSESMENT

Case Study

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1. INTRODUCTION

1.1 Initiators

The Program **PROMOTING ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS INTO THE ROMANIAN JURIDICAL SYSTEM** was initiated by a group of researchers and practitioners from ***Foundation for Democratic Change*** (FDC).

The following persons were permanently involved and participated in the phases of conception, development, and analysis of results and at elaborating this Report:

- Carmen Semenescu, PhD candidate in juridical sciences - Project Director
- Anca Badila Ciuca, expert in conflict management - Project Coordinator
- Daniela Anton, PhD Candidate in Sociology - Evaluator

During the different phases of the program, other individuals with different specializations and professional backgrounds were involved:

- Simona Iliescu, lawyer
- Daniela Popoviciu, specialist in conflict resolution
- Cristina Jura, lawyer
- Alexandru Mihaita, project assistant

1.2. Program Objectives

The Program has first of all an educational component and its main objective is to raise the awareness of the Romanian juridical environment on the existence of alternative conflict/dispute resolution methods, as possible options for increasing the efficiency of the juridical procedures.

The conception and the development of the project PROMOTING ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS INTO THE ROMANIAN JURIDICAL SYSTEM was motivated by a number of factors identified by the initiators from preliminary studies and which, as they were initially formulated, represented the premises for the development of the project.

Because the initiators of the program have extended knowledge on the nature of conflicts and alternative conflict resolution methods (facilitation, interest-based mediation, conciliation), and the main goal of Foundation for Democratic Change is to promote ADR into the Romanian society, these premises are affected by a partisan approach.

During its first stage, the program aims to identify through a study on the concept of „settlement" related to the juridical system, to what degree practitioners and theoreticians from the juridical field confirm the ideas formulated by the initiators of the project, further more, what would be the best ways and methods to put into practice these ideas to include these alternatives to Courts in the Romanian juridical system.

1.3. Premises

Like the entire Romanian society, the judicial sector finds itself in a process of transformation, not only from a structural-functional point of view, but mainly from a point of view of values to promote: *respecting human rights, democratic principles and practices, educating individuals as conscious and responsible citizens.*

A look at the methods of conflict resolution used in Romania shows that in the majority of cases, these fall within the competency of judicial institutions, the solution generally favored being an arbitrary one, based on *the win-lose (winner-loser) concept.*

Without trying to deny the importance and the role of the juridical system in its present form, we have to admit that the win-lose type of solutions used by juridical institutions, in many cases, are not the most appropriate, leading to serious malcontent and contributing in many cases to the escalation of the conflict between parties involved, not at its de-escalation.

The need for „another type of justice" is maybe best illustrated in civil cases (division of marital assets, inheritances, property rights, etc.) or in the case of litigations between trade unions and owners. By simply giving a ruling the conflict is not solved, and the Courts of justice are already overcrowded with cases, which take years to find a final solution because of the strict procedures.

On the other hand, we notice that the tendency of the citizen is to accept the decision of a judge as the only possible solution for conflict resolution, not being usually aware or not trusting enough the possibility of using alternative conflict resolution methods, although they might allow for a faster, less expensive and enduring solution.
Even more, lawyers called to bring their contribution in trying to solve situations of conflict tend to approach the conflict from the same perspective, not presenting the sides with other possible options and engaging them in expensive lawsuits, both financially and time-consuming.

Regarding research in the juridical field, the studies published until now are very few; also the focus of the Romanian scientific research world for the study of alternative conflict resolution methods has been minimal. Thus, we can notice that the Romanian researchers are not entirely connected to the latest international tendencies and to the most recent researches in this field, continuing to use a traditional and sometimes excessively positivist approach to these problems.

The role of scientific research in promoting concepts and methods in the field of conflict resolution is essential in explaining, considering the Romanian juridical and cultural context, the nature, factors that influence conflicts and the possibilities for their resolution using alternative methods. Even though the foreign juridical literature is rich in this field, the reality showed that often, theories, concepts and practices from a certain country, that has a certain cultural specificity, cannot be simply applied entirely and without differences in another country.

This is exactly why scientific research has an extremely important role in adapting, wherever needed, western theories to the Romanian cultural reality. This would allow the Romanian researchers to offer to the practitioners a realistic theoretical basis to have a tangible and effective approach to the diversity of disputes and states of conflict generated by this diversity the Romanian justice currently confronts with.

In order to successfully implement the alternative conflict resolution techniques, the Romanian juridical environment has to know what these techniques represent, to what extend and especially how does the practice of mediator "affects" the juridical procedure, so that these ideas will not be received with hostility, but, if possible, they would be assimilated in the Romanian juridical system.

Successfully promoting alternatives for conflict resolution methods implies to take into account the existing legal proceedings that could support the acceptance of ADR by the Romanian juridical framework.

The closest legal proceeding to what we could call "alternatives to courts" is the procedure of ***settlement.***

Mentioned by the Romanian Civil Code, settlement should be the first stage for dispute resolution in civil cases, but this stage is not applied because:

- There is no other practice but the efforts of the lawyers, efforts that remain strictly at their desire and ability to apply them;

- Those that should practically use "settlement" (usually lawyers) do not have the necessary theoretical knowledge on the nature and the evolution of conflicts (there are no such courses in the academic curricula);

- Although mentioned in the Romanian Civil Code, settlement is not supported through the existence of qualified persons in this field (mediators, facilitators) that could provide assistance in such circumstances, and there is also a lack of knowledge regarding the role they could play in the resolution of a dispute;

- Alternatives for Dispute Resolution (ADR) have to be professionally explained, because without an in-depth knowledge of the concepts and only from a general overview (without addressing their substance and content as is in the case of many lawyers) a strong reaction of aversion, total and unjustified rejection of everything that is different from what has been used and taught until the now, could arise;

- We could consider the willingness to implement ADR is real, at the theoretical level - legally covered (Civil Code), as well as at the practical level (the interest shown by the juridical circles already contacted from the Institute for Juridical Studies) to know more and to promote alternative methods of dispute resolution (ADR).

2. Evaluating Interest and Assessing Needs

Case Study

2.1. Motivation and the proceedings

Regarding the premises put forward by the initiators, the case study on the procedure of settlement as it is presented in the Romanian Civil Code aims to identify:

- in what measure these premises are verified in practice;
- what would be the needs for extending or improving the practical use of these forms of dispute resolution before appealing to the courts, and
- what would be the ways and the means to support such an endeavor.

In order to avoid the results of this investigation to be affected by the acquisition of theoretical knowledge regarding Alternatives for Dispute Resolution, as they are defined and practiced in countries with advanced democracies, the study was conducted using subjects whose theoretical and practical knowledge comes only from within the Romanian juridical system.

The study comprised the following stages and used the following sociological methods for approaching the investigation:

A. *Identifying* through interviews a number of people from the Romanian juridical system, who may be interested to see a good development of this program and wish to *support* it and act as intermediaries between FDC and the juridical environments.
   In order to better know in what consist the alternatives to courts, these people have been later on invited to participate in seminars and trainings organized by FDC and/or trained directly by the members of the program initiators' team.

B. *Conducting a survey* among the lawyers based on a self-administrated questionnaire with closed and open questions.
   The questions were strictly related to the procedure of settlement, but comprised also questions regarding the way they practically use settlement (the process of implementing settlement). These questions also helped in identifying the level of direct and intuitive knowledge of the process of mediation and to establish differences between the methods of approaching it: direct negotiation, interest-based mediation, conciliation, arbitration etc. In this sense, the questionnaire-based survey had a promotional role too, in the sense that it induced a need to know more and overcome the professional self-sufficiency barriers that appear in a natural way after a period of experience as a lawyer in a certain field.

C. *Organizing a number of meetings* and round-tables at the FDC's location in Bucharest, also in other Romanian large towns (Iasi, Cluj, Ploiesti, Brasov, Craiova).
   The meetings between the members of the initiator's team and the different categories of lawyers had as a main goal completing the information obtained through the questionnaire-based survey, as well as the identification of potential multipliers for the concepts and possible resource persons. The program started with the premise that, following the questionnaire, questions may arise and the need to suggest new solutions, as well as the desire to know more about the program and its objectives. Handouts with presentation of the program were distributed at these meetings, as well as minimal notions about mediation and other alternative methods for conflict resolution, together with copies of normative documents adopted in the United States of America and Canada.

2.2. Difficulties

If the first stage of the study developed as planned by the initiators, the questionnaire stage was not as smooth as expected.
In Iasi for example, all the 20 questionnaires distributed were returned blank and the most of the others completely lost. Out of 35 questionnaires initially distributed, only 6 were recovered. Faced with this situation, the research team decided to distribute the questionnaires only after previous minimal information offered to the interviewees on the purpose of the questionnaire and presenting it into the larger framework of program promoting Alternatives for Dispute Resolution (ADR).

After adopting these new tactics for distributing the questionnaire, 16 filled-in questionnaires were recovered, however their number continued to be insufficient for developing a sociologically pertinent analysis.

In order not to endanger the development of the third stage of the study - meetings/round-tables -, a new initiative was formulated to distribute the questionnaires at the beginning of each meeting and to start the discussions only after they will be filled-in.

This is why, the results of the questionnaire analysis is affected, in the sense that the percentage of those who do not use settlement in their daily practice as lawyers and/or do not have a clear idea of what this could be, is actually higher. Basically, out of the 180 questionnaires distributed, only 51 were recovered, representing only 28.3% out of the total number of questionnaires.

Another way in which the results were affected is that the majority of those who did not fill-in the questionnaires or did not return them, are people aged above 45 years, with a long juridical experience. Thus, the average age of those who filled-in the questionnaires was 27 years old, many of these being in the beginning of their careers. These represented more of an ideal situation, a desired one than a need, more curiosity to learn than practical experience.

Unlike the questionnaires, where the main audience were young lawyers, at the meetings organized in the third stage of the case study, those with more practical experience felt the need to express opinions regarding the way mediation should be promoted and their contribution was much more useful in the sense that they identified obstacles or problems that could appear in the process of implementing the legal framework to support interest-based mediation.

In this sense, the conclusions and suggestions formulated during the meetings were added to the suggestions formulated in the questionnaires and shaped a realistic strategy for the process of adopting a legal framework that will support and promote Alternatives for Dispute Resolution.

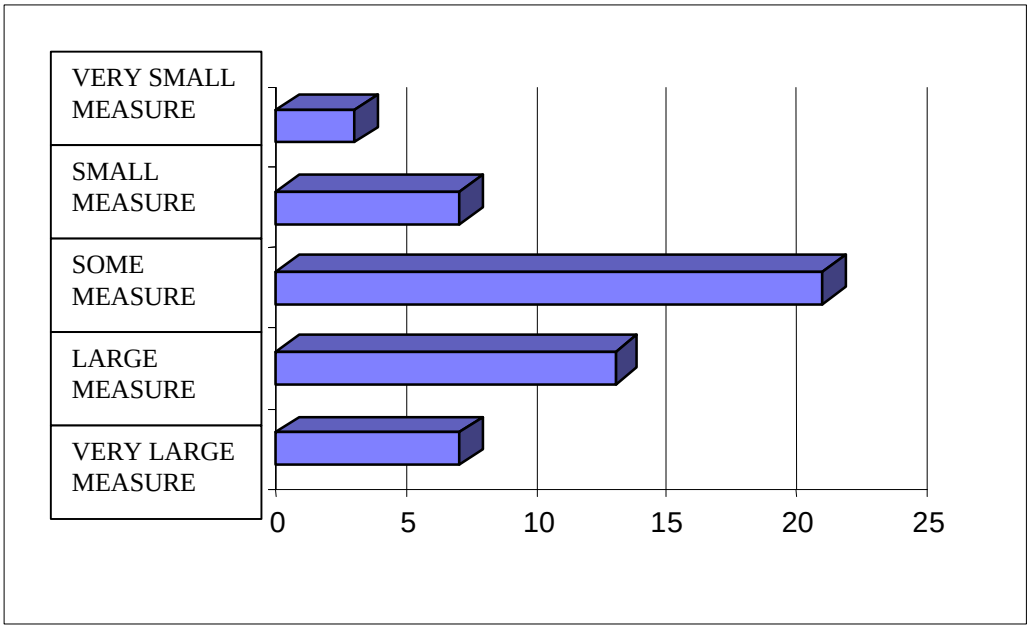
Sociological Survey

2.3. Results of the Sociological Survey

The survey was addressed to specialists from the juridical field that, in their practice, deal with problems of conflict resolution that appear between parties, by using settlement as a preliminary stage for juridical procedures. We aimed to identify the specific aspects of this type of conflict resolution, as well as to identify the interests and the needs of the lawyers from this point of view. The study had an exploratory character, without paying attention to representation, the questionnaire being applied through self-administration.

51 questionnaires were recovered, the subjects being students (22 - 43.15%), barristers (17 - 33.33%), juridical consultants (6 - 11.76%), judges (4 - 7.84%), and teachers (2 - 3.92%). The average age was approximately 27 years old. For those who were already working in this field, the average professional experience is of about 3 years. They are mainly young people, in the early stages of their careers.

According to the provisions of the Civil Code, settlement is mentioned as the possible first stage for legal dispute resolution. This is considered applicable in a very large measure by 3 subjects, representing 5.88%, in large measure by 6 subjects (11.76%), in some measure by 21 subjects (41.18%), in a small measure by 12 of them (23.53%) and in a very small measure by the rest of 6 (11.76%).



The arguments offered for these answers are based, from the point of view of the interviewers, on the judiciary practice and the legislation in place, paying attention to the provisions of the Civil Code and “particularities of each case”. Particularly, we could consider “personal experience”, knowledge in this field, jurisprudence and consultation of the studies realized in this field, also the “way of working with clients” and the “power of convincing of the lawyers.”

One category of arguments looks at the importance of solving "*on an amiable way a conflict without getting to court*", thus preventing "a delay of the solution, by using an amiable and friendlier solution for the parties", acknowledging that "in most cases, disputes start from a wrong or incomplete knowledge of the legal provisions or from the "misunderstanding of the demands of the other." In other words, "*settlement represents an equitable solution as long as the parties reach a commonly agreed solution*."

Not many times, the motives invoked are of a financial nature or time-constraints, because the "parties in litigation solve the case through settlement being interested in the financial aspect" and, also "judges are offered the possibility to solve a smaller number of cases in one day, and the parties spend less money."

Another category of arguments offered for the type of answers "*settlement is applicable in some measure*", are placed in the field of psychology: behaviors, personality, human nature, interests, all these being different according to the cultural specific of the individual and characteristics of the context.

The arguments offered for the type of answers "*settlement is applicable in a small or very small measure*" refer mainly to the absence of regulations, or existence of regulations that are "minimal and ambiguous, this being the reason why settlement is mostly left aside."

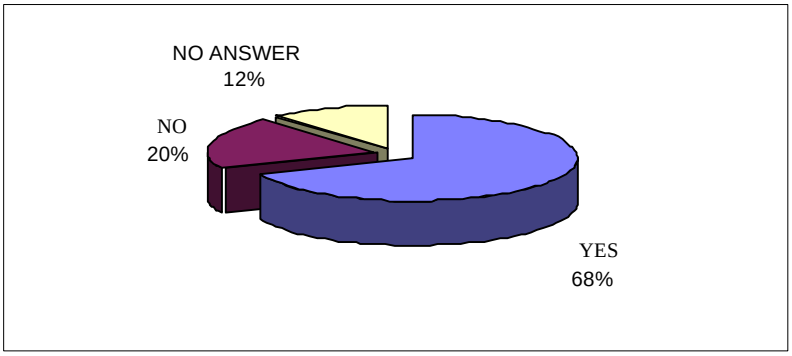
Another category of arguments in this sense, considers that "*if a case is in front of the court, settlement is not possible*" and that it is "*less likely that after the initiation of a conflict in which the parties involved, got in front of the court, they would solve their problems, considering that the proceedings to go to court are initiated by one of the parties.*"

The conclusion is that "*in these cases, settlement will lead to the closure of the procedure if it is equivalent with the resolution of the complaint*".

Other aspects refer to the fact that "*in most cases, settlement is no longer applicable after appealing to courts*" and that "*it might happen that settlement be forced upon the context.*" Even more, "*in most cases administering the evidence for solving the problem that is under debate is a requirement.*"

Even though there are "*just a few cases in which settlement has relevancy in the resolution of the cases*", "*settlement should be used, as it is mentioned in the Civil Code, as a first stage in dispute resolution, as an essential stage*", because "*the process of the judicial proceedings could bring material or moral prejudices to both parties*."

The majority of the interviewed subjects (35- 68.63%) consider that they use settlement in their judicial practice. 10 subjects (19.61%) mentioned that they do not use it and the rest of 6 subjects (11.76%) did not answer to this question.



The motives invoked by the interviewees for the neutrality of settlement in the juridical practice are:

- The absence of sufficient knowledge in this field or of the required juridical experience;
- Generally modest results already achieved;
- The effectiveness of the method and "*the lack of regulation*" could generate "*the impossibility to implement settlement in certain situations*";
- The bad will of the parties that "*in most cases refuse settlement*", because of their "*lack of communication*", "*serious misunderstandings*" and "*dissensions*" that existed or appeared in "*serious conflicting situations.*"

According to some interviewees, "*the conditions that could function as the premises of settlement vary, the criteria are different and the evaluations are diverse*". For most of the interviewees that answered this question, the criteria, conditions and specific situations that determined them to use settlement in a case are:

- The level of implication of the parties, regarding agreement, interests and not lastly "*the willingness of the clients to use this method*";

- The gravity of the conflict: " *the existence of superficial conflicts*", *"in cases the conflict is not very serious*" and "*the parties agree that the loses are relatively low*";

- The development of the process, considering the "*mandatory character of the Civil Code's norms*" as well as " *the efficiency of the lawsuits*"; we should pay attention to "*difficulties encountered in using the judiciary mechanism*";

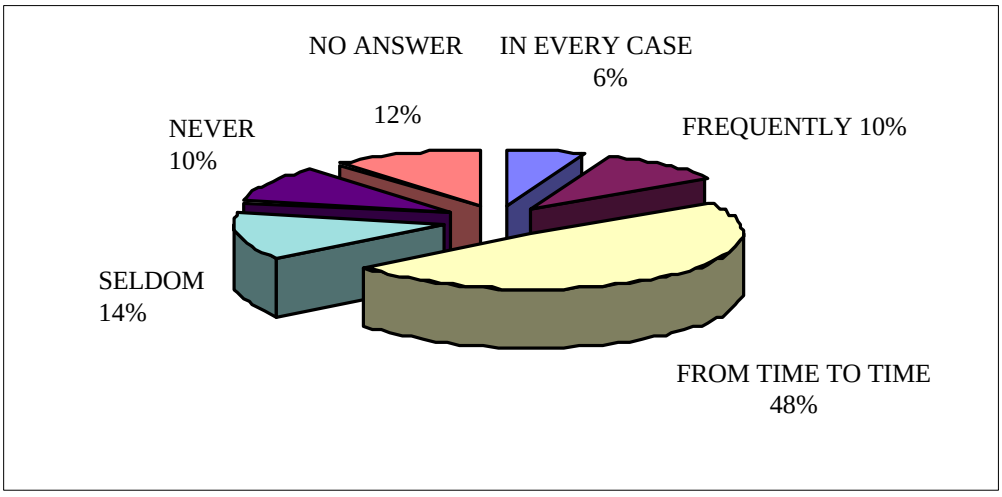
- The specificity of the situation, requiring the "*existence with cases that would allow such method of resolution*", considering "*the subject matter and complexity of the cause*", and taking into account that "*using settlement should occur in the situation where that case allows for such an approach*";

- The desired outcome: "*first of all the profit of both parties without biases*" and the "*resolution of the conflict by convincing both parties that each has its share of guilt*", thus trying to attain the "*benefits of both parties in a case of settlement*";

- Time and financial factors: *"the possibility to save time"* in order to avoid *"a long costly case, having the belief that parties will get to an agreement to their litigation"*, based on "*certitude that there is a possibility to save time*";

- Subjective factors like "*celebrity*" and "*satisfaction*", also "*power of convincing*" related to barristers' activity.

The frequency the interviewees consider they use settlement in their practice was the purpose of the next questions. Therefore 3 (5.88%) interviewees mentioned they use settlement for every case; 5 (9.80%) use settlement frequently; 25 (49.01%) interviewees use settlement from time to time, 7 interviewees (13.72%) consider they seldom use this method and 5 (9.80%) said they never use it. Six interviewees (11.76%) did not answer.



The interviewees considered that the role played by settlement in the resolution of juridical cases and, in the individual practice is mentioned in terms of:

- Qualitative appreciations ("important", "essential", "primordial")
- The role it plays (" minor, "medium", "active")
- Frequency
- Methodological Support

For a greater relevance of the comparison, in this table we present the frequencies of the opinions obtained:

Role of settlement		In general	In their practice
Qualitative	important; essential; primordial; special; necessary	21	14
Role	very small; minimal; minor	8	6
	medium; moderate	2	2
	large; active	4	4
Frequency	all the time	0	1
	occasional	0	2
Methodological Support		2	1

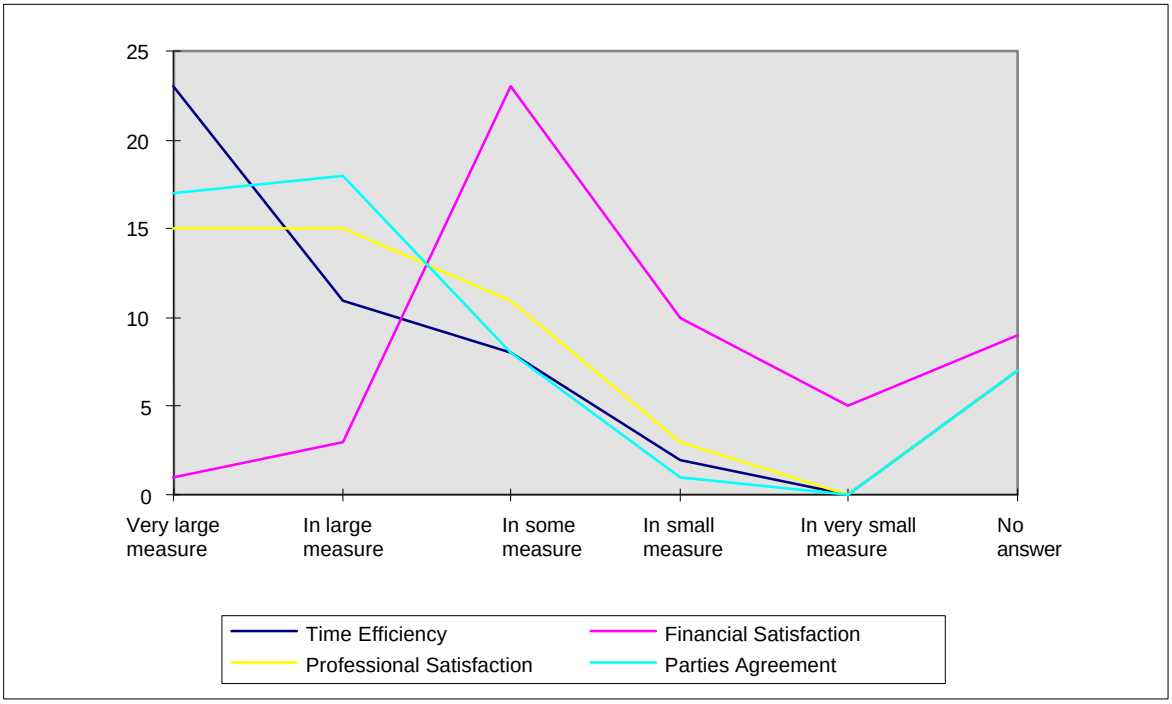
Another aspect for analysis was the level in which the interviewees considered they are able to attain certain outcomes by using settlement in their cases.

Therefore, in terms of time-efficiency, they considered this outcome was touched in a very large measure by 23 subjects (45.10%); in a large measure by 11 (21.57%); in some measure by 8 (15.69%); in a small measure by 2 (3.92%). Nobody answered "in a very small measure" and 7 interviewees (13.72%) did not answer.

Financial satisfaction is an objective attained in a very large measure only for 1 interviewee (1.96%) and in a large measure for 3 (5.88%). The majority of the interviewees (23- 45.10%) consider this outcome attained in some measure; 10 (19.61%) considered that it was attained in a small measure and 5 (9.80%) considered it attained in a very small measure; 9 (17.65%) subjects did not answer this.

Professional satisfaction was considered to be an attained outcome in a very large measure by 15 interviewees (29.41%) and in a large measure by other 15 (29.41%). 11 (21.57%) considered it attained in some measure and 3 (5.88%) considered this outcome attained in a small measure; 7 (11.76%) subjects did not answer to this question.

Another aspect that has to be taken into account is the agreement between the parties. This was achieved in a very large measure by 17 interviewees (33.33%), in a large measure by 18 (35.29%) and in some measure for 8 (15.69%). One (1.96%) considered the objective achieved in a small measure and 7 (11.76%) did not answer to this question.

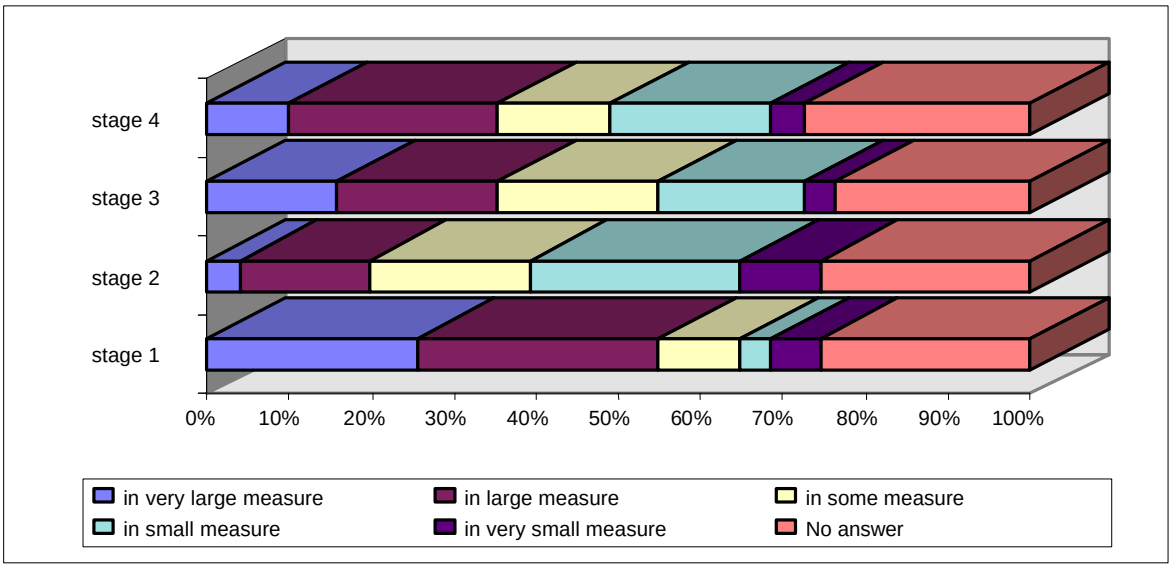


Based on the level of using the methods of settlement, we can group the interviewees in 2 categories: with and without practice in this field, as an explanation for the high number of non-answers situations registered.

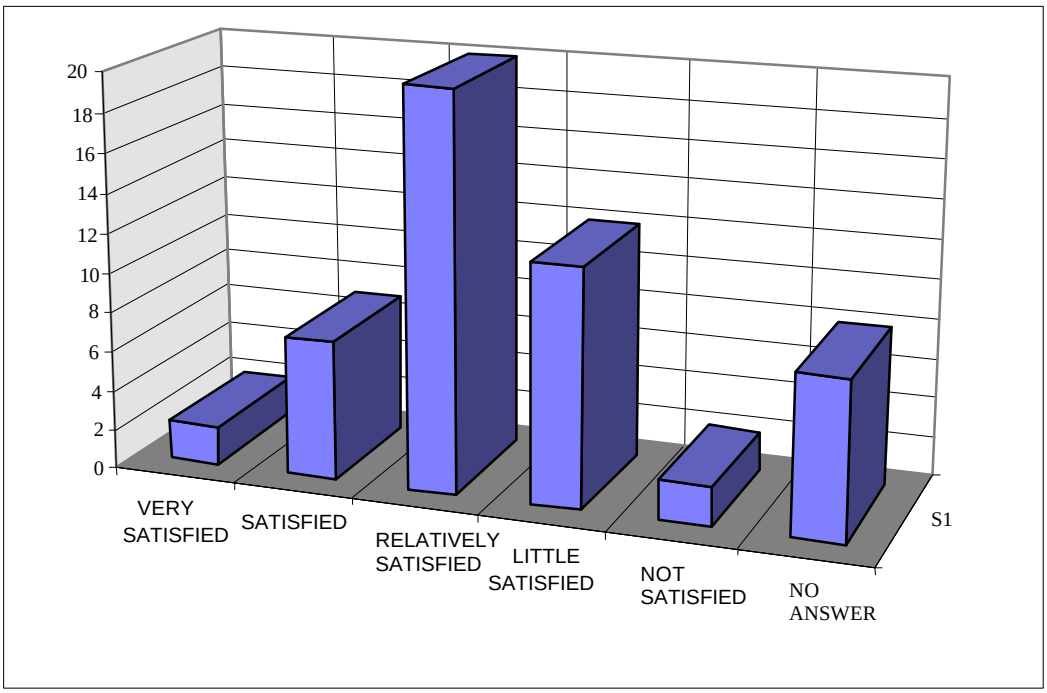
A first situation would be that **together with the representatives of the adverse party and with the involved parties, a discussion takes place in order to reach an unanimously accepted solution for conflict/dispute resolution** (graphic: stage 1). This situation was used in a very large measure by 13 interviewees (25.49%), in a large measure by 15 (29.41%), in some measure by 5 (9.80%) and in a small and very small measure by other 5 (9.80). 13 interviewees did not answer this question.

Another situation was represented by **direct assistance to the parties in order to reach an agreement following a certain pattern for the development of discussions, but not focusing on their content** (graphic: stage 2).
This situation is less used than the first one: in a very large measure by 5 interviewees (9.80%), in a large measure by 13 (25.49%) and in some measure by 7 (13.72%). Those using this situation in a small measure (10 - 19.61%) and in a very small measure (2- 3.92%) are a significant number. 14 interviewees (27.45%) did not answer this question.

The last question looks at the situation in which, **without taking decisions, the parties that find themselves in conflict are assisted to solve their problems through direct negotiation or a face-to-face dialogue** (graphic: stage 4).
This situation is practiced in a large measure by 5 interviewees (9.80%), in a large measure by 13 (25.49 %) and in some measure by 7 (13.72%). A large percentage of the interviewees use this situation in a small measure (10 -19.61%) and in a very small measure (2- 3.92%). 14 did not answer (27.45%).

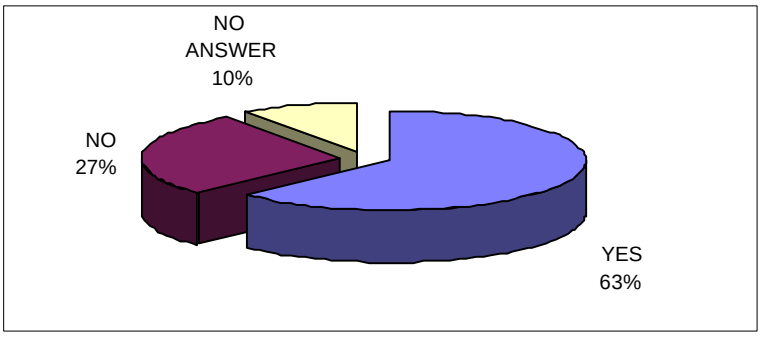


Another aspect analyzed in this study was the identification of the **satisfaction level** felt by the interviewees regarding the way in which the methodological prescriptions for the use of settlement are realized.
These were the answers received: 2 interviewees (3.92%) said that they were very satisfied with the methodology, 27 interviewees (52.94%) mentioned they are satisfied or relatively satisfied, 12 (23.53%) are little satisfied and 2 (3.92%) mentioned that they were not satisfied at all. 8 interviewees (15.69 %) did not answer this question.



Linked to this question are the other questions that look at **the need for improvement** as well as the form this improvement could take.

So, 32 interviewees (62.74%) consider necessary an improvement from a legal point of view regarding the procedure of settlement, while 14 interviewees (27.45%) consider that such a thing is not needed. 5 interviewees (9.80%) did not answer this question.



The recommendations regarding the improvement of these provisions are mainly to "*renew legislation*", "*detailed regulations*", and "*promoting*" settlement through "*increasing possibilities*" to use it and through "*more significance*" given to it.

More specifically, the answers received could be grouped as follows:

- Improvement of legal framework: a series of rules for these negotiations and for creating the legal possibility for meetings with lawyers and parties involved, simultaneously ;

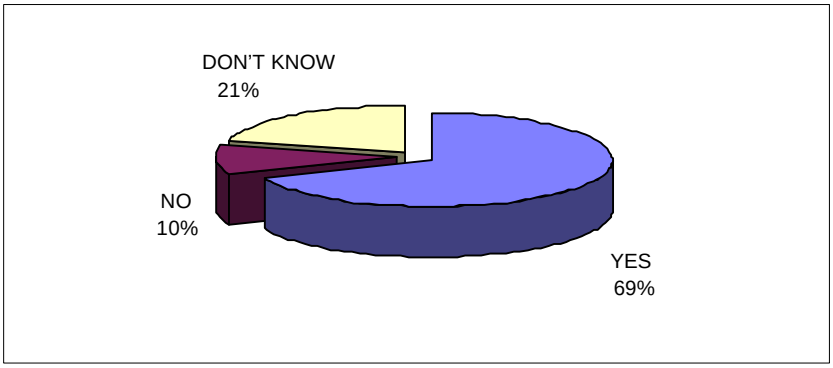
- Legalize settlement by "*setting it up as a preliminary stage of a lawsuit*", basically "*by setting up a preliminary procedure of the lawsuit*", and "*creating institutions, organisms, that will fulfill the settlement attributions, previously held by the institutions of justice*";

- Clarity and comprehensiveness through dispositions that will "*create clearer and more comprehensive regulations*", regarding the "diversity of situations" with "*specific, clear provisions that will not leave any doubts or leave room for multiple interpretations, in conformity with international standards*", with "*concrete provisions regarding the method of implementation included in the legal framework with specific regulations"* and *"with the quality of the procedural documents*";

- Specific regulations that aim to "*shorten the time period for lawsuits*" and which "*will give priorities to the jurists*", but offering a "*larger liberty of movement to the representatives of the respective parties*", and "*to leave wherever required a larger possibility for intervention from the conciliator*" with new provisions regarding the relationship between the affecting and the affected parties"; we have to add here a "more human attitude of the lawyers", in the sense that they are not interested "only in their fees".

In the end of the questionnaire the questions asked looked at the personal side of continuous professional training of the interviewees.

In this sense 33 interviewees (64.70%) consider it necessary to improve their knowledge regarding techniques of assistance, only 5 interviewees (9.80%) do no consider this necessary and 10 (19.61%) did not answer.


DON'T KNOW
21%
NO
10%
YES
69%

The practical forms, through which the interviewees considered they could improve their knowledge, take into consideration various methods for improving the access to as much as specialized information as possible, promoting this field and its language of specificity, in an ample process of „individual study" and of „adding of new information", are:

- Professional and juridical practice and the identification of examples and case studies through „*participation in the practical development of settlement procedures*"
- Organizing conferences, meetings, training sessions, analysis meetings and debates, round-tables etc.
- Organizing specialization courses:
    - Comparative law
    - Analysis of the techniques of mediation and approaching conflicts, as well as methods and techniques used by the negotiators;
    - Presenting the theory and doctrines from „*Canada, France, United States and of other states that have legislation in this field*"
- The study of the literature of specialty: documents, books, magazines, focusing on the „juridical literature of mediation that will present these techniques in a separate chapter" and through the „daily updating with everything that appears new in this field"

Meetings/ Round-Tables

2.4. Results of discussions from the Round-Tables

Between February - April 1998, a series of meetings/ round-tables took place at the Foundation for Democratic Change, Bucharest office, as well as in other Romania towns (Cluj, Iasi, Brasov, Ploiesti, Craiova).
A total of 16 round-tables were organized at which participated on average 4 jurists and 2 representatives of the group of initiators.

From among the jurists that participated at these round-tables, 62.8% of them have more than 5 years experience in different fields: lawyers, researchers, faculty, jurist consultants, and magistrates. Even though a special consideration was given to this last category of jurists, there was no prosecutor present at the meetings. Also, there was no questionnaire filled - in by this category of jurists.

Taking into account the needs identified through the use of the questionnaires, FDC prepared for the participants of these meetings a set of materials that contained selective legislation regarding the application of Alternatives for Dispute Resolution in US and Canada. The handouts included also a few theoretical notions regarding mediation, facilitation, conciliation, arbitration, the differences between these and the place they occupy in regard to the courts. The handouts were well received by the guests, all of them highly appreciating the possibility to find from the source (other countries' legislation) about these alternatives to courts.
Because the handouts were given in the beginning of the meetings, the participants had time only to take a superficial look at the information offered.
The organizers also made a presentation of the program, of the major objective of FDC - that of promoting the use of mediation in Romania, as an alternative to courts -, as well as the goal of the meetings, that of seeing, in what measure, based on the already existing level of knowledge of the Romanian society, mediation could be sustained by offering a specific juridical framework.

These are the reasons why, we believe that the opinions expressed by the participants in these meetings have not been altered by the substantial information regarding the content of Alternative Dispute Resolution (ADR) and they do reflect with accuracy the actual „image" of mediation, as it exists in the Romanian society.
This „non-alteration" is very important because in this way it was possible to identify as realistically as possible, the obstacles, but also the strong points that stand in the way of promoting an adequate legislative framework for the practice of mediation.

These are some of the opinions expressed, out of the 100 hours of discussions:

- A optional course on ADR could be introduced in the curricula of the Law Departments, but also in other Departments - it would be useful for the new generation to know more about the Alternatives for Dispute Resolution (ADR);

- The lawyers should be trained first - they could put in practice mediation immediately;

- There is no need for a special legal framework for mediation, the lawyers have the ability to use mediation themselves, if there is an adequate legal framework;

- The lawyers would be the first to oppose promoting mediation because they fear that they will lose their clients;

- There are already too many lawyers in Romania and another category of pseudo-lawyers would mean that they would lose clients;

- Mediation would hurt especially the new generation of lawyers, those that do not have yet a name thus having ensured their own regular customers;

- There are situations in which it would be useful to use mediators, for example the penitentiaries' strike;

- There cannot be adopted a legislation regarding mediation because not enough information is known about the legislation of other states where they practice mediation;

- Europe is different, we should learn about the experience of European countries were mediation is practiced;

- Include in the materials used for promoting/ informing about mediation, graphical representations-much more suggestive;

- More explanations about what is ADR, mediation, etc.;

- A bibliography about mediation, both in Romanian and in foreign languages is needed (thus we could see that mediation is not realized as we wish, but rather is the product of multiple studies, researches and especially of a long practical experience);

- A list with sub-specializations of ADR, respectively mediation (working relations, relations owners-labor unions, family, communities, identifying needs and adopting strategies through consensus etc.);

- Elaborating a Deontological Code of the Mediation or adapting the ones that exists in countries where mediation is practiced as alternative to courts ;

- Elaborating and adopting as an Annex to the Law regarding mediation, a Framework Agreement for the parties (what it should comprise/ not comprise in order to protect the confidentiality of mediation);

- Establishing and initiating a campaign to present mediation and its advantages, to the large public, together with lists of experienced mediators;

- Posters in support of mediation;

- Public documents that would present what exists currently in Romania and in other countries in the field of conflict resolution regarding mediation;

- Statistics - how many cases are solved through mediation before going to a lawsuit;

- Opening Mediation Offices, so that, when the legislation will be adopted, there will exist mediators ready to be used;

- Promoting a special law in order to ensure an adequate legal framework for the practice of mediation;

- There are situations in Courts, when the judge send both parties to find a mutually agreed solution; such cases have to be identified and analyzed (studies) in view of elaborating a scientific research in the juridical field and that will support the legal recognition of mediation as an alternative to Courts;

- What are the Romanian alternatives to conflict resolution outside the court, what are the disadvantages and the advantages of these alternatives
    - Settlement Commission (not functional since 1990)
    - Administrative Courts

- The institution of settlement was not a good choice for the questionnaires;

- In order to promote the concept, focus should be placed on the fact that it is less expensive and less time consuming in what regards the juridical system;

- What fields could mediation cover and based on this, the law regarding mediation should point only to those fields (as compulsory);

- To what extend divorces could be refer to mediation and not to conciliation on family problems;

- There is the danger that a so - called mediator would do something else at the cover of registration as a mediator - e.g.: intermediation, a „false lawyer" etc.;

- It is not very clear what is and in what consists mediation as a process; trainings are needed to present mediation process (according to target group and desired outcome);

- After authorization, mediators should be evaluated to see if they are doing what they are supposed to do or if they use the diploma for other purposes;

- Who certifies and how the quality of mediators, the fact they mediate or not;

- Before promoting mediation, civic education programs should be developed for those who may use mediation in the future;

- A study to determine to what extend the political-social system existing in the countries with advanced democracies allowed at a certain moment in time the introduction of mediation as an alternative to courts;

- We have to admit that using mediation would represent a huge help (the courts are overcrowded by files-some of them being ridiculous cases, some of them go to the Supreme Court, where if, using mediation before appealing to courts, would lead to the resolution of such cases with minimal costs;

- Overcrowding the Courts with "ridiculous cases" leads to the fact that the time spent on serious cases is smaller, judges not having the physical time necessary for a thorough study of the files. Compared to the 2-3 cases a day which are judged by a judge in the United States, a Romanian judge have to judge 30 and 60 cases daily;

- First of all some structures have to be created - when mediators will start working, the institution of mediation could start to be used, too;

- Positive Romanian examples in which mediation has been used have to be presented, together with examples from other countries (in order to see different types of conflicts/disputes in which mediation could be used);

- The concept has to be advertised;

- As much public information as possible delivered on what is and in what consists the concept of mediation;

- Studies about what mediation is and its effects have to be realized, etc.;

- There is no knowledge regarding the differences between the larger concepts of peacemaking, peacekeeping, or peace-building - new concepts for Romania;

- We have to start immediately to practically use mediation, the best method being that of applying it to closed communities, in which people are obliged to leave together:
    - Shelters
    - Penitentiaries
    - Boarding Houses
    - Re-education centers

- Besides, the already mentioned closed collectivities, we could also identify other cases for the application of mediation in stable collectives such as: inhabitants' associations, at work place, in school, between parents and children, etc.

Conclusions

An increasing preoccupation constantly appeared on how mediation could be best promoted and sustained, both publicly and legally, instead of the preoccupation to critique at the conceptual level the idea of using alternatives for Courts.

More experienced jurists did not express their disagreement, but rather the need to present some tangible results obtained through mediation and, more specifically, the need to train mediators before passing a law to set up mediation as an alternative to Courts.

The fear that mediation could diminish the number of those that use Courts, relative to lawyers and legal representatives in front of the Courts, were expressed mainly by people that are at the beginning of their careers, and try to build a name in this field of work. For these, the need to know more about mediation or even to be trained as mediators (being able to function as such if required) represents more of a threat to loose the financial perspectives that would come through practice the law, and place them in competition with the future mediators. From this perspective, we should not consider this reserve to be an opposition, but rather a normal fear to the unknown (your own professional future faced with a new competitor in the same field, the mediator).

Any future try to promote the profession and, thus of an adequate legal framework for the practice of the profession of mediator has to take this fear into account. Neglecting it or trying to minimize it could have negative effects.

As a secondary observation regarding the meetings, the organizers constantly noticed the same type of reserve when first contacts between jurists from other juridical fields were made: lawyers - jurist consultants, professors - lawyers etc.
The first tendency in the discussions was that everyone supported his/her point of view as being the only ones valid and the most important. But, the discussions allowed them to learn about the problems with which other types of jurists confront.
The beginning of the meetings constantly produced the most aggressive and inflexible ideas, but the end of the discussions produced unanimous support for the utility of mediation, and in general, for alternatives to courts.

As a personal observation of the organizers, we believe that jurists could benefit from each others' experience and the tensions existing inside the Romanian justice system would be diminished significantly if, having a topic of debate, more opportunities to meet and express their opinions, would be offered to the different types of jurists.
In what regards Alternatives for Dispute Resolution (ADR) we could say that except 2-3 individuals that participated in these meetings, the rest of the jurists manifested a clear interest to contribute in supporting the promotion of the concept of alternative to courts, and more exactly, of mediation. Some showed even their disposal to start working on a bill for the implementation of alternatives to courts.

The critiques and the fears could be interpreted as realistic tries of seeing the present constraints, both in terms of time and human resources.

3. Conclusions of the Case Study

The team of researchers of the ***Foundation for Democratic Change*** pursued the case study presented in this report, in order to identify to what extend *Alternatives for Dispute Resolution (ADR)* could be sustained both by adopting an adequate legal framework, as well as by implementing it into practice.

Any legislative modification, in order to be further sustained by a good practice, has to pay attention to the already existing legal framework and, especially, to the cultural specificity expressed in the principles that govern this framework.

Analyzing the Romanian legislation, forms of alternatives to courts have been identified:

- Settlement, provided for in some cases by the Civil Code
- Administrative Courts
- Arbitration commissions, for commercial causes

Because among the *Alternatives for Dispute Resolution* (see Annex 1) interest-based mediation represents the "purest form" of "**another type of justice**" and the closest resemblance to it in the Romanian legislation is settlement, this was the object of the first part of the study, in the form of the sociological survey.

We had to mention the other forms of alternatives to Courts, reason why the discussions held during the meetings/ round-tables focused on identifying the level to which these forms (not-excluding settlement) answer to the current needs of justice.

If the more open and general discussions held during the meetings focused mainly on identifying real needs for the existence of alternative forms of dispute resolution, as well as on the level of potential support offered for interest-based mediation, the questionnaires focused on the institution of settlement, surprised through the approach of a specific provision from the Civil Code, and to whom it is attached a relative importance, both in the curricula of universities as well as in practice.

This is one of the reasons why many jurists directly refused to fill in the questionnaires or returned them empty.

The analysis of the questionnaires filled - in and returned, as well as of the meetings allows us to group the results of the study as follows:

A. Knowledge of the concept of Alternative Dispute Resolution (ADR)

A set of questions from the questionnaires described different alternative methods for dispute resolution without naming them, such as:

Question:
When you use settlement, to what extend do you use the following forms:

- together with the representative of the adverse party and together with the parties involved, discussions are developed in order to reach an unanimous accepted resolution of the conflict or of the dispute ***(n.a. direct negotiation)***
- direct assistance offered to the parties in order to reach an agreement respecting a certain pattern in the way the discussions are developed, but not in their content ***(n.a. facilitation)***
- intermediary for the parties, collect information from which the interests of each party result in view of establishing an agreement between them ***(n.a. conciliation)***
- without taking decisions, the parties that are in conflict are assisted to solve their problems through direct negotiation or face-to face ***(n.a. interest-based mediation)***
- other forms (which)

From the collected answers it was obvious that in the smallest measure are used the forms that correspond to facilitation, respectively interest-based mediation.
Because interest-based mediation is a well-structured process and whose knowledge and especially practical implementation require for a long period of special training, the use of this form in a very small measure shows a lack of the necessary theoretical and practical knowledge.
Facilitation being an “incomplete” mediation (the parties get faster to direct negotiation, because it was not reached a high level of conflict escalation), the use in the smallest measure of this form of settlement, confirms the results obtained for the case of interest-based mediation.

This was confirmed by the discussions held at the meetings/round-tables. The high interest showed towards the handouts comes to support this affirmation, too.

In other words, there is talk about mediation, but at a theoretical level it is a very new concept that has not benefited out of sufficient attention from the research environments and there is no relevant practice in this field.

B. Appreciating the utility of introducing into juridical practice of some alternative forms of dispute resolution

Both, the analysis of the answers from the filled in questionnaires, as well as the ideas put forward and debated upon in the meetings/ round-tables show that the most important benefit brought to justice through the application of *Alternatives for Dispute Resolution (ADR)* is that of increased efficiency through a better use judges' time. The gain in terms of time is appreciated by the juridical counselors and lawyers, too.

Another benefit for using ADR is related to the resolution of conflicts that could end up in front of courts, but the methods for submitting and admitting them in front of courts are much more unclear and uncertain. Such examples refer to the strike in penitentiaries, conflicts that appear in closed communities, some work place related conflicts.

In what regards, professional satisfaction, the distribution of opinions is relatively homogenous. This could be explained also through the fact, that even though there were some singular opinions stating that it would be enough to have only lawyers practicing mediation under the current legislation, the majority of jurists consider that the whole discussions are about a new job, of it own, the job of mediator. The specific of this job, the numerous problems of competency, morality and efficiency to whom it has to answer, support the perception of a new job, that has to be defined and found a place in the juridical framework.

C. Expressed needs for promoting Alternatives for Dispute Resolution (ADR)

The majority of the expressed needs, for the effective support of ADR and especially, of mediation, refer to knowledge about the concept.

Thus, it is admitted that there exists a lack of specialization literature, of thorough scientific studies, for example of best practices, and, why not, a lack of enough mediators in the eventuality that they will have to take over cases that will be considered of their competence.

Both, from the answers offered in questionnaires and from the discussions held during the meetings/ round-tables the idea of a quasi-lack of knowledge regarding Alternatives for Dispute Resolution (ADR) came out, all the classical forms of information being mentioned as useful in this stage.

As a conclusion of the group of researchers, we could affirm and sustain through this study, that there exists a real openness regarding the promotion of an adequate legal framework for the implementation in practice of *Alternatives for Dispute Resolution*, achieving this goal, being more a debate regarding the way in which the expressed needs could be satisfied: knowledge, explanation, positive example.