

Mediation and restorative justice post-sentence: The Hungarian experience

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Since the middle of the 20th century, the unstoppable spread of crime has urged criminology experts of theory and practice to reconsider the efficacy and purpose of punishment. As a result, two polarised views in criminal justice policies have established themselves: one being the pragmatic need for retribution and strictness, whereas the other focuses on the resocialisation of the offender and the needs of the victim. The restorative approach, which is based on the latter and appeared as a new solution to criminality in Europe, quickly achieved significant results. Making the offender face the consequences of their crime, holding them accountable for their actions and enforcing the victim's needs appeared in the Anglo-Saxon countries as an alternative to the traditional criminal justice system, whereas in continental Europe the restorative approach is more typically embedded in the criminal proceedings. As a result of these achievements, experiments to enforce restorative justice (RJ) in prison settings, where the punishment is executed, with special attention to offenders and victims of serious crime commenced. This practice, however, has not become widespread, even though in several European countries including Belgium, the United Kingdom, Switzerland and Germany these methods have been greatly successful.

In Hungary, using mediation as part of the penal process began in 2006 when the Criminal Procedure Act was modified. There are, however, legal limits to the use of mediation: it can only be used in crimes against persons, traffic offences or property crimes punishable by imprisonment of

up to five years. In other words it cannot be used in the case of serious crimes. There is a list of conditions under which mediation is inapplicable, among which the most emphasised are cases connected to organised crime or committed by repeat offenders. The last stage at which victim-offender conflict-resolution can be carried out is at the court of first instance. Later, including during the execution of sentence, it cannot be applied.

Victim's reconciliation - perpetrator's accountability¹

In Hungarian criminal law it is not the aim of the penal system to foster reconciliation between parties nor is it suitable for it to do so. This means that, unless parties have already reconciled, they will not have the opportunity to do so later. Because of this, however, a victim who would like to take part in such a process is unfairly excluded from the opportunity of restoration and negotiation, and those imprisoned will not have the chance to face the harm or offence their crime has caused or to express their remorse in a way that is recognised by law.² Meeting the victim may have a significant role in the process of the perpetrator facing up to the consequences of their actions and seeing the harm they have caused. Many psychological studies have shown that offenders tend to detach from their actions and 'stay outside', which means that, after they have served their term, they are likely to feel that they have completed their part of the job and can continue from where they left off.³ For this reason, meeting the victim can be of vital importance,

1 Research by the author is supported by the János Bolyai scholarship of the Hungarian Academy of Sciences.

2 Besozzi, C. (1998/99) *Die (Un)fähigkeit zur Vaerenderung. Eine qualitative Untersuchung über Rückfall und Bewährung von ertsnemals aus dem Starfvollzug Entlassenen*, <http://ofj.admin.ch>.

3. Strasse, F-Randolph, P. (2005) *Mediáció a konfliktus megoldás lélektani aspektusai. Nyitott Könyvm_hely Kiadó.*

sometimes even if it does not lead to official consequences (such as the mitigation of punishment).⁴ This aim can be particularly important amongst juvenile delinquents, for whom committing crimes has not yet become a lifestyle and where issues caused by lack of education and emotional problems appear to be more easily dealt with.

The current public atmosphere in Hungary does not appear to be favourable towards embedding mediation possibility between victims and offenders within criminal proceedings as an alternative to imprisonment. Mediation applied in prison settings, which would intend to mitigate the sentence, is expected to face similar public reception.

The public voice appears to demand more severe and longer punishments - life imprisonment and the reintroduction of capital punishment - as is reported in the media on a daily basis. Several politicians and public figures believe that more serious and stringent punishments, and a lowering in the age of criminal liability would be successful in decreasing crime rates and these people regularly voice their views in public. At the same time, it is obvious that for a researcher it is not the public atmosphere that matters but the long-term objectives that they are hoping to fulfil.

Research on the restorative approach in prison settings amongst offenders of serious crimes - the MEREPS Project⁵

In 2008, having recognised the significance of the restorative approach with offenders who have committed a serious crimes and been imprisoned, Hungarian criminologists and their international partners have applied for support from the EU's Criminal Justice Programme for a pilot research and training program.

4. Liebmann, M. and Braithwaite, S. (1999) *Restorative Justice in custodial settings, Northern Ireland: Report for the Restorative Justice Working Group in Northern Ireland*, <http://www.restorativejustice.org.uk>.

5. **With the financial support of the European Commission's Criminal Justice Programme (JLS/2008/JPEN015-30-CE-0245615/00-52).**

Using empirical research and by carrying out pilot programmes in Hungary and abroad, the aim of the project is to:

- study the usability of RJ during the execution of sentences;
- become familiar with ongoing mediation projects in prison settings and study participants' achievements;
- map out the attitudes of prison staff and inmates towards mediation as well as survey the opinion of the population in Hungary;
- provide a training program for criminal justice and prison staff about available prison-mediation services;
- develop well-functioning techniques (mediation, facilitation, circles and other restorative techniques), good practice and processes that can be standardised; and
- foster the exchange of best practice and information between parties and future cooperation.

Members of the consortium

The MEREPS project's consortium leader, Foresee Research Group (Hungary), is responsible for the technical and administrative implementation of the project. Foresee (in partnership with the judiciary, the prison and the probation services and some NGOs) is coordinating the Hungarian pilot project, including the organisation of training of prison staff as well as carrying out mediation and RJ activities in prison settings. Throughout the project, Foresee's priority is to stimulate effective partnerships and exchange between the various national and international parties as well as to coordinate the dissemination of the results.

The National Institute of Criminology (OKRI) in Hungary is a major criminological research institute. OKRI is responsible for carrying out quantitative and qualitative empirical research concerning the attitudes of inmates and prison staff towards restorative justice.

Independent Academic Research Studies (IARS) will carry out a UK-based research project on the post-sentence use of RJ with young offenders. IARS will carry out interviews with policy makers, correctional staff, and young people to identify emerging themes and examples of best practice.

The German partners (the University of Applied Sciences and the Victim Offender Mediation Service in Bremen) will carry out and evaluate victim-offender mediations in prison settings as well as deliver research about the judiciary's attitude towards RJ.

Information about the results of the research and pilot programmes will be provided for the broader audience via the MEREPS web portal and by other dissemination activities, primarily by the European Forum for Restorative Justice.

All these activities aim at contributing to European-level policy making, including future methodological, institutional and legislative developments concerning RJ in prison settings.

The antecedents of the research in Hungary and abroad

Surveys of people's attitudes towards punishment have for a long time contributed to the development of criminal justice policies outside Hungary and public support also has an important role in this process. In contrast, so far in Hungary little research has been done on public support for mediation, support for those directly affected and the impact of mediation on criminal law.

A great number of international research projects have been carried out on how the population views justice, what factors have an influence on public views and how public trust towards justice and its various institutions could be strengthened. For example *Roberts* and *Hough* emphasise the hegemony of imprisonment when they highlight in their research report that the public associates committing a crime with punishment and punishment with prison.⁶ According to Sessar's research, 47.5% of respondents supported private restoration by the perpetrator or negotiation in connection with property crimes, and fewer people, 20.5% of respondents supported the same idea in connection with violent crimes.

Researchers of the Cullen Fisher Pealer Applegate Santana team looked into community support for correction rehabilitation in the USA.⁷ Their report points out that public support for rehabilitation is significantly influenced by politics, as there are two points of view against correctional actions: "it does not work" and "the public does not support it". In reality, however, it is becoming overly clear that rehabilitation programs are more efficient and successful in reducing the reoffending rate, which means that both research and the correct communication of ideas have an impact on this matter.

Specialist studies relating to this topic have been carried out in Hungary for over ten years.⁸ Barabás research in 1993 looked into the possible use of mediation in connection with crimes and the attitudes of inmates and their victims. At the time, only 2% of those found guilty rejected the idea of compensation for the victim in exchange for the mitigation or avoidance of the punishment. This result was confirmed by a repeat study by Barabás in 2003.

6. **Roberts J.V. and Hough M. (2002)** *Public attitudes to punishment: The context in Roberts, V., University of Ottawa and Hough, M. (South Bank University (ed) (2002) Changing Attitudes to Punishment, Public opinion, Willan Publishing.*

7. **Cullen, T,et al. (2002)** *Public support for correctional rehabilitation in America:change or consistency?, Roberts, V., University of Ottawa and Hough, M., South Bank University (ed) (2002) Changing Attitudes to Punishment, Public opinion, Willan Publishing.*

8. **Barabás, T. (1996)** *A mediáció esélyei Magyarországon egy empirikus vizsgálat tükrében Kriminológiai és Kriminálisztikai Tanulmányok.*

A victim survey carried out by OKRI based on a sample of 10,000 people titled 'Victims and Opinions', clearly showed that the idea of reconciliation, accepting restoration and using mediation is not far from the Hungarian people's traditions and mindset.⁹ The In-Sec research also discovered that Hungarians do not tend to be more punitive than people in other European countries.¹⁰ Moreover, a large proportion of respondents believed that prevention is not necessarily achieved by a more severe punishment in the field of violent crimes.¹¹ The 'Victims and Opinions' survey made it clear that, in accordance with international findings, those who have previously been victimised showed more understanding towards the idea of victim-offender agreement. This result was confirmed by an AGIS survey in 2004, which also highlighted the fact that a lack of information leads to an increase in insecurity.¹² Attitudes towards the acceptance of mediation amongst experts were studied by Kerezsi, and Fellegi amongst judges and prosecutors.¹³

Expected results in Hungary

A prominent consideration regarding mediation in prison settings involves enforcing the victims' interests as much as possible and a desired impact on the perpetrator. Communication in the criminal proceedings and confrontation with the crime or the harm it caused can both be of significant importance in relation to the life of the perpetrator after serving their term. It may help their integration or re-socialisation into their community and give support to victims by resolving the emotional harm and conflict that the crime caused. Besides the fact that all opportunities that might have a role in the prevention of crime have to be taken, it is equally important for victims to receive emotional support - an issue that practically no organisation in Hungary is concerned with (except some very specialist ones such as those that deal with the victims of sexual harassment).

9. OKRI, Budapest.

10. **With the financial support of the National Research and Development Programmes** (NKFP-5/0100/2002., OM-00120/2002)..

11. **Barabás T. et al. (2005)** *The Hungarian Country Report, Insecurities in European Cities. Vol. 2. Crime-Related Fear Within the Context of New Anxieties an Community-Based Crime Prevention, Budapest.*

12. **Ibid.**

13. **EU AGIS programme: Crime Prevention Carousel. Sharing Good Practice in Crime Prevention, based on the Evaluation of Physical Rehabilitative and Social Schemes in Problematic Urban Areas in Member and Accession States Opportunities for restorative justice in responding to crime, funded by the Hungarian Scientific Research Fund, 2006 (No. T 037854)**

In this research we are studying the application of law in the European-Prussian (continental) and the Anglo-Saxon criminal justice systems from the point of view of whether mediation works or not and if yes, under what legal and topic-specific conditions is it used in the criminal proceedings. In Hungary it is particularly important to study: the options for developing a special model of mediation that can be used in prison settings; the legal conditions and criteria for restorative justice which would be necessary for its implementation; the way it would be received by prisoners and prison staff supervising them; whether it is necessary and possible to use mediation for resolving conflicts within the prison (between prisoners and prison staff or for relieving tension between prisoners); to what extent the victims and the mediators employed by the Office of Justice would accept this; and which other NGOs could be involved in the process in order to achieve more efficacy and possibly greater acceptance. Bearing in mind international solutions and the empirical findings of this study, we and our English and Hungarian trainers are going to develop a model project, on the findings of which a proposal can be made to expand the use of mediation in prison settings.

Above all, the aim of these actions is to make peaceful conflict-resolution techniques available to perpetrators and victims of serious crime; as they know best what it is like to live a life with an unresolved conflict.

Additional References:

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