

STATE OF AFFAIRS OF RESTORATIVE JUSTICE IN HUNGARY¹

Restorative justice and mediation in penal matters currently do not exist in Hungary neither for adult offenders nor for juveniles. However, mediation in civil cases is available and regulated by a specific law², especially in commercial disputes, in cases within the health care system, in community conflicts, and in family- and child welfare issues.

Concerning mediation in criminal matters, there recently have been some important governmental efforts in different fields that will certainly help the institutionalisation and legislation of restorative justice in the future.

5.1. LEGAL POSSIBILITIES FOR INTRODUCING VICTIM-OFFENDER MEDIATION

The most significant development regarding the possibilities for introducing victim-offender mediation in Hungary was the reform of the Hungarian Probation Service. This reform is part of a broad systemic change that is currently going on in the criminal justice system. In the new legal tendencies, more emphasis is put on crime prevention, on the use of alternative sanctions as well as on creating possibilities for restoring the victim and the community.

Among other improvements, a favourable change was that the Government clearly expressed its intention to include the principles of restorative justice in the future activities of the Probation Service.

5.1.1. CURRENT POSSIBILITIES – INTRODUCTION OF THE “PRE-SENTENCE REPORT”

In order to create possibilities for more individualised sanctions, probation officers can, since 2003³, intervene in the criminal procedure even before sentencing by preparing a pre-sentence report based on the individual circumstances of the offender.⁴

The pre-sentence report is supposed to serve the principle of relative proportionality: since courts are obliged to take the social inquiry of these pre-sentence reports into account in their measures, they are able to differentiate among individual offenders who have committed the same kind of criminal act (Gönczöl, 2005: 185).

The preparation of this report is obligatory in all juvenile cases if the prosecutor decides to postpone the accusation. Concerning adults, reports are needed if the accusation is postponed and the prosecutor plans to include special behavioural rules in the final decision.⁵

Postponement of accusation derives its authority from the official exercise of discretion by the public prosecutor in cases that would not exceed imprisonment of three years (for adults) or five years (for juveniles).⁶ The Act on the Postponement of Prosecution mentions the possibility for the prosecutor to include a special behavioural requirement for symbolic or financial restitution to the victim and/or to the community.⁷ The decision of the prosecutor on whether to include this special behavioural requirement is largely dependent on the pre-sentence report that might detail the offender's willingness and possibilities for restoring the damage to the victim and/or to the community.

¹ Written by: Borbala Fellegi (September 2005), in Fellegi, B., *Meeting the Challenges of Implementing Restorative Justice in Central and Eastern Europe*, Final Publication of the AGIS project of the European Forum for Restorative Justice, Leuven: 29-37.

² Law on mediation No. 55/2002.

³ Decree No. 17/2003 (VI. 24.) IM of the Minister of Justice on the Activities of the Probation Service and the Amendment of Related Decrees. Chapter II.

⁴ Before this legal change, probation officers could only intervene in the criminal justice procedure after sentencing. Therefore, their experiences with the offender could not influence the judgment at all.

⁵ Postponement of accusation automatically leads to supervision of the offender by the probation service in both adult and juvenile cases. If the offender fulfils the behavioural requirements defined by the prosecutor, keeps regular contact with the probation officer and does not commit further crimes, after a period specified by the prosecutor, the case can be dropped and diverted from the court procedure.

⁶ Para. 224 in the Criminal Procedure Act (19/1998).

⁷ Para. 225 in the Criminal Procedure Act (19/1998).

It is also worth mentioning that according to the evaluation of the Office of the Prosecutor General of the Republic of Hungary between 1 July 2003 and 30 September 2004⁸, special behavioural requirements, including restitution, were more frequently used in prosecutors' practice compared to the years before.

According to the legislation, in the pre-sentence report

“the probation officer shall, in particular

- c) indicate whether the defendant is willing to compensate the injured party in part or in full for the damages caused by the criminal act, or to provide any other form of restitution,
- d) indicate whether the injured party will grant consent for the proposed restitution,
- e) demonstrate whether the defendant is willing and/or able to perform material provisions for some specific purpose, or to perform work in the interest of the community (restitution for the public).”⁹

To conclude, with the introduction of the pre-sentence report restorative elements have entered the sentencing process. However, it is important to stress that currently victim-offender mediation is not yet a formally defined institution, although prosecutors can include the requirement of restitution in the special behavioural requirements. These enable probation officers only to ‘prepare’ the process of restoration (by asking the victim if he/she grants consent for the proposed restitution) but they cannot conduct such meeting or refer the case to victim-offender mediation.

5.1.2. FUTURE PLANS IN LEGISLATION – REFORM OF THE CODE OF CRIMINAL PROCEDURE

In order to meet the requirements of the Council Framework Decision 2001/220/JHA, the Ministry of Justice clearly intends to implement penal mediation in legislation by 22 March 2006. The type of cases that can be referred to mediation, the stage of the criminal procedure where mediation can be used and the individuals who will be able to act as mediators will be regulated by the newly reformed Code of Criminal Procedure.

This reform is in progress and runs parallel to the preparation of a new Act on the Support of Crime Victims (see section 5.1.3). According to the current draft¹⁰, referrals to mediation will be possible at the level of the police, the prosecutor and the court. These authorities are obliged to inform the parties about the possibility of mediation. The process of mediation will be fully confidential. Mediations will be carried out – particularly at the initial stage of the implementation – by adequately trained probation officers.

The conditions for referring a case to mediation at the prosecutorial level are:

- the type of the criminal offence should not be punishable with more than five years of imprisonment;
- the suspect pleaded guilty and is willing to make some kind of reparation (material and/or symbolic) towards the victim;
- the voluntary consent of the victim and the offender.

If the prosecutor refers the case to mediation, the criminal procedure is suspended for 6 months.

In less serious crimes, successful restitution to the victim might lead to the unlimited reduction of punishment. In more serious offences the fulfilment of mediated agreements can be taken into account in the judgement.

As can be seen from the current proposal, mediation will be used mainly as a diversionary measure for less serious crimes, at least at the initial stage of the implementation. Consequently, victims of more serious crimes will not have access to mediation, although the extension of its use is not excluded within the framework of future reforms. Nevertheless, the diversionary character of mediation might raise the question of equal access of victims to mediation, since parties, who have suffered more serious harm and who could benefit from the possible restoration even more, would not have the possibility to participate in mediation at this stage. Moreover, the efficacy of this alternative measure will also be questioned, since,

⁸ National study by the High Prosecution Office (2003-2004) (unpublished document).

⁹ Decree No. 17/2003 (VI. 24.), Chapter II., Section 6.

¹⁰ The text is available on <http://www.im.hu/?mi=1&katid=44&cid=75&cikid=2233>.

according to several researchers, the beneficial effect of restorative justice (regarding, for example, the reduction of re-offending) is more visible in serious crimes than in less serious cases (Miers *et al.*, 2001).

5.1.3. NEW ACT ON THE SUPPORT OF CRIME VICTIMS

On 20 July 2005 the Government accepted the Bill on the Support of Crime Victims¹¹. This document, which will have to be promulgated by January 2006, also emphasises the importance of introducing victim-offender mediation in the criminal justice process as a right of crime victims according to the Council Framework Decision 2001/220/JHA.

5.1.4. NATIONAL STRATEGY FOR COMMUNITY CRIME PREVENTION

A final legal instrument that might contribute to the implementation of restorative justice in Hungary is the recently adopted National Strategy for Community Crime Prevention (2003). The comprehensive strategy presented in this document stresses the importance of setting up the conditions and applying victim-offender mediation within the framework of the probation service. It also emphasises the need for spreading “restorative judicial services, including compensation, small-community conflict management and mediation (p. 79)” and widening the “application of restorative justice tools (restitution, mediation, community conciliation) (p. 74)”.

Furthermore, the strategy addresses several sectors in promoting restorative justice. Firstly, courts and public prosecution services should promote restorative justice methods (restitution, mediation, reparation to the community). Secondly, courts and the probation service should intensively use the instrument of pre-sentence reporting. This instrument has the potential to bring restorative elements into the procedure, and may also serve as significant tools for preventing recidivism. And, finally, the media should be involved in publicising restorative justice (National Strategy for Community Crime Prevention, 2003).

Besides legislative changes, there is a strong conceptual support from the Ministry of Justice regarding the application of restorative justice. According to Katalin Gönczöl, the Ministerial Commissioner for Criminal Policy in the Ministry of Justice, “our effort is to reform the probation service and develop a coherent criminal justice policy based on a philosophy of restorative justice” Gönczöl (2006: 181). She adds that “the possibility of realising the sensitive balance between the rule of law and public order lies in strengthening the elements of restorative justice” (Gönczöl, 2006: 185).

5.2. RESTORATIVE JUSTICE IN PRACTICE

5.2.1. TRAINING

As can be seen from the overview above, the main actors in conducting victim-offender mediation in Hungary will be the probation officers. Although some of them have participated in specific trainings, seminars and conferences on mediation and on Real Justice, their nationwide and consistent training concept has still not been completely outlined, mainly due to the lack of financial resources. As a consequence, their preparation for practicing mediation is a rather fragmented activity at the moment: it is primarily based on the individual willingness of some probation officers whose training is covered by financial sources of temporary projects operated by the Service. However, it has to be mentioned that the Probation Service has expressed intentions towards the organisation of probation officers’ preparation for providing mediation. As a result, the standardised training of sixty officers has started in September 2005.

Therefore, one of the main issues at the moment is to continue the establishment of the systemic and nationwide training of probation officers. It is based on two main conditions: firstly, stable financial conditions have to be guaranteed, i.e. training in mediation has to be included in the yearly budget of the Service. Secondly, it is also essential that their training be based on a consistent and standardised methodological system (preferably done by the same set of trainers, at least in the beginning of the process), in order to be able to ensure that victim-offender mediation by probation officers means more or less the same service in every part of the country.

¹¹ “Bill on the Support of Crime Victims and the Role of State in Reparation” (“A bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről szóló törvény koncepciója”), 2004 <<http://www.bunmegelozes.hu/?pid=88>>.

Besides these top-down processes, the ‘bottom-up promotion’ of restorative justice also has to be mentioned, since it has a history in the Hungarian criminological thinking already from the 1990s¹². Mediation and restorative justice have initially been recognised by a few academics in Hungary.

In October 1999, Paul McCold and Ted Wachtel from Pennsylvania, United States, ran the first training course and two Hungarian professionals (a lawyer and a psychologist) spent months at the Community Service Foundation schools in Bethlehem, Pennsylvania to learn and practice the method of Real Justice. In 2003 the Community Service Foundation (CSF) of Hungary was established by grants from the Community Service Foundation (CSF), the International Institute for Restorative Practices (IIRP) from the United States, and supported later by the Hungarian Ministry of Children, Youth and Sports, and the Ministries of Justice and of Social and Family Affairs. “CSF has established an experimental day treatment program based on restorative practices for both high risk and delinquent youth who are living either in their own homes or in nearby foster care or other institutions. [...] The program seeks to achieve two empirical goals: to reduce the number of high-risk youth from committing criminal offences and reduce the number of delinquent youth from re-offending (Negrea, 2004: 5)”¹³.

The Family Child Youth Association also started an experimental project using restorative practices in schools in 2001. Thanks to this project, a high-school called “Zöld Kakas” (“Green Rooster”) – which was the partner organisation in this pilot programme – has been using the conferencing method in the everyday life of the school and has trained several peer-facilitators since then.¹⁴ In addition, the Association provides Real Justice trainings for legal practitioners, social workers, teachers and other interested professionals.

Several law faculties have introduced a special course on mediation and restorative practices. In 2001 the Police Academy in Budapest also integrated the subject of restorative justice into its curriculum.

5.2.2. PRACTICE

Currently more than 200 active and trained mediators work in the field of labour, family, health, education and community conflicts. Furthermore, several professionals, who were trained in Real Justice, use this method in their activities in the field of education and social services. In 2000, a National Mediation Association was formed as an umbrella organisation. It intends to stimulate the cooperation of organisations working in the field of mediation.

There are some programmes offering family and divorce mediation since the legislation on mediation has come into operation in 2002. At least in principle those willing to divorce should be asked whether they have tried mediation, but most of the lawyers and judges have no idea about the new option and its possible forms (Herczog, 2002: 10).

Since 2004, according to the “child welfare mediation procedure”, the Public Guardianship Authority has the right to use mediation if the parties are unable to reach an agreement on date, frequency or type of keeping relations. This procedure focuses only on the relations between children and parents (grandparents and other entitled persons) (Herczog, 2002: 12). Within the child-welfare system, some foundations are offering mediation in custody-related issues as well. This voluntary and free service is primarily offered in cases in which one of the parents/grandparents have not seen the child for a long period of time: the custodian parent is obliged to let the child meet the other family members and can be fined for not doing so (Herczog, 2002: 10).

5.2.3. RESEARCH

As part of a three year-long research project funded by the National Research Fund (OTKA), the National Institute of Criminology, with the help of external experts, organised workshops for legal professionals in order to gain a deeper knowledge of their opinion, experiences and needs concerning the

¹² For example Vigh, J. (1998), “Restorative Justice”, (A kárhelyreállító (restoratív) igazságszolgáltatás), *Magyar Jog (Hungarian Law)*, Vol. 6.

¹³ For more details, see the programme description on page 127-128 and the presentation by Vidia Negrea (2004) on <http://www.euforumj.org/conferences.Budapest.htm>.

¹⁴ For more details see the presentation of Borbala Fellegi on <http://iirp.org/Pages/nl03/nl03sessions.html#using>.

current sentencing system and their views on the possibilities for including restorative justice in it. Within the framework of this project, an empirical research project based on structured interviews with offenders about their attitudes towards restorative justice was also conducted.¹⁵ This will be followed by an empirical research based on surveys about the attitudes and expectations of the Hungarian population towards punishment and the criminal justice system. The study will specifically focus on gaining a deeper insight into the public's general punitiveness and its opinion about the application of restorative measures in criminal cases.¹⁶

In addition, more and more PhD researchers have started projects on investigating the legal, institutional and sociological aspects of implementing restorative justice. These projects include qualitative studies as well, for example about the attitudes of relevant actors, such as the legal professionals, victims or offenders towards the restorative approach.

Furthermore, Hungary is a member of the COST Action A21 focusing on the "Developments of Restorative Justice in Europe".¹⁷ Within the framework of this Action, Hungarian members are responsible for a research mapping the training modules of legal practitioners in the field of restorative justice in the European countries.

5.3. FUTURE TENDENCIES

Agreements of international communities have the potential to significantly contribute to the effective reform of the Hungarian criminal justice and social protection system. Hungary became a full member of the European Union in 2004, and also has to adopt the requirements of the Council of Europe as well as of several UN declarations, such as the Beijing Rules, Riyadh Guidelines, UN Rules regarding the support of juvenile delinquents in confinement, Convention on the Right of Children, etc.

However, there is still a significant discrepancy between the provisions of these agreements and the Hungarian legal practice. The challenge to develop sensitivity to human dignity and embrace the basic liberties of the individual will require the adoption of special laws and procedures, the establishment of special authorities and institutions. In addition, extra-judicial problem-management should also be promoted by the authorities (Herczog, 2002: 11).

Concerning the Council Framework Decision 2001/220/JHA, due to the close deadline, there is a danger that the obligation towards the European Union on introducing mediation in criminal cases before 22 March 2006 will lead to the establishment of a too-quickly designed legal and institutional system instead of the construction of a consistent and efficient organisational framework that could efficiently introduce and develop the service of mediation. However, there is still hope that the Government will recognise the need for basic research, systemic training and a thorough consultation process before it introduces new legal institutions, such as mediation in criminal matters. Previous experiences have clearly showed that it is much more difficult to significantly change the concept of a law once it is promulgated. On the other hand, a well-designed legal reform can be essential in opening the doors to new innovative and effective institutions.

Moreover, it is essential that the media – having a significant impact on shaping public opinion – shift from the biased coverage of criminal offences that concentrates primarily on the scandalous aspects of crimes (Herczog, 2002: 11) and could inform the general public about the more complex issues behind the phenomena of crime.

As Herczog concludes (2002: 11-12), "in the present system child welfare services are adopted for delinquent children's cases and the sanctions focus on education, reparation (e.g. reformatory) and insurance of children's needs. Based on the regulations (to be precise, on the lack of regulation) within the Law on the Protection of Children the easiest way to introduce victim-offender mediation is in the field of child delinquency, because this method of mediation can be adopted in this system without any conceptual amendment".

¹⁵ Barabás, 2004: 155-175.

¹⁶ For more information, please see http://www.okri.hu/?lang=gb&menu=hungarian_project.

¹⁷ For more information, please see <http://www.euforumrj.org/projects.COST.htm>.

To conclude, due to the top-down and bottom-up activities as well as to the international standards, restorative justice has become an important issue on the agenda of the Hungarian justice system. The principles of restorative justice can well fit into the overall concepts of the current reforms. Interdisciplinary and multi-agency cooperation in the process of designing new systems as well as broad level consultation before making significant amendments in the criminal justice system might have a large potential in contributing to the efficiency of reforms. But it should not be forgotten: once this dialogue has started, it also has to be maintained. Since it is more a cultural than a legal or institutional issue, it might be one of the main challenges for the future.

REFERENCES:

- BARABÁS, A. T. (2004), *Agreement instead of imprisonment?: Mediation and other alternative sanctions in Europe (Börtön helyett egyezség?: Mediáció és más alternatív szankciók Európában)*, Budapest: KJK-Kerszöv Kiadó (in Hungarian).
- FELLEGI, B. (2003), 'Using Restorative Techniques at High Schools: Evaluation of a 'Face to Face' Program', Paper presented at the Fourth International Conference on Conferencing, Circles and other Restorative Practices, 29 August, Veldhoven, The Netherlands [17 October 2005 <<http://iirp.org/Pages/nl03/nl03sessions.html#using>>].
- GÖNCZÖL, K. (2005), 'Developing humane criminal justice systems in democratic societies: An update from Hungary', *The Journal of Community and Criminal Justice*, 52(2): 181–186.
- HERCZOG, M. (2002), 'Victim-Offender Mediation with juvenile offenders in Hungary', in *Victim-Offender Mediation: Organization and Practice in the Juvenile Justice Systems* series, Bologna, Italy: Research Institute on Judicial Systems, National Research Council (IRSIG - CNR). [17 October 2005 <http://www.irsig.cnr.it/reports/testi_reports/pdf_reports/report_Hungary_8aug03.pdf>].
- HERCZOG, M. (2003) [Ed.], *Reconciliation and Restoration – Handbook on Restorative Justice (Megbékélés és Jóvátétel)*, Budapest: CSAGYI Books (in Hungarian).
- MIERS, D., MAGUIRE, M., GOLDIE, S., SHARPE, K., HALE, C., NETTEN, A., UGLOW, S., DOOLIN, K., HALLAM, A., ENTERKIN, J. and NEWBURN, T. (2001), *An Explanatory Evaluation of Restorative Justice Schemes*, UK: Home Office, Crime Reduction Research Series, Paper 9.
- NEGREA, V. (2004), *Transforming labels: new practices to reintegrate troubled teens*, Paper presented at the Third Conference of the European Forum for Victim-Offender Mediation and Restorative Justice, 'Restorative Justice in Europe: Where are we heading?', Budapest, Hungary, 14-16 October 2004 [17 October 2005 <<http://www.euforumrj.org/conferences.Budapest.htm>>].
- National Strategy for Community Crime Prevention* (2003), Annex to Parliamentary resolution No. 115/2003., Hungary: Ministry of Justice [17 October 2005 <http://bunmegelozes.easyhosting.hu/dok/national_strat_crime_prevention.pdf>].
- VÍGH, J. (1998), 'A kárhelyreállító (restoratív) igazságszolgáltatás' (Restorative Justice), *Magyar Jog*, Vol. 6 (in Hungarian).