

RESPONSIBILITY-TAKING, RELATIONSHIP-BUILDING AND RESTORATION IN PRISONS

MEDIATION AND RESTORATIVE JUSTICE IN PRISON SETTINGS



Editors: Tünde Barabás – Borbála Fellegi – Szandra Windt

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MEDIATION AND RESTORATIVE JUSTICE IN PRISON SETTINGS

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Introduction

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*The editors
on behalf of the MEREPS team*

*Martin Wright*¹

FOREWORD

At first sight, imprisonment and restorative justice operate on different wavelengths. A prison sentence is imposed primarily as a punishment for what a person has done in the past, while restorative justice is about making things better in the future – and for the victim as well as the offender. But prison is a fact of life: there are about 10 million prisoners worldwide; of the countries covered in this book, there are fewer than 100 prisoners for every 100,000 Germans and Belgians, and about 150 per 100,000 Hungarians and British inhabitants (Walmsley, n.d.). In Britain and many other countries, the prisons are full to capacity, which makes it difficult for constructive activities to take place. It is easy to think of the negative aspects of imprisonment, and reasons why it would be better to make far less use of it. Some characteristics are hard to avoid: separation from families, association with other offenders, regimented activities, stigma after release into the community. Others can be made worse by harsh regimes: boredom, lack of work or other meaningful activity, conforming to rules rather than developing responsible autonomy – or conversely rebelling against the rules. In the worst cases, there is “institutionalisation” (learning to live in institutions and being unable to cope outside), self-harm

1 *Martin Wright, PhD*: former director of the Howard League for Penal Reform and senior research fellow at the Faculty of Health and Life Sciences, De Montfort University, Leicester

(especially among female prisoners) and suicides. All of these features of prisons are focused on the prisoners rather than on the victims of their offences.

In spite of these difficulties (and sometimes in spite of their political masters), many prisons and their staff try to make the experience more constructive. Efforts are made to provide work, recreation, and programmes to address offending behaviour, such as drug and alcohol therapy, cognitive behavioural therapy, anger management, and basic education and work skills. The eighteenth-century English prison reformer John Howard, after visiting prisons all over Europe, advised that “[t]here is a mode of managing some of the most desperate, with ease to yourself, and advantage to them. Many of them are shrewd and sensible: manage them with calmness, yet with steadiness: shew [sic] them that you have humanity and that you aim to make them useful members of society” (Howard, 1792: 39).

Restorative justice brings a new dimension to the effort to make prisons more humane and effective. It has three aspects. One is the possibility of using it as a community-based sanction, thus avoiding the need for imprisonment. That is a very encouraging development, but it is not the subject of this book. The second is the possibility of enabling victims to meet offenders. This is at the heart of restorative justice. According to prevailing ideas, there are many offences for which courts regard a prison sentence as necessary, but a restorative process can be used in addition. It may help to change the attitude of the offender, and it can also help victims in the many ways that have been found in studies of restorative practice: it provides an opportunity for them to get answers to questions, and to let the offender know the impact of his or her actions. In addition, when the victim and offender know each other, or at least live in the same neighbourhood, there is a possibility that by meeting they can reassure each other that they do not need to live in fear of each other. In some cases a restorative meeting has even reduced post-traumatic stress symptoms (Sherman and Strang 2007: 64).

The third application of restorative justice is in the running of the prison itself. Prisoners have conflicts, just as do people in the outside world. If these can be resolved without the use of force, it is in the interests of both, and of the smooth operation of the prison. It is also possible for conflicts between prisoners and staff to be resolved in this way: if, for example, a prison officer feels that he or she has been insulted by a prisoner, or the prisoner considers that he has been given an unreasonable order. It must be admitted that this will require a considerable build-up of trust before it can be accepted in the authoritarian structure of a prison, but when it happens, it will put into practice John Howard’s maxim “with ease to yourself, and advantage to them”. Ultimately authority will have to be used, in cases where a restorative method is inappropriate or has not been successful; but that will become rarer as restorative methods are more widely used.

This is the case for restorative justice in prisons; but is it too optimistic? The short answer is No, because it has already been successfully put into practice in many places. It began with partly restorative practice, interest in which goes back for some years. In the mid-1980s, victims of burglary were able to meet young offenders (but not “their” offenders) in Rochester youth custody centre in Kent, south-east England. The project was called VOIC (Victims and Offenders In Conciliation) (Launay and Murray, 1989). In another such

institution, in Germany, at about the same time, groups of women who were not themselves victims conducted seminars on sexual roles (Geschlechtsrollenseminare) comprising about 40 sessions for sexual offenders in the young offenders' institution in Hameln (Tügel and Heilemann 1987). A recent book gives case histories of meetings, in the United States, between imprisoned offenders and their victims (or victims' relatives, where the crime was homicide). The project, called Victims' Voices Heard, was started by the mother of a young woman who was murdered. The crimes were of the most serious kind, yet both victims and offenders found the process helpful. In one case (of burglary and rape) the offender had been abandoned by his family, and after release his sole support system comprised his victim and her husband (Miller 2011: 67). In the United Kingdom a guide to making restorative justice happen in prisons has been published (Edgar and Newell 2006; the second author is a former prison governor), and it is indeed happening in a number of prisons, for example in Gloucester and Swansea (reported in Resolution, the newsletter of the Restorative Justice Council, 2010 Winter and 2011 Autumn respectively). Some of these projects are not fully restorative, in that they may involve "victim awareness" rather than actual dialogue between victims and offenders, but they are on the restorative spectrum. There have been projects with young offenders, and one, called REMEDI (Restorative Justice and Mediation Initiatives), working with adult prisoners, formed part of an extensive government-funded research project (Shapland et al. 2011).

One country which has been developing restorative initiatives in prisons – within the framework of MEREPS – is Hungary. The research has set out to assess the ability and willingness of offenders to participate in mediation after sentencing, and also studied attitudes of staff – those who had even heard of restorative justice. An action research programme then investigated all kinds of interventions following restorative principles, including restorative conferencing, family group conferencing, mediation and circles of support. Restorative methods of handling cell conflicts were also introduced.

Introducing restorative justice into prisons is not straightforward, however, and the strength of this book lies in facing some of the difficulties of implementing this new approach, which is unfamiliar to most of those involved. Advocates of restorative justice have given little attention to these practical problems. Some projects incorrectly describe themselves as "restorative" (others, however, which are at least partly restorative, do not use this term). Inmates' motivation may appear to be influenced by self-interest; they could believe that they might earn advantages in the prison system. The staff might comply in order to impress the governor, or see the restorative method as a way of disposing of conflicts easily. The latter, of course, is not necessarily a disadvantage: if criminal justice personnel save themselves work by using a restorative approach, everyone benefits.

The pilot study shows how restorative justice can positively influence the communication culture of a hierarchical institution, how it can become a first step towards empowering people (both staff and inmates) to articulate their needs, and to believe that some dialogue and cooperation might be possible.

In Germany, victim-offender mediation is widely known among prison staff, but only a small minority are familiar with family group conferencing and circles. This should change, now that a project has been started and mediations are taking place. Belgium has also promoted mediation in prisons, and was probably the only country to appoint “restorative justice advisers” in every prison, “not to work individually with victims, but to re-orient the prison culture towards a culture of R J”, although the function was abolished, for unexplained reasons, in 2008 (Van Doosselaere and Vanfraechem 2011: 60).

In particular countries, or at least in particular prisons, restorative practices are beginning to be used in the monolithic, punitive prison systems. The results are showing that they can co-exist with the prison culture and begin to modify it. Prison governors and staff find that they do not lose authority, but use it to force prisoners to think for themselves, and thereby gain respect. In time we may hope that courts will see that the restorative process works without sending people to prison first, although there are some offenders for whom the most ardent penal reformers would accept the need for some form of imprisonment, and others for whom a prison operating on restorative lines could serve as a sanctuary in which to come to terms with their crime, before possibly taking part in a restorative process if their victim so wished. The concept of “restorative detention” has been proposed (Blad 2006: 144-6). Advocates have to guard against seeing it as a panacea, but it is an exciting new paradigm which offers a way out of the penal cul-de-sac. Practitioners have led the way; now researchers, such as those in the MEREPS project, are illuminating and consolidating (and when necessary constructively criticising) their work. This book should inspire both researchers and practitioners to take the process forward.

INTRODUCTORY THOUGHTS

“Do you remember when we first met? It wasn’t in a coffee shop. You broke into my house. And robbed me of my belief that I was able to protect my family and my home from people like you.”

“I had never seen anyone before suffering from such a deep sense of sorrow, anger, desperation, isolation and guilt. It surprised me that it was he who felt guilty for what I had done! That was the moment when I realised the damage I had caused, and saw who had been affected and how.”

“And then we started to talk... about pain, about the past...”

(Excerpts from the documentary entitled “Woolf within”, in which Peter, a recidivist, and Will, one of Peter’s victims, make a confession about what it meant to them to meet each other. Peter said that he had committed nearly twenty thousand offences before he met the victim of his last burglary, Will, within the framework of mediation. This meeting changed the lives of both of them. Peter has been “clean” since 2003 and published a monograph entitled “The Damage Done”, while Will established the organisation named “Why me?”, which supports the victims of crime and assists them in participating in mediation.)

Our sense of justice and the need to protect our society require that people who commit serious crimes are imprisoned. At least for a certain period...

What happens to offenders during their imprisonment and afterwards? What do they think about the crime they committed and the damage they caused? To what extent do they feel responsible for what happened? Do they have a sense of guilt and an urge to make things right? Do they have a way of facing and dealing these feelings at all? What plans and opportunities do they have when starting a new life in “law-abiding society” after their release? What are their chances of success in integrating into society and restoring their relationships?

And what happens on the other side at the same time? How are their victims compensated for the damage they suffered? Do they have an opportunity to share their pain and loss with someone, especially with the one who made them suffer; or to ask the questions that haunt them? Who helps them deal with the trauma they suffered and move on, and in what ways? Does the justice system give them justice and how can they take part in it directly?

Or: How do the parents, children and family members of the victims and offenders respond to the crime? Are they able to handle what happened? Are they able to support their loved ones in coping with the consequences and “restart” their lives?

And there are questions related to the broader community and the society as well. How is the damaged community compensated as a result of the criminal justice procedure? Is there any guarantee that the released offenders will not hurt someone again? Are we ready to accept released prisoners and help them integrate?

Dialogue can be mentioned as the common feature of possible solutions: dialogue between offenders, victims, directly or indirectly affected family members, the professionals involved, and members of the immediate and broader community.

Lacking the necessary set of tools, the traditional criminal justice system has been unable to facilitate such a dialogue. As such, it is no surprise that the restorative approach has gained ground in relation to dealing with crimes and offenders.

In the past two decades, Restorative Justice and its institutions have become increasingly recognised in European jurisprudence, and have also appeared in practice. However, in most cases restorative solutions are available only prior to conviction. Only a few practices exist that allow offenders to repair the harm they caused whilst in prison. It mainly affects those offenders and victims who are willing to engage in a restorative dialogue, which is not available in prison settings.

Based on domestic and international research findings, which suggest that the restorative approach is most effective and efficient regarding serious crimes, Hungarian restorative professionals, in cooperation with foreign partners, have set up a research team to study, at the national and international level, how restorative practices can be applied with offenders during their prison time.

The research programme has become known as the MEREPS project, the name of which stands for “*Mediation and Restorative Justice in Prison Settings*”, and it has been sup-

ported by the Criminal Justice Programme of the European Commission.¹ Led by Hungarian researchers, the international project looked at how mediation and other restorative practices could be applied in prison settings, with special regard to offenders who committed serious crimes. The aim of the research was to assess the possibilities of meeting and reconciliation between the imprisoned offender and the victim living in the outside world. Another purpose of the project was to reveal the way conflicts between offenders and their environment, as well as conflicts arising in prison, can be resolved, and to examine how conflict management can serve the social reintegration of offenders following their release. The project developed its examination methods and pilot programmes that work in practice, involving the researchers, restorative professionals, legislators and legal practitioners in the countries concerned.

The development of the application of restorative methods in prison can be similar to the children's game where you have to throw various forms into holes of various shapes. It is obvious in this game that it is impossible to insert a triangular form into a round hole. However, if the little forms were made of plasticine, maybe we could shape them a bit here and there at the edges and this way we could manage to insert figures of shapes different from the shape of the holes.

It became apparent in connection with the subject of mediation and Restorative Justice in prisons that it is particularly difficult to incorporate an approach, which basically is built on democratic values and cooperation between partners, into a highly hierarchical system. The MEREPS project was about finding out how we could and should knead these forms to insert them into the world of prisons.

As members of the MEREPS consortium, seven research groups from four European countries participated in this search. The Hungarian-led project was headed by the Foresee Research Group, operated under the professional supervision of the National Institute of Criminology and was financially managed by Innokut Non-profit Ltd. Foresee's foreign partners were the Leuven-based European Forum for Restorative Justice, the London-based Independent Academic Research Studies (IARS), and two organisations from Germany, the University of Bremen (Hochschule Für Öffentliche Verwaltung Bremen) and the Bremen Mediation Service. The domestic implementation of the project enjoyed support from several high-profile organisations, including the Central Office of Justice of the Ministry of Public Administration and Justice, the Hungarian Judicial Academy, the Community Service Foundation Hungary and the Hungarian Crime Prevention and Prison Mission Foundation. The empirical research was carried out at two locations in Hungary, the Penitentiary and Prison in Balassagyarmat and at the Penal Institution for Juvenile Offenders in Tököl.

When planning the project proposal, we summarised the plans and aims we would like to achieve during the MEREPS in a flipchart. What we knew for sure was that we wanted to examine the applicability of the restorative approach in the case of serious crimes through research, and that, in addition to theory and practice, we wanted to test practical feasibility

¹ Project number: JLS/2008/JPEN015-30-CE-0267156/00-39. Our website: <http://mereps.foresee.hu>

within the framework of pilot projects. This duality of theory and practice was fully represented by our German and English partners, thus MEREPS could create opportunities for synthesising theoretical results and on-site observations.

During the project, with the help of IARS, we organised a study trip to England for Hungarian experts (public prosecutors, probation officers, heads of penal institutions and civilian facilitators), so that they can familiarise themselves with English restorative programmes. After the attitude research based on in-depth interviews, questionnaires and focus groups, within the framework of a pilot project we also tested the tools of Restorative Justice in practice, in the field of conflicts within prisons and the conflicts of inmates with the outside world. It turned out that restorative procedures cannot be introduced overnight. It is essential to prepare and sensitise the affected community. We therefore held group sessions and workshops for the inmates and the staff of the penal institution involved.

The pilot project in Hungary started with mediation training programme held by *Dr. Marian Liebmann*, a trainer from England, as a result of which we now have a prison mediation manual prepared in both English and Hungarian.² Simultaneously with this, our English and German partners also carried out intensive empirical research, and the Bremen Mediation Service also developed a local pilot project of the prison mediation service. The exchange of professional experiences at the international level – another important aim of ours – was supported by the conference of the European Forum for Restorative Justice held in Bilbao in 2010, the communication channels of the Forum and the project's own website³ (in English and in Hungarian). Furthermore, each partner informed the professional audience at several conferences and in several newsletters about their results. The final steps are the present essays published in English and Hungarian and the closing conference that was held in Budapest on 17-19th January 2012.

This volume of essays includes the research studies, results, observations, experiences and proposals relating to the work carried out by the participating partners over the course of three years.

First, those interested can get to understand the background of the empirical research of several years carried out by the National Institute of Criminology, the summary of the different target groups and methods of the survey and, on the basis of all this, the possibilities of mediation in Hungarian prisons. In the course of this, we will present the results of the examinations conducted in the penal institutions in Balassagyarmat and Tököl, you can get to know the feelings and circumstances of inmates as well as their attitude to repentance, what the Hungarian prison system has to offer and the attitude of those working in the prisons. You can also read about the needs of victims, based on victims' forums and the relevant research.

This is followed by the presentation of the one-year pilot project implemented in Hungary: the disclosure of the difficulties, (partial) successes and the tasks arising in the everyday life of prisons, which have to be addressed and solved and which will lay the foundation

2 Barabás T. – Fellegi B. – Windt Sz. (eds.): Resolution of conflicts involving prisoners. OKRI, Budapest, 2010. Available in Hungarian and in English here: <http://mereps.foresee.hu>

3 www.mereps.foresee.hu

of the domestic application of prison mediation. The pilot project tested the applicability of the Restorative Justice (RJ) approach in the Hungarian prison system: how can practices representing restorative principles be introduced in prison settings? What are the institutional, legal and personal conditions that serve as supportive circumstances, and what are the specific challenging circumstances?

The Hungarian chapter ends with the evaluation of a practicing public prosecutor of the opportunities offered by the legal and institutional framework which are necessary for the application of penal mediation and which can be realised in the current legal framework.

The presentation of the research carried out by our foreign partners begins with the study conducted in England, concentrating on juvenile offenders. In Britain there are fewer legal barriers to the introduction and application of restorative practices (compared to the continent), and so they are significantly ahead of us in the field of introducing and applying restorative tools. This may facilitate the experiences of the British being regarded as exemplary when introducing penal mediation in Hungary. The essay, however, looks further ahead, and presents a much broader range of the programmes of a restorative approach applied in the different prisons of the world, primarily in respect of juvenile offenders. The essay mentions the research carried out among English experts and makes recommendations concerning the application of the restorative approach in prisons.

After that you can read about the results achieved in the German study and pilot project. You can become acquainted with the complex system of the German federal rules and the rules of the state of Bremen, as well as the general conditions and current practice of Restorative Justice in Germany. The chapter details the research carried out by the University of Bremen and the results of the model experiment subsequently conducted in the penal institution in Oslebshausen (Bremen).

The closing study in the volume describes the history and possibilities of prison mediation already implemented and operating effectively in Belgium. On the one hand, it outlines the Belgian legislative environment and current regulatory framework; on the other hand it presents the structural barriers and difficulties as well as the good practices and other development trends.

A special feature of the book is that its last part contains three case studies (one Belgian and two Hungarian cases), which illustrate the resolution of "real-life", successfully closed and very serious cases, from preparation to closing, through a restorative approach.

This seemingly small volume may represent an important milestone in the adaptation and introduction of restorative practices such as mediation and group conferencing in prison settings. We are hopeful that the studies in this book will contribute to the communication of the various programmes and models of a restorative approach. And maybe they can also make us reflect on programmes that make it possible to get those affected by a crime to sit down and discuss the issues that are important to them, so that they can develop a mutually acceptable solution together.

Budapest, 2012.

The editors

Hungary

Tünde Barabás PhD¹

THE POSSIBILITIES OF RECONCILIATION AND RESTORATION IN PRISONS

“I often think about the victim. He was middle-aged and his son, who was with him, was about 25. I don’t know what the father might think of me and why he would want to meet me, but if we met, I would tell him that I am sorry for what happened; I did not want this. It cost me my life, too...”

(Inmate sentenced to 25 years for homicide, eight months before his release.)

The offender, 20 years after the murder, is still thinking about the victim and his family. He is afraid of the future, the unclear situation and the fact that, in the community that he is about to return to, he may meet and have to face the victim’s relatives. He should talk about the causes of his crime and show repentance to the victim’s family but he has no opportunity to do so. Meanwhile, the members of the victim’s family may be worrying at home, thinking about the imminent release of the offender. They arrange that from now on there is always someone accompanying the children to school and on their way home. They fear the offender’s revenge.

1 Tünde Barabás, PhD: The author is a senior research fellow and head of department at the National Institute of Criminology. She won the Bolyai research scholarship of the Hungarian Academy of Sciences. www.okri.hu

The people in the case – the offender and his victim – are on opposite sides in the criminal procedure. Still, many years after the verdict, they have similar fears. They are afraid of the future and of each other.

What happened cannot be undone, however much anyone may want it. Their quality of life, however, can be improved and the punishment becomes acceptable if the pain, fear and anxiety – which have emerged after the crime – subside because those concerned can get answers to their unanswered questions, show repentance and face both themselves and the crime. The only question is whether they have the opportunity to this, whether it is permitted by the law or whether they receive any institutional support.

According to the Hungarian legal regulations, the prison system is not aimed at promoting reconciliation between the parties and it is not even suitable for that at the present moment. As such, if they have not reconciled themselves with each other by then, the affected persons will have no opportunity to do so later. However, a victim, who may later on require reparation/reconciliation, may this way unfairly lose the possibility of doing so, and those imprisoned will later have no chance to face the pain/harm they caused with their offence, or to show repentance, at least subsequently. The offender's meeting the victim can be instrumental, in that the offender can assess the consequences of the offence and the damage he caused in reality, and it can also help the victim to cope and be reconciled with what happened.

Restorative justice in theory and in practice

The basic idea behind restorative justice is the endeavour to achieve agreement/reconciliation between the offender, the victim and the community, and the promotion of reintegration. This is not only in the offender's interest. According to the research on victimisation, after suffering the crime, as a result of their untreated trauma, the victim can easily get into a state in which they are unable to carry on with their lifestyle and becomes uncommunicative and anxious; their relationships break down and the quality of their life gradually deteriorates. Although this most often occurs with victims of serious or violent crimes, it may also happen after a "plain" burglary, when the victim does not want (or dare) to leave his/her home or, on the contrary, is afraid to return there.

The meeting of the parties centres on the offender's facing the crime, his getting to know the victim's point of view and his taking responsibility, contrary to retributive punishments, where the aim is to "cause harm in return" (Wright, 1999:32). Restorative Justice – as understood by Gavrielides – "*is an ethos, which serves practical purposes through restitution for the harm caused, the meeting of the affected parties and a process based on a voluntary and sincere dialogue, aiming at mutual understanding*". (Gavrielides, 2007:139)²

This may later help the offender to reintegrate into society and his community. This is important for society too, because social exclusion can lead to the emergence of dangerous subcultures. The offender must get another chance so that he can feel himself to be a valuable member of society.

2 For more information about this see the study by Theo Gavrielides in this volume

The community also takes part in this process and makes sure that the offender and the victim are not left alone, that reintegration is realised and that reparation becomes possible. The resolution of conflicts therefore offers several benefits; namely, it provides more security to society and entails lower costs (e.g. through early release or as a result of successful reintegration). The victim feels relieved and receives answers to their questions, while the offender learns to control himself so that the same thing does not happen again in similar situations. The offender and the victim start to cope with the events during their conversation. The social and mental integration of the parties comes to the fore. (Matt and Winter, 2002)

What is the duty of prisons: detention and/or assistance?

Kimmet Edgar and Tim Newell distinguished between two types of prisons when examining prisons in England and Wales, namely the restrictive-punitive institutions and institutions with a reformed approach, where they aim at working with the inmates, endeavouring to solve problems and promote reintegration. (Edgar and Nevell, 2006:57–61)

While the aim of the “retributive” prison is to exclude, humiliate and cause harm to the person who violated the law, in a reformed prison human dignity is respected and inmates are helped to redress the damage they caused. Retributive prisons are characterised by restrictive and stigmatising control and the inmates’ separation from their loved ones, as well as attempts at dominance and a preparedness to use violence amongst both inmates and staff. This treatment can increase the likelihood of recidivism among inmates.

On the other hand, in a reformed prison it is understood that criminality is the result of certain social conflicts which have to be addressed. In such an institution a safe atmosphere and the joint solution of problems are ensured. The emphasis is laid on creating a “protective net” which assists the inmate in successful reintegration.

In fact, these two types never appear in their pure forms; instead, these factors usually emerge jointly in almost every closed institution. Obviously, prisons operate according to strict principles, which make it very difficult to introduce restorative techniques. However, in every prison there also are values which support the application of restorative tools.

The authors Edgar and Nevell pointed out the basic problems of prison sentences. According to the retributive approach, offenders must be caused an injury in return for the crime. This happens in order for the offender to feel that it is not worth committing crimes; in other words, to deter him. However, in many cases, instead of this, the punishment becomes a factor that generates the further commission of crimes, which means that it fails to achieve its purpose. As a result, the inmate becomes isolated; his family ties break off, he may become homeless and he does not receive any support, which leads directly to recidivism.

In retributive prisons, the educational effect is also not realised and it cannot support the development of offenders or their preparation for life after release. Inmates are hardly allowed to make any decisions. Their task is to passively accept and endure their punishment.

The wardens have to keep control all the time; consequently, they cannot allow the inmates to have a voice in the way things work in the prison. The inmates feel that the

wardens have no respect for their needs and that everything happens in order for them to feel bad. This generates great inner tension and increases the chance of the emergence of conflicts and violence within the prison.

This premise holds true for the Hungarian circumstances as well. This means that both tendencies occur in the various penal institutions to a certain extent and in different forms. This greatly depends on the type of the institution, the inmates and the governor's approach.

Types of restorative programmes

Programmes can be divided into several categories on the basis of their objectives. There are programmes that aim to improve empathy and awareness in prisoners, whereas other programmes provide the opportunity for inmates to compensate their victims. There are programmes that attempt to settle the relations between the prisoners and their victims, the family members and the community in mediation meetings. There were also projects which concentrated on reinforcing the relations between prisons and the communities in their area. (Hagemann, 2003:221–235)

Van Ness divides the programmes into seven categories on the basis of their aims and their implementation (Van Ness 2007: 312-323):

Programmes for increasing awareness and empathy are based on the finding that the existence and the process of victimisation is unknown to most prisoners. The aim of such programmes is to make offenders understand what an effect their offence has on the victims, and to reduce the number of recidivists in this way. The main methods of these projects are the organisation of meetings and presentations as well as the facilitation of dialogue between the prisoners and the victims.

The purpose of *restorative programmes* is to facilitate – mainly financial – reparation by the offenders to the victims. Since the procedural and legal costs usually exhaust the financial resources of inmates, in most cases there remains no chance of them being able to compensate their victims. In order to eliminate this problem, several funds have been established, from which such needs can be satisfied. An inmate has to carry out a certain amount of community work in order to be able to access these resources.

Within the framework of *mediation/dialogue programmes*, meetings are organised for the victims and offenders involved in serious crimes. This is preceded by a preparatory stage, the purpose of which is to prepare the parties for the meeting. The meeting takes place with the assistance of the mediator who has participated in the preparatory stage. It aims at healing as much as possible the psychological wounds caused by the offence. Another important feature of this programme is the mediation between the offender and his family, which is necessary because the consequence of committing a crime is, in most cases, that the offender and his family grow apart. Programmes have also been created with the purpose of preparing the prisoner for reintegration after release, by re-establishing the dialogue between the members of the community and the prisoner. The reintegration of

the offenders who committed the most serious crimes against sexual morality is treated as a special project, as society and the community reject these offenders the most.

Prison-community programmes aim at reducing the isolation of prisons in their neighbourhood of as well as the prisoners from the communities. The inmates are made to carry out community work, thereby reinforcing the part they play in the given community.

Conflict resolution programmes have been developed to assist prisoners in settling their conflicts without using violence. The inmates learn how to recognise the situations that may carry the danger of violence and the means of communication with which they can avoid using force. Some programmes aim at the amicable settlement of disputes between prisoners. It also happened that the help of a gang-leader, who was also serving his sentence, was requested to resolve a conflict between the members of the gang.

The most ambitious projects are the so-called *reformatory programmes*, which are aimed at creating an environment – some kind of a “moral prison” – in which the inmates will change for the better. The starting-point of these programmes is that prisons are institutions where moral correction is one of the main objectives, as it encourages those being released to lead a better, moral life.

The victim's feelings

It turns out from both the Hungarian and the international research projects on victimisation that those victimised are generally dissatisfied with the work carried out by the authorities (the police, defence lawyers, public prosecutors and judges). (Barabás, 2004) In their opinion, the authorities do not deal with the consequences of the crime to a sufficient extent and the victims do not receive enough support from them or from others to remedy the injuries arising due to the offence. The surveys conducted in England show that victims would also like to be asked about their needs and would appreciate it if decisions were made according to their expectations. These results called attention to the importance of dealing with reparation, thereby restoring the self-confidence of the victims and the general public's faith in a fair and effective judicial system. (Edgar and Nevell, 2006:78)

An argument often cited against the restorative approach is that wounds can only be healed alone. If many people deal with the crime for a long time, the victim usually gets into a worse condition than before. It is true that, by the time of any meeting at the prison stage, when a long time has passed since the offence, we have to be especially careful when contacting the affected persons. Getting over what happened can often help to transform the inmate's behaviour constructively, but it is not guaranteed that the same will be successful in the case of the victim. Therefore, programmes which suit all the affected parties should be drawn up.

The victim and the offender first of all have to become acquainted with the advantages and possible disadvantages of dealing with the offence, which requires appropriate preparation, particularly with regard to the victim. As a result of the offence, victims often experience a loss of control, difficulties in comprehension or their faith in humanity and

justice may be shaken.³ It is important that the meeting with the offender is valuable and purposeful to the victim and/or their family as well. However, according to foreign experiences, such conversations can be effective even if the victim does not have any actual questions yet, as questions can also be formulated during the meeting with the offender, or the offender himself may offer various opportunities.

It is, therefore, of the utmost importance, who has a chance to participate in such a meeting and when, because emotions and needs are quite different in the period following victimisation.

The victim may become shocked and upset upon suffering a crime, and they will try to neutralise the event. At this time they need support and understanding above all. This is the stage when, if asked about the punishment, they may easily think of anything from mutilation to even capital punishment, for instance in the case of a burglary when a laptop containing the family photos has also been stolen.⁴ After this, as time goes by, they may become depressed, their self-esteem hits rock-bottom and they start to blame themselves as well or exclusively for what had happened. Their feelings at this point are also very negative. But maybe they would already like to get answers from the offender to questions such as “who is to blame?” or “why me?” If all goes well, after this stage, the victim will gradually accept what had happened to them (this is the time when they have new locks or a new alarm system installed), and their mood returns to normal. In the latter two phases mediation has a fairly good chance of success, as the victim is already able to enforce their interests and later they may even understand and forgive the offender. The time this process takes differs in each case. Many people, however, are not so lucky as to finish this process. Some are stuck at certain stages, perhaps even at the very beginning, and are unable to get beyond that. In their case, with appropriate support and assistance, mediation could play an important part in that they can move forward after meeting and talking to the offender.⁵

According to the findings in Belgium, in especially serious cases it would be too early to arrange mediation during court proceedings, because it often occurs that one of the parties is still upset and is not ready to meet the other. It may also happen that the victim has the feeling that the offender could benefit from the mediation in the earlier stages of the proceeding, and so they do not want it to take place. The fact that in Belgium mediation is also effective in the case of serious crimes shows that in the event of such offences the victims still have questions, emotions and grievances even a long time after suffering the crime and so they want to participate in mediation, either directly or indirectly. Experience shows that the more serious the effect of a crime is on the affected persons, the greater the need for mediation. It may lead to the repeated victimisation of victims if the possibility of meetings, understanding and forgiveness is excluded in such cases (Van Droogenbroeck, 2010).

3 Liebmann writes about this, In: Barabás – Fellegi – Windt (eds.): *Konfliktuskezelés elítéltekkel*. [Resolution of conflicts involving prisoners]

4 We could see such opinions for example in the international AGIS research entitled “*Crime prevention Carousel*”, in which the OKRI also participated. For more information about this see: Irk F. – Barabás T. – Kovács R. – Windt Sz.: *Hungarian National Report*, 2006.

5 For more information on this topic: Barabás – Fellegi – Windt (eds.): *ibid*.

The possibilities of mediation in Hungary

The Hungarian Criminal Code (Btk.) follows the principle of the dual-track criminal policy. In the case of the most serious crimes, which can be found on the first track, it orders strict retribution, proportionate to the offence. According to this concept, all other forms of crime, i.e. petty and medium-level criminality as well as criminality that occurs in large numbers, belong to the second track. There are several means available among the sanctions for offences on the second track, from the serious forms of imprisonment to alternative sanctions enforced in a community and to victim-offender settlement. (Ligeti, 2007)

In Hungary, the application of mediation within the framework of criminal procedure has become possible through the amendment of the Criminal Procedure Code in 2006. Mediation, however, has some statutory limits: it can only be applied with regard to cases of a crime against the person, a traffic-related crime or a crime against property punishable by a maximum 5 years of imprisonment. In short, the legislator mainly intended it for use in less serious cases.

The condition for using mediation is that the proceeding can be dismissed or the punishment can be subject to unlimited reduction pursuant to section 36 of the Criminal Code (active repentance), in which case the public prosecutor suspends the proceeding and refers the parties to a mediator. Active repentance as grounds for the termination of punishability in the case of juvenile offenders is different from the rules relating to adults, as the maximum upper limit of sentences is five years (in the case of adults this limit is three years) in the case of acts with the same legal subject.

Since 1 January 2007, mediation has taken a successful journey in the history of Hungarian criminal justice. According to the relevant laws, not only the parties but also the public prosecutor and, during the trial of the first instance, the judge may recommend its application (with the approval of the parties). Despite previous negative sentiments, mediation works effectively in Hungary as a restorative method and it is successful in more than 3000 cases every year. It must be noted, however, that in the majority of cases it is applied with adult offenders. The rate of participation of juvenile offenders is only 12%. According to our examination, the main reason for this is that neither the judges nor the public prosecutors consider it a good solution for juvenile offenders, with especial regard to the impossibility of financial reparation and to the fact that the Act does not require the ordering of probationary supervision for the duration of the

mediation. On the other hand, when postponing indictment for example, in addition to imposing rules of conduct, the judge orders probationary supervision. Juvenile offenders are thus continuously watched and supported by a probation officer. This practice therefore is primarily attributable to statutory deficiencies.

Practical experience shows that legal practitioners also have diverse views on the possibility of mediation (Barabás-Windt, 2009, Fellegi, 2009:296-297), and many of them do not deem it a good approach in cases involving more serious crimes. According to the results of the first two years, mediation is typically used with regard to offences where conviction results in a maximum of three years of imprisonment; in cases at the upper limit of five years, mediation only occurs sporadically. The relevant provisions also determine grounds for exclusion, among which, besides the organised nature of the crime, the most important is being a repeat offender or a habitual recidivist, which means that the offender had previously committed several or similar offences. In this way another significant group of offenders – and their victims – are also excluded from the possibility of using mediation. The process of negotiations/conflict resolution between the offender and the victim is available for the last time in the judicial proceeding of the first instance: it cannot be applied later.

This raises several questions, as it is not clear from the rules whose interests it serves to restrict mediation in this manner. If this primarily intends to awake or strengthen the offender's acceptance of responsibility it is not justified to restrict the application to such an extent at all. If this is mainly done in the interest of the victim, so that they can understand and handle the events they suffered, the restriction is also pointless.

Facts and data according to the statistics

Punishments

In Hungary, according to the general public the most appropriate punishment is imprisonment and it is also the first mentioned among the range of sanctions. (Barabás-Windt, 2010). Despite this, up to the last year, the courts typically and most often imposed fines. This trend seems to have been breaking since 2010 and apparently the increase in the number of imprisonments and the decrease in the number of fines will slowly result in the reversal of this process. In 2010, out of more than 86,000 definitive verdicts almost 30,000 were suspended or unconditional prison sentences, while the number of fines was about 28,300.

We also have to note that every year approximately 7-8 % of those convicted in a final court ruling are juvenile offenders. The practice of sentencing juvenile offenders is significantly different from that of adults.

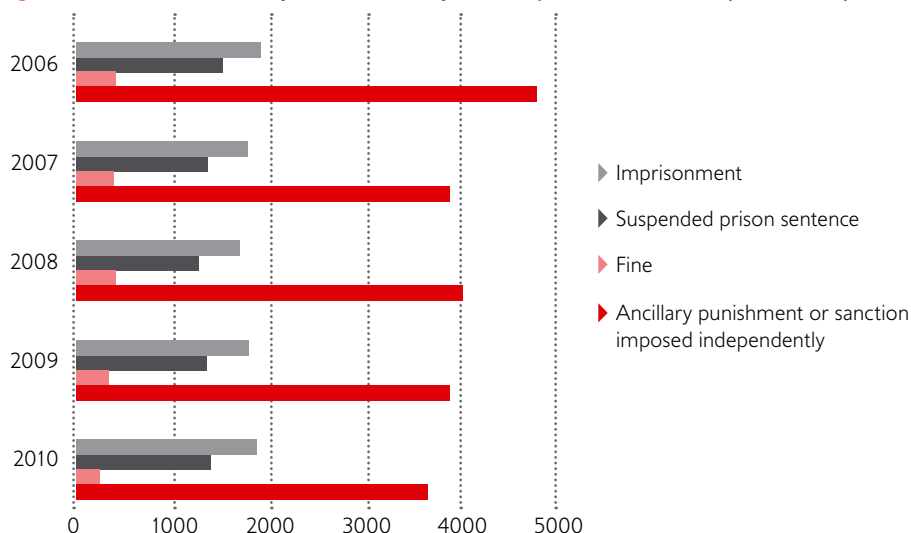
Figure 1: Breakdown of sentences imposed on adults (2006-2010)



Source: Unified System of Criminal Statistics of the Investigative Authority and of Public Prosecution (ENYÜBS).

The punishments of the adults convicted in a definitive court ruling are similar to the above. The decrease in fines is in part probably due to the fact that legal practitioners realised that these punishments are ineffective. A significant proportion of offenders commit the crime for the very reason that they are not rolling in wealth, which means that some of the convicts – the ones whose circumstances are the worst – will sooner or later get back to the prison (maybe because they are unable to pay the fine). The withholding influence of this type of punishment is questionable even in the event of a successful enforcement.

Figure 2: Breakdown of the punishments imposed on juvenile offenders (2006-2010)



Source: Prosecution IT System (VIR), OSAP 1523. registration number

There are fewer options for juvenile offenders, as fines can only be imposed on them if they have income or assets of their own, and community service can only be ordered for offenders who are older than 16. It can be mentioned as a positive feature that ancillary punishments and sanctions imposed independently, such as reprimand, probation or supervision by probation officer are ordered for juvenile offenders in large numbers. They can also be placed in reformatory institutions, but research experience shows that their impact on reforming offenders is rather poor.⁶

The number of juvenile offenders convicted in definitive rulings has decreased over the past five years. The percentage of those sentenced to imprisonment was 26-27%. The highest rate was 29.8% in 2010. The court suspended on probation 73.5-80.6% of the sentences. In 2010, out of 6007 juvenile convictions, imprisonment was imposed in 1790 cases, of which execution was suspended in 1385 cases (77.4%). The number of fines was 368 in 2006 and 196 in 2010. Their percentage was between 3.3 and 5.7%. Ancillary punishments and sanctions imposed independently constituted more than

⁶ On the unsolved tasks and of reformatory institutions and the situation of such institutions see: Herczog M.– Kiss A. – Gyurkó Sz.: A gyermekkori deviancia és annak kezelése a hatályos jogszabályi keretek között. [Childhood deviation and its treatment within the current legislative framework.] OKRI, Budapest, 2005. Manuscript

half, in fact almost two thirds of the punishments imposed upon juvenile offenders. In 2010 their number was 3560. Probation was the most frequent (87.5-89.4%), followed by reprimand (7.2-5.4%), then by confinement in a reformatory institution (4.3-5.9%). (ENYÜBS)

Those who are imprisoned

The number of inmates is continuously rising – despite the fact that the number of offences has not changed considerably for several years. This may be partly connected with the stringency of the laws resulting from the ideas of legal policy.

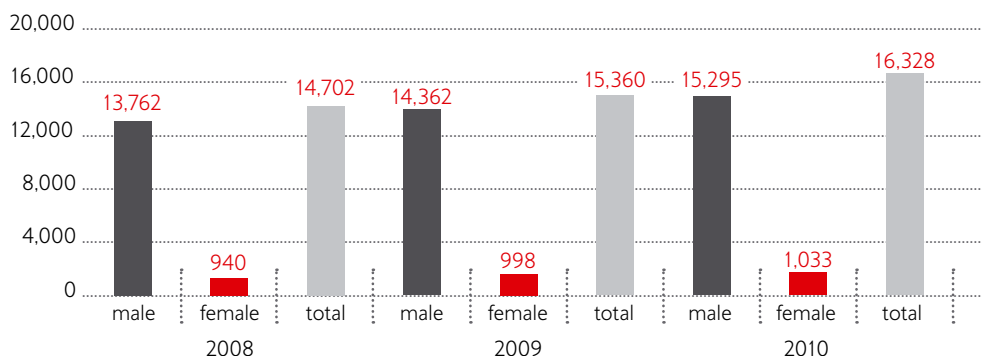
In June 2010, Act LVI of 2010 introduced to Hungarian criminal law the a significant increase in the severity of punishments for recidivists who have serially committed violent crimes against the person – which has become known as “the three strikes” principle – which may also be life imprisonment in the most serious cases. The accepted amendment has doubled the upper limit of the sentence of the most serious crime in multiple offences if at least three of them are violent crimes against the person. It is a further aggravation that, if the upper limit of the sentence thus increased exceeds twenty years or life imprisonment can be imposed in respect of one of the multiple offences, the offender must be sentenced to life imprisonment. The law provides that the sentence cannot be reduced in the case of a violent repeat offender.⁷ Within the framework of increasing the severity of the law, the principles of imposing sentences from before 1st March 2003, the so-called “median term punishment”⁸, have been reinstated. This divides the society of lawyers, because in the opinion of some people it violates judicial independence.

In addition to this, the amendment of Act LXXXVL of 2010 on certain amendments necessary for improving public security made it possible to apply confinement for juvenile offenders who committed petty thefts, fraud or damage to property; in other words, it lifted the ban on confinement and on changing an imposed fine to confinement in the case of juvenile offenders. According to the legislator it is not justified to maintain the ban since fines cannot be imposed on juvenile offenders, as they do not have any income or assets of their own. This means that, previously, the authorities hardly had any options for punishing juvenile offenders for the offences they had committed. However, the maximum term of confinement that can be imposed for juvenile offenders is determined in the Act as half of the maximum term that can be imposed on adults – that is, 30 days – and it also requires the separation of juveniles and adults during execution. (Lajtár, 2011)

7 See: <http://www.jogiforum.hu/hirek/>

8 When imposing a fixed-term imprisonment, the median term of the sentence shall be governing. The median term shall be determined in such a manner that half of the difference between the upper and the lower limits of the sentence must be added to the lower limit of the sentence.

Figure 3: Changes in the total number of prisoners, 2008 – 2010 (together with persons in custody, convicts, persons subject to involuntary treatment in a mental institution and persons referred to confinement)



Source: Directorate-General of the Hungarian Prison Service (BVOP)

Partly as a result of this process, the number of prisoners in penal institutions exceeded seventeen thousand in February 2011 compared to the 13,000-14,000 before.

Mediation in prisons primarily affects those who serve their sentence on the basis of a definitive judgment. In 2010, the total number of such persons was more than eleven thousand (11,241) in the different closed institutions of the country. As it is clear from Table 1, the most typical form of enforcement is prison, to which offenders who committed so-called crimes of medium severity are predominantly sent. Juveniles who committed the most serious crimes serve their sentence in prisons for juvenile offenders, separated from the adults. This however is not always possible considering the current crowdedness of prisons.

Table 1: Trends in the number of persons in penal institutions, convicted in a definitive judgment, 2008-2010

	2008			2009			2010		
	Number of persons	of this		Number	of this		Number	of this	
		male	female		male	female		male	female
Penitentiary (maximum-security institutions)	2,900	2,785	115	2,846	2,734	112	2,866	2,775	91
Prison (medium-security institutions)	5,728	5,326	402	6,113	5,670	443	6,655	6,197	458
Correctional institution (minimum-security institutions)	716	655	61	833	765	68	854	794	60
Fines and community service changed into imprisonment (minimum-security)	405	383	22	480	454	26	506	467	39
Prison for juvenile offenders (medium-security)	170	163	7	177	173	4	191	186	5
Reformatory institution for juvenile offenders (minimum-security)	153	147	6	141	137	4	169	163	6
Total	10,072	9,459	613	10,590	9,933	657	11,241	10,582	659

Source: BVOP

According to the results of one of the most well-known longitudinal research projects – the Wolfgang-Figlio-Sellin survey conducted in Philadelphia – a relatively small group of offenders is responsible for a considerable part of the offences. These so-called “incorrigible criminals” start their careers as a criminal in their early childhood and their other circumstances are also worse than the average. (Wolfgang, Figlio and Sellin, 1972)

When examining the criminal records of the inmates of domestic prisons, the results show that slightly less than 50% of prisoners are first offenders, while typically 30% have already committed at least one, maybe similar, premeditated crime, and about 20-24% have committed several crimes, on account of which they are qualified as recidivists.⁹

⁹ According to section 137 of the Criminal Code, “recidivist” means the perpetrator of a premeditated criminal act, if such a person was previously sentenced to imprisonment without probation for a premeditated criminal act, and three years have not yet passed since the last day of serving the term of imprisonment or the last day of the term of limitation until the perpetration of another criminal act. A “habitual recidivist” means any recidivist who commits on both occasions the same crime or a crime similar in nature and a “repeat offender” means a person who has been sentenced to imprisonment without probation as a recidivist prior to the perpetration of a premeditated criminal act, and three years have not yet passed since the last day of serving the term of imprisonment or the last day of the term of limitation until the perpetration of another criminal act punishable by imprisonment.

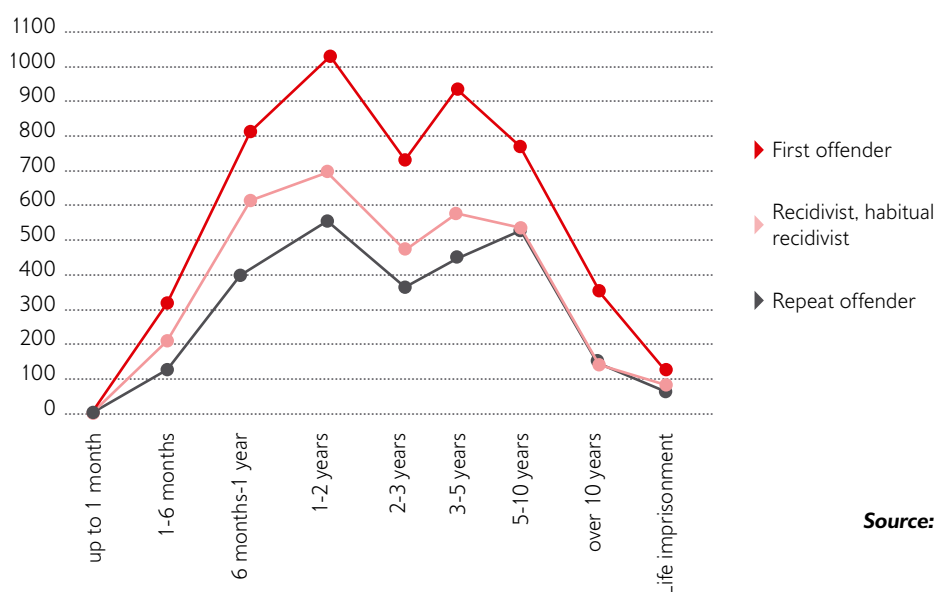
Table 2: Trends in the number of persons in penal institutions, convicted in a definitive judgment, broken down according to their criminal records 2008-2010

Criminal history	2008		2009		2010	
	Number of persons	%	Number of persons	%	Number of persons	%
First offender	4,655	46.2	4,915	46.4	5,137	45.7
Recidivist, habitual recidivist	3,060	30.4	3,147	29.7	3,383	30.1
Repeat offender	2,357	23.4	2,528	23.9	2,721	24.2
Total	10,072	100.0	10,590	100.0	11,241	100.0

Source: BVOP

Reality is slightly worse than the statistics. The above table does not contain the offenders who, although they committed crimes on several occasions, are not regarded as recidivists according to the Criminal Code because more than three years had passed since their release from the imprisonment for their previous act. Besides, it is obvious that there are inmates who, although they had committed crimes, appear as first offenders, as their crimes did not become known to the authorities, or procedures are currently pending against them in connection with such crimes. It turned out during our research that these cases are by no means rare.

Figure 4: The term of imprisonment and criminal history (2010)



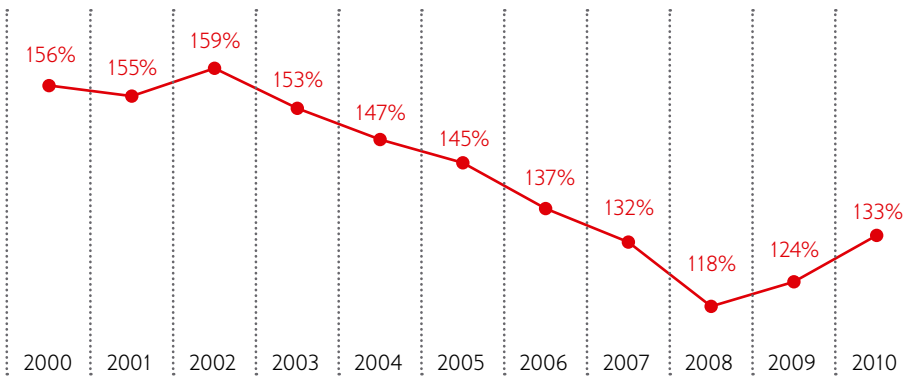
Source: BVOP

The most typical term of imprisonment is 1 to 2 years in all three categories and, in the category of first offenders and recidivists, it is a sentence of between 3 to 5 years. These terms however can be shortened, for example for good behaviour, which means that the actual time spent in the prison will be less.¹⁰

10 See: Law-decree No. 11 of 1979 on implementing punishments and measures..

Among repeat offenders, this period shifts towards the range of 5 to 10 years, a main reason for which – in addition to the gravity and other circumstances of the crime – is the fact that they are repeat offenders.

Figure 5: average utilisation of the penal institutions



Source: <http://www.bvop.hu/>

Overcrowding generates tensions in the prisons, which can appear as the aggression of people towards each other and to themselves. The prisons, which usually do not have enough staff and psychologists, are unable to tackle this problem. The year 2011 started with a tragic incident.

At dawn on 1st January 2011, a prisoner serving his sentence in the Vác Penitentiary and Prison was killed after his cell-mates – who later attempted suicide – seriously abused him, disclosed the head of the public relations office of the Directorate-General of the Hungarian Prison Service (BVOP). On Saturday, at about a quarter past one in the morning, the wardens heard noises in the barracks of the Vác Penitentiary and Prison; therefore they opened the "suspicious" cell. This was the moment when they noticed that one or two inmates had abused the third inmate in the cell for three so seriously, that he died. Following the abuse, the perpetrators – probably because they realised what they had just done – attempted to commit suicide with the razor used in the penitentiary. The cells were regularly checked in the Vác Penitentiary and Prison, even on New Year's Eve. The last such check before the crime was carried out at ten minutes to one. The nurse and members of staff from the penal institution started to apply life-saving techniques immediately, after which the members of the emergency service who arrived took over the treatment of the casualties. The condi-

tion of the two inmates – serving their penitentiary term based on a definitive court ruling – stabilised and they were taken to hospital. The institution immediately notified the police, who started the investigation at the site inspection.
News item¹¹

On the basis of his examinations carried out in the Hungarian prisons, the ombudsman Máté Szabó, when interpreting Resolution No. 13/2001 (V. 14) of the Constitutional Court, emphasised the necessity of lawful treatment within the framework of the prison system too.¹² According to the ombudsman, the lawfulness of the treatment of prisoners manifests itself in a complex way during imprisonment, and it includes the prohibition of discrimination against prisoners, the requirement of speaking in an appropriate tone to them and respecting the prisoner's human dignity and self-esteem. *On the other hand, treatment in a wider sense also includes the circumstances of the prisoner's accommodation and the crowdedness of the places of confinement.* Over-crowding in penal institutions can have a negative effect on the prisoner's legal status and the security of imprisonment.

Violence in prisons is not only a problem in Hungary. Though there are huge differences between prisons, it is generally true that violent incidents undermine the balanced operation of the facilities.

There are four characteristics of typical prisons that generate conflicts:

- ▶ the deprivation of material goods, which gives rise to competition;
- ▶ the high risk of victimisation – murder, homosexuality;
- ▶ the loss of personal autonomy – endeavours to assert personal force and one's own decisions;
- ▶ the lack of experience in resolving conflicts without the use of violence.

None of these factors can be fully eliminated, which means that it is worth interfering in the areas where there is the greatest chance of finding a solution. The use of restorative measures on the basis of joint decisions can be effective in each area regarding the lessening of tensions.

(Edgar–Nevell 2006:63)

11 http://www.fmh.hu/belfoldi/20110101_drama_vaci_borton

12 Notice of the parliamentary commissioner on his findings relating to the prison service in Hungary: www.obh.hu/allam/aktualis/doc/BV_fuzet.doc

In Hungary, approximately fifty prison psychologists are currently employed, and it is their job to attend to the psychological well-being of the more than sixteen thousand inmates. Máté Szabó, the parliamentary commissioner for civil rights, called the attention, in his opinion prepared on the basis of his examinations carried out in Hungarian penal institutions, to the fact that to “achieve a more humane prison service”, more physicians and psychologists should be employed in the prisons.

Research in prisons

The unfavourable trends in the rate of recidivism in the whole world show that the transition from the prison to society and the reintegration process should be assisted more effectively, both during the term of imprisonment and after release. Consequently there are strong reasons for examining the means of reintegration and, in connection with this, the process of desistance. The effectiveness of the measures applied at the various ages and in the different stages of criminal career can be improved with the assistance of factors that support the interruption of a criminal career – for example by applying restorative methods.

Restorative methods were also quite successful during the prison stage with regard to serious crimes – as established by international research programmes, by projects already in progress and by the experiences in Belgium¹³ – and brought about positive changes in the lives of both the inmates and the victims. With these results in mind, we set the examination of the feasibility of restorative techniques and, in particular, mediation during the execution of imprisonment, as a target in the MEREPS project supported by the European Union. The application of restorative techniques seems to be an appropriate means of handling the continuous conflicts and tensions in prisons. Consequently, our research carried out among juvenile, young adult and adult offenders does not only examine the possibility of facing the former victim and the community but also deals with the possibilities of applying restorative methods within penal institutions (between the inmates).

The empirical research was carried out at two locations, in the Penal Institution for Juvenile Offenders in Tököl and the Penitentiary and Prison in Balassagyarmat (for adult prisoners).

The juveniles' institution in Tököl

Most of the juvenile¹⁴ convicts in Hungary are in the Penal Institution for Juvenile Offenders in Tököl. The prison area is not only for the accommodation of juveniles. Only a smaller proportion – approximately a quarter – of the more than 700 inmates are juvenile offenders, the rest are adults. The Central Hospital of the Prison Service is also located here,

13 On the Belgian results see the study of Ivo Arsten in this volume

14 Pursuant to section 107 of the Criminal Code: “Juvenile offender” means any person between the age of fourteen and eighteen at the time of committing a crime, which means that the perpetrator may only be subject to criminal prosecution after his/her fourteenth birthday. Before and on this day he/she is regarded as a child, therefore the ground for the preclusion of punishability exists in such cases, which means that he/she is not punishable. [BJD No. 3838]. The perpetrator shall be regarded as juvenile on his/her eighteenth birthday. If he/she commits the crime on this day, the special statutory provisions must be applied. (BH 1987. 267).

which serves in-patients not only from among the prisoners in Tököl but also for all the inmates of the country. Duna Papír Termelő Kereskedelmi és Szolgáltató Kft. (Duna Paper-Mill Factory) is operated next to the prison.

The complex was originally built as an army base, and then in the fifties it was altered into an internment camp. It has been operated as a reformatory institution and prison for juvenile offenders since 1963. Though it was enlarged in 1985, its condition is continuously deteriorating, the buildings are outdated, and the cells are spacious but overcrowded.

The majority of the juvenile offenders are in compulsory education because of their age, and so they do not work. There is a "regime-system" in force in the institution, which differentiates between the ranges of available benefits. The possibility of changing between the regimes is an important principle which motivates the inmates. The assessment criteria include the following: the development of personality, the completion of work, participation in education, community work and activities and their relations with other inmates as well as with the supervisors.

In the prison, juveniles are together with young adults (up to the age of 21). Mainly owing to the pent-up tensions, violent acts are frequently committed in the prison, which afterwards lead to even more years in prison. The victims of violence become crippled both physically and mentally, which is why suicide attempts and successful suicides have both occurred.

Máté Szabó ordered an examination of the penal institutions for juveniles following the incident when in October 2007 a juvenile prisoner was killed by his cellmates in the penal institution in Tököl. According to the examination, prisoners tend to turn on each other where cells are overcrowded. According to the ombudsman the inmates' aggression towards each other should be prevented by the state with all available means.¹⁵ He expounded in his report that the accommodation of juveniles directly jeopardises their constitutional rights to life, human dignity and to protection and provision by the state, as well as their rights necessary for appropriate physical, mental and moral development. As the management of prisons is not able to significantly change the existing circumstances, the parliamentary commissioner requested the Minister of Justice to devise a specific action plan for guaranteeing the lawful detention of juvenile offenders.

The institution for adults in Balassagyarmat

The basic duties of the prison, which was built between 1842 and 1845, are to carry out the penal tasks relating to pre-trial detention, the imprisonment of adult male convicts in

15 www.obh.hu/allam/aktualis/doc/BV_fuzet.doc

a penitentiary or a prison, and confinement. According to the data from the beginning of 2010, there were nearly 500 prisoners in the institution.

The institution, which was registered as the first prison in the country, is more than 150 years old and in a listed building, with all the drawbacks related to this. The building has thick walls; it is poorly insulated, damp, hard to heat and in constant need of repair. The institution tries to improve the situation through applications for funds. For example, the renovation of the historic chapel and library has been recently completed with the help of the Norwegian Civilian Support Fund.

The basic area of the institution is smaller than that of the complex in Tököl. It is only one building with a complicated ground-plan. The prisoners have no opportunity to play sports or go for a walk in a large area. Cells are also reminiscent of the old days, since they are small, low and do not comply with the requirements of our age in other respects either.

The Penitentiary and Prison in Balassagyarmat is, as much as possible, open to applications that facilitate the training, social reintegration and education of prisoners. A great number of prisoners request to be transferred here because of the opportunity to work, for example. While in the 19th century the employment of prisoners was realised within the framework of the "Nógrád County Institution of Prisoners' Employment", convicts are now employed by Ipoly Cipőgyár Kft., a shoe factory operating next to the institution. In addition to this opportunity, the continuous education and development of inmates is guaranteed thanks to the many programmes.

The staff and management of the prison lay special emphasis on the placement of inmates. When dividing the prisoners into groups, they endeavour to reduce the number of conflicts between inmates placed in the same cell to the minimum, in that they try to filter in advance those that are hard to handle, and they fill cells in such a way as to create order and a peaceful and pleasant community, which can be regarded as optimal in respect of the order of the prison. There are six regimes in the institution distinguished according to the severity of the offences committed by the prisoners and on the basis of how cooperative they are during their imprisonment.

The results of the empirical research

The importance of mediation and the other restorative methods in respect of the prison and of reintegration lies in the fact that, through identifying himself with the victim, repentance and forgiving, it is easier for the offender to find his way back into society and his community, and it is more likely that his criminal lifestyle comes to an end. Restorative Justice, whilst approaching the interpretation and handling of conflicts with a new approach, also retains some of the objectives of the traditional systems relating to rehabilitation. (Gavrielides, 2007:139) If we accept this effect of this method, the results of our research, as a matter of fact, also answer the question as to what circumstances and conditions are required so that the offender has better chances of reintegrating into society, which would also protect society as a whole from further atrocities.

Our research was based on the duality of the examination of prisoners from the socio-logical and the psychological aspects. During the examination in Hungary, we approached

the chances of applying restorative techniques with three different research methods, namely in-depth interviews (100), questionnaires (200) and focus group interviews (8). None of these means is able to reveal the inmost thoughts of the respondents or the “truth” by itself, but we hope that by combining these methods we could get nearer to the truth¹⁶. The research carried out in prisons is capable of finding out the truth to only a limited degree. Respondents do not always say the truth. This may be caused by their fear of the consequences, by their desire to live up to the questioner’s expectations or to impress them.¹⁷ The interviews were significant because, through them, individual opinions could be revealed and a more personal relationship was established between the researcher and the respondent, while the analysis of questionnaires facilitated the in-depth and thorough evaluation of the data. The focus group examination demonstrated the system of collective expectations and the ways and limits of an individual’s submission, through the interaction between the group members.

The premise of our research was that the willingness to repent and to participate in mediation is influenced by the intention to integrate or reintegrate into society: the stronger this urge, the stronger is the readiness to cooperate.

The results of the examination conducted on two sites – in the institution in Balassagyarmat and the juvenile offenders’ institution in Tököl – were fundamentally different. Below, I will analyse the possibility of mediation and reparation on the basis of the differences between the answers received in the two institutions.¹⁸

Questionnaires and in-depth interviews

The personality and status of offenders

The age of offenders

The place of imprisonment was determined by age, as it arises from the difference between the penal institutions that all juvenile offenders serve their term in Tököl, whereas older offenders are in Balassagyarmat.

The average age in the sample is 26 years.

The youngest person we questioned was 15, while the oldest person was 57. The majority were 20 years old and the number of prisoners younger than 22 was the same as that of the prisoners older than that. The youngest respondent was 15 and the oldest respondent was 21 in Tököl, while in Balassagyarmat the youngest was 22 and the oldest was 57.

School qualifications of the inmates

Prisoners are at a disadvantage in respect of school qualifications compared to the national average. This, in part, is due to the high proportion of the younger age-groups. Older inmates are more likely to have professional skills and more work experience.

16 For the details about the methodology of the research see the study of Szandra Windt in this volume.

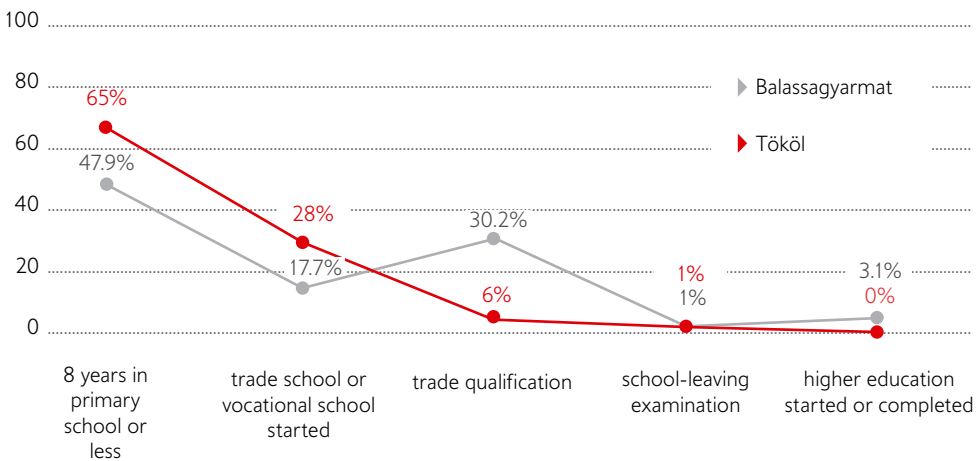
17 For more information about this see: Fliegauf.-Ránki 2007. *ibid.*

18 Using the contents of the research report compiled by the Local and Regional Monitoring Institute (LRMI).

The less educated groups are overrepresented among the prisoners. In Balassagyarmat, 48% of the prisoners completed eight or even fewer grades; 18% only started secondary school, 30% had a trade qualification and not more than 4% had a school-leaving certificate or a degree. These proportions were even worse among the prisoners in Tököl: 65% had completed eight or even fewer grades, 28% only started secondary school, 6% had a trade qualification and not more than 1% had a school-leaving certificate. This however was obviously in connection with the young age of the respondents.

We could hardly find a prisoner with a secondary-school certificate or higher qualifications. Prison may help in compensating for certain disadvantages but this is only a partial effect. The inmates usually proceed with their studies up to the 10th grade as there is no possibility for education any higher than that. After this, they usually work but this is not true for everyone.

Figure 6: Breakdown by school qualifications (%)



Source: Local Monitoring and Regional Institute (LRMI)

Religiousness of the inmates at the time of the research and before their imprisonment

Most of the prisoners regarded themselves as religious in one form or another. The significant majority is Roman Catholic and the smaller part is distributed between the followers of the Reformed or the Evangelical church or the Buddhist doctrines. Nearly half of those who regard themselves as religious never go to mass but a significant part of them – almost the other half of those questioned – go at least once a month. Two thirds of the prisoners who professed themselves to be religious pray at least once a week. The inmates in Balassagyarmat prayed a little less often, while most prisoners in Tököl did so daily and only a

small proportion of respondents said they never prayed. At both locations, somewhat more respondents professed themselves religious at the time of questioning than in respect of the period preceding their imprisonment.

60% of the inmates in Balassagyarmat were religious at the moment they committed the crime, in contrast with the 68% at the time of questioning. These percentages increased from 46% to 60% in the case of the prisoners in Tököl.

Nationality and origin of the inmates

The prisoners were Hungarian citizens with the exception of one person. As regards their origin, 36% of the prisoners in Balassagyarmat professed themselves Hungarian, 13% Hungarian and Roma, 32% Roma, 1% Slovak and 1% German. Twenty-two percent of the prisoners in Tököl professed themselves Hungarian, 11% Hungarian and Roma, and 60% Roma.

Family

Family relationships can become especially important in the prison. Returning to the family is the purpose for which it is worth fighting, for which one has to survive in the prison and, all in all, it means the promise of a normal life. Family ties can have a much stronger influence in the extreme socio-cultural environment of the prison. The outside world of the family may become overstated and overly idealised as an antipode of the world of the prison. Visits and the arrival of parcels and letters affect not only the prisoner's frame of mind but also his status within the prison.

Most prisoners had previously been living in a relationship of some kind. The differences between the inmates of the two prisons in respect of family status and the number of children exist, of course, due to the differences in the age-groups and life cycles of the prisoners. The majority of those in Balassagyarmat are married or were living with one or more (!) life-partners, in general far from their parents, with their own families.

Owing to their youth, a greater proportion of the respondents in Tököl were single but the majority of them were also living in a family or in a relationship of some kind before their imprisonment. Despite their young age, many of them have children. Besides, they also lived together with more people than the adults.

The examination suggested that in many cases these "outside" relationships did not really exist anymore in practice. Letters and parcels often stop coming as time goes by and also because of the financial situation of those left at home. Visits are the first to cease because they are too costly for those families that are already poor and often left without a breadwinner. The offenders – especially in the prison for juvenile offenders – come from diverse regions of the country and their family members are unable to pay the travel expenses. In many cases the parcels also exhaust the last reserves of the families.

The committed crimes and criminal history

Among the crimes committed by the prisoners questioned, the most common are crimes against property (approximately 50%), followed by crimes against the person (25%).

The overwhelming majority of the prisoners are first offenders and the minority are recidivists. Most of the recidivists fall within the category of habitual recidivists.

Two thirds of the inmates in Balassagyarmat and almost nine tenths of the prisoners in Tököl are first offenders. We must keep in mind as regards juveniles that, because of their age, the legal regulation relating to that is aimed at a concrete age-group; they have fewer "possibilities" to commit offences, and in part this is the reason for which the rate of recidivism is smaller. However, the ratio of those against whom criminal cases are currently pending for the commission of other offences is higher among the young prisoners in Tököl.

There are criminal proceedings pending against 18% of the prisoners in Balassagyarmat for the commission of other offences, while this proportion is 30% for the prisoners in Tököl.

The term of imprisonment

A quarter of the prisoners questioned were sentenced to unconditional imprisonment for a term of between one and two years. More than 90% of the inmates in Tököl were sentenced to a maximum of five years, whereas in Balassagyarmat this number only corresponds to 41% of the inmates. Forty-three percent of the prisoners in Balassagyarmat spend five-ten years in the prison and 15.5% spend more than ten years there. In the case of juvenile offenders the maximum term of imprisonment that can be imposed is 10 years; however, in the event of committing another offence this period is, of course, prolonged.

Table 3: The term of imprisonment (total time to be served, %)

	Tököl (%)	Balassagyarmat (%)
max. 1 year	10.6%	5.2%
1-2 years	26.6%	20.7%
2-3 years	30.9%	1.7%
3-5 years	24.5%	13.8%
5-10 years	4.3%	43.1%
more than 10 years	3.2%	15.5%
total	100.0%	100.0%

Source: LRMI

Relations in the prison

Conflicts and relations

Conflicts always emerge more intensely in prisons, since they are closed institutions. After spending more time in the prison and as they grow older, the affected persons learn to handle their problems with each other, or at least they talk about such problems less openly, and so it seems that the aggression has decreased. *Half of the adult prisoners and more than two thirds of the juveniles in Tököl said that they had already had conflicts with others.* Conflicts usually emerged with the other inmates, outstandingly with inmates other than cellmates. The prisoners in Balassagyarmat would rather try to avoid conflicts or resolve them in words. *On the other hand, the young prisoners in Tököl prefer aggression, sometimes even in its rather serious forms, and only a smaller proportion of them are willing to discuss disagreements.*

The methods used by the inmates in Balassagyarmat for conflict resolution are that they discuss it (n=32); they ask/would ask for the instructor's help or report the incident (4); they endure it or tolerate it (n=3); they cannot solve it (n=1); they respond with abuse, oppression or causing grievous bodily harm (n=16); they settle it among themselves (n=2); they leave or detach themselves if possible (n=4); the conflict gets sorted out by itself (n=1). The methods of the inmates in Tököl for conflict resolution are that they discuss it (n=42); they ask/would ask for the instructor's help or report the incident (n=5); they endure it or tolerate it (n=2); they cannot solve it (n=3); they respond with abuse, oppression or causing grievous bodily harm (n=56); they settle it among themselves (n=3); they leave or detach themselves if possible (n=6).

On the whole, the prisoners in Tököl mentioned aggression as the only way of resolving conflicts in a shockingly larger number than the prisoners in Balassagyarmat.

In both institutions, nearly all inmates mentioned that they had to fight. As they related, those who are not willing to do this can expect much worse and often become the target and victim of harassment. Conflicts usually happen during the period after getting into the prison. This has several functions. One, and maybe the most important, is that it serves the creation of an informal hierarchy of inmates. The initial conflicts can only be avoided or mitigated through recognition inside or the respect achieved in another penal institution (the offender's reputation).

They usually do not commit grievous bodily harm against each other as it has more serious consequences and may lead to another sentence. Independent of this, mainly among juveniles, cases of stabbing or serious injuries may occur, about which the intimidated

victims will keep quiet. There were fewer irregularities reported in Balassagyarmat: there were fewer cases of stabbings, harassments, fights and the use of narcotics.

These differences are also not caused by the specific characteristics of the institutions but by the age of inmates. Apparently, drug abuse (Rivotril, marijuana and other narcotics, limited only by the inmates' creativity) occurs more often among juvenile offenders, and in general it is not discovered unless it causes a bigger trouble.

For instance, the prisoners in Tököl did the gardening with enthusiasm until it turned out that they produced narcotics from certain plants. The situation was similar in the case of flower-boxes, where the resourceful juvenile offenders planted hemp stems.

In Balassagyarmat, fewer people mentioned harassment, which does not mean that, in fact, there were not any such occurrences in the prison in Balassagyarmat. The juvenile offenders mentioned it more often and also there are several criminal proceedings pending in Tököl for rape, which may result in as much as five years of imprisonment. In Balassagyarmat, when selecting the people to be confined in the same cell, it is especially important to create a combination of persons that will lead to the fewest open conflicts. It is less possible to realise this in Tököl, as the inmates live in large cells, in many cases with more than ten of them.

However, physical strength is not the only principle that establishes the hierarchy within the prison, though, without doubt, it is the most effective one. It seems that inmates can stand out with their intellect. This tended to be mentioned more in Balassagyarmat.

As alleged by the inmates, there is no real friendship between them. *"There is no friendship in the prison, it is only fair-weather friendship.* By this, the inmate alluded to the fact that there existed interest groups within the prison. For those who lived a criminal lifestyle and committed crimes in gangs outside or later even within the prison, we can talk about a strong solidarity. In many instances the prisoners' relatives are prisoners in the same institution, and there were also cases when the offender was placed in the same institution as his associates. These relationships, that are closer than the average, were not formed in the prison but had already existed before the sentence.

Victimisation

Whereas the offenders are open about the crimes they commit in the prison, this cannot be said of victimisation. In the entire sample, there were altogether 52 inmates who admitted that they had already been the victim of a crime. The majority of them (36 persons) are prisoners in Balassagyarmat. Only 4.5% of the inmates admitted that they suffered the injury within the penal institution (this means 9 persons). This proportion is relatively small; however, we can assume that in fact there were more persons victimised in the prisons than those who admitted it.

Repentance and the sense of guilt

On the whole, the prisoners participating in our research declared themselves “somewhat guilty” rather than not concerning the offences they committed. When rating *their guiltiness* from 1-5, the prisoners in Balassagyarmat gave an average of 3.23 points, while the prisoners in Tököl gave 3.61 points. There were more prisoners in Balassagyarmat who declared themselves innocent. The responses were characterised by a certain kind of extremism: *the respondents either think of themselves as totally innocent or as absolutely guilty.*

The overwhelming majority of the offenders blamed themselves for the occurrence of the crime. This, however, as it turned out during the talks in the focus group, did not mean the acceptance of responsibility but only that the offender felt that he had “screwed it up”, for example he was not watchful enough or chose a wrong target and so he was sent to prison. Besides, the ratio of those blaming their associates is much higher among the prisoners in Tököl, since juveniles tend to commit the crime in a gang more often.

Six percent of the prisoners in Balassagyarmat mentioned external circumstances, 13% their associates, 25% the victim, and 54% mentioned themselves as the cause of the crime. Four percent of the prisoners in Tököl mentioned external circumstances, 29% their accomplices, 22% the victim, and 56% blamed themselves for the crime.

We also asked them whether they considered the sentence imposed upon them to be just. In general, the inmates accepted the verdict, but they tried to lessen the gravity of their crime, therefore they felt that the sentence was too long.

According to several research projects, the prison socialisation is an important stage of the restoration of one’s self-image. A negative self-image causes unbearable tension after a period. This means that the lessening of the committed crime can be regarded as the start of prison socialisation. Nevertheless, it is not a good strategy in the juvenile offenders’ prison to deny the committed crime, as this way the affected person may be easily classified as weak. This can be an explanation of the fact that, while the adults tend to insist on their innocence, the juveniles in Tököl admit to having committed serious crimes in order to be cool.¹⁹

The inmates and the possibility of restoration

During the research we asked the offenders whether they would meet the victims and whether they would be willing to apologise or whether they would endeavour for reconciliation. We compared these answers with the other circumstances of the interviewees. *At first sight it seemed that the answers gave a rather favourable picture, since 64% of the*

¹⁹ On the psychological characteristics of the prisoners’ categories see: Boros, J. & Csetneky, L.: *Börtönpszichológia*[The psychology of prisons] Rejtjel Kiadó Kft., Budapest, 2002., pp. 93-127.

inmates answered that they were willing to participate in a meeting with the victim and would even agree on compensation.

The prisoners who replied that they did not want to meet the victim mentioned various reasons for this. One of the most typical answers was that, as they were already punished anyway (as with the prison they are “done with” the punishment), they do not think that any further meeting, acceptance of responsibility or apologies would be necessary. Others mentioned that they had already apologised and showed repentance during the trial. It is indeed usual that, on the advice of their lawyer, the accused apologises and show repentance in the course of the trial. This, however, often happens without the victim present and usually is without true emotions, as it only happens for tactical reasons.

There are some who are still angry with the victim or maybe even blame them for their being in prison. There are some who feel innocent or even that they are a victim. In the opinion of some inmates, mediation would not be a solution in their case but they can imagine it in others' cases. There were cases when, according to the prisoner, the meeting was not possible because of the nature of the crime (for example in a homicide case). In the opinion of some prisoners, if they show repentance, it may lessen their authority in the prison. Others were afraid that they would be humiliated during the meeting with the victim. Apparently, there are many reasons for rejecting mediation. There are reasons which can make the prisoners more open if they accept the main point of restorativity as well as the ideas of repentance and of taking responsibility. However, certain reasons obviously cannot be eliminated, and, in such cases, it would be explicitly harmful for the victim to meet the offender (for example if the prisoner is angry with them or even blames them).

As regards the inmates' age, it turned out that juveniles and those older than the average were more willing to meet the victim. The willingness to participate in mediation radically decreases up to the age of 25, then, between the ages of 25 and 40 it fluctuates at a lower level, and finally, it increases again over the age of 40. We detected greater differences and “uncertainty” in the measured proportion among “older” inmates. With regard to juveniles, however, when compared with other parameters (for example the propensity for aggression or the refusal to accept responsibility), the sincerity of the respondents can be doubted. We therefore returned to these questions during the focus group examination.

When looking at school qualifications, there are two categories the values of which significantly deviate from the willingness to participate in mediation: while this ratio is well below the average of the examined population among those who finished secondary school or were attending secondary school just then, the ratio of those who graduated from a grammar school or studied in higher education was well over that. We can infer from this that *higher school qualifications have a positive influence on the intention to participate in mediation.*

Previous convictions do not affect at all the extent to which the inmate is ready to participate in mediation. This also holds true for those persons against whom criminal proceedings are pending in another case.

On the basis of the answers, the prisoners who are *married or live in a relationship are more willing to participate in mediation*, which means that relationships have a positive effect on their intention to reconcile.

The family's opinion also plays a part in the process of reconciliation. Based on the data, those prisoners whose family also expressed their disapproval of the crime but who did not condemn the prisoner and their relationship did not change for the worse are the most willing to agree to mediation. Among prisoners whose relations with their families have deteriorated, the openness to mediation remains under the average willingness in the sample. Only a third of those who have no family or maintain no relations with their family would agree to mediation.

We can infer from this that, if we support the prisoners in re-establishing their broken relationships, for example through the method of family group decision-making, we can also increase the successful application of other restorative techniques.

The religiousness of the inmate proved to be significantly related to his willingness to reconcile. This can be explained by the fact that, in the majority of religious doctrines, penitence is of fundamental importance. It is possible that the characteristics that determine religiosity also encourage the participation in mediation.

The fact that the prisoner himself has already been a victim (perhaps he was victimised in the prison) also has a noticeable effect on mediation. A probable reason for this is that he can better identify himself with the victim. Maybe he, as a victim, also wishes to settle the conflict or he was pleased when the offender apologised.

The relationship between the offender and the victim was similarly important. In cases where the offender knew the victim prior to the offence, he was more likely to answer that he would strive for reconciliation (nearly 75%).

The findings of the focus group conversations

During the examination with questionnaires/in-depth interviews, we experienced that the prisoners are generally open to mediation. In the second phase of the research, during the focus group interviews, we asked the offenders about their families, repentance and integration, keeping these results in mind.

We had two aims:

- ▶ to measure the willingness to participate in mediation during the prison stage using a new, experimental technique and
- ▶ to clarify the uncertainties which were revealed during the previous examinations and which appear in connection with the factors that make prisoners ready for reconciliation/settlement.

During eight discussions conducted in focus groups, we tried to cover the entire society of the prison as much as possible in Balassagyarmat and in Tököl in order to get to know the widest range of the attitudes to reparation. With the assistance of the instructors at the institutions, we created the groups partly on the basis of the offenders' status in the prison

hierarchy, their adaptation to the circumstances in the prison, their mental state and the term they still had to serve in the prison.

Adult “big guns”

All of the participating inmates are at the top of the prison hierarchy. Thanks to their position they have the most resources, they can surround themselves with inmates (soldiers), who will protect them and enforce their interests and they can exploit the inmates at the bottom of the hierarchy. It was noticeable that they appraised each other’s position and understood the criteria for their selection even before the conversation started. After that they tried to prove their dominance in front of both each other and the researchers. They denied the charges brought up against them almost unanimously and many of them were angry with the victims.

Adults’ cell group

The six participants came from the same cell so that we could also examine the role of the hierarchy within the cell. The level of the group’s intelligence was well below the average. They did not even understand some of the questions we asked in everyday language and they were repeating the same sentences. The status of the group leaders arose from their dominance, the reason for which was that they were relatives (son-in-law and father-in-law) and they also committed their offence together. Their opinion was not leading and it did not influence the incoherent group. Denial and the lack of regret were typical in this group as well.

Compliant adults’ group 1

The compliant inmates belong to the middle layer of the prison society. Thanks to their compliant behaviour they provide the supervisors with the smallest amount of work. This group can be described as the one behaving in the most average way, both in respect of the intelligence and the communication skills of its members. We selected for participation in the first adult group (out of the two) two prisoners who previously took part in the Zakeus programme.²⁰ We expected them to make the other inmates sensitive to the subjects of repentance and apology. The prisoners expressed their opinions honestly and openly and this was the first group where the victims’ point of view came up. Four of the seven inmates seemed to be suitable for the participation in mediation. Strangely enough, the very person who was the most keen to declare his belief in God and his penitence denied the commission of the crime.

Compliant adults’ group 2

The meeting with the second group of compliant inmates also finished with positive results. It became clear during the talk that repentance and the acceptance of responsibility

²⁰ The aim of the programme is to facilitate the offender’s repentance by discussing the biblical story of Zakeus. For more information on the programme see the study of Dóra Szegő and Borbála Fellegi.

are highly dependant on the victim's personality and the type of the crime. There was no difference between the two groups as regards repentance according to whether some members of the group had previously participated in a programme with a restorative approach or not. The results also showed that compliant behaviour is occasionally a survival strategy of a kind within the prison and does not necessarily mean that the person in question is truly sorry for having committed the offence. Insincere behaviour, however, can be detrimental to the victim in the event of a meeting in person. As such, the offender's good conduct and adaptation within the prison cannot serve alone as a basis for the possibility of meeting the victim.

Juvenile "big guns"

Compared to their counterparts in Balassagyarmat, the juvenile inmates were almost unmanageable, tried the researchers' patience constantly and tried to prove their dominance. It was shocking to see their absolute lack of repentance and their openness about their intentions to carry on with a criminal lifestyle after their release.

Juvenile subordinates

These inmates are at the bottom of the prison hierarchy. They are unable to enforce their interests and the others usually exploit their weakness. We could also observe in their case that they tried to live up to the expectations of both their fellow-prisoners and the researchers with their answers. However, there were some people in this group who may be suitable for meeting their victim.

Compliant juveniles' group

Although they were also compliant, this group greatly differed from the two compliant groups in Balassagyarmat. Complying with the unwritten rules in Tököl, none of the inmates showed repentance and there were some who even spoke about their victims with anger. It is not surprising that nobody seemed to be suitable for participation in mediation from this group.

Juveniles "before release"

This was a compliant group, the members of which were to be released soon. Unusually for the inmates in Tököl, everybody in this group showed repentance, a reason for which may be their desire to live up to the expectations but also the fact that prisoners who will be released soon do not feel subject to the unwritten rules of the prison's society any more. There was one inmate in this group who said that he came to regret his crime because of the victim's testimony. There were also some persons in this group who were suitable for mediation.

During the conversations, we first talked about the subjects of *repentance and the acceptance of responsibility*. The prisoners had various attitudes to their crimes and the consequences of the same. In general, three types of opinions could be distinguished in connection with repentance:

- ▶ *The absolute lack of repentance* – A proportion of the prisoners showed no form of repentance at all. The reason for this may have been denial, i.e. the prisoner consistently declared himself to be innocent. However, it occurred also quite often that the prisoners blamed the victims, the policemen or the judges and it did not even cross their mind to become detached from their own point of view.
- ▶ *Repentance according to the prisoners' own interests* – Although quite a few prisoners showed repentance, the reasons behind this gesture are not feelings for the victim but the prisoners' selfish motives or injuries. It is virtually a habit among the offenders to apologise to the victim at the trial, hoping that the judge will impose a less stringent sentence. There were also prisoners who only wanted to live up to the expectations of the researchers but their repentance was not sincere. This phenomenon was spectacular among those juveniles in Tököl, who were soon to be released and did not dare to risk anything negative coming to the supervisors' attention. Typically, when the prisoners expressed their regrets, in fact they were only sorry that they were imprisoned as it was hard for them to deal with the confinement; they missed their family members etc.
- ▶ *Sincere repentance* – Few prisoners reached the stage of understanding that they had caused damage to their victims and of showing sincere repentance for this. Besides a certain level of empathy and the sense of shame, there is another factor that encourages the prisoners to repent, namely the victim. In the event that the prisoner knew the victim or previously they had been on good terms with each other (perhaps the person in question was a family member or a friend) sincere repentance is more typical. *The persons who could be classified in this group during the examination would be suitable for participating in mediation.*

It was interesting for the researchers to observe what the inmates' attitude was to expressing repentance and taking responsibility: according to the juveniles in Tököl, the expression of repentance and a guilty conscience is to be avoided as the inmates regard it as a weakness. It is not usual in Balassagyarmat to stigmatise those who show repentance. Whereas in Tököl the prisoners are proud to admit their offences, those in Balassagyarmat instead try to lessen their own responsibility for the commission of the crime in many cases.

In comparison to the results of the questionnaire-based survey, *on the whole religiousness seemed to be less important in respect of repentance*. Those persons who said that they had already been religious before their imprisonment do not regret their crime any more than those who are not religious. They said that they usually prayed to God to help them

keep their benefits, give them back their lost material goods or help them in another way. Several of them stress that they do not believe any more: “when I was sentenced to the first ten years, I was still a believer but after the second verdict (another 15 years) I smoked the Bible” (a prisoner currently 20 years old, sentenced to altogether 25 years for murder and other violent crimes).

Those who became religious later, already in the prison, mentioned that this had completely changed them and made it easier for them to cope with what had happened to them. In this respect, again, there are differences between Tököl and Balassagyarmat. The adults can admit to each other without fear if they believe in God and practice their religion, and the prisoners treat this as a private matter which nobody has anything to do with. The situation is different in Tököl, where those who admit that they are religious are disdained.

On the whole it seems that those *who became religious while in prison would participate in mediation more willingly and sincerely* than those people who have been religious from the beginning. It turned out from the inmates’ reports that for those who have been religious, for example since their childhood, practicing their religion is such a routine activity that it is separated from the individual’s everyday behaviour and thinking, while the prisoner who became religious in the prison experiences his faith actively, which influences his way of thinking and his approach to repentance.

Family can play a very important part in the prisoners’ lives, either positively or negatively. This means that family relations can indirectly influence the probability of recidivism and can motivate the offender to participate in mediation. The disapproval of the family and the shame they feel can motivate the offender but only if the family ties are strong and play a significant role in the individual’s life. There are several circumstances lying in the background, such as sadness due to being isolated, the recognition that the person in question is a disgrace to his family, and knowing that the family members have less and less financial resources, their circumstances are deteriorating and the children are left without their father. Because of all this, the offender will probably endeavour after his release never to get into such a situation again.

However, only a smaller proportion of the prisoners had a family or real relationships. A reason for this is, for example, that for repeat offenders the family gradually acquiesce, in that they cannot change the behaviour of the person in question, they give up on him and do not keep in touch with him even while he is in prison. The family also won’t keep the prisoner going if there are other ex-convicts among the family members. Under such circumstances delinquency can easily become a lifestyle, which particularly threatens the juveniles in Tököl. *It is usual in Tököl that the inmate’s father is also in prison or that “my mother is dying here in the prison hospital of cancer” or that his brother or cousin is also in Tököl or somewhere else, maybe “already” in the “Csillag” [a prison in Hungary]*²¹. It also often happens in Tököl that a significant number of the offenders had no relations with their family even earlier as they grew up in an orphanage.

21 The Szeged Penitentiary and Prison serving for the imprisonment of adult prisoners is famous for accommodating the most brutal criminals.

We also examined the inmates' intention to reintegrate into the community. We discovered during the conversations in Tököl that the prisoners had such a standard of living before their eyes, which is absolutely out of their reach if they want to achieve it in a lawful, law-abiding manner. This means that they have no realistic vision and their dreams and desires are as far from reality as possible. The reference group to which the juvenile offender wants to belong has a huge responsibility in this respect. *"When I'm released, I will be able to work for my uncle because I'm a qualified butcher. But if he pays a little, I will procure girls - you can get by that way. How much money is "little" [the researcher's question]? Well, about a hundred [a hundred thousand], that's nothing, I won't work for that".*

It often happens that juvenile prisoners have such examples in front of them that indirectly support deviant behaviour and delinquency. Many inmates mentioned that after their release they intended to carry on with their previous lifestyle but in the future they would pay more attention to concealing the crime or their identity; *"if I get out, I'll be smarter".*

We also observed in Balassagyarmat that in many cases the prisoners gave neutral and routine answers to the question concerning their plans after their release. There can be several factors behind this. Answers like "I will be an entrepreneur", which contain no concrete information, are typical. However, there is a strong desire behind such answers to live up to expectations. The prisoner assesses what the "civilian" researcher expects of him and tries to answer accordingly. Often, prisoners are indeed in such a hopeless situation that they are unable to develop any concrete plans. In Balassagyarmat, one of the groups made a good list of the conditions that are, according to them, necessary for successful reintegration. These are the following: *stable employment and financial background, good health, peaceful family life, and creating relationships that can be useful for the person in question.*

It is also an especially important question how the community would receive the prisoner returning home after his release. It turned out from what the inmates related that it usually does not remain hidden from the members of the community if somebody is put in prison and so the prisoner will bear the stigma of being an ex-convict after his release. This is usually true for smaller towns in the country or the immediate living environment in a bigger city. The prisoner can choose either to leave the community or to stay and accept the situation, and maybe to do something so that the community takes him back. If a person chooses the latter option, it is possible that he will also be ready to meet the victim and to resolve the conflict. *However, the community can have other influences, as well, depending on its values.* Namely, if, for example, it is usual in the community that somebody supports himself by committing crimes, the above factors will obviously not be present and the prisoner will get back into the role he had previously thought of as his own.

Special features on the basis of age and belonging to a certain group

There were both advantages and disadvantages of creating different kinds of groups. It was an advantage that we could observe what kind of differences occurred between the groups and between the adults and the juveniles, and we could involve a wider circle of interviewees in the research. The further advantages included that we more or less managed to determine the factors that facilitate or, on the contrary, prevent the participation in

mediation. The advantage of division into groups, however, proved to be a disadvantage at the same time, as it turned out that it is mainly the adults and the compliant inmates who are suitable for having sincere and open conversations with the researchers.

In Tököl the need to be part of a group – which is predominant in one's youth – was clearly reflected in the prisoners' attitude to repentance, the acceptance of responsibility and religiosity. It seems that there is a picture in their mind about the "ideal prisoner", which everybody endeavours to resemble so that their fellow-prisoners do not ostracise them. This "ideal prisoner" proudly admits having committed the crime and shows no repentance. He thinks that his fate is in his hands; therefore he despises those who await help from greater powers.

This phenomenon was less present in Balassagyarmat. Perhaps it only manifested itself in the fact that, in contrast with the juvenile offenders, the adults tried to deny or at least lessen their responsibility in their cases, thus an external observer could learn that almost everybody was innocent in Balassagyarmat or certainly so at least in the case for which the person in question was kept in prison. Here, the more intelligent or religious inmates typically assumed responsibility, even for the most serious crimes. Many tried to play down the case, their role in it or the gravity of the case and to blame the authorities or the victim, who brought "false" charges against them and was "in fact guilty".

Whereas the focus group method worked ideally in Balassagyarmat, our experiences were not that positive in Tököl. In Balassagyarmat, the inmates also behaved as individuals in the group situation and expressed their opinion openly; it did not matter that their fellow-prisoners could also hear it. On the contrary, in Tököl, in certain groups the opinions on topics of key importance were distorted under the group's pressure, for example concerning the role of repentance and religiosity or in connection with the plans after release. The reason for this is that a kind of effort to reach consensus developed in the juvenile groups, which was not favourable for learning the individual opinions.

Conclusion

Using the different methods in a complementary manner, our study, which rested on three pillars, detailed the picture we had of the prisoners' life in the prison, their attitude to the offence and the victim and the applicability of restorative techniques. It also became clear that the use of restorative means during the prison stage requires much more energy and resources than with regard to mediation in the pre-trial stage.

We could observe a significant shifting of accent between the application of restorative methods in the stages before and after the trial. While the participants, the conflicts, the emotions and the cases are the same, the emphasis, the tasks, the locations and the expected direct and long-term effects can be found elsewhere and in different ways during the use of restorative methods – mainly mediation – before the trial and after that (in the prison). The table below presents these differences when applying mediation.

Table 4: Differences between the mediation before and after the verdict (emphases and effects)

Criteria	Pre-trial mediation	Mediation in the prison stage
Direct effect	<ol style="list-style-type: none"> 1. Reparation, restoration, and forgiving on the victim's side 2. Repentance on the offender's side 	<ol style="list-style-type: none"> 1. Repentance on the offender's side 2. Reparation (e.g. symbolic apologies), forgiving on the victim's side
Long-term effect	<ol style="list-style-type: none"> 3. Reconciliation and coping with the crime on the victim's side 4. Change of attitude/personality on the offender's side 	<ol style="list-style-type: none"> 3. Change of attitude/personality on the offender's side 4. Reconciliation, coping with the crime and possibly subsequent restoration on the victim's side
Location	The office of the mediation service	Prison
Time	Relatively close to the suffering/ commission of the crime: quick reaction – quick effect	Long after the occurrence of the crime
Participants	Victim Offender Community, Family members and supporters on both sides, Mediator	Offender Victim (or the victim of another, similar crime) Family members and supporters on the victim's side, Community, Staff of the prison, Mediator
Preparation	Can be done relatively quickly	Crucial, probably a longer process
Outcome	A much faster and direct effect on the affected persons and the community. Results are usually (in most instances) very positive.	Takes much longer and is strenuous for all affected persons, requires more energy and financial means. The outcome can be uncertain.

It can be seen that, in the case of mediation after the trial, during the prison stage more attention is paid to the offender and more energy is spent on the involvement of the victims, which in many cases is not possible. Since it may happen that the victims get into contact with the offenders only several years after suffering the injury, it is especially important to determine the factors that can be decisive on the offender's side with regard to the realisation of a successful meeting. The victim may not be victimised again under any circumstances due to inadequate preparation or a false assessment of the situation.

According to our examination, the first and maybe most important condition for the meeting of the prisoner and the victim is the *empathic ability* of the offender. It is probable that a person with strong empathic abilities will not commit any offences, as he would forecast what the victim would undergo and which would hold him back. In the prison, such a level of empathic abilities can be expected of those offenders who are, at least subsequently, able to acknowledge that they caused pain to the victims. This acknowledgement

facilitates the offender being able to experience the victim's pain, the ideal consequence of which is sincere repentance.

According to our experiences, the majority of inmates are *unable to go beyond their egocentrism* and they only consider their own interests when thinking and acting. This is illustrated by the fact that many prisoners alleged that they regretted what they had done but they were not sorry for the victim but only for the fact that as a consequence of their offence they were sent to prison (*next time I'll be "smarter"*). Although empathic ability develops in early childhood, it can also be improved later. Compared to the adults, we can mention a much lower level of empathy among the juvenile offenders; the victim's feelings did not even come up during the research or if they did indeed, the juveniles did not understand them. In their case we can therefore hardly speak about sincere repentance. It seems it would be worthwhile to hold training for the prisoners to improve their empathy, as successful participation can prevent the prisoner from committing a crime in the future. It is not by chance that Van Ness mentions the programmes for improving empathy among restorative training. (Van Ness, 2007:312–323)

Besides empathy, other important factors are *the extent to which the individual relates to the community* that surrounds him and the values represented by this community. (Differences may occur in the degree to which a person makes his self-esteem dependent on external valuation.). If the community condemns the act in unison and the individual is responsive to the negative opinion of the community members, it is natural that he will feel ashamed of himself. This feeling may be constructive, in which case we call it a "*reintegrative shame*".²² The prisoner who is surrounded by a close community, whose relationships remain alive even during his imprisonment, and is also responsive to the opinion of the community, tends to feel reintegrative shame, which supports the endeavour to resolve the conflict with the victim. This situation, however, mainly occurred in adults. *Among juvenile offenders we more often observed chaotic family relations and also the fact that the members of the environment that reared them had also been previously convicted or are serving their term at the moment. In this case, the relations with the community may have negative results instead.*²³

In addition to all this there is another basic criterion that the offender must meet so that the accomplishment of mediation becomes real, namely *the individual's appropriate mental state*. For most prisoners with a pathological personality, who in certain situations behave in a deviant manner, that is, in an extreme, unusual, maybe even bizarre or *dangerous* manner, mediation is not recommended. Such prisoners include first of all psychopaths, the mentally defective, psychotics, or drug users, whose behaviour is otherwise not abnormal. According to previous studies, 27-46% of prisoners are in a mentally anomalous state. (Gunn, 1977; Boros 2002:110-123) In these cases, obviously, the victim can only be the losing party of a meeting and they may be victimised again, even if the psychopath offender with an

22 On this see Braithwaite, J.: Crime, shame and reintegration. Cambridge University Press, New York, 1989

23 On the relationship between the so-called "integrative" and "exclusive" social ties on the one hand and restorative processes on the other hand see Fellegi, B.: Út a megbékéléshez. A helyreállító igazságszolgáltatás intézményesülése Magyarországon [A Way to Reconciliation: Institutionalisation of Restorative Justice in Hungary]. Napvilág Kiadó, Budapest, 2009., pp. 102–108

ingratiating manner would gladly meet them according to his statement. The filtering of these offenders would require extra attention and previous psychological training on the part of the prison staff during the use of mediation.

In addition to this, it is a minimum requirement from the victim's point of view that the offender has a certain level of intelligence acceptable to the victim, which is necessary for communication between the parties, that the offender is able to understand the rules and instructions he is given and that he is able to formulate his opinion and thoughts. It is extremely important that the prisoner has adequate emotional stability and is able to control his impulses, since we cannot expose the victim to the risk of becoming a victim again to any extent.

One of the important results of the research is that in whose cases mediation cannot be recommended as a technique became distinctly visible. This means that the fact that the prisoner would agree to meet the victim does not mean that he would in fact be suitable for this. The intentions expressed by the offenders can be insincere, false or selfish. However, it also happened that a prisoner who said that he did not want to participate in mediation would be suitable for it. In many cases the offender would not meet the victim because he does not want to humiliate or disgrace himself, which according to him would happen during a meeting within the framework of mediation. There are some prisoners who flatly refuse to meet the victim because they think that, by serving their term, they are done with the punishment and so there is no point in a meeting like this. These prisoners, regarding their characteristics, are often mentally healthier, more empathic and sincere than their fellow-prisoners who agree to meet the victims.

During our research we endeavoured to determine the institutional circumstances and conditions that are subjective/inner, objective/external (but relating to the person) and are completely independent of the given person, and which may promote the successful application of mediation. Thus, for instance age, family and education are objective circumstances. Subjective circumstances – that is, relating to personality – are for example the following: emotional intelligence, religiosity – particularly voluntary religiosity, in the event of later conversion – openness, sincerity, repentance (if any), the wish to reintegrate. In addition to these, the prison itself greatly influences the inmates with its special rules and latent/secondary values. This is especially true for juveniles because of their immature personality and their lack of a stable emotional and moral background.

Every social organisation has normative (regulated by the law) and latent (falling outside the sphere of norms) functions. The prison is no exception to this, where a secondary system is developed and practically working under the surface, with its own system of brutal norms. The prison staff also know about this informally but are unable to intervene in practice. Whilst this "second society" is a strong counterforce against re-socialisation, with its specific means it also takes part in ensuring the operation of the institution. (Boros & Csetneky, 2002:144)

Among juvenile offenders the cult of violence is manifest for the very reason of their age, thus anyone can only become a leader with supporters inside (for example associates or relatives) or maybe through trickery. This phenomenon does not reinforce the mentality of repentance, reconciliation and reparation. The majority makes every effort to comply with the prison's official norms and also its latent, sub-cultural norms, where sincerity represents no value. Among the adults, powerlessness and the problems arising in the outside world and in the family, which cannot be solved from within the prison, may sometimes cause unbearable tension.

According to Titanilla Fiáth, the psychologist of the Budapest Penitentiary and Prison, antisocial personality disorders can be diagnosed in most of the adult prisoners and they often have mood disorders and anxiety problems. Laura Homonyikné Bertha, the head of the Psychology Department at the prison in Tiszalök, described the causes of the problem as follows: "The psychological problems of the inmates arise from the conflicts of the world left outside. Locked up, they feel completely powerless and they worry because there is nobody to take care of the children, the house, or a relative falls ill, and they also cannot handle such crises as the death of a family member outside, when they are unexpectedly sentenced to a longer term or if their wife breaks up with them." Due to the confinement, every little thing becomes significant. There is a constant rivalry among the inmates, even in such issues as who is given a special task by the instructor. According to Éva Éles, the psychologist of the Csillag prison in Szeged: "Most of them are men aged between 30 and 42 in the prime of life. They compete with each other in here over such things as whose body is more pumped-up or who received a parcel, or who was sent some fruit".

(The opinion of prison psychologists on the mental state of prisoners. Source: www.origo.hu)

We ran into several difficulties with regard to juvenile offenders, where the application of restorative means would be especially important. While they usually spend much less time in the prison, this is exactly the period when they become real criminals. As many of them mentioned, a short term in the prison is enough for them to learn new criminal techniques and become even more aggressive or injured. A new subcultural order develops among the juvenile offenders, in which it is violence that leads to power and independence. On the other hand, a perpetual uncertainty also appears as deprivation, since the obtained status is not permanent: anyone can be attacked at any time. *In such situations, the immature personalities injured many times are virtually unsuited for meeting their previous victim or for*

understanding the latter's situation without any prior mental support and emotional development. The basic idea behind restorativity is that the persons affected directly are entitled to decide how the problems caused can be solved. The majority of the imprisoned juvenile offenders are not suitable for this. *For this very reason, the use of restorative means requires special preparation in their cases. In addition to their psychological and mental development, a change in the prison culture, as well as the reinforcement of family ties, is also crucial.*

However, prison can also support the development of the inmates using its resources and can prepare the application of restorative techniques. When admitting the prisoners, penal institutions also conduct a psychological examination, provided there is a psychologist working in the prison at that time. During this it would be useful to examine the factors that test the offender's "suitability" for mediation as well. On the other hand, an education plan is prepared for each offender at the time of admission, which, on the basis of his personality and other circumstances, could include a plan for improving the skills necessary for the application of restorative methods (training, education, psychological treatment etc.).²⁴ Although education plans are made these days, in many cases they are formal both in respect of their content and their implementation. There are several reasons for this. The budget of Hungarian prisons does not allow the employment of enough instructors and psychologists and the appropriate further training of the existing employees. At the very best there is one psychologist in the prison. An exception to this is Tököl, where at the time of the study there were three, but there even that is not enough. Moreover, one instructor is responsible for about 70-80 prisoners, which makes it impossible to deal with the prisoners one by one other than formally. It is no surprise that inner tensions are increased, violence is spreading and the number of suicides is growing.

The European Convention on Human Rights – also signed by Hungary – prohibits the use of inhuman punishments. However, according to the findings of the ombudsman's examination, the circumstances of the detention of juvenile offenders and the general conditions existing in the juvenile offenders' prison violate the prohibition on inhuman punishments and the inmates' human dignity. The statistical data, according to which lately the serious and violent offences between prisoners have mainly occurred in the institutions accommodating juvenile offenders, also refer to this. The introduction of stricter penal laws also increases the number of adult prisoners; in 2011 it had already exceeded the 133% overcrowding of 2010 at the beginning of the year.

24 A good example of this is the so-called long-term development plan operating very well in the United Kingdom, which contains an education plan including for instance the prisoner's psychological support and social work, by using restorative tools.

However, over-crowdedness does not only increase violence but also less attention is paid and less assistance is provided to each prisoner because of it. Since the prisoners who leave the prison are primarily “educated” by each other, they will continue their already started criminal career armed with the knowledge of new techniques and great determination. In certain subcultures, previous convictions can also be regarded as a positive thing as it suggests experience and hardiness. If the inmate is concerned with his crime and the relevant consequences, this may entail the accessory risk of stigmatisation and so the inmate denies confession and repentance.

Howard Zehr says that many offenders feel that they are victims as well. In addition to the fact that they do not want to deal with the offence they committed, prisoners have a negative attitude to society and the victim; they deem the way they are treated as unfair and may even harbour thoughts of revenge. The probability of the occurrence of mental illnesses and psychotic disorders increases further in the prison. This does not promote positive changes, either: on the contrary, it hinders reintegration.

This is why it would be necessary to deal systematically with the handling of the crime during the prison stage. While analysing the principles of the justice system, the authors Matt and Winter emphasise that the prisoners should not become worse during imprisonment than they had been before. They should be supported in repairing the harm they caused and reintegrating into society more easily, by making available financial reparation, the possibility of payment in instalments and charity work in any form. They should be supported in facing their offence and showing repentance to the victim. The understanding and the successful application of this method can significantly contribute to changing the prisoners’ attitude as, instead of their previous, wrong behavioural patterns, they can get to know some new solutions and methods, which may help them to handle their problems, not only during the imprisonment but also after their release. However, there are many things that have to change in order to achieve this, mainly in the field of the general opinion on the role and aim of prisons.

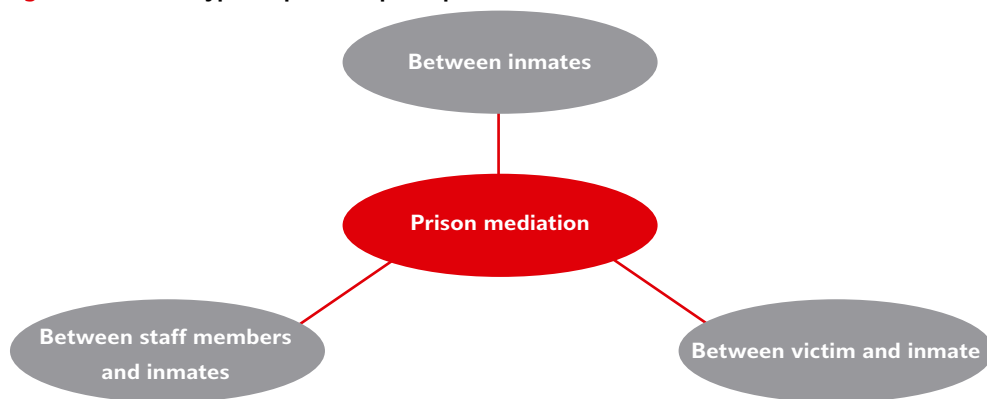
OPPORTUNITIES FOR PRISON MEDIATION BASED ON THE OPINIONS OF PRISON STAFF, INMATES AND VICTIMS

Introduction

The following is to acquaint readers with the background and the complexity of studies carried out by the National Institute of Criminology in Hungary. As part of the MEREPS project, we used various methods to review the attitudes, opinions and openness of actors that can be involved in prison mediation.

In planning the project, we identified three different types of potential participants between whom mediation proceedings could be conducted while a sentence is being served (see figure 1). As part of the research done within the project, we sought to identify the framework, possible stumbling blocks and challenges in setting up mediation proceedings in the penal phase.

Figure 1: Different types of potential participants



The inmates were chosen from among those placed at the two partner institutions collaborating in the project, the Balassagyarmat Penitentiary and Prison and the Tököl Penal Institution for Young Offenders. The staff and inmates of these institutions constituted the subjects of our study.²

We had the opportunity to apply various different methods in the course of our study, and even had a chance to examine the issue of prison mediation separately for each target group, using different methods for each group.

1 Szandra Windt, PhD, researcher at the National Institute of Criminology, www.okri.hu

2 We would also like to thank Dr. István Budai and Colonel Tamás Tóth, directors of the Hungarian Prison Service, for their help.

We would like to emphasise that our study was **carried out at the two afore-mentioned penal institutions**, and that, although our aim was not to analyse the roles that inmates in the study played in the hierarchy of prisoners, their criminal career or family background, we still did partially examine these issues and took them into account as important information.

The main question was to find out the extent to which inmates were open to mediation with victims while they were serving a penal sentence. We expanded this by examining the extent to which dispute resolution techniques or even mediation proceedings could be applicable in response to cell conflicts (between inmates) or conflicts arising against prison staff.

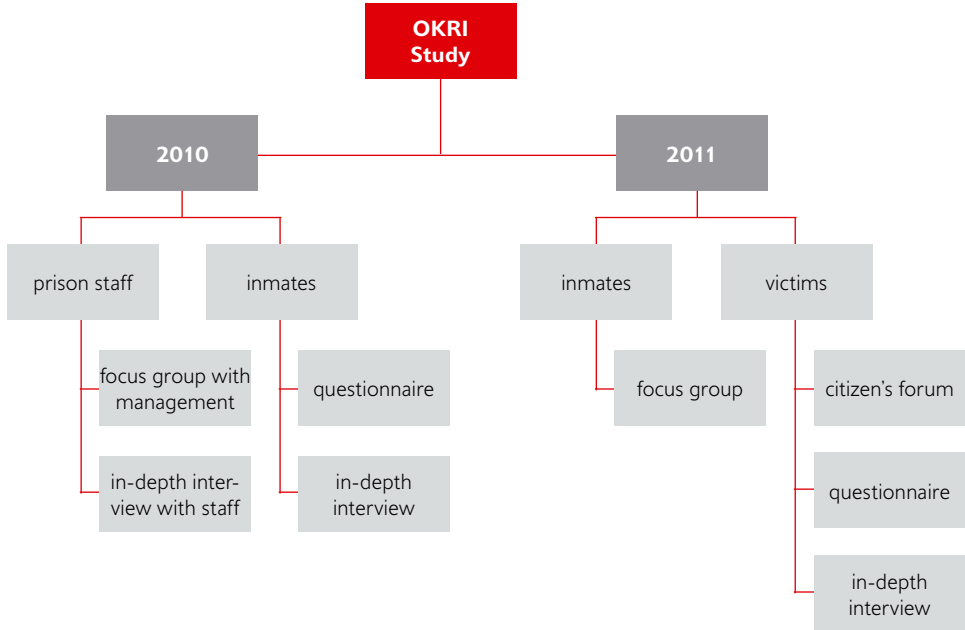
It is for this reason that prison staff also became a target group of our research – as prison mediation and dispute resolution in this manner are both inconceivable without their participation.

As the study progressed, the “relationship” between prison staff and inmates was given more attention. Attitudes towards prison staff and management play a crucial role in determining whether a restorative approach can be integrated into everyday life or not.

Meanwhile, throughout the study we always kept in mind that the aims and philosophies of mediation and prison are very far from one another, as a relationship of partnership is a basic requirement for mediation as opposed to the hierarchical structure of prisons. The situation is not hopeless, but this distance should be kept in mind in connection with any of our suggestions made in connection with the procedure of prison mediation.

The figure below presents the different elements of our study programme, broken down by target groups. This can also be used to read our results.³

Figure 2: Methods used for each group, broken down by years



3 The Local and Regional Monitoring Institute (LRMI) assisted us in carrying out the research.

1. Research carried out with prison staff (2010)

1.1. Focus groups with management

*“What is the aim of the prison system?
It’s not to be just a place that guards people.”*

In Spring 2010, we held two focus group discussions in which we attempted to identify attitudes of middle and upper management of the two penal institutions involved in the project, as well as the applicability of dispute resolution. All of the management staff – who play a significant role in dispute resolution and in forming the atmosphere of the institution – were open to the application of restorative practices in their institutions. In fact, almost all of them had already taken part in some sort of training and were familiar with the restorative approach and methods.

Conflicts in prison

Only a small number of conflicts between inmates are reported to correctional educators or guards and, through them, to management. Despite this, it is clear to the latter as well that, because of forced communal living and different socio-cultural backgrounds, coexistence is the source of numerous problems. Both penal institutions emphasise the peaceful resolution of conflicts – insofar as they learn of the case.

“There are a lot of problems between inmates, and 80 to 90% of these problems never reach the staff members who are in charge of them. (...) The problems that are referred to staff are those that the inmates couldn’t solve amongst themselves and where external intervention and guidance is needed to solve them.”

Acquiring dispute resolution techniques should be especially emphasised. However, according to focus group participants, inmates are “basically able to solve any problems that arise by discussing them amongst themselves. *For things that reach outside the cell – that is with a noticeable level of tension – the educational officer reacts immediately, the guard reacts – because this is something that the group within the cell can’t solve. For us, if we look at the tension, this is something we have to deal with preventatively. Once events precipitate, then we have to deal with much more serious problems. Because they know that they’re imprisoned in a strict system, it’s really only the most serious problems that come out like that. Some other problems come up too, but educational officers can solve those by talking about them or through other activities.*”

Among young offenders, various behavioural and conduct problems arise, such as “minor theft, loss, cigarettes, putting down each other’s families”.

For young offenders, dispute resolution typically takes the form of physical assault. Because this generally leaves visible traces of injury, it is more easily noticed by educators and guards.

The creation of these forced communities is the responsibility of management. They have to be careful who they put with whom in a cell. It is for this reason that, after a new inmate is admitted, he is held for 30 days in a receiving section so that they can get to know him, and it is only after that that they decide to which cell they will send the new arrival. Whether or not an inmate has contact with the outside world, with whom, and how, are all factors that have an important effect on his behaviour. The management of both institutions emphasised that assisting inmates in keeping such contacts is of crucial importance, as maintaining relations with family and friends has a significant impact on the integration of the inmate and his conduct within the prison, as well as his life after release.

The recognition of conflicts and the establishment of a relationship of trust between educator and inmate are also needed in order to deal with these conflicts. It is for this reason that *“we decided earlier that educators should wear civilian clothes, so that there wouldn't be this authority-type issue, that they see the uniform. The relationship towards a staff member from the security department is then totally different than with an educator. If the inmate sees that the educator is dressed as a civilian, he won't identify them with the prison authority. There's a better chance of establishing an atmosphere of trust than if the educator is in uniform.”*

The heavy workload of educators, in part because of the large number of inmates for which they are responsible, is also very significant. The management have to make sure that they receive necessary training and to protect them from burning out; this was recognised by all participants and seen as a crucial task, although they also mentioned that the earlier, successful recreational programme could not be continued for financial reasons.

“Staff members, primarily educators and psychologists, really play a decisive role in seeing where a real change in personality has occurred, or where an inmate, acting in what he perceives to be his interest, follows the rules and behaves appropriately, and can identify those whom we can reach.”

Focus group participants also noted that **conflict management is needed in prisons**. In both institutions, they had already had this type of training for staff members and for management as well; and in both institutions there were programmes of this type for inmates as well (e.g. Zacchaeus⁴ programme, conflict management training, etc.).

In addition to their openness and commitment, participants in the talks also stated that they believe that there are already attempts to conduct something similar to mediation in prisons. In this sense we were really preaching to the converted.

“I think it happens on a daily basis; my colleagues could tell you better.”

“Sometimes we don't know that we're mediating, it's true that we don't know that that's what were doing, but generally there are a lot of conflict situations, when a per-

4 The aim of the Zacchaeus programme is to sort out the relationship between victim and offender. As part of this programme, 12 offenders who volunteer to participate take part in joint two-hour weekly sessions held over the course of six weeks within the prison. Issues of making amends, psychological balance and restoration of peace are emphasised. For more detail, see: <http://www.bortontarsasag.hu/>

son wants to get away from the others or there's some kind of problem, and you just have to talk it over with the other cellmates."

"In some cases there are already mediation practices inside the prison, like when there's something between the inmates but it's not big enough to make a case out of it and they just try to solve it with the educator between the inmates."

Focus group participants noted that prison mediation cannot be carried out without a change in legislation, or a change in a single law, the creation of a legal framework or the drafting of a clear set of guidelines.

They primarily brought up the risk of duplicate proceedings in the event of misdemeanours:

"A conflict situation arises between the inmates. This is usually a disciplinary act. We find out about it, we have to launch disciplinary proceedings, that gets reviewed and then a decision is taken. Deciding when you can mediate, until when, starting at what point and how long to maintain disciplinary measures, all that without any legal framework, is for us a big risk. Of course there is a place for mediation, there are lots of things that can be mediated, but the laws definitely have to be adjusted to really make it possible to mediate, or for a staff member who is faced with a disciplinary situation to decide whether to mediate the case or to apply disciplinary measures."

"If there is a so-called disciplinary event, then the educator has to deal with it anyway. It makes no difference at all whether I mediate or fill out a disciplinary sheet."

At the disciplinary hearing, they find out what the cause of the conflict was, what happened, and then find a solution in order to prevent this situation from arising again in the future.

However, duplicate proceedings are already today a routine practice in prisons with regard to serious offences.

"If an inmate commits a more serious offence, it will lead to criminal charges. This is done in parallel under current laws. Independently from this, we also have to launch disciplinary proceedings. These parallel proceedings exist in the penal system."

"If the inmate commits an act subject to disciplinary proceedings and which is also considered a crime (such as grievous bodily harm), then regardless of the fact that criminal proceedings have been launched, we also have to continue the disciplinary proceedings."

It was often mentioned at the talks that they would like to get to know three different groups of prison mediation options: in conflicts between inmates, between inmates and staff, and between inmates and their victims. Problems in connection with these also emerged in the discussions.

Concerns

At the focus group discussions, the management, although committed to using restorative approaches, expressed serious concerns with respect to prison mediation.

a.) Who should the mediator be?

The main concern raised was with respect to the role of prison staff members.

"The only problem is that this is not a typical mediation!

You can't expect an educator, who is one moment an integral part of the penal institution's system, in charge of the life and tasks of the whole wing, who is basically always intervening in inmates' personal lives, to suddenly the next moment be an impartial party on an equal footing with them – there's a conflict between the roles."

"I think that the staff would more readily accept one of their own (as a mediator). But we don't know who the inmates would accept."

"Often the inmates accept someone from the staff too, or a probation officer or an NGO who does that; in fact there are probably lots of staff members who would be able to do this as well."

"Who am I going to mediate with? Here too, we have to set up a practice that has its roots in civilian life or has at least some kind of partial result. Then we could use it. But even then, I think it could only be used to deal with conflicts between inmates. Based on my experience in prisons so far, I can't imagine a situation where we would mediate. It would chip away at our authority. If an inmate ends up in a conflict, it means that he's crossed a line somewhere. We have to react. If we just start talking about it with him and don't do anything, then there're going to be serious problems."

b.) Which conflicts should be mediated?

The idea of mediating conflicts between inmates and staff was unequivocally rejected. The main issue raised was the dichotomy between the roles.

"Mediation between guards and inmates is not really viable."

"There is a very clear, subordinate legal relationship between staff members and inmates. There is also more to it than that. It also has an internal, emotional content. There's the prestige and battles that are waged daily between guards and inmates. Basically, this is how it works in reality, even if it isn't explicitly stated that way."

c.) Attitudes of inmates

Based on their years of experience, participants in the talks also expressed their concerns in relation to the attitudes of inmates: the majority of inmates have no sense of remorse whatsoever, most inmates cannot or do not want to take responsibility for their acts – a factor which is of fundamental importance when carrying out mediation. It is for this reason that they believe that mediation with victims is not feasible in all cases, assuming that there are any inmates who are actually suited for mediation. This number was estimated to be very low. Many very important issues also arose in connection with the selection of suitable inmates and in connection with their sensitisation, which would be crucial in carrying out the procedure successfully.

d.) How to carry out mediation

The choice of person to act as mediator between inmates was also an issue.

Because of the superior/subordinate relationship between staff and inmates, using mediation in settling disputes is inconceivable, although the use of some sort of restorative means should not be ruled out.

If a victim were open to going to the prison to mediate with the inmate, then many important questions would have to be dealt with, such as who notifies the victim and how, who prepares the victim and inmate for the meeting, where is the meeting held and how, who attends the meeting, and how restraints should be used on the inmate. Although many concerns arose in connection with carrying out mediation between victim and offender, as these were listed and analyzed all participants agreed that mediation is – or could be – a positive contribution.

"It helps in dealing with their own inner conflicts and to deal with the conflicts with the inmate if at the beginning we don't make a big disciplinary case out of it. Of course it's not suitable for all cases, and not all the time. It's not a miracle cure, but it could be a good contribution.

From the perspective of the young people who are here, they didn't grow up in a context where they had a chance to learn that you don't handle conflicts through violence, but through some other way. For them, it could mean a lifelong benefit. This is not true of the staff, but it could help them."

"It wouldn't be a bad thing if it made relationships between inmates and the work of our colleagues easier."

In addition to listing these issues, the management of both institutions was open to us carrying out further studies on this topic in their institutions; in fact, the Balassagyarmat Prison and Penitentiary gave us an opportunity to launch a pilot programme there after the training held at their institution (for more on the pilot project, see the study of Borbála Fellegi and Dóra Szegő).

1.2. In-depth interviews with staff members

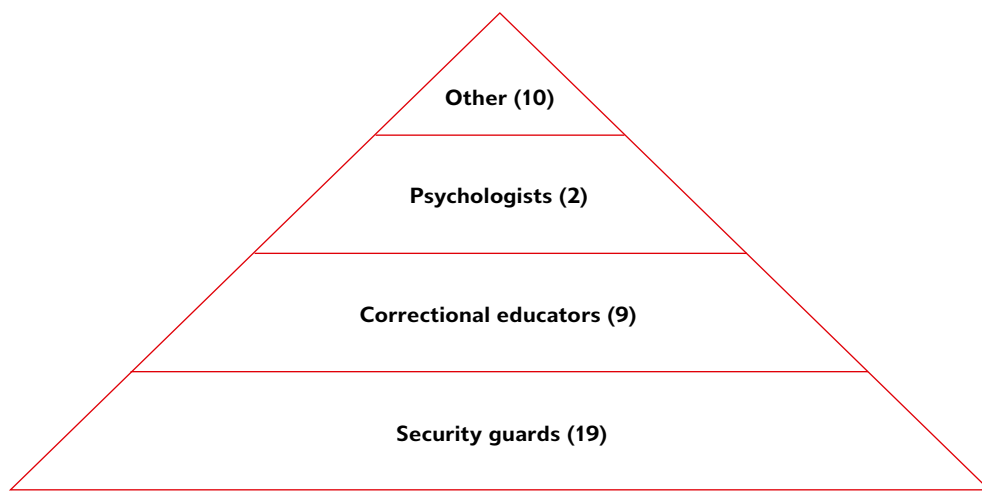
"The worlds of educators and guards are completely different."

After learning of the opinions of leaders and decision-makers of the two penal institutions through our two focus groups, we also tried to map the attitudes of the staff of the two institutions (while at the same time carrying out research regarding the inmates). Altogether, **40** in-depth interviews were held with staff members of the two institutions.

The dispute resolution experiences of the guards plays an important role in dealing with daily problems (mostly because they are in contact with the inmates the most), thus the majority of the interviews were held with them. The role of correctional educators is also important, as they handle inmates' everyday problems, their connections with others, they prepare educational plans, and they are the best able to see if one of the inmates under

their charge has changed, and in what way. We also felt that it was important to learn the opinions of the psychologists, although they both worked at the Tököl prison with young offenders. In addition to guards, educators and psychologists, we also mapped the attitudes of staff members who, although they are not in contact with inmates on a daily basis, still play an important role in inmates' lives, are in contact with them and experience conflicts. For this reason, we also involved other staff members in our study as well: the teacher, workshop leader, nurse, record-keeper, activities leader and programme coordinator.

Figure 3: Breakdown of staff members involved in interviews



In interviews with staff, we followed this interview outline:

- ▶ Position
- ▶ Number of years at penal institution
- ▶ Original professional training
- ▶ Do other people in your family work in this or similar areas? What does this work mean to you?
- ▶ Relationship with inmates
- ▶ Are you happy with your life?
- ▶ Personality: to what extent the staff member disagrees with the regulations of the institution
- ▶ Attitudes towards mediation
- ▶ Opinion about mediation as part of the penal process

From these in-depth interviews, *we gained a more nuanced picture of the situation* than the one presented by management. Many staff members, especially guards and some staff in the “other” category, were sceptical *with regards to mediation*, and in many cases had never even heard of it.⁵

5 Cf. study by Arthur Hartmann et al. in this volume (ed.).

"I think that mediation itself is not useful at all. I don't see the point in it, and it's kind of foreign for me. I can't imagine contributing to the programme, because what I mostly see in it is extra work."

"Within the prison, I think mediation would mostly be useful in conflicts between inmates or between staff members. I think victims should be protected and wouldn't recommend victim-offender mediation."

"I don't think that mediation would be a suitable method. At most, it could be used between prisoners."

"I've never heard of mediation. I don't think that mediation is a viable option, only if it's for theft of minor objects or minor clashes. I think that in more serious cases, the victims would just clam up and it wouldn't be possible to sit down with them and talk."

Respondents who did know about the mediation philosophy and procedures were more open and saw its positive sides and usefulness.

"In theory we were supposed to learn it in college (laughs) but that isn't the way it works here. There's none between us or between inmates...Though I would totally be into doing a course like that, if I had the chance."

"If the law would allow for it, it would absolutely be worthwhile, because prison could be avoided altogether in the case of more minor offences."

With regards to ***inmates***, the majority of our interview subjects reported negative experiences and had pessimistic opinions, and believed that any changes to inmates' personalities or redirecting them to a law-abiding life were inconceivable.

"It's hard to change anyone who ends up here. They're already adults by the time they get here. It's hard to change at that point. Family background matters a lot, how many relatives are in jail. Also an inmate's friends matter a lot, whether he has kids, whether he's a family man, etc."

"There are some who change. But most of them will be repeat offenders. There are some who just put on an act. But there are some who are setting up their criminal career for when they get out: They just get each other into more and more trouble."

"They definitely learn theory from one another. As for their re-integration outside, it depends on friends, family and their profession."

"Offenders can also prefer to keep to themselves, they don't care what happens and who the victims are. I don't think it would have a serious impact on an offender to meet with the victim of his crimes. If so, then mostly in the case of first-time offenders. Even if offenders make promises to their earlier victims, they still won't keep their promises."

"Usually everyone promises that they'll change and that they'll never come back."

"It's harder to deal with the young offenders. They have more energy, they're more wild. No one raised them at home and they're also very stubborn. They wreck anything that can be wrecked."

"I have seen cases where people were honest with each other, but only once or twice. Most of them are just putting on an act. Most of them are not at all serious when they make all these promises; instead they're already planning their criminal career for when they get out."

The in-depth interviews clearly showed that staff members who are in direct contact with inmates – guards and educators – are under intense stress. Many of them displayed apathy and disillusionment which came from a lack of interest and appreciation, which can also be reasons for their rejection of mediation and negative view of inmates. Many of them said that "it's just a job", but others also described the inmates under the supervision of guards as "goons". Respondents from the "other staff" category⁶, younger staff members and women were more open and less negative.

*"The down side of the work is stress. It's hard to deal with the inmates; it's hard to make them do something. And there are lots of reports for offences. Not long ago, one of my colleagues ended up at the military prosecutor's office, which I don't think is right."
"There are little special moments, and you have to be able to notice them. I used to work with adult offenders too, not just with young offenders, and there was one of them who yelled out the window when he was released 'thank you, miss educator, for listening to me'. His little grandchild was sick, a little baby only a few months old, and once I listened to him as he cried and told me all his problems. Sometimes there's a bit of positive feedback like this, when they thank you, when they don't want to come back, when they see me as their mother, and then I hope that what we told them here was useful. But it's very rare."*

Virtually all interviewees noted that inmates who have little free time, who work and have regular daily activities, tend more to follow the rules and cause fewer problems. They are also easier to motivate and reward. The majority of respondents also believed that it is much easier to motivate people in prison with rewards than with punishments.

"Some of them don't care if we send them to solitary. It's a minority; you can use it to steer most of them. In-house, you can deal with these conflicts between prisoners. There have even been cases where we had to transfer a prisoner to another prison because of his behaviour."

"There are lots of conflicts between prisoners and educators. Unfortunately, the disciplinary sheet is often not sufficient. Often prisoners taunt the guards on purpose. But sometimes there are eventless days, compared to those days when you have to solve lots of problems all at the same time. The disciplinary sheet is not a really effective means of motivation. For lots of them, proceedings aren't either. Rewards work better. Even small rewards can be a significant motivating factor. Work also makes a big difference – the ones who work are calmer, they're tired in the evening and don't have the energy for any scheming."

⁶ The (female) teacher at Tököl believed that with the right amount of patience, dedication and the right methods, it is possible to motivate offenders.

With respect to **prison mediation**, we met with a lot of resistance. The majority of respondents rejected this possibility.

*“Within the prison, conflicts could be solved between prisoners. Between guards and prisoners, it’s not possible because it would mean that the guard would lose their **status of respect**. If we had to have a system like this, then you would need another person between them, or an external mediator, not from the prison.”*

“However at the moment there is not really the capacity for mediation. I don’t think that it would have a serious impact on the conscience of an offender, but maybe it would have some effect. I think it’s worthwhile to make them sit down with each other and talk here in prison too. At the same time, I’m concerned that offenders wouldn’t be interested and would see it as another punishment. It’s also dubious from the perspective of the victim – it’s quite possible that they don’t want to meet with the offender.”

“The only people who would be good as mediators are people they know and respect. Given our current number of staff, I think we would not be able to really provide for mediation. The only times inmates are honest is if it is in their interest. They don’t really show any remorse. Some of them make all sorts of promises that they’ll start a new life, but it usually doesn’t work out that way, especially if they have other family members who’ve served time in prison.”

*“Between inmates, I don’t think so, but maybe **one or two would be worth a try when dealing with internal conflicts.**”*

“Some of them want to apologize to their victims, but I don’t know what kind of effect it would have on them. Or what it would change. Actually, I can only speak for young offenders because that’s who I’ve worked with the most. Lots of times they don’t even realise what they’ve done, so I don’t know. I think it would be more feasible with adult offenders... Maybe it would be simpler if they could talk it over, but I don’t know how the victim would take it. I’m not sure I’d be happy to go and meet the guy who’d slashed at my throat or mugged me.”

Respondents completely ruled out the possibility of using prison mediation in conflicts between guards/educators and inmates, but they did emphasise that, with regard to some inmates, mediation could be a method for dealing with internal conflicts.

2. Studies carried out with inmates (2010, 2011)

We used several methods to learn more about the attitudes of inmates. In 2010, we gave questionnaires to 200 inmates: 100 young offenders aged between 18 and 21, and 100 adults, and also held in-depth interviews with 60 inmates.⁷ With both methods, we tried to thoroughly cover factors having an influence on the individual, the offence, the attitude towards the victim and the psychological processes of the inmate, as well as openness to mediation.

⁷ See the study of Tünde Barabás on the results.

Our initial hypothesis was that readiness of inmates to take part in mediation would be influenced by various factors:

- ▶ Personality and antecedents of the offender
- ▶ Relationship towards the victim
- ▶ The offence committed
- ▶ Access to benefits or advantages

The following criteria were used to select inmates from the Tököl and Balassagyarmat institutions: we chose those whose (most recent) crime did not involve a fatality, whose victim was a natural person and who are serving a sentence handed down by a court. Inmates took part in the study on a voluntary basis. For the questionnaire, we used the systematic sampling technique in order to ensure that the sample would be representative of the inmates of the two institutions. At *Balassagyarmat*, where about 400 inmates were held at the time of the study, we included one quarter of inmates in the sample. In *Tököl*, we had to give questionnaires to almost all inmates, as we needed 100 respondents and at that time, there were scarcely more inmates than that. In addition to all the above, in some cases the sample was distorted because if an inmate presented security risks and another inmate had to replace him.⁸

Overall, our findings showed that *inmates are open to mediation*. The personality of the offender, his attitudes towards the offence and victim are such fundamental factors in openness to mediation that proved to be statistically significant as well. Age, level of education, impact of family (closeness of family ties, feedback/reprisals in connection with the offence), sense of culpability, type of offence and attitude towards the victim all proved to be important factors.⁹

Based on the results of the previous year, in 2011 eight focus groups were set up (involving 50 inmates altogether), in order to confirm the proposed theoretical model. In these groups, we further analysed the attitudes of inmates towards mediation and our aim was also to clarify uncertainties regarding indicators showing a tendency towards mediation that were identified during our testing in 2010.

The focus groups talks nuanced the results found in the questionnaires and in-depth interviews.

In the course of the focus group study, we covered three topics:

- ▶ Family
- ▶ Feeling of culpability, remorse
- ▶ Re-integration

8 After selection, we filled out a data sheet for each inmate. The data sheet served the purpose of acquainting us with the inmates/interview subjects (interviewees and questionnaire respondents), for which we used their data from the prisons' record-keeping systems. By comparing the data sheet with the completed questionnaires, we could also to what extent inmates had given honest answers.

9 See the study by Tünde Barabás for more on this topic.

When identifying these topics, what we kept in mind was to approach issues that were especially predominant in our 2010 study, but on which our findings were ambiguous with respect to the role and significance of certain sub-fields, such as, in the case of family, the “adequate, close ties” which could show up in a great variety of value systems and which could socialise inmates towards crime, deviancy or integration into society. With respect to remorse, the process and the role of religion within this were uncertain. We also wanted to know more about the process, the depth of this feeling and whether it was honest or spurred by a need to conform.

The order in which the topic-specific questions were asked was part of the experimental quality of the study. It was important to identify which questions encouraged respondents to take part in the conversation more fully and which ones were of little interest to them as well as which questions had an off-putting effect on them.

Similarly to the questionnaires, the criteria for selecting focus group participants were the following: inmates who had committed an offence against a natural person, serving a sentence based on a final court decision, having served 80% (or at least half) of this sentence (1-2 years remaining) and if possible, inmates who had never taken part in this sort of activity before.

We organized four focus groups in each of the two institutions. We used several methods to prevent inmates and their responses from influencing one another: we changed the questions and the order in which they were given and asked the governor to not put them together in homogeneous groups.

Selection criteria applied that were unique to the given groups:

1. **Balassagyarmat:**
 - a. People in the top ranks of the inmates' internal informal hierarchy (“the in crowd”)¹⁰
 - b. A group of inmates with middle status, none of whom have taken part in training (“control group”)
 - c. Inmates with middle status who have taken part in personality development or other training (e.g. the Zacchaeus programme)
 - d. All the inmates of a selected cell in order to test general rules
2. **Tököl:**
 - a. People in the top ranks of the inmates' internal informal hierarchy (“the in crowd”)
 - b. People from the lowest ranks of the inmates' internal informal hierarchy (“lackeys”)
 - c. Middle status inmates (“control group”)
 - d. Inmates whose release is imminent

Compared to the questionnaire and in-depth interview studies carried out in 2010, the influencing factors listed above were given different emphasis in each focus group.

¹⁰ Staff identified what role prisoners played in the informal hierarchy.

Based on the focus group discussions, *the relationship towards the victim* was highlighted, and – regrettably – *the sense of culpability* was also very slight.

Table 1: Comparison of the emphasis of the 2010 and 2011 studies

2010	2011
(1) Sense of culpability	Appeared less important; integration was much more important
(2) Age	Important, tendency towards mediation more pronounced among more mature age group
(3) Schooling (professional training, high school)	Level of training can also be important from the perspective of intelligence
(4) Relationship towards the victim	Extremely important
(5) Victimization of the offender	[not examined]
(6) Religious inclinations	Important according to the psychologist; in a few cases, those who profess a religion have a greater tendency towards remorse

The cell group from Balassagyarmat was made up of inmates with lower intellectual abilities. However, the group also included two pairs of accomplices who reinforced one another – this had the regrettable effect of diminishing the effectiveness of the focus group.¹¹

3. Studies performed on the victims (2011)

The original research plan did not provide for the examination of the victims' perspective. In 2011, however, we had the opportunity to include the perspective of victims in our study as well, although we encountered many difficulties in obtaining victims' details, recruiting and reaching them.

In the part of the study dealing with victims, we used citizens' forums, questionnaires in part and partly in-depth interviews. We asked questions regarding the circumstances of victimisation, psychological burdens and assistance received from officials and other sources, as well as willingness to take part in mediation.

3.1. Citizens' forums

"We also have to do our part to avoid victimisation."¹²

In the first quarter of 2011, we held two citizens' forums, one in District III of Budapest and one in the town of Székesfehérvár.

¹¹ See the study by Tünde Barabás for more on the results of the focus group study.

¹² A respondent from a citizens' forum in the town of Székesfehérvár.

In order to gain the most thorough knowledge possible of the needs of the population, we gave the MPs from the constituencies the opportunity to speak on the topic and to respond to questions raised by participants.

Presentations were given by criminologists, sociologists, psychologists, MPs of the constituencies, mayors, police officers and public security advisors. In both locations, the municipality – represented by town councillors – hosted and acted as co-organizer of the event, while several local police leaders also attended. In Székesfehérvár, we even had the honour of receiving the city's chief of police at the event.

As part of the forum, researchers and other experts present were also available to answer questions from citizens on an informal basis.

The events were announced in local and national media, and were attended by 10 victims in Óbuda (District III, Budapest) and by 15 victims in Székesfehérvár.

The primary criteria in setting out the topics was to get to know participants' experiences, opinions about public safety in their neighbourhoods, to thereby evaluate needs of citizens, to identify what is lacking and to allow victims to share their own cases as well.

We examined the following questions at the citizens' forums:

I. Sense of safety

- ▶ What should be done to improve public safety?
- ▶ Are there places in your neighbourhood where you do not feel safe? If so, where?

II. Institutional assistance

- ▶ Do you know of any victim support organisations?
- ▶ If so and if you have turned to such organisations, what kind of assistance did you receive?
- ▶ What type of assistance would you expect from a victim support organisation?

III. Individual psychological and emotional processes

- ▶ Do you have any persisting negative thoughts and feelings about the crime and about any related proceedings?
- ▶ What would you do to avoid being victimised again?
- ▶ Would you agree to meet with the offender if he offered to apologise and to make reparations?

25 March 2011, Óbuda

“Modern methods are good, but let's try to watch out.”

At the citizens' forum in Óbuda, it was primarily questions regarding a sense of security that arose.

The role and function of surveillance cameras was especially important in the life of this district: 64 surveillance cameras scan the streets of the Békásmegyer housing complex, which has resulted in a significant (30 to 40%) drop in local crime. This has also helped

the local police force to mobilise better and to better dispatch officers to problem areas. The installation and maintenance of the surveillance cameras represents a significant cost, as the yearly maintenance of a single camera is approx. 6,500 EUR. Despite this, there are some areas where apartment blocks covered the costs of installing a camera system within the building. There are plans to install and maintain more cameras. In Békásmegyer, there are some residential areas where the owners' associations of apartment buildings have installed internal surveillance cameras at their own expense in addition to the external ones.

Óbuda's neighbourhood watch programme has been improved over the last few years and collaboration with the local police is much more effective. These efforts are complemented by new public area surveillance responsibilities of staff, especially foot patrols that take action against graffiti and illegal parking.

Part of the discussion covered surveillance cameras in public areas and in buildings (to a lesser extent), parking lots, parking spaces, safety of peripheral areas, the role of citizens and civil society, their acceptance by authorities and their limits.

The camera system is part of the "security fashion". Wherever they are present, people feel "safe", while the sense of not being safe increases where there are no cameras. In some cases, there are real grounds for this. After cameras were installed, there was a sudden, noticeable drop in crime. What appears to be a problem is that, currently, the only way of operating them is to combine them with police surveillance. What this means in practice is that, in many cases, the use of cameras is symbolic, as there are no qualified staff to actually continuously monitor them – although recordings can always be viewed after the fact. They are also only archived for a short time. For example, they do not provide appropriate coverage for the one- to two-week vacation cycles which are to be expected during the summer season.¹³

One of the main lessons learned from the forum is that the absence of cameras causes more problems than their installation and operation.

The district is making major efforts to avoid victimisation. One example among many is the launch of the neighbourhood watch's victim support programme in two schools in order to prevent victimisation of children.

1 April 2011, Székesfehérvár

Located 60 km from the capital, yet still close enough to feel its influence, Székesfehérvár has a lot of through traffic. Besides its proximity to the capital, another factor that increases crime is the nearby Lake Velence, a major vacationing spot. The great volume of through traffic in the city facilitates the "work" of transient criminals.

At the forum, some of the questions for which we sought answers were which crimes bothered people the most, how typical it was for families to be victimised, what type of assistance and support was given to victims, whether they were satisfied with this assistance and what they still felt was needed. We also asked locals to identify which parts of their

13 Thus, if someone's home is burglarized during the summer, necessary information may not be available.

community they found the most dangerous, and why; as well as their opinion on what would need to be changed in order to make everyday life safer.

The Székesfehérvár forum was also different from the Óbuda one in that local NGOs (for child protection, working with disadvantaged youth, organizations helping young children), which can also play a significant role in crime prevention, were also in attendance. Recruitment was more successful, the event raised more interest and the forum was much more interesting and productive than the previous one. The leader of the organisation for disadvantaged youth noted that *there is a lack of public venues* that organise constructive activities for the young people of the city, but also added that their “open gyms” programme is successful and that feedback indicates that young people are taking advantage of this opportunity and are grateful that something is being done.

At the forum, we learned that the municipality is funding the work of the police force to the tune of 2 bn HUF (about 65 million EUR) and that local police spokespersons feel that it is important that officers from Székesfehérvár serve the city where they are familiar with the area and the people.

At the Székesfehérvár forum, issues related to public safety were raised in a different way. On one hand, most respondents clearly indicated that they found their city safe. Despite this, they also noted that, besides the usual public urban spaces (markets, shopping centres, pedestrian underpasses, public transit terminals, etc.), basically anyone could be a victim of crime in any part of the city. This was especially true of young people, who are exposed to gang violence.

Overall, participants were satisfied with the police force, as well as its work and attitudes. Several departments of the police force were represented at the forum. The leader of the Crime Prevention Sub-department stated that “this city is a good place to be a police officer”, that they intend to continue doing everything in their power to maintain and strengthen the trust of the population, including an increased presence in public places. Leaders of the police force identify target groups with specific priorities and tasks, and see it as a crucial part of their work to take an approach of empathy towards victims when carrying out investigations, and to put them in touch with NGOs that offer support.

The reason this is important is that victims need support. *As one of the participants put it: “the hardest part is that these issues can never be closed”.* It is for this reason that the majority of victims need the psychological help offered by mental health support staff in addition to the empathetic attitude of officials. One participant recounted that, after having reported an exhibitionist, he had to answer the judge’s “prying” questions and was also practically made to be the “bad guy”, and for a long time afterwards continued to fear that the offender would come after him once released. The discussion of this case at the forum in Székesfehérvár also showed that there is also a need for a well-organised, effective victim support service which would be able to provide victims with real help in processing these events.

3.2. Results of the study based on questionnaires filled out by victims

Because of the difficulty of obtaining victims’ contact data, we conducted the survey via the internet. All persons concerned could anonymously fill out a questionnaire (*Questionnaire*

on victimisation¹⁴) by following a link from the website of the National Institute of Criminology. Questions touched on victimisation, psychological and financial consequences, and about institutional and official support offered to victims.

Sections of the questionnaire:

- ▶ Offence
- ▶ Victim – support
- ▶ Relation between offender and victim
- ▶ Mediation
- ▶ Proceedings
- ▶ Material and physical damage
- ▶ Psychological processes
- ▶ Personal issues

This study **cannot be considered representative**, as the sample was filled out by visitors to a website who had been invited to do so at a press conference. *For this reason, answers to the questions are only for informational and indicative purposes and should not be used to infer results regarding all victims. Notwithstanding, it does concord with the results of previous studies on victims.*

Participants filled out 10 questionnaires at the citizens' forums, and 116 online questionnaires were received as well.

We processed **79** questionnaires in the final analysis, as we believed that this was sufficient to be complete and comparable with the other questionnaires.

Circumstances of the offence

Of the respondents, 57% gave details on the offence. Three quarters of the 52 crimes described were against property (theft, vandalism, pickpocketing, breaking and entering, mugging, or attempts of the same).

Offences against persons included threats, coercion, disturbing the peace, harassment, fornication and sexual assault.

Some – 15 cases, or 18% – of the offences were committed near (but outside) the victims' homes.

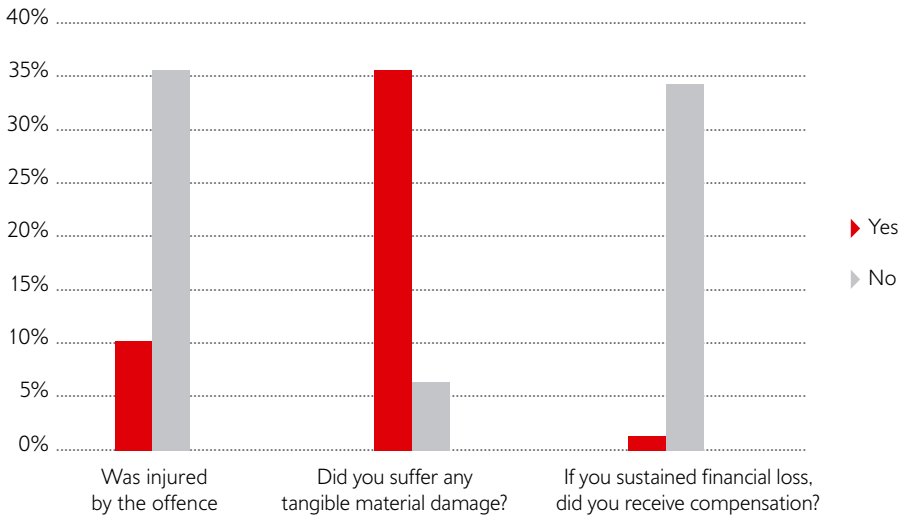
As a result of the press conference, responses arrived from virtually every part of the country (38% of them from Budapest).

Loss and injuries

Eleven of the respondents claimed that they had suffered physical injuries from the offence in question and 37 (47%) stated that they had suffered financial loss. Only two of the respondents stated that they received compensation for their financial losses.

14 <http://www.okri.hu/>

Figure 4: Injuries or loss sustained as a result of the offence



Source: LRMI

Among the 37 questionnaire respondents who had suffered financial loss as a result of the offence, eight victims said that they would be willing to see the offender go free if the latter apologised to them.

Assistance

From the 79 questionnaires that were evaluated, 29 respondents (or roughly one third) stated that they were in need of help as a result of the offence. Most of them (24 persons, or 83%) did receive this assistance.

In addition, 29 respondents felt that they (would have) needed further support; altogether they indicated 41 needs for assistance. The need mentioned most frequently (14 times, or 34%) was for psychological support, but the need for medical assistance (mentioned 9 times, 22%) was also significant. In addition to these, many needs for financial and legal support were also expressed.

Acquaintance – relationship with the offender

The offender became known to the victim in 17 of the cases evaluated (22%) while in 30 cases (38%) we received a clearly negative answer to this question. However with respect to this question, any answers that were not clearly positive can be seen as a denial or as a neutral answer. Among the 17 persons who did find out who the offender was, one-third of them (5 persons) already knew the latter and 8 persons (10%) met with the offender after the offence.

When asked, 18 respondents (23%, between one fourth and one fifth) stated that they were still angry at the offender.

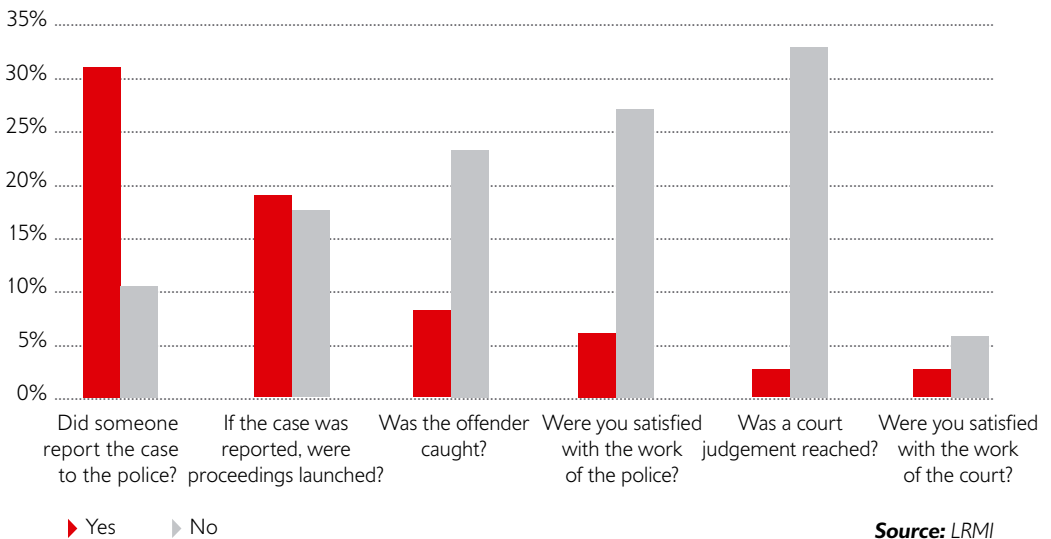
We only found one case where the offender had apologised to the victim.

Among the respondents, 32 said that they had reported the crime, and 20 of them (about two thirds) reported that proceedings had been launched. Out of these cases, the offender had been caught in 9 cases.

Very few respondents were satisfied with the work of the police (only 7 respondents¹⁵), and four times this number (28 respondents) described themselves as very dissatisfied with the police's efforts.

There were two cases in which a court judgment had been handed down, and two respondents stated that they were satisfied with the court's work. This represents about one fifth of the cases that were brought before a court.

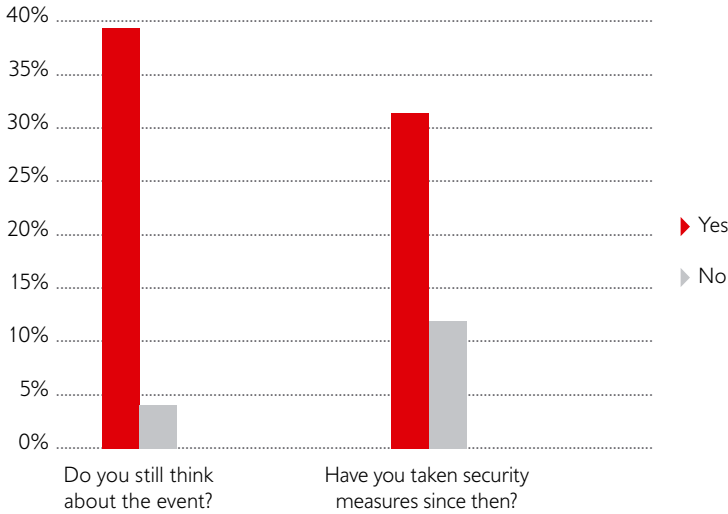
Figure 5: Official proceedings and degree of satisfaction with the work of the authorities



Although a significant proportion of the offences had happened long ago, the majority of respondents reported that they still think about the offence on a daily basis. The other consequence of the offences was that virtually all respondents had taken some sort of security measures, such as installing locks after a burglary, getting a guard dog, etc.

¹⁵ This represents one quarter of those having made a report, 9% of all respondents or 22% of those having reported the crime.

Figure 6: Current sense of safety



Source: LRMI

Apologies and forgiveness

Respondents generally rejected the notion of an apology by the offender. In cases where no material damage had been sustained, they accepted the notion of apology more than where financial loss had also been caused in addition to other unpleasantness.

3.3. In-depth interviews with victims

Just as we did with the inmates, we held 12 in-depth interviews with victims in order to better nuance our study. We used the interviews as an opportunity to evaluate the level of openness towards mediation and to learn more about the circumstances of their victimisation.

Interview subjects were either volunteers from the participants in the citizens' forums, people who approached us as a result of press conferences or found through personal contacts. We covered the following topics in the in-depth interviews with victims:

- ▶ Description of the offence: describe what happened.
- ▶ The offender: did you know each other, and if so, what was the relationship between you?
- ▶ Mapping the mechanism of the psychological impact of the offence, the inner process as a function of time elapsed.
- ▶ Help in processing the consequences: was official / institutional / social welfare / medical assistance received, requested or used?
- ▶ Willingness to participate in mediation: what is your attitude towards the offender now? Do you have a need to learn more about what happened?

We will evaluate the individual cases in three groups of questions:

- ▶ Type of offence
- ▶ Relationship between offender and victim
- ▶ Effect of the offence on the victim

The 12 interview subjects included men, women, young, middle-aged and old, as well as people from higher and lower social groups. Some offences had occurred a long time ago, while others were recent. The offences themselves were also quite varied. Most cases were burglary, but there were also hit-and-run cases, harassment and coercion. None of the cases had caused damage in excess of one million HUF (about 3,250 EUR). In one case the victim had required extended hospital care, but did consider himself to be partially responsible.

Only two of the 12 cases had not been investigated by the police. However, several respondents stated that they had only reported the first offence to the police and that in second and third cases of lesser or medium importance they had found it pointless to report it again, given their previous experiences. Regrettably, many of them felt that the police proceedings were very *superficial*. Several of them tried to make the police proceed more actively in the investigation. External psychological support was recommended in a case where it was particularly justified¹⁶. Interview subjects especially noted the empathy and helpfulness of female police officers. The significance of this is crucial, because the victim is in contact with the police very soon after the offence and in a very vulnerable state; the attitude shown towards him/her can thus have a great impact on the extent to which the victim is later able to process the crime.

Dissatisfaction with the authorities also contributed to the *strong emotions* caused by the event and reported by the majority of interview subjects, as well as a certain sense of *uncertainty*. Their fear of being victimised again increased, they became more cautious and less trusting.

Most victims were **angry** at the offender for intruding on their personal sphere, for damage caused, etc. One interview subject claimed that the benefit gained by the offender was significantly less than the amount of damage he had caused. However, there were also victims who primarily expressed **curiosity** about general (the offender in general) or specific (the offence and the events leading up to it) issues.

Several interview subjects raised the issue of shared responsibility, or even assumed the responsibility entirely. Those who felt responsible were generally more open towards the offender. A girl who had been hit by a car would have liked to receive merely a verbal apology. However, those who felt that the offender was entirely responsible for the offence were also generally angry at the latter.

With respect to mediation, it can be stated that the victims who we contacted *did not reject the notion of mediation*. However, virtually none of them was willing to make efforts to meet with the offender. One or two respondents said that there are questions that they would like to ask the offender.

16 In a case of harassment.

Closing reflections

We had to deal with various problems in our study carried out as part of the MEREPS project. The studies carried out with inmates in the penal institutions were special in that we had to take into account the particularities of the closed system and security considerations (e.g. when selecting the sample and the order of interviews). Although it did not figure in our original plans, we succeeded in reaching victims and including their perspective, and we were able to draw conclusions which, although only in a general and non-representative manner, were still valuable.

Based on our study, at this time, prison mediation of conflicts between inmates and prison staff is inconceivable and not feasible.

Our research showed that mediation has a better chance of success with adult offenders than with the *young offenders* we interviewed (using several methods). Mediation is not applicable in all cases, nor are all people suited to it. *Victim-offender mediation* could only be feasible with the help of thorough preparation of the inmate, using psychological tests as well. The victims that we contacted were curious and open to mediation, but were not willing to make any efforts towards starting the process. This would shift even more responsibilities onto support staff. Mediation requires mental and emotional preparation on the part of both the offender and the victim.

This type of proceedings could perhaps best be used for conflicts between inmates, avoiding at the same time duplicate proceedings and following clear, well-defined guidelines. The attitudes of staff are also extremely important in helping the restorative approach to take root by using it to deal with everyday conflicts between inmates. The staff members that we interviewed expressed serious reservations with regards to mediation, not the least of all because it means more work and responsibilities for them. It would only be possible to apply mediation practices in a generalised manner if staff members take part in several training sessions and awareness-raising seminars, and reach a point where they understand and feel the positive aspects of it when integrated into their own work as well.¹⁷

One of our interview subjects believed that there is hope: *“There will probably be some people who will be against it, because they don’t see the advantages brought by mediation. This is maybe because they haven’t been well-informed, or maybe just because they think that this is again something that only benefits the inmates and just means that they have to go on more training courses, or that the whole system just takes more time and doesn’t give anything back to them. However, there won’t be any problems with those who just do what the institution says – just do their job. They will be cooperative.”*

17 Naturally, the – real or perceived – issues raised by staff (lack of financial recognition, stress and burnout) go beyond the scope of our project and this study; however, these problems also have an important impact on how staff members deal with any conflicts that arise. For more on this issue, see the study of Dóra Szegő and Borbála Fellegi.

Dóra Szegő¹ – Borbála Fellegi²

THE FACE BEHIND THE FENCE – CONFLICT MANAGEMENT WITHIN THE PRISON AND BEYOND

Introduction

This study presents the results of the pilot project³ and the related action research implemented as part of the MEREPS⁴ (*Mediation and Restorative Justice in Prison Settings*) project that ran between 2009 and 2012. The MEREPS programme is the first attempt in Hungary to introduce and integrate restorative procedures into the prison system⁵. Restorative practices were applied within the context of the one year long pilot project, between November 2010 and November 2011, in three areas: cell conflicts (i.e. conflicts between inmates), the restoration of family relations and victim reparations.

The aim of the pilot project was to test the applicability of the Restorative Justice (RJ) approach in Hungarian prisons and to see how practices based on RJ principles can be in-

1 Dóra Szegő: sociologist, researcher, Foresee Research Group, www.foresee.hu

2 Borbála Fellegi, PhD: founder and executive director, criminologist researcher, Foresee Research Group, www.foresee.hu

3 We refer to the pilot project also as “action research”.

4 The project was funded by the European Commission’s Criminal Justice Programme 2008 (JLS/2008/JPEN015-30-CE-0267156/00-39).

5 For the purpose of this analysis, we use the words “mediation” and “facilitation” to mean restorative processes.

troduced into the prison context. Furthermore, the aim was to identify the institutional, legal and human resources requirements that support these initiatives and to map what factors and characteristics hinder them.

This study is divided into three main sections. In the first part, we present the basic approach of the programme and the basic principles underlying the action research. We will summarise the preparatory and implementation phases of the pilot project and then give an overview of the state of the Hungarian prison and victim protection systems as fields of the introduction of restorative practices. We will then introduce the types of restorative dialogue implemented in the course of the project, give an overview of the cases involved in mediation and of the research methodologies used in the process evaluation accompanying the project. The second part of the study is the evaluation of the process. As part of this, we will analyse the characteristics of prisons, including the personal attitudes, motivations and socio-psychological dynamics of both staff and inmates that shape the process of introducing the restorative approach. In the third part, we formulate recommendations with respect to the future of the project, that is, how we can introduce RJ-oriented programmes into prisons in a way that takes into account the special characteristics of this context, and what are the aspects to be reconsidered that can contribute to the effectiveness of this and other similar programmes. One of our main questions is how RJ principles can be represented within the confines of the prison system, which principles have to be “adapted” to the prison context, and how the norms, life-world and value system of RJ experts and prison staff can be brought closer together.

1. Basic principles of the action research

We see RJ and related methodologies as processes with the primary aim of repairing the damage caused as a consequence of harmful behaviour or criminal offences. When applying these methodologies, an aspect that we emphasise is that the persons and members of the community who have been affected by the offence take an active part in formulating the responses to the damage caused. Our aim is for all the material and emotional needs of the stakeholders (victims, offenders, and the communities around them) to be revealed in the course of the conflict management process. (Fellegi, 2009, 55.)

Our programme focuses on restorative principles. We consider as restorative principles-based encounters⁶ all those meetings that were held with inmates and which were consciously built upon the following principles. First, the parties are given comprehensive information about the aims and possible outcomes of the process. Thereafter, they voluntarily enter the process that provides space for an open and partnering communication in which the needs – both emotional and material – of the victim(s), offender(s) and other stakeholders (community members, family members, etc.), and the active responsibility-taking of the offender are emphasised. Our main goal is for any agreement reached between the parties to be made with the active participation of the widest possible circle of persons directly affected. The purpose of the dialogue is to reveal the circumstances of the conflict, the causes of the offence, the impacts of the case on the persons concerned and on those around them, the potential for reparation and the restoration of relations, the conditions for the prevention of further conflicts, as well as all of the commitments required to facilitate these ends (Fellegi, 2009, 55-56). Regardless of the persons participating and the given case for restorative intervention we regarded the enforcement of these principles as a fundamental element of our action research, while the specific techniques, methods of implementation varied depending on the given circumstances.

The pilot project encountered three different perspectives: that of restorative experts, the prison staff and the attitude of the inmates. With regard to reparation cases, the perspective of the victims offers still another dimension. Our project is about the potential amalgamation of these perspectives. In the course of the preparatory meetings and restorative encounters, we strove to encourage the inmates involved, the personnel, victims and the members of the affected community to develop restorative approaches and to apply them in the long term.

2. The process of introducing restorative processes into prisons: characteristics of the field

2.1. Preparatory phase

Our pilot project in Hungary was based on the results of an attitude study of inmates and prison staff carried out by the National Institute of Criminology.⁷ The first step of the pilot

6 In the study we use the terms restorative dialogues, encounters interchangeably to refer to such meetings.

7 See the studies of Tünde Barabás and Szandra Windt on the results of this research, in this volume.

project introducing RJ approaches and methodology was a training programme held by British trainer Dr. Marian Liebmann, which was an introductory mediator training for a group of about 30 staff members from one prison for adults and one for young offenders in order to sensitise them to the RJ approach and means of application. After conveying the basics of the methodology, we simulated mediation and conferencing sessions in different conflict situations⁸. For our project, the Zacchaeus (Sycamore Tree) Programme prepared a one-day training session for 18 inmates to sensitise inmates and raise awareness of the victim's perspective. This programme was led by Csilla Katona, trainer with the Hungarian Crime Prevention and Prison Mission Foundation.

2.2. Convening the MEREPS working group and selection of inmates

A shortlist was compiled of participants in the mediation training who were open to collaborating in the MEREPS programme and who were also found to be suitable for the task by the management of the prison. Finally, with the help of prison staff and management, we developed the protocol for the pilot project.

As such, our project did not target the prison community and staff as a whole; instead, we carried out more intensive expert and consultative work with a narrow segment of people. For this reason, the cases that we became involved with were those that fell under the remit of participants in the MEREPS working group or on which they had collaborated with their colleagues. The advantage to this was that both staff and inmates received targeted, comprehensive attitude-forming and professional support. The drawbacks were mostly experienced with respect to the inmates: due to the small number of inmates who were participating in the Zacchaeus Programme and in contact with the educators, during this limited time we had less chance of finding people with restorative motivations and a sincere intention of providing reparations to the victim. This decision paves the way for the first steps towards restoration for the victim (mapping attitudes towards the victim, learning of factors hindering restorative intentions), but also contributed to the fact that the project came into contact with fewer cases in which it was feasible to hold a safe meeting with the victim.

2.3. Principles underlying the project's approach and methodology

As mentioned above, the project was not methodology-specific. What was considered important was to promote the principles and to apply various related techniques, both inside and outside prison walls, whether through facilitation, restorative conferencing, family group conferencing or other circle models.

However, in the course of all processes, we believed that it was important for offenders to take active responsibility for their offences, as well as to ensure that the widest possible

⁸ Due to the integrating (not method-specific) approach of the pilot project, the training also included different RJ practices, such as victim-offender mediation, conferencing and family group conferencing.

range of stakeholders was included in the dialogue and that the real emotional and material needs of all affected parties (offenders, community of inmates, prison staff, victims, families, etc.) were expressed as well. Methodologies, as well as the type and parameters of meetings, were adapted to meet the special characteristics of prisons and of the needs that arose in the course of the process.

An example of this adaptability was that, when the working group experienced some mistrust, reticence or manipulative behaviour by inmates in relation to the mediations, they organised a meeting with cell leaders. One of the aims of this was to learn of the attitudes of cell leaders towards restorative practices and to find out how cell conflicts are handled within the prison community. In addition, cell leaders gained an understanding of the opportunities and aims of restorative practices which do not impact on their relationships within the prison. We were thereby able to assist them in identifying how restorative methods can support them in the performance of their tasks as cell leaders, and also the community of inmates was able to gain information in connection with restorative practices through the cell leaders, as persons who are embedded in the prison society.

2.4. place of restorative practices in the Hungarian criminal justice and prison system

The restorative approach and mediation procedures between the victim and offender were institutionally incorporated into criminal procedures in 2007 (Fellegi, 2009, 201). Officially, it is the Probation Service of the Office of Justice belonging to the Ministry of Public Administration and Justice that is in charge of mediation in criminal matters. However, the application of mediation in the context of prisons is still in its very beginnings. In recent years, a programme implemented by several non-governmental organisations has been launched in prisons: conflict management groups, training about responsibility-taking and sensitisation to the attitudes of victims, family group conferences for the promotion of the reintegration of released inmates and community reparation projects. A common point of these activities is that they are all to facilitate communication among inmates, between the inmates and local communities or the inmates and their victims.⁹ On the other hand, they lack a standardised theoretical and methodological background. Some of them rely on conventional restorative methods, while others are just indirectly linked to the restorative approach. Typically, they are operated in isolation from each other, lack sufficient resources, and therefore are hardly sustainable (Fellegi, 2009, 212). Thus, at the national level it can be claimed that, in spite of the positive examples, there are just a few restorative justice programmes that would encourage active responsibility-taking, regret and reparation on the part of the inmates.

⁹ Among these programmes, one especially important one is the highlighted TÁMOP 5.6.2 programme coordinated by the Ministry of Internal Affairs. It aims to assist recently released inmates in re-integrating into society (Source: <http://www.bunmegelozes.hu/index.html?pid=1724> [date accessed: 7 Nov. 2011]).

2.5. Place and role of the victim in the criminal justice process and in the victim protection system

Within the Hungarian criminal justice and prison system, little attention is given to the interests of victims (Kiss, Velez, Garami eds. 2009, 57; Fenyvesi, 2002). Victims are treated as witnesses throughout the criminal justice process: their role is as an accessory to official bureaucratic proceedings. Their testimony is used to identify the circumstances of the offence, which raises the possibility of secondary victimisation (Fellegi, 2009, 239-241). In the offender-focused criminal court proceedings, the interests of the victim are given very little space. Even with the most serious offences, victims are left alone to cope with their needs and questions. There are strict restrictions on access to information on the situation of the offender, including on the victim learning of the date when the offender will be released. It is foreseeable that, without the necessary victim support and protection institutional system in place, an official letter regarding this could have a damaging effect on a victim, even decades after the victimisation took place.

In Hungary, the act on the rights of the victims survived the political change after state socialism by 15 years. Beginning in the 1990s, intensive efforts have been made towards reforming the position of the victim in criminal proceedings. Part of this was the expansion of the restorative options within the criminal justice system¹⁰, to improve the procedural situation of the victim, to create new legal institutions – one of which being restorative-oriented mediation proceedings – and the integration of legal guarantees that make it impossible to restrict the rights of the victim. The state of criminality, which shifted fundamentally after the political change, had an impact on the reform. Crime rates grew dramatically and the structure of criminality changed while rates of recidivism and unsolved crimes grew as well. Change was also urged by international expectations and agreements on victim's rights. In response to this, towards the end of the 1990s, the Victim Support Service of the Office of Justice under the Ministry of Public Administration and Justice was established as a state institutional system to provide information and support to victims. In connection with the protection of the victim, and in compliance with international documents, emphasis was placed on *information* (on the release of the offender, on damage mitigation, health-care and social assistance) and *state compensation*.¹¹ The current law has been in effect since 2005,¹² under which the Victim Support Services, operating at county level, offer assistance of the following nature: *information, legal aid, instant monetary aid, state compensation*. In keeping with the 1999 Government Decree, the police established the national victim protection contact point network. The aim of the contact points is to liaise with investigative, reviewing and other units of the police carrying out other activities, to direct victims towards the victim support system, and to carry out preventative and awareness raising activities in order to prevent victimisation.

10 Act I. of 1973.

11 Governmental Decree 1074/1999 (VII. 7.) on legislative tasks and other measures to ensure the protection of victims and their families and the compensation for damages.

12 Act CXXXV of 2005.

However, studies (Sömjéni, Zséger, 2009, 91; Barabás, 2004) show that most victims do not know about the existence of victim support services, the available options and forms of the promotion of their interests. In the light of the results of a representative survey in 2007, 30% of the population in Hungary is aware of the existence of victim support services, and around 5% of the victims of crimes make contact with the victim support services (ERÜBS¹³ 2007, Kerezi, Kó 2008, 7). It is only in very rare cases that victims receive material compensation.

It can therefore be seen that, until very recently, psychological and other non-material assistance for victims did not figure among the aims of the state and its institutions. There are NGOs, set up prior to the state institutional system, which focus on special groups of victims and have a much smaller territorial scope.¹⁴ The first government effort towards providing psychological assistance was a pilot project run by the Victim Support Service in Budapest. Based on the experiences of this project, it continued to develop the quality of victim support services, psychological assistance to victims and the institutionalisation of professional support for volunteers working with them.¹⁵ As part of the programme, the Victim Support Departments of the County Justice Services in the counties of Nógrád, Heves and Borsod-Abaúj-Zemplén offer personal psychological counselling to crime victims, ranging from single meetings to multiple-visit crisis interventions and to longer therapeutic interventions as well as to group therapies for victims dealing with similar problems.

2.6. Relationship between the victim support system and the Restorative Justice programmes

In addition to the attitude of inmates mentioned previously, the lacunae in the victim support system also hinder the implementation of the victim reparation aspect of RJ programmes. In the case of the MEREPS programme, it was nearly impossible to find contact details for the victims due to the absence of a comprehensive institutional system of victim protection, and partly due to data protection and other legal restrictions. The only sources to consult are the procedural documents, the bill of indictment and the issued sentences. However, bureaucracy poses strict limitations on access to these documents. Because of the lack of clarity in the legal background, the extent and in which form civilian helpers can have access to information about victims was quite unclear, while there was no precedent for such personal contacts. As a result, no matter how much it is a basic principle that victims and offenders be involved to the same extent, the practical implementation of this principle – at least with respect to victims outside prison – was not possible during the course of the action research.

13 ERÜBS stands for the Integrated Criminal Statistics of the Police and the Public Prosecution.

14 The *White Ring Public Interest Association* was the first victim support organisation to be founded after the regime change. The above-mentioned TÁMOP project also seeks to achieve this goal with its victim support sub-programme. However, at the time of the MEREPS action research, the pilot-project type victim support services were not yet available.

15 TÁMOP 5.6.2 special project, Development of victim support services, 2011-2012.

Because of the restrictions on access to data, when implementing similar programmes, it would be crucial to ensure that an official institution be in charge of making contact with the victim support institutions.

The psychological counselling sections of victim support offices can also help in giving out information and in preparing victims for the restorative process. A good example that could be followed is the voluntary victims' database managed by the Correctional Service of Canada. Victims who voluntarily register on this database can obtain information about the personal background of offenders and about how the offences occurred, about victim-offender mediation opportunities, and where persons implementing the RJ prison programme can also reach the victims in order to involve them in the process.¹⁶

2.7. Features of the Hungarian prison system

By nature, the prison system operates in a highly bureaucratic and hierarchical manner. Moreover, the prison system in Hungary shows a specifically hierarchical and overly bureaucratic institutional structure. Among some of the most important problems faced by prisons, overcrowding should be mentioned. According to the Helsinki Committee's 2006 report, within the Hungarian correctional system, there is, on average, one education officer per 80-100 inmates.¹⁷ Although overcrowding is not a uniquely Hungarian phenomenon, the high rate of imprisonment is especially characteristic of former socialist countries. Imprisonment therefore represents a more serious problem in the countries of Eastern and Central Europe than in Western Europe.¹⁸ The high rates of recidivism and violent crime, violence within prisons and the lack of sufficient funds, as well as the absence of other institutional support services to facilitate the reintegration of detainees, all further impede the functioning of the system and reduce openness towards alternative sanctions.¹⁹

As a consequence, there are just a few prisons that are open to restorative programmes. Their implementation witnesses a number of attitudinal and institutional obstacles. While restorative experts tend to approach principles and methods in a context defined by the given approach and method, the prison system is a special environment wherein actors maintain complicated networks of interests and "particular communication strategies" (Fliegeauf, 2009, 343).

16 <http://www.victimfirst.gc.ca/serv/hrv-cev.html>; <http://www.csc-scc.gc.ca/text/rj/vom-eng.shtml>

17 Report of the Hungarian Helsinki Committee (2006).

Available at: http://helsinki.webdialog.hu/dokumentum/MHB_jelentes_BudapestiFB_2006.pdf
http://helsinki.hu/dokumentum/MHB_jelentes_Palhalma_2006.pdf

18 One of the experts taking part in this study on the challenges of introducing victim-offender mediation in the countries of Central and Eastern Europe describes the typical approach of former socialist countries as the "Gulag mentality", whereby the only appropriate response to breaches of the law is to impose the longest possible terms of imprisonment and to increase the capacity of prisons rather than to look for alternative means of punishment (Fellegi, 2005, 67).

19 Although the follow-up probation supervision service is available nationwide, because of their heavy case-loads and the lack of a network of halfway houses, job opportunities and other supportive psychological assistance, probation officers have very few resources to work with in assisting inmates to reintegrate successfully.

The written and unwritten rules, the status of the personnel within the prison system and the strong hierarchical setting (disciplinary devices, strongly regulated and formal communication, and well-established criminal procedures for the management of conflicts) are inherent circumstances that largely influence how staff and prisoners relate to the restorative approach – in our case, the MEREPS programme.

3. Methods, types of encounters and a summary description of project cases

In the course of the one-year action research, we involved a total of *forty-nine* inmates into eight restorative encounters concerning cell conflicts, one family group conference, one Zacchaeus programme, and several face-to-face discussions as first steps towards victim reparation. The inmates became involved by various means. Regarding cell conflicts (usually mild physical assaults), where in most cases disciplinary procedures resulted in the restorative meeting, it was the prison governor who offered the option to the parties in conflict to participate in the restorative process in addition or as an alternative to the disciplinary proceedings. In other cases, words were exchanged, and the restorative encounter was organised before physical aggression occurred. In most cases, the affected parties notified the correctional education officer, who raised the possibility of a restorative meeting. In the third case, the inmate had already heard of restorative practices, and expressed his desire to take part in a restorative dialogue in connection with a specific conflict.

In cell conflicts, it is primarily the restorative conferencing method that is applied, wherein the largest possible number of persons concerned (inmates, correctional education officer, members of the affected community) is encouraged to reveal the causes and consequences of the conflict, and its implications in terms of personal responsibilities, and jointly work out proposed solutions for repairing the harm caused. We organised family group conferencing (FGC) in connection with the release of an inmate. The aim of FGC is to prepare the inmate, the family and the local community for the inmate's release, bringing the needs, expectations and fears of the parties to the surface, and also revealing the scope of resources and potential conflict interfaces. It also serves to frame a scenario for the inmate's temporary release or reintegration after release (residence, employment). In the MEREPS case, the prison governor found it necessary to apply the restorative methodology because he wanted to obtain information from a more personal and more comprehensive perspective than that provided by the social inquiry report of the probation officer before reaching a decision on whether to release an inmate who had been in prison for 16 years. In this case, the positive outcome of FGC definitely contributed to the fact that the prison approved the inmate's application for temporary release.

In the course of our intervention, we tried to develop a mechanism for the facilitation which would give the greatest chance of applying the principle of impartiality; at the same time, the practices used indicated their sustainability. During the first half of the research period, restorative encounters were led by two facilitators: a "civilian" psychologist not be-

longing to the prison system (the “MEREPS supervisor”), Vidia Negrea²⁰, and a member of the prison staff, in a facilitator role. The facilitator from the prison was an “external” correctional education officer, whose own correctional group does not include the inmates concerned, meaning that the officer knew and understood the action mechanisms, but still did not have a direct, correctional relationship with them. Facilitation shared between pairs has a double goal: the facilitator coming from the prison setting informs the civilian of prison relationships, while the civilian facilitator uses his/her experience with the methodology to give expert support to his/her colleague from the prison.

The role of the MEREPS supervisor as civilian expert changed over the one-year period. Her role gradually shifted away from being an active co-facilitator to a background, supporting, mentoring and supervisory role, as prison staff increasingly became able to lead meetings on their own. The aim of the withdrawal of the civilian facilitator is to ensure that correctional education officers find a place for restorative practices within their work, and that they continue to apply the approach and methodology even after the programme has closed.

Important elements of the process are the preparatory and follow-up meetings of the conferences, as well as our professional working group called the Support Group, which involves staff, restorative experts and researchers. It has a triple function: this is where cases that can be referred to RJ encounters are raised, and where follow-up studies are made. These meetings offer regular settings for dialogues between restorative experts and the prison personnel in relation to objectives, motivations, fears and the possible role-conflicts.

20 Facilitator Vidia Negrea, director of the Community Service Foundation of Hungary, represented the side of RJ experts. She is one of the few and first psychologists who, at the end of the 1990s, spent an extended amount of time in the US where she learned about RP within the framework of the International Institute for Restorative Practices.

Types of cases	Number of cases	Number of offenders	Types of the crimes of their inmates involved	Proportion of first offenders	External, supporting actors involved	Types of restorative encounters	Average number of hours expended on a case	
							Preparation	Execution Follow-up
Cell conflict	8	30	Homicide, robbery, theft, physical assault, sexual assault, rape, forgery of official documents, blackmail	60%	-dedicated correctional education officer. -MEREPS supervisor	restorative conference case discussion	2	2
Restoration of family relations	1	1	Homicide	100%	-family members,- dedicated correctional education officer,- MEREPS supervisor	family group conference case discussion, supporting circle	8	2
Victim reparation	4	18	Robbery, theft, physical assault, vandalism	75%	-dedicated correctional education officer,- MEREPS supervisor	Sycamore Tree (Zacchaeus) training Personal interview	8	2

Table 1: Cases and methods used in the pilot project

4. Process evaluation

The process evaluation is based on the observation of participants in restorative interventions, preparatory and follow-up expert working groups and supervisory meetings as well as on interviews with the prison staff, civil sector actors and inmates that took part in the one-year work process. These are summarised in the following table.

Table 2: Stages and methods of process evaluation

Event	Type of follow-up	Number of observations / interviews
Mediation training	participant observation	3 days
Attitude-forming workshop activities with prison staff and partner professions	participant observation	1 day
Sycamore tree programme	participant observation	1 day
Restorative encounters (preparatory and sensitisation meetings, talks, conferences, family group conference)	participant observation	15 occasions
Support group	participant observation	9 occasions
Follow-up	follow-up interviews with prison staff and inmates	13 interviews

Experiences of the preparatory workshop and mediation training

The MEREPS programme prepared a one-day workshop and one three-day mediation training programme for prison staff. Nearly forty people took part in the workshop; they represented the core of one prison for adults and one for young offenders (educators, security guards, a psychologist, employers of the in-prison factories, specialised therapists, etc.) Other participants included teachers, probation officers, family assistance officers and child protection staff working in prisons as well as some criminal law judges and public prosecutors. One of the aims of the workshop was to provide information about the pilot programme, as well as providing staff with an introduction to the restorative approach. It was also an opportunity for the MEREPS team to get an impression of what prison staff know about the restorative approach, what opportunities they see related to the restorative approach, and media-

tion and what possibilities they see for integrating the restorative approach into their work and roles in prison.

Evaluation questionnaires showed a positive rating for the diversity of participants and viewpoints and the opportunity for joint reflection with professionals coming from many different backgrounds, as well as the interactive aspect of the workshop and the situation exercises. However, staff also expected practical guidance and methodological keys (“know-how”) from the workshop. Participants awaited the training with questions and uncertainties regarding the applicability of restorative practices in prisons.

The three-day mediation training led by Dr. Marian Liebmann primarily focused on the underlying approach rather than on individual techniques, similarly to the work process for the entire year, which concentrated on the introduction of the restorative perspective and principles. The training did not seek to provide the programme with a “recipe” for prisons, as a unique type of community; instead, it aimed to offer perspectives on how mediation can be tailored to meet local characteristics. The concept saw the programme as a mutual learning process, in which the MEREPS team and staff develop a realistic, feasible and sustainable practice together, while methodological principles are adjusted to meet the unique aspects of prison.

In the course of role plays, prison staff experienced the difficulties of switching between the roles of facilitator and prison guard: *“we don’t know which role to put first – the prison one or the mediator one”* (prison staff member). Participants soon realised – and initiated a dialogue on this topic – that they had different approaches towards the facilitator role depending on their professional background. Certain job descriptions make it easier to integrate the facilitator role, while others tend rather to clash with this task. At first, the role of facilitator felt foreign, which was expressed through self-deprecating ironic comments on workplace roles: *“OK, OK! We need a disciplinary intervention here! I can’t take this anymore!”* (prison staff) or: *“Everyone’s going to have a chance to talk. Assuming that we let them!”* (prison staff). Feedback also showed reactions to the return to a prison role: *“It’s hard to step out of the prison role”* (...) *“Giving advice was the most typical mistake in the mediator role. But it goes with the territory – this is what we do all day!”* (prison staff member).

A turning point in the training was when the attitude towards the facilitator role changed. Besides these lighter comments, experimentation with the techniques that were taught and deeper reflections on the tasks of a facilitator were also voiced:

"We have to differentiate what their feelings are at the time of the offence, and what they are later. Because their feelings change." (prison staff member)

"I see common ground and similarities between the feelings and needs of the different parties to the offence." (prison staff member)

The training evaluation questionnaires showed positive feedback. Of the training participants, 90% felt that they had learned a lot at the session. Participants highlighted the structure of the training and the ideal balance between practical and theoretical aspects. Most respondents cited the experiences of Marian Liebmann, real-life cases and group work in pairs as the most important contributions of the training. At the end of the training, the staff also made some suggestions for the adaptation of restorative practices to the prison environment, which served as a good departure point for the joint project. The general opinion was that correctional educators should not mediate in cases involving inmates from their correctional education groups. They felt that it was important that one facilitator be a prison staff member, partly because of his/her knowledge of the legal environment and institutional regulations, and partly because he/she would have more insight into inmates' interpersonal relations and interests. We rated the event as a success, as prison staff participants underwent an intensive learning process – as reflected by the feedback as well – and were able to accept the approach and basic methods presented by a foreign speaker (via a Hungarian interpreter).

The world within prison walls is characterised by formal frameworks and specifically defined tasks. Meanwhile, the staff has not been socialised within interactive parameters that emerge as a part of a process. This may explain why some of the immediate feedback on the training expressed some doubts about the applicability of the approach.

According to the MEREPS supervisor, the training, although confirming doubts and uncertainty in the short-term, was an ideal part of the process by conveying the message that there will be no formal framework and that they will not be bound to formulaic instructions. The “initiation” into the approach and the wide parameters of the practical implementation supported the later efforts of the working group:

“This was a relief to me, to know how they were going to apply this here. So because it was not exactly a training on mediation but rather an introduction to the approach, that gave it some flexibility. So the absence of formal demands makes it possible for us to apply the restorative approach in accordance with actual needs.”

The Zacchaeus Programme for sensitisation of inmates and its follow-up

We organised a one-day Zacchaeus Programme for inmates with the participation of MEREPS.²¹ Inmate participation in the group was voluntary. The programme leader, Csilla Katona, held attitude-exploring interviews with the 26 applicants, from which she finalised an 18-person group. The inmates had to analyse the Biblical story of Zacchaeus. The aim of this was for them to see and understand their own needs and circumstances, as well as those of the victim and of other affected parties.

The opinions of inmates started from denial and refusal to assume responsibility: *“if the victim doesn’t care about me, why should I care about him, and about whether or not he forgives me?”* (inmate no.10), or *“it happens one time out of ten that non-violent acts cause psychological damage!”* (inmate no. 11). Over time, they gradually turned towards understanding of their own situation and that of others: *“the offender feels psychological pain if he thinks about what he did”.* (inmate no.10) *“It’s not us who are being punished; it’s our families at home.”* (inmate no.11) By the end of the day,

21 The programme was an abridged Hungarian adaptation of the American “Sycamore Tree” Programme. The Sycamore Tree Programme was originally a five- to eight-week training held within prisons, and which involved victim-offender meetings (victims did not meet with their own offenders), discussions about the effects of the offences, damage caused and reparations. (for more detail, see: <http://www.prisonfellowship.org.uk/sycamore-tree.html> [downloaded: 7 Nov. 2011])

the programme leader saw a significant change in the inmates' attitudes. Attitudes expressed by the inmates in the closing circle discussion indicated that significant progress had been made towards responsibility-taking and reparation: *"Restitution is a source of relief for both parties."* (inmate no.10) *"If you can be the first to take responsibility, it opens up a new path for you."* (...) *"It is very important for the victim to know what the motivations were."* (inmate no.13) *"If we don't do anything, it just gets buried inside and we don't know how to become normal people (...) it just gets buried into our personalities."* (inmate no.14) *"So far, I hadn't even considered that maybe the people I sold drugs to were stealing the money from home that had been set aside to pay for the gas bill. It moves my conscience."* (inmate no.15) *"We never dissect these issues, only what we did, how long is the sentence and then we go home."* (inmate no.15) *"If we talk the problems over, it makes it a little easier."* (inmate no.16)

The Zacchaeus Programme closed with these statements by inmates and with great expectations on the part of both the MEREPS team and prison staff. After the closing circle, MEREPS team members said that, as part of the programme, there would be an opportunity to make personal reparations to victims. Eight participants said that they were interested in the opportunity to meet with the victim. A few weeks later, the MEREPS supervisor and a female correctional educator began to hold individual meetings with the inmates interested in making reparations. In all the talks, it was found that other interests lay behind the intention of the inmates to make reparations. The MEREPS supervisor described the experience as follows: *"there were manipulative intentions and motives that were completely foreign to us, as we had never worked with prison culture before."* In some of the talks, the inmates refused to admit to even one of their offences. Others had indicated an intention to make reparations in order to use the talks as a chance to find out about assistance or benefits. The most extreme case was that of Gyuri²², who even wrote a letter of apology to

22 All names used in the quotations have been changed.

Gyuri was 25 years old, serving a sentence of five years and nine months for a first offence of theft and robbery. He took part in the Zacchaeus programme and in an individual talk to map intentions to make reparations towards victims.

his victim (a young person). A few weeks later, one of his cell mates attempted to hang himself, but Gyuri stopped him. Based on the circumstances and testimony of the cell mates, the likely explanation was that Gyuri had choreographed the whole event and was hoping to get his request for temporary release approved. His intent to make reparations and apology letter also fit into this new scheme of things.

Although the Zacchaeus Programme – despite its initial success – failed to get inmates involved in the project, it did play a role in other respects. The group context, the expectations of correctional educators and civilians all placed a lot of pressure on the inmates: *“They had to put on a performance here. In order to reduce frustrations, the inmate took on certain obligations that maybe he didn’t identify with at that time. But circumstances still came together in a way for various reasons that made me realise that maybe this wasn’t such a bad thing after all. In the Zacchaeus Programme, it was so intense, this expectation that at the end everyone has to be in a state of ecstasy and feel remorse for everything. This is more about us than about them.”* (evaluation of the situation by the MEREPS supervisor). Perhaps this can explain why this effect could only be produced in an artificial environment and why it was not long-lasting. This was an important learning experience for us in the development of the year-long work process.

The disappointment in Gyuri’s case was an opportunity to bring out the differences in perspectives between the MEREPS team and the correctional educators. As we later discussed at a joint feedback circle, prison staff were faced with the “naive” approach of the civilians, while the MEREPS team gained some insight into how it was difficult for correctional educators, in a restorative context, to set aside their previous experiences with inmates: *“correctional educators can’t be disappointed in an inmate because they don’t have positive opinions about the inmates to start with.”* (correctional educator no.1)

Another challenge was to move away from the punishment/reward culture. In the beginning, correctional educators taking part in the MEREPS programme also used various means of reward and punishment. A restorative meeting was seen as a reward, which has to be earned:

"Gyuri had a protected inmate status at the prison; he had privileges. He tricked us. His reparations case was not important, because it showed that he doesn't deserve our spending any more energy on him. (correctional educator no.1) This kind of staff-perspective had to be combined with the equality principle of the restorative approach and the inner needs of the parties, including the question of voluntary participation in RJ encounters that principally should be made by the parties themselves.

From the first reparations-oriented discussions, it was also learned that inmates' self-perception as victims often limits their desires to make amends. Neutralising techniques were characteristic of how inmates relate to the offences they had committed. They often defined themselves in the role of the victim, refused to take responsibility and denied having caused harm (Sykes-Matza, 1957). This hindered taking responsibility in cell conflicts and made the aim of reparations to victims more remote.

As stated by the MEREPS supervisor, *"it would take decades for him to become aware of each internal conflict, to realise the effect the offence had on the other. Openness to others is incredibly time-consuming. You can't speed it up. (...) And it's even harder in prison. So what makes it harder to introduce this approach is that they themselves feel that they are victims and want to prove that. If they don't, then they would go crazy from being the guilty parties. (...) Anyone who reaches that point either tries to forget everything or tries to rewrite the story in his own favour. Meanwhile, we show up with reparations to victims and bring up this whole bad story, in which the inmate made a bad decision and failed, and for which he already blames himself anyway. And then we come and tell him to just get over it and assume responsibility for his mistakes."*

The Zacchaeus Programme raised awareness of the differences between the approaches of inmates, correctional educators and the MEREPS team, and spurred us to take the first steps towards harmonising these different perspectives.

4.1. Features of the institutional environment

a.) *Regulatory system of the prison, bureaucratic ways, routine procedures and their impact on the implementation of the project*

In general, it can be claimed about the conditions that are associated with the closed nature of the institutions, rules, hierarchical and overly bureaucratic operation that they tend to hinder and do not support the introduction of restorative techniques.

An example of such institutional conditions is when, in the prison system, each type of conflict has its own, firmly established criminal law procedure for handling it, and the system can hardly ignore it. In certain cases (e.g. physical assault with over eight days of recovery), the regulatory requirements and the criminal procedures cannot be avoided, while in milder cases disciplinary proceedings are launched. The commencement of these latter proceedings can be considered by the governor. No matter whether criminal or disciplinary proceedings are launched, it is evident that, due to the interrelations of the processes, it is rather problematic to start a restorative process in parallel with any proceedings relying on the rationale of the paradigm of punishment. The following will present some perspectives which arose as factors that hindered the process.

Routine procedures

One correctional education officer brought up the restrictions of the bureaucratic system in the example of an inmate who had also been involved in a restorative intervention.

Medium and high security inmates don't mix

The topic of the conference was the integration of a Slovak national into a cell. The cell's problem was that the inmate wanted to watch Slovak TV channels on the shared TV, and that it also bothered him that the others taunted him about his accent in Hungarian. The conferencing did not succeed in fully solving the cell conflict and the inmate was transferred to a new cell, where new conflicts came to the surface. In the end, they tried to find an alternative way to resolve the solution. Together with another Slovakian inmate in the prison, they attempted to be placed in a cell together. Claiming that their nationality was the basis for the cell conflicts, they took their claim all the way to the Slovak Consul, asking for support. The prison would have supported the effort as well; however statute prevented their placement in a common cell. One of the inmates had been sentenced to medium security, and the other to high security prison, and the law stated that two inmates sentenced to different levels of institution could not be placed in the same cell.

Bureaucratic procedural routines do not only pose formal obstacles to the restorative process but can also hinder an alternative path on the level of interpersonal dynamics. In many instances, prison staff used the usual procedures, which highlighted the scope of the restorative approach. In one case, fear of security risks caused a staff member taking part in MEREPS to become unsure as to whether to take the usual or the restorative approach. One of the most obvious examples of this was that, in the majority of cell conflicts that were brought to conferencing, after a successful agreement was reached, the parties to the conflict were not returned to a common cell – and so the agreement and follow-up were not given any real weight. Instead, usual procedures (*removal from the cell*) were applied after the conferencing. With respect to conflicts with a more serious risk of assault, the perpetrator was separated even before the conferencing:

"I don't dare to take the chance. It's a security risk. Let's just pretend to them that they're going to go back to the same cell, just to see their reaction." (correctional educator no.2)

"No matter what they say, no matter how convincing they are, I still wouldn't take the chance of putting them back together in the same cell. I don't trust them that there won't be any trouble." (correctional educator no.3)

"We have to separate them if they're fighting. No one wants to be responsible for this leading to more crimes. We have to react quickly and take immediate steps." (correctional educator no.1)

A factor that lessens the security concerns of correctional educators is if those officers, guards, and other staff members who are not taking part in a mediation are also notified of the results of the restorative process and of the content of the agreements. On one hand, if a correctional educator chooses a restorative solution, this increases its legitimacy in the eyes of their colleagues; on the other hand, this means that a wider circle takes part in follow-up and the correctional educator is not solely responsible for it. Furthermore – as the correctional educator gains information and pays attention to the matter – the chance of more disorder is reduced. Thirdly, we can thus also give staff members who were not involved in the facilitation to turn to RJ practices in the event of new episodes of the same conflict or new conflicts, instead of the usual, penal-oriented framework. We will discuss the form and significance of this in more detail in the recommendations section.

Correctional educators are bound by a *strict legislative structure* to follow routine procedures; meanwhile, RJ encounters are not given any regulatory space among conflict resolution processes within the prison. This situation was a source of uncertainty on the part of the correctional educators and tended to reinforce existing conflict management methods.

An example of this was a theft that occurred within a cell, and where the members of the cell did not want to escalate the matter into a legal issue by reporting the offender, and instead wanted to use mediation. However, if there is a theft of objects above a certain value, pressing criminal charges is compulsory. This placed the correctional educator in a contradictory situation: mediation offered a promising solution to the conflict; the

intentions of the parties to the conflict indicated this as well. Ideally, the mediation session should have been organised as soon as possible but, until the educator knew the facts of the theft, he could not decide whether it was possible to hold mediation or whether criminal proceedings would be launched instead.

These obstacles had a determining impact on the scope of applicability of restorative practices and tended to direct these practices towards less significant conflicts. In more serious cases, the governor would offer inmates mediation as an alternative to disciplinary measures, which on one hand had an impact on motivation to attend the mediation session, although it did raise issues as to true voluntary participation and responsibility-taking.²³

Paperwork

Among the factors specific to prisons and which presented obstacles to our work is the overly bureaucratic administration of these institutions, which – in overcrowded Hungarian prisons – burdens correctional educators with an exceptionally heavy workload and a constant lack of time. On top of all this, they also had to find time to deal with restorative practices:

"Many people took part in the training, but not everyone can come to the monthly meetings. They have other work-related engagements that prevent them from attending. From the perspective of the correctional educators, it is obvious that the large numbers of inmates in their correctional groups result in so many administrative and organisational tasks that it can be a huge burden for them to also have to deal with something as time-consuming as preparing for and holding mediations." (prison staff member)

"You could find cases in every cell community. But again, that's incredibly time-consuming. We correctional educators also just tend to bypass these cases. We can't just set everything else aside and start mediating. You would have to have another person just for that." (correctional educator no.4)

"I might come across some cases, but there's so much work that it's impossible to carry it out." (correctional educator no.3)

"You guys can't change anything. Ideally, I wouldn't have any daily tasks and would just be available for mediations." (correctional educator no.1)

"Where and when can we do it? That's a problem. When the shift comes from work, everyone comes at once and everyone has things to do. That's when the financial guy is there, the record-keeping group and hearings with educators. Then we have to send

23 This will be discussed in more detail below in the section on the importance of ensuring the restorative principles.

them to school and to other activities. Because the inmates are available at that time. And at that point, the correctional educators and the guards are already pulled in ten directions at once. Mediation is the eleventh.” (correctional educator no.4)

The institutional system

For both correctional educators and inmates, time is divided according to a strictly regulated schedule which is difficult to reconcile with the nature of restorative conferencing. In one case, this contradiction even jeopardised the security of inmates. This example, in which an eight-member cell community took part, is described below²⁴.

The issue of lunch in the middle of a conferencing session

“In the last case, we were about halfway through the discussion by lunchtime. We had to adapt to the schedule and pick up lunch. The institutional schedule makes it extremely difficult to carry out this complex and time-consuming task. The guard had already come in twice to tell us that now we really had to go for lunch. The solution we came up with was to have one of the inmates (who had already told us his version) to go and pick up everyone’s lunch. The others were already starving – so you can imagine how little they were able to concentrate on the session.” (correctional educator no.4)

“We couldn’t have a break because they’ll re-evaluate and re-discuss the whole thing once they get back to their cell. And you can be sure that that discussion won’t be following restorative principles. And if they go back to their cell in this tense state and with all these loose ends still unsolved, then we would end up making a very big problem out of a small one. One inmate had been humiliated. Some very unpleasant things came up about him. We didn’t dare to let them go back in the middle of the process.” (correctional educator no.2)

“The accused was not able to react to the accusations. He remained in a state of reaction to all of the negativity directed towards him.”

24 The cell community in this case is made up of inmates in pre-trial detention. All are awaiting a ruling of a court of first instance or an executory sentence. Because of this, they have very different backgrounds. The range of offences and expected sentences is very broad: from theft to homicide, and from sixty days probation in a minimum security institution to life sentences without probation. The restorative intervention was a spontaneous, reactive circle. The circle closed with an agreement and can be rated as especially successful, in that the eight-member cell community remained together.

"We can't go on mediating away here until ten just because we've only just got going. At seven there's lockdown and roll call." (correctional educator no.4)

b.) Organisation of work, communication paths and power games within the prison, and their impact on the project

Institutional support

The hierarchical structure of the prison as well as the strict regulation of each employee's tasks affected the project at many levels.

The attitude of the governor played a key role: his support led to the openness of the staff and the effectiveness of the programme within the institution.

In the case of the MEREPS programme, the leader of the institution provided strong support from above for restorative practices, something that he also expressed through symbolic gestures. For example, he attended the first support group meeting and brought pastries for the team members. The MEREPS supervisor described the importance of his attitude and gestures as follows: *"he opened our first session. It was very important to him that we all feel comfortable. This was especially reassuring to me because previously I had feared that it would be very difficult to work in such a highly hierarchical system."*

At the institution for adult offenders, there were several programmes running at the same time, dealing with preparation for release, personality development and conflict management. All these programmes are integrated into the prison's long-term strategy. The governor supported building in restorative practices at system level. As explained by the programmes coordinator,

"We are a prison that is always applying for programmes. (...) One direction is programmes oriented towards reintegration and preparing inmates for release. Its elements are groups for conflict management, communication and identifying values; in all of these, the trainers are attempting to effect changes in the personalities, thinking and behaviour of the inmates participating in the groups. (...) For years, we've been trying to bring the conflict management element into the prison programmes. We think that it would help to prepare inmates for release if they learn that conflict situations can be dealt with in other ways than how they have dealt with them in the past. (...) If I look at what current programme applications we have out right now, what I increasingly see is that restorative methods – within prison and applied after inmates are released – are getting more attention than before, whether it's mediation or the applicability of FGC."

At the prison for young offenders, some of the staff members took part in the MEREPS mediation training by their own, individual choice. The governor urged a few educators to take part in the training and gave his permission for their collaboration with the project, but beyond that, was not able to take a more active part in the implementation. Instead,

he entrusted staff with the task of putting their experience from the training into practice, and tracked the process via the feedback that he received from them.

"The colonel asked my opinion several times about the restorative practices, because he also sees potential in them." (correctional educator no.5, at the prison for young offenders)

In this case, there was less pressure from above. In introducing the techniques, the emphasis was on the positive motivations and intentions of the educators who had taken part in the training. Based on experiences from the training, one educator began to use restorative methods in solving everyday conflicts. When reviewing and following up on these, we found that the correctional educator in question believes that there is a place for restorative techniques in their prison, and that the application of these techniques mostly met with positive results when dealing with minor disciplinary offences. What this also confirmed for us, however, was the importance of *having ongoing supervision that is embedded in the system*, and that can support the correctional education officers in developing the methodologies, dealing with their role conflicts and in learning more about RJ principles. Without this, it is questionable whether restorative practices can become integrated into the system in the long term.

Professional roles

In addition to macro-level management directions, the personal motivations, professional role issues and battles of competencies of the working organisation staff all had an impact on the process.

These were also connected to their positions within the system and whether or not they were trying to be promoted. At the adult prison, the monthly working group (support group) meetings were originally attended by the seven staff members and the MEREPS supervisor, which gave a framework for the preparation and follow-up of mediation cases. The group included correctional educators, security guards, and prison officers. After a few months, the group had dropped to four correctional educators who attended regularly and one security guard (occasionally). According to them, the reason for this was that within the prison, they have to reconcile many types of – often contradictory – interests:

"[...] ours is the penal department. The guards and security officers are from the security department. The main interest of the security department is to ensure security, order and discipline. This means continuous inspections, keeping cell doors locked and as few programmes as possible. From their perspective, the more civilians there are in the institution, the bigger the risk factor. Our perspective however is to try to offer inmates as many options as possible. This is a point of contention among staff members." (Prison staff member)

"The security department has a different job. We have to stick to written protocols. There is one kind of inmate, and we don't need to know anything about them." (Security department staff member)

These contradictions of interests due to the complex nature of the prison system were also reflected in attitudes towards restorative practices and in the formation of the groups.

For group participants, the restorative process supporting open and partnering communication created a framework for power games to be exposed and played out in a way that was more open than usual.

An example of this was an unsuccessful mediation: the prison department chief in charge of coordinating the MEREPS programme left a correctional educator (who had taken the initiative in the work so far) to replace them during their vacation. This substitute person was to identify cell conflict cases that were appropriate for mediation, to prepare and organise restorative conferencing sessions. When they identified a case and began to prepare for the conferencing, a conflict arose with another correctional educator:

"All of us uniformed personnel on site have to follow certain set guidelines. First we report to the department chief, and he reports to the governor. Whatever does not require the approval of the governor, he decides himself. (...) In this case, my colleague reproached me, saying how on earth did I think I was going to involve this inmate in mediation, and that he had called a female educator vulgar names. I didn't know about this." (correctional educator no.2, excerpt from an interview)

"I told him quite forcefully that he's got to be kidding, trying to mediate with this inmate. He is the kind of inmate who, on the outside, makes his living from being big and strong, and – as he says himself – as long as there are whores, he doesn't have to work. For him, women equal whores – that's the kind of mindset he has. I think that maybe with an attitude like that, he may not really be in alignment with the aims of mediation. Meanwhile, he had his own agenda and realised how great it would be for him to get into this thing. It would've been a tool for him, the fact that he was even willing to sit down and mediate! The other reason is that once he seriously insulted my immediate superior, the leading correction officer. (...) And I don't want anyone to forget that an inmate insulted a staff member. It's not that I want revenge, but I think that if we don't all stick together and watch out, then anything can happen to any one of us." (correctional educator no.1, excerpt of interview)

This conflict shows the importance of information flows, and of discussing and agreeing on interests and principles. It also shows how conflicts within the work organisation can have an impact on the restorative process. It also indicates how the restorative approach had an impact on the organisational culture as well, as the correctional educators brought their own conflicts into the support group, thereby creating an opportunity for them to discuss, handle and solve this conflict in an open manner.

Making the best of human resources

The power of roles was felt not only in the restorative group, but also in the difficulties in getting into the group. This was shown in the contradictory situation regarding the prison psychologist. With regards to the role conflicts of correctional educators, from time to time it was mentioned that the kind of person they need as a facilitator would be someone from the prison and thus who is well-informed about relationships within the prison, but who is not in regular contact with the inmates and is hence more independent. In this way there would be no connected interests between facilitator and inmates; the facilitator would not be the subject of game-playing by the inmates and would be more able to implement the principle of impartiality. It was often suggested that the prison's psychologist could fill this position, but the correctional educators never took steps to bring him into the team. At the suggestion of the MEREPS supervisor, the psychologist attended one support group meeting, where his/her attitude towards the project and the correctional educators could be seen. It appeared that he had no personal relationships with the correctional educators and we found that he took a cautious and passive approach to the project. Despite this, the restorative session did provide him with an opportunity to open up, to make a few steps towards his colleagues and for him to look for how he could integrate himself into the programme. He agreed to find out about new inmates' intentions to make reparations at each first psychological consultation, and also expressed an intention to take part in restorative conferencing. Thereafter, however, he did not participate further in dealing with the cases.

This can be seen as an example of how difficult it is to find and link internal human resources in such a hierarchical working environment, where the highly regulated environment is accompanied by the "prison sicknesses" of work overload and lack of time. All of this has an impact on the implementation of a programme and on its integration into the system.

At the same time however, from the prison perspective, external human resources and civilian participants are not automatically accepted either. When we talked about the other programmes, it was often mentioned that there were doubts about the activities carried out by civilians with inmates. These external people are not always seen as resources:

"They come from outside, they don't know anything about prison life. I find it dangerous and unjustified if they come in contact with inmates." (correctional educator no.1)

"What I saw on that training, and maybe here too, is that whoever does those mediation practices or whoever came up with that idea sure didn't know much about prison life. It's all very well and good, but for me the whole question was – how could we do it in here? (...) Once there was this civilian – I don't remember who it was – who sweetly said "let's knock on the door of the cell to ask if we may come in". [...] From this you could see, or I could feel that this person just has no idea. I'm not saying that it's good or bad. But I was sure that in this format, you can't just transfer things from civilian life. You have to adjust to the characteristics of prison." (correctional educator no.4)

The MEREPS supervisor also underwent an “initiation” phase and passed through various changes with respect to the correctional educators. Work between the MEREPS team and the educators was also carried out in accordance with restorative principles and thus allowed the educators the opportunity to express their criticism and doubts.²⁵ As was mentioned earlier, this framework did not seek to provide “recipes” from outside, but instead was built on a concept of mutual adaptation and of together developing good practices. It was perhaps because of this – in addition to the support of the governor – that the MEREPS supervisor was accepted and that the programme was treated with a special trust.

Information flows

During the course of the one year of work, we learned that various other programmes were running in parallel to the MEREPS project in the prison, which could potentially support one another. For example, to prepare inmates for release, they hold sessions on personality development, self-knowledge and conflict management. It is difficult to build contacts between these and other similar projects with a restorative approach. There are also regulatory causes for this:

“What you have to realise is that what’s special about the TÁMOP (EU-funded) projects is that an inmate can only take part in one TÁMOP project at a time. That’s the criterion. For example, there can’t be any overlap between two TÁMOP projects, even though there are some inmates that would fit into both of them. There can be no overlap with regards to either the experts who are implementing the project or in the participating inmates. This completely rules out any linking between the two.” (prison staff member)

In addition to daily tasks, they collaborate with external partners in alternative programmes coming from outside, but as a rule there is no project staff within the prisons or dedicated expert supervision or management. Prison staff are responsible for the organisational and administrative aspects of programmes and for researching new opportunities, all of which represents a significant additional workload in addition to daily responsibilities. An NGO is currently being formed of staff members in order to benefit more effectively from various grant options. It is understandable that, given this climate of work overload, it is difficult to ensure information flows within the programme and to build links between the projects.

25 The full text of the present study was also commented upon by the staff members involved in the programme.

4.2. Attitudes, motivations and roles – social-psychological dynamics between participating parties

a.) Roles, motivations and attitudes of offenders

A 180-degree turn in the prison community

From a social-psychological perspective, all factors that served to move inmates out of their prison community roles were conditions that supported the introduction of restorative practices. This includes stepping out of their status in the informal prison hierarchy, their communication strategies and ongoing conflicts. Our experience showed that the inmates who were the most likely to be willing to accept the restorative approach and communication methods were those who have family relations beyond the prison, actual goals after becoming released, and who are consequently less affected by the process of imprisonment (Clemmer, 1940, 299; Winfree, 2002, 214).

In better cases, these relationships were present but it was also an added advantage to a few of the restorative conferences that it rebuilds or strengthens ties with people on the outside.

An example for the connection between, strong family ties and the restorative intent is the family group conference that was organised in connection with the inmate's temporary release:

“Robert’s behaviour has changed substantially since the conference and his temporary release. As if he was a whole different person. His facial expression has changed. He has plans: he has submitted his application for the next temporary release, and he has talked about the idea of establishing a carpentry business together with his son. He has also admitted that when he requested temporary release in the past, he had promised himself not to come back. And now that the request really did succeed, it didn’t even occur to him not to return. His relationship with me has become more familiar as well. He told me in the hall, not in the conference room, that he was also submitting a request for a temporary release for Easter.” – evaluation of the correctional education officer on the outcomes of the temporary release of the punishment as prepared by a conference.

This quote and the following one are examples of how it is not only the prison conditions that affect restorative methods, but also the techniques that similarly influence the relationship between inmates and the correctional education officers.

“My wife said that the correctional educator went to see them. I was surprised that they are trying to help this much. I saw that the prison management was ready to help. This was a new experience. This isn’t what you experience on a day-to-day basis. (...) My impression is that since then, the correctional educator has a more positive attitude towards my case.” (inmate no.1)

With regards to the temporary release that was prepared for by a FGC, the inmate rebuilt his relationship with his estranged wife and proceeded to re-evaluate the remainder of his sentence time and strengthen his goals for life after his release:

"I never would have thought that we would be on good terms again. The reason I forgave my wife is that I saw at home that my kids are cheering for me and I could see that it was because of her. (...) I've been out three times since then. Bit by bit, I've managed to fix up the house. Here inside I make scale models, decorative pieces and smaller furniture pieces. My son is going to get a diploma soon and our joint business is going to be in his name." (inmate no.1)

In the course of FGC's, we encountered far fewer difficulties than we did in our restorative meetings to deal with cell conflicts.

The power of external relationships and their difference in nature from relationships within the prison was shown by the fact that both the MEREPS team and the educators found it self-evident that FGC (held in connection with release or temporary release) was appropriate and useful in the prison environment.²⁶

Intra-prison relationships

A factor supporting the restorative process was also certain intra-prison relationships that were different in nature from what is typical in prisons, and that followed a different pattern than the hierarchical relationships between inmates or the formal, superior/subordinate relationship between correctional educators and inmates.

Another example of a closer relationship is if a friendship develops within the prison – according to some inmates, this is very rare, while others state that it does not exist. In this respect, we defined *partnership-based relationships* as a supporting factor.

Another motivation to make reparations can be when two inmates are "homeboys" – that is, they come from the same county or area, first met outside prison or their families knew one another. This assumption was corroborated by experience: that other relationships outside of the prison also have an effect – in a different way from family ties – on the restorative process. The fact that two inmates knew each other before imprisonment adds further weight to events within the prison. The seriousness of injuries increased: "My homeboy claimed that I'd punched him. That was a serious blow to me." (inmate no. 7) or: "One of my homeboys was dissing me in front of my cell mates." (inmate no.12)

One reason for this can be the sense of solidarity between "homeboys", as well, conflicts inside the prison can be a result of ties outside the prison.

A special and unusual event in interpersonal relationships in prison is if a personal, trust-based relationship develops between an inmate and his/her correctional educator. In one

²⁶ See the case study of Robert for a more detailed description.

case, an officer used restorative techniques because he wanted to solve a conflict that had been caused by a decision of his. It can be seen from the way he expresses the problem how personal was his relationship with the inmate:

"I felt bad about the inmate, the one I made a bad decision about. I temporarily put someone new in his cell without talking about it with him first. Officially, we don't have to ask them But István and I share a common past, we go way back. I see him as a cooperative party. The precedent in our relationship is that he can expect me to ask his opinion." (correctional educator no. 4)

After the conflict broke out between the inmate and the "guest" inmate, within the framework of a structured dialogue with the involvement of both parties, the correctional education officer offered an opportunity for the inmates to express their grievances and needs which arose in connection with the given situation. This meeting had a secondary function: to restore the relationship between the correctional education officer and the inmate. In this case, the open, partnering communication and the resolution of the conflict was allowed by the fact that the correctional education officer had regarded the inmate – to a certain extent – as a partner in general. It was therefore easier to bring the dialogue into a restorative framework, and involve a third person as facilitator.

If we look at the case from the perspective of motivation for restorative procedures and the correlations of moral thinking (Fellegi, 2007, 205-225), it can be claimed that motivation rises from the "preconventional" level to the level of "conventional" ethical thinking (Kohlberg, 1971). Although there might be a long way to go until responsibility-taking, the expression of needs and the inner need to make reparations are expressed by the inmates, according to the MEREPS supervisor: this could be a good step towards understanding the needs of the victim:

"Here empathy, as well as the consideration of the aspects and needs of the other person surface in the relationship with the correctional education officer. In this way, the inmate can also be compelled to consider the aspects of the other inmates, as well. And perhaps, over time, to also feel empathy for the victim and to consider the perspective of the victim as well."

"Self-appointed" facilitators within the prison

A supporting factor, which is similar to the dynamics of personal relationships, is if there is one member of the prison community who represents his own inmate society through communication means that are different in nature from the closed dialogues that originate from the rigid, superior/subordinate relationships typical of prison life. In the cell communities, there are persons who tend to overwrite these patterns, and take communication towards open, partnering dialogues.

They – usually the cell leaders – are the ones who are entrusted with keeping the cell clean and orderly. Part of this is mediating conflicts between inmates, which cell leaders themselves see as part of their job, described in their own words as the responsibility "to maintain harmony in the cell community", "to make sure that no one feels oppressed", "to discuss conflicts among ourselves", "to treat the weak and those with disabilities as equal partners".

Some of them use their position of power, threats or exclusion from the cell to reach their aims, while others use RJ principles to take steps towards improving daily prison life, in their role as mediators who are embedded in the inmate society.

Correctional educators only find out about a fraction of these intra-cell conflict management actions. As such, one of the goals of conflict management is to make sure that the conflict does not become so serious that it is noticed by the correctional educator or that it has to be reported to him for security reasons. One cell leader described the situation as follows: *"to deal with the conflict so that the correctional educator doesn't find out about it; the last thing we do is the involve guards"*. The recognition of mediating persons within the prison and their involvement in the mediation processes within the framework of MEREPS has proved difficult, yet this is definitely an important and supporting factor. Another factor contributing to these endeavours was that at the sensitisation discussion held with the cell leaders: several of them said that they often feel unequipped, don't know who to turn to with their problems and would need help in solving conflicts:

"There is a need for it, but the way it should be is to take each type of problem one by one and discuss them. For example, if one gets early release and the other doesn't, that's hard for us to handle. Because these people have totally different motivations. If someone gets something extra, then he doesn't want to talk honestly, and someone who hasn't got anything has nothing to lose by confessing." (inmate no.7)

"Often the problem is that the cell leaders don't even dare to talk to one another about these problems." (inmate no.8)

"Some of them need professional help. As a cell leader, there's not much I can do for them." (inmate no.9)

The power of shared interests

Inmates can be thrown out from the hierarchical prison roles when they recognise a shared interest in the midst of a conflict of opposing interests. This results in the emergence of a *community of shared interests*. An example of this is a conference where the subject of the conflict was that one party had made intimate advances towards another.²⁷ The inmate rejected these advances, and it bothered him that the other party persisted. In this case, both offender and offended were united by a marginalisation within the prison community and a sense of displacement. The facilitators built up the conference on these factors, and an agreement was reached.

27 The victim of the cell conflict was 22 years old, a first-time offender, serving a prison sentence of 8 years and 6 months for homicide. The man making sexual advances was 35 years old, a first-time offender serving a prison sentence of 6 years and 6 months for indecent assault. A cellmate was involved in the conflict as a support person, who was serving a 10-year sentence for depravation and rape. The restorative interventions included a preparatory phase, one-on-one discussions and a restorative conference, which closed with an agreement. The parties returned to their shared cell, and later, after the offender stated that he had breached one of the points of the agreement, the educator decided to place the victim in a new cell. The reason for this was that he was the more adaptable, less problem-causing and more "placeable" of the two inmates.

"Neither of them wants to leave the cell. Zsolt doesn't want to, because he has the face of a kid. The goons will beat him up for that in another cell. Géza doesn't want to leave because he's gay. They'll hurt him because of that. Their common interest is to stay in the current cell. That's why they're both trying to reach an agreement." (correctional educator no.2)

The nature of communication

The structural characteristics of the institution were also reflected analogously in the community of inmates. On the surface, inmates live within the strictly restricted order prescribed by the institution. Their placement in an institution and their scope of freedom are determined by the type of offence committed, their record, whether they are sent to maximum- or minimum-security institutions and the various levels of stringency.

However, there is also a parallel status hierarchy system (baron, punk, snitch, etc.) made up of rigid superior/subordinate relationships within the prison community. As Fliegau writes, *"in prison, certain interpersonal conflicts become entrenched in their interactions. Prisoners take on roles, because it is through them that they are able to effectively represent their interests."* (2009, 344)

The key to survival for inmates in this dual-expectations system is being well-informed, manoeuvring and staying out of the way. On one hand, to meet the expectations of correctional educators and thus reach certain benefits such as temporary release, a good cell and earlier release; on the other, to meet the norms of the community of inmates, where manipulation plays an important role, as well as keeping secret the events that occur within the community of inmates.

"Most inmates try to show what's good and nice. But it's in one ear and out the other. That's how it goes in this kind of talks. Then it goes on like that until the minute I go out. Let's say now I come back and they ask: where were you, old chap? I've been at talks like that. There was no beginning or end to it!" (inmate no.2)

Inmates live in a system of strategic acts. In prison life, hiding intentions and actions is the norm, as well as solving conflicts behind the closed door of the cell (trafficking prohibited items, loan-sharking, asserting status through minor physical assaults and sexual violence). It is not only their communications with correctional educators, but also those with one another that are closed in nature. One of the fundamental rules of prison life is don't trust anyone and keep to yourself. All of these factors complicated restorative interventions, and trying to get information within this dual system set up a formidable task for the MEREPS team.

"If someone isn't open, there's a reason for it. If I talk to someone, the first thing he's going to think is that I'll twist his words and use them against him. There are very few open people here in the prison. There's a saying here in prison: look good, but don't be smart. You can't be a smartass." (inmate no.3)

"Talking about trust in prison...yeah, I think it's hopeless. Pardon the expression, but here we're basically just screwing with each other at a certain level. If someone says something – whether it's me or an inmate – we never know who will use it against me and when. The inmates don't necessarily dare to open up to each other either. There is very little trust and honesty here. All the planets would really have to be lined up just right for two inmates to meet face to face and trust one another enough to actually dare to own up to their problems in a totally honest way." (correctional educator no.4)

Usual means of conflict management

The usual paths for conflict management also followed the logic of strategic actions and a closed type of communications. Neither the formal system nor the inmates' community supported the open discussion of problems – in fact, this was punished through formal and informal means.

The community of inmates feared the means of punishment applied by the guards (disciplinary measures, solitary confinement, criminal charges, etc.), so they punished anyone who violated the "dirty secrets" code by marginalising, demoting or other sanctions. Involving the supervisors in conflicts was seen as snitching on one's cellmates:

"In most cases, it's not because of us that they won't talk and won't open up in mediation. They're scared of each other, that if they make trouble the cell will sanction them." (correctional educator no.1)

"Inmates don't like to run to correctional educators with every little conflict. That's condemned by the prison community. Educators only find out about the serious ones." (correctional educator no.2)

"In most cases, the commission of these acts remains latent. In the case of fights or misdemeanours that result in the abuse of cellmates – the matters only become generally known if there is some visible sign, that is, an injury can be seen on the person in question. If there are no such signs, then we only find out about it by hearsay. And the chances of that being true are zero. If in the end an inmate actually does report abuse to his correctional educator, his cell mates exclude him and see him as a "snitch"." (correctional educator no.5)

"Here you've got to put up with a lot of crap. You have to just ignore things if you've got something to lose. I got an extra 22 months earlier release. You don't want to risk that by standing out." (inmate no.4)

"Here you can never blow off steam. That's why lots of guys end up back here after they get released. Because here they don't know how to handle strong feelings. They just

bottle everything up. Once they're out, all it takes is a little fight to set off an explosion.” (inmate no.3)

“Pista was there in the cell. He saw what happened. But I don't recommend him as a witness because here in prison you don't involve anyone in things that don't concern him. That's considered troublemaking.” (inmate no.5)

Another factor that made it difficult to deal with conflicts openly was that tensions between inmates partly concerned the “forbidden” zone of the institution: access to coffee, cigarettes and forbidden items, loan-sharking and paying up debts.

The condition for gaining access to these goods is the continuous reinforcement of one's status within the hierarchy. These issues arose on a daily level as the main areas of tension:

“When I was put into this cell, I tried to put an end to the domination of weaker cell-mates, like how they take the coffee and cigarettes away from the young kids, and that the weak ones have to clean up. The others didn't like that. That was one thing. The other thing, specifically, was that the cell – together – had also taken out a loan to buy coffee, and we shared the cost of the payments. We couldn't pay, and then they said that it was my loan. This is why they put me in a cell and that's why the mediation started. But those guys didn't dare to talk about it at the session.” (inmate no.3)

“You want my honest opinion? A truckload of coffee and cigarettes would help to make order last more than a week. Here, that's what makes the world go round.” (inmate no.2)

In the prison for young offenders the failure to report sexual disciplinary misdemeanours and crimes is particularly characteristic. A correctional educator explained the reasons for this as follows:

“With regards to sexual crimes, the chance that the offence will become known is even lower because among young people, the sense of shame is extremely high and they will tolerate it for a very long time just in order to avoid being shamed. (...) when penal proceedings are launched ex officio in response to the offence, the victim will, because of the shamefulness involved, in 95% of cases withdraw the statement originally made in the prison when questioned by the police.” (correctional educator no.5)

In general, conflict resolution was based on inmates' techniques for survival or to gain certain benefits, or was based on manipulation or hierarchical relationships. It was obvious that it is difficult for someone to identify with the principle of open and partnering communication if their survival strategy has been built up on a completely contrary logic.

It was difficult for the mediation process to urge these inmates out of their set roles and patterns:

"Someone who gives to one person loans to others too. If there's a deal made about one loan, that would put his deals with his other debtors at risk too. If you let one debt or give the debtor more time, than why not to the others too? This only leads to more conflict. Loan-sharks live from this, it's a business. They make many times more than their official earnings illegally. They don't care how these conflicts are solved." (educator no.2)

"For someone who has never sat down to discuss anything, because he has a mentality of fist-fights where the top dog wins – for people like that it must be very strange to have to sit down and tell the other 'listen, something's bothering me!'" (correctional educator no.4)

"Talks don't change anything for guys who have been here 15, 20 years. Or even with those who've just been here 7 years. You couldn't draw them out with a hundred talks. There are some things you just don't talk about. It won't change anyway. It'll all stay the same anyway." (inmate no.3)

Among dispute resolution techniques, placement in another cell, wing or even another institution were options that arose frequently. An aspect that made the mediation process more difficult was that for inmates, the routine solution was to leave the situation.

If they did not succeed in this by making a request, then they would try through other means. We saw a wide range of the effects of this on educators:

"[...] people here don't understand normal talk. Only if you threaten people or cut yourself up, that's how you get what you want. Refuse to eat or work, cut themselves up with a razor blade, or if it's really desperate, there are some who swallow razor blades." (inmate no.3)

"For debtors, asking for loans is a lifestyle. They have their usual strategies for how to get out of the debt without having to pay it back. They refuse to work, they hide in solitary confinement or get themselves transferred to another prison and start a new life, leaving their debts behind." (correctional educator no.2)

Roles that support or challenge – pressures to conform to the informal prison community

In some interventions, the actual conflict brought to mediation and the way the conferencing came about reflected the everyday power relations between the two inmates. In some cases the parties came to mediation with a consensus already, or an inmate who had a higher status in the hierarchy dominated the discussion and the needs of weaker inmates did not come to the surface, and they identified with the version of the dominant party or pretended to agree, meanwhile mediators could not learn whether the weaker party

had needs of his own. An example of this was a minor physical injury, where the offender from the beginning placed himself in the roles of both victim and helper and described the physical injury as a manipulative defamation²⁸:

“Zoli’s nerves were on edge. His father was in hospital, and he hadn’t had any letters from home. He was tense. Plus his brother-in-law was sent to another cell. He wanted to go with him. He accused me of beating him up. [...] But I’d just playfully hit him on the head. I told him you can’t make up stuff like that. Maybe another guy would’ve got mad at him, but not me, I help him in any way I can. [...] The other guys also said to him, ‘you should be ashamed of yourself, spreading rumours like that about Józsi. We all know you wanted to go to the other cell with your brother-in-law!’” (inmate no.3)

At the one-on-one talk, the victim described having received a real blow that hurt. However, at the conference, he did not say this and didn’t produce any information that contradicted the dominant inmate’s version, saying *“he hit me twice on the head, but maybe he was doing it as a joke, and I just took it the wrong way.”* (inmate no.8) Their claims were almost identical, showing a consensus throughout the whole process. For the victim, the risks within the prison community of stepping out of his subordinate role outweighed his motivation to express his needs or current injury.

In a contrary case, the subject of a conflict can jeopardise the inmate’s position in the prison community. An example of this was the case where an inmate was bothered by the sexual advances of a cellmate. The victim was scared that the prison community would see him as someone who had entered into a same-sex relationship, and this is why he agreed to mediation:

“Zsolt is scared that the other guys think that he had sex with Géza. That would downgrade him in the eyes of the other inmates and would demote him in the prison society. That is why he openly reported that Géza was making physical advances.” (correctional educator no.4)

In this case, the aim of the facilitation and the expression of needs harmonised with the broader goals of the victim within the prison community: to demonstrate his refusal of the advances. However, for the inmate on the other side of the conflict, the open admission of his sexual advances threatened his status in the prison. It was for this reason that the mediation began with denial, and gradually reached openness:

“Géza will probably deny these things. He’s scared of the other inmates, and of being labelled.” (correctional educator no.4)

“I have this bad habit of watching everyone in the cell. It bothered him. [...] So I was looking around in the cell. Not just at him, I was looking at the others too. [...] That’s how my

28 In this case, the victim of the cell conflict was 23 years old, serving 9 years of imprisonment for a first offence of theft, rape and assault. The cellmate having caused the minor physical injury was 41 years old and a repeat offender. He was serving a 2-year sentence for physical injuries and trespass.

Mum raised me; you have to help anyone you can! [...] For me, giving someone a little shove is an ingrained habit. I did it outside too, that's how I communicate.” (inmate no.3)

“okay, so I did a couple things I shouldn't have. I was the one who started it. [...] Maybe I was looking at Zsolt more than at the others.” (inmate no.3)

These last cases show how the power relations within the prison society shape the facilitation context. Fear of either the dominant party in the conflict or of a general sanction within the prison community can block the expression of needs and the open discussion of the conflict. In the course of facilitation, it was very important to clarify the complex system of values within the prison community and the network of hierarchical roles. The educator acting as a facilitator was able to assist the civilian facilitator in this respect.

Involvement of support persons

If the delicate nature of the conflict, a prison power relation or a fear of retribution within the prison community prevented the victim from reporting the conflict and from opening up a way to restorative dispute resolution, **support persons played a key role in the case by helping the victim to discuss the conflict openly.** An example of the importance of the support person is also found in the case above. As a first step, the victim turned to his employer for help against the harassment of his cellmate. The employer relayed the problem to the educator and reassured the victim to make a written statement to the educator. Here the key to the supporting role is that the employer was external to daily cell life. Because of the delicate nature of the topic, it would have been difficult for the inmate to approach the educator directly.

Shifted motivations – pressures to conform to the formal system

Another aspect that made the restorative process more difficult was if the participation of the inmate was motivated not by trying to identify the needs that arose within the conflict but by trying to avoid punishment for the conflict or by trying to obtain some other benefit; that is, the attempt to conform to the expectations of the formal system and of the correctional educators.

“If an inmate is involved in mediation, he tries to talk the right way, in the way that we expect. Conflict solved, and mediation closed. But I'm not sure – I think in some cases they come here with manipulative intentions. There were cases where I had the impression that they agreed on everything ahead of time – behind our backs – and planned who would say what.” (correctional educator no.4)

“This agreement is a sham. We all agree with this. The educator has solved this new case that I brought, and put them in another cell. Now they're on great terms, even with no mediation. When we sat down together, there was basically no problem to discuss.” (correctional educator no.2)

"They also know that the mediation has to be a success for the disciplinary measures to stop. It's a way of getting ahead!" (correctional educator no.2)

What presented the greatest challenge to the MEREPS team and educators was, in the restorative dialogue with inmates, not to use the usual set of strategic actions to mislead the staff, and to instead, at some level, ensure that the real reasons for the conflict are revealed, that the offender takes responsibility and that the actual needs and grievances of the parties to the conflict are expressed.

In this endeavour, we also found what "risks" there are from the prison's perspective if the restorative process gains insight into the deeper levels of a conflict and if the agreements to make amends have the effect of rewriting the inmates' informal hierarchy. If the restorative intervention shakes up the hierarchical relations, this can have far-reaching consequences long after the mediation. It can lead to more conflict, and more serious conflicts can arise that must be dealt with by the educators:

"I'm not sure that it's a good idea to interfere with the hierarchy through methods brought in from outside. The group has to be formed all over again and that starts with a thunderclap." (correctional educator no.1)

Result-oriented vs. process-oriented: the way to harmonising motivations

When examining the effect of the restorative process on inmates' roles, motivations and relationships, it is important to emphasise that this is a process. In the MEREPS working group, a constant topic of discussion, which was re-evaluated over and over, was what should be the result of a restorative intervention, and what should be considered a success.

Based on the feedback of inmates, the restorative sessions often had an effect of the life of the cell community and typically would result in a temporary shift in hierarchical relationships.

"When we went back to the cell after mediation, I got all the cell members to sit down and talk about how we are going to keep this agreement and treat each other like human beings." (inmate no.2)

"I prepared the cell rules." Besides that, it didn't have any effect. [...] Or if it did, it lasted a week. For a week, the guys treated each other like human beings, then everything went back like before. Once again, everything was settled through coffee and cigarettes." (inmate no.4)

"After the agreement, Sanyi said that he was surprised to hear what my problem was with him. For a while, my cellmates acted differently with me. They made gestures. For example, Sanyi got some coffee from somewhere and offered me some. And the educator said that I could move to Béla's bed while he's in solitary confinement. His bed is better, because it's a lower bunk and my back was hurting. So I moved there. Then when

Béla came back, I didn't give him his bed back right away. But then after awhile I gave it to him anyways..." (inmate no.6)

At the beginning, the educators looked for success-criteria in the results of the conferences. The prison approach is partial to tangible results. In this respect, the MEREPS supervisor played an important role in adjusting them to a process-oriented approach, and summarised as follows the path taken in the educators' shift in perspective as they experienced the importance of the process:

"I think that a positive outcome of the temporary release case was that it had a motivating effect on the process as a whole. This is because in the other cases, especially in the beginning, there were such big expectations from the mediation sessions that success would mean that all the problems are solved! This was an obstacle in the beginning. [...] We needed a shift in perspective – that it is not necessarily the end result that matters, but the process itself, because the process can lead in so many different directions. Or its results can only be seen as the process matures. So when the inmates said that "so what, we still didn't stick to the agreement!" or when the educators said that "they're only saying that because we're there, and they're trying to conform to our expectations", all this is true! But the result is the process itself, which is internalised. The result is also in the reflections and thoughts that emerge subsequently, and changes in the quality of relationships. They didn't see this at the beginning. That is why they needed this temporary release case, where the result was very quick and visible: he could leave. I remember how thrilled the educators were to read the letter from the family, or to get the pictures sent by the children. [...] So these were turning points, when they did not try to deduce lessons from the results of the conferencing. [...] This was not really conscious at that point. It became more conscious when it wasn't what the session ended with that mattered, but that what would happen after. This is why, at our last mediation, the importance of follow-up came to the foreground. Because they realised that relationships are changing here, and that if you look at it from a restorative perspective, you can say that this is the key to achieve success. This is where they realise that it's not the deal on paper reached between two people, but a restoration of relationships that's happening, which takes more than one meeting. That will be shown in the subsequent decisions reached in their lives together."

Correctional educators gave the following feedback:

"If, after mediation, they go down for exercise and are talking to each other, while they weren't talking to each other before, I already see that as a success." (correctional educator no.2)

"This was the first case where I felt that it wasn't because of our expectations that they talked about positive things, instead the fact that they were really friends gave depth to the session." This wasn't just for the sake of appearances. I felt that what really happened here is that from now on they really will try to do better." (correctional educator no.3)

As well, correctional educators saw the first signs of inmates' acceptance of the restorative approach even in the violation of an agreement or in a failed mediation session. The two following cases are examples of this:

Breaching the agreement, but taking responsibility for that – it is also a success

One case is the previously mentioned sexual advances case, in which an agreement was reached that specified which gestures of the party making the advances would be monitored over the next few weeks and how they could ensure that the cell-mate does not feel harassed. If he does not succeed in fulfilling the obligations he has undertaken, he was to voluntarily report to the correctional educator and ask to be transferred to another cell. One of the follow-up points was complied with: he left the cell at a different time and avoided physical contact. But one thing occurred that went against the agreement. It was then that the offending party himself recounted the events to the (female) correctional educator and requested a transfer to another cell. That is, the obligations he had undertaken in the agreement were not upheld, but the inmate respected the agreement:

"[...] I noticed that he was looking down from his bed one afternoon. He hadn't managed to keep the deal. I watched TV in the afternoon, in the evening I asked – what should we do? I wanted him to say why he was looking. Géza didn't say anything. I asked the others what we should do. In the end, we didn't have to do anything because Géza told the events to the correctional educator himself." (inmate no.8)

In this case, from a restorative point of view the correctional educators saw as a success that the offender chose a path which would previously have been unusual: before a new conflict arose, he made a decision and reported the breach of the agreement. The fact that such a sensitive topic was at hand made his admission even more significant, as well as the fact that, despite the risks attached to it, he made his statement in an everyday cell context, beyond the framework of the conference.

Where mediation is blocked by the interests of inmates, but these are openly communicated

In another case, where the interests of inmates outweighed the conflict, a mediation procedure failed. With respect to a theft within the cell, the inmates did not report the offender out of solidarity, but peaceful coexistence did not return. They reported the issue to correctional educators, asking them to offer an alternative solution to reporting the offence. When speaking with the correctional educators, the offender at first did not admit to his acts, as he feared criminal charges. When the correctional educator brought up the option of mediation, he finally took responsibility for his actions. Three cellmates agreed to mediation, the fourth refused and insisted on the offender being placed in another cell. The reason for this was his own impending release. The mediation raised the possibility of the offender remaining in the cell, and from the perspective of the inmate who was to be released, this would mean the risk of more theft and conflicts, which could jeopardise his release as well. He insisted that the offender be placed in another cell, saying that otherwise (contrary to the other cellmates) he would press criminal charges. In this case, the first signs of warming to the restorative approach can be seen in the fact that inmates' needs and interests were openly expressed during the preparatory phase.

b.) Roles, motivations and attitudes on the part of staff

Helping motivations

It can also be said with regards to prison staff that all circumstances that encouraged correctional educators to move away from their usual tasks as educators and from their related role expectations also supported the restorative process. They could fill this role with positive motivational elements, such as *professional challenge, an interest in the approach and methodology*.

Correctional educators taking part in the programme were typically in their thirties and had not been working in their position for long. They were characterised by a shared motivation to overcome difficulties and to reform the limitations of the system. Three of the five active group participants were pursuing post-secondary studies (either in the same field or in order to make a career change) in addition to their work. The motivational background

for their participation in the MEREPS programme came from their age group, history with the prison and goals.

“Those who stayed close are still in that phase which emphasises professional development. In practice, they are the kind of people who are still very active and ambitious in their professional development.” – (evaluation of MEREPS supervisor)

Programme participants tended less to conserve their roles and tasks as correctional educators. The desire to fulfil and reinforce professional skills and the desire to excel played a part, as well as that of appearing as a creative, innovative employee both in their own eyes and in those of their superiors:

“I have never had the experience – nor have I ever really heard – of a correctional educator going out to meet with families and relatives. As a prison staff member, this was such a new thing that it was truly memorable.” (correctional educator no.4)

Many of them expressed the opinion that the position of correctional educator is considered entry level work experience, or a springboard in the prison environment. Taking part in practices which are groundbreaking in a prison context and learning about the restorative approach could also be motivated by a desire to move ahead in their careers:

“A paradigm shift is happening within the prison, which is having a strong effect on employees and sharply divides them. Either they are very interested in the restorative approach, or they completely reject it. What I see is that the path is pointing towards restorative justice, and I like to be there where new things are happening. (correctional educator no.4)

Supervision as a need, not only to support the restorative process

The application of restorative practices was also supported where the correctional educators saw a benefit in entering into more personal relationships with inmates and to perform tasks different from their usual daily routines, or if they recognised that facilitation situations and opportunities to step out of the role of correctional educator offered a counterbalance to the heavy administrative workload and impersonal daily routines.

From the perspective of the correctional educators, the support group as a supervision position was perhaps even more important element (in preventing burn-out) to the programme than the restorative practices themselves. Another indication of this was that problems not related to restorative processes were also brought up at support group meetings.

“It was great to talk about all the difficulties; you get to know not only your own feelings but those of others as well. This is a rarity in the prison and I think it gave us a lot.” (correctional educator no.2)

“I was thrilled by the feedback. Once again, we’ve done something new without even trying – something that’s written down somewhere and works. We miss these talks

inside. They're a chance to see and hear what everyone thinks. There should be more supervision. I hope that this will be a positive contribution to what is still to come in the programme." (correctional educator no.4)

"[The MEREPS supervisor] provided a solid background and didn't leave us on our own. For me, this was a source of support in my work." (correctional educator no.4)

Displaced motivations: the formal system and pressures to conform to the role of correctional educator

At the beginning of the programme, the risk arose that, in certain cases, correctional educators might also have attitudes that detract their motivations for the restorative approach. This was connected to the fact that they had groups of 80 to 100 inmates as well as an excessive volume of work. There were attempts to "just get it over with as fast and easily as we can", efforts towards tangible results (mentioned earlier) and the generation of "agreements on paper". The concern was that the depth of the process would be lost in certain cases. In addition, we identified two types of attitudes: the "let's not have any conflicts" attitude from the expectations connected to the role of a correctional educator, and the "investigative attitude":

"We have to find out the truth and the motives. Who did what, why and what he did exactly." (correctional educator no.1)

"It's hard to spot the early stages – but if we could mediate those out, then things don't degenerate. The goal should be to catch the early stages of serious conflicts." (correctional educator no.2)

"I never would have thought that this role switching would be the easiest for me. At the beginning, I always wanted to clarify everything." (correctional educator no.1)

From the words used in the interview excerpts cited above ("mediate them out", "catch", "clarify"), it can be seen what path the educators had to take as they began to apply these techniques. Meetings of the support group provided a space for staff, with the support of the MEREPS supervisor, to reflect on these attitudes and not allow them to preponderate in the process.

Partnering dialogue

A major challenge was dealing with the educators' role conflicts and stepping out of the perspective of a correctional educator.

"It's not so easy to change from a vertical relationship to a horizontal one. What you're used to is that for years, what you say is right. You try to show them the right way and to demand that they follow it. Suddenly this demand slips out of your hands and ends up in their hands." (correctional educator no.2)

Because of this difficulty, we decided that educators should not facilitate between inmates belonging to his/her own correctional education group. However, educators regularly attended restorative conferences of inmates from their groups, as a person in a supporting role that has a broader insight into the conflict than the facilitator. The difference between the two roles is that the supporting person's thoughts and needs can be voiced at the conference. This way, thoughts and suggestions on educational goals, the importance of the agreement or its chance of being upheld can also be included in the mediation. For example, if the educator is at the conference in the role of an educator, then he/she can voice doubts with regards to whether the parties are being honest in the dialogue.

For educators, participating in conferences in the roles of facilitator and of educator also presented difficulties, but in another way. According to their feedback, the facilitator role to some extent meant that they were "protected". If they were there as educators, it was more difficult for them to take over the partnering, informal communication context and its attributes (such as sitting in a circle and using first names). An example of this was one of the first cases in which, besides the educator, a cellmate who had seen the conflict from outside also took part as a supporting person.

"It's going to take me some time to get used to this role. I can't call the inmate by his first name. What made the situation even more difficult for me is that I had to sit very close to the inmate, in a circle. I didn't know how to act. Do I dare to smile now? Should I look at him encouragingly? [...] How much should I influence this, or should I at all? I couldn't find my place or my role. What aggravated all that I was feeling was the fact that I was in the same role as Balázs: both of us had to help solve the conflict with a supporting presence and suggestions." (correctional educator no.4)

As well, for educators to find themselves in a partnering context with inmates there was also the risk that at a certain point, the educator's own, personal side would threaten the educator's authority and legitimacy. The following dialogue is an example of this:

Inmate: "I don't want him back in our cell, because I don't want there to be rumours about 'how come he came back to you after you hit him?' 'Why?' 'He told us he was scared of you!' This would be unpleasant for both of us, for the educator and for me too."

Educator: "Just a minute! Would you please explain what you mean by saying that it would cause me problems if I put him back?"

Inmate: "Because if there are rumours that there's a fight, that's bad for the educator."

Educator: "You're wrong! If there's a conflict between two inmates, that's not my problem. I mean, it doesn't affect my status. You're not going to make me responsible for this."

Educators were confronted by different challenges in the role of facilitator. In parallel with the difficulty in separating the roles of facilitator and educator and the restorative inten-

tions, there was also the problem of returning to the role of educator. It was not easy to go from "seeing the person" behind the inmate to putting on the uniform of the correctional educator. We had to figure out how the tasks of the educator and the restorative aims could coexist in parallel.

"As an educator, you have to be the mother, father, sibling or friend of the inmate. At the same time, you have to be their boss, their director, their employer. These are exaggerations, extremes. But the educator-inmate relationship is a complex one. It's hard on me and hard on them when I take the place of a mediator. Maybe the day before, I imposed disciplinary measures on one of them. Maybe the next day we talk to each other in a context of trust and impartiality. It's hard not to think that 'my life depends on the educator. If I do what he wants, I get benefits; if don't support him, I won't get anything.' You can't disregard the fact that one person's fate depends on another." (correctional educator no.4)

"It makes no difference if you say that you're a facilitator and that there's the civilian facilitator too. This time too, the whole time, the inmate was calling the educator 'sir'. The whole time! Maybe he isn't in the educator role right now, but if we go upstairs, then he will be again!" (correctional educator no.2)

Because of the difficulties of combining the two roles, at the beginning there were times when an educator playing the role of facilitator confused the roles and stepped back into the role of educator:

"It would do a lot more towards ensuring peace in the cell if you would communicate about the conflict!" (educator in the role of facilitator)

Or "If there's no coffee and cigarettes, you have to be tough! It's in your own interests to wean yourselves off it, because if you take out a loan, then you have to repay it and it generates conflict! It's only going to be worse for all of you!" (correctional educator no.3)

"The hardest for me is to put the educator attitude aside. To not just hand the solutions to them, that it shouldn't be us telling them what has to happen." (correctional educator no.2)

In cases like these, the intervention of the co-facilitating psychologist was important to correct and support the educator in returning to the role of facilitator and to ensure that the facilitation truly focused on the conflicts and needs raised by the parties.

Impartiality

Previous, often negative, experiences with inmates and the resulting *mistrust* affected the participation of educators in the restorative process. They themselves also stated that impartiality was perhaps the restorative principle that was the most difficult to put into practice. In some cases, they expressed mistrust that was unrelated to any specific conflict:

"I can't be disappointed in an inmate because I don't expect anything good from anyone. So I can only be surprised in a positive sense." (correctional educator no.1)

In other cases, they found it difficult to be impartial towards a certain inmate who was involved in the restorative process:

"Zsolt is strategically important for the educators. He's straightforward and cooperates with the prison staff." (prison staff member)

"That inmate has protected status. We're keeping an eye on him – because of his age and personality, he's still formable." (correctional educator no.4)

In some cases, the educator's mistrust and previous experience compared to that of the restorative experts actually supported the process. For example, they at times indicated that the conflict being discussed was actually a pseudo-conflict, or that the conflict did exist but that the inmates were using the mediation dialogue as an instrument in order to pursue other interests, such as avoiding disciplinary measures, transfer to another cell or the approval of a request:

"The external facilitator is not aware of the power relations between the inmates. The dominant inmate tries to force his intentions on the weaker ones and to reinforce his position through the facilitation. In those cases, the presence of the educator helps to protect the victim." (correctional educator no.2)

In these cases, the role of the educator facilitating the conference was to help give information about the prison community, about the nature of the relationships between the inmates and their hidden interests. This helped to ensure that the parties' real needs emerged. Meanwhile, the educator involved as a facilitator had to learn about the positive and negative biases towards the parties in order to ensure restorativeness and that the mediation process be led by the intentions and needs of the inmates. A factor supporting this is that most of the conferences were not mediated by the educator of the inmates taking part, so the facilitating educator did not have specific educational goals with respect to the inmates.

In this respect, it is important to note that, even if it is not ideal if a facilitator slips back into the role of educator, it does much to promote sustainability if the restorative approach and practices (a culture of partnering communication, assuming responsibility and expressing needs) are built into the work of the educator and come up in the dialogue between educators and inmates.

An example of this is the following citation as well:

"If they see that could use another approach and don't use it, that you could write out a disciplinary report, transfer them to another cell or have a cell inspection, but despite

that, you still choose to go to mediation, I think inmates must see that as positive." (correctional educator no.1)

What can present a problem is if the restorative process finds itself involved in the range of rewards and punishments.

Thus, it is different if the session improves the situation of some inmates while pushing others into the background, or if information that emerges as a result of increasing trust is used by the educator in applying means of punishment.

The following case is an example of both how a successful restorative intervention can build the relationship between educator and inmate, and of what are the risks inherent in this. It shows that stepping outside of the reward/punishment framework is difficult for both educator and inmate.

How restorative interventions fit into a system built on rewards and punishments

The subject of the conflict was a vulgar remark screamed from the window of a cell, intended by one inmate to humiliate another in front of his cellmates. On the next day, the educator initiated a spontaneous restorative encounter in which they agreed that the offender would apologise to the victim in front of his cellmates. The apology was made. At the same time, a valuable object disappeared from that wing of the prison. Because the victim of the previous conflict felt that he had been rewarded with the restorative situation, he wanted to reward the educator in exchange and informed him that because he was grateful for his humane approach at the mediation, he would tell the educator who had stolen the object and where it was hidden. The risk in this case is that the trust that is built up during the restorative process leads to the educator learning of information that can contribute to finding out about the offences committed by another inmate and lead to his punishment. As well, if an inmate provides information because of a relationship of trust, and hides this from his cellmates, the risk is that the restorative process become part of the strategic games played between inmates and educators. The situation can be solved if the educator deals with further developments in a restorative context as well, by launching a restorative procedure for the theft as well, which does not lead to punishment but instead to a dialogue between the affected parties and perhaps an agreement on restitution.

Table 3: Overview of factors supporting and challenging restorativeness in the prison context

	Factors supporting restorativeness		Factors challenging restorativeness	
	Prison staff	Inmates	Prison staff	Inmates
Formal institutional administrative rest- frictions			Established practices of handling conflicts as based on the paradigm of punishment, routine procedures Complicated, overly bureaucratic administration of the prison system	Acts that go against the formal rules of the prison, e.g. the inmate commits an act that automatically triggers the launch of criminal proceedings. The strict institutional structure of the prison e.g. the inmate is transferred during the restorative process.
Manifest motivations and interests	Interest in the method and approach Feeling of professional achievement, sense of competence Participation in a new pilot project in the prison Being process-oriented	Intention to restore relationships Intent to make reparations	Avoidance of disciplinary action Enforcement of order Expectation of tangible results	
Latent motivations and interests	Promotion in the prison system Role of innovator or reformer	Earlier release Desire to please the educator, conforming to expectations Desire to leave an unfavourable role in the prison community	Emergence of attitudes of "let's get it over with quick and easy", and "let's not have any conflicts" or "investigator" attitudes.	Obtaining formal benefits in the prison: - positive approval of requests - avoidance of disciplinary action - Option of temporary release - maintaining an advantageous position in the prison community

<p>Personal fears</p>			<p>Fear of losing legitimacy and authority in the educator role</p> <p>Fear of real partnering communication with the inmates</p> <p>Fear of seeing the human side of inmates and their personalities</p> <p>Fear of security risks</p> <p>Stereotypes with regards to inmates, lack of trust</p>	<p>Loss of favourable role in prison community</p> <p>Fear of honest dialogue because of the prison community hierarchy</p> <p>Fear of prison sanctions for admitting to conflicts</p> <p>Fear of sanctions within the cell community</p> <p>Stereotypes and mistrust towards the educator</p>
<p>Perception of formal roles</p>	<p>Ability to separate the roles of educator and facilitator</p>		<p>Behaviour in accordance with the expectation of totalitarian roles (investigation of the facts, obligations to maintain order and make reprimands)</p> <p>Ability to separate roles, slipping into role of educator when acting as facilitator</p>	<p>Behaving in accordance with the perceived expectations of educators, hierarchical communication</p>
<p>Perception of formal roles</p>	<p>"Mother", "father", "brother", "mentor" -type roles of trust with some of the inmates</p> <p>A shared past, personal nature of relationship with inmate</p>	<p>Relationships with families and others outside the prison, connections based on <i>shared place of origin</i></p> <p>Mediator role accepted by the other inmates in conflicts</p> <p>Partnering relationships within the prison</p> <p>A shared past, personal nature of relationship with educator</p> <p>The common interests of the parties to the conflict</p>		<p>The informal prison society status hierarchy makes partnering communication impossible, only superior/subordinate dialogue in accordance with one's status</p> <p>The prison's code of unwritten rules makes it impossible to involve people, e.g. anyone who enters into a dialogue with prison staff is considered a <i>sneak</i></p>
<p>Definition of success</p>	<p>The needs of the persons concerned, the causes of the conflict and the implications in terms of liabilities have been revealed, a solution has been proposed</p>		<p>A superficial agreement has been reached, founded on the other interests described above</p>	

5. The first steps towards integrating restorative practices

In the course of the one-year process, educators identified areas where restorative elements were already present in their daily work:

"We mediate here every day. Not just us, but a good leader or boss in civilian life also mediates. Guards and educators mediate. Only they sort things out more quickly and are more goal-oriented." (correctional educator no.4)

"We were doing what we always do and it turns out that we've been mediating all along." (correctional educator no.1)

They began to use restorative practices in a more conscious way, integrating them into their set of resources for dispute resolution. In order to ensure long-term application, the MEREPS team especially tended to facilitate this. This was especially because our experiences showed that for correctional educators, cases which they handled independently gave them a real sense of achievement and these experiences had the greatest impact in forming their rapport with the restorative approach.

"I am more flexible in dealing with conflicts between inmates. It comes more easily to me. I don't try to solve things in a rigid manner. I listen more to the different points of view than other educators I work with who didn't take part in this project. I don't try to force solutions so much in a direct way, in accordance with the usual practice. In more minor situations, for examples I don't transfer them to another cell so often, instead I try to solve it." (correctional educator no.2)

"Once again, we've done something new without consciously planning it – something that's written down somewhere and works." (correctional educator no.4)

At the same time, the supervision of the support group was important for cases handled by educators independently to ensure that the practices integrated by educators followed restorative principles instead of principles of doing it "as quickly as possible" and being too heavily goal-oriented. At the end of the one year work process, the educators independently facilitated five cases. These included cases where an educator applied restorative principles independently in solving a conflict between the inmates assigned to them, as well as ones where another educator was involved as a facilitator and the restorative practices were applied in the context of a restorative conference. In one case, the educators independently applied methodological innovations. The MEREPS supervisor reflected on these events as follows:

"The preparatory phase for this case was not for the offender to think about reparations, but realise that there's a problem. They led a reactive restorative circle. You have to do this in cases when someone has no insight. You yourselves realised that the offender should be heard last. And you tried to make the others realise that there's a problem. You're using the group to set out restrictions for another."

"You also realised that you were working with the shame factor. The offender found himself in a situation where he was shamed, and this is very hard to work with. Stigmatising shame took the place of re-integrating shame. The first just showered down on him. If you had taken a break from the session then, then he would have remained labelled, and it would have been very hard to reintegrate him. But there was an opportunity for him to do something, to assume responsibility for things and thereby to get a chance for reintegration through the shame."

One striking example of how attitudes were formed was when, towards the end of the project, the management of the prison asked one educator to report to a group of about 40 staff members at an internal training session about the experiences gained from the project, and about introducing the restorative approach and practices into the prison system. The educator attended all of the support group meetings and discussions, but did not facilitate and was ambivalent towards the idea of stepping out of the role of educator. When preparing for the presentation, he/she could have presented the methodology and approach in an objective, distanced way, based on his notes and mediation handbook. Instead, he/she chose a very personal approach:

"I thought that I shouldn't give practical information, but explain my learning process to them. I have just completed a process. I was afraid that I wouldn't be able to show them what happened inside me. I was wondering how I could show this to my colleagues in a credible, legitimate way, so that they understand the context. [...] And this developed in me the way I prepared it. Meanwhile I was thinking about it and realised what the value of the restorative approach is for me." (correctional educator no.4)

As this educator said, some of his/her colleagues had attitudes similar to the ones he/she had initially: doubts, incomprehension and sometimes hostility (as she said: "virtual knives in our backs"). It also became apparent that within the organisation, identifying with the restorative approach – which in many ways contradicts standard practices in the prison system – is a step that is just as difficult to make as it is for an educator to take on the role of facilitator.

6. Recommendations

The recommendations for implementation summarise reflections collected through interviews with the MEREPS team and in the working group of prison staff taking part in the process. With respect to some questions, no consensus was reached; in these cases, we expose the dilemma and the potential solutions to it.

In light of this, we sought to offer a guide to how RJ-type practices can be carried out while taking into account the special characteristics of prison society. After the answers to the questions of who, how and where, the table at the end of this section classifies the circumstances and practical measures that support restorative interventions as well as those challenges that threaten restorative principles which, if dealt with appropriately, would contribute to the success of other, similar programmes.

6.1. Who should carry out restorative interventions?

Restorative interventions with regards to cell conflicts, restoration of family relationships and reparations to victims present a complex set of tasks. Part of this is the *shaping the attitudes of offenders, victims and staff, identifying and referring cases that are appropriate for RJ encounters, selecting cases, preparation for the restorative encounters, facilitating them and coordinating the follow-up*. In order to ensure that the restorative practices are able to function appropriately, it is important to clearly identify the responsibilities of staff – who does what, and how.

a.) Reparations to victims

Based on our experiences over the year, finding inmates and victims who were open to offender-victim meetings and reparations for victims was one of the most difficult tasks. In order to ensure the effective and responsible performance of this task, *a specific job position should be created within the prison* (as in the Belgian model²⁹). This person's job description would include forming attitudes of offenders and staff, mapping intentions to make reparations, sorting out cases, contacting and preparing victims, liaising and collaborating with victim support institutions.

Within this process, great care should be given to the protection of victims and the avoidance of secondary victimisation. For this reason, the attitude forming and direct preparation process lasts until it becomes clear that true intentions to make reparations are present on the side of the offender, and that motivations such as the avoidance of punishment, trying to conform to the system and other gain-oriented motivations can be ruled out, with any other aspects that could cause the victim further victimisation.

At the same time, the restorative treatment of cell conflicts can also be a first step towards reparations to the victim if it helps the offender to take responsibility for his actions and to have a better understanding of the needs of others.

b.) Mediation in cell conflicts and in the restoration of family relationships

Within the MEREPS support group, opinions were continuously shifting with regards to what type of facilitation approach would be the most appropriate in conducting restorative interventions. Up until the end, there was a consensus to the effect that *a thorough knowledge of RJ was just as necessary as being familiar with prisons in order to provide quality mediation*. What is needed is a person who represents the restorative background as well as a person who is an actor within the prison, who can see through the hierarchical relationships between inmates, but who also represents the order within the institution and who can ensure that cases are heard and agreements are reached in accordance with the institutions internal regulations and that they comply with statutory requirements as well.

Acceptance and legitimacy of civilian facilitators in the prison community

From the perspective of a civilian facilitator, the prison's acceptance is very important – it is ensured partly by the support of management, and partly by the continuous, shared work

29 On the Belgian practices, see the article by Ivo Aertsen in this volume.

with a restorative approach. It allows the civilian to learn about prison life while prison staff have an opportunity to learn about the restorative approach and practices.

Acceptance of the prison facilitator as a facilitator

Our experience has shown that it is difficult to realise the aims of impartiality and equal partnership if the inmates' own correctional educator takes on the role of facilitator. People who are appropriate choices to act as facilitator are the prison's psychologist, or a facilitator who has been trained by the prison, a former correctional educator who is familiar with the workings of the prison system but who does not currently have any superior/subordinate relationship with the inmates and who does not have any direct shared interests with them. It is important that the correctional educator and facilitator roles and skills be kept separate during preparation and the intervention itself, and that this is clearly conveyed to affected parties during the mediation. It was the unanimous opinion of prison staff that the ideal solution would be to create a separate position for a facilitator, thereby simplifying work through the restorative approach without imposing an extra workload on a staff that is struggling with insufficient time.

The role of the correctional educator

In restorative interventions, inmates' own correctional educators take part as *correctional educators*. This raises both advantages and problems. The correctional educator has insight into the inmate's hierarchical relations and makes sure that inmates who occupy positions of power in the hierarchy do not dominate the dialogue. Having an inmate's own correctional educator present helps to ensure that the agreement is realistic and can be complied with in the inmates' daily life. They are also in charge of rewards and punishments to inmates. If the aim is to manage a part of the conflicts with restorative practices as an alternative to the rewards/punishment system, then the partnership with the correctional educator is crucial. They also play a key role in the restorative follow-up to the process.

On the other hand, the presence of the correctional educator can make it very hard for inmates to experience the situation as one of partnership and raises the issue of having to conform to the expectations of the correctional educator, a shift in motivations towards avoiding punishment for conflicts and towards obtaining benefits. These aspects should also be kept in mind in the course of mediation.

6.2. How does the intervention take place?

Procedural guidelines

In order to increase the effectiveness of reparations interventions, the proactivity of the staff and the sense of security, the institution should set up procedural guidelines for restorative procedures. This would offer guidance to the working group, made up of prison staff and civilian actors, with respect to what type and gravity of cases can be referred to restorative methods of dispute resolution, by whom they can be referred, and how. The guidelines would set out the basic principles governing the distribution of tasks and

scopes of responsibilities. It should also identify who is responsible for each phase of the restorative process: attitude forming, identifying and selecting cases, related organisation tasks. Additionally, it should describe and make transparent how the restorative practices relate to the legal environment, the prison's formal institutional procedures and to its usual sanctioning measures.

This would help to ensure that the restorative intervention is an alternative to the usual routine procedures and that it would be compatible with the institution's strict schedules and security rules. A clear set of guidelines would also help to ensure that conflicts are handled as soon as possible – as soon as the emotions and feelings are expressed.

Relation with punitive procedures

From the perspective of the formation of both voluntary intent and restorative motivations, the connection between the restorative process, disciplinary procedures and other penal sanctions is important. **As much as possible, mediation should be kept separate and independent from rewards and punishments.** It is also important that the agreement that emerges from the restorative session does not automatically result in the cessation of disciplinary procedures or in the lessening of other punishments. The other side of this principle is to ensure that as little risk of sanctions as possible be connected to the tackling of conflicts; i.e. the system should not impose penal sanctions based on the information that emerges in the course of the restorative process. **In the process following the agreement and its follow-up, the emphasis should be on compliance with the agreement and on the expression of taking responsibility for the acts committed.**

However, for the very reason that the mediation process does not fit into the rewards/punishment system and has no consequences in criminal law, the process may lose its seriousness in the eyes of inmates. **It is for this reason that it is important to use such means that support inmates' sense of commitment and responsibility and that serve to increase the weight of the process and the agreement.** It may help to increase the seriousness of the process from the perspective of inmates if follow-up is especially emphasised: it should be carried out systematically in a format established in the agreement. The agreement should also contain factual and verifiable elements.

All efforts should be made to ensure that, once an agreement is reached, the parties who were originally in one cell should remain in one cell together. This would give the restorative process a real chance to prove itself and would give more weight to the agreement. Along with the integration of the restorative approach, a long-term aim could be to allow parties (having reached a successful agreement) to remain in one cell, even after a disciplinary offence.

Forums

Systematic forum for the transmission and sharing of information

It would be very useful for the restorative processes if a systematic and open forum were created, bringing together the broadest possible scope of prison staff and civilians, which

would help provide open information about relationships and sources of conflicts between inmates. On one hand, this would make it possible to obtain information from as many sources as possible when preparing specific cases, thereby contributing to *impartiality and objectivity, as well as the identification and involvement of support persons*. On the other hand, it would make it possible for prison staff to provide information to the widest range of people possible (guards, management, psychologist) on how cases are developing. This information system would legitimise the restorative process within the organisational structure, and would contribute to ensuring that follow-up – in the broadest sense – be carried out in accordance with restorative principles, that responsibility for the consequences should not be borne only by the correctional educator and that subsequent events also find their way into the working group’s scope. All of this would also contribute to the integration and acceptance of the restorative approach within the prison.

A forum for feedback

It would also be important to create another forum for case follow-up and supervision of facilitators (see the MEREPS programme’s “support group”) where all the prison staff and external experts taking part in a specific case would be able to discuss the cases as well as the questions, dilemmas and needs that arise within the team. The supervisory sessions would also help in keeping the “correctional educator” and “facilitator” roles and skills separate. Based on our collaborations with the institutions for adult and young offenders, we saw that, because of the strongly regulated and overworked staff, it is very important that any dialogue or supervision that involves external persons should follow a specific pre-defined framework and schedule. Merely *ad hoc* attempts at assistance are difficult to implement and not effective, due to the limitations of the system (lack of time and capacity, institution’s daily schedule).

Role of preparatory discussions

Information exchanged at the *one-on-one discussions* with parties before conferencing play a key role in the mediations. Their aim is to expose the attitudes and prejudices of the parties and to prepare the parties for the conferencing. *Restorative mediation can be held if, during the preparatory phase, an attitude of openness is seen, restorative motivations are present in the parties and the facilitators see a chance of finding a common denominator.* It often occurs that the parties express their grievances and needs or take responsibility for their actions during the individual discussions, but then do not do so at the restorative conference. In order to ensure that the statements made by parties during the individual discussions and other information are included in the conferencing process, it should be established during the discussion which information they will also declare publicly. Where facilitators work in pairs, the parties must agree to release the content of the one-on-one discussions to *both of the facilitators*, so that they can help the process if it becomes stalled.

Prevention: as close as possible to the root of the conflict

Efforts must be made to ensure that restorative methods be used in the resolution of cell conflicts as soon as possible and in a spirit of prevention. Conflicts should be reached in the earliest phase possible, when no sanctionable offence has occurred yet. This way, there is a better chance of truly voluntary participation and restorative motives from the parties. If we deflect the early phases of a conflict by directing it towards restorative approaches, then the prison's automatic dispute resolution methods – disciplinary measures, transfer to a separate cell, solitary confinement, or criminal charges in serious cases – are not automatically triggered. Accordingly, the position of power of the decision-maker (e.g. the governor) in the procedure does not play a role in the process. From the perspective of the inmate, the desire to avoid sanctions, to end disciplinary measures or to obtain other favours does not force restorative motives into the background.

As soon as possible: the role of on-the-spot mediation

If the conflict in question has already broken out, the sooner mediation is held, the better the chance of voluntary participation, the expression of needs and the assumption of responsibility for the conflict. At this point, emotions and feelings still dominate and the needs of the parties with regards to the conflict have not yet been overwritten by other, institutional motives, fears and obligations to conform. Another point in favour of immediate mediation is that "strategic" participation can thus also be avoided, and the usual informal dispute resolution mechanisms such as power games and the reinforcement of hierarchical roles.

The role of the location

The restorative intervention should take place on neutral ground, where power relations are as little formed as possible.

Identifying supporting relationships and communication patterns

Trust, honesty and open communication are patterns that are difficult to understand in the prison community. Some correctional educators and inmates were of the opinion that these concepts are not present at all, while others said that their meaning has to be re-interpreted from civilian life. It helps the restorative process if the team seeks out the relationships, communication patterns and intentions inside and outside the prison that shed light on values that are important from the perspective of the restorative process. These patterns (that are in harmony with RJ principles) and the roles within the prison system that reflect them can be used as a base on which to build the restorative process.

It is more likely to find these restorative patterns in relationships outside the prison, with family and other community members, than in relationships within the prison. It helps in the identification with restorative values if the inmate has goals for his life after release on which civilian relationships can be built.

However, honest relationships can emerge between inmates in the form of a sense of partnership, shared place of origin, shared prison past or solidarity created by joint interests.

Another aspect that supports the restorative process is if the educator or another staff member has a “shared past” with the inmate, which means that the relationship between staff and inmate is more personal in nature and is characterised by a desire to collaborate.

Role of involving support people

An important aspect is identifying support persons (either from among inmates or educators) and channelling them into the process – this increases the sense of safety of the affected parties and their commitment, as the chance that they will open up and assume responsibility for the conflict will grow. In certain cases, these support persons join the process spontaneously, such as when they are the ones who first find out about the conflict and who direct it towards a restorative setting.

Role of the process

In order to ensure that impartiality, voluntary participation, trust-based open communication, motivations that encourage parties towards the expression of actual needs, assumption of responsibility and desire to make amends, the most important aspect is that the RJ process should consist of a long series of encounters that build upon one another, instead of discrete, ad hoc interventions that are independent from one another. It is important, as much as possible, to continue to follow a restorative path in the events subsequent to a conflict and in other conflict situations affecting those parties.

Because dispute resolution techniques that are based on the value system of the prison community, hierarchical relationships and strategic actions are deeply embedded in the system, any one restorative intervention can only effect *temporary changes*. Even after experiencing the dispute resolution model built on partnering communication and assumption of responsibility, inmates’ attitudes will not be changed in a fundamental, long-term manner. This is why the notion of *process* is especially important.

Mediating in cell conflicts, restoring family relationships and making amends to the victim can be seen as steps in the forming of the approach and which build on one another. The aim of handling cell conflicts through a restorative approach is to sensitise inmates to the perspective of the victim of the offence and to make direct amends to him.

Sharing experiences and ensuring a flow of information between similar programmes at a prison (personality development, conflict management, preparation for re-integration) can also contribute to the process-oriented quality, and their effects can reinforce one another.

Table 4: Risks and recommendations concerning the implementation of restorative principles into the prison setting

Restorative principle	Existing supporting factors in the prison	Risks	Practical steps
<p>Ensuring that all participants are taking part voluntarily</p>		<p>If the prison prescribes or makes the involvement of inmates in the process „automatic“, that threatens the real decision-making situation.</p> <p>If the person referring the inmate to mediation (e.g. governor) appears in a position of power at that point.</p> <p>If information gained through the discussion of the conflict revealed in mediation is subject to penal sanctions within the system.</p> <p>If routine prison system conflict management methods are triggered: disciplinary measures, transfer to another cell, solitary confinement, criminal charges in serious cases. All of this shows intents to conform to expectations of the authorities, and brings to the surface intentions of avoiding or stopping disciplinary measures.</p> <p>If the restorative process loses its seriousness because it has no consequences in criminal law.</p> <p>If the inmate is prevented from partnering communication because he sees the facilitator as a correctional educator.</p> <p>If the educator takes part in the dialogue with an educational agenda/ inmates who are in a position of power within the informal hierarchy dominate the dialogue and prevent weaker inmates from communicating openly.</p>	<p>GENERAL</p> <p>Making official contact with victim support partner organisations in order to reach victims</p> <p>Drafting procedural guidelines</p> <p>Creating open forums for discussion and to ensure the flow of information</p> <p>Creating follow-up and supervisory forums</p> <p>Linking prison programmes with similar approaches (personality development, conflict management, preparation for reintegration)</p>
<p>Inmates have to be motivated in taking responsibility for the conflict and finding a solution to it. The restorative motives should be present:</p> <ul style="list-style-type: none"> ▶ Trust ▶ Open, partnering communication ▶ Expression of needs ▶ Taking responsibility ▶ Intent to make reparations 	<p>Communication and relationship patterns that are in harmony with the restorative approach</p> <p>Solidarity between inmates</p> <p>Possible sources:</p> <ul style="list-style-type: none"> -shared interests, similar personal background (shared geographical origin, similarities in crime committed or status in the prison) -Sufficient self-knowledge on the part of the facilitator that allows him/her to keep the roles separate. -Knowledge of the prison society's hierarchy, helping weaker status participants in the process, ensuring equilibrium. 		<p>PREPARATION</p> <p>Dealing with the conflict in the earliest stage possible, <i>preventative approach</i></p> <p><i>Involvement of support persons</i></p> <p><i>Identifying communication and relationship patterns that harmonise with RJ principles, building on these. Finding out what the parties' attitudes and pre-conceptions are. RJ encounters should only be implemented if an attitude of <i>rapprochement</i> is seen during the preparatory phase.</i></p>

Mediating the conflict as soon as possible, when emotions and feelings have come to the surface.

The restorative intervention should be kept separate from the prison's penal measures.

The restorative process should be carried out on neutral ground, where power relations do not show up.

Separation of the roles and skills of educator and facilitator, clearly communicating these to the parties.

Using alternative methods based on commitment and a sense of responsibility.

Striving to ensure that agreements reflect the real needs of the parties.

Striving to ensure that the parties to an agreement remain in one cell after the agreement has been reached, thereby allowing the restorative process to run its course and giving weight to compliance with the agreement.

FOLLOW-UP

The agreement that emerges from the restorative session should not automatically result in the cessation of disciplinary procedures or in the lessening of other punishment.

In the process following the agreement and its follow-up, the emphasis should be on compliance with the agreement and on the expression of taking responsibility for the acts committed.

Follow-up includes joint review of the agreement voluntarily entered into by the parties, and which takes the interests of both parties into consideration.

The success of the agreement is found in the exposure of the real grievances and needs of the parties and in the formulation of means for making amends.

If the success of the agreement is seen by staff and/or inmates as the avoidance of disciplinary measures or the avoidance of an offence subject to disciplinary measures.

If follow-up becomes a new means for exercising control.

Conclusion

Looking back over the one-year project, we can see that the step made by the six-member prison staff group (with the support of the management) was both important and impressive. At the mediation training, they accepted the restorative perspective, which diverges in many aspects from the world of the prison system based on rewards and punishments. They agreed, in the course of our ongoing, joint work process, to make room for restorative practices – which are demanding in terms of time and concentration – in their daily schedules, which were already overloaded and subject to strict limitations.

As part of the pilot project, they simultaneously worked on attitude forming, selection and preparation of cases, carrying out mediations and complex follow-up tasks, tasks in which the help of extra staff had often been used in standard practice. And, as perhaps the most difficult task, they had to harmonise the roles of facilitator with their official roles.

All this happened in a flexible, informal, personal context that served as a mirror – which presented a new sort of challenge for the team working within the prison context. In the course of these joint reflections, they also had to face up to difficulties and recognise the limitations imposed by the institutional system, attitudes and roles. The openness, the trust placed in co-workers and the MEREPS team and personal courage made it possible for them to – once they had recognised these limitations, to look for solutions to these challenges and often to overcome them. At this point, as we conclude our analysis, we would like to again thank all colleagues and inmates who took part in this project for their openness and trust, as well as for all the time and energy that prison staff invested into the MEREPS project. Further thanks and acknowledgements go to the governors and directors of the participating prisons for their flexibility and ongoing support which made all of this possible.

In lieu of an extensive summary, we would just like to express a few thoughts. The direct result of the programme is that participating staff members gained new methods for dealing with conflicts and had the chance to experience how, in certain situations, these methods could help, and in the course of the project, they began to adapt these methods to their purposes and integrated them into their daily work.

We hope that, by taking an approach to conflict management based on open communication and accountability, both staff and inmates were able to have a glimpse of one another as persons as they both experienced the challenges that come with accountability as well as the opportunities that it offers.

We believe that the part of the process that prepares inmates for their life after release is extremely important, i.e. strengthening and rebuilding relationships with family and the broader community. The process sought to find means for joint reflection on the problems related to reintegration and on making the first steps towards solving them. It was clear for prison experts, the inmates involved and their family members that release from prison is one very important point in which the prison's expertise can still help with reintegration. Release can provoke numerous issues and conflict situations. Dealing with these is key to ensuring that the families affected gain the largest role possible in accepting the released inmate again, with his own opportunities, his own methods, resources and issues. Indeed,

in the majority of cases, the inmate is released at one point. However, whether or not he returns behind prison walls no longer depends on the prison, but on the ability and readiness of the family and local community to keep him with them.

The MEREPS programme also sought to provide practical opportunities for staff to try out how restorative principles and practices can help in making release and integration more successful, how a dialogue can be initiated between the inmate and the community around him, and, within this context, how the prison staff can contribute to this while the sentence is being served.

Another result beyond conflict management is that they have begun to use the forums created by the MEREPS project to reflect on their own work. Prison staff had a chance to experience how a forum like this can help in their work and protect them from burning out by giving them an opportunity to supervise each other's work and to reflect together on various dilemmas, "mistakes", and places where they get stuck. We believe that even if our programme does nothing more than to create a similar systematic forum that offers an opportunity for joint reflection on the principles promoted by the project, then prisons will already have gained at least one important tool. In their feedback, educators also indicated that one of the main contributions of the programme was greater insight into one another's work:

"I gained insight into how my colleagues handle certain situations, what their conflict management methods are. And considering current circumstances, it's a luxury to have two educators on one level, so we don't get to see one another's work at all. I learned a lot from them."

The forum helps co-workers to believe in the importance of their work – filled with daily challenges – and in their own abilities to cope with it. All of this is essential to ensure that after imprisonment and release, offenders find an alternative to acts that cause injuries and recognise their own responsibility in the restoration of their relationships and in leading a law-abiding life.

Dr. András Szűcs¹

OPPORTUNITIES FOR THE APPLICATION OF MEDIATION IN THE PHASE OF EXECUTION OF PUNISHMENTS: THE PERSPECTIVE OF A PRACTICING PUBLIC PROSECUTOR

Traditionally, mediation is a diversionary tactic used by the criminal courts up until sentencing in order to reduce or avoid the negative effects of criminal procedure and of carrying out the sentence. Is there a place for this in Hungary within the phase where sentences are implemented? And if so, what practical solutions are worth examining? These are the questions primarily addressed by this study.

Throughout the world, mediation within the phase of execution of punishments is still in its very early stages. Accordingly, section II(4) of the Appendix to Recommendation No. R (99) 19 adopted by the Committee of Ministers of the Council of Europe states that mediation between victim and perpetrator should be available at all stages of the criminal proceedings, but this does not infer that mediation is recommended at an “international level” in the execution of punishments. As such, it does not apply to the obligation of Member States with regards to criminal proceedings as per Council Framework Decision 2001/220/JHA.²

There are fewer advantages to mediation after an executory decision has been reached than to mediating during the criminal proceedings: after sentencing, the procedural costs and, to some extent, the executory costs as well, have already been incurred, the procedure does nothing to lighten the docket of the criminal justice authorities, the negative effects of imprisonment have already been sustained, etc.

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- 1 *Dr. András Szűcs*: Commissioned head of department at the Office of the Prosecutor General of Hungary
 - 2 Legal academic experts are divided as to whether correctional/penal procedures can be seen as part of criminal procedure or not, but in international law, penal matters are not classified under the heading of “criminal procedure” in international law documents related to mediation.

However, based on practical considerations, mediation does have some important advantages during the execution of punishments, primarily when imprisonment is ordered. First of all, it is expedient to review the applicability of mediation in this context in cases of criminal acts of such gravity that a sentence of imprisonment is imposed, in consideration of which society has no choice but to impose a prison sentence. There are also cases in the phase of the execution of punishments in which it can be justified to create an opportunity for personal meetings between the victim and the inmate, even if this meeting will have no impact whatsoever on the sentence. In the mediation process, the various elements (understanding, recognition, remorse, forgiveness, etc.) of a meeting between victim and perpetrator can have a positive impact on both parties. In addition, it must also be mentioned that mediation can be of invaluable assistance in reducing problems related to conflicts that arise between inmates or between inmates and prison staff.³

It must also be borne in mind that during the time of imprisonment, reparations (as well as mediation) can be used in combination with e.g. conditional release.⁴ For example, the implementation of any intention to make amends can be made a pre-condition to conditional release. The damage caused by a criminal act can also thus be repaired and the sentence revised.

Mediation between inmates or between inmates and prison staff can be linked in with any disciplinary proceedings launched against an inmate, or with any related sanctions. Successful mediation can result in the termination of the disciplinary measures, or in the annulment or mitigation of sanctions imposed as part of the disciplinary procedure.

Clearly, the restorative approach is most obviously applicable with regards to sentences of imprisonment, but in theory, mediation should not be ruled out with regard to other types of punishment as well.

3 See Borbála Fellegi: *Út a megbékéléshez* (Path to Reconciliation), Budapest, 2009, at 211.

4 See Hans-Jörg Albrecht: *Kriminologische Perspektiven der Schadenwiedergutmachung* in: "Neue Wege der Schadenwiedergutmachung im Strafrecht" Freiburg, 1990, Band 18, 43-89. Cited in: A. Tünde Barabás: *ibid.* 87-88.

Current legislation on mediation in Hungary

Since 1 January 2007, it is possible to use mediation in the course of criminal proceedings in Hungary. Legislation regarding mediation is primarily found in the Act on Criminal Proceedings as well as in Act LI of 2006 amending the Penal Code and Act CXXIII of 2006 on penal mediation (hereinafter: the Mediation Act). For the purposes of this paper, I do not intend to present and analyse the full legislative background, but only to highlight those elements of the related legislative materials which are relevant to my proposals on mediation between perpetrator and victim carried out during the phase of execution of punishments.

In the event of “active remorse” on the part of the perpetrator, as defined in Section 36 of the Hungarian Criminal Code, and if the conditions in the law are met, criminal proceedings can be ceased with regard to lesser offences (sanctioned by a term of imprisonment of less than three years), or, for more serious offences (sanctioned by a term of imprisonment of no more than five years), sanctions can be subject to unlimited mitigation. According to the word of the law, especially active remorse is where the perpetrator confesses to the commission of the offence prior to the formal accusation and where he has, in the context of a mediation process, made reparations for the damage caused by his criminal act in a manner and to an extent that is accepted by the victim.

The legislator has excluded several cases from the scope of applicability of the section on active remorse, thus section 36 does not serve to cease a criminal procedure or mitigate a sentence in the case of multiple offenders and recidivists, nor does it apply to offences committed within the framework of organised crime.

In accordance with section 2 (1) of the Mediation Act, mediation is a conflict management process between the victim and the offender that seeks to find a solution – set down in writing – to conflicts resulting from a criminal act, mediated by a third person (the mediator), independent of the court hearing the criminal case and of the public prosecutor, which might mitigate the effects of the criminal act and steer the offender towards abiding by the law in the future. From this detailed definition, it is especially worth highlighting the objective to reach an agreement at the outcome of the process, which not only seeks to repair damage caused but also to incite the perpetrator towards lawful behaviour.⁵

Another fundamental element of current legislation in force is that mediation can only take place if both perpetrator and victim have freely consented thereto; furthermore, any and all agreements reached within a mediation context must be founded on the principle of mutual consent.⁶

5 Section 221/A (2) of the Code of Criminal Procedure also identifies this as one of the aims of mediation.

6 See section 7 (1) of the Mediation Act.

Current opportunities for penal mediation in Hungary

Similarly to the situation generally encountered throughout Europe, the conditions for penal mediation have not yet been established in Hungary. Although the existence of written law in the United Kingdom is not a condition of the development of law, in Hungarian law – firmly rooted in the legal positivism of European continental legal traditions – the absence of legislation constitutes an obstacle to the assimilation and establishment of a new legal institution. Given the current state of Hungarian penitentiary institutions and the options that they offer, and given the absence of appropriate legislation, mediation between perpetrator and victim can only be carried out at the price of significant difficulties, while the outcome of such attempts is also largely uncertain.

Despite the necessity of legislation, a prison mediation programme was recently carried out in Hungary as part of the MEREPS⁷ project. (The international context of MEREPS offers a perfect opportunity for countries having more experience in this area to evaluate their performance and identify avenues for future development, while in Hungary it provides a chance to learn and assimilate good practices and procedures that can be standardised.⁸) The programme – taking current realities into account – was limited to conflict management within the penal institutions or to prevent conflicts from escalating. One of its main achievements was the finding that there is a clear need on the part of prison staff and inmates alike to continue in this direction – a condition to this however is the enactment of legislation supporting prison mediation.

In connection with our overview of Hungarian legislation, it must also be stated that, currently, efforts by the two affected parties (offender and victim) to come into contact can meet with obstacles, especially if this contact is initiated by the person serving a term of imprisonment.⁹ The convict generally does not know the address of the victim; so to begin with, he has to obtain this information. In the current regulatory context, the inmate can attempt to do this by requesting a copy of the court records¹⁰ of the first instance court proceedings that cover the testimony of the victim as a witness, and that also contain the victim's personal data (under current laws, the court cannot send copies of these records to an external third party). If, however, the data of the witness have been ordered to be treated confidentially, this attempt will be unsuccessful, as in such cases, participants in the criminal proceedings can only receive a copy of a document containing personal data of the witness if the personal data of the witness have been removed from it.¹¹ (Naturally, with regard to witnesses under special protection or taking part in a witness protection programme, the inmate cannot learn of the witness/victim's place of residence.) Given that, in the above cases, the offender can, after the investigation has finished, have full access to all

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8 See A. Tünde Barabás – Borbála Fellegi – Szandra Windt (eds.): *Konfliktuskezelés elítéltekkel. Kézikönyv a mediáció és a helyreállító igazságszolgáltatás alkalmazhatóságáról a büntetés-végrehajtásban.* (Conflict management with inmates: a handbook on the applicability of mediation and restorative justice in penal institutions.) Budapest, 2010. 8.

9 See the study of Dóra Szegő and Borbála Fellegi.

10 Code of Criminal Procedure section 70/B (10).

11 Code of Criminal Procedure section 96 (3).

investigation documents including the records of testimony¹², it would be difficult to justify a refusal to release a copy of the records of the proceedings at first instance.¹³ In addition, it must also be considered that, after the last witness is heard, the victim may move from his/her last place of residence, thus even if the copy of the proceedings is issued, this attempt to enter into contact with the victim may prove fruitless.

If the victim wishes to initiate contact with the offender serving a sentence of imprisonment, this can only be done via an intermediary because, for contact to be made, the offender has to include the name of the victim in the list of contact persons authorised by the penal institution.

In accordance with current legislation in force, the person acting as an intermediary between victim and offender (mediator) can only meet with the inmate within the walls of the penal institution under visitor status. Rules applying to visitors are very strict, which has a detrimental effect on the mediation process.

Inmates may receive visitors at least once monthly.¹⁴ The time and duration of the visit – at least 30 minutes – are determined by the governor of the prison, and on request this duration may be extended by a maximum of 30 minutes.¹⁵ The visitor may only speak with the inmate in the location designated for this purpose and the conversation may be monitored.¹⁶

Another problem is presented by the fact that it is difficult to motivate inmates to take part in mediation, given that there is no “state-sponsored incentive” which would encourage them towards making reparations or to enter into agreements with victims.

Recommendations for the implementation of penal mediation in Hungary

When Hungarian legislation on penal mediation is enacted, it would be ideal if it were drafted to be similar to the regulatory system governing mediation during criminal proceedings. Regardless of whether we are seeking to establish alternatives to imprisonment during criminal proceedings or in penal institutions, it would be logical to base the same legal institution on the same principles within a single legal system. Thus, for example, the aim of mediation during the phase of execution of punishments would only be to seek reparations for the consequences of the criminal act and to steer the offender towards lawful conduct in the future.

It would also be justified to impose certain restrictions on the applicability of mediation during the phase of execution of punishments. It also seems to be appropriate for it to be applied among those convicted for offences against persons, property and the traffic code.

12 Code of Criminal Procedure section 193 (1).

13 According to sections 70/B (6) and (10) as well as section 60 (1) of the Code of Criminal Procedure, the issue of a copy of these records can only be restricted if to do so would be prejudicial to human dignity, to the personality rights of the victim or to the dignity rights of a deceased person, or if it would result in the unnecessary disclosure of information on a person's private life.

14 Section 36 (1) c) of Decree 11 of 1979 on penal institutions and penal measures.

15 6/1996. Section 89 paragraphs (1) and (2) of Ministry of Justice Decree VII.12.

16 44/2007. Section 9 (4) of Ministry of Justice Decree IX.19.

It would however be worth disregarding the restrictions on sanctions for offences appearing in the Code of Criminal Procedure¹⁷, considering that in Western Europe, mediation is successfully used with perpetrators of serious crimes, not to mention that the introduction of, for example, the current five-year limit in the mediation law would greatly narrow the scope of applicability of mediation among prison inmates. Another factor in favour of removing this restriction is that, in connection with mediation in the phase of execution of punishments (at least with regards to executory sentences of imprisonment), the state does not fundamentally renounce its prerogative to impose a sanction, thus there is no dichotomy between Restorative Justice and the imposition of the sanction. Who should be excluded from penal mediation, for practical reasons, are those convicts who through their own fault have previously caused a mediation process to fail at any stage of the criminal proceedings writ large. Clearly, the participation of such persons who have shown themselves to be undeserving of mediation would entail an above-average chance of failure.

Voluntary participation must play a crucial, fundamental role in penal mediation, and such mediation processes should also strive to ensure that an agreement is reached between convict and victim that is based on the active remorse of the inmate. Naturally, recognition of the fact that a criminal act has been committed is also a fundamental prerequisite, as without it, there can be no remorse.

Once criminal proceedings – in the narrow sense – have been concluded, the launching of mediation *ex officio* (or by the authority conducting the criminal proceedings) would not really be justified. It would be best to introduce a mechanism whereby the victim, the convict, or the latter's defence counsel could make a request for the initiation of mediation.

Decision-making powers on launching mediation should be vested in a person or organisation who/which has sufficient expertise in the matter and constitutional legitimacy in making decisions of this type. I believe that the person best suited to this task – just as with respect to the reduction of the sentence based on an agreement between the convict and the victim – is the judge responsible for the execution of punishments (hereinafter: judge of punishments). After the closing of criminal proceedings, only the court can be entitled to reach such a decision, and it is only the court that has the necessary constitutional legitimacy for it to be able to change the contents of an executory sentence without raising concerns. In Hungary, it is usually the judge of punishments who performs the tasks related to the imposition of a sanction, thus it would appear obvious that this judge should also rule on any legal consequences of an agreement reached between convict and victim.

A very important issue is what the state can offer the convict "in exchange" for reparations. In theory, one could imagine, for example, a sort of "soft version," whereby the judge of punishments would be obliged to take into consideration any reparations already made or promised when reaching a decision on the conditional release of the convict.¹⁸ When deciding whether a convict can be released on probation or not, one of the circum-

17 According to the Code of Criminal Procedure section 221/A (1), mediation may be used in any criminal proceedings regarding an offense punishable by a sentence of less than five years of imprisonment.

18 Incidentally, there is currently no legal obstacle to prevent the sentencing judge from taking into account any reparations offered to the victim or agreements to this effect between offender and victim.

stances to be examined is whether or not the convict has developed a readiness to lead a law-abiding life.¹⁹ If an agreement is reached between the parties that aims to support the law-abiding conduct of the offender in the future,²⁰ then in theory there would be more substantial grounds on which to presume that the convict has developed a willingness to lead a law-abiding lifestyle and thus also that the aims of the punishment can also be achieved without any further imprisonment (i.e. by releasing the inmate on probation). The “only” problem with this approach is that, pursuant to current probation mechanisms, the convict does not have to do anything in particular in order to be released on probation. To be granted the opportunity of probation, the only requirement is passive observance of the rules (good behaviour), thus, given the current structure, the convict would not have the necessary incentive to attempt to repair the damage caused by the crime he has committed.

In this light, it would be much more effective to have a system where, if an offender undertakes in an agreement reached between the offender and the victim to make reparations (typically compensation for the damage caused), then the offender would be eligible for probation earlier than under the general regulations.²¹ Taking into consideration the fact that, within the walls of the penal institution, the inmate has very limited means for making reparations, the option of granting an inmate who has made a reasonable and justified promise to carry out reparations conditional release from the institution could be considered as well. If the inmate fails to fulfil the promise of reparations undertaken in the offender-victim agreement, the judge of punishments would revoke probation.²²

Mediation combined with probation could be integrated without any particular problems into current Hungarian penitentiary law. This, however, raises a justified question as to what should be done with those inmates sentenced to imprisonment who are willing to repair the harm they have caused to their victims, but who have been barred from probation by the judge of punishments, the criminal court, or by a provision of the Criminal Code. Given the current dogmatic structure and staff within the criminal justice system, it would be difficult to reach effective motivation for participation in mediation in penal institutions. It is however difficult to justify that a convict who has been barred by the court from probation at the beginning of the sentence of imprisonment (generally because the offender was found to be undeserving of conditional release on probation) should later be granted probation regardless. This contradiction would also not be helped by renaming early release on probation as, for example “conditional reduction of term of imprisonment”. In the case of these inmates, reduction of the degree of imprisonment could be considered, but of course

19 See section 47 (1) of the Criminal Code.

20 See section 2 (1) of the Mediation Act.

21 Thus, for example inmates in maximum-security institutions would be eligible for parole after serving three-quarters of the sentence, after two-thirds of the sentence for those in medium-security institutions and after half of the sentence for those in low-security institutions. Another advantage to this is that it would reduce the costs of the correctional system.

22 Of course the sentencing judge or the court hearing the case may also revoke probation if there are any other legal grounds on which to do so.

only if there are no other legal obstacles to this change.²³ In the event that the obligations assumed under the agreement were not fulfilled, the judge of punishments could revoke – as a quasi-sanction – any earlier ruling that granted a milder degree of punishment.

Within the *sui generis* conditional release or reduction in degree of punishment granted by the judge of punishments, the roles of prosecutor and defence counsel can easily be circumscribed, as they can use the same instruments (motion, appeal) that are available to them in other proceedings of the judge of punishments. In addition to special proceedings for the revocation of probation, the judge of punishments would currently also have access to proceedings of this nature²⁴ which, similarly, can be raised by a motion of the prosecution requesting that the matter be heard by a judge.

Mediation carried out between a person sentenced to imprisonment and the victim is most easily carried out in the institution where the offender is held. In order to ensure, however, that mediators are able to perform their tasks appropriately within the penal institution, they should be granted the status of persons acting in the performance of their duties²⁵ and should be granted special access and rights with regards to their entrance into the penal institution, contact with the inmate. A special status should also be granted to victims participating in the mediation process.²⁶

It is also conceivable that mediation in the phase of execution of punishments could be used not only in cases of imprisonment but also in cases where other penal sanctions have been applied. For example, instead of public work, as a result of a successful mediation process, the offender could perform work for the victim by way of reparation, or compensation paid to cover the victim's material losses would result in the waiving in full or in part of a fine imposed. Considerations of this nature are not entirely new, as recommendations for the imposition of fines as reparations²⁷ have already been seen in the academic literature, but practical solutions applying the restorative approach can also already be seen in current legislation.²⁸

Mediation could be very effectively applied in disciplinary actions against inmates or in connection with the implementation of related sanctions. This type of mediation increases or contributes to the practical significance to inmates of avoiding any disciplinary cita-

23 However, a serious disadvantage to this is that the convict remains in the penal institution, thus significantly reducing the chance that reparations will be made.

24 See section 9 of the Penal Institutions Act.

25 A person acting in the performance of official duties or providing services must hold and present identification papers, documents, a ruling, a letter of authorisation or a power of attorney concerning the performance of these duties, and is granted access to the penal institution in order to perform these duties in as specified by law. Once inside the institution, this person can generally have unmonitored conversations with the inmate – although security measures still apply

26 The current Decree 44/2007 (IX. 19.) of the Ministry of Justice which provides detailed regulation of entry to and exit from the premises of penal institutions as well as the presence of external persons in these institutions should also be amended accordingly.

27 See e.g. György Vókó: *A magyar büntetés-végrehajtási jog.* (Hungarian Correctional Law) Dialóg Campus Kiadó, Budapest, 1999. 89.

28 Under Swiss penal law, any fines paid by the offender, objects or assets belonging to the offender seized or confiscated by the state can be used to compensate the victim for damage sustained. (A. Tünde Barabás, (2004): *ibid.* 89).

tions or sanctions that might later constitute an obstacle to eligibility for probation or the granting of other favourable conditions, while the judge of punishments would be most appropriate in reaching a decision closing a mediation process in offences punishable by sanctions other than imprisonment (for the reasons already specified above). Where mediation is carried out in connection with matters with relatively minor sanctions and this task is performed by the penitentiary institution, it would be expedient to ensure that a judicial review (to appeal a decision reached by the penal institution) is accessible, in order to ensure legality and the respect of human rights.

Special rules on mediation within penal institutions (such as provisions determining the scope of authority of the judge of punishments) should be enacted in the Criminal Code²⁹ Of course this would not exclude the provisions of the Mediation Act specified in the Criminal Code (e.g. aim of the mediation process, regulations applying to mediators, etc.) from being applicable in this process as well. Accordingly, detailed regulations on mediation carried out in disciplinary matters would be placed in the Ministry of Justice Decree 11/1996 (X.15.) on the disciplinary responsibility of inmates in penitentiary institutions.

Closing reflections

The institution of penal mediation is still only narrowly practiced worldwide, and it is also undisputable that it promises less positive results than those offered by mediation during criminal proceedings. There are very few examples before us, but Hungarian pilot projects in this area are also worth considering in addition to those solutions used in Western Europe. Given the particularities of Hungary's continental legal system, the main option open to it is the "Belgian way", that is, penal mediation is only conceivable in the context of adequate national legislation that also takes local characteristics into account.

Mediation in the phase of execution of punishments is not a panacea (no more than is mediation in general or restorative justice), and its application cannot in itself provide a definitive solution to the problems that arise in connection with the traditional administration of penal sentences. Notwithstanding, we should not rule out the use of this means which can prove to be of benefit to the offender, the victim, the state and society as a whole.

29 Ideally, these regulations should be placed in a new Act on corrections.

England

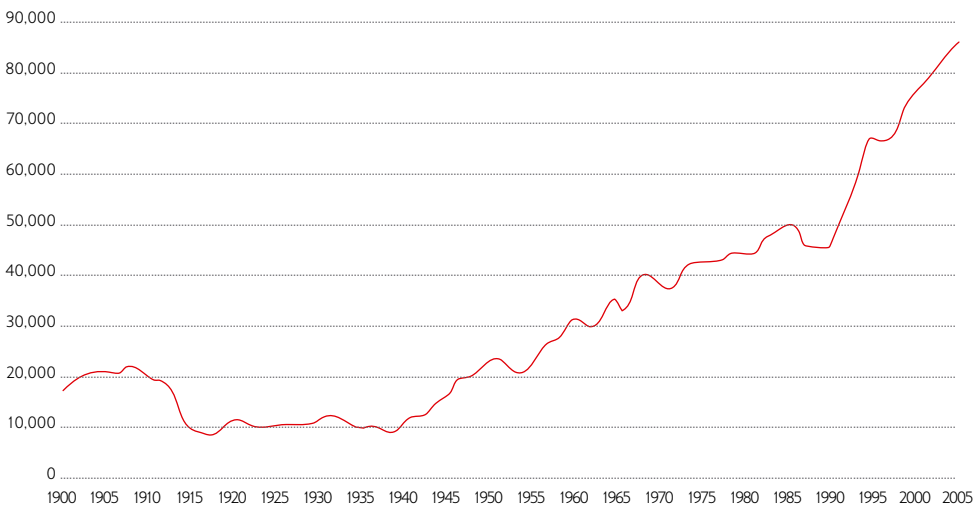
RESTORATIVE JUSTICE AND THE SECURE ESTATE: ALTERNATIVES FOR YOUNG PEOPLE IN CUSTODY

Introduction & Problem Statement

In England and Wales, the prison population stood at 85,494 (October 2010). This accounted for 2,150 places above the usable operational capacity of the prison estate, and it is forecast to rise to 94,000 before the next general election (Berman 2010: 1). There are 139 prisons including high security prisons, local prisons, closed and open training prisons, young offender institutions (for young prisoners under the age of 21) and remand centres².

The statistics on young prisoners³ are not encouraging either. In September 2010, there were 1,637 young people (15-17 years) in prison, 273 children (12-15) in privately run secure training centres (STCs) and 160 in local authority secure children homes (SCHs). In addition, there were 10,114 young adults (18-21) in prison (Berman 2010: 7). According to the Offender Management Caseload Statistics, in 2009, the UK had 151 prisoners per 100,000 population, the second highest rate in Western Europe, below Spain (Ministry of Justice 2009). Figure 1 illustrates the increase in prison population in 1987-2007.

Figure 1: Statistics on prison population, England & Wales 1900-2009 (MoJ 2008)



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2 Most prisons in England and Wales are in the public sector, and these are managed by the National Offender Management Service (NOMS). There are 11 privately managed prisons in England and Wales.

3 Young prisoners in England and Wales are those prisoners aged between 15 and 21 years, the group being broken down into young people (15-17 years) and young adults. Young adults are those aged 18-20 and those 21 year olds who were aged 20 or under at conviction who have not been reclassified as part of the adult population.

Compared to the prison population in other Western European countries, England and Wales comes at the top with 148 people per 100,000 population (see Figure 2). Compared to the rest of the world, England and Wales comes 10th with the US at the top (International Centre for Prison Studies 2010).

Figure 2: Prison population in Western Europe (Walmsley 2009)

Country	Prison population	Population per 100,000	Jail occupancy level %	Un-sentenced prisoners %
ENGLAND/WALES	80,002	148	112.7	16.4
GERMANY	77,166	94	96.5	17.1
SPAIN	63,991	144	129.5	23.5
ITALY	61,721	104	131.5	35.9
FRANCE	52,009	85	109.9	31.5
NETHERLANDS	21,013	128	95.6	30.0
PORTUGAL	12,765	120	103.7	23.8
BELGIUM	9,597	91	110.6	37.2
AUSTRIA	8,766	105	107.2	22.6
SWEDEN	7,450	82	102.7	20.3
SCOTLAND	6,872	134	107.5	21.0
SWITZERLAND	6,111	83	93.4	39.0
FINLAND	3,954	75	112.4	11.6
NORWAY	3,048	66	92.1	15.9
N IRLAND	1,375	79	91.5	37.4

According to 2010 Ministry of Justice data, the reoffending rate post-custody⁴ is high compared with other disposals. While the overall reoffending rate across all disposals is 40%, the offending rate post-custody is almost 50%, meaning that approximately half of all offenders sentenced to prison will go on to commit a further offence (Ministry of Justice 2010b). Figure 3 illustrates a stable increase in the amount of custodial sentences given for 10-17 year old in 1989-2007 rising from just above 2000 to almost 8000.

⁴ This is the percentage of offenders who are proven to reoffend within one year.

According to the Ministry of Justice, the two key factors that caused the increase in the prison population of England and Wales (1996-2009) are “tougher sentencing and enforcement outcomes” imposed by the legislative, and “a more serious mix of offence groups coming before the courts” (Ministry of Justice 2009b). Appendix 1 lists some of the key laws impacting on the prison population in England and Wales in 1996 – 2009.

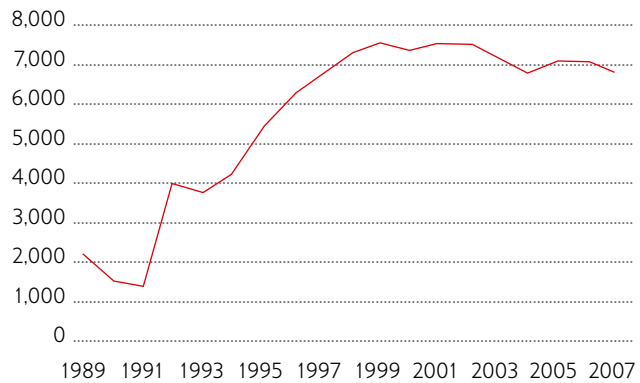


Figure 3: Custodial sentences for 10-17 year olds 1989-2007
(Hagel 2005)

In June 2010, the justice secretary under the new UK coalition government launched a scathing attack on what many newspapers called the “Victorian bang'em up prison culture” of the past 20 years (Travis 2010). “Banging up more and more people for longer is actually making some criminals worse without protecting the public” the justice secretary said in his speech at the Centre for Crime and Justice Studies in June 2010.

In December 2010, the UK coalition government published the Green Paper “Breaking the Cycle”, announcing its intentions for key reforms to the adult and youth justice sentencing philosophy and practice. This consultation set out the resulting proposals which aim to break the destructive cycle of crime and protect the public, through more effective methods of punishing and rehabilitating offenders and by reforming the sentencing framework. The Ministerial Foreword noted: “There is much work to do in a criminal justice system which is so badly in need of reform ... We will simplify and reduce a great mass of legislation ... We will put a much stronger emphasis on compensation for victims ... I think it is right to describe these reforms as both radical and realistic” (Ministry of Justice 2010: 2).

In the eyes of a criminologist, or indeed any thinking citizen, the Green Paper’s proposals come as no surprise. In a financial climate where public services are being reduced, legislative reforms are expected. Independently of the motives behind the review of our sentencing philosophy and practice, the aforementioned developments provide a unique opportunity for also renewing our social contract for law and order in modern society.

Focusing on young people, this paper presents the findings of a three year study, which looked at the use of restorative justice (hereafter RJ) in the “juvenile secure estate”⁵. The project employed a combination of qualitative research methods including a review of the extant literature.

The assumptions and research hypothesis for the study were originally based upon the 2004 Youth Justice Board (YJB)⁶ report “Restorative Justice in the Juvenile Secure Estate”. The YJB report aimed to establish the scope of RJ work that was being undertaken at the time within custodial and secure establishments, and to identify and disseminate good practice. The 2004 report also aimed to establish the extent to which RJ influences the regimes and programmes in secure institutions. Amongst other things, the YJB study concluded: “While existing research generally supports the idea that RJ can be effective in working with young people in the community, there is only limited (albeit encouraging) evidence of its effectiveness within custodial and other secure settings. There are isolated examples of good practice ... but there is no common understanding of what is meant by RJ and no policy guidance from the centre. A project could be set up ... to explore the potential of a range of restorative interventions” (Youth Justice Board 2004: 6).

Despite scarce evidence, inconsistent evaluation of existing practices and a conclusion that “there is currently little RJ intervention of any kind taking place in Young Offender Institutions (YOIs) or in the juvenile secure estate” (Youth Justice Board 2004: 5), the 2004 report recommended that the “YJB should devise and publicise a strategy for RJ in secure institutions for young people”. It also called for investing in prison staff training in RJ as well as the production of protocols and guidance for prison governors (Williams 2004: 191).

Consequently, in 2006 the YJB published its Action Plan “Developing RJ,” stating that it wants to “broaden, develop and extend the practice of RJ within the youth justice system” (Youth Justice Board 2006: 3). “In YOIs, RJ can be used as part of the adjudication process. Secure training centres and secure children’s homes can use RJ in equivalent processes” the report said. It also committed to commissioning a further review of current RJ practice to inform a strategy that will “promote RJ among key local and national partners and stake-

5 In England and Wales, the main custodial sentence for young people (10-17 at the time of conviction) is the detention and training order. Young people may also be sentenced to extended determinate or indeterminate sentences under Sections 226 and 288 of Criminal Justice Act 2003. There are three types of secure accommodation in which a young person can be placed: (1) Secure training centres (STCs); STCs are purpose-built centres for young offenders up to the age of 17. They are run by private operators under contracts, which set out detailed operational requirements. (2) Secure children’s homes, which are generally used to accommodate young offenders aged 12 to 14, girls up to the age of 16, and 15 to 16-year-old boys who are assessed as vulnerable. They are run by local authority children services, overseen by the Department of Health and the Department for Education. (3) Young offender institutions (YOIs). YOIs are facilities run by both the Prison Service and the private sector and can accommodate 15 to 21-year-olds. They will only hold females of 17 years and above.

6 The Youth Justice Board for England and Wales (YJB) is an executive non-departmental public body. It oversees the youth justice system in England and Wales and aims to prevent offending and reoffending by children and young people under the age of 18.

holders in the youth justice systems” (p 6). The strategy would also support approaches to managing the custodial community as well as making RJ a part of sentence plans”.

As this paper’s evidence will suggest, four years after the publication of the YJB Action Plan, a consistent and measurable model of RJ in the secure estate is yet to be developed⁷. It is not the intention of this paper to analyse the policy, political or other reasons behind this⁸. It is also not the intention of the research to speak for, or against, RJ. Gavrielides argued that the focus of RJ researchers should move away from arguments on the paradigm’s superiority and towards an understanding of what really works and when it works (Gavrielides 2008). Gavrielides also warned that “RJ might not be a *bed-time story* any more, but is not a panacea for all the deficiencies of the current criminal justice system either” (Gavrielides 2007: 9).

This paper aims to achieve three objectives. Firstly, it will attempt an up-to-date descriptive account of RJ practices within the juvenile secure estate and prisons more generally. As the central focus of the research was the use of restorative justice with young people, our account could not be limited to the juvenile secure estate. For instance, our research looked at issues of classification, definition and understanding. We also attempted to map existing practices in the hope that our devised classification can be put in the context of actual practice and reality.

Secondly, the paper will present a critical overview of existing RJ practices with the objective of establishing the extent to which they influence the regimes and programmes of the secure estate. Anecdotal evidence and testimonies from those directly involved in their delivery will be used to assess the impact that these practices are having on the offender, the victim, the institution and the community. A cost-benefit analysis of restorative justice will also be attempted.

Thirdly, looking at the YJB 2004 recommendation for a RJ strategy in the juvenile secure estate, this paper will explore the potential of such an approach, its viability and practicalities in the secure estate more generally. The fieldwork data will also aim to place this recommendation in the context of today’s policy framework, proposed legislative changes and institutional restructure. It will also point out the barriers and available levers for the implementation of such strategy.

7 The 2006 YJB Behaviour Management Code for the Secure Estate is seen by some as a testament to the YJB’s proven effort to show that RJ is an effective approach and that institutions should thus embed it. It is also worth noting that the secure estate has since undergone restructuring and de-commissioning.

8 In October 2010, the government announced that the YJB will be abolished and its powers transferred to the Ministry of Justice.

Project background & research methodology

This paper reports on the findings of the UK project that was conducted by Independent Academic Research Studies (IARS). The aforementioned three objectives of this paper reflect the key aims of the UK research project.

When considering the research strategy of the UK project, qualitative research was thought to be the most appropriate method. It was not the intention of the research to paint a quantitative picture of RJ in the secure estate. If such a study were ever possible, it would require an incredible amount of resources and time. In fact, some have argued that it is highly unlikely that such a scientific analysis can ever be achieved due to an array of factors, such as sampling limitations, movement in the sample population, definitional confusion, access barriers, agreement on outcomes and issues of confidentiality and ethics (see Marshall and Merry 1990: 20, Gavrielides 2007: 173).

The research design aimed to combine various qualitative methods with a view to ensuring that the results were as accurate as possible. The research adopted the “non-probability sampling” methodology and the rules governing “convenience sampling” more specifically. Therefore, it was essential that the limitations surrounding this approach were acknowledged. Bryman, for instance, warns that the generated data cannot be used as the only basis for generalised conclusions. The yielded information, he said, “will only provide an insight into the sample’s views and attitudes towards the discussed topics” (Bryman 2004: 100). However, concerns about external validity and the ability to generalise do not loom as large within a qualitative research strategy as they do in quantitative research⁹.

According to Shaw, studies that are carried out with non-probability sampling are not interested in working out what proportion of a population gives a particular response, but rather in obtaining an idea of the range of responses regarding ideas that people have (Shaw 1999). More importantly, according to Shipman, the dangers inherent in any generalisation of data derived from the responses of a non-probability sample will be minimised if analysed in conjunction with evidence from the extant literature. To achieve this, a “triangulation” of the collected information will have to be attempted (Bryman 2004; Shipman 1997). According to Bryman, triangulation is the process whereby: “the results of an investigation employing a method associated with one research strategy (e.g., questionnaires) are cross-checked against the results of using a method associated with another research strategy (e.g. interviews)” (2004: 454)¹⁰. Accepting that the survey’s data derived from personal perceptions

9 In qualitative research, the orientation to sampling is more likely to be guided by a preference for theoretical sampling than with the kind of statistical sampling. Bryman concludes that “There is a much better fit between convenience sampling and the theoretical sampling strategy of qualitative research” (2004: 102).

10 In terms of what is achieved through triangulation, Guion explains that this “is a method used by qualitative researchers to check and establish *validity* in their studies (Guion 2002: 1). “Validity” in qualitative research relates to whether the findings of a study are “true” and “certain” (Guion 2002). Guion suggests that “true” should be interpreted to mean “findings accurately reflecting the real situation”, while “certain” could be read to mean “findings being backed by evidence” (i.e. the weight of evidence supports the conclusions) (Guion 2002: 1). Deacon et al said that “Increasingly, triangulation is also being used as a process of cross-checking findings deriving from both quantitative and qualitative research” (Deacon et al. 1998: 47).

and did not constitute universal truths, the project employed triangulation to mitigate the limitations of its sampling methodology.

The UK project therefore started with an overview of the extant literature. It was then officially launched with an expert three day seminar that took place in London in November 2009. Thirteen Hungarian criminal justice professionals (i.e., prison governors, probation staff, judges, prosecutors, and researchers) attended workshops organised by IARS in partnership with Prison Reform Trust, NACRO, Southwark Youth Offending Team, London Probation, Dr. Martin Wright, and the Register of RJ Practitioners (see Gavrielides 2011).

The preliminary findings from the workshops were complemented with a focused literature review, followed by original qualitative research that combined 20 in-depth interviews with prison governors, RJ practitioners, policy makers and academics (see Table 1). The fieldwork also included observation of a RJ practice and five in-depth interviews with young people who had received a custodial sentence and had direct experience with RJ.

INTERVIEWEE	AREA OF EXPERTISE
HMP Grendon and Spring Hill, Prison Governor (retired)	Prison and RJ
Hull University, Research Director MA in RJ	Research on RJ, academic
Prison Reform Trust, Head of Research	Prison and RJ Policy
Youth Justice Board, Director of Secure Accommodation	Prison and RJ
Association of RJ Practitioners	RJ practitioner
HM Prison Hewell National Offender Management Service, RJ Manager	Prison and RJ
Lambeth Mediation Service, mediator	Research on RJ, academic
Prison Fellowship International US Sycamore Tree Programme Director (retired)	Policy expert
West Midland Probation Service, Victim- Offender Development Manager	RJ Practitioner
Board member, Youth Justice Board	Youth Justice Policy
Safer London Foundation, Director (retired)	Criminal Justice Policy
NACRO, Head of Policy	Criminal Justice Policy
European Forum for RJ, Chief Executive Officer	Research and policy on RJ
Centre for Justice and Reconciliation at Prison Fellowship International, Executive Director	Research and policy on RJ, academic
Independent RJ Trainer and Researcher	Research, evaluation and training on RJ
Home Office, Anti-social behaviour and youth crime unit	Youth Justice Policy
Southwark Mediation Centre, Project Manager	RJ Practitioner
Open University, Senior Lecturer	Youth justice policy
London Probation, Project Manager	RJ Practitioner
Metropolitan Police Service, Detective Chief Inspector	Criminal Justice Practitioner

Table 1: Profile of project interviewees

The UK research was concluded with an expert half day seminar that was held in London in November 2010. The seminar was organised by IARS in partnership with the Open University¹¹. Forty experts in the field of RJ, policy and criminal justice attended the seminar. Participants included public bodies such as the Ministry of Justice, NOMS, Home Office, Youth Justice Board, Equality and Human Rights Commission and Probation, independent organisations such as Prison Reform Trust, RJ Council and Victim Support, RJ community based practices such as Southwark Mediation and College of Mediators and prison staff. Academics and researchers in the field of RJ also participated in the discussions.¹²

1. Understanding restorative justice in the secure estate

1.1. Definitions & categorisations

Arguably, the term “restorative justice” was first introduced in the contemporary criminal justice literature and practice in the 1970s¹³. Van Ness and Strong (1997: 24) claimed that the term was coined by Albert Eglash in a 1977 article (Eglash 1977), but then (2010) cited research by Skelton (2005) who found that the 1977 chapter was a reprinted article from a series that Eglash published from 1958-59¹⁴.

Despite a plethora of definitions and studies on the meaning of RJ, there is still conceptual ambiguity (see Mackay 2002; Johnstone 2002; Gavrielides 2008; Artinopoulou 2010a). For the purposes of the MEREPS project, Gavrielides’ definition is accepted. “RJ is an *ethos* with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue” (Gavrielides 2007: 139). According to Gavrielides, “RJ adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals” (139).

Gavrielides understands the term “ethos” in a broad way. “RJ, in nature, is not just a practice or just a theory. It is both. It is an ethos; it is a way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist” (Gavrielides 2007: 139). For Braithwaite (1996) and McCold (2000), the principles underlying this “ethos” are: victim reparation, offender responsibility and communities of care. McCold argues that if attention is not paid to all these three concerns, the result will only be partially restorative. In a similar vein, Daly (2002) said that RJ places “...an emphasis on the role and experience of victims in the criminal process” (p.7), and that it involves all relevant parties in a discussion about the offence, its impact and what

11 <http://www.iars.org.uk/content/drawing-together-research-policy-and-practice-restorative-justice-0>

12 To download the expert seminar report http://iars.org.uk/sites/default/files/RJ%20Seminar%20Nov%202010%20report_Final.pdf

13 The first contemporary RJ practice took place in Ontario (Canada) when Yantzi, a probation officer, initiated the Victim Offender Reconciliation Programme (Yantzi 1998).

14 Skelton found that Eglash source was Heinz Horst Schrey’s 1955 book *The Biblical Doctrine of Justice and the Law*, originally published in German and then translated and adapted into English.

should be done to repair it. The decision making, Daly said, has to be carried out by both lay and legal actors.

The RJ ethos, as defined by Gavrielides, and the RJ principles, as developed by Braithwaite and McCold, must lead to certain outcomes if a practice is to remain genuinely restorative. Focusing on the application of RJ with young people, according to the YJB, these RJ outcomes are:

- ▶ “victim satisfaction – reducing the fear of the victim and ensuring they feel “paid back” for the harm that has been done to them;
- ▶ engagement with the young person – to ensure that they are aware of the consequences of their actions, have the opportunity to make reparation and agree a plan for their restoration in the community;
- ▶ creation of community capital – increasing public confidence “in the criminal justice system” (Youth Justice Board 2008).

Attempts to classify RJ practices in prisons have also been numerous (see Immarigeon 1994; Liebmann 2004; Edgar and Newell 2006; Van Ness 2007; Dhami et al 2009). These codifications tend to change depending on a range of factors such as the origin of the programmes’ agencies (Immarigeon 1994), the programmes’ objectives (Van Ness 2007), the programmes’ inclusion of all, few or none of the harmed parties (Newell 2002), or the programmes’ impact on the organisational and cultural aspect of prisons (Johnstone 2007).

The latest literature groups prison-based RJ projects into five broad categories (Dhami et al 2009: 438). The first category is “offending behaviour programmes,” such as Alternative to Violence (AVP) workshops. They are attended voluntarily by prisoners, but they do not include victims (Bitel and Edgar 1998). The second is “victim awareness programmes,” such as the Sycamore Tree Project developed by Prison Fellowship (Prison Fellowship 1999). They are attended voluntarily by prisoners who are given the opportunity to interact (either in a direct or indirect way) with “surrogate victims”¹⁵. They are usually delivered in group sessions and do not include restitution to their own victims, but provide opportunities for offenders to make symbolic acts of remorse such as poems, letters and craftwork. The third is “community service work,” which includes projects that teach prisoners skills through work in the community that not only benefits the public but also prisoners’ prospects for post-release success and integration (Carey 1998). They do not involve interaction with the victim and are fairly prevalent in British prisons (Liebmann 2007). The fourth category is “victim offender mediation,” which includes an encounter (direct or indirect) with the prisoner and their victim. The final category refers to prisons with a complete RJ philosophy. This refers to institutions that have adopted RJ not just as a practice for the prisoners, but also as an ethos and philosophy that guides their policies and procedures, induction programmes, anti-bullying strategies, staff disputes, race relations, resettlement

15 This is a term used to refer to victims who are involved in similar crimes but they do not relate to the offender directly.

and release strategies (Robert and Peters 2002). Table 2 provides an illustration of the aforementioned five categories.

Table 2: Categorisation of prison-based restorative justice projects

CATEGORIES OF PRISON-BASED RJ PROJECTS	KEY CHARACTERISTICS
1. Offending Behaviour Programmes	No encounter with victims; no direct reparation
2. Victim Awareness Programmes	Encounter with surrogate victims; no reparation to the direct victim
3. Community Service Work	No encounter with the victim; no direct reparation
4. Victim Offender Mediation (direct & indirect)	Encounter with the victim; direct reparation
5. Prisons with a complete RJ philosophy	Encounter with the victim; direct reparation

Based on Gavrielides' definition, only two of these categories can be classified as restorative justice (Victim Offender Mediation and Prisons with a complete RJ philosophy). This is because in the first three categories the element of a "direct/indirect encounter" with the affected parties is missing. It is true, however, that some RJ proponents have advocated for a wider understanding of RJ. For instance, Bazemore and Walgrave (1999) said that RJ "consists of every action that is primarily oriented towards doing justice by repairing harm that has been caused by crime" (p. 48). This approach is not adopted by this paper.

1.2. Restorative justice and prisons: friends or foes?

There is still strong debate both inside and outside the RJ movement about the compatibility of the RJ philosophy within the practice of imprisonment. This was reflected in some of the interviewees' reluctance to take part in the survey, as they believed that their involvement in a research project on prisons would undermine the development of RJ. We believe that this reluctance reaches deep into the very foundations and history of RJ. When the notion of RJ was first coined in the early 1970s, RJ advocates such as Cantor (1976), Christie (1978), Barnett (1977), Thorvaldson (1978) and Zehr (1990) portrayed the relationship between the then emerging RJ and the existing criminal justice system as being "polar opposites" in almost every aspect. Cantor (1976), for instance, argued in favour of a total substitution of civil law for criminal law processes with a view to "civilising" the treatment of offenders.

Barnett spoke of a "paradigm shift" (1977)¹⁶, defining "paradigm" as "an achievement in a particular discipline which defines the legitimate problems and methods of research with-

¹⁶ See his 1977 article with John Hagel, where they argued for the abolishment of criminal law, and its replacement with the civil law of "torts". They suggested that restitution constitutes a new paradigm of justice, one that is preferable to criminal justice (Barnett and Hagel, 1977).

in that discipline" (1977). Barnett claimed that we are living a "crisis of an old paradigm"¹⁷ and that "this crisis can be restored by the adoption of a new paradigm of criminal justice-restitution" (1977: 280). Christie¹⁸ claimed that the details of what society does or does not permit are often difficult to decode, and that "the degree of blameworthiness is often not expressed in the law at all" (p 5). Christie argued that the State has "stolen the conflict" between citizens, and that this has deprived society of the "opportunities for norm-classification" (p 5).

By introducing RJ as a radical concept, its proponents were hoping to make the then new concept of RJ appealing and interesting enough for writers and politicians who knew nothing about it. However, once the excitement was over, and while RJ was leaving the phase of "innovation" to enter the one of "implementation", its advocates (e.g. Braithwaite 1999) started to talk about the need to combine its values and practices with existing traditions of criminal practice and philosophy.

However, RJ purists continue to believe that RJ should sit outside the current criminal justice system, including prisons. Some hold the view that, if integrated into current traditions of punitive philosophy, some restorative practices will be co-opted, while others will be marginalised and gradually withdrawn (see Edgar, and Newell 2006, Gavrielides 2008, Dhimi et al 2009). The most critical view from the interviews came from a leading practitioner who said: "I have strong concerns not just for RJ but for any humane practice that is introduced in prisons as this tends to make public and prisoners feel that imprisonment is not as bad as originally thought". The same practitioner, however, moved onto say: "However, being a realist, I am conscious not to deprive offenders and victims the option to meet if they both wish to do so".

This tension is particularly visible in the RJ movement, and it has repeatedly led to misconceptions and disagreements. It has also created tendencies to either playing up or down differences and similarities between RJ and the criminal justice system. These are often exemplified by a reluctance from a number of RJ advocates to acknowledge that the criminal justice system comprises certain restorative elements (e.g., in the form of victim impact statements, community service and victim compensation).

More importantly, as Johnstone (2007) argues, the RJ movement has had little success in its efforts to encourage the use of RJ as alternatives to imprisonment. As such, a normative discussion on wishful thinking and untested potential makes no contribution to the construction of implementation models and policy. Similarly, Immarigeon (2004: 144) argued: "RJ measures rarely divert anyone from imprisonment ... Some evidence exists that New Zealand is using RJ as an alternative to detention, but even that evidence is weaker than one would hope for".

17 One of the most influential books on "paradigm changes" is by Kuhn (1970). There, Kuhn claimed that paradigms can replace each other, causing a "revolution" in the way we view and understand the world. What can cause such a change is a "paradigm crisis".

18 Nils Christie is considered a leading proponent of the "Informal Justice" movement. After "Conflicts as Property", he published "Limits to Pain", where he showed the connection between the "theft of conflicts" that he advanced in the article, and the use of punishment (Christie 1978).

Admittedly, MEREPS, the larger EU programme within which this project is placed, has accepted a priori that the goal of a large scale replacement of imprisonment with RJ is unlikely to be achieved in the short-medium term¹⁹.

Consequently, MEREPS joined a number of other research and campaigning initiatives that aim to experiment with the application of the principles of RJ within prison settings.

However, it also has to be accepted that the scepticism about restorative imprisonment derives from more than just “blue sky thinking” by abolitionists and RJ purists. As Guidoni (2003) argues, the possibility of integrating the constructive ethos of RJ within a punishment-based social institution, such as the prison, is highly problematic in philosophical terms.

For instance, the findings of a two year (2001-2003) evaluation of a RJ programme (*A Bridge Towards New Horizons*) in Turin prison (Italy) concluded that: “RJ cannot be assimilated into the ideology and practice of punishment, if we mean by punishment negative sanctions for a crime – those inflicted on a convicted person by a judge under the rules and guarantees of the penal trial” (Guidoni 2003: 57). Guidoni argues that, before the potential of RJ in the prison estate is explored, we need to be able to develop a robust philosophical understanding of two preliminary questions. First “is RJ itself a form of punishment” and secondly “does it have common features with rehabilitation and retribution”?

In a similar vein, Gavrielides (2005: 87) asked: “Does RJ belong to the world of theories or is it merely an alternative criminal justice process”. The debate on RJ’s relationship with punishment has been particularly interesting and extensive. To give some examples, Daly takes RJ to be punishment, because it leads to obligations for the offender (Daly 2000). On the other hand, McCold (1999) rejects the idea of including coercive judicial sanctions in the restorative process, as they might shift RJ back to being punitive. Marshall (1996) claims that non-coercive processes are not always achievable, and that coercive measures must be considered. However, this should be done through the criminal justice system. He argued that this is where RJ should end, and where the traditional system should take over.

For the sake of brevity, I will attempt to divide the many views from the extant literature on RJ’s relationship with punishment into two broad categories. I will also add a third category developed by Gavrielides (2005).

The first denies that RJ measures can, in any way, be punitive (Wright 1996). The second argues that RJ is not an “alternative to punishment,” but “alternative punishment” (Duff 1992). The argument of the first group is that restorative measures’ primary purpose is to be constructive. Therefore, they are not inflicted “for their own sake” rather than for a higher purpose (Walgrave and Bazemore 1999: 146). The second group, however, has argued that “this purported distinction is misleading because it relies for its effect on the

19 For a general guide to further reading see Van Ness (2007), Guidoni (2003) and Robert and Peters (2003). For initiatives in the UK see Stern (2005), Edgar & Newell (2006) and Liebmann (2007).

confusion of two distinct elements in the concept of intention. One element relates to the motives for doing something; the other refers to the fact that the act in question is being performed deliberately or wilfully” (Dignan 2002, 2003: 179).

Gavrielides introduces a different type of punishment. He argues that in practice there are only two kinds of *ποινή* (poene/ punishment/ pain). “The first is what we *experience today*, as the outcome of a criminal process, and is based on the understanding of the punitive paradigm. The second is what we *normatively experience* in a restorative process, and has little to do with what retribution and other punishment theories deal with”. Gavrielides names this type “Restorative Punishment” (p 91). He argues that, irrespective of whether we decide to go with the first group of critics who deny that restorative measures are punitive or with the second who claim that they are alternative punishments, we still have to accept that RJ is surely neither punishment nor is it interested in it, at least in the form that it has taken under the punitive paradigm of our criminal justice systems. Gavrielides moves on to conclude that “Restorative Punishment aims to restore the harm done. Deterrence (general or specific) might be welcomed as a side effect, but is not among the primary goals of restorative measures, nor is retribution for what was done” (p 93)²⁰.

In Gavrielides’ understanding of “restorative punishment”, prisons and the RJ ideals and goals are not mutually exclusive. Although he does not accept that RJ is punishment in the traditional criminal justice sense, he argues that in the context of “restorative punishment” deterrence is a welcomed side effect. As argued by both utilitarian and libertarian schools of thought, deterrence is also one of the primary goals of imprisonment. However, “Restorative punishment” entails pain and has serious precautions for all parties involved.

In fact, “restorative punishment” shares similar objectives with imprisonment and hence RJ and prisons are not mutually exclusive. The critique, however, is important as it helps us to identify a number of aspects of imprisonment which conflict with the ethos of RJ (Johnstone 2007). Like Johnstone, I also have to agree that there is a huge gap between the environment of a prison and the ethos of RJ. As he also points out, “there is also a very large gap between the environment of many parts of contemporary society and the ethos of RJ” (p 20). And yet RJ is implemented in the community, I would add.

Subsequently, we have concluded that RJ and imprisonment strategies can be pursued concurrently and that the two can be complementary in achieving crime reductions goals such as deterrence (common feature of both), incapacitation (feature of imprisonment) and restitution/ healing (feature of RJ).

1.3. Restorative justice in the books vs. restorative justice inaction: maintaining the restorative justice ethos

There seemed to be consensus among the sample that their experience of RJ on the ground had little to do with the normative vision of the notion. For instance, the interviewed prison governors/ staff and RJ practitioners/ proponents agreed that when RJ is implemented in the secure estate there is little awareness of it, even by the very agents

20 Marshall's (2001) understanding of punishment also seems to be aligned with Gavrielides' (2001).

implementing it. “Most of the times, prison staff will not realise they are doing RJ, when they are”, one policy maker said. “One of the difficulties of identifying, measuring and rolling out RJ in the secure estate is that in the everyday reality of prison staff and in the chaotic lives of young offenders, it cannot be pinned down as one isolated practice or phenomenon”, one practitioner pointed out. The interviewee continued: “when there is appetite for RJ in a juvenile institution, it will mostly be done in bits ... some will use it for educational purposes, others for psychological support and mentoring and others for healing, whether of the young person or the affected community”. This finding resonates with many RJ authors who have continuously warned the movement to be cautious when claiming a practice to be restorative for funding or evaluation purposes (see Roche 2003; Zehr 2005; Gavrielides 2007).

Some interviewed practitioners who were open to the idea of a consistent and identifiable model of RJ within the secure estate warned of a potential threat of a narrow version of the practice.

“A narrow version of RJ will not allow us to apply the educational and other preparatory stages that are needed in order for any encounter to be attempted”, one interviewee said. The interviewed practitioners and prison staff also highlighted the extremely vulnerable nature of young people who tend to be very emotional and insecure individuals. A few interviewees also quoted examples to illustrate the fear that these individuals carry, not only in relation to their environment and themselves, but also of society and their victim. A young person who was interviewed and had undergone a RJ programme while in a secure institution said how scared he was when he was confronted with the idea of meeting the victim he had assaulted. According to the interviewee, the prison staff had to give him reassurances that the victim’s bag was searched for a gun that he thought would be used to get revenge for his wrongdoing.

A psychologist who was interviewed stressed the significance of being able to instil a sense of hope and confidence in young people while involving them in an RJ programme. The development of skills and the right attitude that will allow these convicted youngsters to be integrated back into society as successfully as possible were also highlighted.

All in all, the interviewees advocated for a RJ model that is flexible enough to accommodate the educational, psychological and other needs of young offenders but at the same time retain the core of the values underlying the RJ ethos.

1.4. “Preparatory” and “delivery” restorative justice programmes in prisons

The classification that was described above (see Table 2) was not thought by the interviewees to be helpful. For instance, one interviewee said: “I don’t find the five categories particularly accurate; how much restorative are offending behaviour programmes or community work”? Someone else said: “It is a useful typology ... but only for the literature. I am not sure it helps when it comes to doing RJ”. “RJ is harm-focused ... where is the restored harm in offending behaviour programmes”? Another practitioner said: “where is the encounter in AVP”?

Overall, there seemed to be a consensus in the interviews that current RJ practices in the prison estate should simply be classified into two groups: “preparatory” and “delivery”.

In the “preparatory practices” group, our research placed all practices that targeted only one party (i.e., offending behaviour programmes, victim awareness programmes and community service work). These practices were also characterised by a RJ *intention*, but not necessarily a RJ outcome. “Delivery practices” referred to programmes that involve a (direct or indirect) *encounter* (i.e., victim-offender mediation and prisons with a complete RJ philosophy). Delivery practices must be run with a restorative outcome in mind – irrespective of whether this is successful or not.

To better understand the proposed division of RJ practices in the prison estate, a review of existing programmes was carried out looking at examples from around the globe both in relation to adult and young offenders (see Table 3)²¹. Sources for seeking more information on each of these programmes are provided, as the limited scope of this paper does not allow a detailed examination of their individual practices. A caveat that needs to be mentioned relates to the “labelling” or “self-categorisation” of programmes as restorative. This definitional ambiguity is discussed by the paper in detail.

21 A thorough accounts of RJ in prisons can be found in Francis 2001; Liebmann and Braithwaite 1999.

Table 3: An up-to-date mapping exercise of RJ projects in prisons

NAME	COUNTRY	YOUNG PEOPLE/ ADULTS	CATEGORY
Sycamore Tree ^a project	Australia, Bolivia, Cayman Islands, Colombia, Commonwealth of Northern Mariana Islands, Costa Rica, England and Wales, Guam, Hong Kong, Hungary, Kazakhstan, New Zealand, Netherlands, Northern Ireland, Palau, Philippines, Rwanda, Scotland, Solomon Islands, South Africa, USA, Zambia	Both	Preparatory
SORI project ^b	England and Wales (mainly Cardiff prison)	Both	Preparatory
Hope Prison Ministry ^c	South Africa	Adult	Preparatory
Bridges to Life ^d	Texas, USA	Adult	Preparatory
Community based mediation	Examples from the UK: REMEDI (South Yorkshire), Kent Mediation, Thames Valley Statutory Adult Restoration Service (STARS) and West Yorkshire mediation.	Adult	Delivery
Probation based mediation	Examples from the UK: West Midlands, Kent, Avon and Somerset	Both	Delivery
Youth Offending teams based mediation	Examples from the UK: Leeds, Swindon, Torbay, South Devon, Lancaster, Cookham Wood.	Young people	Delivery
Victim offender dialogue programmes ^e	USA (24 states), Canada (Langley, British Columbia)	Both	Delivery
Prisons Transformation Project ^f	South Africa	Adult	Delivery
Corrective Services based mediation ^g	Australia, New South Wales	Adult	Delivery
Phoenix Zululand ^h	Zululand	Adult	Delivery
AMICUS girls restorative programme ⁱ	USA, Minnesota Correctional Facility	Adult	Delivery
Restorative conferencing ^j	UK, Medway Secure Training Centre	Young people	Delivery
Restorative adjudications ^k	UK: Brixton, Bullingdon and Grendon (male), Swinfen Hall (both), Cornton Vale (adult female), Ashfield, Brinsford, Huntercombe, Cookham Wood (young male), New Hall (young female)	Both	Preparatory

- a. As recorded in 2009 Sycamore Tree/ Prison Fellowship International: www.pfcjr.org
- b. See SORI Project (Supporting Offenders through Restoration Inside), Ministry of Justice: clifford.grimason@hmpps.gsi.gov.uk (originally developed by Cardiff Prison Chaplaincy).
- c. See Hope Prison Ministry, Cape Town, South Africa: www.hopepm.org/restore.htm
- d. See Bridges to Life, Texas: www.bridgestolife.org
- e. For further information see Umbreit et al 2003.
- f. See www.ccr.org.za/images/stories/pdfs/CCRAR_0708_pt2.pdf, pp.52-4
- g. See www.dcs.nsw.gov.au/offender_management/restorative_justice/newsletters/201002.pdf
- h. See www.phoenix-zululand.org
- i. See www.corr.state.mn.us/rj/documents/RJactivities2007.pdf
- j. Mainly used for bullying incidents and conflicts within prison.
- k. These are mainly used to deal with prison incidents such as assaults and thefts.

NAME	COUNTRY	YOUNG PEOPLE/ ADULTS	CATEGORY
Communities of Restoration (APAC) ^l	Argentina, Australia, Belize, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Ecuador, Germany, Hungary, Latvia, New Zealand, Norway, Singapore, USA	Both	Preparatory
Kainos Community Programme ^m	England and Wales (HMP The Verne, HMP Swaleside and HMP Stocken)	Adult	Preparatory
Prison Therapeutic Community Programme	England and Wales (HMP Grendon)	Adult	Preparatory
Alternative to Violence Project (AVP) ⁿ	African Great Lakes Initiative, Angola, Armenia, Australia, Azerbaijan, Belarus, Bosnia-Herzegovina, Brazil, Britain, Burundi, Canada, Colombia, Congo, Costa Rica, Croatia, Cuba, Dominican Republic, Ecuador, Georgia, Germany, Haiti, Hong Kong, Hungary, India, Indonesia, Ingushetia, Ireland, Japan, Jordan, Kenya, Lithuania, Macedonia, Mexico, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Russia, Rwanda, Singapore, South Africa, Spain, Sudan, Tanzania, Tonga, Uganda, Ukraine, USA, Zimbabwe	Adult	Preparatory
RJ in Prisons Project ^o	Belgium (Leuven Central, Hoogstraten School Centre, Leuven Hulp)	Both	Delivery
A Bridge Towards New Horizons	Italy (Turin prison)	Adult	Delivery
The Anne Frank Prison Project ^p	UK (Holloway, HMP Durham, HMP Highpoint, Oakhill STC, HMP Peterborough, HMP Highdown, HMP Wakefield, HMP Cookham Wood, HMP Bullingdon, HMP Werrington, HMP Swaleside, HMP Stanford Hill, HMP Gartree, HMP Edmunds Hill, HMP Carlford, HMP Newhall)	Both	Preparatory
Prison based mediation and conferencing ^r	UK (36 prisons)	Adult	Delivery
The Forgiveness Project ^s	UK (7 prisons: High Down, Guys Marsh, Featherstone, Wandsworth, YO1 Ashfield, HMP & YOI Parc, HMP Doncaster, Blantrye House (Resettlement), Huntercombe)	Both	Preparatory

- l. Country list as of 2009, see www.pficjr.org
- m. Country list as of 2009, for AVP in Britain see www.avpbritain.org.uk and internationally www.avpinternational.org
- o. For a detailed account of this programme see Aertsen and Peters 1998, Newell 2002a,b,c.
- p. Carried out by the Anne Frank Trust, see <http://www.annefrank.org.uk/node/50>
- r. This is based on Home Office (2005) RJ mapping exercise. Other projects not listed here but were in existence are: The inside out trust (preparatory), Victim Impact Groups in Bristol Prison (preparatory), Manchester Adult RJ Project (preparatory), the government funded project in HMP Bullingdon and Thames Valley, the government funded CONNECT project (25 prisons were running it), Wetherby YO1 (preparatory).
- s. See <http://theforgivenessproject.com/projects/prisons/>

1.5. Summary conclusions

In drawing a conclusion for our understanding of RJ in prisons, care needs to be taken not to raise false expectations. The extant literature and our findings from the fieldwork seem to suggest that the dynamic and personable nature of RJ practices require us to think about their classification in a manner that is consistent with the notion's evolving nature.

To sum up, so far, we have accepted that RJ and prisons are not necessarily mutually exclusive as some commentators have argued (Guidoni 2003).

This proposition is, of course, open for debate. The paper also endorsed the idea of “restorative punishment” and rejected the proposition that RJ can only be approached as an abolitionist concept. It therefore placed its investigation in the pool of research and campaigning initiatives that aim to experiment with the application of the principles of RJ within prison settings.

Our findings also suggest that a broader categorisation of existing practices in the secure estate is preferable. A mapping exercise of existing programmes in prisons was attempted, grouping them into “preparatory” and “delivery” categories. While the first group *aims to prepare* the victim and the offender to reach RJ outcomes (e.g., via an encounter), the latter *pursues these outcomes* directly/indirectly. However, both preparatory and delivery programmes must be based on the RJ ethos as this was described above.

Finally, the fieldwork also suggests that the fluid nature of RJ practices and their *ad hoc* implementation create a gap between *what is perceived to be RJ* and *what is stated*.

Consequently, despite genuine efforts to map these practices, including the effort made here, many good practices will remain in the shadows. The fact that they don't identify themselves as “restorative” does not mean that they aren't. This, of course, opens up a new debate for RJ proponents and researchers. For instance, if programmes are not identifying themselves as restorative, they are bound to remain in the shadow of research, evaluation and analysis. Questions are also raised in relation to consistency, risk assessment, and quality control.

2. A critical overview of restorative justice in the secure estate

Any attempt to develop a critical overview of a practice assumes that there is a level of homogeneity in its development and implementation. It also assumes that there are enough scientific studies and evidence to allow a worthwhile account of that practice. It should also be taken as a given that these studies are robust and that they had received enough attention from funders and researchers to produce viable scientific data.

However, as argued, there is lack of consistency in the delivery of RJ. The interviewees stressed that it is rather common for prison staff to practise RJ (principally the preparatory version) without any awareness or training. It was also pointed out that the evidence on RJ's

effectiveness in the secure estate is still accumulating. This finding chimes with the extant literature (see Francis 2001; Curry et al 2004; Johnstone 2007). Moreover, as suggested by the various mapping exercises, including the one carried out by this study, “there is currently little RJ intervention of any kind taking place either in YOIs or in the secure estate generally (Williams 2004: 191). Bearing these caveats in mind, this section will look at the scarce evidence and, in conjunction with the project’s qualitative findings, attempt a critical overview of key themes.

2.1. Restorative justice – the good news

Positive results were cited in relation to the “RJ in Prisons Project” carried out in three UK prisons (i.e., Bristol, Norwich and Winchester). The evaluation, which was funded by government and looked at several key indicators including the impact on offenders, victims, the community and the prison environment, highlighted key positive outcomes. Based on this project, Edgar noted: “With a little imagination, and a lot of courage, prisons could become a natural setting for RJ” (Edgar 1999: 6-7). Commenting on the same programme, Newell (see Figure 4) noted the “significance given to staff change by those who had worked with in the Restorative Prisons Project” (Newell 2002c: 22).

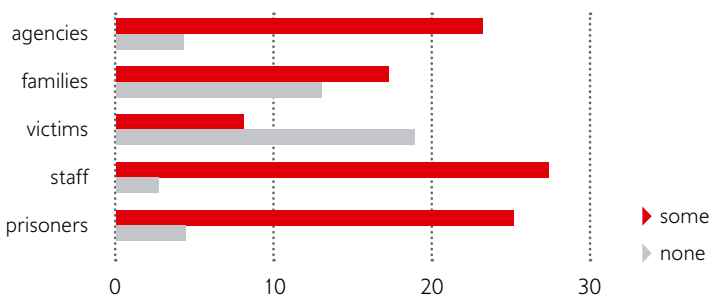


Figure 4: Restorative Justice in Prisons Project: impact on people (Newell 2002c)

Similar encouraging findings were cited for the Texas-based “Bridges to Life” project involving 24 prisons (see Table 3). Of 9,267 prisoners completing the programme, 3,602 have been released, of whom only 587 (16.3%) returned to prison²² (Bridges to Life 2010). According to Bridges to Life, their target to keep the re-conviction rate below 20% after three years’ release from prison is so far achieved.

The “Communities of Restoration Projects” (APAC), which create “prison communities” in which whole prisons are run along restorative lines²³, indicated a recidivism rate

22 10.2% of the 587 were returned based on new convictions and 6.1% on technical violations, 39% were returned for violent crimes.

23 APAC uses a combination of methods including pro-social modelling, direct and indirect meetings and discussions, group work and learning experience of community living. APAC is the acronym for the Portuguese name.

of 16% compared to the more usual 50-60%²⁴ (Liebmann 2007). The women's prison in the Minnesota Correctional Facility (see Table 3) also recorded a high level of awareness of offenders' accountability for the harm they had caused and the need to repair it (Liebmann and Braithwaite 1999). The HMP Grendon in England project (see Table 3) reported victim and offender satisfaction with restorative procedures and outcomes (Liebmann and Braithwaite 1999; Zehr 1994). Liebmann and Braithwaite also reported similar positive results from the Gratesford State Correctional Institution in Pennsylvania and the Washington State Reformatory (Liebmann and Braithwaite 1999). Despite reservations, Guidoni, also reported positive outcomes from the Turin prison based project *A Bridge Towards New Horizons*. Guidoni (2003: 66) said: "I cannot exclude that RJ in prison can have a positive impact, such as creating more humane and democratic conditions, developing closer relations with the outside community and civil society and fostering greater possibilities for changing one's life".

Aertsen and Peters (1998) and Newell (2002c) also cited extremely encouraging results for the Belgian-based RJ in Prisons Project, which led to the development of the "Restorative Consultants" institution. Similar positive outcomes from the Belgian experience were also reported by Biermans and D'Hoop (2001), Regelbrugge and Dufrain (2002) and Robert and Peters (2003). Research by Immarigeon (1996) and Umbreit et al (1999) into the Canadian project cited in Table 3 (Grande Cache Institution in Alberta) are also worth reflecting upon.

Key findings from the 2004 evaluation of the Sycamore Tree project²⁵ (see Table 3) also rendered some encouraging results for RJ. Based on data collected from 2,188 prisoners using the CRIME-PICS II questionnaire methodology, the evaluation indicated that over a period of two years, significant improvements were noted in victim empathy among prisoners who took part in the pilots. The evaluation also indicated strong evidence of statistically significant changes in attitudes to offending which can be attributed to participation in the programmes (Prison Fellowship 2004). The evaluation was repeated in 2009 using the same methodology and 5,007 sample participants. Across the whole sample of prisoners there were significant positive attitudinal changes with regard to the five psychometric features of Crime Pics II. Furthermore, statistical analysis indicated that these positive changes are associated with completion of the programme. Interestingly, the positive attitudinal changes were associated with all groups of prisoners including male, female, adult and young prisoners. Finally, the positive attitudinal changes were also evidenced across all institutional categories (Prison Fellowship 2009).

Moreover, the Rochester Youth Custody Centre reported that victims felt less anxious and angry after meeting their offenders (Launay and Murray 1989). At the same time, the young offenders saw their victims in a more positive light while they reported having a better understanding of victims' attitudes and of the impact of their crime

24 See Communities of Restoration www.pficjr.org

25 See study of Dóra Szegő and Borbála Fellegi.

(Launay and Murray 1989). Furthermore, Australian research with young prisoners demonstrated a “big drop in offending rates by violent offenders (by 38 crimes per 100 per year) and a very small increase in offending by drink drivers (by 6 crimes per 100 offenders per year)” (Sherman, Strang and Woods 2000: 3). Nugent et al (2001) also found that children and adolescents who participate in mediation programmes are likely to commit fewer further offences. An interesting quotation from Renshaw and Powell comes from a victim after taking part in face-to-face mediation with a young prisoner: “the process has been worthwhile as I can now put the incident behind me and get on with my life” (2001).

Our survey interviewees who had experienced RJ in prisons highlighted examples to show the unique benefits that can be gained (see Table 4). It is important to stress that the majority of them did not believe that these benefits could be achieved via any other practice or ethos. For instance, one practitioner said:

“I have been working in prisons for most of my life. The anxiety and fear that young prisoners experience prevents them from hoping for something better, while their motivation to do something for others is non-existent. It is only through a process of transformation that they can genuinely be offered a chance to change. To help them deal with their realities, prisons should be more than just punishing them. The system should be about giving hope, skills ... help them change their attitudes, educate them and yes even sometimes provide them with qualifications. I haven't come across any practice that can do all these and transform lives other than RJ”.

Another practitioner commented:

“RJ is not just about conflict and crime; it is also about psychological support, learning and personal development ... that is why it works with young offenders. I am not saying that all young people in prisons are appropriate for RJ, but (for)those who need that breakthrough, RJ can develop the empathy they are lacking and the world has deprived them of”.

Someone else said:

“By developing an understanding, you also develop compassion and emotional maturity. Their lack leads to violent crime and it is not surprising that most young offenders in institutions have no emotional intelligence or the ability to sympathise and relate to the external environment. Dialogue and RJ has strong potential in changing this”.

In short, the benefits of using RJ with young people in custody as these were recorded by our fieldwork and triangulated through the extant literature (Umbreit 2001) can be summarised as follows:

Table 4: Benefits of using RJ with young people in custody

For victims	An opportunity to ask “why me”, to understand what happened to them, express the full impact of the harm they experienced and obtain emotional relief from the process of being heard
For victims	Alleviate their fears and in some cases rage
For victims	Achieve a greater sense of closure so that they can move on with their lives
For young offenders	An opportunity to express remorse and that they are trying to change since the offence
For young offenders	Change their perceptions about the impact of their offence and increasing self-awareness and as a result not re-offend
For young offenders	Achieve peace of mind as they feel that they have been able to help the victim
For communities	A sense of involvement and ownership of the conflict that impacted on the locality and its residents; participation and engagement in tailored problem solving and deterrence strategies.

2.2. Restorative justice – the bad news

The obstacles and challenges faced when implementing RJ in the secure estate are considerable. Both the findings from the fieldwork and the available data suggest that issues of implementation tend to stretch from simple funding obstacles to the very culture of prisons as institutions of incapacitation and punishment.

Zehr (1994) listed some of these barriers, focusing mainly on the resistance and mistrust of prison staff and prisoners, the priority given to security measures, the limited participation of prisoners and lack of information. Newell (2001), despite his strong support for RJ in prisons, he spoke honestly about obstacles such as “the difficulty in reconciling the basic values of RJ within prison law and administration” (p. 4).

Although all our interviewees seemed to share a keen interest and support for RJ in the secure estate, our initial assessment of the obstacles they presented led us to believe that this enthusiasm was fragile. In fact, some of the obstacles they faced appeared to be so structural that they caused doubts about RJ’s viability as a consistent practice in the secure estate. Guidoni spoke about these structural obstacles as a “clash between two different if not opposing ways of sanctioning: the one grounded in RJ and the other in the maintenance of prison as a total institution” (2003: 62). In summary, Guidoni’s (2006) six identified structural obstacles to the success of restorative prison projects are:

- ▶ *“Competing with prison culture”*: i.e. the disciplinary regime of prisons exert a constant pull on offenders – away from the world that RJ requires them to enter and would allow them to engage with their victims and the community.

- ▶ *“Conflict over the construction of the self”*: i.e. the prison culture destroys the self and erases identity and this comes in direct opposition with RJ’s goal which is to help the offender reconstruct their self-image and identity.
- ▶ *“Non-violent conflict resolution vs prison disciplinary action”*: i.e. given the levels of violence within prisons and the commitment to harsh disciplinary sanctions, it is impossible to establish negotiated forms of conflict resolution.
- ▶ *“The difference between stated and perceived goals”*: i.e. prisoners and staff participate in RJ for instrumental/selfish reasons and therefore “voluntary and honest dialogue” (Gavrielides 2007) is not possible.
- ▶ *“Autonomy denied”*: i.e. the hierarchical and authoritarian regimes of prisons do not allow prisoners to be empowered, which is a pre-requisite for RJ.
- ▶ *“The social conditions of a restorative justice prison”*: i.e. the social conditions within prisons are so awful that they do not allow prisoners to focus on the harm they caused to others whose lives are probably much more comfortable than their own.

In Guidoni’s view, this clash “created ambivalent feelings in the prisoners, the prison staff, and in the external participants, the volunteers and university staff”. He concludes by saying: “These ambivalences were decisive in the failure of the project’s institutionalisation” (62). Table 5 summarises the obstacles that were identified by the primary research that we conducted. The findings are meant to be complementary to what has already been identified by the aforementioned researchers.

Obstacles	Responsibility
Power balance between the victim – offender due to the prison environment (custodial setting) (see also Francis 2001)	Parties
Geographical location of YOIs; young offenders being placed in YOIs far from home/ the victim created difficulties in holding face-to-face mediation	Parties/ institution
Shortage of prison staff and resources to implement RJ	Institution
Shortage of funding mediation practices to intervene	RJ independent services
The usage of indirect mediation and letter writing has been inconsistent with no prescribed time limits, dedicated resources, follow up procedures or exit strategies (see also Curry et al 2004)	Institution
The pursuit of reparation tends to sit outside of the RJ framework (e.g. as part of a training plan, or a punishment or for damage caused within the institution). It rarely follows a voluntary and conscious decision by the young offender to repair.	Institution
Lack of prison staff training and awareness of the RJ principles	Institution
Lack of agency policy on the use of RJ with young people	Institution
Lack of the infrastructure that would allow prison staff to liaise with home probation officers or YoTs	Institution
Prioritisation of other tasks in an overcrowded prison system	Institution
Lack of research data and the absence of internal evaluation structures that would allow self-assessment and self-audit of RJ practices	Institution
Poor communication and information sharing of best practices; isolation and short life span of pilots	Institution
Threats to security, changing fortunes of prison-based bail information schemes and personal officer schemes for young offenders (see also Eadie and Williams 1994)	Institution

Obstacles	Responsibility
"Territorialism" and "isolation" of YOTs	Institution
Complexity and length of several bureaucratic structures such as CRB checks and clearance for accessing YOIs	Institution
Strong culture within YOTs of supervision of young people post and prior release; also culture not to work with victims	Institution
The short sentences received by young offenders do not allow enough time for setting up and the investment in an RJ process	Institution
Too much focus on one type of RJ practice (e.g., conferencing)	Institution
Young people in YOIs tend to live chaotic lives, have extremely low self-esteem and need psychological and other expert support for an RJ intervention to be meaningful	Offender/ institution
Lack of support for RJ from the top	Institution
Political acceptability and public misconceptions of RJ as a soft option	Public
Lack of a consistent "restoration fund" that would enable prisoners through restitution and work to restore the victim and their community	Offender
The RJ paradigm is very demanding in the sense that prisoners have to first take responsibility for their acts and lives. This requires preparatory work and practices before a restorative encounter takes place. It also requires expertise, safeguards, time, resource and commitment.	Institution
Lack of information material in prisons.	Institution
Lack of specific resources for developing RJ in YOIs	Institution
Lack of guidance, set procedures and protocols for prison staff in obtaining victims' contacts	Institution
The image of prison staff as "masculine" and "security guards" did not match the independent mediator role that RJ requires them to take	Institution
The dual nature of prison staff's role focusing both on security and mentoring	Institution
Lack of policy and policy guidance on implementing RJ in the secure estate	Institution/ state
Lack of agreement on the key RJ principles	RJ movement
Lack of appropriate and accessible information to victims and their families	Institution/ State/ victim support groups
Competing with prison culture (see also Guidoni 2003)	Institution
The unsocial conditions of prisons, inequality and gangs	Institution
Conflicts within prisons (between prisoners, and between staff and prisoners)	Institution
Conflict between the stated and perceived goals of RJ, e.g. the offender agreeing to take part not because of genuine remorse but for obtaining benefits	Institution/ practitioners

Table 5: Obstacles faced when implementing RJ in the secure estate

2.3. A cost-benefit analysis of restorative justice

Implementing RJ in a difficult financial climate instantly brings up the question of cost and benefit. Data on the financial viability of RJ are extremely limited, let alone in its use in prison settings (see Sherman and Strang 2007; Matrix Evidence 2009; Victim Support 2010).

By contrast, the financial analysis of imprisonment is well developed (Justice Committee 2010). The Ministry of Justice as a whole receives funding of £9.5bn per annum (as of 2010). Keeping each prisoner costs £41,000 annually (or £112.32 a day). This means that if there are 85,076 prisoners at the moment, prisons cost as much as £3.49bn. According to

Home Office statistics, it costs £146,000 to put someone through court and keep them in prison for a year (Prison Reform Trust 2010).

Putting one young offender in prison costs as much as £140,000 per year (£100,000 in direct costs and £40,000 in indirect costs once they are released) (Knuutila 2010). Two thirds of the YJB budget, or about £300 million a year, is spent on prisons, while the money it uses for prevention is roughly one-tenth (Youth Justice Board 2009). More worryingly, according to the YJB, as a result of inflation and the rising costs of utilities and food, the costs of custody will keep rising even if prisoners' numbers stay the same (see Table 6).

Year	Average cost of prison place
2010/11	£41,000
2007/08	£39,000
2006/07	£37,500
2005/06	£36,500
2004/05	£34,500
2003/04	£33,000

Table 6: Average cost of prison places in the UK (Hansard 3 Feb 2009: column 1176W)

Moreover, according to a 2010 report by the New Economics Foundation: “a person that is offending at 17 after being released from prison will commit on average about 145 crimes. Out of these crimes about 1.7 are serious crimes (homicides, sexual crimes or serious violent offences). Given that a prison sentence is estimated to increase the likelihood of continuing to offend by 3.9 per cent, this translates into an average of about 5.5 crimes caused, out of which about 0.06 are serious” (Knuutila 2010: 40).

In June 2010, the Justice Secretary said that prison often turns out to be “a costly and ineffectual approach that fails to turn criminals into law-abiding citizens” (Travis 2010: 1). He also indicated the new government’s appetite for seeking new and more cost effective ways of reducing reoffending and serving justice.

Before trying to reach conclusions or even developing our thinking about the cost-benefit analysis of RJ, one has to ask what “the unit costs” and the benefits that we should be assessing are. One of the very few studies on the matter is the 2002 report *Economic analysis of interventions for young adult offenders* prepared by Matrix Evidence. The report proposed the following “unit costs”:

- ▶ **The cost of diversion:** i.e., the cost of diverting young adult offenders away from the criminal justice system or into different paths through the criminal justice system.
- ▶ **The cost of the alternative sentences:** i.e., the cost of community orders instead of custody, or RJ conferencing instead of community orders.

- ▶ **The economic impact of changes in re-offending both during and after sentence:** i.e., the economic impact of a crime includes the cost to the criminal justice system of responding to a crime, the healthcare costs of treating the victim of a crime, the victim's financial cost of a crime, and the pain and suffering experienced by the victim of a crime. It does not include the cost of the loss of income due to having a criminal record (Matrix Evidence 2009:3).

Looking at the “crimino-econometrics” of RJ, we used the analogy of the basic economic theory whereby the price (cost) of a commodity or service affects the relationships or quantity of that commodity that people (service users) would wish to purchase at each price. The scarce evidence suggests that the savings that flow from the contribution made by RJ to reducing reoffending rates are impressive; crime by former prisoners costs society more than £11 billion per year (Prison Reform Working Group 2009), while RJ can deliver cost savings of up to £9 for every £1 spent (Shapland et al 2008). According to Victim Support, “if RJ were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system – as a result of a reduction in reconviction rates – would amount to at least £185 million over two years” (2010: 29). In relation to prison related services, the 2010 Victim Support report findings are summarised in Figures 5 and 6 below:

Figure 5: Cost saving analysis for RJ (Victim Support 2010: 29)

Table 1: Cost saving where restorative justice is offered to all victims of burglary, robbery and violence							
Number of offenders	Number of RJ interventions (40% take up)	Net cashable CJS saving over 2 years	of which Police	of which Prisons	of which Legal Aid	Net cashable NHS savings	Non-cashable net savings
75,000	29,000	£185 m	£65 m	£56 M	£14 m	£55 m	£741 m

Based on Victim Support / Restorative Justice Council modelling

Figure 6: Cost saving analysis for RJ in prisons (Victim Support 2010: 29)

Table 2: Cost saving where restorative justice conferencing is used to divert some custodial			
	Number diverted from immediate custody	FTE 1 year prison places saved	Saving to prison budget from diversion
Total	6,540	11,000	£410 m
Violence against the person	3,000	4,400	£166 m
Burglary	2,300	3,300	£124 m
Robbery	1,200	3,200	£120 m

Based on Victim Support / Restorative Justice Council modelling

According to Matrix Evidence (2009), RJ practices “would likely lead to a net benefit of over £1billion over ten years”. The report concludes that diverting young offenders from community orders to a pre-court RJ conferencing scheme would produce a life time saving to society of almost £275 million (£7,050 per offender). The cost of implementing the scheme would be paid back in the first year and during the course of two parliaments (10 years) society would benefit by over £1billion (2009).

Although some of our interviewees used their own practices as examples to illustrate RJ’s cost benefit for prisons, no-one from the sample was able to provide hard statistical evidence. Most of their case studies revolved around time spent on processing young offenders via traditional criminal justice practices and prison as opposed to an RJ encounter/ practice. Time as a “unit cost” has also been recorded in the scarce available literature. For instance, according to the 2010 Association of Chief Police Officers (ACPO) survey on RJ, the average time taken by Hertfordshire police officers dealing with minor crimes through “street RJ” was 36 minutes as opposed to 5 hours 38 minutes spent on issuing reprimands. Translating this into cost meant £15.95 for RJ and £149.79 for a reprimand. Similar savings were found for Cheshire police (£20.21 vs £157.09) (Cheshire Operation Quest 2 2009). All in all, the scarce financial data seems to be encouraging, but the lack of scientific evidence remains.

While it appears that it is economically advantageous to society to adopt a restorative approach to crime, our research suggests that an appeal solely on this basis may undermine RJ in the long run. For instance, there was consensus among the interviewed practitioners that this could lead to quick fix policies, a lack of a coherent and long term strategy and high expectations.

There is no doubt that increasing pressure is put on government to cut down the financial costs of imprisonment and recidivism. Moreover, there has already been criticism of the way cuts are being made in the prison service. For instance, the House of Commons Justice Committee noted: “We have grave concerns about the impact of efficiency savings on practice at the frontline for both prisons and probation, which will undoubtedly undermine the progress in performance of both services. Neither prisons nor probation have the capacity to keep up with the current levels of offenders entering the system. It is not sustainable to finance the costs of running additional prison places and greater probation caseloads from efficiency savings in the long-term” (2010: 10).

The fieldwork also raised concerns around the factors that drive social policy and criminal justice reform. For example, all the interviewed policy makers and the majority of interviewees made reference to the government’s past commitment to a national strategy on RJ. The discussions were made within a climate of disappointment and suspicion. Specific reference was made to the 2003 Home Office consultation document on the government’s strategy on RJ (Home Office 2003). The debate and promises that were made at the time raised the RJ movement’s expectations (Gavrielides 2003). Soon after the publication of the draft strategy, and despite the plethora of evidence it collected through submissions from the public and individuals, the flurry of activity and interest in RJ waned.

The RJ unit that was set up within the Home Office was dismantled and the majority of the strategy's recommendations were left in draft format.

In 2010, the Justice Committee (2010: 12) said: "We are surprised by the cautious approach that the Government has taken towards RJ but we welcome its current commitment to revive the strategic direction in this area. We urge the Justice Secretary to take immediate action to promote the use of RJ and to ensure that he puts in place a fully funded strategy which facilitates national access to RJ for victims before the end of this Parliament".

3. A strategy for restorative justice in the secure estate

The 2006 YJB Action Plan *Developing Restorative Justice* stated that it wants to "broaden, develop and extend the practice of RJ within the youth justice system" (Youth Justice Board 2006: 3). The Board had hoped that this would be achieved through a national strategy that would "promote RJ among key local and national partners and stakeholders in the youth justice systems ... The strategy would also support approaches to managing the custodial community as well as making RJ part of sentence plans" (p 6). At the same time, NOMS is currently looking at the potential of RJ in prisons more generally.

The truth is that RJ is still far from being mainstreamed or even accepted as an official response to crime. A national strategy recognised by NOMS is yet to be developed. Some have argued that all the evidence needed for such a strategy is available. For instance, Sherman and Strang argued that "The evidence on RJ is far more extensive, and positive, than it has been for many other policies that have been rolled out. RJ is ready to be put to far broader use" (2007:4). As evidenced by this report, RJ's application in the secure estate also remains piecemeal and to a great extent undefined. The interest of the new UK coalition government in RJ may present a unique opportunity to take the debate on its implementation forward²⁶.

We have already accepted that RJ and prisons are not in opposition and that though they belong to two different schools of thought they may be complementary. Given the many types, quality and nature of RJ practices that are currently implemented in the secure estate, a question is raised as to whether a potential strategy should aim to expand or support these practices.

The key question that the RJ movement will soon have to answer is whether it is better that the new debate focuses on mainstreaming the RJ practice or invests in the infrastructure that is currently needed to support RJ practitioners.

In developing a strategy for RJ's implementation in the secure estate, a clear understanding and an agreement will need to be reached as to whether resources will need to be focused

26 The "Breaking the Cycle" Green Paper (Ministry of Justice 2010a) and the Ministry of Justice consultation for an RJ Practitioners Register (Ministry of Justice 2010b) are just two examples of policy initiatives pushing the barriers for RJ.

on infrastructure support or taking RJ into new areas of implementation. In the current climate of financial austerity both objectives cannot be achieved.

As the evidence is still accumulating, new and more robust research is being published with encouraging results for RJ in the secure estate (see Jacobson and Gibbs 2009, Solomon and Alen 2009). These cannot be ignored. However, caution must be taken while assessing what makes these practices work in different philosophical environments.

Practices also tend to change depending on levels of awareness, intentions, obstacles and popular culture.

Their quality is inconsistent and their outcomes vary. If the intention for an RJ strategy is to be taken seriously, the key enablers and barriers need to be considered carefully.

3.1. The enablers and barriers

A detailed list of obstacles as these have been identified by the extant literature and our primary research has been presented. These obstacles may indeed suggest that RJ is impossible in the prison context. For even our own interviewees, who at first showed keen interest in RJ, when questioned about these barriers further, this enthusiasm waned.

However, as our research progressed and the expert interviews were complemented with observation and in-depth interviews with offenders, our initial assessment changed. In fact, our finding and the position that we developed as a consequence are in disagreement with Guidoni.

As it will be argued, despite several challenges these were not considered of structural nature, but common issues of practicality and implementation.

In fact, what seemed to be consistent throughout our research was the absence of institutional opposition and philosophical doubt about RJ's viability and applicability in prison settings, as Guidoni (2003), Immarigeon (1999) and others have suggested. All interviewees, independent of their background, appeared not only to be supportive and willing to consider RJ. Both the practitioner and policymaker groups indicated commitment to implement RJ in the secure estate, including the YJB.

This finding is in agreement with Williams (2004): "More interesting ...was the response of a number of key players to the idea of using RJ in secure institutions for young people. The research ... showed that there was a consistent willingness to consider restorative approaches not only in working directly with young people in institutions but also in experimenting with restorative regimes" (192). Williams gave the example of the Brinsford project, which "appeared to be exceptional in having survived all [obstacles]" (2004: 195).

Although Guidoni is right in saying that the Turin project that he investigated failed to reach genuine and long lasting RJ outcomes, his total dismissal of RJ in the prison estate is flawed for three main reasons. First, Guidoni's analysis makes the assumption that RJ must

be “institutionalised”²⁷. As Guidoni noted: “These ambivalences were decisive in the failure of the project’s institutionalisation” (2003: 62). According to our research and the extant literature, rarely will RJ practitioners go as far as believing that RJ will one day be “institutionalised” (Johnstone 2007; Gavrielides 2008). In fact, several interviewed practitioners, who work in the community, expressed strong reservations with RJ being institutionalised or mainstreamed. For instance, they stressed the importance of the practice being community led or having a community representative at all times (Wright 1996).

Second, Guidoni seems to accept only one vision of RJ. This vision dates back to the 1970s and was best captured by the abolitionist movement (Kuhn 1970). He views RJ as being totally at odds with the criminal justice system while the notion of “restorative punishment” is not considered; naturally the “RJ paradigm” is thus rejected. To illustrate his point, he quotes Stan Cohen’s *Peace Crimes*: “The core of a prison system ... cannot be changed.... Either we eliminate the institution entirely or we keep it with all the contradictions and paradoxes emerging when we try to reform it” (pp. 441-442).

Finally, Guidoni is flawed in his belief that all RJ proponents reject the idea of using RJ for recidivism and the reduction of prison population. Guidoni said: “I cannot see how RJ could lead to reducing prison populations, which actually is not an intended goal of its advocates” (p 65). Many RJ advocates would disagree with this statement particularly since there is consensus in the vast RJ literature that RJ’s objectives and goals do not merely revolve around the victim and the community, but have an offender focus, particularly when it comes to reintegration and resettlement (see Edgar and Newell 2006; Gavrielides 2008; Artinopoulou 2010).

Now, looking closer at the available enablers of an RJ strategy in the secure estate, as argued by Williams (2004) and others (see Liebmann 2007; Newell 2002b), despite all the aforementioned barriers, including sometimes a complete lack of knowledge of RJ, there is a general positive attitude by prison staff towards RJ when it is properly introduced to them.

“RJ can offer options and open up possibilities that can never be pursued through the traditional criminal justice philosophy”, one interviewed policymaker said. “How can you bring home to young offenders the impact of their actions, if it is not through dialogue and a transformative process of taking responsibility”? one researcher noted. “Victims are not as vindictive as the media and politicians think ... they want to be given a chance to understand what happened to them and why, and especially if it involves a young person, to see them through a process that will give them the reassurance it will not happen to them or others again ... they want their experience to count”, one practitioner commented.

27 Guidoni did not really define what he means by “institutionalisation” but we are left to assume that it means the implementation of RJ within an institution such as prisons. This is opposed to RJ’s implementation in the community or as a pilot scheme introduced on ad hoc basis. Gavrielides (2008) defines mainstreaming as the process of integration into an institution’s culture and everyday reality.

Emerson (2009) from the Thames Valley RJ Service has said that prisons are particularly good settings for victim-offender mediation for serious offences, because victims feel safe in the secure setting and they are also able to witness some of the realities of prison life for offenders. This environment creates a better opportunity for meaningful dialogue. Curry et al also noted: "Staff in custodial and secure settings were broadly sympathetic to the notion of experimenting with restorative approaches to work with young people" (2004: 4). Williams points out: "Most interestingly ... was the response of a number of key players to the idea of RJ in secure institutions for young people" (2004: 191).

The primary and secondary research of this project also indicated (see Table 3) that there are enough best practices in the community and the secure estate that would allow a good descriptive account of models that could be promoted through a strategy. As one interviewee noted: "We have moved away from the phase of experimentation ... although we, as practitioners, need to do better in documenting and evaluating our practices. The next step should be about wider implementation with built-in research".

The research participants also spoke about strong and effective partnerships that can act as levers to deliver RJ in the secure estate.

According to the fieldwork, many of these partnerships have been in existence for years despite the lack of statutory or financial support. The significance of delivering RJ in partnership is also highlighted by the extant literature. According to Emerson (2009), the first Golden Rule for RJ in prisons is to build effective partnerships; the second is that prison staff cannot do it alone.

Any strategy for implementing RJ in the secure estate should look at existing partnerships and put forward models for local, regional, and national consortia. The lessons, challenges and successes recorded in current effective partnerships will need to be considered carefully without losing sight of the different needs of local communities. A caveat that was identified by the research is that most of the evidence on this particular enabler does not exist in the literature or has ever been recorded. It sits within practitioners' expertise and is known through word of mouth.

Furthermore, the strong expertise that is readily available within the RJ movement should not be underestimated. The interviewed practitioners also pointed out the commitment and passion that accompanies it. Although the level of RJ's awareness among prison staff is low, the opportunities for good training and educational programmes are ample. Most of these skill development opportunities are already being provided for free or at extremely low cost by charities, community organisations, and universities.

Another significant enabler that is readily available but has not been used yet is the existence of regulators and auditors that could engage a process of external and internal monitoring of RJ's implementation in the secure estate. One interviewed Prison Governor pointed out that Ofsted, responsible for STC inspections, and Her Majesty's Inspectorate of Prisons (HMIP), responsible for YOIs inspections, should be engaged to enable a consistent evaluation and implementation of an RJ strategy in the secure estate. It was thought

that this enabler would help avoid the problems associated with individuals not knowing or buying into the restorative ethos. "If they are told what outcomes they are expected to achieve, and those outcomes contribute to a restorative intervention, then their personal knowledge of and passion for RJ becomes less critical". The auditing and the development of self-assessment tools are structures that do not need to be reinvented but simply capitalised through the adaptation of inspection standards and processes.

3.2. Strategy design and focus

Designing and implementing an RJ strategy in the secure estate will demand considerable expertise, resource and a long term commitment and investment, the participants said. As argued, despite good intentions, the YJB did not take forward its plans for a strategy and these are lessons that cannot be ignored by NOMS and current policy. The recent institutional changes, opportunities and challenges will also need to be considered particularly since the demise of the YJB is soon to take place (House of Commons Public Administration Select Committee 2011)²⁸.

Starting with the strategy design, the current legislative proposals present a unique opportunity for data collection and analysis. Any design will also need to be informed by the available data, the interviewees pointed out. This report has provided an up-to-date account of the information that is available in this area. Further and more tailored data gathering will also need to be commissioned. These will need to take into account the focus of RJ on the local as well as its fluid nature. "Any strategy that is too prescriptive will fail", one interviewee said. Issues of locality, RJ's malleability and flexibility, as well as the various kinds, shapes and forms that practices can take, will need to be taken into consideration. The interviewed practitioners pointed out that the RJ ethos, as described above, will need to be maintained; any other goals will need to be re-prioritised, they said. Moreover, they all seemed to agree that such a strategy should not be put on the statute but should seek cross party political support and long term commitment.

All interviewed practitioners and some of the researchers agreed that the bottom-up structure and community based nature of RJ will need to be factored in the strategy design and implementation.

The involvement of practitioners and their representatives will determine its success, they felt.

There was also concern about a strategy design that ignores the relationship between RJ and current criminal justice practices. One interviewee pointed out: "What does need significant thinking is precisely how RJ will relate to and fit with what currently exists without simply becoming a tool of the existing strategy. It seems to me that there is both scope

28 A total of 901 public bodies were considered as part of the government's 2010 review of all public bodies sponsored by departments, excluding executive agencies. It was decided that 192 would be abolished, including the YJB which was given a 12-18 month transition period by which it will need to merge with the Ministry of Justice (House of Commons Public Administration Select Committee 2011).

and need here for a great deal of scholarly study. But also for more attention to scholarship that already exists”.

The issue of qualifications and standards also featured prominently in this part of the interviews. For instance, interviewees recommended that the strategy includes provisions on minimum standards, a conceptual framework for RJ, agreed qualification criteria for RJ practitioners and safeguards for parties involved in direct/ indirect encounters.

One of the most consistent findings from the fieldwork highlighted the need for maintaining the ethos and values of RJ.

There was concern that principles are being watered down to fit in with funding restrictions and pre-fixed priorities. As one practitioner commented: “So, when you get money from the Government, then it is likely that you get their agenda, and this affects how to measure the value of RJ and its outcomes”. The interviewees pointed out that to justify their existence and funding, RJ practices in the secure estate have to appeal to the persuasive power of utilitarian or economic rationalism. This means that they have to show that: (a) they will decrease court caseloads, the prisoner population, and recidivism rates; and (b) they will increase the percentage of restitution settlements and victim/offender satisfaction.

According to the interviewees, it is likely that if RJ projects continue to be funded according to the aforementioned two criteria, its original values and principles will be skewed and possibly merged with the retributive and utilitarian objectives of the traditional criminal justice system. The sample seemed to believe that the predominance of utilitarian and retributive goals in the criminal justice system, in combination with the secondary role that has been bestowed on restorative practices, expose the concept to a “no-win” process, where restorative ideals are called to compete with the already deep-rooted beliefs of “law and order” to which most policymakers and politicians adhere. A potential strategy will need to take this danger into consideration. Certain suggestions were posited in helping to overcome this danger.

a.) Addressing misconceptions

The funding of RJ practices, evaluation, and research seems to be affected by what funders and stakeholders conceive to be “restorative practices”. As one interviewee said: “...RJ is not an easy concept to comprehend or accept. It is difficult to get it across within a short period of time”. According to the interviewees, funders have often been led to:

- ▶ think that RJ practice and practitioners are against the traditional criminal justice system – some may even believe that RJ was introduced to lead to a fundamental transformation of the justice system;
- ▶ associate RJ practices with religious beliefs;
- ▶ confuse RJ with individual practices such as victim-offender mediation;
- ▶ believe that RJ is something “new” and hence too risky or cumbersome to support;

- ▶ take RJ to be a “radical idea”; and
- ▶ believe that RJ is a “soft option” which should be used only for minor crimes and young offenders.

Our findings correlate with the extant literature. For instance, Wilcox and Hoyle said: “Funding bodies need to be more specific about the nature of the interventions they are funding, or else they risk funding non-restorative activities. There was a considerable amount of *drift* from the aims stated in the bids, reflected by the fact that over 50% of interventions involved either community reparation or victim awareness only” (2004: 54).

b.) Victims vs offenders’ funding: the middle way

The findings from the fieldwork indicate that the prioritisation of funding resources parties of crime affects the sponsoring of RJ schemes. This is mainly due to the fact that restorative principles place equal significance on all communities of interest. For example, funding specifically allocated to rehabilitating offenders may not consider RJ schemes to be fit for that purpose. Likewise, funding for victim support programmes may treat RJ as something for the offender and indeed dangerous for the victim. The fieldwork pointed out that future funding streams for restorative methodologies will need to focus on all communities of interests.

c.) Hijacking funding: spot the difference

In the absence of a regulatory body that checks the quality of RJ practices, the question for funders is how to assure that the invested practice is one that is based on the norm’s true values. Funders are not experts in RJ; therefore it should not be expected that they will be able to spot the difference between what is a practice that is indeed based on the values of RJ and what is not. As one of the interviewee said: “...the term RJ is currently being used to label things that are in no means restorative for either party involved. And there are a lot of reasons for this, and one of them is money ... some people came along with their punitive practices and labelled them RJ in order to get this money, hijacking funding by non-genuine RJ programmes”.

Moreover, according to the research, funding bodies introduce time scales and performance measurement targets into funded practices that usually undermine their effectiveness. The interviewees also pointed out that evaluation needs to be large scale, and conducted at a sufficient length of time following an intervention to accommodate re-offending data. Scheme co-operation must be a condition of any funding arrangements. One practitioner said: “When it comes to asking money, the problem is that RJ has a slow time delivery ... this is especially the case with the Government, where the money usually comes from. Funders, in general, want to see results now, and treat RJ as a *quick fix tool*; this often leads to disappointments and misunderstanding about what RJ really is and what it can offer”. Another practitioner pointed out that: “Potential funding bodies will continue to insist on some measure of success or failure at a reasonably early stage, which is almost

well short of the time needed to develop firm and efficient strategies of work....Rather than insisting on rigid academic conditions for *proper* evaluation, researchers are forced to develop modes of investigation that address success while accommodating to the reality of what they are assessing”.

If progress is to be made in assessing the outcomes of RJ projects, resources would be better spent on implementing well-designed projects with clearly defined aims and methods. Evaluation should thus be built in from the start.

The fieldwork proposed that any strategy should include a plan of resourcing that takes into consideration the following:

- ▶ the compilation of a list of core standards for RJ practices. This should be used to set up new programmes and evaluate existing ones;
- ▶ the introduction of a “checklist” that funders could apply during the assessment and monitoring stages; and
- ▶ performance measurement and quality control built-in from the start and in agreement with the practitioner and the practice values.

3.3. Strategy implementation: the open market model

Almost without exception, the dominant view of our research participants was that the open market/ partnership model will have to be supported and encouraged. This was defined as the joined up working between voluntary, private, community and public sector bodies in developing, delivering, and evaluating RJ practices.

Our seminar participants represented all these sectors and had an opportunity to debate their ideas (Gavrielides 2011).

There was a strong view that, while awareness and capacity should be built within the secure estate and among prison staff, the commissioning of RJ practices will need to include all stakeholders in the RJ field. In fact, a number of practitioners stressed the significance of RJ keeping close to its bottom-up, community-led nature.

Almost all interviewees stressed the contribution of the voluntary and community sector in keeping RJ alive and in promoting a feeling of empowerment and belonging in community groups. This seemed aligned with the government’s Big Society agenda²⁹. Organisations working in this sector help maintain a balance between community groups, often feeling isolated and let down by public services and government. It was pointed out that the sector helps to establish communication channels between individuals and government

29 A flagship policy introduced in 2010 by the UK coalition government. The aim is “to create a climate that empowers local people and communities, building a big society that will “take power away from politicians and give it to people” 10 Downing Street website 18-May-2010.

bodies, and enable small and large minority groups to have a say in policymaking, legislation and regulation of the country's affairs.

Although this allows a considerable level of flexibility in the development and management of RJ schemes, it also adds a number of challenges that the strategy will need to take into account. For instance, some of the practitioners pointed out that voluntary groups are often under-resourced and understaffed, while most of the time not being seen by statisticians, criminal justice officials and governmental bodies as contributing to crime prevention.

Furthermore, the vast majority of voluntary activity takes place at a local level, often addressing the needs of society's most disadvantaged groups.

A national strategy on RJ's implementation in the secure estate will need to take the issue of locality and local service provision seriously. As partners, providers and advocates, voluntary organisations are ideally placed to work with local authorities to achieve results for local people – improving the quality of life and the quality of services in every area and encouraging strong and cohesive local communities.

According to the interviewees, criminal justice agencies do not always engage with the voluntary and community sector adequately. It was also pointed out by the research that prison staff and governors also know very little about the voluntary sector's work, and there is suspicion about the role of volunteer mediators. The strategy will also need to acknowledge that regional governance bodies and strategic structures are increasingly relying on the voluntary and community sector to help deliver on their crime reduction agendas.

Statistics also show that the public trusts the voluntary and community sector more than other sectors, particularly in relation to crime work (Clinks 2009).

3.4. Preparing the ground at the macro and micro levels

To deliver a consistent and successful RJ strategy in the secure estate significant, long-term investment needs to be made in preparing the ground both at the micro (experts and RJ movement) and macro levels (those affected by a harm, communities, general public).

At the micro level, the RJ movement needs to finally reach a consensus as to what constitutes RJ. A conceptual framework needs to be agreed and independently regulated.

It seems from the surveys' responses that the drafting or maintaining of RJ principles is unlikely to offer the parameters for building the aforementioned necessary conceptual framework. The interviews provided a detailed analysis of the factors, which, according to the participants, led existing national and international principles to impracticality. It was concluded that although these type of lists can be of assistance, at the same time, they can become an additional source of confusion and disagreements. What the sample seemed to be in favour of was the drafting of basic standards. This could be achieved through an

open consultation process with the community, which should include representatives of all groups and stakeholders in the RJ movement.

The difference between having a list of *standards*³⁰ and not *principles*³¹ is that the former will merely set the lowest level that someone who is practising, theorising or reading about RJ will not be allowed to drop below, but can exceed. As one interviewee expressed: “Maybe then it comes down to terminology and the distinction between the words *standards* and *principles*. The first is something you don’t want to drop below, but you can exceed, whereas the latter is not something you think of dropping below; it is something you either apply or not, either you have or not. In the same vein, another organisation claimed: “...To *operationalise* such a set of principles, it needs those principles to become standards that practices and performances will not be able to drop below”. These standards, however, need to correspond to RJ’s commonly accepted central normative and practical elements. Then, in this way disagreements and confusion as to what they might mean will be avoided. Finally, standards are generally more easily applied and respected.

RJ practice standards should be developed by the community and not the government. But the government will need to implement and enforce them in its secure facilities, rejecting standards that others designed without its participation. Moreover, there should be national standards for all aspects of RJ, and those need to be adapted to particular contexts.

The drafting of a list of conceptual standards was recommended through a national consultation with representation from all stakeholders (theoreticians, practitioners, researchers, evaluators, policymakers, politicians and legislators) and, to a certain extent, with the general public and community members (victims and offenders). This attempt needs to be coordinated by a widely accepted and nationally (or even internationally) recognised authority/ agency that will not allow the Government to dominate the process (directly or indirectly). Avoidance of having a governmental lead on this project will reduce the risks of incorporating agendas that might not be primary or compatible with the RJ ethos, as was described above.

The following caveat also needs to be kept in mind at all times. *Standards* might not indeed be open to interpretation or adjustment by anyone who wishes to abuse them, but should be vulnerable to time. According to our research, one of RJ’s strengths is its malleability according to environment and the fact that it is a living notion that expands or limits its application and normative understanding depending on the given historical, geographical and cultural changes it experiences. *Adaptation*, therefore, to the given realities and necessities of our times is necessary.

30 An example of an RJ standard could be: Participation can only be valid, if both parties have voluntarily agreed to it, as a result of informed and honest decision making process. It can be considered as standard because without it the RJ theoretical or practical concepts fall apart.

31 An example of an RJ principle is “Commitment to the accreditation of training, services and practitioners”, Fattah; 1998. Both theory and practice can stand without this principle, which enhances them but not creates them.

RJ needs to “listen” to the calls of practical reality and be receptive and adaptable. Finally, it is advisable that the *practical* development of RJ and the implementation of its strategy is not guided only by theoretical principles of good intentions, but also *by evidence of real-world effects*. Empirical evidence is also the only way to be sure there is no conflict between the norms themselves.

Work will also need to be done at the *macro level* (i.e., public, the community). This step can aid victims and offenders to put the term “RJ” in context, making it easier for them to decide the reasons they might want to participate in restorative processes. Another lever that was identified for the implementation of a successful RJ strategy is the public’s support for it. Although it is a well-known fact that RJ awareness among the public is rather low, there is evidence to suggest that people support the general notion of compensation and restitution, focus on victims and mediation and conferencing (see Roberts and Hough 2005; Dhami et al 2009). The wider implementation of RJ in the secure estate as well as the buy-in from families and victims is also key but very much dependent on people’s support for it, and not just its perceived benefits.

To this end, more information and education is warranted. To achieve this, the participants suggested the use of the media. It is true that, until today, the role of the press in offering contextualisation for RJ has not been particularly significant.

In contrast to what needs to happen at the micro level, at the macro level the government can take a more active role in promoting understanding around RJ’s concept and practice. This is because a profile campaign for RJ that will be assisted by the government has more chances in achieving its goals. This involvement is desirable because it does not concern defining RJ’s standards, but helping their spread among community members.

However, opening RJ up to the world of the media can be a very dangerous process, especially in relation to its application in the secure estate. Many pitfalls seem to be associated with this step, particularly due to the intensely personal nature of restorative practices. No doubt, the media’s expectations can be unrealistic in the sense that mediation rooms do not always offer suitable material for broadcasting. The media also tend to limit or refuse editorial control to the facilitators, and are most often interested in the gossipy side of the stories rather than the real effect of the events. Various other practical problems may arise, such as location and choice of appropriate venues, adequate staff or staff and participants who are willing to participate in a restorative process that will be under the microscope of a camera.

Another practical difficulty in employing the media is confidentiality. The irony in increasing public awareness is that restorative practices are meant to be confidential. Restorative programmes are closed from public view and by invitation only. This is, of course, understandable and has to be respected if practice is going to retain its restorative character. This is particularly relevant to young offenders whose defamation by the media is protected by basic legislation. So, how can one overcome this difficulty and make real cases heard? How can facilitators keep to their confidentiality agreements and at the same time

educate citizens about what really happened in the mediation room, telling them that there are other ways they can settle their dispute?

The complexity of these questions becomes even more apparent, if we consider that a number of other issues are also related to confidentiality. For example, although personal disclosure plainly needs to be respected by all parties, it appears that a number of other aspects may need to be shared with others.

Any Strategy should acknowledge the importance of integrating RJ with sentence and supervision planning, It is essential that outcome agreements reached in conferences be disclosed to prison and probation staff, so that assistance can be given in making these undertakings a reality.

Confidentiality is, therefore, an issue that should attract the more careful attention of both service and training providers. Its inclusion in the review of standards and accreditation mechanisms becomes even more apparent. The key point to remember while engaging in restorative meetings is to avoid publicly naming a person. On the other hand, parties that wish for their name to be disclosed should be free to do so. Surprisingly enough, parties are often willing to share their experiences and invite others to choose restorative meetings. For instance, Andrew Jones, an offender who had agreed to participate in one of the VOM programmes that were filmed by BBC said: "My first thoughts were *oh my God*, but after serious thinking to myself, I thought something good may come of it. My first concern about being filmed was being seen on TV as a burglar but hopefully I would be able to put across that I only stole to feed my habit and I am not an habitual thief..." (Caverly 2003).

The above issues can constitute the basis for further research. This could produce specific guidelines for RJ professionals in how to find the relevant media, how to contact them, what to say and what to avoid. Future research can also look into the facilitators' concerns about running RJ programmes under the watchful eye of the media, as well as the fears and apprehensions of the parties regarding confidentiality. Follow-up studies could also evaluate the presentation of RJ in the international, national and local press, especially with regard to: (i) the drafting and publishing of press reports and releases for RJ (e.g., to what extent do traditional frames apply? Are the press open to the difference RJ represents?); (ii) the ways in which RJ schemes are communicated to the media by the police and participants; (iii) how communication between practitioners, researchers, and policymakers can be better facilitated; and (iv) how practitioners and researchers identify the media, particularly since they seem to face a number of difficulties when attempting to do so.

4. Critical reflections: the sceptic and the believer

Garland said: "Crime control today does more than simply manage problems of crime and insecurity. It also institutionalizes a set of responses to these problems that are themselves consequential in their social impact" (2001: 210). The increasing number of suicides by young prisoners³², the overcrowded prisons and the inhumane conditions to which young people and children are subjected, the high rates of reoffending and the rising costs of incapacitation as a policy and a philosophy for crime control are some of the factors that populists quote in their search for more attractive solutions. Since most governments are determined to cut down their national deficits by any means possible, this presents a unique opportunity to rethink existing strategies within the criminal justice system.

The message from government, the media, and academia is that further spending on imprisonment is not intended or indeed considered to be the right way forward at present. Lacey noted: "Given the government's competence in managing the economy is... key to their electability, even those of us who see the issue in terms other than the purely economic must surely acknowledge the importance of pressing home the message that increased prison spending is a form of fiscal mismanagement" (2008: 28).

RJ appeals to the contemporary politician.

A collective feeling of acceptance of a non-punitive response to crime is gradually being developed, while on an individual basis we are slowly becoming more honest about what matters for victims and offenders, particularly if we have been touched by crime. The interest of the UK coalition government in RJ may present its proponents with a unique opportunity to take the debate on its implementation forward.

RJ in prisons is widespread but piecemeal, inconsistent and sometimes invisible. It is also characterised by numerous implementation barriers and definitional ambiguity. However, these problems are not insoluble. In fact, what seemed to be consistent throughout our research was the absence of institutional opposition and philosophical doubt about RJ's viability and applicability in prison settings, as Guidoni (2003), Immarigeon (1999) and others supported. More importantly, case studies suggest that certain best practices have already been successful in overcoming these challenges. Whether their success and lessons are replicable or not is indeed a matter of debate and further research.

This paper also argues that the practices of RJ and imprisonment are not in opposition, despite belonging to two different schools of thought. The paper also endorses the idea of "restorative punishment" and rejects the proposition that RJ can only be approached as an abolitionist concept. It therefore places its investigation in the pool of research that aim to experiment with the application of the principles of RJ within prison settings.

32 See for example the case of Michael Cartwright, an 18 year old, who committed suicide while being held in Stoke Health YOI in Shropshire on 20 December 2010. He was serving a 20 month sentence for assault.

In our attempt to construct a clearer picture of RJ in the secure estate, we became sceptical of codification projects that saw various programmes labelling themselves as “restorative justice”. The research pointed towards a more simplified way of identifying RJ practices in the prison estate claiming that programmes can either be “preparatory” or “delivery”.

The qualitative data also illustrated the malleability and fluid nature of RJ, both in the prison and community settings context. The difficulty to pin down RJ practices was thought one of the key reasons they remain largely in the shadow of research and evaluation. On the other hand, RJ’s *ad hoc* and local nature is believed to be a key ingredient of its success.

Despite encouraging findings recorded by the limited extant literature on RJ’s impact on young prisoners, offenders and the community, doubt remains in relation to its ability and viability as a mainstream policy.

Increasing pressure is put on governments to reduce the financial cost of imprisonment and recidivism. The belt-tightening in public spending presents RJ with a chance to test its cost-benefit analysis. The scarce evidence seems to be encouraging, but the lack of hard data remains. This is particularly true for RJ practices within prisons and the juvenile secure estate. A key concern that arose from the study is that RJ may be picked up as an alternative practice for its seemingly low cost and not really for the depth of its values and practices.

There was consensus among the interviewed practitioners that this could lead to quick fix policies, a lack of a coherent and long term strategy and high expectations.

Criticism has already been made of the way cuts are being carried out in the prison service. “We have grave concerns about the impact of efficiency savings on practice at the frontline for both prisons and probation, which will undoubtedly undermine the progress in performance of both services” (Justice Committee 2010: 10).

In developing a strategy for RJ’s implementation in the prison estate, a clear understanding and a mutual agreement between RJ practitioners, politicians and researchers must be reached as to where resources will need to be focused.

The shrinking state and the reduction in available public services also present an opportunity for the voluntary sector. They also give a reason for mobilising communities. Scepticism remains, however, as to the motives that lead to social policy reform and the engagement of civil society.

In addition, knowledge about the voluntary sector’s role in crime control is principally based on anecdotal evidence and only rarely are scientific studies published on its contribution and evaluation. The infrastructure for developing such knowledge is absent while academia itself needs to develop its thinking even further in the development of clearer goals of research for RJ. If the RJ rhetoric is to be taken forward, researchers should not just focus on matters of immediate policy and practical relevance. Instead, a broader academic

agenda is proposed. Distance will need to be taken between the goals of RJ and the goals of academic research.

Furthermore, the government's emphasis on locality favours RJ. However, it is rather questionable whether a solution promoted through a national strategy may be able to accommodate the nuances characterising local communities and the groups populating them. The interviewees agreed that, although a policy lead is needed from the centre, "any strategy that is too prescriptive will fail". The interviewed practitioners pointed out that the RJ ethos will need to be maintained; any other goals will need to be re-evaluated, they said. Moreover, they all seemed to agree that such a strategy should not be put on the statute but should seek cross party political support and long term commitment.

As expressed in other works, one of the biggest strengths of RJ is the passion and commitment that exists among mediators and RJ practitioners (Gavrielides 2007). Meanwhile, Braithwaite (2002) warned that if this passion is tampered with, there is a real danger that RJ may lose its authenticity. The study continues to be sceptical about top down approaches that attempt to define the future of RJ in the UK. The study also remains dubious about the reasons that drive current legislative and institutional proposals for a change in the philosophy and practice of sentencing and crime control.

5. Key Recommendations

- ▶ **Definitional challenges:** Since its inception, restorative justice has been faced with definitional ambiguity. In drawing a conclusion for our understanding of restorative justice in the secure estate, care needs to be taken not to raise false expectations. The extant literature and our fieldwork findings seem to suggest that personable and dynamic nature of restorative practices require us to think about their classification in a manner that is consistent with the notion's continuously evolving character. *Restorative practices tend to change depending on levels of awareness, intentions, obstacles and popular culture. Their quality is inconsistent and their outcomes vary. A fixed delineation of restorative justice is not advised.*
- ▶ **Philosophical challenges:** *Caution must be taken while assessing what makes restorative justice practices work in a different philosophical environment such as prisons. The notion of "restorative punishment" developed by Gavrielides (2005) entails pain and has severe consequences for the offender. It may provide the "philosophical bridge" between restorative justice and incapacitation. Further development of restorative justice theory is needed.*
- ▶ **Research challenges:** The obscurity, *ad hoc* nature and short life of many restorative practices in prisons render quantitative studies impossible. Moreover, mapping exercises become very quickly out of date, and evaluations tend to be influenced by pre-defined targets that are not necessarily aligned with the *vision* of restorative justice. Qualitative research is recommended as the best research strategy for similar future projects. Despite its limitations, qualitative research must be accepted as the best research strategy for unravelling complex issues relating to the application of restorative in prison settings.

- ▶ **Strategy design & implementation:** A strategy for the implementation of restorative justice in the juvenile secure estate and prisons is long overdue. The latest policy and legislative changes provide a unique opportunity that should not be missed. However, in developing a national strategy a clear understanding and a mutual agreement between restorative justice practitioners, politicians and researchers must be reached as to where resources will need to be focused. Implementation must also be measurable. The auditing and the development of self-assessment tools are structures that do not need to be reinvented, but simply capitalised through the adaptation of inspection standards and existing processes.
- ▶ **“The Big Society”:** The shrinking state and the reduction in available public services also present an opportunity for the voluntary and community sector. They also give a reason for mobilising communities. In implementing a strategy for restorative justice, the “open market/partnership” model was supported by the research which defined it as the joined up working between voluntary, civic society, private, community and public sector bodies in developing, delivering, and evaluating restorative practices. However, *knowledge about the voluntary sector’s role in crime control is principally based on anecdotal evidence and only rarely are scientific studies published on its contribution. The infrastructure for developing such knowledge is absent while academia itself needs to develop its thinking further. Scepticism also remains as to the motives that lead to the engagement of civil society.*
- ▶ **Reconciling the local with the global:** The government’s emphasis on locality favours restorative justice. It is questionable whether a solution through a national strategy alone may fulfil the challenges faced by local communities. The interviewees agreed that although a policy lead is needed from the centre, “any strategy that is too prescriptive will fail”. The interviewed practitioners also pointed out that the restorative justice ethos will need to be maintained; any other goals will need to follow.
- ▶ **The restorative justice movement:** This research reiterates that one of the biggest strengths of restorative justice is the passion and commitment that exists among its practitioners. Given the many policy, legislative and institutional changes that are taking place, let it be a warning that if this passion is tampered with, there is a real danger that restorative justice may lose its authenticity and grass roots origins. This study continues to be sceptical about “top down approaches” that attempt to define the future of restorative justice. The study also remains dubious about the reasons that drive current legislative and institutional proposals for a change in the philosophy and practice of sentencing and crime control. It is recommended that the bottom up, community structure of restorative justice practice, its focus on locality and the underlying values that characterise its core ethos are maintained and respected by government, funders, policy makers and stakeholders particularly when introduced in the structured context of the prison estate.

Germany

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PRISON MEDIATION IN GERMANY

A. Introduction

1. Introduction

Restorative Justice (RJ) approaches have become more important as models for dealing with crime during the last two decades (Domenig, 2011, pp. 24 ff.; United Nations, 2006, p. 5). On the European level, this is reflected in several regulations and guidelines as well as in the European Charter of Fundamental Rights (Willemsens 2008). The application of mediation is recommended even for dealing with conflicts within the prison system (Council of Europe, 2006, Rec. 56.2, Rec. 70.2). At the level of (European) nations, we also find a steadily growing number of criminal justice systems that integrate alternative approaches to combat crime, such as victim-offend-

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er-mediation (Aertsen, 2004, p. 9). The adoption of victim-offender-mediation, particularly in the field of diversion, has proved of value in Germany, too, so that regulations were included in the JGG (Juvenile Court Act), StGB (penal code) and StPO (code of criminal procedure). In Bremen, victim-offender-mediation can also look back on a long tradition; its far-reaching possibilities are reflected in, for instance, the "Richtlinie zur Förderung des Täter-Opfer-Ausgleichs im Lande Bremen" (guideline to promote victim-offender-mediation in the Federal State of Bremen), implemented on 16th November 2010. There are comparable guidelines in other Federal States, too. The idea to implement elements of Restorative Justice in the prison system too can be seen as a result and logical continuation of these developments.

Naturally the ideas and principles of Restorative Justice, as with those of "volunteerism instead of enforcement", "inclusion instead of exclusion", and "compensation instead of repression" seem to antagonise the "usual" structure of the prison system. Attempts to implement Restorative Justice in the prison system are moreover exposed to the suspicion of legitimising a repressive system instead of forcing back or even conquering the system. On the other hand, it is one of the main principles of Restorative Justice that priority is given to the needs of the victims (Zehr & Mika, 1998). There are high-profile crimes that are avenged with prison sentences, which can antagonize a diversion process for several reasons. The traumatisation of the victim can, for example, block any contention with the offender. However, due to the severity of an offence, a public, symbolic condemnation through the conviction can be in the victims' and the public's interest; a prison sentence is sometimes a last way out if the offender is not willing to accept responsibility for his crime. But after a while the needs of the victims, of the community and of the public can develop into the direction of reconciliation (Van Ness, 2006, p. 312). Today there are numerous examples of such situations (Mariën, 2010; Van Droogenbroeck, 2010; Van Ness, 2006, p. 312). The transferability of the above described insights into the German prison system have been tested within the context of a model research project.

A special impetus to this project was the large-scale research project by Cambridge University, which was financed by the British Home Office (Shapland et al. 2008a and Shapland 2008b). On the basis of an experimental research design, a significant reduction in recidivism could be established in a sample that had experienced Restorative Justice programmes compared with a control sample. All offenders studied were male adults who had committed serious offences. The study was based on three projects that were financed by the British Ministry of Justice within the framework of the Justice Research Consortium. Among these projects there was also the Thames Valley Prison Project, in which conferences were used to prepare violent offenders before being discharged from prison. Here the recidivism frequency two years after the discharge was an average of 1.39 vs. a frequency of 2.06 within the control sample. This means a reduction in the recidivism frequency of almost 33 percent, which, due to the random allocation to both sample groups, cannot be ascribed to selection effects. Taking this in isolation, this effect was not actually statistically significant, because the conferences sample only had 52 and the control-sample had only 42 respondents. However, in the context of the overall study, integrating all projects, the effect proved to be significant. Additionally the studies show high levels of satisfaction among victims and offenders who participated in the conferences (Shapland et. al., 2008a, p. IV, 27; Shapland et. al., 2007).

Finally the current situation in Germany gave rise to participation in this international project. On the one hand, in 2006 the legal situation concerning prison legislation changed fundamentally in Germany due to the so-called "Föderalismus-Reform"(see part B). The legislative power was shifted from the federal government to the federal states ("Länder"). Due to that, new youth custody laws were established in all 16 states by 2008. The regulatory content of the norm, as well as its consequences for an implementation / realisation of Restorative Justice and victim-offender-mediation, was to be analysed. The development regarding the laws for the adult prison system proceeded less rapidly but here a sustainable change is in progress, too.

Above all the German prison system was shattered by some very severe offences that happened amongst prison inmates. The cruel killing of a 20-year-old inmate by his fellow inmates, which happened in the prison of Siegburg, shall be instanced here (Steinberger, 2006). Such terrible incidents show the necessity to improve the situation in prisons in a number of ways. One of these improvements should be at least to try to establish non-violent conflict-resolution schemes within the prison system.

The German contribution to this international project thus includes three main elements:

- ▶ first, the analysis of the legal situation for the implementation of Restorative Justice in German prisons, which has been rather confusing since the "Föderalismusreform" (see part B in this report), and the research and analysis of examples for the implementation of RJ projects in the German penal system (see part C in this report).
- ▶ second, an examination of the chances of a broad implementation of RJ in German prisons. This should be achieved through a survey of prison staff regarding their attitudes towards and assessments of RJ (see part D in this report).
- ▶ third, the implementation of a model project for victim-offender-mediation in the prison in Oslebshausen, which is the prison for juvenile and adult inmates of the Federal State of Bremen. The mediation service for this model project was provided by the NGO "Täter-Opfer-Ausgleich Bremen e.V." (victim-offender-mediation association Bremen). The model project was evaluated by the "Hochschule für Öffentliche Verwaltung Bremen – University of Applied Sciences in Public Administration Bremen)" (see part E in this report). The evaluation of the model project is – among other approaches – based on interviews with the imprisoned offenders and their victims who took part in the victim-offender mediation within the frame of the model project (see part F in this report).

On this basis all findings will be summarised in the last part of this report (see part G in this report).

B. JURIDICAL BASIC CONDITIONS

1. Introduction

In the following part, the juridical basic conditions that allow victim-offender mediation and other instruments of Restorative Justice, for example, family group conferencing and circles, during imprisonment in Germany will be explained. These opportunities have been created since 1990, first in the youth criminal law and later also in the criminal law for adults and in the criminal procedural law. With the first amending act of the Juvenile Court Act of 30th August 1990, federal law gazette I p. 1163, sec. 10 paragraph 1 No. 7 JGG and sec. 45 paragraph 2 sentence 2, the Juvenile Court Act was reformed and thus RJ was introduced into juvenile criminal law. In criminal law for adult offenders, RJ was introduced by the Act against Crime of 28th October 1995, federal law gazette I p. 3186, so sec. 46a Criminal Code with a legal definition of "Täter-Opfer-Ausgleich" in Ziff. 1. "Täter-Opfer-Ausgleich" is normally translated as "victim-offender-mediation", but the legal definition of "Täter-Opfer-Ausgleich" does not require a mediation setting, although there is a widespread practice of victim-offender mediation in the legal frame of "Täter-Opfer-Ausgleich". Finally "Täter-Opfer-Ausgleich" was specifically regulated in sec. 155a and sec. 155b StPO – Code of Criminal Procedure. These regulations were introduced by the Act of 20th December 1999, federal law gazette 1999 I p. 2491. According to this regulation, the prosecutors and the court are obliged to check the possibility of victim-offender mediation in every part of the procedure. They also give permission for personal data to be passed to a victim-offender scheme. Besides sec. 153a No. 5, StPO gives the opportunity to dismiss the procedure if the offender seriously makes an effort in the field of victim-offender mediation.

These regulations contain the instruments which are typically used within the frame of Restorative Justice (for more details see Hartmann, 2010, 125). Nevertheless, these regulations concern the sentence, the opportunities to suspend a procedure and divert a case. Another opportunity consists of using instruments of Restorative Justice within the scope of probation (sec. 56 and 56B Criminal Code), or a warning with suspension of a sentence (sec. 59 and 59a Criminal Code). However, so far victim-offender mediation has been used before, not during the execution of an imprisonment (Laubenthal 2008, Rn. 168). The relevant legal regulations for custody and its expiry – consequently also for victim-offender mediation during the custody – can be found in the Prison Acts. The following chapter is designed to illustrate which opportunities for the use of RJ during a time in custody arise on the basis of the Prison Acts.

2. Overview of the legal situation in Germany

Before the so-called federalism reform in 2006, the legislation competence for the prison acts lay with the German Federation (Bund). Since the reform of 2006, the legislative competence for the field of custody has been neither in the catalogue of the exclusive legislative competences of the Federation (according to article 71, 73 of the Constitution of Germany), nor among the competing legislative competences according to the articles 72,

74 of the Constitution of Germany. As the legislative competence is in no way attributed to the German Federation, article 70 paragraph 1 of the Constitution of Germany is valid. According to this regulation, the federal states (Länder) have legislative competence. As a result there are diverse Prison Law Acts. At the moment there are valid prison acts for adult inmates from five federal states and one from the central state, because up to now not all federal states have made use of their legislative competence. As such it is only the states of Bavaria, Hamburg, Lower Saxony, Baden-Württemberg and Hessen which made their own Prison Acts for adult inmates. In the remaining states, the Prison Law Act of the German Federation (Bund) is still valid according to article 125 of the Constitution of Germany (Sachs 2008, article 125 a Constitution of Germany, para 1). In August 2011 Berlin, Bremen, Brandenburg, Mecklenburg-West Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig – Holstein and Thuringia published a common model prison act on which they intend to orientate their respective legislation.

The legal situation in custody for juvenile inmates is different. In the meantime, all federal states (Länder) have passed their own prison acts for juvenile inmates.

3. Constitutional-judicial aspects

The rehabilitation of criminal offenders is one of the most important aims of custody due to constitutional law. This can already be deduced from the “Lebach” case of the Federal Constitutional Court of 5th March 1973 (Laubenthal 2008, Rn 143). Furthermore, the court stressed that rehabilitation depends on the offender as well as on the prison.

The aim of rehabilitation results – from a constitutional-judicial view – from human dignity according to article 1 paragraph 1 Constitution of Germany, from the social state principle referred to in article 20 paragraph 1 Constitution of Germany, and from the fundamental rights of the prisoner (BVerfGE 35, 202, 235; Laubenthal, 2008, para. 144).

To reach the aim of rehabilitation, support by the state as well as by society is necessary. The convicted offender must not be an object of repressive imprisonment (Laubenthal 2008, Rn 144). Often – as the Federal Constitutional Court in 1973 argued – a perfect rehabilitation fails due to the disregard and rejection of the offender by society. This can cause social isolation (BVerfGE 35, 202, 236). Therefore, it is an assignment of custody to counteract such a development, if possible. In consequence, as far as instruments of Restorative Justice can contribute to rehabilitation, there are good reasons to see it as a constitutional-judicial duty to use these instruments.

There are also limitations to the use of repressive imprisonment to achieve social improvement (Kaiser & Schöch 2003, §6 Rn 13). The state is not allowed to use force to educate the convicted persons to become orderly “model citizens”. Rehabilitation measures are only acceptable when they do not aim further than the goal of avoiding further criminal offences (Arloth 2011, § 2, para. 7; Kaiser & Schöch 2003, § 6 para. 13). This principle limits the rehabilitation measures admissible. The measures which support rehabilitation should encroach upon the rights of the prisoner only to a minor degree and should at best be voluntary.

Article 20 paragraph 1 Constitution of Germany guarantees social participation by the citizens (“Sozialstaatsprinzip”). The state – in each of the three powers – must therefore take account of the aspects of rehabilitation with its decisions. This is valid for the legislation as well as for the organisation of the custody (Laubenthal 2008, para.145), so that custody has to be applied in a form which promotes rehabilitation (Laubenthal 2008, Rn 145). In this respect the constitutional law also limits the power of the federal states in terms of legislation and practical management of custody. As far as RJ serves this constitutional aim of social participation, it has to be taken into account, namely in the field of legislation as well as in the field of legal reasoning and legal practice.

4. Juridical regulations of the custody for adult inmates

4.1. Prison Act of the German Federation (Bund)

The Prison Law Act of the Bund (StrafvollzG of the German Federation) was passed in 1976 and has been in force since 1st January 1977. According to sec.1 StrafvollzG, it is valid for imprisonment in prisons. The StrafvollzG was most recently amended by sec. 2 of the modification law of 29th June in 2009.

4.1.1. The aim of custody according to sec. 2 Prison Law Act of the German Federation (Bund)

According to sec. 2 Prison Law Act on the one hand, custody has to serve the rehabilitation of the prisoner and, on the other hand, has to protect society from other criminal offences (Kaiser & Schöch 2003, § 6 Rn 8). **Rehabilitation is one of the central aims of custody and serves at the same time a positive special preventive role** (Kaiser & Schöch 2003, § 6 Rn 10; Arloth 2011, §73, Rn 10; BVerfGE 45, 187, 258). Restorative Justice can be seen as an essential element for the realisation of these aims (Kamann 2008, Rn 255). RJ is a social performance of the imprisoned person, during which he or she can reflect what the victim may have experienced as a result of the criminal offence and what damage and suffering the action caused the victim (Kaiser & Schöch 2003, § 6 Rn 12). Empirical research points to the fact that RJ exerts a favourable influence on rehabilitation (Shapland et. al. 2008a, pp. IV, 28, 40). Furthermore, according to sec. 4 paragraph 1 Prison Law Act, a commitment and involvement by the prisoners should be sparked. This could be achieved through the use of Restorative Justice in an exemplary manner.

Custody should only be a last resort (“ultima ratio”). The proportion of imprisonments amongst all sentences has only been about five to seven percent since the 1970s. If, in a certain case, the use of custody is necessary as a final option, the correctional service has the duty to use all measures that can help reintegrate the offender into society as quickly as possible (Kaiser & Schöch 2003, § 6 Rn 12). Since restorative justice has to be regarded as a chance of rehabilitation, the correctional service has to take RJ into account.

4.1.2. Help during the custody referred to sec. 73 StrafVollzG

By this legal regulation, aid to self-help should be offered to the imprisoned person. The institution should therefore stimulate and motivate the inmates whenever RJ seems possible (Arloth 2011, §73, Rn 1). Victim-offender-mediation and, even more, conferences offer a chance for the prisoner to regulate existing claims for compensation with the injured person and prepare for his/her living conditions after their discharge, and his/her relationships with family, friends and the social environment. Sec.73 StrafVollzG also contains aspects of social reintegration after the custody. The norm justifies the claim of a prisoner for social support, but the correctional service has a scope of discretion in which way this support can be provided (Calliess & Müller-Dietz 2008, §73, Rn 1; so probably also Walther 2001, p. 81). However, this discretion is bound by the legal concept of the norm. Hence, the discretion is under comprehensive judicial control (Peine 2008, Rn 227).

The text of sec. 73 Prison Law Act speaks of the reparation of the damage caused by the criminal offence. However, damage means not only material but also, among others, emotional damage. RJ supports the reparation of all kinds of damage and promotes the social ability and the social responsibility of inmates (Calliess & Müller-Dietz 2008, §73, Rn 3). Sec.73 Prison Law Act presupposes a claim by the prisoner for social support, but actually the correctional service should support the prisoner in suitable cases (Arloth 2011, §73, Rn 1).

Besides, the attention to and the mindfulness of the interests of the victim are among the aims of treatment during custody. Furthermore, the prisoner should be prepared for a life under his/her own responsibility and freedom, which he/she should live in a socially adequate and acceptable manner, which means in compliance with the laws, needs and requirements of society (Best 2009, § 73, para. 6). Apart from the material reparation, sec. 73 Prison Law Act therefore also covers also victim-offender mediation and other procedures of Restorative Justice, such as conferences (Arloth 2011, §73, Rn 5). This interpretation approximates that the correctional service – apart from in atypical cases – has to support the use of RJ with the aim of comprehensive reparation of the damages.

4.1.3. Result

As such, RJ can be tied to sec. 73 Prison Law Act and can be realised on this legal basis. The discretion of the correctional service is restricted in this way, particularly as RJ also promotes the aims of sec. 2 Prison Law Act.

4.2. Regulations of the federal states

After the federalism reform of 2006, the federal states have availed of their legislative competence and can implement their own legal regulations according to article 70 paragraph 1 Constitution of Germany. The federal states have partly used their new legislative competence. :

Only some of the federal states have taken advantage of this opportunity so far. However, it can be said that, based on the current laws of the federal states and of the federation, victim-offender mediation can be carried out at the penal stage in all of the federal

states. The basis of this is found in the legal order of the federal state in question as well as in the constitution of Germany and the constitutions of the federal states. In addition, based on the constitution and certain legal regulations, it can also be said that, in cases where victim-offender mediation or other Restorative Justice approaches are appropriate, the penal institutions have an obligation to support these measures.

In the frame of the MEREPS-project the legal situation in each of the federal states was analyzed for juvenile and adult inmates. Here we have to take into account, that the space of a publication is limited and the majority of readers may not be interested in the peculiarities and specific characteristics of each of the German federal states. Therefore we will present in the following sections the locations of the project and therefore the laws that are relevant in the federal state of Bremen in this field. Beyond that we give comprehensive summaries on the legal situation in the other federal states in prison laws for juveniles and adults.

4.2.1. The (model) Prison Act (LStrafVollzG)

On 23rd August 2011 the federal states of Berlin, Bremen, Brandenburg, Mecklenburg-West Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig – Holstein and Thuringia presented a model prison act which is to become a basis for the Prison Acts of these federal states. In these federal states the above mentioned Prison Law Act of the German Federation (Bund) is valid till the model Prison Act (LStrafVollzG) is set into force by the parliament of the respective federal state.

In sec. 2 Prison Law Act, the aim of custody and the duties of prison staff and inmates are set out. According to sec. 2 para. 1 LStrafVollzG, the aim of custody is to enable the prisoner to live a life in social responsibility. The rehabilitation of the inmates is also a further aim (justification of the LStrafVollzG, p. 61), with the already above discussed consequences for support for Restorative Justice by the correctional services. A further assignment of custody is the protection of the society from further criminal offences (LStrafVollzG, p. 67). The whole execution of a sentence has to be orientated to these aims (LStrafVollzG, p. 63).

Restorative Justice confronts the prisoner with his/her criminal offence. He/she has to accept responsibility and is confronted with the view of the victim. This can influence the decision of the offender to lead a socially adequate life in the future. This would come up with the aim mentioned in clause 1, as well as the preventive purpose of clause 2. Hence, RJ is able to promote the aims of custody.

Sec. 3 Model Prison Law Act contains the principles of the arrangement of custody. According to sec. 3 paragraph 1 Model Prison Law Act, the correctional service has to encourage prisoners' reflection on their criminal offences and the consequences of the offence for the victims. Within the scope of Restorative Justice, the prisoner must necessarily deal with the views of his/her victim, with the damage, injuries and suffering and, finally, with the needs and claims of the victim resulting from the offence. There is hardly any other measure with which the correctional service could achieve the aims of custody better than with support by Restorative Justice. This alone is a good reason to justify an obligation of the custody service to support RJ.

The prisoner cannot derive those rights from sec. 3 Model Prison Law Act which are directed at the correctional service (justifications of the LStrafVollzG, p. 68), and the prisoner cannot judicially enforce the support of Restorative Justice in his/her individual case on this legal basis.

During the first eight weeks of imprisonment, every prisoner has to pass through a diagnosis procedure and then an execution plan has to be made. According to sec. 8 paragraph 1 sentence 2 Model Prison Law Act, the correctional service has to point out every required measure for achieving the aims of custody for the particular prisoner. Besides these necessary measures, other measures can be recommended.

The mandatory content of the execution plan can be deduced from sec.9 Model Prison Law Act. According to sec. 9 paragraph 1 No. 18 Prison Law Act, the execution plan has to specify in which way the damage to the victim should be compensated.

Restorative Justice can result in a compensation of the criminal offence in material as well as in immaterial ways. It is therefore a suitable measure in terms of sec. 9 paragraph 1 No. 18 Model Prison Law Act. Hence, the victim-offender-mediation is also part of the execution plan according to sec. 8 Model Prison Law Act. However, referring to sec.9 Prison Law Act, there is a ranking among the different measures. As per sec. 9 paragraph 1 No. 5 to 10 Model Prison Law Act, those measures which are necessary because of the results of the diagnosis procedure for the realisation of the aim of the purposes of sec. 2 Model Prison Law Act must be particularly stressed and have priority compared with all other measures. Victim-offender mediation is not included in the circle of measures, since it can be recorded in the execution plan within the scope of sec. 9 paragraph 1 No. 18 Model Prison Law Act.

As per sec. 5 paragraph 2 Model Prison Law Act, the imprisoned person should be motivated by the correctional service to compensate material as well as moral damage caused by the offence. According to the rules of the administrative law, which are also valid for custody, the formulation "should" expresses a bound discretion (Peine gen. VerwR, para. 212; Maurer, Allgem. VerwR, §7, para. 11). The correctional service is therefore obliged, according to sec. 5 paragraph 2 Prison Law Act, to motivate the imprisoned person to compensate material and moral damage.

Though Restorative Justice and victim-offender mediation are not explicitly mentioned in sec. 5 paragraph 2 Model Prison Law Act, there are only a few other measures which are as capable as RJ to promote compensation for material and moral damage. This is also recognised in the juridical literature (BT-Drs. 12/6853, 21; Fischer, Criminal Code, §46 a, para. 2 and the following; Rössner & Krämpfer in: Dölling & Duttge & Rössner, Criminal Code, §46 a, para. 1 and 9; Lackner & Kühl, Criminal Code, §46 a, para. 1; Streng in: Kindhäuser & Neumann & Paeffgen, Criminal Code, §46 a, para. 4; Theune in: Leipzig comment, Criminal Code, §46 a, para. 9). The justifications to sec. 5 paragraph 2 Model Prison Law Act also point to victim-offender mediation. Of course, the law gives the opportunity to use other measures besides victim-offender mediation. This includes other instruments of RJ such as conferences or circles.

5. Juridical regulations for the custody of juvenile inmates

5.1. Legal-historical development

The separation of the custody of juveniles and of adult inmates was first introduced in the Imperial Criminal Code of 1871, but this regulation found no broad application in practice (Lindrath 2010, p. 18). The first specialised prison for juvenile inmates was put into service in 1912 (Lindrath 2010, p. 19). The separation of juveniles and adults in custody therefore can look back on a long tradition in Germany. It still is a dark chapter of German legal history. In the time before 1977 no legal regulations existed for custody. This lack of regulations was unconstitutional, as the Federal Constitutional Court demonstrated in the judgment of 1972 (Federal Constitutional Court of the 3/14/1972, file number: 2 BvR 41/71). Since the Prison Law Act of 16th March 1976, federal law gazette. I p. 581, p. 2088, in force since 1st January 1977, custody is regulated by a law. The Prison Law Act regulates custody for adults; it is valid only partially for the custody of juveniles. The Juvenile Court Act (JGG) also contains only a few regulations for custody. An analogous application of the norms of the Prison Law Act was not possible. An analogous application of regulations needs an unintended regulation gap as a precondition. However, sec. 176 and 178 Prison Law Act show that there is no unintended regulation gap, as it was intended by the legislator that the other regulations of the Prison Law Act should not be valid for juvenile inmates. (Goerdeler & Pollähne 2007, p. 59).

These missing regulations for youth custody was declared unconstitutional by the Federal Constitutional Court in 2006 (Federal Constitutional Court 31st May 2006, file number: 2 BvR 1673/04; 2 BvR 2402/04, para. 36; Goerdeler & Pollähne 2007, p. 55). This legal situation was not compatible with the basic requirements of a state under the rule of law. After all, juveniles possess fundamental rights, and interventions in their fundamental rights also need legal regulation (Federal Constitutional Court, 31st May 2006, file number: 2 BvR 1673/04; 2 BvR 2402/04, para. 67; Goerdeler & Pollähne 2007, p. 58). Although these problems had been discussed in the literature long before the judgment of the Federal Constitutional Court. the legislator did not achieve a Youth Prison Law Act until the federalism reform in 2006. With the federalism reform of

2006, the federal states received the legislative competence for custody. All federal states therefore had to create legal regulations for juveniles in custody in a short time.

Since 1st January 2008 16 different Youth Prison Law Acts exist, which are explained in the following paragraphs.

5.2. Special constitutional standards for custody of juvenile inmates

Legal regulations have to take the differences between juveniles and adults into account. These differences derive from the development of juveniles that is still continuing as regards biological, psychological and social aspects (Federal Constitutional Court, 31st May 2006, file number: 2 BvR 1673/04; 2 BvR 2402/04, para. 50). This development contains stress potential due to insecurity, difficulties in adapting and their relations with older or socially accepted people. Behaviour patterns that juveniles adopt during this time are often learnt from adults. From a socially adequate perspective, this conditioning can be positive as well as negative. As such, the surroundings in which young people live and grow up is especially important: imprisonment can therefore be only a last resort (“ultima ratio”) (Federal Constitutional Court, 31st May 2006, file number: 2 BvR 1673/04; 2 BvR 2402/04, para. 50; Goerdeler & Pollähne 2007, p. 60). Juveniles usually do not plan the future like adults, but live mainly from day to day (Walkenhorst, 2010, pp. 22, 26), and juveniles usually suffer more from being separated from their social surrounding and can accept loneliness less easily than adults (Federal Constitutional Court, 31st May 2006, file number: 2 BvR 1673/04; 2 BvR 2402/04, para.54). For these reasons, only six to seven percent of all convicted juveniles are sentenced to serve term of imprisonment (Walkenhorst, 2010, p. 22). If imprisonment seems to be necessary, it has to be as brief as possible. On average, the confinement amounts to 13 months for male juveniles and to 8.5 months for female juveniles (Walkenhorst, 2010, 22, 24).

5.3. Regulations of the German Federation with significance for the custody of juveniles

The Code for Social Affairs (SGB) VIII has to be mentioned here. According to sec. 1 paragraph 1 SGB VIII, every young person has the right to education and the development of an independent personality capable of living according to the standards of society. According to sec. 7 paragraph 1 No. 4 SGB VIII, young people are those who have not yet completed their 27th year. Sec. 1 paragraph 1 SGB VIII is also valid for juveniles in custody. These are not excluded from the scope of application in sec. 6 SGB VIII either, so the regulations of the SGB VIII are also to be applied to them.

Every juvenile has a right to receive education, as far as this is suitable and necessary for his/her development as per sec. 27 paragraph 1 SGB VIII. Nevertheless, it is doubtful whether the applicability of sec. 27 paragraph 1 SGB VIII is abandoned by the regulations of the Juvenile Court Act. Basically both laws pursue different aims. The criminal law for juveniles serves mainly as a sanction system. The SGB VIII ensures the right of the youth

to receive welfare and social benefits (Wiesner, 2011, Before §27, para. 46.) . The sanction after a criminal offence can have the character of “education rules” according to the regulations of the JGG. With the First Juvenile Court Amendment Act, the legislator intended to incorporate welfare services for juveniles into the criminal law for juveniles in a better way (BT Drs 11 / in 5829, page 11). According to sec. 27 paragraph 1 SGB VIII, a right to claim for assistance from the state exists (Kunkel, 2011, § 27 para. 15). This right could also be there during the time of custody. If such a right existed, a measure would have to be taken in the event of a claim. Victim-offender mediation is not in the range of measures regulated in sec. 28 to sec. 35 SGB VIII. Nevertheless, the enumeration of the measures in the law is not a conclusive enumeration, which arises from the legal formulation “in particular” (Sec. 27 paragraph 2 p. 1 SGB VIII; Kunkel, 2011, §27 para. 29). It is therefore justifiable that victim-offender mediation and other instruments of RJ can be valued as a form of assistance on the legal basis of the so-called innovation clause sec. 27 paragraph 2 S. 1 SGB VIII, although they provide not only help and support for young offenders, but also for victims (Kunkel, 2011, §27 para. 29). According to SGB VIII, the youth welfare department is responsible for these measures (Kunkel, 2011, §27 para. 29), while according to the Prison Acts for juveniles, the correctional services of the federal states are responsible. This leads to difficult competence questions that cannot be discussed here.

5.4. The legal regulations in the federal states

Due to the legislative competence of each federal state according to article 70 paragraph 1 of the Constitution of Germany, there are 16 different Prison Law Acts for juveniles. In the following sections, we will briefly introduce the laws that were relevant from the perspective of our study, as well as the options offered under the law for victim-offender mediation and for the implementation of other RJ approaches.

5.4.1.

Performing victim-offender mediation in the penal stage is permitted in all of the federal states. Each federal state has enacted its legislation such that, in addition to victim-offender mediation, other Restorative Justice approaches, such as conferencing, are also possible. In all the federal states, implementation is carried out from a pedagogical perspective and is focused on re-socialisation in order to prevent the commission of any further crimes. As such, victim-offender mediation offers a chance to transmit non-violent conflict resolution. In addition, each federal state focuses on supporting the gaining of insight into the victim’s perspective and dealing with the consequences of the offence on the victim. This can also be implemented within the framework of preparation and implementation of victim-offender mediation. In addition, inmates should be educated towards making reparations, which should be used as a means for supporting their re-integration into society. These expectations can also be productively connected with victim-offender mediation, while conferencing can offer perhaps even more advantages, as it involves several support persons on the sides of both the victim and the offender. In conclusion, many factors promote the possibility for the offender to meet with his or her “actual” victim, and these aims add es-

pecial substance and seriousness. Taking into account all legally prescribed aims and tasks, it is difficult to imagine any individual measure that could have an effect as comprehensive as that of victim-offender mediation.

From the perspectives of this study, the legal regulations do not extend to a broad scope. Instead, they cover details and identify what are considered as central questions. In certain federal states, the regulations are so clear and binding that there are only a few possible cases in which inmates are not to be encouraged to engage in victim-offender mediation or other similar measures. **Furthermore, the legislation in each federal state stipulates that each case must be carefully examined and considered in order to determine whether such initiatives are necessary in order to reach the penal objectives and for the optimal and comprehensive implementation of the legal regulations.**

5.4.2. Bremen – Aspects of the Constitution of Bremen

The Constitution of the Federal state of Bremen provides different educational aims in its article 26. According to article 26 No. 1 Constitution of Bremen, education should foster a mindset and attitude geared towards common sense which is directed upon respect for the dignity of every person. Article 26 of the Constitution of Bremen refers not only to education at school. This can be deduced from the systematic position of Article 26, because the state school supervision is ruled from article 28 of the Constitution of Bremen. Nevertheless, Art. 26 does not constitute a fundamental right, but an aim of the education, and consequently is to be considered by the state authorities regarding their activities and decisions. The aims of Restorative Justice and victim-offender mediation are compatible with the mentioned aim of the Constitution of Bremen, because RJ and victim-offender mediation also foster an approach geared towards common sense as well as the respect for the dignity and self-determination of victims and offenders. The understanding of the consequences of criminal behaviour, the ability to settle conflicts in a non-violent dispute, social peace and, most of all, reconciliation are promoted by RJ as required by Art. 26 of the Constitution of Bremen. All state institutions have to consider this in their activities and decisions.

5.4.3. The Bremen Juvenile Prison Act (BremJStVollzG)

According to sec. 2 Juvenile Prison Law Act, the aim of custody is to enable the prisoner to live a life without further criminal offences and take social responsibility. A further aim is the protection of society from further criminal offences. As already shown, victim-offender mediation can serve both aims.

Following sec. 3 paragraph 1 Juvenile Prison Law Act, custody has to be executed in an educational way. The prisoner should be enabled, according to his/her abilities and skills, to live a life of social responsibility and to respect the rights of other persons. The correctional service should stimulate an understanding of the consequences of the criminal offence according to sec. 3 paragraph 1 sentence 2 Juvenile Prison Law Act. Victim-offender mediation and other methods are also compatible with this objective .

According to sec. 5 Juvenile Prison Law Act, the abilities and skills of the offender should be strengthened. Support and education should help to realise the aim of custody as far as possible – as per sec. 2 Juvenile Prison Law Act. According to sec. 5 paragraph 3 Juvenile Prison Law Act, the measures should motivate the imprisoned offender to acknowledge his criminal offence and to recognise the causes and also the consequences of the offence. Victim-offender mediation is eminently suitable for this objective.

A plan of action has to be prepared as per sec. 11 paragraph 1 Juvenile Prison Law Act, which refers to a diagnosis procedure according to sec. 10 paragraph 2 Juvenile Prison Law Act. The educational needs and other needs of the prisoner concerned have to be identified. The necessary content of the plan of activities results from sec. 11 Prison Law Act. Aspects of the plan of action are also measures and offers in order to compensate for the damage and violations caused by the offence. This results from sec. 11 paragraph 3 No. 10 Juvenile Prison Law Act. Victim-offender mediation can therefore be recorded in the plan of activities.

According to sec. 8 Juvenile Prison Law Act, the correctional service should support the prisoner in the process of solving social, economic and personal problems. The help applies to “help to self-help”. In consequence, the inmates should be supported to become able to organise their own affairs. This also concerns reparation for the material and immaterial damage and violations to the victim. The correctional service “should” stimulate and enable the imprisoned persons to settle their affairs. The formulation “should” means a bound discretion in this respect for the correctional service..

To sum up for Bremen, the realisation of victim-offender mediation and other restorative measures is legally possible during the custody of juveniles and it is compatible with the assignments and aims of custody. There is therefore a duty for the correctional services to take victim-offender mediation into consideration and to promote it, except in particular cases for which other measures might be more suitable to achieve the legal aims of custody.

6. Juridical regulations for the custody of juvenile inmates

The prison laws for juveniles and adults do not differ in the emphasis they give to the reflection of the consequences of the offence. The offenders should be stimulated to compensate the material as well as immaterial and emotional damages the victims have suffered. However, considering the human rights and principles of the constitution financial reparation should not interfere with rehabilitation. As such, the inmates are to be supported when dealing with these problems. However, the discussion of the rulings of the prison laws clearly demonstrated that it is mandatory to stimulate the inmates to reflect on the consequences of the offence and to try to compensate the victims.

C. PRACTICE OF RESTORATIVE JUSTICE IN GERMAN PRISONS

1. Introduction

In Germany Restorative Justice is predominantly used as victim-offender mediation in cases of diversion (Kerner & Eikens & Hartmann, 2011,14), though some projects have begun to gather experiences with conferencing approaches (Hagemann, 2009). The research results showed that some (pilot) projects in Germany exist that offer restorative measures in prisons. Information on three projects could be gathered by telephone expert interviews, which shall be explained in the following.⁷

2. Berlin: “Juridical mediation for conflicts in prison”

The pilot project “Juridical mediation in prison” of the Berlin District Court was carried out from April 2009 until the end of March 2011 (homepage <http://www.berlin.de/sen/justiz/gerichte/kg/presse/archiv/20090409.1440.127687.html>, last retrieval: 12.09.2011).

The project offered the possibility to solve conflicts between prison inmates and the prison staff and management via mediation. When an inmate makes an application for a court decision (109 StVollzG / Prison Act) against a staff member or the management of the prison at the District Court, the court can refer the case to the mediation scheme.

The basic prerequisite is the acceptance of both parties to take part in a mediated dialogue. For a case to be passed on to the responsible mediation scheme, the following conditions have to be fulfilled: there is no need for an interpreter; the application must not be urgent; the case has to meet the criteria for judicial mediation. Participation in judicial mediation is voluntary and should be arranged at short notice. Mediation sessions take part in special rooms in Tegel Prison. If a solution can be reached to which both parties agree, a legally binding agreement is recorded. The proceedings at the court can then be declared as essentially resolved. If no solution can be reached in the mediation scheme, the court proceedings shall go on as usual, with no legal disadvantages for any party.

Such approaches are quite relevant, especially concerning social rehabilitation, as prison inmates learn to deal with conflicts in regulated discussions without violence, and they ex-

7 The following report is based on literature and internet research, research in the context of congresses, inquiries at relevant and active institutions like the “Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung” (service office for victim-offender-mediation and mediation) in Cologne (www.toa-servicebuero.de) and the publication about the project in the most relevant journal in this field of work (see project report, 2010). Further information was gained from telephone expert interviews and within the context of the survey among German prison staff (see chapter D of this report). Eventually, in September 2011, the final report of the survey was sent to the ministries of justice, which were at the same time asked to inform us if they had obtained further information on respective projects or facilities. Despite this wide research we cannot speak of a complete outline due to the federal structure of Germany. In fact, one can assume that there is some further practical experience in several penal institutions: however, bigger projects or institutions are assumed to have come to our knowledge.

perience that the views and expectations of all parties are respected. In this way the social competence of the inmates can be improved.

The prison magazine of Tegel, which is called "der Lichtblick", and is edited by inmates, reported on judicial mediation and described the mediation process as "excellent" (Funke, 2011). Judicial mediation provides the opportunity to experience a non-violent solution to conflicts. The editors invite all inmates to take part in mediation.

The evaluation of the project was expected to be completed in 2011. So far a final report is not available.

3. The federally financed model project „Start Chance“

The project started in April 2009 and will last until the end of March 2012 (homepage: http://www.hilfzurselbsthilfe.org/downloads/flyer_familienrat_web.pdf; last retrieval: 13.09.2011).

Though the project does not use a typical RJ approach, as it does not involve the victims, it is newsworthy for Germany because of its conferencing approach. The project especially focuses on supporting young offenders to lead a life of social responsibility. This also includes job-related integration. The model project is characterised by the application of a family group conference. The cases are referred to the association "Hilfe zur Selbsthilfe e.V." in Reutlingen by the juvenile court aid. The main interest of the application of the family group conference is to strengthen the social network of the juvenile and is implemented to either support or to replace other measures. Experience shows that the young offenders profit from the possibility to design their future life outside the prison together with family members, friends, juvenile court representatives etc. Over several sessions a plan is developed with appropriate consideration of the wishes, fears and aims of all participants. A main precondition for the success of the family group conference is the intention as well as the joint aim of the participants to reintegrate the juvenile into a normal life without further offences.

This project has not been evaluated so far.

4. "basic" – Occupational and social integration of prisoners in the Ravensburg prison

The project, launched in January 2008, was in progress until December 2011 (homepage: http://www.hilfzurselbsthilfe.org/downloads/flyer_familienrat_web.pdf; last retrieval: 13.09.2011). The project aims at helping prisoners before and after their discharge. Prisoners are supported in finding a job and a flat, and their social reintegration is encouraged. The aftercare of the prisoners is the main task of the "basic" project, which especially focuses on a faster and easier reintegration via occupation and other measures.

5. Conclusion

Even though no conclusive evaluation reports have been published yet, one can already say that the adoption of instruments of Restorative Justice in prison settings or in the outer field of prison settings is possible in Germany too..

In our opinion, the most important finding of this research is that the implementation of RJ elements plays a minor role in German prison settings. This is contrary to the Prison Acts (for youth and adult custody) of all federal states (“Länder”), which link such methods in numerous ways (for more information see chapter B of this paper).

The important role which the legal regulations assign to the recognition of their criminal activity and its consequences for the victims, as well as to compensation for the material and immaterial damage, is not clearly reflected in a common use of instruments of RJ. It has to be feared that in practice the legal regulations lie idle.

However, this attitude seems to be changing. In some federal states (“Länder”) there are serious initiatives in progress which are using the rudiments of the Prison Act to expand a victim-oriented penal system. In this context, the pioneering that was achieved within the MEREPS project could be sustainable and productive.

D. ASSESSMENT OF VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE PERFORMED BY THE STAFF OF GERMAN PRISONS

1. Introduction

The aim of this part of the research project is to get more information about the attitudes towards and the assessment of Restorative Justice by the staff of German prisons. This survey should help to estimate the amount of support and obstacles when introducing RJ in German prisons on a broader scale.

2. Methodical Approach

2.1. Preparation and Notification of the Survey

In June 2010 the Ministries of Justice in the Federal States were contacted in writing, were informed about the project and the questioning and were asked for permission to undertake interviews in prisons. At the same time a questionnaire was conceived and tested in some open interviews with staff members in the prison in Oslebshausen.

After several revisions the “GrafStat 4” program (www.grafstat.de) was applied to change the questionnaire, which included 34 questions, to a user-optimised online form. The online form contains 26 closed and eight open questions. After discussing and adjusting the research project via e-mail communication and telephone expert interviews with the criminological services for prisons that are established in the majority of the Federal States and after a short testing phase of the online questionnaire and the program, the Ministries of Justice of the Federal States were asked for permission to carry out the study.

The institute obtained permissions from the Ministries of Justice in the course of the next months. The last approvals which still had been missing were made after a meeting of the Committee of the Federal States responsible for the penal system on 29th September 2010 (July 2010: Baden Württemberg, Brandenburg and Lower Saxony; August 2010: Saxony-Anhalt, North-Rhine Westphalia, Schleswig-Holstein, Saxony, Bavaria, Saarland, Thuringia and Hessen; September 2010: Mecklenburg-West Pomerania, Berlin; October 2010: Rhineland-Palatinate, Bremen and Hamburg).

On 1st November 2010 all prisons were contacted in writing (e-mail) and asked to take part in the fieldwork. The e-mail also informed of the period of time of the questioning (8.11. to 5.12.2010), of the link to access the online form, and of the contact details of the coordinator in charge of the survey at the IPoS. The questioning was secured by numbers for transaction (TAN) to exclude, in the best possible way, any misuse or manipulation.

2.2. Target Audience

The target audience for the questioning included all people who perform an activity in a prison which involves regular contact with prison inmates. As the structures of prisons differ strongly from each other, the target audience was not specified in detail at the beginning. Because of various requests, the following specification was made afterwards:

The following groups were to be questioned in particular:

- ▶ *Personnel, especially those in intensive contact with prisoners, in all special services (Pastoral Care, Psychological Service, Social Service, Medical Service, Educational Service)*
- ▶ *Heads of management of Prison Departments*
- ▶ *Work services*
- ▶ *Heads of management of General Prison Service and their deputies*
- ▶ *Assistants in Departments*

According to the more open definition of the target group at the beginning, some additional staff members (regardless of their role), who were interested in participating could take part in the research.

Eventually the prisons were asked to find out the number of persons to be taken into consideration for the study and to inform the IPoS about it by e-mail. The respective number of TANs was then sent to the prisons, also by e-mail.

2.3. Comments on the Representativity of Results

The investigation was designed as a total survey, i.e. all persons who work in the prisons and meet the conditions of the target audience were to be questioned. A purposive or structured representative sample was not drawn. Due to the institutional conditions only a (kind of) representative sample could actually be achieved. According to statistics of the "Bundesamt für Justiz" (Federal Office of Justice), 37,180 people worked in prisons in 2008

(Bundesamt für Justiz, 2008). If statistical computation were followed, a sample of 381 people would be necessary for a survey to achieve a statistically representative result. Actually 459 people took part in the survey. However, the participants do not represent a substantial representative incidental sample of the entirety of all staff members of prisons, as not all people in the sample universe had the same access to the survey. Participation in the online interviews required a working place with access to a computer and internet access; due to local conditions and organisational requirements made by the prison management, the extent to which access could be achieved varied greatly. As such, it can be assumed that staff members with high-level tasks or who provide special services are over-represented while AVD (general prison service) employees are under-represented. Because of this fact the respondent base must be seen as a kind of "incidental structured sample" (Fähnrich 2011, p. 44). As such, the results cannot be seen readily as representative of the entirety of all staff members in German prisons. However, one can act on the assumption that the results, in their trends, represent the spectrum of prison staff members' opinions in matters of "victim-offender mediation" and Restorative Justice in imprisonment.

2.4. Methodology of the Analysis

As already mentioned, respondents answered closed as well as open questions. The closed questions were analysed by means of tabulations and traditional statistical tests in a statistics program.

Various bivariate analyses, such as regression and Chi tests, were therefore carried out. A qualitative content analysis was conducted to evaluate the open questions. Content analysis enables important statements to be extracted. First, all statements are reviewed and, on this basis, a system of categories, otherwise known as a code frame, is drawn up for the answers to each open question (Gläser and Laudel 2009, p. 197). During the analysis the category systems were repeatedly adapted and completed in order to include as many answers as possible.

The main categories and subcategories were defined precisely to make the analysis understandable to a third party. In this way the reliability and validity of the analysis can be guaranteed (Hussy et al. 2010, pp. 235-264). Some coding items seem self-explanatory and therefore were not defined further. It should be observed that more than one answer was possible for each open question. This means that the number of respondents is not always the same as the number of opinions. For a better understanding, the verbatim responses which were given again and again were counted and used as examples to illustrate the answers.

3. Results of the Survey

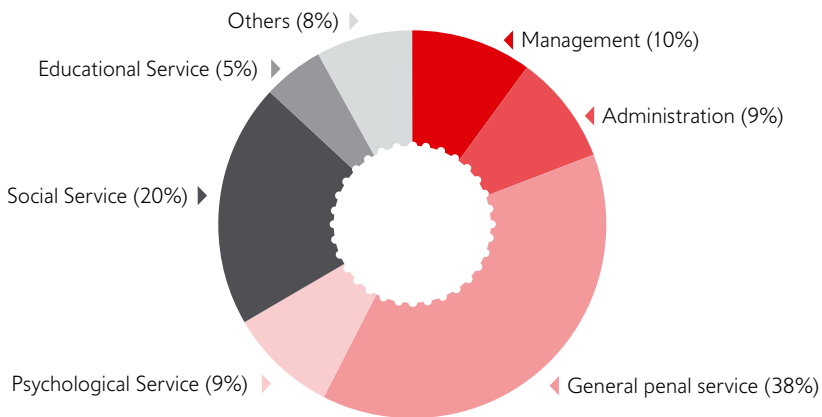
3.1. Frequency Distribution

All answers are presented in a way that only those statements are included in the analysis which also offered an answer. Missing answers are only commented on if this seems to be relevant due to there being only a very small number of answers.

3.2. The Total Respondent Population

459 people, 59 percent male and 41 percent female, participated in the investigation. The respondents work mainly in prisons for adults (52 percent) and for men (61 percent); 40 percent work in juvenile detention centres and 15 percent in prisons for women. The capacity of the prisons in which the respondents work is stated by 64 percent as being up to 500 prison inmates. Only 1 percent of the people questioned work in prisons with up to 50 prisoners and 22 percent work in prisons with a capacity of more than 500 prisoners. Around 60 percent of the respondents (also) deal with remand prisoners. More than two-thirds of the respondents work in prisons where the inmates were sentenced to stay in prison for a time between one year and five years; 35 percent of the respondents deal with convicted criminals who have to serve longer prison sentences (adults: five years to life sentence; juveniles: five to ten years).

Figure 1: Function of the interviewees in the prison



As figure 1 on the left shows, 10 percent of the respondents hold a leading position in their prison. This group is over-represented – due to the circumstances which were already discussed in the paper. However, the procedure that we chose made it possible for staff members of the General Penal System to take part in the interviews to a very large extent. With a share of 38 percent they are the largest group of respondents. This is of immense importance for the evaluation of the results, as the success of reforms is highly dependent on the acceptance they meet among the main body of employees. As the General Penal System is in permanent daily contact with the prisoners, these staff members can have a distinct influence on the informal climate of opinion among the prisoners; this is of decisive importance for a measure which is based on voluntary participation. Figure 1 also shows that the important special services are well-represented, too.

The average work experience of the respondents is 15 years. When the duration of work experience is arranged in steps of 5 years each, a distribution is to be seen as shown in Figure 2. It has to be pointed out that most respondents have worked in a prison for 10 to 14 years; only a few have worked there for 35 and more years.

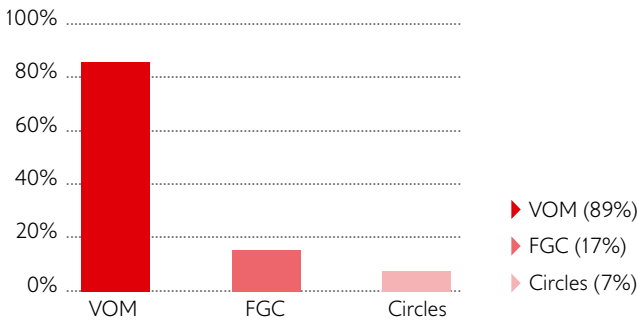
Figure 2: Work experience of the interviewees



3.3. Knowledge of RJ Measures among Prison Staff Members

To assess staff knowledge of Restorative Justice measures, questions were asked of their awareness of the measures (“Do you know of …”) on the one hand, and about their familiarity with them (“To which extent are you familiar with …”), on the other. Both were asked regarding Victim-offender mediation (VOM); Family Group Conferencing (FGC); and Circles.

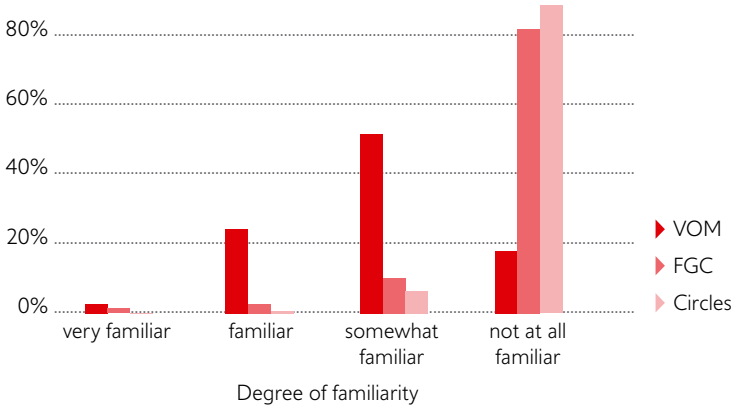
Figure 3: Knowledge of RJ instruments



The great majority of respondents (87 percent) know of VOM. The two other instruments are not well-known at all. Looking at the results referring to the familiarity of the respondents with the instruments, there is a more differentiated outcome.

The ratings “very familiar”, “familiar”, “a little familiar”, and “not familiar at all” could be used. Only 1.3 percent of the respondents state they are “very familiar” with VOM and 24 percent claim to be “familiar” with VOM. More than 50 percent of prison staff members are “a little familiar” with VOM and just 20 percent are “not familiar at all” with VOM.

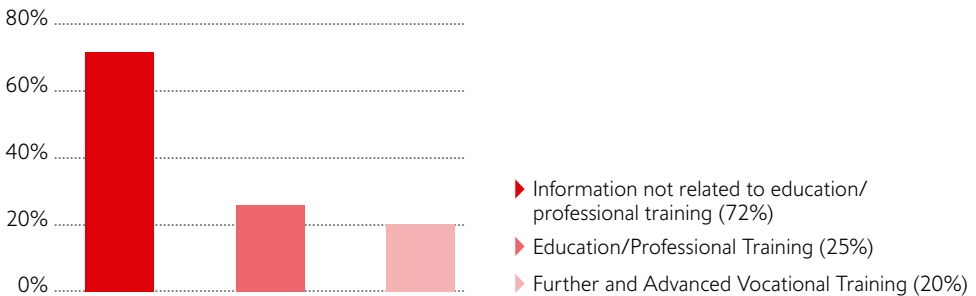
Figure 4: Familiarity with RJ instruments



The statements referring to familiarity with the other two instruments indicate clearly that the respondents are unfamiliar with them. A vast majority of respondents are not familiar at all with FGC and Circles; they are slightly more acquainted with FGC than with Circles.

When asked how they acquired their previous knowledge of RJ measures, a large proportion the respondents (72 percent) state that they gained it when getting “information not related to education/professional training”. Only a quarter of all of those questioned relate the knowledge to their own “education/professional training” and only 20 percent to “Further and Advanced Vocational Training”.

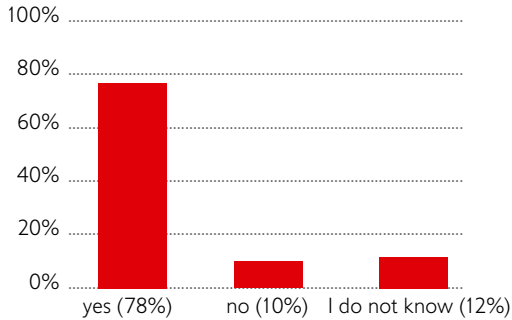
Figure 5: Source of information about RJ



3.4. Perspective Assessment of RJ Measures (made by prison staff members)

The success of implementing, or realising, Restorative Justice in the penal system in the future is to a high degree dependent on the assessment and acceptance of staff members. As such, not only is the knowledge of staff members regarding the topic of RJ extremely interesting but so are their assessment and opinions. These were elicited via the following questions.

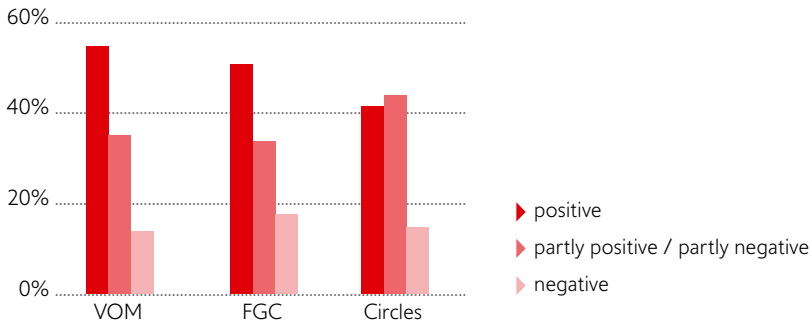
Figure 6: Compensation despite



A little more than three quarters the respondents think that attempts at reparation make sense also after conviction. They accordingly support the implementation of RJ in the penal system on principle. Only one-tenth of the respondents are of a contrary opinion and 11 percent hold no opinion. A bare majority of respondents think that efforts at reparation should be initiated only by the offenders. Forty-five percent are of the opinion that VOM at suggestion of the prison management is useful.

The respondents who are acquainted with the measures and made an assessment see the perspective of a future offer of RJ measures (VOM, -Conferencing, and Circles) in their own prison as mainly positive (For this question the following categories of answers could be chosen: “very positive”, “likely more positive”, partly positive/partly negative”, likely more negative”, “very negative”, and “I do not know the measure.” In order to improve clarity and comparability, the answer categories were grouped. The ratings are thus as follows: “positive” (“very positive” and “likely more positive”), “partly positive/partly negative” and “negative” (“likely more negative” and “very negative”). The offer of VOM is particularly approved of. More than half of these respondents assess a future implementation of VOM or FGC at their own prison as being positive.

Figure 7: Perspective Assessment of the implementation of RJ measures at the own prison



Only 12 to 15 percent of these respondents assess an implementation of RJ measures as being negative. The proportions giving the answer “partly positive/partly negative” were about 35 percent referring to an offer of VOM or FGC and about 45 percent referring to an offer of Circles. They can be said to be critical of these measures or support them with reservations.

The reasons for the assessment of RJ measures were collected with open questions. The analysis of these answers also confirms the positive attitude towards VOM. Of the respondents, 214 gave reasons for their assessment and 172 of these answers could be evaluated (42 answers which could not be taken into account could not be evaluated as they were not precise enough (e.g. "see above") or as the answer was not logical).

The majority of respondents (n = 115) assess VOM in a positive way. Among these, 60 respondents stated as reasons for their assessment that they have a positive opinion of VOM on principle or that they are of the opinion that positive effects can be achieved with VOM. *"The aspect of analysis of the criminal offence and the possibility to develop empathy with the victim and taking responsibility is positive."* (28/30) Furthermore, it is said that VOM is advantageous for the offender (n = 37) as well as for the victim (n = 18). The opportunity for the victim and the perpetrator to review the offence is given as a reason and seen as an advantage. However, some express their point of view that offenders take part in VOM only because of the benefits to them which come along through VOM (n = 10).

By way of contrast, 57 respondents explain their answer with a basically critical assessment of VOM and the opinion that negative effects or no effects at all are to be expected from VOM. *"Because it is nonsense. Who cares for the victims? Too time-consuming, requires too much manpower."* (12/14). 26 respondents think that a lack of resources and the situation of the prison being understaffed do not allow the implementation of VOM. Moreover, the point of view is advanced that VOM measures would fail anyway. The expectation that the offenders (n = 18) or the victims (n = 6) will refuse to participate is a particularly frequently given reason for the negative assessment of VOM. Furthermore, it is remarkable that only a few respondents do not give any reasons for their answer. As a reason for that, they mention that they do not have enough experience with VOM (n = 5).

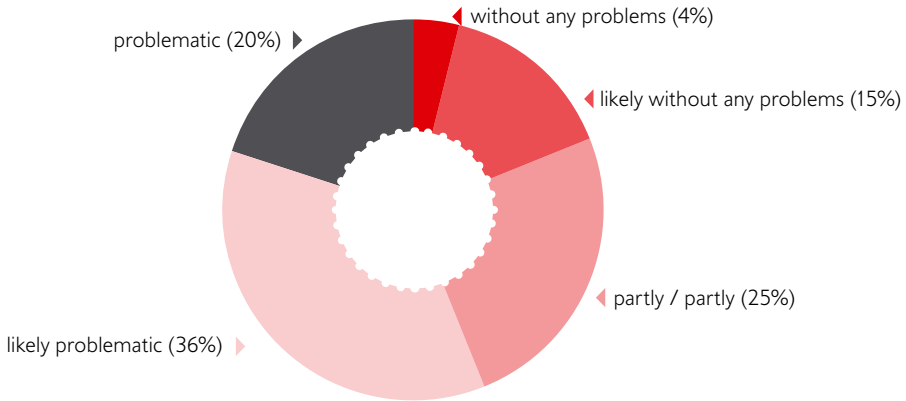
Clearly less feedback was received for FGC and Circles. Out of 459 respondents, only 24 name the reasons for their answer to an assessment of FGC and 10 respondents name the reasons for their answer to an assessment of –Circles–. Positive effects are also predominantly connected with the measures of FGC; problem-solving within the family is especially emphasised as a reasonable aim.

Looking at Circles there is hardly any trend to be seen, as three respondents assessed Circles as being positive and two others as being negative. Three more persons noted down that they had too little or no experience at all with Circles. A lack of resources, such as the lack of time and personnel, are again given as reasons for doubts that FGC and Circles can be put into practice.

3.5. Opinion of Feasibility of VOM in the Prison

In addition, and only for VOM, an estimation of the feasibility of the measure under the current conditions at their own prison was asked about (The question was: *In view of the current circumstances – how do you estimate the feasibility of VOM measures?*).

Figure 8: Estimation of feasibility of VOM at the own prison



Only 18 percent of the interviewed prison staff members estimated the feasibility of VOM at their own prison would be “without any problems” or “likely to be without any problems”. In contrast, more than half of the respondents (57 percent) assess the realisation as being “likely to be problematic” (36 percent) or even “problematic” (21 percent).

Respondents also had the opportunity to word reasons for their already given answer to this question in a free text (The question was: *From your point of view, what concrete effect would an implementation of VOM at your prison have?*). Out of 161 answers, 140 state the opinion that in their respective prison VOM is not feasible or very difficult to put into practice. More than half of these respondents ($n = 85$) name missing resources and specific aspects of organisation as causes for this difficulty. *“More and more, the prisons are overburdened with tasks that are not related to activities in the prison; they administer and control themselves with immense time and effort. This is done at the expense of working time, which is needed for such meaningful offers of treatment.”* (87/89) Twenty-three people state, as a reason for their answer, that external personnel are necessary for the realisation of VOM or that current personnel have to be trained. Only 15 percent express the point of view that the implementation of VOM would fail because of the lack of motivation among offenders or their difficult personalities.

Respondents were given the opportunity to estimate the effect of VOM if it were implemented in their own prison via another open question.

One hundred and sixty-one participants made use of this option; 131 answers could be evaluated (30 answers which could not be taken into account could not be evaluated as they were not precise enough (e.g. “see above”), or as the answer was not logical). Seventy-two respondents associate a positive outcome with VOM; 40 expect a rather negative effect, and 20 respondents explain in the free text that they cannot estimate a possible impact be-

cause of their lack of experience. The analysis and resolution of conflicts was mentioned in particular as a positive effect (n = 31). The perpetrators would admit their criminal offence so that they could reappraise it. This would support the process of re-socialisation and make a release ahead of schedule possible. The increase in operating expenses caused by VOM (n = 29) is the most frequently mentioned reason for the expectation of negative effects, as there would be more effort in terms of time, mentoring, and organisation. Moreover it is said that VOM can result in psychological pressure for the personnel.

3.6. Possibilities of Reparation

In another open question, the respondents were offered the possibility to name activities to perform reparation which the offender could make towards the victim while imprisoned (The question was: *From your point of view,– what kind of possibilities do prisoners have to realise activities to perform reparation while being in prison?*). A total of 168 participants wrote down something about the possible forms of reparation and 154 answers could be evaluated (14 answers which could not be taken into account could not be evaluated as they were not precise enough (e.g. “see above”) or as the answer was not logical). More than half of the respondents state that financial reparation should be paid (n = 80). In this context there is often a restrictive comment: prisoners rarely have the chance to provide financial reparation. This is linked with the fact that sufficient money to settle the financial damage cannot be earned in prison.

Second most frequently named is an apology as a means of reparation is named. The offender is supposed to apologise, e.g. on the telephone, in writing or (later) in personal VOM talks (n = 46). The VOM itself is also mentioned as a possibility for reparation, too (n = 21). Relatively many respondents are also of the opinion that there are no possibilities for reparation (n = 15), or that there are relatively few possibilities for reparation. (n = 20).

3.7. Further Remarks by Respondents

Respondents additionally had the chance to write down further remarks of any kind in the free text. This possibility was meant mainly for those respondents who stated they did not know VOM. These remarks are summarised as follows:

Generally speaking the implementation of VOM is assessed positively; however, some conditions should be fulfilled in advance. **Personnel specialized in VOM would therefore have to be employed in order not to overstress the other staff members.** VOM should be integrated into imprisonment-related tasks; however, the personnel necessary for this work should come from external institutions. In addition, prior to implementation, it should be examined carefully whether stress for the victims in the future can be prevented. If VOM is taken into consideration, the victim should be asked and agree to the measure. Finally, there are remarks mentioning that many prisoners take part in numerous measures already, but these are exclusively for the benefit of prison inmates.

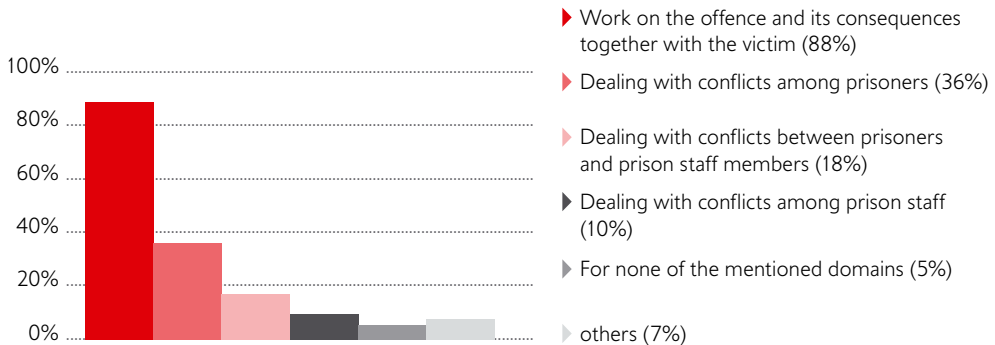
3.8. Victim-offender-mediation – Opportunities and Boundaries

The following evaluations refer only to VOM. This is mainly because of the fact that, compared to FGC and Circles, this instrument is established in Germany in the best way by far. The results of this survey which are presented above also confirm this assumption.

As presented above, “victim-offender mediation” means something to most of the respondents. The possibilities of the application of VOM in the penal system are examined more closely with the following evaluation.

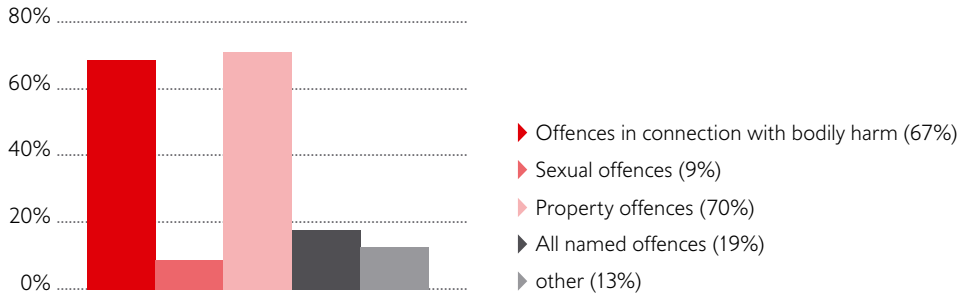
Nearly 90 percent see VOM in the first place as a chance to work on the criminal offence and its consequences in cooperation with the victim: 35 percent also see the opportunity for VOM to work on conflicts among the prisoners. This was confirmed by further statements, as it was possible in a free text to recommend more domains suitable for making use of victim-offender mediation. Only a minority of 10 percent to 20 percent think of VOM as being an appropriate instrument for resolving conflicts in which prison staff members are involved. Just 5 percent of the respondents consider VOM to be suitable “for none of the mentioned domains” (see figure 9).

Figure 9: For which domains would you recommend an implementation of VOM?



In addition it was interesting to find out for which categories of crime prison staff members think would be appropriate for an implementation of VOM (The following options could be chosen as answers: “offences in connection with bodily harm”, “sexual offences”, “property offences”, “all named offences” and “other” offences to be dealt with in a free text). Figure 10 shows that property crime is particularly seen as a reasonable domain for the application of VOM; in contrast only about 10 percent of the respondents assess VOM to be adequate solely for sexual offences, while 20 percent take VOM as being suitable for all kinds of crime. In free texts fraud and insult were also mentioned in particular and labelled as appropriate domains of VOM.

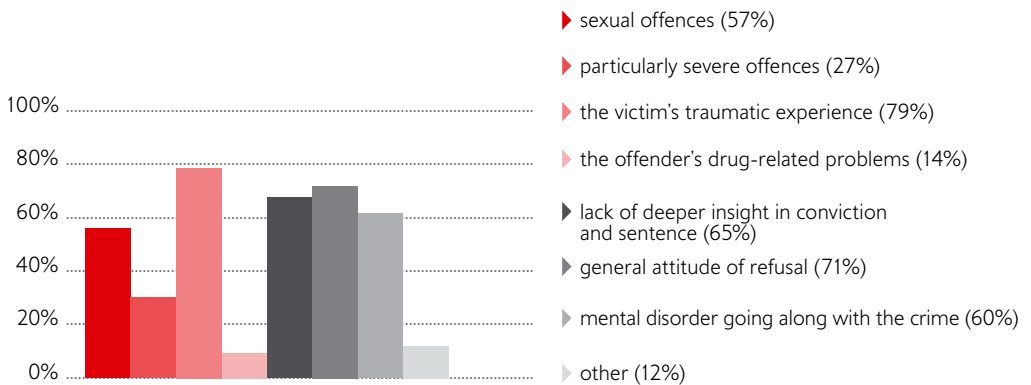
Figure 10: Domains of crime appropriate for VOM



On the other hand there are those criteria which, according to the respondents, exclude the implementation of VOM. More than half of the respondents specify sexual offences as a criterion for exclusion. A lack of comprehension of and deeper insight into the verdict and the sentence, or mental disorder going along with the crime are mentioned by the same number of respondents as grounds for exclusion.

Nearly 80 percent exclude the implementation of VOM because of “the victim’s current or continuing traumatic experience” and about 70 percent do so because of the “general attitude of refusal of prison inmates”. A “known complex of problems in connection with drugs by the offender” (14 percent) as well as “particularly severe criminal offences” (27 percent) as criteria for exclusion are mentioned by far fewer respondents (see figure 11). As a reason for these answers it is stated in the corresponding open question “because of the victim’s current or continuing traumatic experience” VOM should be excluded if the victim does not agree to the measure or if the offender does not show any comprehension and deeper insight.

Figure 11: Criteria to exclude the implementation of VOM



In addition it is stressed as important that VOM should be carried out only if the victim is supported by a measure of psychological care.

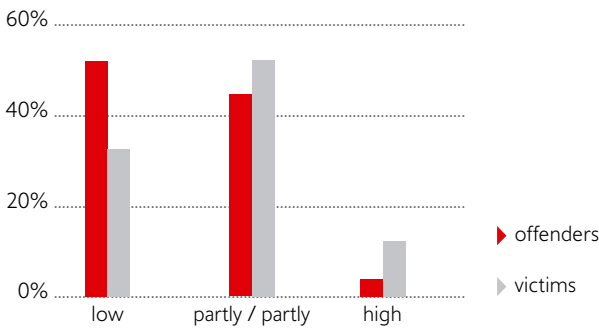
The results suggest that –despite the extensive approval of VOM among prison staff members as described above – there are several conditions attached to VOM that have

to be fulfilled when the realisation of VOM is considered. In this connection, it seems to be interesting whether opinions differ when being related to gender or work experience of the respondent or kind of imprisonment. These questions are looked at under point V.

The success of an implementation of VOM in the penal system is not only dependent on the opinion and acceptance of this measure among prison staff members, but also dependent on the answer to the question whether such an offer has a chance of being accepted by the prison inmates and the victims. It is true that, concerning this question, there are no results of polls related to inmates and victims, but the prison staff members were asked to give their assessment.

The results show that only a minority assumes a high degree of acceptance on the side of the offenders and on the side of the victims (see figure 12).

Figure 12: Estimation of Acceptance regarding VOM on the side of the offenders and on the side of the victims



A reward for engaging in VOM of any nature whatsoever will certainly have a positive effect on the motivation of the prisoners. On the other hand, one must see the risk that prisoners participate only formally in order to achieve their only aim: benefits and favours in their everyday life in prison. This being the background situation, a little more than a quarter (28 percent) of the respondents are of the opinion that imprisoned

persons who take part in VOM should be rewarded for their engagement. For example, 43 percent of these respondents think of “an earlier discharge on probation” and 41 percent mention “privileges in daily routine in prison” as a possible reward. A reduction of the time in prison is imaginable as a possible appreciation for almost 20 percent.

It was possible for respondents to propose more and other rewards in a free text; 33 respondents made use of this opportunity. They mention the loosening (of rules and regulations) most frequently (n = 7). In addition, six respondents state their point of view that VOM itself leads to a reward as one can usually expect a positive influence on the prognosis.

However, a clear majority of all persons who were questioned (72 percent) reject a reward for prisoners who take part in VOM. A large part of these respondents (79 percent) state that reparation is a matter of course as their reason for this opinion. Each third person (32 percent) doubts the voluntariness of the commitment and therefore would refrain from rewarding. Almost 15 percent of these respondents think that it is too late for efforts at reparation at this point. The behaviour of the perpetrators which is oriented to the purpose is stated as a reason in the then following open answers. *I should not do it only just to receive a reward !!!” (103/105). “Primarily the point of VOM is the intrinsic motivation” (131/133).*

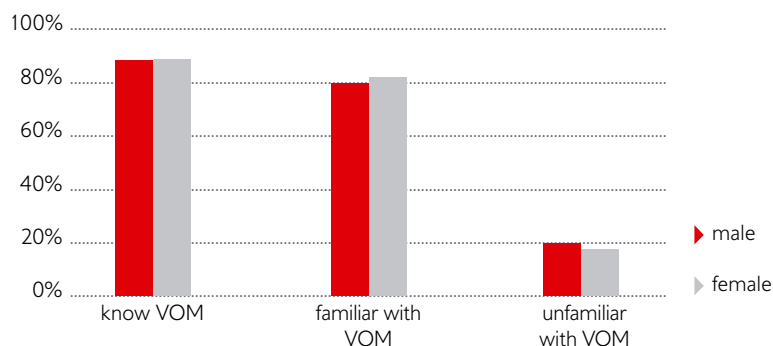
4. Bivariate Analyses

In this section the question is pursued whether individual-related features, such as gender and work experience, or structural conditions like the kind of penal system in which the respondents are employed, exert an influence on their manner when answering. So one can presume that, for example, groups of people with longer work experience are more likely to have some knowledge of RJ instruments than persons who have only worked in this profession for a little while. Furthermore, one could assume that employees who work in juvenile detention centres or in prisons with shorter sentences put a stronger emphasis on re-socialization and, because of this, are better informed about respective measures. A multitude of bivariate analyses with almost all variables which can be considered as factors of influence and for which information was collected in the course of the poll were conducted. A lot of these analyses do not reveal any hints that patterns can be seen. There is, for example, no hint that indicates a correlation between the answers and the gender of the persons questioned. In contrast, some features (work experience and kind of penal system in particular) point to interesting coherences and will be described in detail in the following passages. However, only VOM is looked at in these analyses. Detailed evaluations referring to the other RJ instruments do not seem to make any sense as only few people are acquainted with them.

4.1. Knowledge of and Familiarity with VOM versus Gender and Function

According to the collected data, gender has no influence on the knowledge of and familiarity with VOM; this is what figure 13 makes visible. The results referring to knowledge of and familiarity with VOM differ only slightly (extent: at most 3 percent). On the basis of the results, a link between the knowledge of and familiarity with VOM and the function of the interviewed persons in the prison can be made out a great deal more clearly.

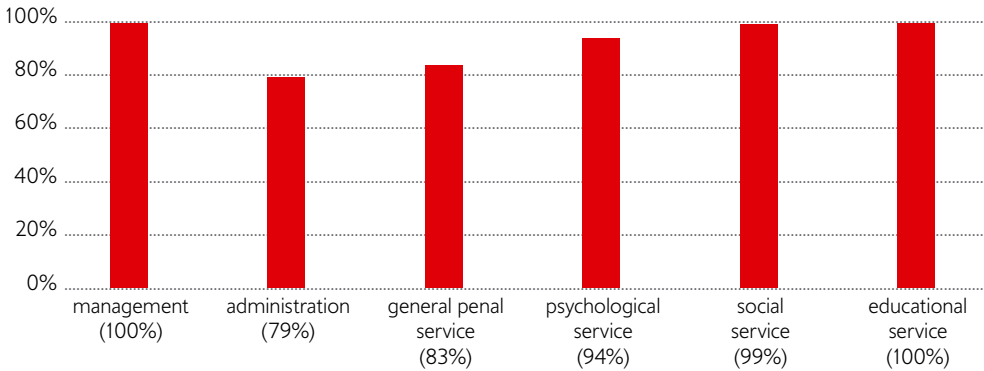
Figure 13: Knowledge of and Familiarity with VOM versus Gender



The evaluations presented in figure 14 show that a little more than 80 percent of the respondents who work in the penal system know VOM. Less than 80 percent of the respondents who work in the administration know VOM. The correlation between a senior function and the knowledge of VOM is almost definite: All respondents who state their function as “executive” also say that they know VOM. The same applies to persons in senior

functions in the Social Service and the Educational Service. Besides, only 5 percent of the persons in senior management stated that they were “not familiar at all” with VOM.

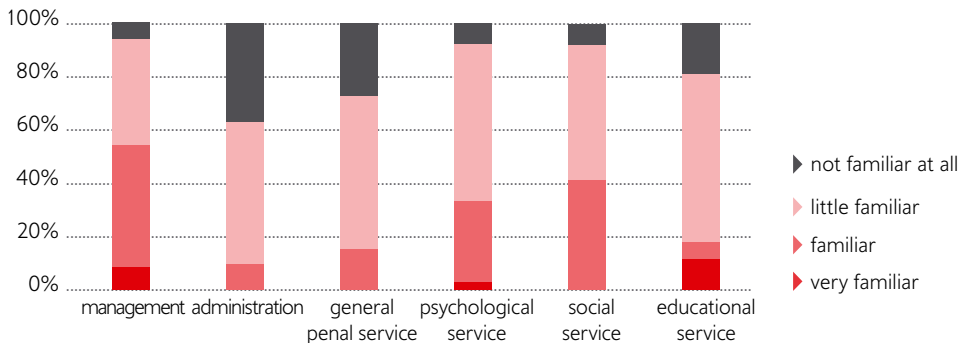
Figure 14 : Knowledge of VOM versus Function



In comparison 37 percent of the respondents who work in the administration make the same statement: 13 percent of members of the Educational Service and 8 percent of those who have a senior function there are very familiar with VOM.

Apart from the relatively high variation between different functional areas in terms of knowledge of and familiarity with VOM, it has to be pointed out that there is a reasonably large part of those who work in administration and in the penal system who know VOM and even a great deal are at least “a little familiar” with VOM (see figure 15).

Figure 15: Familiarity with VOM versus Function

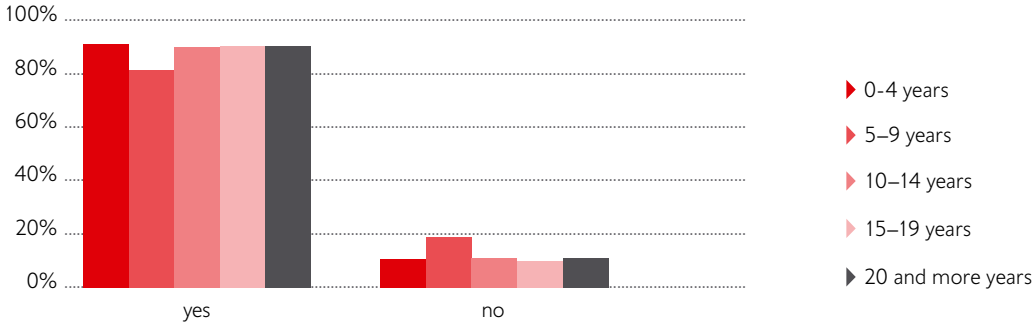


4.2. Knowledge of and Familiarity with VOM versus Work Experience

To achieve a clear arrangement for the following analyses, the primary metric “work experience” variable was changed to an ordinal variable by means of division into groups (0-4, 5-9, 15-19 and 20+ years of work experience). In terms of knowledge of VOM the results show that a longer work experience is not obviously connected with the item whether or not the respondents know VOM or not. However, one can see a difference concerning the answers when looking at the group of respondents with a work experience of 5 to 9 years.

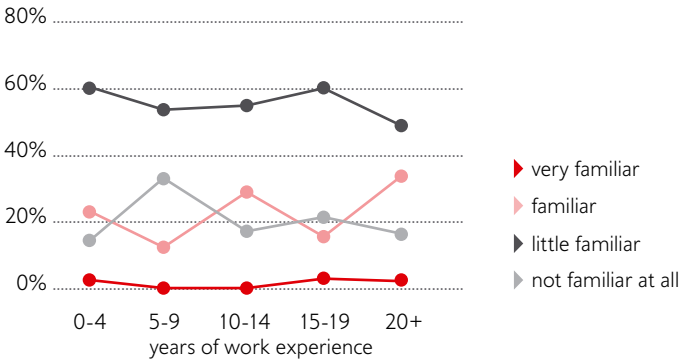
Only 80 percent of staff members with work experience from 5 to 9 years know VOM in contrast to approximately 90 percent in the other groups with different lengths of service who know VOM (see figure 16).

Figure 16: Knowledge of VOM versus work experience



The results are similar when the connection between work experience and the degree of familiarity with VOM is examined. In comparison to all other groups the response “not familiar at all” with VOM is clearly given more frequently by the group with work experience from 5 to 9 years. On the other hand, the response “familiar” with VOM is clearly rarer in this group (see figure 17). However, the figures for this response indicate a recognisable difference in terms of the group with 15 to 19 years of work experience. There are numerous circumstances which can come into consideration to explain these differences; they cannot be investigated further here.

Figure 17: Familiarity with VOM versus work experience

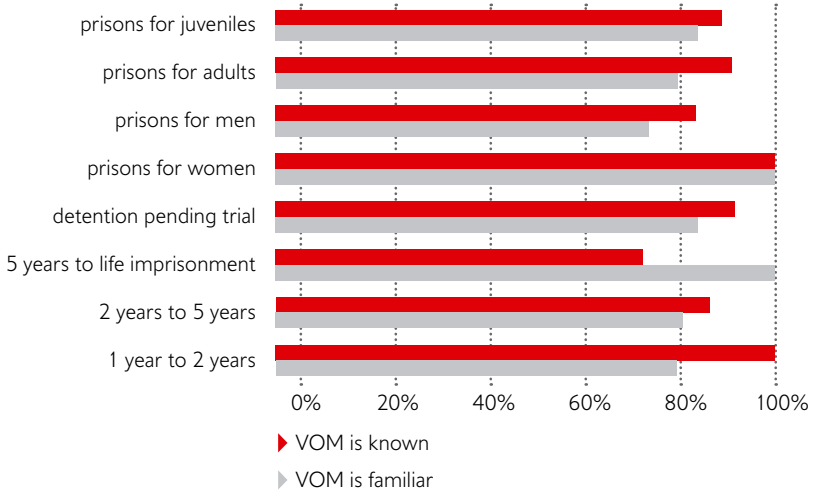


4.3. Knowledge of and Familiarity with VOM versus Types of Penal System

All questioned persons who work in female prisons and in prisons in which sentences of 1 year to 2 years are served know VOM. Staff members who work in prisons in which sentences from 5 years on to life sentences are served or who work in male prisons hold a lower proportion of persons who know VOM. As far as familiarity with VOM is concerned, there are similar differences to be recognised. As presented in the above mentioned results, all employees who work in female prisons are familiar with VOM “in some way”. In addi-

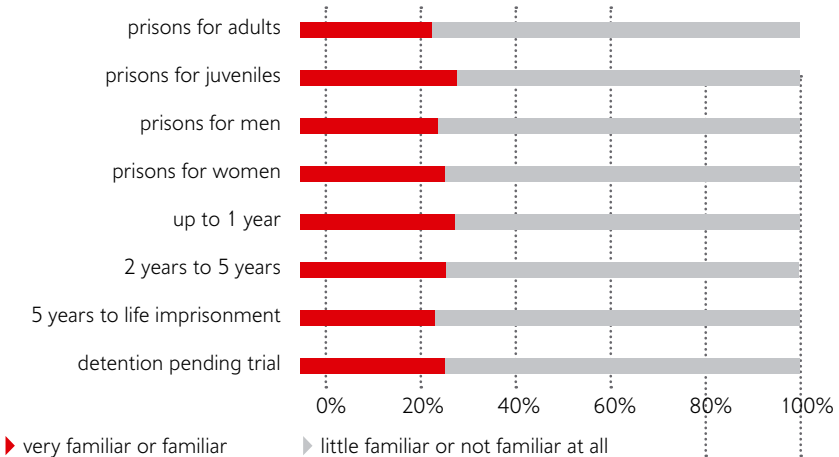
tion, all persons who work in prisons in which sentences between 5 years and life sentence are served state they are familiar with VOM. However, the latter result is contradictory to the low degree of acquaintance with VOM among this group of respondents. This kind of response is hardly explainable. Perhaps some respondents misunderstood the question.

Figure 18: Knowledge of and Familiarity with VOM versus Type of Prison



It was reasonable to suppose that staff members in juvenile prisons were more acquainted and familiar with VOM, as a particularly high value is set on an educational approach there. The collected results do not confirm this assumption in terms of their knowledge of VOM. However, a more differentiated analysis of familiarity with VOM shows that respondents who work in prisons in which juveniles serve their sentences are the ones who are “very familiar” or “familiar” with VOM most frequently. (see figure 19).

Figure 19: Familiarity with VOM versus Type of Prison II



Moreover, when discussing these evaluations it must be taken into account that multiple responses were possible. The interviewed persons could, for example, state they work in a prison for men and in a prison for juveniles. It is also possible that the respondents are employed in institutions in which, for example, detentions pending trial as well as prison sentences of different lengths are served.

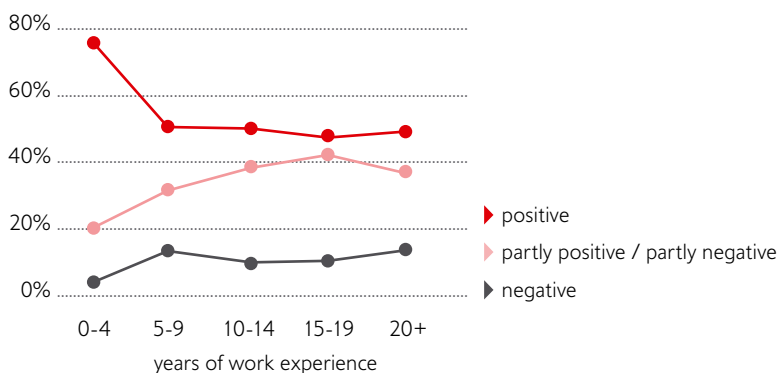
If the evaluation is focused on the group of employees who only work in juvenile prisons, there are however hardly any differences from the total results. **Contrary to our assumption, the fact that someone works in a juvenile prison apparently has no influence on their knowledge of and familiarity with VOM.**

4.4. Influences on the Assessment of an Implementation of VOM in Prisons

In chapter IV point 2, the results referring to the opinions of a future offer of a VOM in one's own prison are presented.

They show that the implementation of such a proposal is assessed in a positive way by the majority. Influences on the behaviour in terms of responses which might be possible shall also be briefly commented on here.

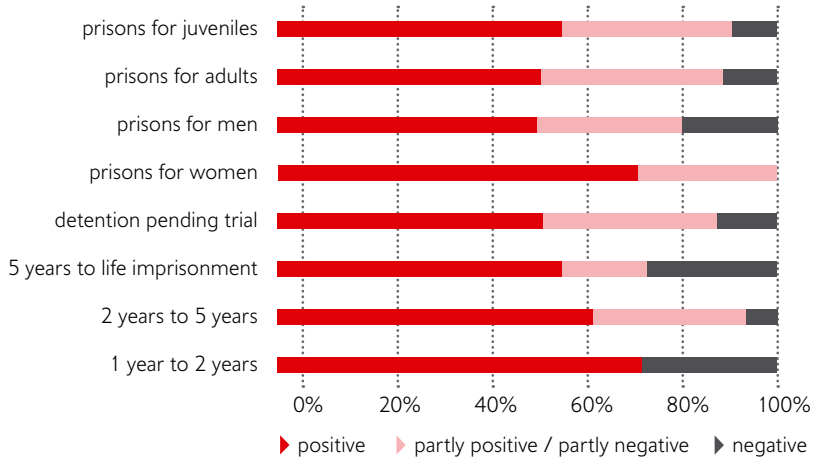
Figure 20: Perspective VOM versus work experience



As figure 20 shows, the respondents with between 0 and 4 years of work experience regard an offer of RJ measures in the future in their own prisons the most positively (almost 80 percent) – in contrast to interviewed person- with a longer work experience (Only between 47 percent and 51 percent of these respondents give a positive judgement.) Parallel to this, it can be found that by far the smallest proportion of those who judge a future offer of RJ measures as being negative in the group of persons with a work experience of 0 to 4 years. With the available data, it cannot be found out whether the respondents with longer work experience estimate the chances of success more realistically nor have some established scepticism and aversion to innovations, or whether the younger generation is more open-minded in general as to victim-offender mediation and conflict resolution. However, it can be recorded that the opinion of a future VOM offer in their own prison is also positive with regard to respondents with a long work experience (share: approximately 50 percent).

If the results are examined for opinions in connection with the types of penal system, some interesting details can be recognised by using the following figure. People who deal with juvenile inmates, with female prisoners or with inmates who serve prison sentences of between 1 year and 2 years support a VOM offer in the future to a higher degree than the other employees. None of the persons who work in female prisons gave a negative opinion.

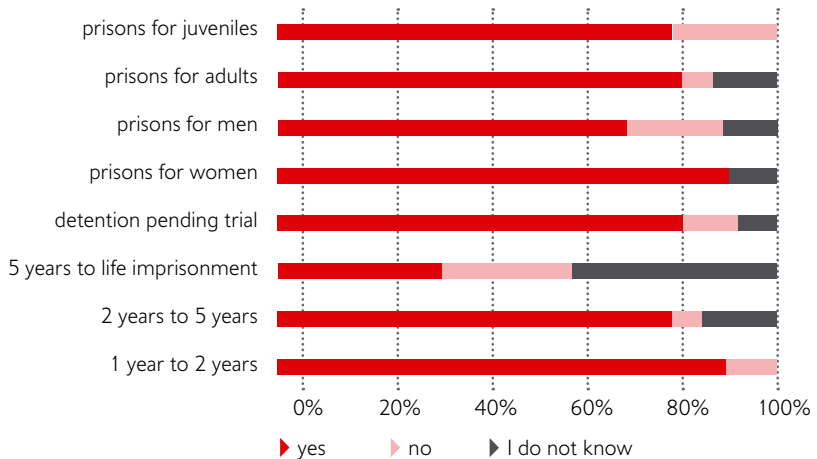
Figure 21: Perspective VOM versus Type of Penal System



4.5. Reparation despite Imprisonment – also in Cases of Long Prison Sentences?

The results of the survey show that altogether almost 80 percent of the respondents are of the opinion that attempts to achieve some kind of reparation and corresponding contacts with victims make sense after imprisonment as well. For this, the collected data make it possible to look at the details, too.

Figure 22: Reparation despite Imprisonment versus Type of Penal System

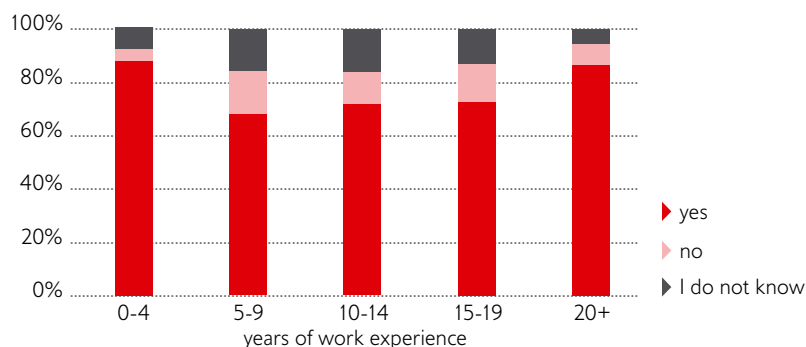


The following figure 23 indicates that more respondents with a work experience of up to 4 years consider the attempt to make reparations for what was done as being reasonable than respondents with a little longer work experience.

Respondents with a long or very long work experience see offers pursuing the goal of reparation increasingly positive.

When the results are broken down by type of penal system, the attempts to achieve reparation are assessed particularly positively by respondents who work in prisons for women and in institutions in which short prison sentences are served. On the other hand, employees in institutions in which long sentences or life sentences are served are very sceptical.

Figure 23: Reparation despite Imprisonment versus work experience



5. Summary and Outlook

Against the background of the German experiences of Victim-Offender Mediation within the context of diversion and sentencing, the current laws of prison administration and the international findings which were mentioned at the beginning, it was the purpose of our research to investigate the degree of knowledge of Victim-Offender Mediation, Family Group Conferencing, and Circles among the staff members in German prisons, and their opinions and attitudes towards these measures. Moreover, Victim-Offender Mediation was tried out on a small scale in the juvenile prison in Bremen-Oslebshausen. When summarising results of this investigation presented earlier, the following points seem to be of great significance with regard to the above-mentioned research perspective:

- ▶ Staff members in German prisons are acquainted with Victim-Offender Mediation to a great extent. They are however acquainted with Family Group Conferencing and Circles only to a small extent.
- ▶ However, only about a quarter of staff members are familiar with Victim-Offender-Mediation. 80 percent are not familiar at all with Family Group Conferencing; regarding Circles even 90 percent are not familiar at all with this measure.

- ▶ Eighty percent of the respondents think that contacts with victims and efforts aiming at reparation make sense. One can therefore say that, in principle, Victim-Offender Mediation and other RJ measures obtain a wide acceptance among prison staff members. However, about half of the survey respondents are in doubt with regard to their implementation.
- ▶ Only to a small extent is the knowledge of Victim-Offender-Mediation based upon information that was imparted within the framework of education/training and advanced vocational training of staff members.

Based on the research findings in foreign countries, the legal situation in Germany, and the basically wide acceptance among the staff members, there are good reasons to support testing Victim-Offender Mediation, and also other RJ measures in German prisons on a broad basis.

However, having in mind the experiences which were made in the penal system in Bremen, the scepticism of employees as to its implementation must be taken seriously. We do not intend to present the results of the model test in Bremen in the summary of this research report; however, it is clear that the frame of conditions which are necessary for such measures cannot be taken for granted that easily, but must be set up within the framework of a model test, and that dealing with prison inmates and victims requires specific relevant experience.

As such, intensive preparation is needed before an implementation of model tests can be considered. In particular, the knowledge of and familiarity with these measures has to be significantly improved by further vocational training measures for staff members. This applies especially to Family Group Conferencing and Circles. Due to international experience there are many convincing reasons to support an intensive discussion of these measures, which have been considered only rarely so far in Germany .

To sum up: On the basis of the results that are on hand, you can advocate that well-prepared model projects be carried out in order to try out Victim-Offender Mediation, but also in particular Conferencing, in the penal system.

E. RESULTS OF THE MODEL PROJECT IN THE JVA OSLEBSHAUSEN

1. Introduction

After being introduced to the above explained analysis the question arises whether the realisation of an implementation of victim-offender mediation and Restorative Justice into the German penal system is after all possible. However, within the frame of this project, the implementation could only be tested in an exemplary way. Regarding the extent of the demand for such measures in prisons, the following results have to be considered as the minimum request for the following reasons. As the first factor, the yearly budget of the amount of 5000 € for overall mediation activities, which does not allow any expansion of

activities, has to be mentioned. The second reason is that, due to renovation in the prison, the number of those imprisoned has temporarily been very small.

Furthermore, the start of the project was delayed for half a year because of the replacement of the prison administration, which made some new negotiations about permission necessary for the project to be implemented in the prison. These negotiations ran into difficulties due to the circumstance that the supervisory body of the prison now had to be convinced of the project, too. During the application it already became obvious that the Federal State of Bremen would not support the financial respects of the project. The budget of the project is very small, mainly because of the fact that "Täter-Opfer-Ausgleich Bremen e.V." had to co-finance the project with its own resources.

After overcoming these start-up difficulties, the acceptance of the project grew very rapidly and in September 2009 it could start with great support from the prison administration and staff. The reconciliation of the project concept took place in a very trustworthy and consensual setting. The working conditions, such as entering and leaving the prison, were designed as cooperatively as possible in terms of prison conditions. A room for the mediation talks was provided by and within the prison. The victim-offender mediation programme/offer could be published by the mediator, Mr. Steudel, via notices and information events. As arranged, mediation started in youth custody while an opening to imprisoned adults was not excluded.

2. Project Partner "Täter-Opfer-Ausgleich Bremen e.V."

In Bremen, victim-offender mediation has so far been practiced successfully to a large extent for the last 20 years. The city of Bremen has 550.000 inhabitants. The „Täter-Opfer-Ausgleich Bremen“ association processes more than 700 cases, covering more than 900 victims and more than 1000 offenders per year (Täter-Opfer-Ausgleich Bremen e.V., 2010, pp. 16, 20, 22). The mediators have large and intensive experience from different areas of Restorative Justice at their command. The same applies to the mediator Mr. Steudel, who was appointed to the project. For several years the association has successfully implemented decentralised mediation locations in socially deprived districts. As a result of this structure, the parties concerned -in comparison to similar institutions- mainly apply directly to these locations (Täter-Opfer-Ausgleich Bremen e.V., 2010, p. 8; Winter, 2001). The proportion of these so-called "Selbst-Melder" (people who start an initiative themselves.) that have not been assigned by the police or the prosecution currently amounts to 22 percent (Täter-Opfer-Ausgleich Bremen e.V., 2010, p. 19). The association has been innovative for years. Apart from the MEREPS project, there are some other model projects at schools at the moment: among them are a project that deals with graffiti, a project with football fanatics and a project with private housing associations (for more see www.toa-bremen.de/index.htm). The association became popular more recently especially due to a project that deals with domestic violence and stalking (for more see Winter, 2010; Winter & Dziomba, 2010; www.stalking-kit.de). The "Täter-Opfer-Ausgleich Bremen e.V." was awarded with the seal of quality of the "Bundesarbeitsgemeinschaft Täter-Opfer-Ausgleich" ("Country-wide Consortium for victim-offender mediation"), which acknowledges the high quality standards of the association's work (for more see www.toa-servicebuero.de).

3. Course of the project

Despite the comparatively high popularity and acceptance of victim-offender mediation in Bremen, conviction with a prison sentence has been an insurmountable obstacle for approaches dealing with mediation for a long time. As soon as a prison sentence without probation had been passed during a main trial and the offender thus had to go to prison, there was no possibility for victim-offender mediation. Neither the imprisoned nor the prison staff (psychologists, social service representatives etc.), the administration nor the victims themselves could apply for the implementation of mediation. Interviews with imprisoned offenders (not suitable for privileges in their imprisonment) in the JVA Oslebshausen had not been possible for organisational, ideally and financial reasons.

With the start of the MEREPS project this condition, which had not been in accord with the legal situation as shown in part B at all, changed. In September 2009 the first talks with offenders (not suitable for relaxed conditions in their imprisonment) took place in a protected room in the JVA Oslebshausen. Most of the participants had a difficult and shattered family background and already looked back on a considerable criminal career. *As the committed offences usually were quite severe (attempted manslaughter, aggravated robbery, severe or dangerous assault/bodily harm), the case work required extensive preparations, not only to guarantee the safety of the victim. By means of a patient counselling technique, the defensive attitude of some participants could be prised open and, by dealing with their own lives, an approach for reconciliation could be made. With those who were ready to be confronted with such a type of contention, the root reconciliation could be challenged. Despite the sometimes unpleasant confrontations with reality and their own fears and feelings, only a few offenders abandoned the talks. Even those offenders who were discharged regularly during the mediation process, and therefore were not forced to go on with such measures, continued their talks until the process could be finished.* The results are described in detail in the following tables.

Actually not all victims responded to the invitations; however, those who were interested in reconciliation with the offenders were prepared properly for a possible meeting with the offender. A careful convergence of the different experiences and perspectives finally led to a positive reconciliation between victim and offender, recognising the wrong and coming to a positive end – independent of the circumstance whether there had been a session involving both parties or whether the reconciliation was reached via shuttle diplomacy.

4. Quantitative results

Since the start of the project in September 2009 until the preliminary ending of the evaluation in September 2011, 27 imprisoned offenders had consented to take part in victim-offender mediation. *Altogether 116 talks were held with those 27 offenders; on average this means more than four talks per offender.*

Overall 22 victims could principally be taken into consideration for victim-offender mediation. It became apparent that, for the offenders, it was quite a difficult step to figure out with which victim mediation would be possible. Most of the offenders had caused harm to a number of victims during their criminal career and often the conviction was based on several offences or on offences with several victims. It consequently required a difficult and

painful process for the offenders to see victims of their offences as human beings, who in part had already tried to forget their sufferings, and furthermore to deal with their possible needs and to contact them in an appropriate manner.

Eight of the 22 victims did not respond to the invitation/contact letter. Seven victims were not contacted due to ongoing talks with the offender that had not yet led to contacting the victim. Seven victims were contacted and, in each case, the mediation process resulted in a successful reconciliation. Actually only four victims were ready for a joint session with the offender; however, the other three communicated indirectly with the offender via a mediator and reached a successful reconciliation in this way.

Contacting the victims proved to be difficult for administrative reasons, too. The personal data of the victims are not available for the prison and are not saved by the prosecution or the court after the case has been closed. The cases are filed and therefore would have to be researched in the archive. It therefore has to be stated that, even though the Bremen Prison Law ascribes great importance to a broad compensation, the organisational premises are not sufficient.

Five of the 27 offenders who had originally been interested terminated their cooperation during the preliminary talks. In seven cases the outcome of the mediation process is still open. A further seven cases resulted successfully in reconciliation. In eight other cases the process can be summarised as partly successful, due to the fact that the offender cooperated very well during the mediation talks but the victim did not answer invitations or contact letters.

The results match the array that is known for usual mediation processes. The apprehension at the beginning that, because of their imprisonment, imprisoned offenders have no possibility of offering (financial) compensation was not confirmed. Three offenders even unilaterally paid financial compensation to the victims. The one-sided efforts especially show that, within the context of a mediation process, progress can be achieved even though the victim does not participate.

Finally, the relatively high number of participants, apart from victims and offenders, needs to be mentioned. The additional chances that come with the conferencing approach, such as the preparation of a "social lobby" for the time after discharge and maintaining contact during the imprisonment, have already been mentioned in this report several times. However, the following analysis shows that fluent passages may do better justice to the participating parties than rigid settings.

Analysis of the victims

Readiness of the victim to participate	Quantity
Victim could be contacted in principle.	22
- victim has not been contacted yet	7
- contacting the victim was not possible; victim did not respond to the invitation	8
- victim was not ready to go on with the mediation process after one mediation talk had taken place	0
- victim stopped the mediation process during the preparing mediation talks	0
- victim was only ready for indirect contact/communication with the offender	3
- victim was ready for a joint session with the offender	4
Sum	22

Analysis of the imprisoned offenders

Readiness of the imprisoned to participate	Létszám
Offender is interested in victim-offender mediation in principle	27
- offender quits during the preparatory talks or is uncooperative, which results in termination	5
- partly successful reconciliation with the offender, however, no contact with the victim	8
- successful reconciliation without joint session; indirect mediation	3
- successful reconciliation; joint session with both parties	4
- open cases	7
Sum	27

Results

Type of agreement/ compensation	Indirect VOM	Joint session	One-sided effort
Mediation agreements ^a (7)	3	4	0
Apologies (15)	3	4	8
Protective affidavit ^b (12)			12
Financial compensation (5)	1	1	3
Presents (1)		1	
Obligation to therapy (4)	2	0	2

Further participants in the mediation process (besides offenders and victims)

Relation to victim / offender	Preliminary talk with the victim	Preliminary talk with the offender	Joint Session
Mother (2)		2	
Girlfriend (2)		2	
Guardian (3)	1	2	1
Weißer Ring (victims aid organisation) (1)	1		1
Lawyer (1)	1		
Police officer (1)	1		
Probation Service (1)		1	

The following table gives an overview of the processed cases and is meant to help to get a more concrete impression of their and the project's character.

- a Mediation agreement (ex gratia):
a written agreement between the injured party and the accused party in a conflict. Within the agreement the reconciliation efforts of both conflict parties as well as possible compensations are stated. Both conflict parties sign the agreement during a joint session or separately.
- b Protective affidavit (ex gratia):
an affidavit of the accused towards the injured party in a conflict. The declaration affirms the active participation of the offender in the mediation process, an apology towards the injured party and the assurance never to act in this way again in the future. The declaration is signed by the accused party and sent to the injured party. This sometimes takes place in an early phase of the mediation process already.

Case no.	Case	Conflict	Abstract of the Mediation Process	Status quo	Result/Conclusion	Particularities
1	Egon, 21 years; aggravated robbery; prison sentence: 4 years, 3 months	The offender threatened a female bus driver with a knife together with another male person and stole the cash. The incident happened during the night.	First the offender showed a defensive attitude. During the process and after engaging his mother, he opened up and started to deal with the committed offence and its consequences. Due to problems getting the data and files of the accused (conviction had not taken place in Bremen) the mediation process was prolonged. After managing the worries, fears and scepticism of the victim with the victim, she was ready for a joint session with the offender. The joint session lasted for two hours during which both parties went through different emotional phases. Finally a reconciliation and relief on both sides could be reached.	Closed successfully.	joint session; reconciliation; waiver of (financial) compensation; mediation agreement.	Due to the conviction of the offender outside of Bremen, acquisition of data and files were particularly time-consuming and difficult. Very high effort in total.
2	Uwe, 17 years; burglary; withdrawal of probation, a new sentence not declared yet	The offender and the victim had been friends. The victim was threatened, beaten and forced to participate in criminal acts (theft and robberies) by the offender and other people. The single mother of the victim did not react to these acts even though they all happened in the jointly inhabited flat. During the sessions it became clear that another offender is mainly responsible. He was the spokesman and intimidated the victim during a period of time. Finally the victim was shot in the face with a gas pistol several times.	The victim seemed to be quite unstable since the first session. He had difficulties in talking about his family and his feelings. Regarding this, several issues remained vague. However, during the further mediation process he started to deal intensely with his role as an offender and as a victim. The victim was distracted because of the upcoming main trial. Furthermore he had serious difficulties with the prison conditions. After the trial the offender was still interested in reconciliation and dealt intensively with the feelings of his victim. Finally it was planned to contact the victim. Due to several circumstances (witness protection programme; unknown whereabouts; move to a place outside of Bremen) this turned out to be very difficult, but finally worked. Single sessions with the victim took place. Via shuttle diplomacy, information between both parties could be exchanged and later resulted in a direct correspondence. As the victim did not want to meet the offender, no joint session took place.	Closed successfully.	Single sessions with both parties; reconciliation via shuttle diplomacy; written excuse; mediation agreement	As the victim was placed in a witness protection programme and located outside Bremen, acquisition of data and contacting the victim was particularly difficult. Sentence was declared during the mediation process.

<p>3</p> <p>Kevin, 19 years; assault; 2 years on probation</p>	<p>The offender threatened and besieged the victim together with other people in the victim's flat for a period of time.</p> <p>The victim had been beaten and forced to participate in criminal acts. Finally the victim was shot in the face with a gas pistol several times.</p>	<p>The offender was interested in dealing with his criminal activities. He wrote a letter of excuse and offered financial compensation. As the victim did not want to meet the offender, no joint session took place. At first no agreement concerning the financial compensation could be attained. The difficult circumstances (witness protection programme, unknown whereabouts, moved to a place outside of Bremen) of both parties prolonged and complicated the mediation process. Finally an agreement about the financial compensation and future behaviour rules could be reached.</p>	<p>Closed successfully.</p>	<p>Letters of excuse; payment of compensation (amount: 800€) in instalments; mediation agreement.</p>	<p>As the victim was placed in a witness protection programme and lived outside of Bremen acquisition of data and contacting the victim was particularly difficult. Sentence was declared during the mediation process.</p>
<p>4</p> <p>Vati, 17 years; attempted murder; 2 years</p>	<p>The offender threw a Molotov cocktail into a police car and was convicted of attempted murder for this offence. The victim is a police officer.</p>	<p>The offender cooperated openly since the first session and reported frankly about his offence. Only when the subject of compensation possibilities came up did it get difficult. The offender was not willing to write a letter of excuse to the victim and/or his family. Instead of this, the offender started to explain his reluctance towards the victim by describing several incidents that had happened prior to the incident. It became apparent that the offender predominantly had conflicts with the police as an institution in general. The police were informed about this insight and further options were discussed. Finally the police agreed to participate in the mediation process. Meanwhile the police had carried out a further raid in the flat of the offender's family. As a result the offender was no longer willing to talk with the police. The offender claimed that the raid was unlawful which was informally confirmed by the police. The connection with the offender was interrupted for some time. He did not respond to letters or calls. Via his guardian he delivered the information that he was not interested in dealing with the offence and the police anymore. Finally he reacted to a personally phrased invitation and was willing to meet in a single session again. He described the new contact with the police and the humiliations by the police officers as unbearable for him. He refused any further reconciliation.</p>	<p>Closed partly successfully</p>	<p>Protective declaration had to be signed and send back to the mediator.</p>	<p>The victim is a police officer. A conflict between the police and the offender seemed to be the relevant problem. Cooperation with the police was essential. Finding an adequate dialogue partner among the police officers was difficult. The hierarchical structure of the authority and a huge media interest complicated connecting. There were strong defensiveness and scepticism on both sides. Even though no joint session with both parties took place a change in the offenders' attitude could be recognised.</p>

Case no.	Case	Conflict	Abstract of the Mediation Process	Status quo	Result/Conclusion	Particularities
5	Rüdiger 39 years; armed robbery; sentence: 2 years on probation	The offender threatened the cashier of a drug store with a knife and forced her to hand over money.	At the time of the crime the offender was in an acute life crisis: alcohol, unemployment, loneliness, hopelessness, depression. During the mediation process the offence and its consequences for the victim could be discussed. Furthermore a new work place could be found.	Closed successfully.	Correspondence between the two parties; letter of excuse; no joint session (refusal of the victim) agreement for financial compensation (1500 €); mediation agreement.	A new employment could be found. The offender seemed to be able to improve his self-perception through the reconciliation with the victim.
6	Peter, 20 years; aggravated robbery; prison sentence: 2 years; 4 months	The offender was armed when he robbed a little bakery. At the time of the crime the victim worked alone in the bakery.	The offender always showed up on time and was willing to cooperate and open to discussions. During the mediation process it became clear though that the offender was only slightly empathetic and did not like to deal with the feelings of the victim. He often was edgy, dismissive and sometimes even aggressive. He wrote a letter of excuse to his victim. Aside from this he was not willing to offer any compensation. He did not change this attitude for a long time and the mediation process was about to be cancelled. Finally the offender started to make an effort again and further sessions took place in which he dealt intensively with his criminal activity and its consequences for the victim. Then the offender was about to be discharged and had many plans for the future, particularly because his girlfriend expected a child. The letter of excuse was sent to the victim. The victim never reacted to the letter. The offender signed a protective declaration ² towards three of his victims. The sessions were continued after the offender's discharge.	Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).	No reaction of the victim to invitations and letter of excuse; the offender signed a protective declaration ² .	Even though the mediation process was almost cancelled (because of the offender's attitude), the process could finally be brought to a successful end.

<p>7</p> <p>Stefan, 28 years; various property and violent offences; 2 years</p> <p>prison sentence: 2 years</p>	<p>The participating parties were imprisoned at the JVA Werl (prison for long-term prisoners) at the time of the crime. The offender had broken the victim's jawbone during a row.</p>	<p>The offender had been moved to the JVA Oslebshausen due to family issues. He cooperated and described his offence in detail and indicated reflection. The offender would have liked to apologise (in person or written) and offered financial compensation of 400€. The victim demanded a significantly higher amount of compensation and threatened the offender via the social service that was in charge. The victim refused to accept the payment of 400€. For to various reasons a joint session with both parties was not possible.</p>	<p>Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).</p>	<p>The offender signed a protective declaration² towards the victim and wrote a letter of excuse. Both documents were sent to the victim.</p>	<p>At the time of the crime both parties were imprisoned in the same prison (a prison for long-term prisoners and serious criminals). Contact with the victim was very difficult. Personal conversations with the victim were not possible. Exchange of information via the social service in charge.</p>
<p>8</p> <p>Edin, 20 years; extortionate robbery, harassment and theft; 2 years, 10 months</p>	<p>The victim was a boy from the neighbourhood. The offender mugged and bullied the boy in several situations.</p>	<p>First the offender described euphorically that he wanted to clarify the "subject" with the victim. However, during the further mediation process the offender did not seem to understand, relativised and negated his offence. Eventually he even blamed the victim as being responsible for his (the offender's) imprisonment. The offender refused to offer any form of compensation. Even though a great effort was made to work with the offender, he showed no insight in his wrongdoings and did not accept responsibility. Furthermore he never tried to empathise with the situation of the victim.</p>	<p>Closed. Mediation process cancelled.</p>	<p>Contact to the victim without success; the offender signed a protective declaration².</p>	<p>The offender expected the mediation to be different than it was. He never tried to fulfil the least requirements. Only physical presence was insufficient.</p>

Case-no.	Case	Conflict	Abstract of the Mediation Process	Status quo	Result/Conclusion	Particularities
9	<p>Firad, 17 years; grievous bodily harm; sentence: 2 years on probation</p>	<p>Under the influence of alcohol the offender and another person beat up a man in a park. The victim suffered grievous, life-threatening injuries and since then was afflicted with anxiety states.</p>	<p>The offender had been brought from Algeria to Germany by a human smuggling network at the age of 15. He had to experience an odyssey with stays in asylum-seekers hostels and refugees ever since. During the mediation talks he dealt with his past, the separation from his family and his situation in Germany as well as with his offence and its consequences for the victim. Until then the offender had not known about the physical fallout the victim suffered from as a result of his crime. He seemed to be shocked and worried about that. The victim's first reaction to reconciliation with one of his offenders was very hesitant. After several single sessions with the victim, in which certain open questions could be answered, the victim wanted to meet the offender. The victim was hoping to find an answer to the question why somebody had done this to him in this way. After extensive preparations with both parties a very emotional joint session took place. The victim was accompanied to this session by a representative of a victim support organisation („Der Weiße Ring“). The offender was accompanied by his legal guardian.</p>	<p>Closed successfully.</p>	<p>joint session that ended with a personal apology and the presentation of a gift. In acceptance of the victim's wish financial compensation was not negotiated during the mediation talks.</p>	

10	<p>Vladimir, 21 years; aggravated robbery; aggravated assault, attempted manslaughter, and on the other side the offender having committed the crime together with another person. The second offender and the victim had already been successful and had come to an agreement via mediation outside the prison.</p> <p>Later in the mediation process the mediator focused on another less serious crime.</p>	<p>The conflict parties are: of an aggravated assault/ attempted manslaughter, and on the other side the offender having committed the crime together with another person. The second offender and the victim had already been successful and had come to an agreement via mediation outside the prison.</p> <p>Later in the mediation process the mediator focused on another less serious crime.</p>	<p>At the beginning the offender seemed to be very interested in mediation and open to discussions. He wanted to apologise to the victim and was willing to pay financial compensation. However, during the further mediation process he relativised his suggestions. The offender mostly denied the accusation, was unable to be empathetic and was unwilling to think about an acceptable way to provide financial compensation. In consideration of the severity of the offence, the mediation process was cancelled at this point. The attempt to put another offence in the focus of the mediation failed as well.</p> <p>The offender was not willing to sign a protective declaration².</p>	<p>Closed. Mediation process cancelled.</p>	<p>No further cooperation with the offender possible.</p> <p>Severe psychological and physical injuries of the victim. Contacting the victim under the given circumstances (offender played the crime down, had little ability to be empathetic, did not take responsibility for his crime, any offer of appropriate financial compensation) could not have been justified.</p>
11	<p>Mehmet, 17 years; aggravated robbery; extortionate robbery; sentence: youth custody on probation</p>	<p>Several robberies, extortions, armed theft.</p>	<p>The reconciliation of one specific conflict seemed to be quite important to the offender. Initially he reacted sceptical, though, towards financial compensation. Finally he was willing to pay compensation in an amount of 300 to 400€ per month. Furthermore the offender wrote a Christmas card to the victims and also a letter of excuse to one victim. The victims were contacted, but did not react.</p> <p>The offender signed a protective declaration².</p>	<p>Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).</p>	<p>The offender signed a protective declaration².</p> <p>Shortly after being discharged the offender was imprisoned for robbery once again. The variety of cases as well as the frequently changing whereabouts of the offender complicated the mediation process.</p>
12	<p>Adrian, 19 years; assault, possession of drugs, theft; prison sentence: 2 years. 8 months; a new sentence has not been declared yet.</p>	<p>The offender slapped a mobile phone out of the hand of a police officer in plain clothes and kicked him in the head when he bent over to pick it up.</p>	<p>First the offender was interested in the reconciliation with the victim. Then he showed up at the meetings being severely drugged and was not able to remember predetermined agreements. Additionally, he became annoyed being confronted with the offence. Finally the offender cancelled the mediation process of his own accord („I don't bother anymore“).</p>	<p>Closed. Mediation process cancelled.</p>	<p>The offender cancelled the mediation process of his own accord. No written declarations or agreements. The victim was not contacted.</p> <p>Conflict with a police officer; drug addiction of the offender complicated the mediation process.</p>

Case no.	Case	Conflict	Abstract of the Mediation Process	Status quo	Result/Conclusion	Particularities
13	Torben, 20 years, extortionate robbery; sentence: 2 years 6 months	A vast number of (mostly) unknown victims (fraud involving eBay, internet).	The offender was interested in reconciliation and willing to pay financial compensation at the beginning. The large number of cases complicated the process of correlating the offences to the victims. After the offender was discharged the connection to him was interrupted. He never reacted to any letters or calls.	Closed. Mediation process cancelled.	After the offender was discharged the connection broke. Neither written declarations nor agreements were signed. The victim was not contacted.	Missing cooperativeness of the offender and anonymity of the (uncountable) victims made the completion of the mediation process almost impossible.
14	Mario, 29 years; robbery; prison sentence: 3 years	Armed assault in a shop. The victim was a young woman who had been working alone in the shop when the offender attacked her.	The case was allocated by the lawyer of the offender. At the time of the crime the offender was heavily addicted to heroin and because of that he was not able to deal with the reconciliation seriously and appropriately. After consulting the lawyer and the court it was decided to arrange drug therapy; that has to be passed successfully before the mediation process can be continued.	Currently suspended (until the successful completion of drug therapy).	The offender signed a protective declaration. ²	Prison for adults! Drug addiction of the offender influenced the mediation process (negatively).
15	Tarkan, 21 years; extortionate robbery; prison sentence: 2 years, 6 months	Armed assault in a gambling hall. The victim was an employee in the gambling hall who, after closing time, was dragged into a car and was taken back to the gambling hall by the offender. There she was forced to open the door and hand over the money.	The offender was sceptical at the beginning because he did not want to confront the victim with the offence again. Finally however he decided to cooperate and at least give the victim the possibility of gaining reconciliation. The single sessions with the offender proceeded well, the offender cooperated and dealt intensively with the crime and its consequences and showed empathy towards the victim. He is supposed to write a personal invitation to the victim.	Open	Open	
16	Alexander, 22 years; theft; prison sentence: 2 years, 4 months	Two imprisoned boys in youth custody were said to have inserted a light bulb into the rectum of fellow prisoner.	Both offenders were very different. Alexander was quite open and empathetic whereas Fabian was very incommunicative and wary. Both tried to play down their parts in the incident and the incident in general. Letters of excuse were written and sent to the victim who by now is located in another prison. The victim never responded to these.	Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).	The offenders signed a protective declaration. ² If the victim contacts the mediator in the future a joint session can be held.	Conflict inside the prison with a sexual background. High level of shame complicated the confrontation with the offence and its consequences for the victim.

17	<p>Samuel, 22 years; aggravated assault; prison sentence: 3 years, 3 months</p> <p>The offender beat a fellow inmate in the face without warning. The victim lost several teeth and subsequently sustained a heart attack. Shortly after his discharge (unfit to be kept in prison) the victim was accused of having raped a young woman.</p>	<p>The offender tried to establish a relationship to the victim. He had not been aware of the impact of the consequences of his crime and he wanted to take responsibility for it and reconcile with the victim. For the time being, a direct session with both parties is not possible as the victim is located in investigative custody. Rumours of a possible vengeance went round in the prison and made a quick intervention necessary. Discussions with the prison administration made it possible for the mediator to contact the victim. A joint session has to be prepared well in several single sessions.</p>	<p>Closed successfully.</p>	<p>Joint session with both parties within the prison which leads to reconciliation; agreement for financial compensation (amount 500 €); mediation agreement!</p>	<p>Conflict within the prison. Imprisonment of both parties in different types of penal institutions complicated the communication/mediation process.</p>
18	<p>Anton, 20 years; aggravated robbery; prison sentence: 3 years</p> <p>The offender threatened the market manager and an employee of a supermarket together with other offenders who were armed and masked. Altogether €30.000 was stolen.</p>	<p>The offender seemed to be quite motivated at first. He described the background and the events of the incident and, in doing this, was able to empathise with the situation of the victim. He wrote a personal invitation to the victims and was willing to pay financial compensation. However, the victims did not react to the invitations. The offender has shown no interest to conciliate with other implicitly involved parties (the offender's family, friends, families of further victims or the person responsible for juveniles at the police).</p>	<p>Open</p>	<p>Open</p>	
19	<p>Murat, 18 years; robbery; prison sentence: 4 years</p> <p>During an armed robbery in the south of Germany the offender threatened the employee of a gambling hall and seriously injured a customer there.</p>	<p>The offender was very talkative but seemed to have little empathy. He never came further than phrases in clichés and always tried to find out about his bounds. He did not comply with agreements and often showed up obviously drugged. When it was explained to him that process had to be cancelled he reacted with annoyance and almost aggressively. After several incidents in the prison the offender was moved to another prison due to security aspects.</p>	<p>Open</p>	<p>Open</p>	

Case no.	Case	Conflict	Abstract of the Mediation Process	Status quo	Result/Conclusion	Particularities
20	Tomas, 20 years, aggravated robbery, prison sentence: 2 years	The offender assailed a young man in a park together with another offender and severely injured the victim.	The offender was strongly depressive and wary. The mediation talks therefore proceeded with difficulty. He dealt with his feelings during the offence and the probable feelings of the victim only hesitantly. He did not comply with agreements and failed to appear at appointed meetings. Finally he gave notice via the penal service that he was no longer interested in reconciliation with the victim.	Open (in agreement with the responsible social service in the prison)	The offender wants to apologise to the victim and is willing to pay financial compensation.	
21	Benny, 53 years; assault; sentence has not yet been declared	The offender's ex-girlfriend parted with him during the offender's imprisonment after the relationship had lasted for more than 4 years. Subsequently the offender was suspected of having pestered the victim (ex-girlfriend).	The offender was member of a motorcycle club (Hells Angels) and behaved grumpily and in a threatening way during the mediation talks. He denied to have pestered the victim and declared that he didn't want to have anything to do with the victim anymore. The victim had been invited to mediation talks but never responded.	Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).	The offender signed a protective declaration ² towards the victim. No reaction of the victim.	Conflict within / after a relationship. Suggestion of the case made by the offender's lawyer.
22	John, 21 years; several thefts; prison sentence: 1 year, 2 months	The offender wanted to deal with a victim of an earlier offence in which he broke the nose of a police officer during a quarrel. The respective trial was concluded (offender had to pay a fine).	The offender had been discharged before the first meeting took place. All mediation talks then took place outside the prison.	Open	Open	Drug-related offence(s).
23	Vadim, 17 years and Gregori, 16 years; several violent offences; prison sentence: 2 years	The offenders were out in the town together with seven to ten other juveniles, were under the influence of alcohol, beat up a fellow passenger on a bus (public transport) and caused several serious injuries.	Actually one of the offenders kept the appointments but behaved quite derogatively, uncooperatively and aggressively. His mother, who had been invited, too was helpless and clueless as to how to deal with her son. Due to these circumstances the mediation process was cancelled. The other offender seemed to be quite embarrassed about his offence. He showed a strong intention to reconcile with the victim and his fiancée who had witnessed the incident. The sessions took place outside of the prison. Meanwhile, the offender has dissociated himself from his "friends".	Successfully closed (with one of the offenders)	Joint session during which one of the offenders apologised to the victim, his fiancée and his (the offender's) mother; financial compensation (amount: 500€) could be agreed on; mediation agreement.	

<p>24</p> <p>Yusuf, 25 years; offence unknown; prison sentence: 3 years, 2 months</p>	<p>The offender insulted and threatened two staff members of the penal service and a teacher during his imprisonment.</p>	<p>The offender described the backgrounds and beginnings of the conflict. He wanted to conduct a conversation with the victims, wanted to apologise for his behaviour and hand over a present.</p> <p>According to the superior of the victims they were not interested in such kinds of reconciliation.</p>	<p>Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).</p>	<p>The offender signed a protective declaration² towards the victims.</p>	<p>Suggestion of the case made by the Department for the Prevention of Violence. The (adult) prison administration did not see a possibility for mediation.</p>
<p>25</p> <p>Michael, 32 years; intermittently imprisoned for more than 10 years</p>	<p>The offender met his ex-girlfriend on a day parole. During the meeting they started a fight in which the offender attacked the victim (ex-girlfriend) physically and injured her.</p>	<p>The offender wanted to apologise for the incident and reconcile with his ex-girlfriend. According to the victim's lawyer she was not interested in any mediation attempts.</p>	<p>Partly successfully closed. (Successful reconciliation of the conflict / offence with the offender).</p>	<p>The offender signed a protective declaration² towards the victim.</p>	<p>Suggestion of the case made by the offender's lawyer.</p>
<p>26</p> <p>Makete, 19 years; aggravated robbery; prison sentence: 2 years and 3 months</p>	<p>Aggravated robbery in a small kiosk.</p>	<p>The offender strove to achieve reconciliation to a large extent. He wanted to apologise, compensate the damage and account for his crime to the victim.</p>	<p>Open</p>	<p>Open</p>	

F. INTERVIEWS WITH INMATES AND VICTIMS

1. Introduction

Within the framework of an evaluation, it makes sense -in addition to the other parts – to survey the assessments of the parties who were directly involved. This applies *a fortiori* to a method like victim-offender mediation, in which the satisfaction of the participating parties is one main aspect of the method.

The main objective of the interviews was to find out how the participants *in victim-offender mediation* reviewed the mediation talks and the whole mediation process, and what had motivated them to take part in the mediation. As such, the main aim was a qualitative analysis of mediation in prison settings.

As the interview situation was likely to be emotionally loaded during the preparation of the interviews, a special focus was laid on the selection of the methodology. Finally a qualitative, partially structured guided interview was adopted

The advantage of such an approach is that there are no restrictive and standard answer options. On the basis of the interview guide and its questions, the interviewer had the opportunity to react flexibly. Certain circumstances and facts to be tackled, as well as the general needs of the interviewed person, could be considered as was suitable in the course of the conversation.

2. Preparation of the Interviews

The interview guide was designed within the frame of the underlying questions. The first section is orientated on Donabedian's characteristics for quality assurance (Donabedian, 1966). The total guide is divided into the following four sections:

- a. *Victim offender mediation* (initiation, structure, quality of the process and the result)
- b. *Context of the offence* (victim-offender relation, consequences of the offence)
- c. *Motivation of the complaint and course of the criminal proceeding*
- d. *Anamnestic Data*

In respect of the sensitivity of the "context of the offence" issue, some accordant advice was added to the guide. If the interviewed person signalled difficulties in talking about the offence, the interviewer would have had the possibility to inform the case manager at the Täter-Opfer-Ausgleich Bremen e.V. and to organise individual support if applicable.

3. Course

The interview guide was completed in July 2011. Due to data protection, the contact letter of the institute (IPoS) introducing the survey to potential participants and inviting them to take part had to be sent via the Täter-Opfer-Ausgleich Bremen e.V.. In addition to a lot of general information about the interview, the letter contained the contact data for the responsible employee at the IPoS. In this way the transfer of contact data via the Täter-Opfer-Ausgleich Bremen e.V. could be avoided. In the contact letter, the addressees were

asked to contact the respective employee at the IPoS to arrange an appointment for an interview. The respective address data could be seen from the contact letter.

4. Target Group

In August 2011 all people who took part in mediation talks with the TOA Bremen association and all those who had refused to participate in mediation talks within the frame of the MEREPS project were contacted. Altogether 44 people were contacted.

5. Response

Twelve out of the 44 letters were sent back to the TOA Bremen association without reaching the target persons. This happened mainly due to the fact that some persons had moved elsewhere or that the letter had been refused without opening it. Beyond that, one letter containing a statement from the head of the JVA Bremen came as a response. It became apparent that it was notably difficult to contact former inmates, who had already been discharged, via mail.

In August 2011 three persons replied directly to the IPoS via telephone. Two of the callers were victims and the third one was the mother of an offender. One of the victims who called agreed to take part in the interview. The two other callers politely refused to participate and explained their rejection, stating the reason that they had finally overcome the incident and moved on and that they did not want to bring the issue up again. Furthermore, one refusing victim complained that the offender had advantages because of his participation in mediation talks even though she did not take part.

The person who agreed to take part in the interview is a young man, single, 21 years old, and German.

However, the interview described below shows how both the interview and the accomplishment of victim-offender mediation can be very important for some people and may contribute to dealing with the offence and its consequences.

6. Interview

The case: For several months the victim was “compassed” in his mother’s flat, where he lived at that time, by two people. He was forced to commit crimes, was beaten and threatened. Finally he was shot in the face several times by one of the offenders.

When the victim received the invitation letter from the TOA Bremen association, he instantly decided to take part in the mediation process.

“I wanted to come to an agreement already, to clear some things. Judicial proceedings take a lot of time and the mediation could be started right now. In the end the process took its time, too, but if you look at judicial proceedings you have to wait for five to six months, because they have so many cases. So I thought that in my situation everything could develop faster and more positively with mediation than with going through the so to say juridical terror.”

One important assumption for his participation in the mediation talks was that all talks took place separately. Under no circumstances did the victim want to meet the offender in these sessions with the mediator. All relevant information was passed from one party to the other via the mediator.

One focus of the evaluation was to find out whether there actually is a need by the victim to talk about the incident. For the victim whose interview is reported here this seems to be the case.

“At that time I definitely had a huge need to give my opinion about what happened, how it could happen and what I, myself, think about all of it. I liked the possibility of telling the person what I disliked, what he could have done better or differently, because that would have been better for our relationship. And he accepted that – at least I hope he did, but altogether I think it all did work out quite well.”

Some people argue that the victim should not be repeatedly forced to talk about the offence, because that could evoke consequences which have not yet been overcome. During the preparation and design of the interview, we discussed extensively, if such a sensitive issue can be made a topic and an important issue in an interview with the victim. These concerns did not apply to this respondent:

“Because of this whole story and some other stuff, I have been in therapy and my therapist told me that I have to talk about all of it and that it is important to make people listen, and maybe even understand me, and they can give me some advice .”

This statement shows that for some people, it seems to be really important to talk about the offence and its consequences. This shows the high relevance of an offer such as mediation talks for victims too.

The respondent affirmed his satisfaction with the TOA Bremen association explicitly.

“Well, I am very satisfied with the TOA. [...] If something happens in the future I can always call Mr. Steudel at the TOA and say: „Something happened, I need some advice, what can I do in this case? This is always possible.”

The victim was as satisfied with the mediation talks as he was with the association in general.

“I had the possibility to talk about my problems frankly, about what had happened. The mediator took all the time necessary to answer my questions, challenged them sometimes and found out what really happened and how it happened. [...] when something came to my mind in between the sessions I always had the possibility to bring it up next time. I really think that it is a good thing with the TOA.”

Answering the question why the offender might have taken part in the mediation talks, the respondent stated the following.

“I don’t know what his reasons have been, but in one of his letters he wrote that he was very sorry about what had happened and that he would like to make amends for it..”

"I think he didn't want juridical problems and the case to end up in tons of files at the court. That this thing is dealt with at another public institution, not at the court."

In addition, it was a matter of interest of the evaluation to find out how the victim assesses the influence of the mediation talks on the offender.

"Mr. Steudel told me that he (the offender) had been quite aggressive during the first sessions and that he (the offender) did not listen to other opinions and views regarding the case. In later sessions, however, his attitude seemed to have changed and he showed remorse and admitted that he had made mistakes. I think it needs several sessions to achieve something like that. In the only one session that would have taken place in the court, all these things could never have been reached."

The next question was the extent to which the victim wanted to initiate a positive change in the offender.

"That was of some importance to me, to make him see that it was not right what he did, to make him reflect and think about it himself and that he maybe changes and decides to take a different path in the future."

"Yes, this was important to me. Such a cathartic effect by means of self-reflection is only possible with the help of an instrument such as the TOA. For me personally, it was very helpful, and I hope it helped him, too, to become aware of his situation and what he has done and has to do better next time."

The victim stated his reasons for taking part in the interview as follows:

"I hope that other people recognise that there are other possibilities than going to court with such things. That they recognise there are ways to come to an agreement and talk about what has happened and in the end be satisfied with the outcome of the process. This definitely has helped me and I can recommend it to everyone who has an issue with someone or anything which he cannot deal with himself."

7. Conclusion

It became obvious already, when looking at the responses to the interview inquiry that when discussing mediation talks in prison, we are dealing with a quite sensitive subject. Obviously several people were not willing to deal with and discuss the consequences of an offence they experienced/committed and to meet the other party. Furthermore, most people did not even want to state their reasons for taking part in mediation talks or not. However, the interview shows that there are also people who profit to a large extent from such an offer. They are thankful for the opportunity to talk about their fears and needs, and like to introduce these to the offender.

In this way the incidents can be processed and, at best, an agreement that satisfies all parties can be reached. However, it should be noted that not only direct personal contact can contribute to successful reconciliation; indirect mediation, which in this case was alluded to by the victim and the mediator can have the same positive effect.

G. CONCLUSION

The juridical analysis leads to the conclusion that all Prison Acts concerning custody of juveniles as well as of adults attach great importance to reconciliation of the criminal offence and compensation of the consequences (for the victims). **The legal framework requests a strong victim-orientated approach in the penal system.**

However, the assessment report showed that respective projects and institutions are very rare. To fill the legal framework realignment, at least in parts, seems to be a necessary consequence. The legally pre-defined victim-oriented approach could be achieved by reinforcing the implementation of victim-offender mediation and other Restorative Justice instruments.

The survey amongst prison staff in German prisons conclusively showed a wide open attitude towards victim-offender mediation. However, training and offers of information in this field are not yet consistent with the relevance which the legal framework attaches to victims' interests. Regarding the conferencing and/or circles approach, only a very small number of employees in prisons have any knowledge of these, even though these approaches introduce some new possibilities: Those third parties who could, for example, positively affect the re-integration of the offender after being discharged, are included more intensively. Staff however have some concerns as to the possibility of an implementation of victim-offender-mediation in the daily routine in prison.

The analysis of the model project in the JVA Oslebshausen showed that victim-offender mediation can be implemented successfully even under prison conditions. Moreover, it has become clear that **the efforts needed for preliminary talks with victims and offenders are considerable. On the other hand, these efforts illustrate the special value of such mediation attempts, even if they do not result in joint sessions with victim and offender. Only by means of offers of mediation talks that only aim at the reconciliation with the victims, can deeper reflections about their criminal activity and its consequences be triggered.**

Furthermore, within the frame of the model project it became clear that the setting should be flexible regarding, on the one hand, the inclusion of third parties and, on the other hand, the question whether victim and offender should meet or reconcile via shuttle diplomacy. Victim-offender mediation can give valuable impulses even if victim and offender communicate only indirectly. Moreover, video-messages could be delivered without any great effort with the existing new technical possibilities for communication.

Finally, mediation attempts can be seen as (partly) successful, even if no contact with the victim is possible, because accepting responsibility for the criminal activity is an important personal step for the offender and is as such recognised as valuable and necessary by the legal frameworks.

Additionally, the framework for a victim-oriented penal system has to be improved. Even on the administrative level, the role of the victim is obviously not an important one yet.

The severity of the criminal activities and the injuries of the victims require highly-experienced mediators working in prisons. It is self-evident that mentoring and cooperative

advice at a high level of quality have to be ensured in order to deal with such cases and clients in a professional way.

Actually the interviews could not be held in the designated quantity. In spite of this fact, the one interview that is at hand proves exemplarily that, even if a victim has suffered from a very serious offence, a preparedness to become involved in victim-offender mediation can be found. In such cases it is even more important than usual to be responsive to the individual needs of the participants.

H. RECOMMENDATIONS

The legal framework in Germany requests an educational, supportive but also victim-orientated approach in the penal system. However the assessment report in particular showed that the victim-orientated approach needs to be better implemented. In this respect the administrative provisions, respective projects and institutions have to be developed further. This is especially true for the implementation of victim-offender mediation and other Restorative Justice instruments.

Prison staff showed an open and receptive attitude towards victim-offender mediation but need better information and training on victim-offender mediation and other Restorative Justice instruments.

Within the context of the model project, it became clear that the setting should be flexible regarding, on the one hand, the inclusion of third parties and, on the other hand, the question of whether victim and offender should meet or reconcile via shuttle diplomacy. Which of the Restorative Justice instruments (e.g. victim-offender mediation, conferences, circles, exchange of video messages) is used in a specific case should mainly depend on the will and needs of victims and offenders.

The severity of the criminal activities of imprisoned offenders and the injuries that their victims had to suffer require highly experienced mediators working in prisons. Mentoring and cooperative advice to a high level of quality have to be ensured in order to deal with such cases and clients in a professional way.

The interview that is at hand proves exemplarily that, even if a victim has suffered as a result of a very serious offence, a preparedness to become involved in victim-offender mediation can be found. In such cases it is even more important than usual to be responsive to the individual needs of the participants.

Belgium

Ivo Aertsen¹

RESTORATIVE PRISONS: WHERE ARE WE HEADING?

Underlying Issues

There appear to be many tensions when we explore new avenues for integrating a victim dimension or a restorative perspective with the administration of the prison sentence. First, we are confronted with a punitive climate in society at large, which at present does not invite the rethinking of crime and punishment in a nuanced way. New forms of punishment are launched, building on the same traditional and abstract conception of crime. The focus is on how to react quickly, much less on how the problem of delinquency can be re-conceptualised. Second, developing a restorative dimension in prisons presupposes an understanding of restorative justice as a broad, theoretical and operational framework. From this point of departure, restorative justice cannot be reduced to a diversionary approach; neither can it be seen as just a sentencing strategy. Restorative justice as a broad option contains “a set of principles which may orientate the general practice of any agency or group in relation to crime” (Marshall, 1999). Third, does the restorative justice idiom represent more than a political or ideological discourse? How strong is its innovative potential in

1 Ivo Aertsen: Professor, Catholic University of Leuven. This text is an updated and adapted version of one published years ago: Aertsen, I. (2005) “Restorative Prisons: A Contradiction in Terms?” in EMSLEY, C. (ed.), *The Persistent Prison. Problems, Images and Alternatives*, London: Francis Boutle Publishers, 196-213.

practice, and does it effectively meet the specific needs of victims, offenders and others involved? In recent years in particular, these questions have become more relevant, since a proactive interest in restorative justice can clearly be observed at policy level within several European countries and within international institutions such as the Council of Europe and the European Union (Home Office, 2003; Aertsen and Peters, 2003; Willemsens, 2008). This brings us to a fourth tension, which relates to the discussion of whether restorative justice should be approached from an instrumentalist point of view or rather from its participatory and democratic values on their own. A demonstration of the first orientation is the strong focus in some countries on the effect of restorative justice programmes on reoffending. This crime reduction concern is less prominent when the emphasis is more on procedural restorative justice. The latter is more inspired by an emancipatory philosophy, where citizens and their community participate actively in an ongoing interaction with criminal justice agencies. A fifth problematic topic relates to the assumption of prison's central role in the criminal justice system: the prison as the main reference point in sentencing policies and practices, the prison as a persistent system, and one that fundamentally should be neither questioned nor changed.

These challenges form the undercurrent to this paper. We will return to some of them more explicitly in what follows. Is it possible, against the background of the above-mentioned tensions, to conceptualise something as restorative detention? An initiative of this sort was undertaken in Belgium in the late 1990s. In what follows it is our aim to present and to discuss the Belgian nationwide model of re-orienting prisons in a restorative direction. We start by drawing the context, which should help to understand the emergence of the programme of "restorative detention".

1. The Belgian context

1.1. The victim's position

Victims in Belgium have gained a relatively strong position within the criminal justice process. In order to get financial compensation the injured party has had to be present, for a long time, in the inquisitorial process in the shape of the *partie civile*. During the 1990s, under the influence of several political and societal events and evolutions, the victim's position was strengthened. Indeed, Belgium has been identified as the European country where the greatest efforts have been undertaken to improve the legal position of the victim (Brienen and Hoegen, 2000). This evolution reached a provisional conclusion in 1998 with the Franchimont law, which considerably enlarged victims' rights within the criminal procedure.² More far-reaching proposals were put forward in 2003, such as those of the Holsters Commission whereby, in respect of both the sentencing process and the execution of the prison sentence, the victim was given an even more important role (Commission, 2003).

1.2. Victim-offender mediation

Academic work and research have been influential in the domain of restorative justice in Belgium. Action-research and evaluative research have accompanied the establishment of several types of restorative justice programmes. Restorative justice in its strict sense – as method – is most developed in Belgium in the form of victim-offender mediation, as is also the case in many European countries (European Forum, 2000; Lauwaert and Aertsen, 2002; Miers, 2004; Willemsens, 2008; Zinsstag et al., 2011). In Belgium, the initial impetus came from small-scale initiatives in the field of juvenile delinquency in the second half of the 1980s. During the following decade, however, mediation in adult criminal law grew faster than for minors. At present (2011), restorative justice has become generally available both for adults and minors in all judicial districts of the country. Mediation programmes are available at all stages of the criminal justice procedure: at the police level; as an alternative to prosecution; in parallel with prosecution; and after sentence. At present, three types of victim-offender mediation programme are regulated by law: the so-called “penal mediation”, which is organised from within the public prosecutor's office and is offered by “justice assistants” (probation officers)³; the so-called “mediation for redress”, organised by the NGOs *Suggnomè* and *Médiante* (this is the “general offer of mediation” for all types of crime at all stages of the criminal justice process)⁴; mediation with juvenile offenders, offered by various NGOs working in the field of juvenile assistance at the level of the judicial district⁵. Under the legal framework of mediation with juvenile offenders, family-group-

2 The Act of 12 March 1998 on the improvement of the administration of criminal justice at the stage of investigation and judicial inquiry.

3 Law of February 10th 1994 containing the regulation of a procedure for mediation in penal matters.

4 Law of June 22nd 2005 introducing some provisions concerning mediation in the Preliminary Title of the Code of Criminal Procedure and in the Code of Criminal Procedure.

5 Law of June 13th 2006 concerning the protection of juveniles and taking into charge minors who have committed a fact described as criminal offence.

conferences are offered by the same NGOs as well. It is important to stress that all types of victim-offender mediation in Belgium are offered by professionals and not by volunteers (except one experimental programme).

The “mediation for redress” programme is of particular interest here. This type of mediation can also be offered in relation to more serious types of crime, for which a dismissal by the public prosecutor is out of question. The outcome of mediation might influence the sentence. Through its intensive co-operation with the judiciary, the programme aims at an ongoing reflection on criminal justice processes including the administration of the (prison) sentence (Aertsen, 2004).

2. Restorative justice and prisons

2.1. Evolutions in the administration of the prison sentence

The orientation towards victims and towards how an offender might make amends during the period of the prison sentence has received much support in Belgium. It is, perhaps, a logical consequence of the increased attention on the victim at the stage of the criminal investigation and sentencing process. The Dutroux affair, which hit the headlines in the summer of 1996, catalysed victim-focused policies, but, in reality, this development started some years before. Since 1996, several Ministers of Justice have stressed in policy papers the interests of the victim during the period of the prison sentence and have opted for an integration of the principles of restorative justice as far as is possible (see, for example De Clerck, 1996; Verwilghen, 2000). The draft of the new prison law proposed, as the main objectives of the period of the prison sentence, a “limitation of the harm” resulting from detention on the one hand, and “reintegration” of the offender and “restoration” to the victim on the other (Dupont, 1998). This new law, based on the principle of “normalisation” of prison life and focusing on both reintegrative and restorative approaches, was adopted by the federal Parliament in 2005.⁶

A legal manifestation of increased victim care could also be found in the legislation of 1998 on conditional release.⁷ This new legal framework put into practice a more victim-sensitive regulation. As a part of the decision making procedure, for example, one of the possible contra-indications to be investigated before granting parole concerns the attitude of the detainee towards the victim. Moreover, some categories of victims could communicate to the Parole Commission any concerns about parole conditions that might be imposed in the victims’ interest. Some categories of victims also had the right to be heard by the Commission. Finally, victims could be informed of the conditional release and the conditions imposed in their interest. The legal framework of 1998 on conditional release has been replaced by a new and more general law on the implementation of various procedures in

6 Law of January 12th 2005 on the organisation of the prison system and the legal position of prisoners.

7 The laws of March 5th and March 18th 1998 on conditional release and the organisation of parole commissions.

the execution of the prison sentence.⁸ In the new law, the legal position of the victim in the procedure of conditional release and in other procedures related to the release of prisoners has been somewhat amended, but the main principles on the involvement and participation of the victim have been kept. Unavoidably, the very significant presence of the victim in the context of conditional release and other procedures influences, in practice, the interpretation of “restorative detention”.

2.2. The national programme on restorative detention

History⁹

Initially part of a larger research programme,¹⁰ “restorative detention” became an independent research project in January 1998. It was an action-research study ordered by the Ministry of Justice from the universities of Leuven and Liège. Central to the research was the question of how punishment in general and prison in particular can contribute to a more just and more balanced administration of criminal justice for the offender, the victim and society. The objective of the action-research was to give imprisonment a more victim-focused and restorative justice orientation. The action-research project was set up in six Belgian prisons, where researchers started concrete restorative justice initiatives, taking into account the specific context of each penal institution. Action, aimed at the phased or cyclical implementation of change in certain well-defined areas, was accompanied by research on the process and the outcome of the actions. Research was, however, not only instrumental in the immediate evaluation and steering of the activities and in the question of generalisation, but was also intended to contribute to the process of formulating a theory.

After almost three years of experiment, and on the basis of several evaluative reports, the Minister of Justice decided to implement the project in all Belgian prisons. The main strategy for this was the recruitment, in October 2000, of a restorative justice adviser for each prison and of two national co-ordinators. The background and objectives of the national programme and the tasks of the restorative justice advisers were laid down in a ministerial circular of 4 October 2000.

2.3. Restorative justice advisers

In the ministerial circular the national programme is situated clearly in the context of “restorative justice”, which, also in a prison environment, aims at “restoring the relation between the victim, the offender and the community”. The mission of the restorative justice advisers is to support a culture of respect within the prison and to help in the development

8 Law of May 17th 2006 concerning the external legal position of persons convicted to a prison sentence and concerning the rights of victims in the context of the execution modalities of prison sentences.

9 See for a more extensive presentation, Robert and Peters (2003). On the conceptualisation and implementation of the national programme of restorative detention several research reports are available in Dutch and French. Moreover, the programme has been discussed at international conferences (Biermans and d’Hoop, 2001; Van Poucke and Daelemans, 2002).

10 Belgian Federal Science Policy research programme “Building blocks for a coherent restorative and victim-oriented criminal justice policy” (Peters et al., 1999).

of a coherent prison policy on restorative detention. The activities of the advisers are not orientated directly towards individual inmates and victims, but rather towards prison staff and prison structures. Restorative justice advisers work towards developing attitudes, skills, programmes and organisational changes to be administered by the prison staff and others.

Restorative justice advisers operate at the level of the prison management directly under the authority of the prison governor. The advisers all have a university degree, usually in criminology, sociology, psychology or education. They are employed on a full time basis and their tasks are focused exclusively on the development of restorative justice.

The following objectives can be discerned for the restorative justice advisers. The first two are defined in order to introduce or to support a culture of respect within the prison:

- ▶ Developing consultation structures between the various departments of the prison;
- ▶ Raising the awareness of prison staff with regard to restorative justice.

The next three objectives are orientated towards making direct and/or indirect communication between the prisoners and the victims possible:

- ▶ Setting up consultation structures between internal and external services;
- ▶ Raising the awareness of the prisoners regarding victims' issues and restorative justice;
- ▶ Raising the awareness of victims and the community regarding detention and restorative justice.

One might argue that some of these objectives, in particular those concerned with internal and external consultation, are not new and not specific to restorative justice. However, putting these objectives in a new perspective might help to surmount existing obstacles and can stimulate the active involvement of groups such as prison officers or external social services.

2.4. Restorative actions

In order to influence the prison context effectively, the restorative detention programme has to address as many aspects of the "prison community" as possible (Robert and Peters, 2003). Establishing a restorative justice prison culture implies not only the active involvement of some key figures, but the support of all prison staff and an effective orientation involving very different aspects of the prison organisation. Hence, a restorative justice prison structure constitutes a basis for a culture of respect.

Initiatives towards prison personnel are, as a consequence, of the utmost importance. Their contribution can be decisive for the success or failure of a restorative detention programme. Secondly, factors of an administrative or organisational nature in the prison have to be taken into account and action taken in these areas. Furthermore, activities involving prisoners, individually or in groups, have to be designed so that they bring the victim into focus to stimulate reflection and responsibility. Finally, a restorative detention programme has to be linked to the outside world and concrete action must be taken in this respect.

Concrete action in the context of restorative detention can be divided in six categories:

- A Preparatory action.** The list here might include: developing a strategic communication plan for staff within a given prison involving all concerned groups; adapting and restructuring the prisoners' files in order to collect and include more information on the possibilities for making reparation (sometimes the most essential data are lacking in the prison dossier, for example on the identity of the victims and on the judicial decisions in respect to compensation).
- B Sensitisation.** For example: starting a discussion group among inmates on the subject of "restorative justice"; making the local community outside the prison aware of prison issues.
- C Informative action.** Examples: modifying the intake brochure for detainees in order to include victim related topics; organising information sessions for prison officers on victim experiences.
- D Training.** More systematic training programmes designed to integrate a victim perspective in daily work can be organised, for example, for probation officers or psychological staff within the prison; victim awareness programmes are offered to inmates.
- E Networking.** Examples are: establishing a temporary or permanent consultation group with local victim support workers; taking part in a local steering committee on mediation and restorative justice developments outside the prison.
- F Actions orientated towards direct or indirect reparation.** For example: starting, in cooperation with municipal social services, a programme on the settlement of debts; developing a programme of face-to-face group meetings between victims and offenders; establishing various types of community service inside and outside the prison.

These are all actions at the level of the local prison. Obviously, developing restorative detention also requires an active policy support from the central prison administration within the Ministry of Justice, and even support and co-operation by judicial authorities who are responsible for or intervene during the execution of the sentence.

2.5. Shared responsibilities

From the objectives and types of activities mentioned so far, it becomes clear that realising a restorative detention programme is not solely the responsibility of the restorative justice adviser. Nevertheless, there is an obvious risk that hiring specific personnel with the status of "restorative justice expert" implies the release of other staff from their responsibilities and necessary contributions to the programme. As a consequence, in first instance, the restorative justice advisers ought not to take upon themselves all possible tasks concern-

ing restorative detention. They should instead try to motivate and to support other staff members and other services, both inside and outside the prison, to take initiatives in this direction.

An example of this can be found in the work that was done in establishing a so-called “redress fund”. This project relates to the poor financial situation of many prisoners and their inability to reimburse the victim. Inspired by the results of a “settlement fund” that was already in existence with juvenile delinquents, the initiative was taken from within the restorative detention programme to draw up a similar model in a prison context. An external NGO – Suggnomè, already mentioned – was found that was willing to host the fund and its administration, and a charity – Welzijnszorg – agreed to act as sponsor. More recently, financial support has been offered by the governments of the (Flemish) provinces. The procedure for the fund is as follows. When an insolvent prisoner wishes to do something for his victim, he can apply for financial intervention through the redress fund. The fund, after the examination of the case by a special committee, can accept the application on the condition that the inmate performs a number of hours of community-orientated work. He can, for example, do some practical or administrative work for an external social-profit organisation. In turn, the prisoner receives from the redress fund an amount of money – up to a maximum of 1250 Euros – which he will hand over to his victim. The main focus of the redress fund is, however, not financial compensation (which sometimes is rather symbolic). The focus is primarily on developing responsibility. Making an appeal to the redress fund, however, always implies a form of direct or indirect communication between the prisoner and the victim. This is done through the intervention of an external victim-offender mediation service (Suggnomè). In this way the victim is also actively involved in the decision-making process. Moreover, the voluntary work is not offered through an existing database. The prisoner himself must reflect on what might be meaningful work, with reference to his victim, and he has to search actively for an institution to which he can offer his services. Finally, the prison has to shape the conditions to make this community work possible. In some cases, exit permission can be granted.

Other examples of multi-agency work in the field of restorative detention are a victim-awareness programme for prisoners, initiated in several prisons by the Flemish Victim Support organisation and more recently taken over by a NGO for educational work with prisoners (De Rode Antraciet), and experimental victim-offender mediation programmes in several Dutch speaking prisons and in all French speaking ones, at present part of the general offer of mediation by the NGOs Suggnomè and Médiante (Buntinx et al., 2001; Buonatesta, 2004). The latter means that the offer of mediation with their victim is available for all prisoners in Belgium. Mediation with prisoners is co-funded by the Flemish and French Communities respectively.

2.6. Resources

Conceptualising and implementing activities in the context of restorative detention requires initiative, a lot of creativity and good co-operation, both inside and outside the prison walls. The highly demanding task of the restorative justice advisers is facilitated by

the daily support of the two national co-ordinators, and by mutual support amongst colleagues. Practice demonstrates that there is a real risk that the restorative justice advisers become isolated, both within the prison and in their relations with the outside world. In some prisons, there is often a tendency to call on the adviser to deal with many other tasks or needs for which there are insufficient personnel available. It has therefore been found crucial that restorative justice advisers constitute a well-focused and tight-knit group.

In order to support the restorative justice advisers, as well as other persons and services involved in the restorative detention programme, some additional tools have been offered on the initiative of the Ministry of Justice. A Vademecum or practical guide has been composed – available in Dutch and French – by the universities of Leuven and Liège, on the effective implementation of restorative justice in prisons (Aertsen et al., 2003). After a general section on restorative justice and restorative detention and its critical factors and ethical issues, the Vademecum concentrates on practical implementation matters. A methodological framework to set up concrete actions is presented, according to the phases of (1) analysis and diagnosis, (2) the formulation of objectives, (3) the practical implementation and (4) evaluation. In each phase, it is suggested, special attention needs to be given to the issues of participation, communication and resistance. This structure has been applied in the Vademecum, on the one hand, to the global programme of restorative detention in Belgian prisons, and, on the other hand, to 23 concrete examples of actions.

A second instrument has been the compilation of an annotated bibliography on restorative justice and restorative detention, by the University of Leuven (Vanspauwen et al., 2003). This bibliography contains abstracts of some 250 articles, books and papers, of both national and foreign origin.

These kinds of scientific services to the programme of restorative detention place universities and academics in a permanent relationship with developments in practice. For a discipline as criminology, this interaction – albeit not always easy to realise – has been found extremely beneficial from both the perspective of applied research and the development of theory in the domain of crime and criminal justice.

3. Challenges

3.1. Restorative detention: (not) self-evident

Orientating a prison in a restorative justice direction might seem a paradox. At least two problematic features accompany such a project. First, some would see an apparent contradiction between restorative justice principles and the essentials of a prison sentence. A custodial setting seems to ignore the very principles of restoration, since incarceration finds its basis in exclusion rather than inclusion, in stigmatisation rather than reintegration. Moreover, security prevails in daily prison life and prison policies. The phenomenon of “prisonisation” inhibits confrontation with the self and with feelings of guilt. The prison context does not invite the incarcerated individual to assume responsibility or to pay atten-

tion to his victim's needs. But, secondly and alternatively, the use of restorative justice can be seen as a new way of legitimating the prison sentence. The prison sentence becomes less problematic, since it can be planned according to the interest of the victim or victims' needs in general.

The idea of restorative detention can be defended from a logical point of view. Integrating restorative justice principles in the administration of the prison sentence (and non-custodial sentences as well) is a consistent option if one is interested in re-thinking and re-orienting criminal justice as a whole.

It can be argued that the restorative dimension must be an inherent part of the subsequent stages of the criminal justice process. This approach opts for restoration not just as an alternative measure for minor offences but as a core element and basic rationale for criminal law independent of the nature or seriousness of the crime.

The main objective is first to strive as much as possible for reparation and pacification. Re-orienting the administration of criminal justice in a consistent way should also help in avoiding – at least at a conceptual level – a dualisation of penal policies. This dualisation refers to an evolution in penal practices in which community sanctions are deemed appropriate for minor offences by diverting the offenders away from the penal system at an early stage, whereas the more serious cases should be dealt with in an ever more punitive way within the system. In a country as Belgium, for example, the total number of incoming prisoners on an annual basis (the flux) is not increasing, but the daily prison population rate (the stock) is, mainly as a consequence of an extension of the length of prison sentences for more serious (violent) crime (Snacken, 2001).

Put in a more pragmatic way: if one agrees that restoration should be a main objective of criminal justice, there is no reason for it not being included in the administration of the prison sentence.

Seen from the perspective of both the victim and the offender, limiting restorative approaches to just one phase of the process (for example to prosecution or conditional release) might even provoke counter-productive effects: how to motivate an offender to take genuine responsibility during the period of his prison sentence, especially if he has learnt to behave and to think in a very defensive or minimalising way before? What sense does it make to motivate and to involve an offender in a mediation process with his victim at the pre-sentence level, if, afterwards, he is sent to prison where he is socialised quickly into a culture of disregard and denial?

It can be argued, finally, that developing restorative detention is a logical consequence of society's duty to create responsible criminal justice agencies (Shapland, 2000). Such a system is dealing with the needs of victims and others involved not as an additional burden, but as an integral part of its mission.

3.2. The victim perspective

The strong offender-orientated tradition and culture in which one tries to develop restorative justice remains a critical factor. The task perceptions of probation staff and prison personnel are not victim-orientated. Often a conflict of interests is experienced through the implication that working with the offender and with the victim is incompatible. Sometimes the principle of confidentiality is brought forward: probation officers or psychological prison staff are afraid of losing the personal relationship with “their client”, and – through more victim attention – of being directed to a more controlling role towards the offender. In the restorative detention programme, this fundamental problem was dealt with by offering ways of developing new methodological frameworks for psycho-social staff in prisons. One of these was the approach of “multilateral partiality”, based on contextual therapy and going back to the theoretical work of Boszormenyi-Nagy (Boszormenyi-Nagy and Krasner, 1986).

Victim-oriented work in prisons risks being narrowed and biased by the strong focus on conditional release and the advisory function of some prison staff. Victim advocates argue that this strong emphasis on conditional release stimulates opportunistic attitudes among prisoners and limits the chances for staff to motivate inmates to assume real responsibility.

After all, it must be said that many actions by the restorative justice advisers start from an offender perspective. The victims’ needs or expectations are sometimes pre-supposed without being thoroughly investigated or discussed. The work of the restorative justice advisers often seems to be determined, to a certain degree, by the institutional context in which they function. As a consequence, their location under the prison administration has been criticised. Some have commented that a more neutral operational basis would be more appropriate. The restorative justice advisers could be based, for example, in a mediation service, or in a public or private service within the Flemish and French communities who also have legal competencies in Belgian prisons. The counter-argument is that the impact of the advisers would decrease considerably if they were located outside the prison.

3.3. Community involvement

According to the ministerial circular on restorative detention, the community is the third actor or party in restorative justice: the disturbed relationship between the victim, the offender and the community must be repaired. As this is often the case in restorative justice discourse, the community is the most vague and abstract element in the whole story. The community is often represented in a “symbolic” way, without any clarification of the meaning and scope of the symbolic reparation or of those involved.

In the *Vademecum* on restorative detention that was discussed earlier, a more concrete operational definition of “reparation to the community” is given. It suggests as a criterion that each action towards the community should be conceived in such a way that the effect on the community can be clearly assessed. This is, for example, the case when members of the local community are invited by prisoners to visit the prison and to have discussions with them and with prison staff,¹¹ or when a prisoner is doing some practical work for an NGO active in foreign aid.

11 Kafee Detinee is the name of a programme that has been offered around the two prisons of Leuven several times now. It allows citizens to visit the prison and to talk to prisoners, linked to a film festival organised in the prison.

3.4. Structural limitations

Four limitations at a structural level, essentially connected to the prison context, must be pointed out. The first is the difficulty that prisoners have in establishing or maintaining external relations with their families, friends or other supportive persons. External influences and emotional support in personal life can be crucial in helping to develop an attitude of sensitivity towards the victim. Many prisoners need to have their self-respect enhanced before respect for others can start to be encouraged. As such, a restorative justice programme must try to strengthen external bonds. In this regard, a research report from the Netherlands distinguishes three phases in the structure of restorative detention: (1) self-redress and the opening of constructive perspectives on the offender's own future; (2) relational redress for victims of crime and community orientated activities; (3) preparation for reintegration into society (Blad, 2004). A method of accompanying inmates towards adopting a more self-reflective attitude and orientation towards others, including their victims, has been detailed in Belgium by Van Daele and Vanhoek (2007). They have written a "Work book" on "Restoration from within a prison cell", to be used by inmates themselves. The book deals with 10 central themes, going from "recognising", through "accepting", "deciding" and "translating" to "restoring". Each theme corresponds with a book chapter and is constructed along three parts: a personal testimony from an offender, a letter written to an inmate by someone from his direct entourage, and a list with personal tasks. The offender can "work" with the book on his own, but can also count on the personal help of a counsellor.

A second limitation concerns the restricted availability of prison labour and the problem of financial debts for many prisoners. Financial reparation to the victim is unrealistic for quite many prisoners. Special provisions can be set up to cope with this situation, such as the redress fund. More fundamental, but more difficult to realise, is the creation of work and income for prisoners. This problem, not yet studied or dealt with by the Belgian restorative justice advisers, deserves priority. It is probably only with the support of government that prison labour can be made more attractive and rewarding for local employers and industry.

Prison schedules themselves can hinder the implementation of some restorative actions or the individual work of a prisoner. The transfers, for various reasons, of prisoners to other penal institutions or the short period of a prison sentence are examples of this. A fourth limitation relates to preventive detention (remand), when the suspect is held during the criminal investigation. Practically speaking, actions towards the victim can be limited or forbidden by the investigating judge. Moreover, because of the principle of presumption of innocence, it can be questioned whether any initiative, in a restorative sense, can be expected from the side of the suspect. For this group, it is common sense to assume that involvement in restorative actions can only be considered on a completely voluntary basis. For convicted prisoners, however, there is a "legitimate expectation" that they commit themselves to a form of reparation.

3.5. The need for an integrated criminal policy

It is clear that restorative detention cannot be considered as an isolated programme. It cannot be separated from the foregoing and subsequent stages of the criminal justice process.

Restorative detention requires the active involvement and support of many actors, both in the prisons themselves and in other sections of the criminal justice system. Civil society needs to be involved. Actions have to be undertaken towards groups in society and towards the media in order to create credibility and community support. Finally, restorative detention, as with other programmes in criminal justice, should always be guided by ongoing evaluation and research.

Restorative detention as a programme can only function effectively if it is part of an integrated criminal policy. This is far beyond the capacities and responsibility of a local prison governor or even a national prison administration.

This integrated criminal policy, it must be admitted, is not yet present in countries. It requires a sound vision, a political will and a consistent and coordinated action plan. Unfortunately, it is often the case that restorative justice is quite easily hijacked or co-opted by the political world. To give but two examples from Belgium: one of the former Ministers of Justice has referred to restorative justice to defend the idea of electronic monitoring; and programmes without any reference to the victims have been defined as “restorative practices” by the Flemish Parliament.

Another factor that has been insufficiently studied, at least in Belgian prison history and developments, is the role of trade unions. One illustration of the position of the prison officers' union and its possible impact on a programme as restorative detention was witnessed in 2003. Officers went on strike in several prisons in protest over prison overcrowding and understaffing. In the process of negotiations with the Ministry of Justice, the union demanded that training activities in the context of the restorative detention programme in some prisons should be reduced.

Restorative justice advisers have to work actively at these institutional, community and political levels. This requires some autonomy and freedom of action, which is only possible for civil servants when they affiliate with influential agencies and groups in society.

3.6. Continuity and autonomy

On the preceding pages, the role of the restorative justice adviser has been stressed several times. The last sentences above refer to a possible downside of their position as conceived in the Belgian case: their lack of autonomy. Indeed, in 2008 it was decided by the central prison administration to abolish the function of restorative justice advisor in the Belgian prisons. The decision came totally unexpectedly and was made without any prior consultation with the restorative justice advisers. The staff themselves were not dismissed, but they had to accept a new function in the sphere of “operational support to the management of justice”. The official argument of the central prison administration was that the culture of restorative justice had now sufficiently taken root, and that tasks with respect to the efficient management of the prison prevailed. Whether restorative justice was implemented sufficiently in all Belgian prisons, and whether it is able to further develop “spontaneously”, remains subject to debate. Most former restorative justice advisers and other professionals

involved in related programmes are very much concerned – and observe effectively – that restoration-oriented activities are being reduced in Belgian prisons.

This story might be a lesson for all working in the field of restorative justice. While it is crucial to develop good, respectful and equal cooperation with criminal justice institutions, one should be aware of, and prepared for, the risk of institutionalisation through cooption by the system. This happened in the case of Belgium: initially, in the name of restorative justice, financial resources could be made available to hire new advisers in the prison system; after a while these resources were totally absorbed by the system to serve its own functioning and legitimacy.

4. Restorative detention: a new perspective for the persistent prison?

Restorative detention can, nevertheless, offer a meaningful perspective for the prison. The programme can contribute effectively towards meeting the needs of individual victims and offenders. Victim-offender mediation and other forms of communication show clear evidence of this. This way, redress for victims and social reintegration can be assisted. The programme can support the humanisation of the prison sentence and the valorisation of prison staff. By bringing the community inside the prison, and prisoners inside the community, public perception of crime and delinquency can be modified in a positive way.

However, restorative detention should not offer a new legitimisation for the extensive use of prison sentences. Restorative detention can offer a meaningful perspective for the persistent prison, in the sense that the programme, through the active involvement of victims and community members, has a specific potential to question the prison institution in a critical way. Restorative justice is about participation, responsibility and effective social control, and (thus) about promoting informal processes under the protection of the rule of law.

We conclude that developing restorative justice in prisons – possibly because of its ambiguous character – only can gain impact and credibility if it is part of a more general, integrated project of criminal policy. One of the key elements of such a policy, from a restorative justice point of view, is the consistent reduction of the use of the prison sentence. Although at present the political climate in many countries might be moving in the opposite direction, other countries in the recent past have shown an ability to reduce their prison populations. Restorative justice can provide a logical and positive content to the restricted period of the prison sentence, and should, at the same time, make prison less persistent.

Case studies

Els Goossens¹

A CASE FROM BELGIUM

I would like to tell you the story of Tom and An: during the story you will get some information about the Belgian methodology.

In June 2006 I'm giving an info session in a prison. Tom is one of the participants. After the session, Tom tells me that he's very interested in a mediation between him and his former mother-in-law. But there seems to be a problem. Tom's lawyer doesn't want him to participate in a mediation. He's afraid that everything Tom says to the victim would be used against him in the upcoming trial.

Ten years ago, it was not exceptional that a lawyer had problems with the concept of mediation between victims and offenders. In Belgium, some lawyers always gave negative advice when it came to the possibility of starting a mediation. They believed that it would affect their case in a negative way. So they projected that fear to their clients, who mostly follow the advice of their lawyers. Except for Tom; he is an exception. He wants the mediation in spite of the negative advice his lawyer has given him.

He wants to talk to me in private about his case. So I promise Tom that I will come back to take a better look at his case, and the possibility of some kind of mediation...

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Ten years ago it wasn't easy to go to prison to see a client. For every person that you wanted to see, you needed to get permission from the governor. You can question the confidentiality of mediation in prison??? Now we have a badge and we can go to prison regularly to see clients. But still there are rules, such as you can't see prisoners before nine in the morning, not during the daily walk, not during the "search", not when they are counting the prisoners, not while they are eating, not while the lawyer wants to talk to his client, not during his work in prison, and so on.

A few days later I'm back in prison to talk to Tom. He tells me his story. In 2005 he killed his ex-wife, also the mother of his two young children. He doesn't know how or why he did it; he only knows that he committed this crime. During his time in prison, he often thinks of An, his ex-mother-in-law and mother of the victim. He really would like to talk to her. Tom informed his lawyer about the mediation, and his lawyer told him to look for another lawyer when he would participate in a mediation.

Before I contact the victim I first check with the investigating judge if the mediation would not interfere with the investigation. He tells me that the investigation is closed so it's not a problem to contact An.

Before I can do that, I first need an address. I contact the public prosecutor and ask him if I can read the criminal file.

Normally we don't read the criminal file. We work with the stories the people give us. We also don't need all the information one can find in a criminal file. We only need addresses. I didn't get the permission I needed immediately. I had to contact five people and wait two months. But in the end I received An's address.

So now I can send a letter to An with all the information about mediation. Three days later An calls me and we make an appointment. When I go visit An, Nathalie from the victim service joins the conversation to support An. An tells me that she's interested in a mediation, but she has second thoughts about it. Her husband, her other children, her friends, her mother ... everybody close to her advised her not to go through with it. You don't go to prison to talk to the murderer of your daughter. That is just something you don't do!! But An wants to see Tom before the trial. She wants to see him one time and talk to him, so she can see for herself whether he's sincere or not. She tells me that on the evening of the murder, Tom had dinner with her daughter Sylvie and their two children. Afterwards he drove Sylvie home and as she entered her apartment Peter followed her, grabbed her from behind, took a knife and stabbed her. Then he had his hand covering her mouth until

she was dead. He wrapped her in plastic and placed her in his trunk. He drove home, put the children to bed and threw Sylvie in his garden.

Despite what happened, An does not have feelings of hate or revenge. She's just very angry. But she believes that her grandchildren, who lost their mother, have a right to know their father. She tells me that she would like to ask Tom what Sylvie's last words were. She wants to know why he murdered her daughter.

A week later I'm going back to see Tom in prison. He's telling me that he has written a letter to An. His new lawyer wanted to read it first, so he can't give it to me for the moment. He's telling me that he was very depressed after he divorced Sylvie. He took ten pills a day and was seeing a psychologist. He couldn't deal with the divorce; he felt really down. And then it happened. While in prison, he's trying to see deep within his soul. He feels like a monster. The fact that An wants to talk with him, despite what happened, makes him feel slightly human again. He doesn't remember much about the murder, only flashes. He doesn't understand how he was able to do such a thing. He says that people have a brake, a brake that prevents them from doing terrible things. Like an "emergency brake"... But that brake wasn't there. His emergency brake didn't work. And that scares him.

Tom wants to meet An and apologise in every way that he can and thank her for taking such good care of his children.

A week later I'm going back to An and tell her Tom's version of the facts. She doesn't really believe the emergency brake story. She understands the concept. But he took the knife and plastic with him before they went to dinner. Why would he do that? He planned it all in his head. Maybe the emergency brake story is just a story he tells himself to ease his mind. An doubts his sincerity. An thinks Tom is deluding himself with this "emergency brake" story. She thinks it's a way of surviving ... at the trial he will have to give answers. At the mediation meeting she hopes to see whether he's lying or not.

An tells me that she has some more questions for Tom: What was he going to do with her dead body? Did he really think he could get away with this? Was Sylvie taking drugs? What does he do all day in prison?

When I see Tom two weeks later, he tells me that his case will go on trial within five months.

In Belgium we have a tribunal for serious crimes, with citizens as a jury. Such a trial takes a whole week. The whole written investigation will be done again orally. All the witnesses, family members of the victim and offender, the investigating judge and police officers have to come to court to tell the jury what they know. Then the jury has to decide whether the accused is guilty or not. When they have decided that the accused is guilty, they have to decide on the punishment. This decision must be taken in consultation with professional judges.

Such cases are closely monitored by the press. You can follow the whole case in the newspapers.

This oral procedure and the press are very big risks for a mediation in such cases. Since 2005, we have had a law that says that all the information from the mediation has to stay confidential and that mediators cannot be called as witnesses. And lawyers have to be quiet about the mediation at the moment of the trial. But when a lawyer mentions something about the mediation, the only thing the judge can do is ask the jury to pretend they didn't hear it... But of course they already heard it ... They heard it and the press heard it too! There's a big risk that you get a big headline, such as "grandmother visits the murderer of her daughter," in the newspaper the next day. So in such cases we have to prepare all parties for these risks.

One possibility for avoiding abuse of the mediation is to draw up a written agreement. This is a paper where all parties can write down their point of view and their arrangements. But there is also the possibility to write "the victim and the offender had a mediation meeting in prison at that certain date, and they both want to keep the content of this meeting confidential". The mediator can ask for this agreement to be added to the court file. If everything goes well, the judge can read this agreement out loud during the trial. This way we can limit the risk of abuse. Such an agreement is only possible when both parties agree. They both have to sign this agreement.

Tom answers all of An's questions. He also understands that An doesn't believe the emergency brake story. He doesn't even understand what he did either. This is the most difficult aspect for him. He tells me that he doesn't remember if and when he put the knife and the plastic into his car boot. He supposes that he's displacing things in his mind ... He tells me that he would like to talk to a psychologist about this but in prison there's nobody to talk to about such things... The psychiatrist in prison only prescribes pills, to keep everybody quiet. Because of the questions from An, Tom starts to think again about how everything must have happened that evening and about his acts. He tells me that honesty is very important for him. Not only during the trial, but also during the mediation.

Tom gives me a letter he wrote for An. His lawyer also read the letter and advised him to delete some things. I ask Tom if I can read the letter first, before I give him to An.

When offenders ask us to deliver a letter to the victim, we always insist on reading it ourselves first. We do this because we want to make sure that the content of the letter is acceptable and corresponds with the content of the mediation. We also need to know what the letter says so we can help the victim understand the content of the letter.

In his letter Tom expresses his regret for what he has done. He also expresses his thanks to An. He is very grateful that she takes such good care of his children.

We agree that the next time I visit Tom, his helper from offender support will also be there so we can prepare for the meeting with An.

One week later I'm going to An and her helper from the victim service to prepare for the mediation meeting. She tells me that she talked to her lawyer. He doesn't have an immediate problem with the mediation. We also discuss what An is going to say to the children about her meeting with their father.

Tom's parents visit him every week and once a month they take their grandchildren with them. Tom's children are 3 and 6 years old. In Belgian prisons, offenders also have the possibility of seeing their children in a special "children's visit". Once a month the offender support service organises a supervised time when children can go and see their father. These visits are held in a room where there are toys so they can play with their children in a warmer room and not in a big, cold room where other prisoners are around.

An decides to tell her grandchildren that she's planning to see their father. She also informs the children's teachers at school.

When I tell her that Tom wrote her a letter, she immediately wants to read it! An wonders if his apology is sincere. Is he sorry because he got caught? Is he sorry because he's in prison? Or is he really sorry that he murdered her daughter in cold blood? And is he sorry he took his children's mother from them? Or is it all an act?

Now I have to tell you a little bit more about the preparation for a mediation meeting. It always runs the same for both victim and offender. We talk about several aspects of the meeting...

► **When and where.** *In this case the meeting has to take place in prison. That's not always easy. Prisons are not set up for victim-offender meetings! It's always a search for a good location. In this case, the governor offers us a room where all their internal meetings take place. When I go to prison and take a look, it appears to be a rather large room with a large table in the middle. It looks good. Then I go to talk to the governor and we make some practical arrangements, such as who will accompany the victim when she arrives at the prison?, Will he inform his warders that a victim will be coming to prison? Can he be sure that the victim doesn't have to wait in line with visitors for*

other prisoners? Will there be coffee during the meeting? Who will accompany the victim after the meeting? Can he make sure that we don't have to wait too long for Tom? Because of other movements in prison, for example. In my conversation with An it is very important to tell her what she is going to experience when she enters the prison: the heavy doors with many keys, the metal detector, more doors and keys, the warders, the other visitors, ... I also describe the meeting room to An and Tom.

- ▶ Then we give **the structure** of a mediation meeting: the mediator starts with an introduction. Then the victim can say what she wants to tell. The offender has to be quiet. When the victim is through with her story, the offender can tell his story. The victim has to be quiet. Then both parties can talk to each other, ask questions, give answers, ... the mediator does not intervene. Except when people are unable to talk to each other over this.
- ▶ Who will be **in the room first**? Does the victim want to be already sitting at the table when the offender enters the room? Or does she prefer entering after him?
- ▶ Who is going to **sit where** at the table? We first ask the victim. Does she want to sit in front of the offender? With her face to the door? Where does she want to place the mediator? And her helper?
- ▶ What does the victim want the offender to **do when he enters** the room? Can he shake her hand? Is he going straight to his chair?
- ▶ Who's going to **start talking first**?
- ▶ What is **your intention** for the mediation meeting? And what if you don't achieve that intention?
- ▶ What are you planning to say? Do we make **a list** in advance?
- ▶ What do you **expect of the mediator** during the mediation meeting?
- ▶ What's **the worst thing** that can happen during the mediation meeting? In that case what are we planning to do?
- ▶ When you want a **break**, will you be able to say this to the mediator or do we have to agree on some kind of sign?

- ▶ *What are you going to do when the mediation meeting is over? Do you want to leave first? Are you going to shake his hand?*
- ▶ *Who's going to take care of the after-care? Mediator or helper or ...?*
- ▶ *Did you inform your lawyer? Did he give you advice about "things not to talk about"?*
- ▶ *What are you going to tell to your husband, children, family, friends? ...*

We go back to our story. An wants me to wait for her at the entrance of the prison. She wants to be in the room before Tom enters. She wants to sit in front of him, and she wants Nathalie to sit beside her. She wants me to sit in between her and Tom. She will shake Tom's hand when he enters the room. She wants him to be comfortable, so that he will feel at ease to answer all her questions. She has no problem with making eye contact: if it becomes too difficult for her she will look down.

During the conversation An hopes to find out whether Tom is being honest or not. She doesn't want the meeting to in order get an apology from Tom – she wants the meeting to get answers!

An will speak first. She wants to ask Tom a lot of questions and also tell him that he made his children the children of a murderer. She wants to tell him how the murder of her daughter affected her life. And not only her life but also the life of his children, family and friends.

An feels that the worst thing that could happen during the meeting is that Tom could start lying. If he lies, An won't hesitate to confront him with that. But even if she feels that he is lying, she wouldn't consider ending the conversation because she believes that he cannot lie about everything!

If things get too difficult for An, she will signal that to me by saying "Just a minute". That way we can take a break when necessary.

At the end of the meeting she will shake Tom's hand and he can leave the room first. Afterwards she'll go and get a coffee with Nathalie, so they can talk about how the meeting went. An has only one expectation: to hear the truth!

After I prepared the meeting with An, I do the same thing with Tom. Tom also thinks that it's a good idea that An will arrive first, and that I sit in between them. Tom doesn't know if he'll be able to look An in the eye; he feels ashamed. When I tell him that An wants to shake his hand at the beginning and ending of the conversation he starts to cry. He's very grateful for this gesture.

It's not a problem for him that An will start the conversation. He also made a list with things he wants to say to her:

- ▶ He wants to thank An for the meeting and for taking good care of his children.
- ▶ He wants to tell her that he can't stop thinking about what happened that day.
- ▶ He wants to ask An why she is talking to her daughter's murderer?

- ▶ He wants to tell her that he realises that the daily care of the children is very difficult and hard for her.
- ▶ He wants to thank An for letting the children visit his parents.
- ▶ He wants to tell her that he will accept his punishment.
- ▶ He wants to tell her that his feelings of guilt are overpowering everything. When he laughs, he feels guilty.
- ▶ He wants to tell her that while he's in prison he's doing everything he can to help other people.
- ▶ He wants to tell An that he's not running away from things. That he also wants to know what happened that day. He is searching for help in prison, but nobody can help him with this ...
- ▶ 'Will An accept that one day, I will be leaving prison?'

For Tom, the worst thing that could happen during the mediation meeting is that the pressure will be too great for him, and that he will lose it! He's afraid that An will insult him or scream at him... He would understand her emotions but he wouldn't be able to listen to it. He's afraid that the situation could explode, and he never again wants to lose himself in a blur of emotions and aggression. He tells me he will look down if it gets too difficult for him, and that way I will know he needs a break. Tom hopes that, after the meeting, An will be able to see the situation in grey rather than in black and white. He hopes that everyone will feel better after the meeting. After the meeting Tom's helper will stay for a while so they can talk about the meeting.

I tell him that An is planning on telling the kids that she's going to see him in prison to have a talk with him. Tom starts crying again and say "What a woman". But he has to admit that the meeting feels like a pré-trial for him.

And then the day of the meeting has come. When An and Nathalie arrive at the prison, it's very clear that both of them are nervous. Even though we prepared the meeting in detail, An is overwhelmed. We walk in together, through the metal detector, a few secured doors. All the wardens are very friendly.

The governor took every precaution necessary for An's visit. All the members of the staff are well informed. One warden guides us from the entrance to the meeting room. We are a bit early so we had to wait 15 minutes. As An and Nathalie sit down, I give everyone a cup of coffee. After 10 minutes the warden tells us that Tom is in the next room, and that he is ready to come in whenever we are. I ask An if she's ready. An is ready. I go to the next room to see how Tom is doing. He's also very nervous, but he's ready to see An.

When Tom enters the room An stands up and reaches her hand to Tom. Tom shakes her hand and finds his seat. You can feel the tension in the room... Tom doesn't make eye contact with An.

I start the meeting with a little introduction. As I start speaking, I can see that An and Tom are carefully starting to make eye contact. I talk about the steps everybody took in this mediation and I thank them for being brave enough to be here today to meet each other. Then I ask An if she's ready to tell her story. She takes her list out of her bag and starts with

the first thing on her list. During the conversation there are some moments of silence and emotion, but both parties are very respectful towards each other.

After an hour and a half we decide to end the meeting. I thank everybody for coming and ask Tom if he's ready to leave. I tell him that I will visit him in a few days to see how he's doing. Tom stands up, shakes An's hand and he leaves the room. In the hallway An tells me that she feels relieved, and that she's very happy she went through with the meeting.

We say goodbye and I promise to call her within a few days to see how she's doing.

A few days later I go to Tom in prison. He tells that after the meeting he had a long talk with his helper. He felt relieved, and it felt good to talk about the children. Tom was shocked to see how much An had aged... He felt very guilty for causing her so much hurt. He hoped that the meeting would bring back some memories about the day of the murder, but it didn't. Still, he's very grateful to have seen An. If in the future An has any other questions, he will always try to answer them but for now he needs some time. When I ask him if he wants to let the court know that there has been a mediation he says that the court should know that there has been a mediation, but that they don't need to know what they said during the meeting.

When I talk to An again, she tells me that she didn't hear anything new during the conversation. Everything he said, she already knew. But she doesn't regret seeing him. Now she's no longer afraid to face him. She thought that Tom looked good; he used to be much more skinny.

She's disappointed that Tom didn't answer all of her questions. She can't believe that he doesn't remember a thing. Everybody always tells her that Tom manipulates the people around him, maybe they are right? But An is satisfied that she had the mediation meeting. It felt good for her to hear that Tom was so grateful to her for taking such good care of his children. It gave her a feeling of affirmation and acceptance. That was very important for her.

She doesn't want to see Tom again before the trial; she also needs some time. She plans on reading the criminal file again. After the trial she would like to see him again. She also wants the court to know that there has been a mediation, but they don't need to know what's been said between them: that's private.

We make up a written agreement...

This mediation came to an end. It has lasted for one year.

Three months later Tom has to appear in front of a judge and jury. The judge mentions the mediation and reads out loud the written agreement. After five days in court, Tom is found guilty of murder and gets a punishment of 25 years in prison.

Two months after the trial I receive a phone call from An: "Is it possible to talk to you again?" We make an appointment. She tells me that the trial was OK. Everything they talked about she already knew. She tells me that after the trial she walked up to Tom and asked him to get stronger in prison, to do something with his punishment.

She says that she wants to talk to Tom again. Not about the trial, not about the murder but about other things like:

- ▶ I heard that there are some problems with his parents? Is this true?
- ▶ The children didn't visit Tom the last time. Why?
- ▶ From whom is Tom getting information?
- ▶ Is there anybody helping him now with his treatment? Is he already doing something with his punishment?
- ▶ How can we make arrangements about the children?

An tells me she wants a conversation about how things are going at this moment. Not about the past. She wants a mediation meeting again as soon as possible to talk about the future. She wants to be able to make arrangements with Tom himself, not with his parents

When I go to prison to talk to Tom, he's happy to see me. He's telling me about his punishment, the day he could possibly be free with conditions (December 2012), ... He tells me that when An came towards him after the trial he immediately forgot his 25 years. "At that moment, An gave me the power to stand up and go for it. Those words were a beautiful present she gave me."

He tells me that there were some problems at his parents' home. But everything is OK now. Next week they will come and visit him with the children. Tom also feels that it would be easier to make arrangements about the children with An, instead of with his parents. His parents are very afraid of doing something wrong or asking something wrong of An. Tom says that it's fantastic that An lets him be a father again! Tom agrees to speak to An again to talk things through.

So, Tom and An meet again! Together they make some practical arrangements for the children. They agree that the children can see Tom on special days, such as Christmas or their birthdays. If Tom wants to see the children, he can write a letter to An and ask her if it suits them to come for a visit. If An has any questions at all, she can always write him. Tom will even put An on his list of visitors. If there is ever an emergency, she can go and see Tom if necessary.

During this second mediation meeting they both tell me that it is very nice to be able to arrange some things by themselves without intervention from all kind of services. They are planning to continue this way of communication by letter.

We end the mediation. A few months later An calls me to tell that she already received a letter from Tom with several dates for children's activities in prison. She also went to another prison to talk to offenders about her experiences as a victim. She tells me she needs to do these things so the death of Sylvie hasn't been in vain.

Dóra Szegő – Borbála Fellegi

SORTING OUT FAMILY RELATIONSHIPS IN THE COURSE OF A TEMPORARY RELEASE – RÓBERT'S STORY

Participants

The participants in the family group conference were Róbert, aged 40, serving a 16-year prison sentence for a first offence of homicide, public endangerment, theft and burglary. He will be released in four years. The mother of the inmate lives in a small town in north-east Hungary, while his wife and four children live in a nearby small village.

Two years ago, Róbert entered the penitentiary, which participates in the MEREPS programme. He had faced disciplinary measures in previous penal institutions. In the current institution he is known as a well-behaved, cooperative and calm inmate. He works in a factory and spends most of his free time building scale models of buildings and other objects out of matchsticks. He used to live in a seven-member cell community, in which he attempted to involve his cellmates in the work in exchange for barter. Some of his cellmates cooperated with him, but others could not tolerate him working late at night in the cell. Prison educators decided that his model building had a good effect on his conduct inside the institution and would also help his life after release. They supported his efforts for this reason, and put him into an individual cell. Some steps taken by him indicate that he is consciously planning for his life after release from prison – he has applied to a cabinet-making course advertised within the prison as well as for the “Net-Ready Programme”, because he would like to start a carpentry business with his son.

Róbert has kept in close contact with his mother, who met with him on a weekly basis. At first, his four children saw him monthly; later they came less frequently, but he still meets with one or the other every three to four months. His relationship with his wife has deteriorated during his prison years. They have not divorced, but do not consider themselves as spouses. His wife has accepted that the children maintain regular contact with Róbert.

Regarding the family group conferencing

The family group conference came about because the inmate requested a temporary release from prison in order to do some repair work on his family's house, which was in very poor condition. His wife and children live there. His request for a 5-day temporary release was under consideration, and the environment reports from both the police and the probation officer stated positive opinions.

One of the aims of the family group conference was to prepare Róbert, his family and the local community for his temporary release, to offer all parties an opportunity to share their fears and expectations, and to identify available resources and possible conflicts. Meanwhile, the five-day schedule was being planned. Another important goal was, before the decision on the temporary release was taken, to ensure that the prison governor would obtain the additional information and a more in-depth understanding of the inmate and his family that would confirm the correctness of his decision.

Preparatory phase

During the preparatory phase, we arranged for personal meetings at the locations where the temporary release was to take place: we met with Róbert's mother in the town, and with his wife and children in a nearby village. Róbert's educator, MERPS mentor and a researcher took part in the talks.

These talks had several aims: to prepare for the conference, to map the parties' expectations, fears and motivations, and to inform the family. Another aim was to inform the penal institution of the inmate's family circumstances and environment, and any potential risks of the temporary release.

Discussion with his mother

Róbert's mother lives with her daughter and two grandchildren in a one-and-a-half room apartment in a block of prefab flats. Her daughter is divorced and a single parent. It appears that the crime he committed has shaped his mother's life since then. She has collected all the newspaper articles about it since the trial. Her daughter works, while she – in connection with the events related to her son – has gone into pre-retirement. She emphasised that her daughter's work is extremely important to her: it is from these earnings that she is able to visit her son regularly.

In the course of the discussion, we learned of a conflict between Róbert's mother and his wife – partly due to the fact that a relative of his wife was Róbert's accomplice. *"Ask his wife. They deny everything to me. His wife's relative was his accomplice. I won't allow him to meet with that type of people. (...) The trouble started when they got married. His wife's family and friends were a bad sort."* Another cause of tension is that his mother has not accepted his wife's new relationship, nor that his wife has failed to stand by Róbert while he serves his long sentence. However, she keeps in contact – albeit loosely – with Róbert's children.

We learned that the conflict between Róbert's mother and wife could represent a danger in Róbert's temporary release. His mother declared that, if the relationship between Róbert and his wife is patched up during the time he spends at home, then *"I will no longer*

have a son". A dispute arising from this could mean a risk factor with regards to the temporary release and the family group conference had to digress in order to cover this issue as well, especially seeing as Róbert would have liked to spend time at both places. A positive factor was that his mother accepted the fact that Róbert would spend most of his time with his children: *"I won't be offended if he sleeps there. It's far for him to always have to leave. Just so long as he doesn't get back together with his wife."* She also accepted the fact that her son would spend a significant part of the five days working. She further agreed that, for the purposes of the temporary release, she would sit down with her daughter-in-law to agree on how to divide the time he would spend at home.

During the discussion, the issue of reparations towards family members as well as towards the victims of the crime also arose. An especial significance to this came from the fact that, during the preparatory phase for the conference, Róbert was not able to see the "person" behind the victim. He saw his actions as crimes against institutions, and that there had been no individual victims. Hearing of the family's trauma and needs opened the way for Róbert towards atoning for and taking responsibility for his actions. *"To this day, we have not been able to accept that he committed a murder. We see him as guilty. Even if he was just an accomplice to the crime, he was there too, and didn't go away. That's why he's guilty. (...) My daughter has trouble accepting that all my savings were spent on Robi: lawyer, packages, visiting. They knew that he was my favourite."* Róbert also broke into the restaurant where his sister used to work. It turned out that, because of this, his sister also found herself in the role of a victim.

Although the decision of the governor had not yet been handed down, the family was already preparing for the temporary release. They had already arranged for a relative who had a car to pick him up and bring him back to the prison. When his educator asked what were the chances of him meeting up with his former accomplices, she answered that his accomplice is serving a sentence in a penal institution in another city, and that the others do not live in this city.

Meeting with his wife and children

The meeting with his children and their mother took place in the family house that is to be renovated. The family lives in one of the outer unpaved streets of a small village and, from the outside, the house seems to be in good condition. They moved to this village ten years ago, because it was close to his mother's relatives. His 16-year-old son is taking a training course for specialised workers, while his daughters (aged 17, 18 and 20) earn their living by working at student jobs and part-time jobs and also receive social aid from the state. Their mother does not work, due to illness. The children were awaiting our arrival. During our discussion, their mother called home, telling us that she was undergoing treatment at the hospital and that she would be arriving later than expected.

The children said that they felt that their father had been present during their childhood: *"he was able to help sometimes. He always sent things, money too."* However, the time without him had been difficult for them, as well as the fact that he had committed a crime. We learned that no one had talked about this outside of the immediate family: *"we never told*

our friends or classmates anything. We said that our parents had got divorced. That's what Mum said, that's what we said too." According to the children, many people in the village know that Róbert is in jail, but few know why he is there. "If people ask, we don't answer. We just say that we don't know, and that's all."

They showed us the part of the house that needs to be fixed and we also learned that the son will be actively taking part in the work. Their plans and expectations with regards to the temporary release were in agreement with one another as well as with those of his mother.

They brought up the issue of the tension between their mother and grandmother as well. They drew a parallel between the two women's personalities and did not associate the conflict between them to the time of Róbert's imprisonment: "They hated each other from the beginning, because both of them are very wilful. They are both very rigid in their viewpoints." The youngest daughter expressed hope that the relationship between mother and grandmother could be repaired. They also knew about their grandmother's "threat". All of them expressed the wish that their mother and father would get back together again, but did not think this possible. When asked what tension might arise between them and their grandmother during the temporary release, the oldest daughter answered: "She will listen to us more than she will listen to Mum, because we are his children. I think he also wants to be with us more, and Mum knows this too."

We also learned that the plans for a father/son enterprise were not only on Róbert's side, but that his son was also preparing for this by studying on a woodworking course.

Towards the end of the discussion their mother arrived; she told us that the children have known since their early teens that Róbert is in jail for murder. She sent the youngest daughter out of the room, which seemed to indicate that she still does not know the full story. She said that she did not get divorced because of the children and that they have not lived as spouses for a decade. "I just got tired of it somehow – lots of children and lots of work. I got a boyfriend and our relationship ended." During the entire period of his sentence, she always felt that it was important for the children to remain in contact with their father. She did not believe that there was any chance of restoring their relationship as spouses, and thinks that her husband shares her opinion in this respect: "we could only be friends, as the parents of the children." They had also planned that Róbert would sleep in his son's room and that his wife would spend the nights at her brother/sister's house. When asked about his release from prison, she said: "I have my own life. He will also make a life for himself (...) He will find work for himself." Despite this, she expressed an intention to assist him in finding work, and has already made some efforts in this direction.

The family group conferencing

Róbert, his mother, his 16-year-old son and the two male relatives who were to assist in transporting him home and back took part in the family group conference on behalf of the family. On behalf of the penal institution, the governor, the department head of the prison and the inmate's mentor/educator were present. The facilitator was MEREPS mentor Vidia Negrea. The conference started by taking up a spontaneous conflict situation: a misunderstanding that had occurred between the educator, the MEREPS mentor and the family

during the preparatory meeting. The family had understood that, if the conference were successful, they would be able to take Róbert home straight away. They were expecting him home with a several-course meal. This conflict allowed the temporary release issue to advance in a positive direction, as the misunderstanding of the family and their reaction of disappointment confirmed to the governor that they were able to handle conflicts well: no accusations were thrown about nor was there an attempt to lay the blame on someone. They immediately understood the situation and made efforts to solve the problem.

As a result of the conference, the family was able to see the inmate in the penal institution. This allowed them to form a much more realistic and up-to-date image of him, and both their fears and illusions about him subsided. In closing, the conference participants outlined a timetable for the seven days of temporary release. The relative agreed to take him away at a specified time and to return the inmate one week later. They decided where Róbert would be on each day of the week, what he would do, and what means of transportation he would use from one location to the other. The family was to notify the penal institution if any problems arose, and they also agreed to document all work on the house and that all members of the family would write down their thoughts and feelings about this one week and forward these to Róbert. As a result of the family group conferencing, the governor approved the temporary release.

The temporary release and its aftermath

During his leave, Róbert carried out the work around the house (wallpapering, painting the hall, plumbing). In accordance with the agreement, his son took photographs of this which he handed over to the educator when Róbert was returned. There were a few points in which the family diverged from the agreement reached by the family group conference. Contrary to the agreement, Róbert spent all of his time in the village, in the home of his wife and children. He only spent the first evening with his mother. The fears of his mother expressed during the discussion did come true – which was the probable main cause of conflict regarding his time spent at home – Róbert did get back together with his wife. No open conflict occurred between him and his mother during the time of his temporary release. According to the educator, his time spent at home had strengthened the bond between mother and son. He also improved other external relationships: he spoke with his son's boxing coach – an old friend of his.

According to the educator, fundamental changes have occurred in his conduct since the temporary release. He has begun to express his feelings and is making plans for the remaining time of his sentence. His relationship with the educator has also become more familiar: *"instead of bringing up his plan to ask for a short release for Easter in the conference room, he mentioned it informally, as we walked back to the cell. (...) He also said that before, when he made an application for a temporary release, he had promised himself that he wouldn't come back. But now that it actually worked out, he never even considered the possibility of not returning."*

The renewal of his relationship with his wife caused Róbert's relationship with his mother to deteriorate. His mother – previously the only person who gave him continuous sup-

port – is sticking to her earlier statement: she neither calls nor writes. However, if Róbert calls her by telephone, she does answer.

In the support group, we continuously tracked the follow-up to Róbert's case and how the relationships developed. The educator said that although it is as if the "*inmate had been switched with another*", the break in his relationship with his mother was a great burden for him. Subsequently, Róbert took active steps to improve his relationships. He requested a short leave for Easter in order to clarify whether his renewed relationship with his wife was actually realistic and sustainable. He also planned to try to reconcile his mother and his wife. Since that time, Róbert has been home twice on leave, and continued the work around the house. In both cases, his leave was uneventful. Róbert has become closer to his wife and children, while his relationship with his mother remains chilly. He has declined offers by his educator and MEREPS mentor to hold another family group conference to help set things straight in these relationships. From now on, he intends to deal with the matter on his own.

Negrea Vidia

THE APPLICATION OF THE RESTORATIVE APPROACH IN THE REINTEGRATION OF EX-PRISONERS

In the following we wish to demonstrate the potential role of restorative meetings in reintegration through the case of an ex-prisoner.

As the Hungarian representative of restorative practices developed by the *International Institute for Restorative Practices* (IIRP), The Community Service Foundation of Hungary has participated in the reintegration efforts in prisons several times through training probation officers and providing support to newly-released prisoners. I came into contact with Balassagyarmat prison and its governor when I participated as a guest at a group session of the Hungarian Crime Prevention and Prison Mission Foundation (the Sycamore Tree Programme, or in Hungarian, the so-called “Zaccheus Programme”). The governor and I started to think about how restorative practices could be applied to prisoners who had spent a long time in prison before their release.

A lucky coincidence

The start of our cooperation and the selection of the ex-prisoner to be involved in the programme were affected by the following factors. First, in the framework of the Zaccheus programme, prisoners worked in groups, on issues related to their crimes and explored ways to repair the relationships they damaged. Among other things, it resulted in a change in their attitudes: Some of the participants became aware of their responsibility for what they had done, which motivated them to make it right in one way or another and earn the forgiveness of their victims.

Based on the feedback provided by the participants, the programme established a bottom-up approach by making the prisoners want to reintegrate and repair the damage they had done.

1 *Negrea Vidia*: Director of Community Service Foundation of Hungary, www.iirp.edu.

Second, even though community work in the facility was available for the prisoners as a symbolic way of compensation, there was still a lot to do in terms of the opportunities to make contact with the victims, and to get rid of their stigma by making direct reparation.

Third, the management of the facility found it important to support processes that help prisoners regain control over their lives in a way that allows them to avoid re-offending and that is acceptable for the family or community they damaged.

When we met, the prison governor suggested that we should work with a particular prisoner who demonstrated spectacular improvement and who, unlike most of the other long-term prisoners, had been able to maintain contact with his family members, who wrote him letters and visited him on a regular basis.

Both the governor and the department manager found it important to reward the prisoner, who had been convicted for murder, for his improvement by supporting him, and they were willing to identify the conditions and factors that might jeopardise his reintegration after his release. They believed that it would be beneficial for both the prisoner and his family to have an opportunity before his release to plan their future together, to discuss the upcoming issues, or simply experience what it feels like being together again, which might increase the prisoner's chance of successfully re-integrating after spending 12–13 years in prison.

Based on the collected information, it seemed obvious that, even though the intervention would require more time, effort and human resources than any previous programme, due to the nature of the crime it might effectively include restitution and the reparation of relationships, as well as identifying needs and resources. The cooperative attitude of the prison management and the favourable conditions (including my positive experience with family group conferencing) encouraged me to launch the pilot programme and try out a combination of restorative practices and activities facilitating re-integration. A wide range of interventions were apparently needed in the given case to align probation work done in the prison, follow-up, family support, victim support, and community service.

Cooperation

Firstly I met János, who had been convicted for murder, at the above-mentioned group session, where he articulated his ideas and worries regarding his release, and asked for help to repair his relationship with his family and to earn the forgiveness of those he hurt.

His request was welcomed by the prison governor, who was willing to release him for a couple of days in half a year to allow him to strengthen his family ties, to prepare for his final release due in 1–1.5 years, and to assess the family's feelings towards him. The temporary release was planned to take place around Christmas, but the governor wanted to make sure first that the short leave would not pose a risk to anybody.

With a view to preparing the intervention, we discussed the details of the cooperation with the prison governor, the department manager and the leader of the Zaccheus programme. We agreed that the activities involved would be based on the restorative approach, and therefore decisions would be made and the nature and frequency of interventions would be determined with the needs and resources of the people concerned in mind.

We basically sought to find answers to the following questions:

Is the family prepared to re-establish ties with the offender? If not, is there a place for him to go after his release? If they are, what is required to allow the family and the offender to be together during the temporary release and after the final release? How will they deal with the potential conflicts with other family members and the local community during and after the temporary release? How will the local community receive the offender? What can the offender do to repair the harm he has done? What is required to reduce the risk of re-offending and to support the released offender in becoming a valuable member of the community?

In order to answer these questions we decided to implement a three-phase intervention programme:

The first phase included a meeting at the prison and was aimed at making preparations for the temporary release by strengthening the relationship between the offender and his family.

In the second phase a family group conference was to take place shortly before the release of the offender into his neighbourhood with the involvement of the family and members of the community.

The third phase includes a restorative conference aimed at mitigating the damage caused by the crime and making reparation in the affected community, in accordance with the preparedness and feelings of the victims. The present writing is concerned with the first and the second phases, with the third one being in progress.

1. Strengthening family ties

Exploring the offender's motivation

We discussed the underlying factors behind the request János had made at the group session in the framework of a personal interview. The meeting took place in a relaxed environment, in a room dedicated to this purpose. A young man came in with a smile on his face and his hair fixed in a ponytail. He was polite, and gave the impression of a well-mannered, self-confident and self-assured person. János, 35 at the time, had been sentenced to over 10 years' imprisonment for murder. He was reluctant to talk about his past and the crime he committed, trying to avoid this line of conversation by focusing on his current situation and plans for the future.

He told me that his elderly parents had been unable to control him when he was a child, so he had dropped out of school, run away from home, and done bad things, of which he was ashamed and remorseful. Living a reckless life, he had not cared much about either his family relations or his children, born from different mothers. He said that his violent behaviour had caused him much trouble both before he was convicted and during the first years of his prison time, but the loyalty of his partner and their two children, as well the Christian values he learned during his prison time, changed him completely and gave purpose to his life. Several times during our conversation he mentioned that he was willing to strengthen his family relationships, to take care of his family, and repair the damage he had caused to

other people. Although he had been given various benefits and opportunities due to his good behaviour, which made his prison days easier, he was increasingly worried about his release and return to the outside world. He told me that his biggest concern was that his partner rarely sent him letters and wrote only about general things, preventing him from getting to know the life of his family and strengthening their relationship. He said that he was willing to prepare to be a good father before leaving prison, but it obviously required good communication with his family. He was happy to hear that he could meet and talk to his family and could even leave the prison for a short period. He readily provided all information necessary for making contact with the woman and the children, and was also prepared to write a letter to his partner to let her know that he had asked for help in repairing their relationship.

The prison governor approved a meeting to be held following the next visit of the family, providing that they were willing to participate. Other family members who might help to prepare János for his release were also allowed to take part.

Preparation of the family

Following a phone conversation, I visited János' partner and family at the partner's parents' home in August 2009. The house was located on the outskirts of a beautiful town with a population of 4,000, located in the outskirts. The dirt road leading up to the house, as well as other buildings in the street, seemed neglected. Mária, János' partner welcomed us. She was a bit embarrassed and apologised for the condition of the house. Struggling with tears, the young, fragile woman ushered me in and introduced me to her family. Her parents and children were present, and later another relative with a small child also appeared. The house was remarkably clean and tidy, and the atmosphere was surprisingly friendly, considering the circumstances. During our conversation it turned out that the family relied on seasonal work to cover the needs of the 12-year-old boy and the 14-year-old girl, and to offset the consequences of their father's crime and absence. However, this task often required them to go beyond their limits, which made most of the locals respect and willing to help them. In response to János' concern about their rare correspondence, Mária said that she had no energy left for writing letters after her daily struggles. She told me that her being alone made her sad and angry, and also told me about her love towards János. The conversation became emotional when the children talked about how their father's behaviour and absence affected them. János' son was struggling with tears while talking about how he had been stigmatised as a small child for what his father had done, and how hard it was for him not to respond to it with violence. As, despite all efforts, he was sometimes unable to control himself, the family had to turn to a psychologist. By contrast, the girl responded to the situation by becoming ambitious, and finished her elementary studies with excellent grades. The words of Mária's mother provide a concise summary of how the family related to János: *"...I condemn what he did, he committed a crime. But János is a kind man, and we would be happy to have him with us again, as long as his intentions are good. The children need him, and so does Mária, who still loves him."* They were happy to hear about the meeting, which all five of them were willing to attend.

After informing János and the prison officers, we scheduled the meeting and I presented its structure. Then I informed the family about the details.

Restorative meeting with the involvement of the family

The meeting, which was aimed at preparing János for his temporary release, took place in the prison in September. The family members, who all showed up as promised, were transported to the facility by a relative. The prison governor, the department manager, and the probation officer who led the group sessions mentioned were also present.

Being the first time for a long while that all six members of the family were together, the meeting was very emotional in the beginning. First the governor presented his ideas about the process, then I started to facilitate between the parties. The conversation went on focusing on restorative questions the attendants were already familiar with (What happened? How did it affect people? What is required? What should be done?). Every participant was allowed to talk about what they thought about the issues. The participants shared their major achievements and difficulties in recent years related to what János had done. The whole family was moved by the governor's report on János' behavioural change. Maria listened to the man with tears in her eyes and full of gratitude. Then brainstorming took place as to how the family ties could be strengthened, how communication could be enhanced, and how it could be ensured that they spend the holiday happily together. The fact that the participants knew the meeting structure and had been prepared for the questions contributed to the establishment of an open atmosphere, in which the participants were able to freely come up with their ideas.

However, during the discussion of expectations and specific plans, János brought up a topic the family had never before talked about in the presence of the children and strangers. He said that while he was at home, he would like to treat all the four kids as his children. The statement was like a bomb going off in the room, tearing into pieces the idyllic atmosphere of the meeting. The children, who knew about only one half-sibling, were shocked, and others in the room also gave strong emotional responses, from becoming speechless to angrily starting to blame each other.

The crisis was solved by a restorative technique: all participants, one after the other, were encouraged to speak about how they felt about the new development, which gave them an opportunity to freely express their emotions. The honest reaction and emotional feedback of the participants helped Maria to express her, so far hidden, disappointment, anger and shame about what János had done.

Her emotional outburst clearly revealed the sources of conflicts that had been buried deep so far. Although it was a very difficult situation for all participants, the fact that they finally revealed their secret resulted in a positive turn in the conversation, making communication more open. The real needs and expectations finally surfaced with respect to their common future, allowing the family to deal with and prioritise the issues effectively. The presence of the children, comments from the grandparents, and the thoughts of the department manager helped János understand the impacts of his announcement and

behaviour, and highlighted the tasks he should accomplish in order to live happily with his family again as a responsible father.

Among other things, János had to learn how to be a parent. They agreed that, for a time, János would only observe the interactions between the children and other family members, and only later, having discussed what he had seen as an observer and always consulting with his partner, would he actively deal with the kids. It was a request from the children that really moved János. He said that he had no idea that his behaviour had such a great impact, even on his smallest son. The children indicated that they would like to show up with him on the streets of the city *“so that everyone can see that we have a father, who is kind, strong and handsome, and who we can introduce to our friends.”*

In the final phase of the two-hour meeting, the participants specified the precise tasks to be done in order to restore their relationship, which they undertook to accomplish by December, and those planned for János' 5-day temporary release. In short, the family's primary objective for the short leave was to restore the relationships between the family and János, and to spend Christmas happily together.

The meeting closed in a relaxed and peaceful mood. To the family's pleasure, they were allowed to spend another hour together without the presence of strangers.

The way the tension that developed during the meeting was handled, as well as the family's responsible and active attitude regarding the most critical issues, were considered promising by the governor, who approved János' Christmas leave. The governor said that he had never had an easier decision, because he had never had a chance to get an insight into how the concerned family operated and get to know their strengths. Seeing the cohesion of János' family, and being assured that they were able to provide both control and support to János, the governor was convinced that he had made the right decision.

According to the department manager, János continued to behave well until his leave. He participated in outside events where he sang religious songs, and he was looking forward to his temporary release, but remained dissatisfied with the number of letters coming from home. Apparently, during his long imprisonment, correspondence had become very important to him, and he had thought that following the meeting he would receive more words from home, at least from the kids. He was disappointed, and had difficulty accepting that the number of letters did not grow. The problem generated tension between him and Mária during their phone conversations.

After 12 years, János spent Christmas with his family again. Their schedule was pretty busy as many relatives were willing to visit the family. According to the family members and himself as well, János met all his undertakings. Minor conflicts emerged during his stay at home, but János and his partner regarded these incidents as a chance to improve their relationship. By their accounts, they often preferred discussing conflicts to sleeping, which János was especially proud of, because, by his account, previously he used to resolve conflicts with aggression. János said that they both had changed a lot, especially him, because he had always thought that his partner was a good person, but now he was also able to show that he cared for her and to accept his wife's love.

Seeing how his partner and mother-in-law dealt with the children made him respect them, and he had also become proud of his children. Having met all his obligations related to strengthening family ties, János returned to the prison on time. The meeting's purpose was fulfilled: the family accepted János, they were able to cope with the problems that arose, and János met the family members' expectations.

2. Family group conferencing

Preparation of the meeting that took place before János' release

The family meeting uncovered a series of issues that made János and his family feel disadvantaged and vulnerable. It seemed necessary to develop a community strategy in order to restore János' and his family's status and value in the community. The restorative team decided to hold a family group conference² before János' release.

The method is based on the active participation of family members at the meetings, which makes them feel they are really involved in the process. For this reason, family members play a bigger role in all stages of the process, from preparation to inviting the participants, and to the management of the meeting.

Together with János and the prison governor, we identified the people who could potentially help to answer the questions previously defined, and support János' reintegration to the community through various activities. Following a series of telephone discussions, we determined the issues, the potential and required participants, and the venue and the time of the event. Mária contacted their relatives and other potential supporters, while I approached professionals and representatives of the community. As the procedure was new to the participants, all people involved were provided with a manual, and I, together with two professionals from the KÖSZ Foundation, informed everyone of the purpose and structure of the conference and about the roles of the participants by phone or in person.

Our discussions with the family members and key members of the community revealed that the conference should also aim to make the community more sensitive to the issue, and that it might help shape the local residents' attitude, strengthen solidarity, and might also facilitate the interventions and the availability of resources required for a successful reintegration. The meeting, which was also attended by a few members of the community, made János think that his plans for his post-release period, which did not seem realistic at the time, could be achieved easily and rapidly. The main issues brought up and discussed at the preparatory meeting were related to how János could get a job and pay back his debts. János, who did not stand a good chance of getting a decent job, planned to make a living and pay back his debts, the amount of which he did not know, through cash in hand work and trading. For this reason the list of those to be invited also included people who could provide information and guidance in this regard.

2 The Community Service Hungary Foundation (KÖSZ Foundation) offers training programmes on this restorative model; more information on conferencing is available at their website: <http://www.iirp.org>

All people contacted were willing to participate, hoping that János' return would not result in prejudices, worries and fear spreading around the town.

The conference

The conference took place in a church hall on a Friday afternoon in June. Mária, her sister-in-law and the chaplain's wife took care of the catering, together with János, who had been granted a brief leave again for the conference.

The *overall purpose of the conference* was known to all participants: to identify the resources János could rely on after his release in his efforts to become a law-abiding citizen, and to work out a plan for János' reintegration into his family and to the immediate and broader community, and for the reparation of the damage caused by his crime.

The group of participants consisted of three sub-groups:

- A,** *The family and relatives: 8 people* (partner, mother-in-law, sister-in-law, cousins, and their spouses)
- B,** *Professionals: 6 people* (the current and the future probation officers, the probation officer who was in contact with the victim's family, the prison department manager, the district notary, the family service officer)
- C,** *Supporters: 3 people* (the chaplain, his wife and a psychology student).

János undertook to introduce the issues to be discussed at the conference and to present his plans and major concerns. During this information-sharing phase the professionals presented provided the family with valuable support regarding the decisions they had to make by demonstrating an open-minded, solution-oriented and supportive attitude. It took an hour for the family to develop a plan of their own, including the definition of specific activities with the related deadlines and responsibilities, grouped into the following areas:

- ▶ *Accommodation* – After János' release, the family will live in Mária's parents' house, but in time they will rent an apartment of their own.
- ▶ *Work* – János will accept the opportunity offered by the notary to work in community service.
- ▶ *Debt* – János will ask the probation officer and local professionals to help him to settle his large debt consisting of the court expenses and the damages done.
- ▶ *Christian life style* – János will continue to live according to the Christian values he learned in prison, and he will attend chapel services, where he will contribute to the well-being of the community by playing music.
- ▶ *Relationships* – Relying on his brother-in-law's and relatives' support, he will prove his commitment by avoiding the company of criminals.
- ▶ *Reparation* – János would like to repair the harm he did to his family, the community, and the relatives of the victim. In this regard a further meeting will be required in the near future.

He undertook to engage in activities in order to repair the harm he did to his family and the community as of the day of the conference. The follow-up meeting was scheduled in three months time.

The professionals approved the plan and agreed that, should János breach the conditions of his release, he would have to face serious consequences, including going back to prison and losing his family's support.

The 4-hour conference ended up in an intimate atmosphere filled with hope. Some participants expressed thanks for the opportunity, and the chaplain said a prayer.

The evaluation questionnaires completed by the family members reflected their complete satisfaction regarding the form and content of the conference, their role and involvement, and the output of the process. The feedback from professionals was also positive. They expressed thanks for the opportunity to participate in the resolution of an apparently difficult case and contribute to the meeting's success. The officer from the family service, who said that he had been afraid of the offender before the conference, evaluated the meeting with the following words: *"when you can be part of a process like this, and see such cooperation and commitment, you feel that you can really make a difference. This day gave me back my belief in my profession."*

Having seen the cohesion of the family, all participants congratulated Mária and János, and looked forward to their reintegration into the community.

During the three days János spent home after the conference he and his family started to work on the tasks defined in the agreement. On the following day they attended a service at the chapel, and on the next working day János visited the family service officer.

The judge approved that János should be released on parole earlier than expected, so he could go home in the month following the conference. Before his release a closing meeting was held, at which János told how he had thought a lot about his return to the outside world in the last year, hoping that, once he was out, all his problems would be resolved easily. However, in the course of the meetings he had realised that no one would provide him and his family with a place to live and money. It disappointed him. He had believed that, seeing the family's situation, the representatives of the city council would provide financial or housing support to them. Nevertheless, he added that "I was surprised to see how many people were trying to help us". He also appreciated the opportunity to talk about the incident from his point of view, which allowed him to clarify the details and prevent conflicts and misunderstandings with his family members and friends about what he had actually done. After the conference, he finally received many letters from his relatives. He appreciated the opportunity to participate, together with his family and city officials, at a useful meeting, since when his partner had been less reluctant to deal with city authorities, and his children had become more prepared to face their problems. János was also happy to see that none of the participants at the conference had prejudices towards him. On the whole, as a result of the process his communication with both his relatives and officials became easier and more open, which he had not expected.

Two months on

The town clerk has happily reported on the phone that János is working for the city. He and his family decided to rent an apartment earlier than expected, but the family service provided them with furniture. The clerk has also reported that all the people concerned are very pleased to see the joint efforts that have already brought about spectacular results. According to the family service officer, the children are fine and happy, and the boy has gone through positive behavioural changes. However, he does not understand why the family had to move and rent a flat so hastily, risking getting into financial troubles. Yet, they are all fine; only Mária shows some signs of worry, so the officer makes efforts to talk to her and support her.

János and Mária are fine and happy together, and are able to handle their minor conflicts. They have been able to integrate into the community and regularly attend congregational events. However, they have difficulty trying to make ends meet, and have to rely on their relatives' help.

Based on their accounts, they are trying to establish their life and develop their life strategy, with a view to maintaining balance in their family life.

Conclusion

Even though with the follow-up phase ahead of us we have only informal feedback to rely on, based on the satisfaction of the participants we may conclude that this type of meeting is suitable for helping prisoners before their release to deal with the problems related to their reintegration, while also taking all stakeholders' interests into consideration. As we could see, relatives and members of the community have a lot to offer in order to help the ex-prisoner, including work, financial help, legal or life management consultancy. This case reinforces the idea that the family and members of the community should be involved in the reintegration efforts and the related decisions, because they have the means of turning the problems of ex-prisoners and their families into something solid.

The two meetings will be followed by a third restorative intervention that aims to help the victim's relatives through the involvement of the family, the probation officer and the community.

Appendix

Key legislative changes impacting on the prison population in England and Wales 1996 – 2009

1996: Offensive Weapons Act

- ▶ Increased maximum penalties for weapons offences (impact on length of stay)

1997: Crime (Sentences) Act

- ▶ Mandatory minimum 3-year sentence for 3rd domestic burglary
- ▶ Mandatory minimum 7-year sentence for 3rd Class A drug trafficking offence
- ▶ Automatic life sentences for 2nd serious sex or violent offences
(all impact on length of stay)

1999: Crime and Disorder Act (1998)

- ▶ Medium term prisoners now eligible for executive recall (impact on receptions)

2005: Criminal Justice Act (2003)

- ▶ Licence period lengthened, increasing likelihood of recalls (impact on receptions)
- ▶ Suspended sentences were made much more available, increasing breach population (impact on receptions)
- ▶ Breach sentences must now be more onerous than that breached (impact on receptions)
- ▶ Introduced release at the halfway point for offenders serving determinate sentences of 4 years or more (impact on length of stay)
- ▶ Minimum mandatory 5-year sentence for possession of illegal firearms offences (impact on length of stay)
- ▶ Introduction of indeterminate and extended sentences for public protection (IPP and EPP), which have since been popular with sentencers (impact on length of stay)
- ▶ Parole Board must now review all recall cases; the re-release rate of recalled offenders has been low (impact on length of stay)

2007: Simple, Speedy, Summary Justice

- ▶ Reductions in pre-trial reviews and increased use of PNDs, frees up court time for other cases (impact on receptions)
- ▶ More early guilty pleas lead to reduced sentence lengths (impact on length of stay)

2007: Bail Accommodation Support Scheme

- ▶ Support for some offenders held on remand enabling them to be bailed (impact on receptions)
- ▶ Support for some offenders enabling them to be released on HDC (impact on length of stay)

2007: End of Custody Licence

- ▶ Certain non-violent offenders released up to 18 days early (impact on length of stay)

2008: Road Safety Act (2006)

- ▶ Introduced new offences of causing death by careless driving or while uninsured (impact on receptions)

2008: Criminal Justice and Immigration Act

- ▶ Changes to rules for IPPs introducing a minimum tariff of 2 years
- ▶ Most prisoners released automatically at halfway point and on licence until the end of their sentence
- ▶ Fixed term recalls (for 28 days) introduced for certain prisoners
(all impact on length of stay)

2008: Tackling Knives Action Plan

- ▶ Expectation of prosecution and tougher sentencing for possession of knives and offensive weapons (impact on receptions and length of stay)

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About the authors

INTRODUCTION TO THE PARTICIPATING PROFESSIONALS AND ORGANISATIONS

Dr. Tünde Barabás, criminologist, senior researcher and head of department at the National Institute of Criminology,

and **Dr. Szandra Windt**, criminologist, researcher at the National Institute of Criminology (www.okri.hu)



As the largest criminological research organisation in Eastern Europe, the National Institute of Criminology (Hungary, OKRI), seeks to study crime, develop the theory and practice of criminology, interpret science and criminal justice, publish research results and train prosecutor candidates.

As the organisation providing the expert management of the project, OKRI is responsible for the analysis and presentation of the qualitative and quantitative results of the attitude assessments carried out among prisoners and prison workers.



Dr. Borbála Fellegi, criminologist, social policy expert, founder and executive director of the Foresee Research Group

and **Dóra Szegő**, sociologist, researcher of the Foresee Research Group (www.foresee.hu)



The FORESEE RESEARCH GROUP (Hungary) comprises an interdisciplinary team of young Hungarian professionals. Its research programmes and projects focus on promoting alternative conflict resolution approaches and practices, and the integration of marginalised social groups.

Through its training, programme development, consultancy, research and networking programmes, the Foresee Research Group aims to reduce social inequalities. Foresee also seeks to raise public awareness of alternative conflict resolution theories and methods, to fight against social exclusion and prejudices, and to promote equal opportunities for marginalised social groups.



As consortium leader, the Foresee Research Group is responsible for the technical and administrative management of the MEREPS project. Foresee is also coordinating the prison mediation pilot project in Hungary, including the organisation of training programmes for prison staff and the implementation of mediation and other restorative justice programmes in prisons.

In the framework of the project, Foresee aims to establish effective cooperation and communication between the Hungarian and international partners, and to publish the findings of the programmes.

Dr. András Szűcs, prosecutor

Comissioned head of department, Office of the Prosecutor General of Hungary, Independent Department for the Control of the Lawfulness of the Execution of Punishments and Safeguarding Human Rights.

The PROSECUTOR GENERAL and the PROSECUTION SERVICE exercise their statutory rights in connection with investigations, represent the State as a party in court proceedings, play a supervisory role over the lawfulness of penal institutions, and exercise their other responsibilities and competences as stipulated by law.

According to the Constitution of Hungary, “[t]he Prosecutor General and the Prosecution Service shall ensure the protection of the rights of the citizens, and shall steadfastly prosecute any act which violates or endangers the constitutional order, security and sovereignty of the country.”



Dr. Theo Gavrielides, lawyer,
founder and director of Independent Academic Research
Studies (www.iars.org.uk)

IARS is an independent, social policy think-tank with a mission to enable young people from all walks of life to participate in civic life, and inform and influence policies and practices affecting them particularly in the areas of citizenship and civic engagement, criminal justice, human rights, equality, restorative justice and education.

Through the provision of high quality volunteering opportunities, internships, work placements, training, skills-development programmes, accreditation, peer mentoring and research, IARS young people learn to inform and indeed influence practices that affect them at local, regional, national and international levels. Through a youth-led structure, young people from various communities and backgrounds learn to influence decision making, policies and the law and as role models participate in society and support their peers and youth-led organisations and groups in creating a tolerant and equal society where young people are respected and valued.



Dr. Arthur Hartmann, lawyer,

professor of the Hochschule für Öffentliche Verwaltung (HfÖV) in Bremen and head of the Bremen Mediation Service (www.hfoev.bremen.de, www.toa-bremen.de)



HOCHSCHULE FÜR ÖFFENTLICHE VERWALTUNG, Bremen (University of Applied Sciences for Public Administration) is a university of applied sciences for public administration, offering four courses: international economic law, international taxation law, risk and security management and higher education for Bremen police officers. The university has two institutes, the institute for further education and advanced training for Bremen police and the research institute, IPoS - Institute for Police and Security research (www.ipos.bremen.de).

The institute is involved in a number of European and nationally-funded research projects in the fields of crime prevention, restorative justice, and risk and security management. In cooperation with the Institute of Criminology of the University of Tübingen, IPoS is responsible for the national statistics on VOM (Victim-Offender Mediation), which is funded by the Federal Ministry of Justice.

TOA-BREMEN E.V. offers restorative justice services in Bremen, a Hanseatic and harbour city with about 500,000 inhabitants and the smallest of Germany's 16 federal states. TOA-Bremen e.V. is experienced in VOM, community mediation in urban trouble areas, mediation in schools and, most recently, in cases of violence related to football games and fans. TOA-Bremen e.V. deals with more than a thousand VOM cases per year. It was also lead applicant in an EU-sponsored project regarding stalking. The stalking crisis intervention team ("Stalking-KIT"), which was established during the EU-funded pilot phase, is still operating and has now become broadly accepted in Bremen and Germany; see www.stalking-kit.de and www.toa-bremen.de.

Dr. Ivo Aertsen

Prof. Dr. Ivo Aertsen is professor and coordinator of the Restorative Justice Research Line of the Leuven Institute of Criminology, Catholic University of Leuven. He holds degrees of psychology and law from the same university. His main fields of research and teaching are Victimology, Penology and Restorative Justice. Dr. Aertsen has been main founder and chair of the European Forum for Restorative Justice from 2000 until 2004, and has coordinated COST Action A21 on Restorative Justice research in Europe from 2002 until 2006. He is Editorial Board Member of several journals and is involved in various practice and policy oriented partnerships. He has acted as expert for the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the European Union. He is closely involved with the Secretariat of the European Forum in Leuven and offers support to the various research projects run by the Forum. For more information, visit the website: <http://www.law.kuleuven.be/linc/english/staff/ivoaertsen.html>



Els Goossens

Ms. Els Goossens studied social work in Leuven. For 4 years she worked with youth who live in an institution because they had committed crimes or because of their problems at home. Since January 2001 Ms. Els Goossens works as a victim-offender mediator for adults in Dendermonde for Sugnomè.

Vzw Sugnomè, Forum for Restorative Justice and Mediation is the employer of the victim-offender mediators in Flanders, Belgium.



Vidia Negrea, director of the Community Service Foundation of Hungary (<http://www.iirp.edu>) and victim support psychologist of the Office of Justice (www.kimisz.hu)



The Community Service Foundation of Hungary is an NGO affiliated of International Institute for Restorative Practices, which offers trainings, consultancy and direct services based on restorative interventions in the fields of education and criminal justice.

The professionals working for the Foundation contribute to the MEREPS project through a continuous exchange of information and by providing expert guidance for prison mediators as well as facilitating restorative processes with prisoners and their family members.

Karolien Mariën, criminologist, executive director of the international umbrella organisation European Forum for Restorative Justice, previously worked as a restorative justice consultant in prisons (www.euforumrj.org)



The European Forum for Restorative Justice was founded in December 2000 to help develop and establish victim-offender mediation and other restorative justice practices throughout Europe.

Restorative justice aims to involve communities in dealing with crime and conflict. Therefore, it is important to inform the general public and to stimulate their active participation. The European Forum wants to contribute to this by:

- promoting international partnerships, exchange of information and mutual help;
- liaising with European and international institutions and organisations, including the European Union, the Council of Europe and relevant non-governmental organisations;
- assisting the development of principles, ethics, training and good practice;
- stimulating research, and exploring and developing the theoretical basis of restorative justice;
- promoting the development of effective restorative justice policies, services and legislation;
- supporting public education, aimed at increasing awareness about issues for victims, offenders and the community.

Dr. Martin Wright

Martin Wright has been librarian at the Institute of Criminology, University of Cambridge; director of the Howard League for Penal Reform; and policy officer for Victim Support. He obtained a PhD in criminology at the London School of Economics in 1990, and is a senior research fellow at the Faculty of Health and Life Sciences, De Montfort University, Leicester. He was a founder member of the European Forum Restorative Justice and until 2006 a member of the board, and until 2010 was a board member of the Restorative Justice Consortium and the Conflict Research Society. He is a volunteer mediator in Lambeth, south London, and with CALM Mediation Service in West London.

Publications include *Making good: prisons, punishment and beyond* (1982, reprinted 2008), *Justice for victims and offenders: a restorative response to crime* (2nd ed. 1996), *Restoring respect for justice* (2nd ed. 2008) and *Towards a restorative society* (2010). He is an honorary fellow of the Institute of Conflict Resolution, Sofia, and holds a diploma from the Polish Centre for Mediation.



“The concept of *restorative detention* [...] is an exciting new paradigm which offers a way out of the penal cul-de-sac. Practitioners have led the way; now researchers, such as those in the MEREPS project, are illuminating and consolidating (and when necessary constructively criticizing) their work. This book should inspire both researchers and practitioners to take the process forward.”

Dr. Martin Wright

Former director, Howard League for Penal Reform

