# The Restorative Approach in Practice: Models in Europe and in Hungary

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## I. Principles and theories

In the first half of the article it would be analysed what responses under social policy are available in relation to the difficulties that arise in connection with crimes and to the conflicts between the affected persons (the victim and the offender) and their communities. What moral, regulatory and institutional systems and schemes are available for society to give a response to crimes? What social and social policy-related issues arise in the lives of the affected persons and groups as a result of the crimes? Are we aware of the effects the responses of society and the various institutions have on the affected victims, offenders, their families, communities and society in general? Can the reactions persuade the law-abiding members of society that common values and principles are still valid? Can the reactions to crime break the vicious circle of violence? Or, can the reactions ensure that no one feels the urge to resist and strike back?

In the article the sphere beyond the related fields (that is, beyond criminal, legal and social policies) is explored as well. This is because the function of responding does not belong to one particular field (see *Figure 1*). I am proposing a uniform system that extends to various special fields and sciences and that responds to various conflicts in society in accordance with a set of principles and rules and with the assistance of institutions and specialists. The borderlines between the subsystems vary in time and are depending on the geographical location. The borderlines are set by political decisions at each point in time and geographical location.

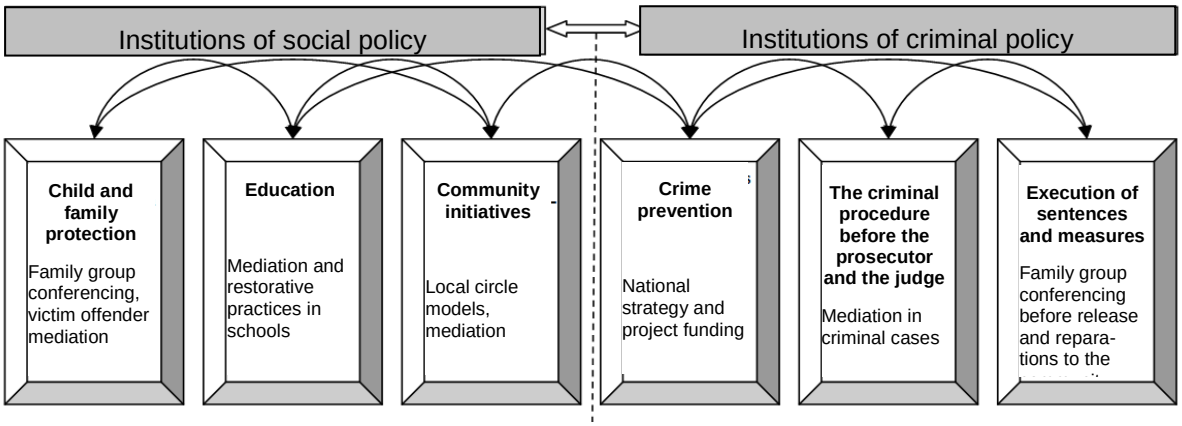


*Figure 1*. The emergence of the restorative justice approach at various levels of social institutions in Hungary

It is clear that the criminal justice system is only able to give an answer to some of these questions. A large part of the problems may only be answered if social policy, educational policy and the field of equal opportunities for disadvantaged groups are involved. The knowledge and methods provided by the practitioners of social services are also of key importance. My approach is that crime in itself is just a symptom of an illness, and the real reasons are such micro-, meso- and macro-level factors that criminal justice cannot influence.

It is noticeable that increased resources are available in the field of social policy and criminal justice if the subjects of the service/procedure cooperate voluntarily, if they can propose forms of cooperation and if persons important to them can also be involved in finding a solution.

According to the philosophy of restorative procedures, the making and the following of rules are built on a set of norms that the members of the community define. As a result, their needs and requirements, such as for a sense of personal security, peaceful coexistence and a respectful conduct (which are also indispensable for the community to continue to exist), are reflected in the set of rules as a whole. If members of the community break any of these rules, not only do they violate the “rulebook” but they also act against the community. As a result, the response to a crime should be made by the community of the individual and not by an external power. According to the restorative approach, the breaking of a rule (the crime, for instance) is primarily interpreted as a conflict between the affected persons and communities.

Restorative procedures are built on a similar methodology despite the differences between the various models applied in practice. It is emphasised in all cases that the participants must give their voluntary consent to participation, and that they must be informed on the possible alternatives, the potential consequences and the possibility of making their own decision at any point. However, it is an important factor when applying any of the different practices, that participants (especially the victim) should be protected from victimisation and re-victimisation.

These ideas started to appear as a result of a 1977 article by a Norwegian criminologist, Nils Christie. Christie's article discusses how the state "stole" their conflicts from the citizens and gave those to professionals (psychologists, prosecutors, judges and social workers). In the criminal procedure, the damage and grievance caused to the victim is forgotten. The victim becomes a prop in the procedure and may become subject to "secondary victimisation" (re-victimisation). Also, the offenders are stigmatised in the procedure, and this makes it particularly difficult for them to reintegrate into society later. Christie thinks that these harmful effects can be mitigated if the handling of the conflict is returned to the victim and the offender and if they and their communities are directly involved in finding an appropriate answer to the crime (Christie 1977).

Having collected the elements that are mentioned the most often, I believe the procedures with the most restorative content are those programmes in which

- the participants agree to participate in voluntarily;
- the participants are given comprehensive information about the possible consequences of the procedure;
- an important goal is to prevent the victim's re-victimisation;
- the offender will take a certain level of responsibility for the crime;
- the procedure is managed by an appropriately trained, neutral and impartial facilitator/mediator/coordinator;
- the procedure is confidential from the beginning to the end and no third party learns what is said during the procedure;
- the needs of the victims, the offenders and the affected community/communities are considered equally important both from a material and an emotional perspective;
- the affected persons are involved in the procedure directly;
- the circumstances of the case are established during the meetings, including the reasons that led to the crime, the possible reparation, the methods of preventing a future conflict/re-offending and any needs that may arise;
- an opportunity is given to the offender to make a voluntary offer to restore the damage caused: the emphasis therefore is on the offender taking active responsibility;
- it is possible to involve other persons to support the parties;
- the agreement is developed by the widest possible range of persons directly affected by the crime.

The criminal policy changes of postmodernism give a larger role to local communities and gradually reduce the tasks of the state. The community has an extended function in both prevention and sanctioning, and it has also become clear that postmodernist changes in society may fundamentally reinforce the possibility of spreading the restorative approach built on the principles of community. The traditional retributive criminal justice system focusing on the offender and ignoring the physical and mental requirements of the victims is often proven to be unsatisfactory and results in secondary victimisation.

The restorative approach therefore can help the persons affected by the crime to re-integrate into society. Restoration can compensate the citizens for the abnormalities of the criminal justice system (for instance, for the fact that personal grievances and the victims are ignored) and may support the effective operation of the criminal justice system as a whole.

## II. Models built on the restorative approach

Consequently, the restorative approach is not simply the theoretical background of a specific practical model; instead, it is a philosophy the elements of which appear in the various models, methods and practices in different combinations and with diverse emphases. In the following part of the article the most common restorative methods are discussed.

### *II.1 Victim offender mediation*

The most frequently used practice in Europe is so-called victim offender mediation. In victim offender mediation, an independent third party called the mediator mediates between the parties, helps them talk over the circumstances and effects of the crime and accomplish an agreement on the form, amount and procedure of restitution. Mediation may be a face-to-face meeting, but it may also be indirect. In the latter case, the mediator meets the parties separately and relays the information to the others to help them come to an agreement. Mediation primarily focuses on the future and seeks to find a solution that will work in the future. In mediation, the expression of interests is given more emphasis than the discovery of the emotional side of the conflict. The participants of the mediation procedures are those persons that are the most directly affected by the conflict. The communities and those supporting the parties are less frequently present at the meetings.

### *II.2 The ”conferencing” model*

The method of conferencing involves a larger group of affected persons in the decision-making process as the meeting is not only attended by those directly concerned, but also by supporting family members, members of the community, reference persons (”significant others”), representatives of the authorities (police officer, probation officer etc.), professionals providing support (social workers, NGOs’ representatives, teachers etc.) and other representatives of the affected community.

The objective of the discussion is to discover the reasons and the consequences of the crime and the responsibility involved, and to make a decision together about how reparation can be made and how re-offending should be prevented. The neutral, impartial person mediating at the conference is called a ”facilitator”. The facilitator’s role is less prominent than the mediator’s. The facilitator primarily focuses on prompting communication between the parties. As opposed to mediation, conferencing puts more emphasis on the discovery of

the past events, and the expression of emotions has an equal or even bigger role than rational considerations.

### *II.3 The ”circle” model*

The ”circle” model reflects democratic principles the most, and it is used to solve the issues of larger communities where the main objective is to ensure that the affected community is represented by the largest possible number of representatives. The victim, the offender, their supporters, the members of the community and the representatives of the criminal justice system join the same circle and reach a consensus on the judgement, they identify the grievances together, and specify the measures necessary for preventing re-offending.

### *II.4 Community work*

It is debated to what extent work done for the community (community work sentences) can be considered a restorative practice. If we only regard as community work cases in which the work is carried out in a mandatory manner as a result of a court sentence (as a punishment), then it does not qualify as a restorative method because the work is not carried out on a voluntary basis. However, in cases where community work is undertaken by the offender voluntarily, and its main goal is restitution and not punishment, community work as a sanction can be considered a practice of restorative justice. If community work is applied in this form, it is emphasised that the crime is not simply a violation of a general legal or moral rule but it is also an activity actually causing damage to the community. The restorative approach to community work can have a large impact in those societies where intra-community ties have loosened and where the real meaning of “community life” is disappearing.

### *II.5 Community councils*

In community councils, the main emphasis is put on the communities affected by the conflict and not on the individuals. In the procedure, the parties overcome the conflict, the events and their effect, and agree on the restitution with the participation of the members (even groups of people) of the affected community.

### *II.6 Victim support programmes*

These programmes can be considered restorative practices if there is a possibility of involving the offender directly and if it is possible for the victim and the offender (and their respective

communities) to communicate directly or indirectly and if a restorative approach appears indirectly in the implementation of the programme.

## III. The introduction of restorative methods in Europe and in Hungary

### *III.1 The European systems*

Based on Gavrielides' typology (Gavrielides, 2007, 31-32), there are three basic types of restorative systems as implemented and used in Europe. In "dependent" (or can be called integrated) systems, restorative practices are offered as alternatives to the criminal procedure. In these systems, it is not necessary to continue the criminal procedure if an agreement is made. Therefore, the restorative programme is a diversionary measure (diverts the case from court) applied in the case of minor crimes. The mediation procedure in the majority of these systems is carried out within a centralised and uniform system the objective of which is to guarantee equality before the law, that is, to ensure the same protocols are used and guarantees are provided in each judicial administrative region of the country. In these systems, referrals are primarily made by the police, the prosecutor, the parties and their attorneys.

In "relatively dependent" (or partially integrated) systems, successful restorative justice procedures (i.e. when an agreement is reached) have some kind of effect on the criminal procedure (for instance, the judge can mitigate the sentence) but they do not replace the sentence entirely. The restorative and the criminal procedure are therefore carried out simultaneously. In these systems, the (NGO or state) mediator organisation closely cooperates with the criminal justice system to provide mediation services. Most referrals are initiated by courts, the parties and their attorneys.

In "independent" restorative programmes, the result of the mediation does not have a legal effect on the procedure of criminal justice, that is, a penalty (in most cases, a non-suspended prison sentence) is imposed, regardless of the programme. The primary objective of such programmes is to provide for the (symbolic rather than material) needs of the participants. This form of mediation is generally offered when the crime is grave. The mediating organisation is only loosely connected to the criminal justice system and is in most cases an independent NGO. The programmes allow the building of a decentralised system of institutions to launch local (pilot) model programmes, therefore it is not guaranteed (but not impossible either) that the services are offered in a standardised system and at a national level. Most referrals are initiated by the parties themselves.

The reasons behind the development of restorative justice are different in each country. In some countries, citizens were not satisfied with the traditional justice system (in Belgium, Finland, Norway, Portugal and Spain, for example) and the possibility of diversion dominated (for instance, in Belgium, Finland and Norway). For juvenile offenders, the following considerations were taken into account as key factors: the extension of the social support and welfare system to the criminal justice system (Belgium), the enhancement of the educational effect (France, Italy, Portugal and Poland), the implementation of rehabilitation-related objectives (Germany, Sweden and Spain) and the offering of a wider scale of sanctions (Germany). In the majority of countries, mediation is primarily applied in the case of minor crimes (crimes against property or crimes causing bodily harm) (Miers–Williemsens 2004).

When mediation in criminal cases is applied successfully, the most typical results around Europe are the following:

- the prosecutor suspends the procedure and the accused person has the opportunity to make amends during the period of suspension. The case is closed if the accused person takes responsibility for the crime and provides reparation for the damage caused. (Austria, Belgium, the Czech Republic, England and Wales, Finland, Hungary, Germany, Italy, Poland, Portugal, Spain, Slovenia);
- for adults, the case is diverted before it goes to the prosecutor (France and Luxembourg);
- the results of the mediation procedure are taken into consideration when determining the sentence (England and Wales, Hungary and Finland);
- the sentence is suspended (Italy and Spain), replaced (Germany) or reduced (Germany and Poland) if the offender carries out his/her side of the agreement;
- as a special measure for juvenile offenders, the young person makes a “contract” with the probation officer on the content of his/her law-abiding conduct in the future (England and Wales, Portugal).

### *III.2 The development of the Hungarian legislative background*

The most frequent problems that need to be tackled in Hungary when reforms with a restorative approach are carried out are the following:

- human and financial resources for criminal justice reforms are scarce;
- the professionals' lack of special training and inadequate foreign language skills block the process of acquiring new knowledge and skills;
- the lack of an established institutional background (for the reintegration of the offenders, the protection of victims, community alternative programmes for restitution etc.);
- the state's refusal to cooperate with non-governmental entities and the state's aversion to services provided by non-governmental entities;

As a result, Hungary's situation is controversial as bottom-up initiatives are only permanent and viable if they are supported from the"top", that is, by the government and if they gain external support from international organisations (primarily the European Union). Consequently, by the mid-2000s, the state itself has gained a more and more prominent role in the introduction of restorative justice in Hungary. A comprehensive reform of criminal policy started in 2003 in Hungary. A key objective of this was to add new alternative sanctions to the existing ones and to establish a so-called "double-track criminal policy". In accordance with the approach of building a differentiated sanctioning system, it has become a primary objective of criminal policy to allow diversionary measures (measures that divert the case from court) to be used as frequently as possible, and to apply imprisonment as a sanction only if the crime is severe.

Before the specific legal and institutional reforms were adopted, Parliament adopted the *National Strategy for Community Crime Prevention* (hereinafter strategy) in 2003 which included a somewhat "utopian" vision. The strategy describes the key areas and activities of crime prevention systematically, including the tasks that must be completed in the interest of effective crime prevention. The strategy specifies the key measures that must be implemented for a pluralistic criminal justice system. According to the strategy's approach, effective prevention and treatment of crimes are no longer the obligation of the state; neighbourhoods, civilians and NGOs and business associations will also have significant roles. In the interest of implementing the strategy, the National Crime Prevention Board provides funding to a large number of initiatives each year whose objectives are in agreement with the following five priorities of the strategy:

1. the prevention and reduction of child and juvenile crime rates;

2. improving the security of urban areas;
3. the prevention of domestic violence;
4. the prevention of victimisation, helping and compensating victims;
5. the prevention of re-offending.

After the preparatory phase described above, the regulatory and institutional background of mediation in criminal cases at a national level has been developed gradually by 2007. However, due to the limitations of this presentation, details of the current regulatory and institutional background cannot be discussed now, but will be explored in other presentations during the conference.

**IV. Theory and practice: the relationship between legislation and legal practice**

The practical evaluation of the theory and principles of restorative justice cannot be carried out without asking the opinions of the key actors of mediation, for instance prosecutors and judges. I made an attempt to inquire about these opinions by preparing an attitude survey of 46 prosecutors and judges through in-depth interviews in 2006 and 2007, that is, before mediation was introduced in criminal cases and when legal practitioners could only voice their expectations and feelings about the new system as there had not been any practice of it in Hungary before then. I will now present an overview of the results.

One of the most important lessons of the survey was that the ideal sanctions pictured by the interviewees and the known effects of certain restorative techniques overlapped to a large extent. However, it is also true that the "wish lists of an ideal sanction" visualised by the participants did not include the representation of the victims' and the community's interest and the voluntary side of mediation was also not mentioned.

Both the prosecutors and the judges mentioned that the official procedures do not provide a trained professional nor time or opportunity for the victims to explain the negative effects the crime had on them, the related needs they may have, their main concerns etc. The authorities in the procedure are simply inadequate for handling the victim's complaints. On the one hand, their workload is too heavy and they have neither the time/capacity nor the training needed for carrying out such activities and on the other hand the rigid regulatory background of the criminal procedure does not allow the discussion of any topics between the victims and the legal practitioners that have little to do with the "subject-matter" of the procedure before the procedure or the court. The lack of opportunities to provide

psychological and moral support to the victims is frustrating for both the victims and the legal practitioners.

Based on the 90-minute conversations with each interviewee, they were classified into four groups according to their character type: the “official”, the “teacher”, the "philosopher" and the "self-evaluator" tags imply the dominant character of each legal practitioner and the aspects he/she considered the most important. Of course, the individuals showed the combined characteristics of the different categories; therefore none of them could be classified into one single category. (However, the concept behind the typology and the proof for its validity need further, in-depth research.)

| **Types of legal practitioners** | **Description** |
|---|---|
| **The “self-evaluator”** | Strong self-reflection and self-criticism; realises own boundaries; emphasises own motivations; emphasises emotional aspects; empathy to clients; primarily uses first person singular; a committed professional; introvert (the only one out of the four); speaks silently; long pauses in speech, stops to think a lot; micro-level analysis. |
| **The “teacher”** | A provider type; believes in the educational effect of the procedure and the judge/prosecutor; the importance of the legal practitioner’s subjective approach in the procedure; categorical thinking; self-confident in role; believes in the possibility of change; pays particular attention to juveniles; very little self-reflection and insecurity; more observations about the external world; community-level (meso-level) analysis; determined style of speech, raised voice, fast speech, no interruptions between arguments. |
| **The “philosopher”** | Emphasises general connections of logic; holistic approach; statement of beliefs; self-criticism and criticism of the system; sarcastic approach, but believes in people in general; reserved tone, balanced intonation; reflects “peacefulness”; macro-level analysis. |
| **The “official”** | Organisation, rule and procedure oriented; his/her main goal is doing his/her job in a conscious manner and according to the rules; seeks to reduce the amount of work to a minimum; focuses on possible hindrances and difficulties in connection with the reforms; rigid; considers deviation from standards a problem; lack of criticism of the system; cynical approach to clients; statements rather than questions; lack of emotions; relaxed manner of speech; balanced intonation; brief or lengthy, monotonous. |

*Table 1.* Some indicators of the four character types

The research proved that legal practitioners do not have consistent moral reasoning and penal philosophy when they consider the necessity of punishment or when they apply punishments in everyday practice. And, although they consider deterrence the main objective of

punishment, many of them said that punishment itself is not suitable for deterrence. It can be assumed on the basis of the interviews that it is a more important factor in decision-making to make sure there is actually a response to crime and it is a less important criterion that the response should be painful to the offender. This distinction is highly relevant in studying how restorative programmes can be added to our current penal system.

Due to the organisational structure of the prosecutors' office and the court system, legal practitioners rarely have the opportunity to share their recommendations and creative solutions with their colleagues and to have them implemented in practice. Isolation and hierarchy together create a conservative system and make it difficult to implement reforms in practice. This, coupled with other factors, quickly leads to the practitioners' burning out. The lack of external analyses and the resistance to reforms have a double, back-and-forth effect: the less possible (or mandatory) it is for an organisation to open to the public, to become transparent and to reflect on itself, the more important the strategy of avoiding these becomes and the organisation isolates itself from the public.

While listing the elements of “ideal sanctioning” legal practitioners mentioned a number of phenomena (support, supervision, the offenders confronting their own crime, the offender’s active conduct, reparations and dialogue etc.) that are also fundamental items of the restorative practices' methodology and approach. This supports the notion that the restorative and the more traditional sanctioning systems are compatible in many ways and that the two systems are more similar to each other than they appear to be at first glance. Nevertheless, it is a political (criminal policy) decision where the borderline, above which private agreements must be combined with the exercising of the state's criminal power representing the interest of the public, is set.

It is a striking result that the legal practitioners are willing to hand over the decision-making power to the victim, the offender and other persons affected by the crime. There is a consensus among professionals that to some extent the crime is the parties’ private matter as they are the ones that can express what they need in order to repair the damage and to prevent future crimes. The practitioners believe that handing over the power of decision-making is a rational move if basic personality/moral rights are respected, the procedural rules are kept and it is guaranteed that the victims are not re-victimised in the procedure.

## V. Final thoughts

In an ideal case, restorative justice is introduced through social, regulatory and institutional reforms. However, even if no regulatory or institutional reform is implemented in a country but the professionals of the related sectors use restorative practices consistently in their daily work (see the text box below), it can be concluded that restorative approach has started to gain ground among the social policies of that particular country. And this alone can effectively help easing the tensions at micro-, meso- and macro levels.

The list below includes the character traits that the participants (victims, offenders and other parties) should ideally have or should be encouraged to show and the professionals should keep in mind when preparing for a restorative programme of any kind. In any case, the professionals, the participants and the other affected parties must all have a certain level of the following qualities:

- a sense of security,
- sufficient self-esteem and a positive self image,
- responsibility,
- honesty,
- the ability to identify their own needs,
- the ability to express themselves openly according to their own role,
- the ability to trust,
- a sense of community,
- respect and recognition of others,
- the willingness to take care of others,
- the ability to listen and understand the other side's views,
- cooperation,
- the ability to confront and support the others at the same time,
- the motivation to understand and learn,
- openness to making / accepting reparations,
- communication skills,
- openness and trust regarding the external and independent mediator,
- partner-based communication,
- demand for external evaluation and feedback,
- permanent self-reflection in practice regarding the basic principles, and
- respect and encouragement for personal and voluntary undertakings.

Maybe a similar list (as the one in the text box) should be put on the wall of all of us. If our goal is to spread restorative practices in Hungary, we can achieve a lot just by looking at the list on the wall and evaluating how we could represent these principles in our daily work and life.

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