

Implementing Victim–Offender Mediation in the Hungarian Penitentiary System

Restorative Justice and Reparation in Practice

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Aim: This research investigated the feasibility of introducing restorative justice offender–victim mediation in the Hungarian penitentiary system. The examination covered the theoretical and practical readiness of the personnel in charge of executing the procedure, as well as the organisational feasibility conditions at the system–wide level. It also analysed and evaluated its impact on the system.

Methodology: Two–phase empirical research was applied. During the first phase, probation officers received training in conducting mediation. During the second phase of the research, offender–victim mediations were carried out by trained staff members.

Findings: The research has shown that probation officers in the prison system are capable of independently identifying and implementing offender–victim mediation cases. It is possible to integrate this restorative justice process into the existing system with minimal organisational modifications. The research has already revealed noticeable positive feedback from prisoners, the court and the prosecution.

Value: In the course of the project, one third of the probation officers conducting the mediation process received theoretical and practical training. Observations were made regarding the changes required for the sustainable implementation of a systemic approach. The implementation of the reparation procedure is expected to result in a substantial decrease in the occurrence of recurrent offenses.

Keywords: interpersonal problem–solving, restorative justice, victim–offender mediation, reintegration

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Introduction

Alongside the criminal justice system, restorative justice has evolved over the past 40 years and has become increasingly common in practice (HANSON–UMBREIT 2018).

This paper presents the implementation and analysis of the research project “Introduction of the restorative offender-victim mediation in the penitentiary system”, which was implemented in 2023, forming part of the restorative justice system.

The perpetrators involved in the research came from the category of offenders against property.² At the time of preparation of the study – November 2023 – the prisons accommodate a total of 17,998 prisoners. Of these prisoners, 13,109 were actually sentenced to imprisonment. Of the 13,109 persons, 5,769 were convicted of offences against property.³

In the course of the research, probation officers and reintegration officers working in the penitentiary system, trained in three consecutive modules, organised and implemented the offender-victim mediations. During the programme, the probation officers participating in the training represented approximately one third of the probation officer workforce, i.e. one in three probation officers were trained.

The analysis of the programme describes how the agreement between offenders and victims affects participants emotionally, mentally and in terms of active recovery. The changes in staffing and responsibilities required to integrate the offender-victim mediation process at the system level are presented.

The paper also points out the secondary effects that arise during the establishment of the offender-victim agreement in the different units of the enforcement system, such as the court, the prosecution, the penitentiary system. It also makes suggestions and recommendations for future practical steps to be taken.

Offender-victim mediation is a resolution protocol for restorative justice.⁴ Restorative justice is defined as “the process by which the parties involved in a specific crime agree together on how to deal with the consequences of the crime and its future effects” (MARSHALL 1999).

In criminal matters, restorative justice was adopted by the United Nations in 2000 (HANSON–UMBREIT 2018), followed by the publication of its basic rules in 2002⁵ and the publication of the *Handbook on the Restorative Justice Programme* in 2006 (United Nations 2006).

On 15 March 2001, the Council of the European Union adopted its Framework Decision on the standing of victims in criminal proceedings. The decision requires EU Member States to approximate their laws, regulations and administrative provisions in the interests of victims of crime (KISS 2005). Hungary had to adopt the relevant legislation

² Chapter XXXVI of the Criminal Code – offences against property: theft, vandalism, fraud, economic fraud, fraud committed by using an information system, misappropriation of funds, unlawful appropriation, larceny of motor vehicle, usury offences.

³ Data provided by the Probation Service of the National Headquarters of the Hungarian Prison Service.

⁴ In addition to the conference and circular models.

⁵ Basic Principles for Restorative Justice.

by 22 March 2006. Mediation is regulated by Act LV of 2002, Act LI of 2006 and Act CXXIII of 2006 on Mediation in Criminal Matters (HÉTHY 2012).

The main differences between criminal justice and restorative justice can be summarised along the following dimensions: Criminal justice treats the commission of a crime as an act against the state, so the main questions that arise are: What law/regulation has been violated? Who committed it? What should be imposed as punishment? Thus, basically, it is an impeachment: for the violation of a social normative system as regulated in writing by law (ZEHR 2002).

Restorative justice treats the crime as an interpersonal conflict. This involves the participants in the process of restoration that is needed in the aftermath of the crime. In this way, the offender, the victim – and in some cases other persons associated with them – are actively involved in the process of restoration. Restorative justice focuses on the following questions: Who was harmed? What are their needs for restoration? Who is it that restores them? (ZEHR 2002; 2005).

The two systems typically operate in parallel in North America and in the European Union – including Hungary.

Background

Since the entry into force of the legislation on restorative justice in Hungary, it has been applied at several levels with different functions.

It is in the area of crime prevention at the level of society that the restorative, reparative approach can be applied with the least constraints and the widest scope. Examples of this arena include the family, the school and different communities, such as a municipality or a community of a part of a municipality. Typically, family group conferences, conciliation circles, restorative justice conference models are the most common models used in these settings (WACHTEL et al. 2010). The National Crime Prevention Council's predecessor, the National Crime Prevention Committee, supported several municipal or community mediations and their documentation – the latter with preventive, educational and awareness-raising purposes. Such was the case, for example, of the Nagymányok or Esztergom municipal mediation (FERIK 2014; NÉMETH–KLOTZ 2020; NÉMETH 2021; NÉMETH–SZABÓ 2021).

Conflict resolution in schools – a method using the Restorative Mediation Circular Model – has also been supported by the Ministry of the Interior for several years, for example through the Forsee Research Centre's Climate+ programme (Foresee s. a.).

Among the conference models, it is important to mention the family group conference, which also has a decades-long presence in Hungary, and which is “a meeting of the extended family network – extended family, friends, neighbours, etc. – convened by trained coordinators in the event of various family problems and crises” (Family Child Youth Association (s. a.).

Offender-victim mediation in criminal and misdemeanour cases

Offender-victim mediation complements the traditional framework of criminal justice as an instrument of restorative justice. In Hungary, the parties involved have had the possibility to settle their conflict arising from a criminal offence within the framework of an offender-victim mediation procedure since 1 January 2007. Since 1 January 2014, mediation has also been available for misdemeanours.⁶

Between 2007 and 2022, mediation was ordered in 78,724 criminal cases. In criminal cases, agreements are reached in 80–85% of completed cases, and 85–90% of these are complied with. In misdemeanour cases, agreements are reached in 50–60% of completed cases, with more than 90% of cases being complied with.⁷

Restorative justice activities previously implemented in the penitentiary system

Among the researches and trainings related to restorative mediation in the Hungarian penitentiary system, the international MEREPS (Mediation and Restorative Justice in Prison Settings) programme, implemented in 2010, is outstanding. This research was carried out at two sites – the Balassagyarmat Prison and the Tököli Juvenile Correctional Institute – and the experience gained from it has been used to produce a practical manual (DEÁK 2010).

From among the restorative techniques, the conference model was introduced at the Balassagyarmat Prison and Detention Centre:

“The manual is based on the combined methodology of Marian Liebmann, an English practicing mediator/facilitator and trainer with decades of experience. Our request towards him was that the training at the Balassagyarmat Prison should not only be based on the introduction of a specific method (e.g. mediation), but that we should also be able to learn more practices (such as the conference method) that can be successfully applied in stimulating dialogue between the people affected by a serious crime and in conducting mediation aimed at reparation” (BARABÁS et al. 2010).

The book resulting from the programme describes the conference model in detail and illustrates it through case studies (BARABÁS et al. 2010). The practical implementation beyond the programme has not been pursued in any meaningful way, either through the practical or other restorative training programmes and research.⁸

A six-month mediation training was carried out in 2009 in the following penitentiary institutions: Balassagyarmat, Budapest Remand Prison, Collection Institute, Kalocsa,

⁶ See <https://igazsagugyiinformaciok.kormany.hu/kozvetitoi-eljaras-bunteto-es-szabalysertesi-ugyekben>

⁷ See <https://igazsagugyiinformaciok.kormany.hu/kozvetitoi-eljaras-bunteto-es-szabalysertesi-ugyekben>

⁸ It would be very important to repeat this training, but specifically for probation officers and psychologists working in penitentiary institutions who are in daily contact with offenders, as their placement is limited to a few institutions.

Pálhalma, Szeged, Tököl, Vác. Conflicts between cellmates, closely related persons, and in one case between prisoners and the outside world were mediated (MEREPS 2012).

The present pilot research on restorative offender-victim mediation for offenders against property thus had ad hoc antecedents in the penitentiary system. They have not been internalised in the course of the programmes listed above and have not become an intrinsic part of the work processes of the probation officers, the reintegration officers or psychologists in the penitentiary system.

The aim of the research

The primary aim of the research is to gain a picture of the current acceptance, effectiveness, limitations, possible directions for application and development of offender-victim mediation protocols in restorative justice.

Furthermore, the theoretical and practical training aims to improve the awareness and effectiveness of the process by identifying and analysing the weaknesses of the offender-victim mediation process, and thus its wider and more continuous implementation in the future. According to preliminary expectations, the most critical point, in the opinion of the programme coordinators and managers, is the contact with the aggrieved party. In Hungary, there is no well-established practical protocol for reparation procedures in penitentiary institutions – thus, the victim’s reticence and abstention could be assumed.

Finally, it was declared as an aim to systematise the possible directions of improvement experienced during the research and to recommend them to the National Headquarters of the Hungarian Prison Service. In other words, to identify the missing parts necessary for the implementation of a systemic application and propose a solution.

The process of the research

In addition to the previous research and educational background described above, the practical implementation of the research was justified by more than forty years of positive international experience (HANSEN–UMBREIT 2018; SHAPLAND et al. 2011), as well as the national coverage of probation officers in the penitentiary system who are able to learn and perform offender-victim mediation, the full support and cooperation of the National Headquarters of the Hungarian Prison Service and the support of the National Crime Prevention Council.

The selection criteria for prison and probation officers participating in the pilot project were as follows:

- There should preferably be a volunteer from each agglomeration.
- Probation officers were given preference because they are authorised to take action outside the prison system, such as establishing personal contact with the victim during the offender-victim mediation process, which was the main priority of our project.

- Among the reintegration officers, those who themselves participate in several phases of the reintegration process, such as leading addiction groups and aggression management groups, were the most likely to apply. This experience provided sufficient insight into which cases of perpetrator-perpetrator conflict warrant mediation rather than disciplinary proceedings.
- A total of fifteen people were recruited, the vast majority of whom were probation officers from all of the country's agglomeration districts.
- A total of fifteen people were selected, the vast majority of whom were probation officers from all agglomeration districts in the country.

The first phase of the research: Training

In the first phase of the research, 13 probation officers and 2 reintegration officers were enrolled in the training programme, representing almost one third of the probation staff at the time. Those accepted into the programme were delegated by the Head of the Probation Department.

The three times three-day training consisted of three theoretical and practical modules that were based on each other. In the first module, participants learned how to approach and manage conflict, followed by the protocol and the steps of mediation. This phase of the training was primarily based on transformative mediation (BARUCH-FOLGER 2005). The main objective of the theoretical phase was to learn to confidently distinguish between mediable and non-mediable cases. During the case exercises, the simpler mediation cases were mastered with the aim of enabling the group members to conduct the mediation process confidently and independently, following its rules (MACLEAN 1990; NAVARO 2010; NÉMETH 2020).

In the second block of the training, the communication and mediation skills needed to solve more complex cases were acquired. In this training phase, forensic mediation cases such as traffic offences were included. In the second phase, the mediation communication tools and techniques such as paraphrasing, separate negotiation, co-mediation, etc. were deepened (MOORE 2014; BEER-PACKARD 2012; KLERMAN-KLERMAN 2015). By the end of the second phase of the training, the group members had become confident in handling more complex, multi-actor cases, sometimes requiring co-mediation (BRECKENRIDGE 2018).

In the third module, theoretical (JOHNSTONE 2009; KIM-MAUBORGNE 2003; MCCOLD-WACHTEL 2003) and practical restorative mediation techniques were presented: offender-victim mediation; circle model, conference model (FELLEGI 2009a; FELLEGI 2009b; MCCOLD 2001; WACHTEL et al. 2010).

During the third training module, the practical training focused specifically on the learning of offender-victim mediation, because in the penitentiary system, this model can be used most often and most effectively by probation officers.⁹

⁹ As the target group of the present research includes offenders against property, the more serious restorative methods to be used in cases of crimes against persons are only presented, but not practised.

At the end of the third block of the training, the group participants identified, based on their own experience, possible types of invitations of victims of crimes against property,¹⁰ such as invitations by telephone, written invitations (official letters) and invitations in person. For all three types, the content elements to be included were identified.

The second phase of the research: Organising mediation sessions

During the second phase of the research project, the participants of the team filtered the offenders against property in their own probation area in the record system of the penitentiary system. Thereafter, they selected the cases that could be mediated. The following offender-victim case types were implemented: offender is in reintegration custody; serving a sentence. The victim may be a civilian or also a convict.

In the case of civil victims, the request was mainly made by formal letter. Then, if the victim responded, a telephone call was made to explain the mediation process, to answer the questions raised and to arrange an appointment for the first mediation session.

In cases where both the perpetrator and the victim were convicted, the probation officer consulted them individually about the possibility of mediation. The decision to participate was always based on the free choice of the two parties.

It is important to note that only one of the convicted persons and only one of the injured parties intended to be involved in the research had previous knowledge of the mediation process. (The pilot research sample included fifteen mediation cases.)

The third phase of the research: Mediation

Following the training, mediation took place in the penitentiary institutions¹¹ belonging to certain agglomeration districts¹²) or, in the case of reintegration detainees, in an off-site, civilian location.¹³

All mediation cases ended by concluding an agreement. All agreements were reached at the first session, which in no case exceeded two hours. The probation officers participating in the training conducted the mediation independently, demonstrating their ability to apply the knowledge acquired during the training in practice. In all cases, the offender-victim mediation was carried out in the presence and under the supervision of the training mediator.

The agreement recorded what the victims themselves asked for or agreed with the perpetrator. This meets the needs of the victims much more accurately than a judgment in a civil case that drags on for years, the exact outcome of which is not known in advance

¹⁰ After filtering in the record system of the penitentiary system.

¹¹ Typically, in a prison library, management office or magistrates' courtroom.

¹² See <https://bv.gov.hu/hu/node/5578>

¹³ On several occasions in a property owned by the victim, for example in the offices of a contractor or in the boardroom of a multinational trading company.

and the enforceability of which is, on the basis of practical experience, highly doubtful. (It is enough to consider here that no property is registered in the name of the perpetrator by the end of the trial.)

All of the agreements concluded in the pilot research include¹⁴ the eight agreement items, which, based on international research, are the most important, listed in order of importance below (SHAPLAND et al. 2011):

1. Apology
 - b) verbal
 - c) written
 - d) in both cases, the offender admits responsibility.
2. Payment of damages – including those imposed by a court.
3. Other types of reparation, such as physical labour.
4. The victim verbally expresses the hope that the offender will not commit such acts again.
5. The offender expresses his or her intention not to commit the given offence or any other offence against the law.
6. The offender expresses his/her intention to avoid his/her former social circle or the environment that led him/her to commit the offence.
7. He/she is willing to participate in a programme that is prescribed as a rule of conduct (alcohol withdrawal treatment, drug rehab, communication training, aggression management, etc.).
7. Other reparation-enhancing event specific to the crime committed.

The fourth phase of the research: Documentation of the mediation protocol

In all cases, the offender-victim mediation carried out during the research project was implemented and concluded with the following documentation:

First, a description of the mediation protocol process was presented, followed by the parties' signatures certifying that they understood and accepted this form of restorative justice. Second, it certifies the confidentiality of the mediators, both the lead and the supervising mediator, their neutrality and impartiality from the parties involved, which is attested by the signature of both mediators and the parties. As a third document, the agreement reached is signed by all parties involved. The agreement sets out the various items of reparation as described in the previous section.

One original copy of each of the above three documents was given to each of the parties involved, as well as to the Probation Service of the National Headquarters of the Hungarian Prison Service.

¹⁴ Understandably, some points may replace other points. For example, reparation through physical activity is not necessarily required in addition to material reparation.

Ethical and victim protection aspects of the research

- During perpetrator-victim mediation, victims could only contact the injured party through the probation officer.
- Restorative mediation could only take place with the voluntary participation of the parties involved.
- Prior to mediation, the mediators made a statement that they had no bias towards either the victim or the perpetrator, nor did they have any family or friendship ties to either party.
- During the mediation, both the victim and the perpetrator agreed in writing to preserve what was said there. Of course, only points agreed upon by both parties were included in the written agreement.
- During the mediation process, security personnel ensured the physical safety of all participants.

Limitation

The present research project examined only the practical applicability of restorative justice mediation in the Hungarian penitentiary system. The research only included crimes against property, or disciplinary cases arising from a conflict between two prisoners within the penitentiary system. The perpetrators of these cases, the largest group of the current prison population, are released within a few months or years and it is important to prevent re-offending and to reinforce social reintegration and resocialisation.

In addition to the above, theoretical or practical issues related to the topic have only been mentioned in order to contextualise and better understand the present research topic.

Evaluation of the research result

The research programme has fully fulfilled its function and achieved its objectives. All the modules of the planned training and the mediation procedures were successfully performed. Thanks to the basic skills and professional knowledge of the participants selected, both the theoretical and practical material could be acquired at a significantly higher level than planned. It can thus be concluded that the trained staff is fully capable of identifying and selecting the cases to be mediated and of carrying them out to a high professional standard.

The implementation of offender-victim mediation has provided us with a clear picture of the partial gaps, through the construction of which the offender-victim mediation process of restorative justice can become a permanent complementary part of the Hungarian penitentiary system and benefit all actors in criminal proceedings.

The first and most significant finding of the research is that offenders showed a high willingness to make reparation, even if it entails years of obligations – financial

repayments, regular physical work. However, for the offenders, this was only secondary to the apology and its acceptance by the victim; on more than one occasion, the offenders showed strong emotional reactions when apologising.¹⁵ Furthermore, offenders perceived that it was more difficult to apologise than to go to court, but they felt much better afterwards, relieved that their apology had been accepted. This is of particular importance for the research and for the further application of the offender-victim process, because it is here that the first step of the change and the reintegration process can become internalised. This process could be much more effective in terms of preventing re-offending than the current practice of parole.¹⁶ In the former case, emotional changes are accompanied by the activation of cognitive learning processes (SZTE ÁOK Anatómiai Intézet [s. a.]) that generate new patterns of coping during mediation. This is the first step in the reintegration process, which provides a basis for the conscious development of further steps towards social reintegration, based on an experience of success.¹⁷

In this regard, the perpetrators said that they had apologised by letter long before, but it is the personal encounter that provides real relief. This is underpinned by the recommendation of probation officers and reintegration officers based on experience: namely, that if there were an offender-victim reparation process of restorative justice prior to trial, offenders would already have the opportunity to begin personal moral and financial reparation, which would have a clear positive impact on the outcome of the criminal trial.

In the case of prisoners in reintegration custody, the reparation procedure has greatly contributed to the reintegration process: in all cases, prosecutors and courts, upon receiving the offender-victim mediation agreement, took a positive attitude towards helping the offender reintegrate into society. In some cases, employment was allowed and in others probation supervision was terminated in order to allow the accused to earn more income as a commuter worker in a neighbouring country in order to fulfil the financial reparation agreed in the mediation procedure.

The biggest challenge – which was anticipated by the management of the prison probation service – was organising contact with the victims. In many cases, victims could no longer be contacted at the address and phone number they had previously provided, or were not comfortable participating in the restorative justice process after such a long period of time. Furthermore, this reparation option is not known at the level of society, nor can it be compared to the awareness of civil proceedings that can be brought after a criminal trial. For these reasons, even with the mobilisation

¹⁵ They started to cry, their voices changed, they were sweating – thus, it was not a fake reaction.

¹⁶ Pursuant to Section 38 (2) of Act C of 2012 on the Criminal Code, if release on parole has not been excluded, the earliest date of eligibility shall: a) fall on the next day when two-thirds of the sentence has been served b) in the case of recidivist, fall on the next day when three-quarters of the sentence has been served; in either case, at least three months have to be served.

¹⁷ This can obviously be more effective with the support of probation officers, in which it is easier to involve the prisoner because he/she has already had a positive experience of his/her own.

of significant additional energy, the availability of victims during the programme is low.¹⁸

An unexpected result of the research project was that the harm caused by prisoners to each other in penitentiary institutions, which led to disciplinary investigations, proved to be highly manageable through the offender-victim mediation process of restorative justice. This solution helps to develop a new pattern of conflict resolution within the institution. In this context, the preventive use of mediation by prisoners has been identified as a further unexpected possibility. This solution offers the possibility of preventing disciplinary hearings and thus avoiding further punishment and retaining benefits.

Both probation officers and reintegration officers saw this type of offender-victim mediation as an effective, time-saving alternative to disciplinary proceedings.

The research has provided clear evidence that restorative justice can significantly reduce the workload of the penitentiary system, particularly the probation service. Furthermore, the prosecutors' offices and courts have also positively welcomed and fully supported the reparation commitments contained in the mediation agreement. As a consequence of the higher proportion of reparation proceedings, the workload of the partner institutions is also clearly reduced.

Vision for the future: Conclusions and recommendations

From the results revealed by this research, clear conclusions can be drawn regarding the introduction of offender-victim mediation of restorative justice in the penitentiary system at a permanent protocol level.

The procedure can be developed with high efficiency and success if the shortcomings¹⁹ identified in this research can be remedied with minimal organisational changes as follows:

- A sufficient number of staff capable of carrying out regular offender-victim mediation is available in the probation department. The training conducted in the research project needs to be carried out for two more groups in order to ensure that all probation officers are able to recognise mediable cases and to carry out mediation. The availability of supervision and training to maintain the professional standards of trained staff.
- In order to increase the outreach rate to victims, it is necessary to assign an administrative staff member in the Probation Department to the following tasks: central transparency of the organisation and adequate information on the offender-victim mediation process. This should be disseminated both in the courts, prosecutors' offices and bar associations in the form of online and

¹⁸ Another reason for low availability is the high fluctuation of probation officers during the research project and the very significant increase in the workload of those remaining in the system.

¹⁹ These shortcomings are due to the lack of familiarity with the procedure and the emergence of offender-victim mediation as a new procedural element, and not to the current framework of the penitentiary system.

written information material – in order to raise awareness at a social level, which will dispel any averts and fears about the procedure.

- Amendment of the legislation on offences against property: research experience suggests that mediation should be conducted before the trial. One of the main advantages of this is that the victim can be reached and directly informed about the reparation process – thus significantly increasing the number of cases where the victim is successfully reached. Furthermore, successful pre-trial reparation proceedings can have a significant positive impact on the judicial process.
- The research has revealed a significant need for offender-victim mediation within prisons, between inmates, which has the following positive effects:
 - It can contribute significantly to the resolution of disciplinary matters of prisoners on their own and thus to compliance.
 - The prisoners clearly indicated that offender-victim mediation was also desirable as a preventive measure, and that the need for it could be indicated to the probation officer.
 - The use of and adherence to self-resolution of conflicts is spreading among prisoners as a good example and good practice.²⁰ This in itself is part of reintegration and could play a significant role in reducing re-offending.
 - The prisoners have become the disseminators of this protocol within the penitentiary system already during the research project, after having learned and experienced the offender-victim mediation process.

By implementing the above recommendations, the workload of the penitentiary system could be significantly reduced over the next two to three years. It could reduce the workload of staff in the system, which may contribute to reducing burnout and the resulting high fluctuation rate. Furthermore, prisoners who remain in the system could be dealt with more effectively.

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²⁰ This requires the development of an internal regulatory protocol within the institution, which may vary from institution to institution.

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