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INSTITUTE OF CONFLICT RESOLUTION
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Key-Practitioners'

Report of

HUNGARY

3E-RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe.
Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain
(including research also in Turkey, the Netherlands, Denmark, Germany)
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3E-RJ-MODEL

The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
Concerning Act_10 & 11 of the EU "3E-RJ-MODEL" PROJECT

1. A General Approach to Restorative Justice

1.1. On Restorative Justice within the Criminal Justice System

Practitioners with legal qualification (*judge, prosecutor, policeman, defense lawyer*) based their answers to the questions on the fact that in criminal cases, Hungarian legal regulation only makes mediation possible as a form of restorative justice. In their opinion, victim-offender mediation is positive and effective in Hungary, also with regard to the fact that it may contribute to a change in the repressive approach, characteristic of current law application, but faces difficulties due to the restricted financial conditions.

In present practice, the judgement of restorative justice is basically characterised by the struggle between punishment and restoration with the possibility of the supplementary or parallel application of restorative justice not or hardly ever arising among the interviewees with legal qualification.

Both in the legal profession and the general public, the punitive approach dominates as a response to criminal acts.

From among the interviewees with non-legal qualifications, according to the *mediator (probation officer)*, victim-offender mediation was introduced in good time. In the answers, this person referred to other criminal justice reactions including restorative elements (e.g. community service). In her opinion, restorative justice is good as a method in Hungary but it would be necessary to improve the system of means, there is an insufficient number of mediators in proportion to the number of cases (what is more, in addition to their work as mediators, these people often act as traditional probation officers in other cases), and the financial resources are also limited. In case of the elimination of shortcomings, the legal regulation related to mediation in criminal justice could be applied even more efficiently, and with the extended application of other sanctions including restorative elements (community service, supervision by probation officer), the restorative approach could definitively gain ground in criminal justice.

According to the *partner of a NGO (mediator)*, when a new legal institution is not introduced as a result of the internal development of law, the legal profession is less receptive to the changes. A possible reason for this is that victim-offender mediation was introduced 'half-heartedly' in Hungary.

The *defense lawyer* and *probation officer* interviewed both thought that participation in mediation was a cost-saving method for offender and victim alike.

1.2. On the objectives of Restorative Justice

So far, the legal bases of mediation have been created in Hungary, providing less opportunity to take community considerations into account. As the *partner of a NGO (mediator)* mentioned it was a special case when the criminal act had not been committed against a natural person. In a concrete case when a community playground was wrecked, the mayor even said that the apologies of the offender should not be addressed to him. It was requested that restoration should be targeted at the community actually suffering the harm and not at the mayor, regarded as the injured party by law. It was also *the partner of a NGO (mediator)* who called attention to another mediation case in which the accused person had committed theft in the village, and after this, whenever he entered the local shop, the shop-assistant, a lady called Marika, followed him everywhere, watching out if he would steal something from there, too. According to the offender, it is very hard to live with such a stigma. The *partner of a NGO (mediator)* underlined that it was important for both the community and the offender, who was a member of this community, that the offender would get rid of this stigma, and the community could forgive him, as this had immense positive effect.

To the question whether mediation could help the victim of the criminal act by encouraging him/her to express his/her needs and by enabling him/her to participate in the procedure, the *head of the police department* underlined that usually when the victims were informed of the opportunity of a mediation procedure, most of them refused to participate. According to the *mediator (probation officer)*, that is why it would be good if the mediator informed such injured parties in the early stage of investigation not only of the legal possibility but also of the essence of the procedure. (This will later be dealt with in detail [point 2.3 on victims and offenders].) Even those victims who request the mediation procedure do so unaware of what positive effects it may have beyond being shorter than the traditional criminal procedure. In the *mediator (probation officer)*'s opinion, in the case of about 80% of the victims requesting the mediation procedure, the reason for agreement is to escape the 'fuss' of the criminal procedure. As she put it: 'if the victim comes here, and we start to talk, he/she is asked the question for the first time in the half-year that has passed since the criminal act how he/she experienced the events, and that is when the victim realizes that I am the important participant here, and starts to tell what happened to him/her. Naturally, in those cases when the accused and the victim have been in connection in this period, it is different. But if the case is that they had not met before the act, then the victim often asks (...) why hasn't he/she come to see me so far? (...) Why hasn't he/she apologised so far? (...) It is the victim who says so although it has not occurred to him/her so far, either, and this is the first time it has come to his/her mind that yes, this is really an harmful thing.'

With regard to whether restorative justice may help offenders in taking responsibility for their acts, the unanimous opinion was yes, it may. This was most suggestively formulated by the *probation officer*: 'Others try to explain in vain what effect the criminal act may have had on the victim so if in a specific case, the probation officer is talking with the accused person, (...) the whole thing will never be as intensive and authentic as when the offender hears it from the offended party him/herself. And to face what effect the criminal act that one has committed actually has had... I think in certain cases, this has very strong retaining force. Not for everyone, but in many cases, it has.'

With regard to the effect of restorative justice on recidivism, it was underlined that no exact data were available but traditional criminal justice practitioners (*judge, prosecutor, policeman*) were of the opinion that this retentive power might rather be expected in the case of first time offenders. According to the *probation officer*, the conscience of the offenders may be woken up under the effect of facing the offended party and hearing his/her narrative of the events – especially in the case of young offenders -, and this may keep them from committing crime in the future.

During the interview, the *head of the police department* also spoke about his personal experience (in two criminal cases referred to mediation, he was personally affected as the offended party or as assistant to offended party). In winter 2009, his wife was victim in a traffic accident. In the mediation procedure, both he and the offender's mother participated as assistants in addition to the offender and the offended party. The 20-21-year-old offender showed genuine regret. Both the offender and the wife of the police constable burst into tears. They agreed on financial compensation to be paid in instalments, which was duly performed. The criminal procedure was ended but the chief constable was phoned by the former offender after about one and a half years as policemen claimed that he had been guilty of drunk driving so he had actually become a recidivist.

2. Restorative Justice Frame of Implementation

2.1. On levels and forms of implementation

The present Hungarian legal regulations make it possible to refer a case to mediation procedure in the prosecution and court levels. Both the *prosecutor* and the *partner of a NGO (mediator)* are of the opinion that by now, prosecutors have become much more open and receptive to it. In the beginning, prosecutors were against it due to the charge principle but they also quoted the extra work involved (in case of referral to mediation procedure, several decisions have to be written).

Courts referred the largest number of cases to mediation in the first year following the introduction of the legal institution (2007). According to the *judge* interviewed, the reason was that several cases suitable for mediation were already on court level at this time. However, later, such cases were generally referred to mediation by the prosecutor's office.

According to the *partner of a NGO (mediator)*, several judges may be of the opinion now that referral to mediation is primarily 'the prosecutor's job', and if a case is already on the court level, less attention is paid to examining whether it is suitable for mediation or not.

In our opinion, the objective basis of this consideration on the part of the judges is provided by the amendment of the relevant criminal regulations in 2009, pursuant to which, it is also the statutory condition of the mediation procedure that the commitment of the criminal act shall be confessed prior to accusation. This amendment made the prosecutor's role more important as there is no longer the opportunity to take into account any confessions made in court trial.

Furthermore, according to the *judge* interviewed, as they have an overview of the cases, the offenders, the offenders' former acts and the offended parties, as well, they see the cases in a much more complex way than the victims, and therefore they are inclined to applying some traditional criminal legal sanction.

As regards other levels of criminal justice, interviewees were also unanimous about the necessity of extending the range of tasks of the police, which is very narrow at present and is limited to information provision. According to the *prosecutor* interviewed, it is desirable that the police have the right to refer cases to mediation if proper safeguarding rules prevail. The investigating authority might have the right to suspend procedure and the prosecutor would exercise control. This view was shared by the *partner of a NGO (mediator)*. In addition, he mentioned that it was a frequent counterargument against the present rules of referral to mediation that if the police complete investigation, having collected a lot of evidence and having used a lot of resources, the prosecutor refers the case to mediation and the offender is exempted from further procedure, all this work has been wasted. But if the accused has already made a confession, and mediation could take place on the investigation level, within 48 hours, so the policeman may refer the case to mediation, response to criminal acts could become even more time- and cost-effective.

The *mediator (probation officer)* is of a similar opinion.

The majority of the interviewees support the application of restorative justice forms on the correctional level, too. In contrast, the *judge* interviewed rejected this. It shows the importance of keeping justice practitioners informed that her opinion changed after mentioning some examples of good practice.

Key practitioners with legal qualification (*judge, prosecutor, policeman*) almost exclusively expressed their opinions about victim-offender mediation as a form of restorative justice.

According to the *policeman* interviewed, it is especially desirable to apply mediation in case of criminal acts of negligence and traffic offences.

In contrast, the *partner of a NGO (mediator)* thinks it is inappropriate to prefer traffic offences to crimes against bodily integrity and health. His views will be presented in detail in point 2.2.

He also underlined that although the relevant act did not make it possible, it would be wise to apply mediation in both administrative offences and economic offences. The latter was also emphasized by the *defense lawyer* interviewed.

Several interviewees noted that mediation would also be appropriate to apply when the accused has only committed the offence 'breach of peace'. (Note: as a result of recent amendments, there is a possibility to apply the mediation procedure if the accused has committed another criminal act in cumulation with the one that can be referred to mediation, and the relevant criminal act is decisive in the commitment, for example, in case of a cumulative criminal act of 'breach of peace' and 'assault'.)

Pursuant to the Hungarian Criminal Code, one of the statutory conditions of 'breach of peace' (a separate criminal act in Hungarian criminal law) is a provocatively antisocial conduct. With regard to the fact that breach of peace is a prominent criminal act against society, according to the *partner of a NGO (mediator)*, it would be appropriate to involve the community in the resolution of the conflict, as well, either in the way that those concerned might participate in the mediation or by applying another restorative form. The *mediator (probation officer)* mentioned an example of practical implementation. In a case, the prosecutor designated the leader of a community as the offended party so that the mediator had to summon him, and had no opportunity to invite other members of the community. In spite of this, several members of the community appeared as assistants, and had the opportunity to air their opinions. Although in this case, they were not able to fully convince the accused persons, they cooperated, and this was an important result, too.

Both the *partner of a NGO (mediator)* and the *mediator (probation officer)* proposed that forms of restorative justice be applied parallel with the traditional criminal procedure, particularly in the case of young offenders and in cases of domestic violence but even with more severe criminal acts. These are typical case categories where the combined application of traditional and restorative justice would have a positive effect.

In answer to the questions about other forms of restorative justice, the *mediator (probation officer)* mentioned that a pilot project was under way concerning the applicability of peacemaking circles. The title of the EU project is 'How can Peacemaking Circles be implemented in countries governed by the "principle of legality?". Three European countries (Germany, Belgium and Hungary) are participating in this project between September 2011 and May 2013. In Hungary, it takes place in four counties (Békés, Szabolcs-Szatmár-Bereg, Hajdú-Bihar and Baranya).

She also mentioned that she thought it would be useful to introduce family group conferences, among others, in cases of domestic violence.

2.2. On categories of crimes

Of the three potential categories of crimes, mediation most often takes place in Hungary in criminal acts against property, next in traffic offences, and most rarely in crimes against person. The interviewees were almost unanimous that competent authorities were keen to apply this procedure in traffic cases.

According to the *defense lawyer* interviewed, 'participation in the procedure is promoted by the fact that here, the offender is understanding and emphatic towards the victim.' The *judge* thinks that it may also promote greater willingness to participate that those participating in traffic are aware of its risks, and due to this, victims appear more understanding, too.

As it has already been mentioned (point 2.1), according to the *partner of a NGO (mediator)*, it is inappropriate to prefer traffic offences to crimes against persons. The essence of mediation is conflict management, and there is no real conflict in the overwhelming majority of traffic offences. In his opinion, we are concerned with a situational conflict here with the parties typically having no connection either before or after the case. It is his firm opinion that the application of mediation is particularly effective if the relationship is expected to be maintained following the conflict management procedure, too. On the other hand, the commitment situation of assault often involves a real conflict that remains unresolved in court procedure so it is useful to refer such cases to mediation as the likelihood of recidivism may be reduced in this way, as well. As he expressed it: 'the force of mediation lies in the fact that we sit there for three hours, and at the end of the third hour, we see the conflict in a different way than before.'

From among the interviewees, several people expressed the opinion that the range of crime categories eligible for mediation should be extended.

On the one hand, in the case of the criminal acts which are currently eligible for mediation, it may be extended to more serious crimes threatened by more severe penalties (at present, only criminal acts not punishable more severely than with 5 years' imprisonment are involved). On the other hand, several interviewees urged that new criminal acts should be involved, for example, the above mentioned breach of peace (point 2.1) or first degree robbery. The latter criminal act may be punished with imprisonment from 2 to 8 years but has no administrative offence level as even a case of robbery involving an object of any small value qualified as a criminal act. Even such actors of traditional criminal justice as *the head of the police department* and *the prosecutor interviewed* urged this. We wish to note here that in Hungarian criminal law, robbery is a complex criminal act

(*delictum compositum*), consisting of theft and violence against a person very often resulting assault. Pursuant to the present regulations, the above acts may separately be referred to mediation.

Following the widely accepted international approach, the *partner of a NGO (mediator)* would like to extend the applicability of the legal institution to every criminal act, even to the most severe ones. These cases would rather involve the completion than the substitution of the traditional procedure, relying on the effect of restorative justice bringing composure to victim and/or offender and promoting community-level reconciliation. As he said, the party involved often appeared because he/she was most interested in getting an answer to the question 'why?' He thinks that confrontation with the offender should be made possible for the relatives of the deceased person even in the case of criminal acts leading to death, of course, strictly on a voluntary basis and under supervised conditions.

It also occurred to the *mediator (probation officer)* why it was such a big problem legally that the people involved in a crime could have a conversation if they were all open to this.

The idea was also raised that it would be easier for an offender committing a severe criminal act to cope with the experience and its effects if he/she could meet the victim of a similar criminal act instead of 'his/her own victim', or for a victim to cope with the same if he/she could meet the offender of a similar criminal act committed against somebody else.

In contrast, the *judge* interviewed said that in her colleagues' opinion, the range of criminal acts should be narrowed to traffic offences, and they were also unanimous that crimes against person should be excluded.

This court approach is perceived by other actors of the criminal justice system, as well. As the *probation officer* suggestively expressed: 'both the court and the public prosecutor's office are keen on punishing, punishing, punishing. They think that they should continue dealing with them [violent criminal acts against person] because they are so severe.'

We wish to note at this point that both the *judge* and the *probation officer* interviewed work in the same county. Therefore, it cannot be safely claimed that this approach is characteristic of the territory of the whole country.

Interviewees were divided in their answers to the question which offenders and victims they would exclude from the application of restorative justice.

Some of the interviewees would not exclude anybody wishing to participate in restorative procedure voluntarily, not even such cases, for example, when there is no direct victim or his/her identity cannot be determined, or when the current regulations exclude the participation of the offender (e.g. the offender is a multi-recidivist or the criminal act caused death), or those involved in more severe criminal acts currently ineligible for mediation.

The *probation officer* raised an interesting point concerning the juvenile victims. In her work, she experienced that it might cause a practical problem if an under-age person with limited capacity to act (a person between the ages of 14 and 18) and his/her legal representative make conflicting declarations concerning the intention to participate in the mediation procedure.

As it has already been referred to (in this point), as a representative of traditional criminal justice, the *judge* interviewed would exclude acts of violence against person from the range of criminal acts eligible for mediation also because in her opinion, the harm caused to the victim cannot be remedied in this way, and the use of state criminal jurisdiction is both necessary and justified.

She would also restrict the range of offenders to first-time offenders and would exclude those who have already committed any criminal act – either intentional or negligent – also irrespective of the sanction imposed on them.

2.3. On Children and Young Offenders

In the case of problematic youngsters who have not committed a criminal act yet, the child care system has long made it possible to apply restorative methods.

In case of children offenders, as they cannot be punished, and for this reason, the criminal procedure will be finished, there is no opportunity to apply criminal mediation.

On the basis of the statistics available, it can be concluded that in the case of young offenders, there is a relatively narrow range of cases that are referred to mediation following the commitment of a criminal act.

The underlying consideration is that in case of criminal acts of similar weight (not punishable more severely than with 5 years' imprisonment), there is an opportunity to apply mediation or to postpone accusation for young offenders, and according to the practitioners interviewed, prosecutors primarily opt for the latter solution. The primary reason for this is that in the case of young offenders, it is mandatory to order probation officer supervision for a minimum period of 1 year in addition to the postponement of accusation (with the specification of separate rules of conduct matched to the offender's personality and his/her specific conditions). From this, a greater preventive effect is expected due to the monitoring for a relatively long period. However, in practice, the achievement of this objective may be jeopardised if probation officers are overburdened.

It is a view shared by many that it is an erroneous approach to consider these two legal institutions as alternatives. There are cases when the mediation procedure cannot replace the postponement of accusation and the conduct rules specified within the framework of probation

officer supervision but it would be desirable to apply them together, and the positive effects of the two legal institutions could prevail supplementing each other.

The viewpoint of the majority was that in the case of young offenders, it would be desirable to extend the possibility of restorative justice as well as to apply it more frequently. On the one hand, the range of the criminal acts committed should be extended as lack of consideration due to young age is often a factor in juvenile delinquency. Breach of peace and criminal acts involving official documents (e.g. forging medical certificates or the use of another person's student card) were specifically mentioned.

On the other hand, empathy is often underdeveloped in young people so they do not realize what a harm they have caused but if they are confronted with the victim and the effect of the act on them during mediation, this may as well promote the development of their personalities.

It was mentioned as a reason for a lower level of referring that a lot of members of the proceeding authority and victims can only see the opportunity of material restitution and paying damages in mediation, and they think that young people are unable to pay so their parents will perform instead of them and therefore the families 'will be punished' instead of the young offenders. In concrete cases, this may lead to the rejection of participation in mediation on the offender's side, as well.

With respect to the question concerning application on different levels of criminal justice, the majority expressed the view that – although in general, they found extension in this direction desirable – in the case of young offenders, it would be particularly useful to implement restorative justice more emphatically even on the police level.

From among the restorative forms, the majority expressed their views concerning mediation in view of the peculiarities of effective Hungarian legal regulation while others also elaborated on the application options of other types.

Family group conferences and in case of school conflicts, the possibility of the application of community group conferences arose.

Several interviewees mentioned the issue of the specific rules of conduct defined upon the ordering of probation officer supervision mentioned above (in this point). These often include restorative elements both on the levels of legal regulation and practical implementation. For instance restitutorial work was done in the form of group activity in Miskolc (cleaning of the zoo) under the aegis of the *Community Day Centre*, affiliated to the Justice Service of Ministry of Public Administration and Justice. Such an opportunity for implementation is only established in two

locations in the country, in Budapest and Miskolc but the practitioners interviewed would find it useful if such institutions were set up in other places, as well.

Also, the interviewees are looking forward to the new Criminal Code, to become effective on 1 July, 2013, which will introduce restitutorial work as a new measure to be applied both against adult and young offenders (with the retainment of community work as a form of punishment).

With regard to the presence of parents, the *mediator (probation officer)* underlined that it was generally positive as the mediation procedure exerted an influence on their approach to the criminal act, as well. In the presence of the victim, they generally felt ashamed, which might influence them to select better educational methods.

On the other hand, it is unfavourable if the parent does not consider his/her child guilty, and makes no effort at home to change his/her conduct. In the opinion of the *partner of a NGO (mediator)*, the parent who belittles the criminal act and denies responsibility does not set a positive example for the child and his/her presence does not help achieve the objectives of the mediation procedure, either.

With respect to other participants, the *mediator (probation officer)* mentioned the legal representatives of young people brought up in state institutions, whose presence and attitude to the young offender and the criminal act committed did not have a positive effect in many cases, either.

The effect of the presence of those appearing as representatives of a non-natural person offended party is not unambiguous as they are not emotionally affected by the case every time. Some people try to affect the young offender, seeking opportunities of immaterial restitution (e.g. writing letters, public apology) while others are content with mere financial restitution.

According to the *defense lawyer* interviewed, in case of the criminal acts committed in the school, it would be useful if teachers participated in the mediation procedure, as well.

2.3 On victims and offenders

In Hungary, the Act on Criminal Procedure stipulates the obligation of the proceeding authority to provide information for both victim and offender. The person concerned shall certify the fulfilment of this obligation with his/her signature.

The sample records of the hearing of the offender and victim/witness include the following text: „Please, be informed that pursuant to section (3), Art. 221/A. of the Act on Criminal Procedure, you may propose suspension of procedure and the referral of your case to mediation procedure if statutory conditions prevail.’

According to the practitioners interviewed, this in itself does not guarantee that the parties concerned will get information going beyond the opportunity of using this legal institution including the important elements of the mediation procedure (rules, basic principles, their own rights, potential consequences of participation). The primary reason for it that the person with whom the one eligible for information first gets into contact – typically, the policeman conducting the investigation but the legal representative can also be mentioned here – has insufficient knowledge him/herself, too.

According to the *probation officer*, 'it may happen that the records are simply handed over, (...) and the offender signs them without having heard anything about mediation. (...) I would make this a bit more effective: every victim and offender would actually hear about it (...) from a suitable person who would not even be a policeman but a totally independent person. Authentic information should be given where questions may be asked, and there is somebody who can answer every question and explain to them what this procedure is.'

According to the *mediator (probation officer)*, it would be the mediator him/herself who would provide information for the parties concerned.

The practice of information provision also appeared as a problem from the aspect of the time available to make the decision concerning participation. Pursuant to the legal regulations, a case may be referred to mediation before the court decision of first instance is passed. The majority considers this sufficient but finds the Hungarian solution problematic that following the negative answer given in the hearing during investigation, the parties are not called upon to make a statement any more, and they do not have the opportunity to change their decision in the possession of any extra information obtained later. If 'in his/her first fit of temper', the victim rejects the opportunity of mediation procedure, probably excludes him/herself from it definitively. Although as it has already been indicated (point 1.2), in some of the cases, the victim only becomes fully aware of the nature of the harm experienced and the positive effects of this measure during the mediation procedure. Naturally, the right of taking the initiative is provided for him/her on the statutory level but the importance of the provision of detailed information should be underlined here, too, because if he/she does not possess sufficient information, he/she cannot enforce his/her rights in an effective way.

As the *judge* interviewed also mentioned if the offender was not young or had committed a less severe criminal act, according to the legal rules no defense lawyer would be delegated for him/her. If due to his/her financial conditions, the perpetrator has no mandatory defense lawyer, either, he/she may reject restorative forms because of a lack of information.

On the other hand, the *partner of a NGO (mediator)* pointed out that often the legal representatives were not properly informed, either, or due to an assumed financial counterinterest, the defence lawyer did not prefer referral to a mediation procedure.

To sum up the assessment of answers, it emerged as a firm viewpoint that during the procedure, the rights of the offender and victim and the safeguarding rules worked properly while the critical point was whether every suitable case would get to mediation or not.

In agreement with the interviewees, it can be concluded that in order that a larger number of cases would be referred to mediation within the available legal framework in Hungary, it is a key issue to form the approach of the general public and make criminal justice experts (policemen, prosecutors, judges and legal representatives) more receptive. For this purpose, it is necessary to organise quality programmes of further training, suitable for changing the current, basically punitive approach, and particularly targeted at those in top positions, who primarily exert an influence on the practical approach, within the framework of the specific organisation.

As the *defense lawyer* and the *mediator (probation officer)* put it, it was primarily the approach of the leader of the specific authority that prevented or promoted referral to mediation, and specifically determined how much restorative methods were appreciated or considered effective by them.

According to the *partner of a NGO (mediator)*, there are counties which have not referred any cases involving young offenders to mediation for several years. Furthermore, he underlined that in comparison with a Budapest case, a case in Pécs had a much greater chance to be referred to mediation. It was the experience of the *mediator (probation officer)* that in Borsod-Abaúj-Zemplén county, the majority of the mediation cases had come from the authorities in the seat of the county. It was the *prosecutor's* opinion that the reason for this was that it might be a problem for the people concerned to travel to the mediator's seat from a small settlement. In addition, the *mediator (probation officer)* mentioned that she could not get sufficient information about cases arising in the provinces as there were neither enough staff nor sufficient financial resources for the probation officer working in the relevant settlement to appear at the meeting if it was necessary. Here, we repeat reference to the shortcomings in the system of means, already mentioned (point 1.1), the elimination of which would improve effectiveness.

2.4 On Restorative Justice Process and Services

According to the interviewees, the basic principles listed here (sufficient evidence, agreement without being forced, voluntary participation, the right to withdraw approval) prevail. As it has

already been elaborated on (point 2.3 on victims and offenders), problems primarily arising from deficient information provision were mentioned with respect to referral to a mediation procedure. With respect to taking into account social, cultural and other factors during referral to a mediation procedure, the *mediator (probation officer)* mentioned the prosecutors' practice rather applied earlier that the decision suspending procedure included that 'the accused person's financial conditions enable him/her to participate in the mediation procedure', indicating that the focus was primarily on material restitution. As a result of the amendment mentioned above (point 2.3 on children and young offenders), the concept of 'damage' was deleted from the Criminal Code and the restitution of the harm caused by the criminal act brought into focus. This had a beneficial effect on the prosecutors' approach, as well.

With respect to this question, the *partner of a NGO (mediator)* remarked that his practical experience was that members of the Roma minority participated in mediation in a very low number. Concerning the offenders of criminal acts against property, he mentioned that victims were less open to mediation thinking that due to his/her poor financial conditions, for example, the person having committed the theft would not be able to provide financial reparation for them anyway.

The *mediator (probation officer)* underlined that for such reasons, precisely those handicapped, poor, socially outcast and probably also badly educated people were unable to use restorative justice for whom it would be most important for the purpose of social integration and prevention. As it has already been pointed out with respect to the former questions, in the opinion of the practitioners interviewed, the most critical factors from the aspect of the successful operation of restorative justice is the provision of a suitable system of means, the provision of thorough and substantial information and the formation of the appropriate approach in the case of both citizens and criminal justice experts.

With regard to the questions concerning practitioners of restorative justice, the most information has been obtained from those working in these fields [*mediator (probation officer); partner of a NGO (mediator); probation officer*].

The possibility of supervision and result assessment was considered important but both the *mediator (probation officer)* and the *partner of a NGO (mediator)* mentioned that such opportunities earlier were provided officially and on the national level only continued to work informally and on the regional level after the transformation of the institution system.

In the opinion of the *partner of a NGO (mediator)*, supervision, further training and case negotiations are needed in any case or otherwise the mediator will burn out but mediation should be supported with a complex quality assurance system, not only providing an opportunity to explore problems but also to handle them. He thinks that it is necessary to provide a long-term, system-level and consistent professional approach permanently.

With respect to training, accreditation and feedback, it was emphasized that although there existed a lot of high-level training courses for mediators in Hungary, completing them was not enough to do high-level professional work. Disregarding qualifications, not every person has the personality to be able to work as a successful mediator. In addition, it is considered necessary to obtain suitable experience for example, under a mentor's supervision, prior to starting to work independently.

The *partner of a NGO (mediator)* mentioned an American research project the results of which revealed that the more qualified and experienced a mediator was, the more likely it was that the parties complied with the agreements concluded before him/her.

In Hungary, a lot of people have already obtained mediator qualifications. Still, as it has already been pointed out (point 1.1), there is an insufficient number of mediators actually authorised to proceed in criminal cases (generally probation officers, in exceptional cases, defense lawyers), and if restorative justice gains greater social acceptance, this number will have to be increased in any case.

The interviewees primarily emphasized the importance of personality traits, participation in mediator training and sufficient experience as the most important requirements towards mediators. They did not consider other qualifications to be a key factor. As the *probation officer* said: 'Anybody may become a good mediator, if he/she has the training. It is not sure that higher education qualifications are necessary, a person may simply be selected from a community, and he/she will fulfil this duty.'

The cooperation of the state and civil sectors in relation to the mediation procedures currently set forth in legal statutes is less of a problem nowadays with regard to the fact that mediation activities are primarily performed by probation officers employed by the state, and to a lesser extent by defense lawyers. However, the *mediator (probation officer)* pointed out that the mediators proceeding in cases of different types (civil, health, etc.) basically applied the same techniques although professional meetings and conferences were mostly organised around the different case categories so there were few opportunities for a large scale exchange of experience.

3. On Restorative Justice Obstacles and Good Practices

3.1

As it has already been mentioned, the obstacles listed in the questionnaire and already detected on the international level exist in Hungary, too, according to the interviewees. They consider the

lack of social acceptance of restorative justice and the scepticism of judges, prosecutors and especially policemen to be of outstanding importance.

3.2

The *mediator (probation officer)* interviewed named the lack of proper environmental and financial conditions while the *probation officer* mentioned the reluctance of parties (offender and victim). Similar factors were considered important by the *partner of a NGO (mediator)*, as well, who mentioned the lack of trust and by the *defense lawyer* interviewed, who pinpointed indifference as the factor representing a major obstacle for him.

3.3

Several of the interviewees pointed out that the probation officers also working as mediators performed their tasks related to the mediation procedure effectively, at a high level and with professional expertise.

In compliance with the international requirement to preferably implement the forms of restorative justice at every level of criminal justice, in the MEREPS project (carried out by an international Consortium led by the Hungarian organization Foresee Research Group), completed recently, family group decision making conferences were held in several Hungarian correctional institutes (e.g. in Balassagyarmat, Tököl) to promote the reintegration of the convicts particularly prior to the expected date of their release. Furthermore, the possibility of the application of mediation was investigated in order to resolve conflicts among convicts and between convicts and staff.

There has been an increase in restorative elements in the implementation of probation officer supervision accompanying criminal law sanctions without deprivation of liberty. As it has already been underlined, (point 2.3 on children and young offenders), restitutorial work has been a possibility for years in the framework of probation officer supervision. By now, two community day centres have been established in Hungary, in Budapest and in Miskolc, to ensure the implementation of probation service (and other community sanctions) and restorative methods and programmes. Pursuant to the new Criminal Code, effective as of 1 July, 2013, restitutorial work will be introduced as a single measure in our criminal law. Furthermore, the new Code explicitly sets forth that the court or the prosecutor may order as a conduct rule that the person on probation should participate in the group conferences organised by the probation officer or in any other programme of the community day centre of the probation service.

In recent years, several probation officers – including our *interviewee* - have participated in a special training course to learn the method of family decisionmaking conference and apply it as a pilot project.

The *mediator (probation officer)* pointed out that she personally had not applied this method but the colleagues participating in it had found it useful. At present, probation officers do it as a part of after-care. The *probation officer* remarked that this involved some difficulty as after a criminal procedure closed with a legally binding court decision, the persons concerned were less motivated to participate.

As it has already been mentioned (point 2.1), the possibility of the application of peacemaking circles with the involvement of probation officers is being researched in several counties within the framework of a pilot project.

The *partner of NGO (mediator)* mentioned the community developing and conflict management activities of Foresee Research Group and Partners Hungary Foundation, not taking place after a specific criminal act but in order to manage and dissolve accumulated tension, avoid the escalation of conflicts and thus prevent any criminal acts.

With respect to the networks for exchanging good practice and information, mention should be made of the work of the Restorative Section of the Hungarian Society of Criminology, regularly organising conferences and professional meetings.

As it has already been pointed out (point 2.4), the organisational and operational background of the implementation of criminal mediation has undergone a significant change as a result of the institutional transformations following the change of government, which restricts the professional cooperation and exchange of experience between mediators working in different parts of the country.

Annex to the Questionnaire

1.

Name of-key practitioner: **P., A.**

Position: **judge**

leader of professional group on criminal law, Court of the City of Miskolc (Local Court)

Years of practice in the RJ field: -

Training received (yes/no, kind, hours, organization – public private):

Interviewers' name: **Ilona Görgényi**

Country: **Hungary**

2.

Name of-key practitioner: **M-Z., I.**

Position: **public prosecutor**

deputy of the leader of the Local Public Prosecution of Miskolc

Years of practice in the RJ field: -

Training received (yes/no, kind, hours, organization – public private)

Interviewers' name: **Ilona Görgényi**

Country: **Hungary**

3.

Name of-key practitioner: **B., Z.**

Position: **mediator (probation officer)**

Justice Service of County Borsod-Abaúj-Zemplén, Miskolc

Years of practice in the RJ field: **6,5 years (as mediator)**

Training received (yes/no, kind, hours, organization – public private): **mediation, 120 hours; private organization – Partners Hungary Foundation**

Interviewers' name: **Eszter Gilányi**

Country: **Hungary**

4.

Name of-key practitioner: **B., F.**

Position: **police officer**

Leader of the Police Headquarter of City of Miskolc

Years of practice in the RJ field: -

Training received (yes/**no**, kind, hours, organization – public private)

Interviewers' name: **Ilona Görgényi**

Country: **Hungary**

5.

Name of-key practitioner: **R., Z.**

Position: **defense lawyer, Miskolc**

Years of practice in the RJ field: **1 year (as mediator)**

Training received (**yes**/no, kind, hours, organization – public private): **mediation, various (basic and further) trainings, a sum of 100 hours**

Interviewers' name: **Eszter Gilányi**

Country: **Hungary**

6.

Name of-key practitioner: **Sz-K., O.**

Position: **probation officer**

Justice Service of County Borsod-Abaúj-Zemplén, Miskolc

Years of practice in the RJ field: **6,5 years (as probation officer)**

Training received (**yes**/no, kind, hours, organization – public private)

Crime prevention coordinator - postgraduate vocational training, University of Miskolc, 230 hours; adventure pedagogy training (private organization) 50 hours; social skills development training (private organization) 60 hours; family group decisionmaking training (private organization) 30 hours

Interviewers' name: **Eszter Gilányi**

Country: **Hungary**

7.

Name of-key practitioner: **K., T.**

Position: **mediator, trainer**

Partners Hungary Foundation, Budapest; and at international level as well

Years of practice in the RJ field: **6 years (as mediator)**

Training received (**yes**/no, kind, hours, organization – public private) **mediation; private organization; 600 hours**

Interviewers' name: **Eszter Gilányi**

Country: **Hungary**