



ANNEX 1 E. Case Study

	Traditional criminal procedure	Mediation process	Relevant statute
Investigation stage			
Ordering of investigation	Following being caught in the act, Gergő is taken to the police station. The policeman on duty records the commitment of criminal offence, and orders investigation on account of the well-founded suspicion of a criminal offence. The investigating authority notifies the public prosecutor and the victim of the investigation within 24 hours.		Art. 164, s. 3, Art. 170 of the Criminal Procedure Code
performance of acts of investigation	Hearing of suspect: Gergő is informed of the essence of the accusation together with the relevant legal statutes (<i>petty offence of damage violating section (1), Art. 324 of the Penal Code but to be qualified and punished pursuant to section (2) therein</i>).		Art. 179 of the Criminal Procedure Code
	As the suspect in criminal offence, Gergő makes a confession. ¹		
	 a) does not propose / does not consent to mediation process	 b) proposes / consents to mediation process.	
	Performance of other acts of investigation, hearing of victim as witness ² .		
representation of	a) victim does not consent to mediation process and wishes offender's impeachment under criminal law	b) Victim gives his/her consent to mediation process.	
	Getting to know the documents of investigation: After the completion of investigation, in a room designated for this purpose, the public prosecutor or the investigating authority hands over the bound documents of the investigation to suspect and defence counsellor. Suspect and defence counsellor may propose the supplementation of investigation. After the presentation of documents, the police send the documents of the case to public prosecutor.		Art. 193 of the Criminal Procedure Code

¹ During hearing, the accused shall be warned of the option of mediation process, which is recorded at the end of the records taken of the hearing. This is certified by suspect's signature.

² Pursuant to the Criminal Procedure Code, the victim shall have the right to get information of his/her rights and obligations in the criminal procedure from the court, the public prosecutor's office and the investigating authority. Art. 51 s. 2 of the Criminal Procedure Code. During hearing, he/she shall be warned of the option of mediation process (in a recorded form)

Prosecution stage		
	<p>Within 30 days of the receipt of documents, the public prosecutor examines the documents of the case and makes an accusation if the conditions of accusation hold.</p> <p>Within 30 days, the public prosecutor investigates the material and procedural criminal law conditions of referral to mediation process. He/she may order the acquisition of probation officer's opinion for the decision.</p>	Arts 216, 221/A of the Criminal Procedure Code, Art. 36 of the Penal Code
<p>➤ <i>If the conditions do not hold:</i> the public prosecutor makes an accusation</p>	<p>➤ <i>If the conditions hold:</i></p> <p>The public prosecutor passes a ruling suspending procedure and refers the case to a mediation process</p> <p>❖ Term of suspension: max. 6 months.</p> <p>❖ Pursuant to the Criminal Procedure Code, the preliminary hearing of suspect is <u>not mandatory</u></p>	Art. 216 s. 1 e), Art. 221/A s. 3, Art. 224 s 1) of the Criminal Procedure Code
Court stage	Start of mediation process	
<p>Preparation of trial: sending indictment to accused (warning of the possibility of mediation process if not ordered by public prosecutor).³</p>	<p>Together with his/her order concerning mediation process, public prosecutor makes the documents of the case available to mediator.</p>	Act CXXIII of 2006 / Chapter 12 Criminal Procedure Code
<p>Scheduling trial, court trial.</p>	<p>Within 15 days of the receipt of documents, mediator sets the date for the first mediation discussion.</p> <p>The mediation process shall be organised in the way that it can be completed within 3 months upon the first mediation discussion, and the document of agreement shall be received by the public prosecutor's office prior to the expiry of the deadline for the suspension of criminal procedure (maximum 6 months).⁴</p> <p>Within 15 days upon the completion of mediation process, mediator compiles a report on mediation process, sends it to public prosecutor, notifying victim, accused and their representatives of this fact.</p>	Art. 9, Act CXXIII of 2006

³It may also be proposed at this stage by victim and accused. If requested by both, the procedure is suspended and referral to mediation process is ordered (if unsuccessful, a trial is scheduled) See B. Legal frame of restorative justice 2. The specific legal provisions in all stages of criminal proceedings

⁴ Both the victim and accused shall get written information about the essence of the mediation process. The mediation discussion shall start with the check of identity. The mediator shall hear victim and accused in appropriate detail. Victim and accused may express their views concerning the case orally. The first mediator discussion may be conducted in the joint presence of victim and accused but also in the absence of one of them. In case of the hearing of a victim with restricted disposing capacity, the legal representative shall be present. The victim (the legal representative if his/her presence is mandatory) and the accused (in case of a non-natural person, the authorised representative) are supposed to be present together at the signing the agreement. The victim and the offender may request permission for maximum two persons each to attend the mediation session, and to make statements on their behalf. The mediator may refuse to comply only if the presence of the person for whom permission is requested is prejudicial to the purpose of the mediation proceedings. The mediator's decision may not be contested.

		a) An agreement is successfully concluded (set forth in a document)	b) No agreement is concluded	Art. 15 Act CXXIII of 2006
		Performance of the provisions of agreement during the term of mediation process ⁵	Start of performance of provisions in agreement ⁶	Public prosecutor makes accusation
	Passing a sentence. Relevant punishment pursuant to Art. 324 s. 2 of the Penal Code (in case of petty offence of causing minor damage): maximum one year imprisonment	Public prosecutor Cancels procedure (active repentance, Art. 36 s. 1 of the Penal Code).	Public prosecutor suspends accusation for the term of performance..	
a) If accused fulfils the obligation undertaken			b) Accused does not fulfil	
Cancellation of procedure (Art. 36 s. 1 of the Penal Code)			Public prosecutor makes accusation	

⁵ Compensation for the damage caused or restitution of the harmful consequences of criminal offence in some other way.

⁶ In the mediation process, performance of agreement shall be verified by mediator, and after it, by the probation officer service.