

Rozum, Jan et al.:

Mediation in criminal justice system I.

Uplatnění mediace v systému trestní justice I.

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Summary

The research Mediation in criminal justice system is handled in line with the Medium-term plan of research activities of the Institute of Criminology and Social Prevention for 2008-2010. The research was assigned by the Council for Probation and Mediation and was implemented in 2008-2010. The research was carried out in close cooperation with the Probation and Mediation Service of the Czech Republic.

The research focused on the evaluation of contribution and efficiency of mediation for offenders, victims and the society, and on how mediation helps to fulfil the general tasks of the Probation and Mediation Service, i.e. integration of offenders, participation of victims and protection of the society. One of the tasks was to find out to which criminal institutes the courts and prosecuting attorneys apply mediation, to what character of cases mediation procedures are applied and what is their effectiveness from the point of view of the society, offender and victim.

Since one part of the research – opinion poll (public opinion concerning mediation) – was executed in November 2008, we divided the presentation of results of the research to two parts in order for the results to be as current as possible. Apart from a brief introduction in the issues of mediation and statistical data concerning mediation, this first part (in 2009) summarises the results of the aforementioned poll.

With regard to mediation in criminal matters in the Czech Republic we may say that the development of mediation procedures in the Czech Republic is closely related to the establishment of the Probation and Mediation Service, which was implemented by Act No. 257/2000 Coll. and came to effect as of 1 January 2001.

The legal definition of mediation is stipulated in the provision of Section 2 (2) of Act No. 257/2000 Coll. on Probation and Mediation Service: “For the purposes hereof mediation is

out-of-court mediation for the purpose of solution of a conflict between the accused person and the victim and an activity leading to settlement of the conflict situation carried out in relation to criminal proceedings. Mediation can only be performed with the express agreement of the accused person and the aggrieved party.” The principles of mediation in the Czech Republic follow the principles generally acknowledged in Europe. The mediation procedure provides both parties with the opportunity to express their feelings, expectations and needs that had been formed in relation to crime. It also makes it possible for the parties to agree on a fast and acceptable manner of remedy. The participation in mediation is voluntary for both parties. Mediation may lead to a common agreement on settlement of the conflict and remedy. The prosecuting attorney or judge may consider the results of mediation when making their decision. They may e.g. discontinue criminal proceedings or propose or approve another alternative measure or sanction.

Since 2005 there have been statistical records that make it possible to monitor data on persons or cases with mediation. In 2005 to 2007 the total of 1,878 offenders went through mediation, of which 1,608 were men (85.6%) and 270 women (14.4%). The majority of cases were recorded in 2005 (950); there was a roughly 50% decrease in the following years. The average age of accused persons who went through mediation was 30.3 years; modus 17 years (7.8% of all persons).

An agreement was reached in 1,498 out of the total number of 1,878 cases. In 361 cases no agreement was reached during mediation. With respect to age, younger accused persons were more positively motivated to reach an agreement through mediation (however, the statistical percentage was not significantly high); with older age the willingness of accused persons to settle decreases.

In 2005 to 2007 mediation helped to solve cases that had been committed under Chapter VII – offences against life and body, and Chapter IX – offences against the right of property. These cases made 82.7% of all cases. With regard to particular crimes the clearly dominating group was bodily injuries under Sections 221, 223 (especially bodily injuries committed in road transport) and the offence of theft under Section 247.

The statistical database of the Probation and Mediation Service of the Czech Republic made it possible for us to analyse termination of a criminal case for majority of cases (1,482 –

79%; for the remaining 21% - 396 cases the Probation and Mediation Service unfortunately failed to receive this feedback from the court or the prosecuting attorney's office). From the point of view of criminal justice, in majority of cases mediation between the accused person and the injured party was terminated (total cases 979 – 66.1%, in 2005 – 508, 2006 – 254, 2007 – 217) with the institute of conditional discontinuation of criminal proceedings pursuant to Section 307 of the Rules of Criminal Procedure.

The prerequisite for mediation to become one of the possible solutions of crimes and their consequences is its general social acceptance and support. One part of the research project was making a poll to find out how the public perceives and evaluates the mission of the Probation and Mediation Service within the justice system, for what types of crime and offenders the public sees victim-offender mediation as a suitable solution instrument and how the public evaluates the overall possible contribution of mediation. The target group was Czech citizens aged 15-69 years; the research sample was selected by the method of a quota selection according to classification criteria comprising sex, age, education, size of the city/town of residence and region. The size of the selected group was 1,014 respondents.

Only 25% of respondents are at least partially informed about the existence of the Probation and Mediation Service. 67% of respondents admit that mediation has a social benefit; 69% of respondents see mediation as a suitable instrument to solve crime. On the other hand, 30% of respondents perceive mediation as useless and inefficient. Despite low awareness of mediation and the Probation and Mediation Service the attitude of the public to mediation is prevalingly positive. The benefit of mediation is perceived mainly for the justice system (lower burden of courts and accelerated process of solution); the corrective effect on the offender and remedy for victims is perceived to be secondary. 53% of respondents would be willing to accept mediation if it concerned themselves (40% would rather not accept or definitely not accept mediation); this leads to the conclusion that the generally rather positive relation to mediation does not quite correspond with the willingness to accept mediation if it concerned the respondent him/herself.

Based on the prevailing opinion mediation should be applied especially to less serious crimes (libel, disturbance, petty crimes against property, vandalism, offences in road transport). Mediation is expressly rejected in case of violent and serious crime against

property and in case of offenders acting under the influence of alcohol or drugs, and also in case of persistent offenders.

The sex of respondents or the fact whether or not they have themselves been victimised in the last three years does not have a significant influence on the opinions and attitudes of respondents. The only exception is that victims of crimes see mediation as more convenient for offenders than those who had never been victims of a crime. With regard to opinions concerning the usefulness and social benefit of mediation we can conclude based on the results of the research probe that the concept of mediation is rejected by a minority of the public.

Citizens usually deem it is likewise important to punish the offender and compensate the damage caused to the victim. Therefore the effectiveness of the judicial system should be measured by the number of satisfied victims as well as the number of prosecuted and convicted persons. In this context, however, the impact of mediation is assessed quite inconsistently, i.e. the public admits that there are benefits either only for offenders or for both sides (less often the public sees benefits only for the victim or no benefits at all).

Translated by: I.T.C.- Jan Žižka