

*Rozum, Jan – Kotulan, Petr – Luptáková, Marina – Scheinost, Miroslav – Tomášek, Jan – Špejra, Michal*

## **Uplatnění mediace v systému trestní justice II.**

### **The Application of Mediation in the Criminal Justice System II**

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#### *Summary*

The research of **The Application of Mediation in the Criminal Justice System II** took place in accordance with The Institute of Criminology and Social Prevention's medium-term research plan for the years 2008-2010. Research focused on evaluating the benefits and effectiveness of mediation procedures for the offender, for the victim and for society, and on how mediation meets the planned general goals of the Probation and Mediation Service, i.e. integration of the offender, participation of the victim and the protection of society. One of the goals was to find out in which criminal justice institutions mediation is utilized by courts and public prosecutors, in what area and type of cases mediation procedures are applied, and their effectiveness from the perspective of society, the offender and the victim. This second part of the research (in 2010) primarily presents empirical findings.

According to available research from abroad, the most important reasons why victims decide to participate in mediation include a desire to find out more about the criminal act itself and about everything that led to it, the need to convey one's feelings to the offender, the wish to help him "change", to make him take responsibility for his own actions, to be eligible for financial compensation for damages, to avoid court proceedings, and to see for oneself that the offender is sufficiently punished. Most studies that focus on the experiences of victims with mediation bring positive results.

Our questionnaire survey between the offenders and victims that participated in mediation was also influenced by research from abroad. Its goal was to map their practical experiences with this measure. The Probation and Mediation Service of the Czech Republic was closely involved in its preparation. Thanks to its staff, it was possible to contact 94 victims and 93 offenders, who were then sent questionnaires. Of these, 89 were returned properly filled in, 50 from victims (a rate of return in this group of 53.2%) and 39 from offenders (a 41.9% rate of return). The research was anonymous, and so it was impossible to compare the offender's answers with those of the victim in the same case.

Reasons why victims most often decided to participate in mediation primarily included the desire to find out the offender's motives for his actions, to avoid lengthy court proceedings, to receive a clear apology from the offender, to contribute to his rehabilitation through one's own participation, and to receive compensation for damages. On the other hand, only rarely did the wish to find out more about the offender play a role, as to prove to oneself that a personal encounter with him would not be a problem. For offenders, the dominant motive was the ability to come to an agreement with the victim, to redress damages, to speed up the entire case and to achieve a lesser penalty for the committed crime. Over half of the offenders had a strong need to apologize to the victim in person, or to inform him that they were sorry for what they had done. In comparison, the need to explain to him the circumstances that led to the crime was relatively rare.

Roughly two thirds of victims received the impression during the mediation that the offender truly regrets his actions, that it is not easy for him to meet face to face, and that he has a true desire to remedy what he caused with his actions. At the same time, it was revealed that according to 59 % of the victims, the offender participated in the mediation only formally, out of a desire to avoid harsher punishment. Meanwhile, impressions that victims got of the offender and his behaviour during mediation were often influenced by feelings, experiences and attitudes they brought with them to the mediation. Thus those who felt a great deal of anger prior to the mediation were less inclined to believe the offender's intent to atone for his actions, and similarly those who had been the victims of a violent crime were more inclined to suspect the offender's approach of being a formal one. Offenders ascribed victims with a pragmatic approach to mediation – 71 % thought that the victim's only reason for participating was to receive financial compensation. A relatively large number of offenders (40 %) also gained the impression that the victim had behaved arrogantly toward them during the mediation. Both of these feelings were expressed significantly more often by those who were not first-time offenders.

The vast majority of both victims and offenders assessed the mediator's work as either very or quite good (96 % of victims and 97 % of offenders). A similarly positive agreement existed for the question as to whether the mediator had succeeded in creating a safe atmosphere, and whether under his aegis both parties had sufficient space to express their personal needs, opinions and positions. On the other hand, almost a fifth of the victims and a third of the offenders got the impression that the mediator had attempted to force on them his own notion of how the case should be resolved. Most of them, however, evidently saw it as a welcome initiative on the mediator's part, as this fact did not have any sort influence on their overall

favourable assessment of his work. Nine out of ten victims as well as offenders stated that they were satisfied with the results of the mediation, with a further positive finding being that 84 % of victims and 95 % of offenders would agree to it again. The vast majority of offenders (90 %) stated that they would also agree to mediations if they were in the victim's place. The same fraction of victims answered yes to the question if they would recommend mediation to similar victims. Only one offender stated that he had committed another offence following the mediation.

When asked about their overall impression and assessment of the mediation, less than one tenth of victims regretted their participation. Eight out of ten victims conceded to a greater or lesser degree that they felt better about the given case after the mediation than prior to it. For roughly three quarters of victims, it was also important that they were capable of talking to the offender openly about the entire matter. The vast majority of offenders were also satisfied with their participation, with the mediation being an unpleasant experience for only one tenth of them. Nine out of ten appreciated the fact that the mediation encounter allowed them to express themselves regarding the resolution of the offence. The results of the survey thus basically agree with the results of comparable foreign studies. A great majority of mediation participants are satisfied with this measure, and say it is a positive experience. The key role of aspects such as the offender's sincere apology, explanation of the reasons for the offence or his real interest in putting things right was confirmed. If the victim expects such elements from mediation, he is likely to be satisfied with his participation – unsatisfied victims tended to be those who had a priori doubts regarding the sense of meeting the offender, and the aforementioned aspects were not that important to them. In some cases, the other party's unsuitable behaviour (for example the offender's formal attitude or the victim's arrogant behaviour) was a barrier to overall satisfaction from the mediation. Almost everyone was essentially satisfied with the mediator's performance.

Another area of research was the analysis of data from the Criminal Register, which offers details of registered recidivism, especially its quantity, nature and development. Information was gathered on 311 individuals who in 2005 had participated in mediation in cases of deliberately committed offences. As far as the offenders' ages are concerned, we monitored this data not only with regards to the time of the mediation, but also the age when the first criminal conviction occurred. The average age of charged individuals in the mediation process was 26.3. The average age they were first convicted of a criminal offence was 23.6. Offenders with no previous convictions were in the clear majority, with a total of 247 (79.4 % of the sample). Another 24 of the offenders (7.7 %) had one recorded conviction. Only 40

individuals (12.9 %) were found to have multiple convictions prior to the use of mediation. Statistical analysis confirmed that the age at which an offender is first convicted is related to his total number of convictions in the Criminal Register. The average age of first offence for those with one conviction on record in the Register was 22.4, for those with 2-3 convictions 21.2, for those with 4-6 convictions 19.9, and for those with seven or more conviction 18.5. For those that had no prior conviction in the Register, the average age was 24.2.

In our sample of cases where a deliberate criminal offence was committed, an agreement was reached in 75.5 % of the cases. Men were more open to reaching an agreement, as were younger people. As far as types of criminal activities go, theft in accordance with Section 247 of the Criminal Code (54.2 %) and bodily harm in accordance with Section 221 of the Criminal Code (31.5 %) formed the clear majority of cases. As far as the completion of mediated cases is concerned, almost two thirds of the offenders (189 individuals) had their prosecution conditionally suspended by either the court or the prosecutor. This option was most frequently utilized by the court or prosecutor for young offenders (65 cases of the 189 terminated by conditional suspension of prosecution). As far as repeat offences are concerned, of the 311 individuals, another 79 had another record in the Criminal Register (roughly four years after mediation), which represents a fourth of our sample (25.4 %). Over 75 % of them had already committed their next offence two years after mediation.

In our research, we also focussed on obtaining practical information regarding mediation during criminal proceedings. We examined court records as regards the course and results of mediation, cooperation of PMS centres with the justice system and the police, and the influence of mediation on court decisions. We also paid attention to the personal data of the subjects of mediation proceedings and the nature of the offences committed. We had at our disposal a sample of 52 files on cases where mediation had occurred in 2007 (regardless of the results) and where prosecution was terminated by a final verdict or other court decision. These cases featured a total of 60 offenders and 81 victims. The majority were property-related offences, most often theft, which were often committed as ongoing or along with other offences.

The offenders who participated in the mediation process included 56 men and only 4 women. Young offenders always committed their offences as an accomplice. For mediation, primarily first offenders were selected, where it could be reasonably expected not only that an agreement on compensation for damages would be reached, but also the high likelihood of the effectiveness of a court verdict outside of the main trial, disciplinary punishments or disciplinary measures. Primarily younger offenders participated in this manner of dispute

resolution, with 75 % of them being below 30. The damage caused by the offenders' criminal activity was primarily damage to property (67.9 %) followed by harm to health in roughly one fourth of the cases.

In suitable cases, conditions for the possible application of alternative types of proceedings and for cooperation with individual PMS centres were already created during preliminary proceedings. Offenders were informed of the options of diversion of criminal proceedings, in cases where the law requires it their agreement with such a procedure was obtained, young offenders were informed of the option of imposition of disciplinary measures, and some offenders were also informed of the possibility of working with the PMS. Probation and Mediation Service centres paid proper attention to investigating possibilities for mediation, and in each criminal case, both subjects of the mediation proceedings took part in a number of (even repeated) individual consultations, which in the case of young offenders also included their legal guardians.

The main criterion for success of the mediation proceedings can be considered the achievement of an agreement to settle the conflict and provide compensation for damages caused. An agreement was reached in 88.9 % of mediations. During the mediation proceedings, requirements of 44.4 % of victims for compensation for damages were completely satisfied, and in 34.6 % of victims agreed to receive compensation in instalments. All mediation proceedings were completed by PMS centres prior to court proceedings, and their results were available to be used in reaching a verdict. Three fourths of mediation proceedings were completed within six weeks, and the average term of proceedings was 44 days. This is a very good result of the work of PMS centres, which has a positive effect on the overall length of criminal prosecution.

In cases where an agreement between the offender and victim was reached, the courts decided to diversify the criminal proceedings 67.8% of the time, with the remaining offenders always receiving a suspended sentence, in four cases along with the suspension of their drivers license. The diversion involved primarily the suspension of prosecution. For young offenders, the number of diversions and sentences was almost identical.

The conclusion of the study provides information on an investigation into the practical experiences of probation officials – mediators. They were primarily asked what they see as the greatest problem in mediation between the offender and the victim, with motivation being the most frequent answer given. In this context, mediators commented both on unwillingness and disinterest in meeting face to face (this applies especially to victims, where apprehension or fear is sometimes also involved) as well as on motivation in the sense of what is expected

from mediation. For offenders, this is primarily their effort to ensure for themselves a better position on which the court's or prosecutor's is then based. As far as victims are concerned, in some cases their primary motivation is the desire to maximize financial compensation for damages. The overall level and quality of cooperation with the justice system and police was also assessed as being problematic. According to mediators' experiences, these authorities represent a system of criminal proceedings that emphasizes other procedures rather than the timely commencement of conflict resolution. Another barrier is the low awareness of the general public of PMS activities (especially in the area of preliminary proceedings), which then results in an initial lack of trust when offered this option.

Our research has confirmed that mediation can be very successful, as it offers the possibility to differentiate and individualize not only the imposition of sanctions, but also the procedure of dealing with the offence itself. It is a method that significantly supports, among other things, the idea of offender rehabilitation. A personal encounter with the victim offers them a unique opportunity to realize the harmfulness of their actions and to attempt to correct their consequences. Even despite certain methodological restrictions on our research, it can be said that the information gained proved the benefits of combining mediation proceedings with regular court cases. Aside from settling conflicts between offenders and victims, reaching agreements on compensation for damages and elimination of other harmful consequences of criminal activity, mediation proceedings created qualified and usable prerequisites for the resolution of criminal cases outside criminal proceedings (via diversion) or for the imposition of disciplinary punishments and measures that do not involve incarceration. Probation workers must be praised for a quick and high-quality mediation process, for helping clients (victims and offenders) find ways to achieve a positive resolution to their conflicts and achieve agreements on reconciling damaged relationships, and regarding compensation for damages caused by criminal activity. Significant is their share in creating conditions for out-of-court case settlement, and thus for the speed of court proceedings. Direct participants also assessed mediation as a suitable and effective measure from the perspective of their own needs being satisfied.

Translated by: Marvel s.r.o.