

Saturation of the Needs of Victims via Criminal Mediation.

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Abstract

The introductory section of the article presents the field of probation and mediation in Slovakia with emphasis on criminal mediation. In the following section, the author outlines the criminal mediation application options from the viewpoint of the restorative principle. The actual diversion and the criminal mediation process are viewed as determining elements that should primarily saturate the needs of crime victims. A case study is used to explain the various parts of the mediation process as one of the possible approaches. The needs as well as sustainable alternatives from the viewpoint of a possible risk of recidivism are explained more broadly, as the process results in an agreement in the form of a consensus between the victim and the offender.

Key words:

Mediation. Restorative principle. Crime victim. The accused. The convict. Mediation process. Mediator.

1/ Introduction (*origins of probation and mediation in Slovakia*)

In the second half of the 20th century, a quest for new forms of justice was launched both in Europe and in Slovakia to replace some traditional approaches in criminal proceedings. These forms or rather alternative solutions to criminal matters may be characterised: „*As specific approaches used as alternatives to standard criminal proceedings and peculiar forms of crime response presenting and alternative to a traditional prison sentence.*”¹ The alternative approaches intend to tailor the criminal sentence in particular. A positive feature is the effort to motivate crime offenders to get actively involved in the resolution of criminal matters to eliminate damages in favour of the victim. A parallel objective is to reduce the workload of courts and criminal law enforcement bodies, to address the lack of prison capacities and to create effective crime prevention forms.

The Ministry of Justice of the Slovak Republic drafted amendments to criminal law codes in the years 2000 to 2003. The idea of restorative justice became their philosophical background.

¹ SOTOLÁŘ, A., PÚRY, F., ŠÁMAL, P. Alternativní řešení trestních věcí v praxi (Alternative Resolution of Criminal Matters in Practice). p. 3.

This view of the prison sentence allows us to impose it in absolutely necessary cases only, unless a different solution to the criminal case can be found. The implementation of the alternatives required the establishment of the Probation and Mediation Service (hereinafter referred to as PMS).

One job position of an expert officer tasked with coordination of preparation and implementation of a PMS pilot project was opened since 1 August 2001 at the Ministry of Justice of the Slovak Republic, Criminal Law Division. It may be stated that PMS in Slovakia was developed as a centralised service taking local specifics into consideration. The intention was *to promote the rights of crime victims on the one hand, to actively assist in re-socialisation of the offender and their seamless post-crime return into the society, and at the same time play an educational role vis-a-vis the entire society. PMS in Slovakia wished to rank among institutions that would actively operate as part of crime prevention programmes.*²

The institute of conciliation (settlement) was introduced to the Code of Criminal Procedure in Slovakian conditions. This created room allowing the court, or the prosecutor in the pre-trial procedure, as applicable, to decide on approval of settlement and to suspend the prosecution, subject to meeting of conditions set by the law and subject to the consent of the accused and of the victim. One of the conditions the accused has to meet is to compensate the pecuniary damage, if incurred due to the crime, or to take another action to redress damage or to otherwise compensate non-pecuniary damage caused by the crime. Mediation as a dispute resolution form, where the dispute arose between the parties due to the crime, is used in holding deliberations between the offender and the victim. Act no. 550/2003 Coll. on Probation and Mediation Officers, effective since 01 January 2004 was passed upon conclusion and a positive review of the pilot programme.

2/ Operation of Probation and Mediation Officers in Slovakia

A probation and mediation officer assists in having the criminal case heard in one of the special regimes of criminal proceedings, if applicable, or in allowing a non-prison sentence to

² Vyhodnotenie pilotného projektu PaM na Slovensku (Evaluation of the PaM Pilot Project in Slovakia). 2002. Author: Ministry of Justice of the Slovak Republic

be imposed and duly enforced, or in allowing custody to be replaced by another suitable measure. For this purpose, the probation and mediation officer shall:

- a) procure supporting documents concerning the person of the accused, on their family, social and work/professional background;
- b) create conditions for a decision on conditional suspension of prosecution or on approval of settlement;
- c) carry out acts to conclude an agreement between the victim and the accused concerning the pecuniary damage incurred as a result of the crime, or concerning the compensation of non-pecuniary damage incurred as a result of the crime;
- d) supervise the conduct of the accused during the probation period and control the execution of non-prison sentences;
- e) execute other criminal procedure acts in performing probation and mediation.

The probation and mediation officer shall carry out acts falling within their scope of competence in accordance with their job schedule on the basis of a counterpart of a legally effective court decision implying the duty to carry out probation, or on the basis of a written instruction by the presiding judge of the bench, by the single judge or by the prosecutor in the pre-trial procedure. In cases suitable for mediation, the probation and mediation officer shall also carry out acts without such instruction, in particular when prompted by the victim or by the accused, provided that the probation and mediation officer shall notify the competent law enforcement authority thereof in writing without delay; a written consent by the presiding judge of the bench, by the single judge or by the prosecutor in the pre-trial procedure shall be required to carry out mediation.

In the execution of probation and mediation, the probation and mediation officer may obtain information and knowledge about the person of the accused and opinions of the victim that is of significance for the court or prosecutor's decision.

Upon passing of the Act on Probation and Mediation Officers, the Ministry of Justice of the Slovak Republic launched a recruitment procedure for the job position of the probation and mediation officer (hereinafter referred to as the „PMO“) via district courts.

The PMO is a court staff member, they may inspect files, review the convict's compliance with the imposed measures, inquire into the family, social, job/professional background of the

offender, organise meetings between the offender and the victim, carry out mediations, draft agreements to be concluded between the offender and the victim. The PMO shall at the same time cooperate with governmental and non-governmental entities in addressing particular social issues of both the offender and the victim. The PMO may request the offender's employer and school to provide expert assessments of the offender. The job of the probation and mediation officer focuses on two domains – probation and mediation.³

3/ Probation

Probation shall be carried out by the PMO of the district court having local jurisdiction over the place of registered residence of the accused or of the convict subject to probation supervision.

☑ *How to perceive probation in criminal law?*

The word probation is derived from the Latin expression „probare“ – meaning to test, to verify / review (*an alternative preferred to a more severe form of punishment, or having a preventative nature, as applicable, aimed at minimising the consequences of criminal offences via targeted steps, protecting the society and creating room for the accused and for the convict to correct their unlawful conduct, focusing on supervision and review*). In the conditions of the Slovak Republic, probation in criminal proceedings may be defined as a certain form of supervision over the accused / the convict to eliminate reoffending, having a maintenance nature, i.e. to keep the offender in the society and to ensure a review of their compliance with the imposed duties and restrictions.

There are various definitions of the actual term probation, according to Inciardi⁴ „*probation is a conditional form of punishment imposing conditions for staying at liberty, and keeping the court's right to change the terms of punishment or to impose a new punishment, should the offender violate the conditions*“. According to the above author, the term probation is used to describe a status, a system and a process. Probation as a status refers to the unique nature of the conditionally released convict – they are neither a free citizen nor serving an unconditional sentence. Probation as a system refers to an organisational component of

³ 550/2003 Coll. on Probation and Mediation Officers.

⁴ INCIARDI, J.: Trestní spravedlnost. Ústavní principy trestního práva, trestního řádu a nápravné výchovy (Criminal Justice. Constitutional Principles of Criminal Law, Criminal Procedure Code and Restorative Education). p. 669.

administration of justice as represented by the body or organisation exercising oversight over probation. As a process, probation refers to a set of functions, activities and services, such as reporting to courts, supervision over conditionally released convicts and service provision.⁵

☑ *Probation may be divided into:*

- a) Activities in the pre-trial procedure, prior to a court decision;
- b) Activities after the court / prosecutor's office decision (parole).

There is no separate and unequivocal definition of the probation service. In its Manual for Probation Services and in the Guidelines for Probation Managers, Rome – London 1989, the United Nations Interregional Crime & Justice Research Institute („UNICRI“) defines probation as: **„an action by the court, whereby the offender shall be convicted for a term of control and supervision in the society“**. It may therefore be concluded that what falls within probation activities depends to a large degree on the nature and structure of criminal codes. On a general level, probation may be perceived as an action by the court or by the prosecutor's office, where the offender is accused or convicted for a term of control and supervision in the society.

Such definition of probation delivers **three basic areas** relevant for the application practice:

☑ ***The first area includes the „mandate“*** of the probation and mediation officer whereunder they may carry out probation. The mandate shall be established by a competent and decision-making body that issued the mandate in the form of a **„resolution“** or **„judgment“** ensuring it is clear and unambiguous for both the probation officer and for the accused or the convict, as applicable. This process involves clarification of the probation officer's position, where the probation officer shall explain to (instruct) the accused (convict) what they can expect and what not. This part is important from the viewpoint of position clarification of the accused (convict) and helps both parties to establish a professional relation during probation, which may *last up to 5 years for instance in case of conditional suspension of the prison sentence with probation supervision*, and up to 10 years in case of prohibition of participation in public events. During this time, the probation officer has a mandate to draw up a probation programme including, besides others, cooperation with social security

⁵ INCIARDI, J. : Trestní spravedlnost. Ústavní principy trestního práva, trestního řádu a nápravné výchovy. (Criminal Justice. Constitutional Principles of Criminal Law, Criminal Procedure Code and Restorative Education). p. 669.

institutions that should participate for instance in searching for a suitable job for the accused (convict), mediate requalification to acquire new job skills, be helpful in arranging pension benefits, etc.

☑ ***The probation programme may also include*** the application of imposed duties and restrictions as part of the short-term and long-term objective. The mandate in this sense means having a certain ***power / control*** over the accused (convict), consisting of drawing up reports for the prosecutor or for the judge, which may have a significant impact on the subsequent course of probation. The actual report may be positive if the accused (convict) did well in the probation. Besides the above, its content may include a proposal to reduce the probation measures. In case of negative information on the accused (convict), the probation officer shall draw up a report in the form of a proposal to turn the conditional sentence into unconditional prison sentence, or a proposal to extend the probation measures, the imposed duties and restrictions, etc.

☑ ***The second area is specific in being focused on control and supervision***, as the primary assignment of the probation and mediation officer. Thus, in terms of this process, the probation and mediation officer shall supervise the accused (convict) to ensure they accept the duties and restrictions imposed by the „resolution“ or by the „judgment“. The term ***„supervision“*** in this process shall, under the Tokyo Rules, refer to *„reducing reoffending and assisting the offender’s integration into society in a way which minimises the likelihood of a return to crime“* (Annex 10.1).⁶ In terms of this area, the probation and mediation officer should be able to distinguish the terms ***„supervision“*** and ***„control“***.

In the European Recommendations for Community Sanctions and Measures, the term ***„supervision“*** differs from the term ***„control“***. The term ***„supervision“*** refers both to assistance activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in the society and to actions taken to ensure that the offender fulfils any conditions or obligations imposed.⁷

⁶ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) (General Assembly Resolution 45/110, 14 December 1990)

⁷ Council of Europe Recommendation no. R(92)16 on the European Rules on Community Sanctions and Measures (Committee of Ministers, 19 October 1992)

☑ ***In the course of „control“***, the probation and mediation officer above all ascertains whether the accused (convict) complies with the imposed duties and restrictions, or participates in their application, as the case may be. For instance there may be a case of an imposed duty involving the order to participate in a social training programme or another educational programme with the assistance of the probation and mediation officer or another professional, etc. In case of non-compliance, besides other measures, the probation and mediation officer, shall notify the accused (convict) in writing in the form of an „official record“ of the possible consequences of repeated non-compliance with the imposed duties and restrictions. This part of probation may be considered demanding, as it involves a process where the accused (convict) should not remain passive, but should be active from several aspects. Another and important part of probation is searching for resources to meet the basic life needs of the accused (convict), to find employment (temporary job), to secure a source of subsistence. The probation and mediation officer should positively steer the accused (convict) towards fulfilment of the various goals under the probation programme to improve the quality of their life in the society and their family life. **Motivation** (ongoing) is an important and legitimate feature of these activities, as it is needed to make the accused (convict) satisfied and it helps to cope both with life situations as well as with the imposed duties and restrictions during the probation supervision.

☑ ***Referring to the above***, we could seek a certain kind of balance between **taking care** of the offender and **controlling** the offender, as the probation and mediation officer has to deal with this issue in their day-to-day job. In the „Manual for Probation Services“ and in the „Guidelines for Probation Professionals and Managers, Rome – London 1998, p.130“, this area is presented as most challenging, as the probation officers face a conflict situation when executing these tasks. **„What virtually matters is the scope of view of probation, whether to perceive it as organisation of social work or as a supervision and control tool.“** _This issue is elaborated on in more detail in the UN document, in the Commentaries on the UN Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), New York 1993, where it is stated, besides others, that on the one hand supervision has a control function to prevent the offender from reoffending. On the other hand, supervision has a social and assistance function helping the offender to integrate into the society. These objectives of supervision are reflected in two cases. **The more control-oriented approach** focuses on the offender’s responsibility towards the society. The second, **more assistance-oriented approach**

focuses on coping with challenges that could lead to another offence, as well as on working with the victim and with the injured party. In exercising probation supervision, the probation and mediation officer should bring balance between these approaches to alleviate the „*tension*“ arising between taking care of the accused (convict) and controlling compliance with the imposed duties and restrictions. It is above all the area of providing social support to the accused (convict) that should be more focused on cooperating with the social curator, the social worker, charities, civic associations, etc. In my subjective view and according to my personal experience, such more flexible cooperation could also work with the use of certain mentors. These would be helpful to the accused (convict) for instance in case of conditional suspension of prison sentence (parole), where the court ordered probation supervision and imposed duties to find employment, to pay the child maintenance in arrears, or to pay damages to the victim (injured party), as applicable, etc.

☑ ***The third area of probation includes the place of its execution***, where the probation measures or the imposed duties and restrictions, as applicable, are executed. As a matter of fact, the probation activities are only carried out in case of the accused (convict) that is subject to probation supervision at liberty under a conditional or alternative punishment. For instance, for compulsory work sentence, the place of execution can be a town, a municipality, a legal entity engaging in education, charity, etc.

☑ ***What are the benefits of probation and alternative forms of punishment?***

- The convict, the accused becomes active in rectifying the damage/injury caused to the victim;
- Allows working with the victim / the injured party;
- Active approach towards compliance with the imposed duties and restrictions;
- The accused does not lose their job, (societal interest);
- Lower government costs of serving the sentence;
- Sentence carried out at liberty;
- Family and social ties remain untouched;
- Room for redress, compensation of damage;
- Prevention in terms of the imposed duties and restrictions;
- Erasure of the punishment upon compliance, clean criminal record (e.g. home arrest sentence, compulsory work sentence...);),
- Ability of immediate integration with the society upon conviction, etc.

☑ ***Probation methods and approaches***

We know that the primary function of the probation and mediation officer in the probation process is to supervise and control the accused (convicts) with regard to their compliance with the imposed duties and restrictions. To achieve this main goal of supervision and control in empirical practice, it is necessary to discuss the manner of application of these methods and approaches. Dedicated literature as well as the working document drafted by experts from Belgium refers to the way of achieving the main goal of supervision, what to do to possibly reduce the risk of recidivism, what steps to take in connection with integration of the offender into the society. To achieve the desired aim, the probation and mediation officer needs a basic methodological framework or a code of ethics. It is further stated that the probation practice remains diverse. Probation officers across Europe use various methods and approaches that they follow in their practice with various offenders. This implies the use of several methods combined rather than the use of a single specific method that would dominate in practice. Probation officers tend to act with differing and often also specific approaches to the methods.⁸ Such presentation is identical in certain aspects in the Slovakian conditions, provided that in some cases it would be more appropriate for the social support work to be addressed by experts such as the social curator, social worker, mentor, etc. within their professional and institutional arrangements. The general principles applied by the probation and mediation officer in empirical practice may include: *tailored approach, targeted expression of emotions; control of emotional involvement; unbiased approach; principle of self-determination of the accused (convict); confidentiality (non-disclosure obligation) to ensure protection of information considered confidential by the accused (convict) and which is an ethical obligation of the probation and mediation officer;*

4/ Mediation and Saturation of Victims' Needs

The profession of a civil mediator and of the probation and mediation officer was established in Slovakia in response to the need to resolve conflict situations in an out-of-court manner. What we see at present is an increased interest in out-of-court conflict resolutions. These are situations that concern us either directly or marginally, to which we can also be direct parties. Therefore we look for possible solutions, alternatives to saturate individual needs, interests,

⁸ The United Nations Interregional Crime & Justice Research Institute (« UNICRI»), in its Manual for Probation Services and in the Guidelines for Probation Managers, Rome – London 1989, p. 54.

opinions, attitudes, or to compensate pecuniary or non-pecuniary damage from the viewpoint of conflict and law. More than ten years of experience in conflict resolution via mediation led us to the need to answer questions either directly or marginally related to this issue. The current knowledge of mediation in the conditions of the Slovak Republic is mostly presented by the expert public from the viewpoint of its legal focus, i.e. via civil and criminal law. The general public perceives mediation as a whole, not splitting it into legal segments, but rather accepting it as a multi-functional conflict (dispute) resolution tool.

Case study from practice:

§ Bodily harm (description of the offence)

Mr. Peter lives in a common household in a detached house with his daughter Eva, who is divorced, has three children, the oldest is 8 years of age. The wife of Mr. Peter and mother of the daughter Eva died of cancer three years ago. It is very difficult for the family to come to terms with this loss of the wife and the mother. One day, after she opened the fridge, Eva found that the groceries she bought yesterday and put into the fridge are gone and she has nothing to give to her three children for breakfast. She turned to her father who was smoking a cigarette in the garden, asking whether he had eaten those yoghurts and drank the milk from the fridge. He said he did so. In that moment the daughter started swearing at her father in a vulgar way, who physically attacked her, he hit Eva with his hand in her face, breaking her nose and as she was falling to the ground, she also broke her wrist. These injuries necessitated 21 days of treatment, a forensic expert assessed the injuries and determined the payment to compensate the bodily harm in the amount of EUR 986.-. The father Peter was prosecuted for the minor offence of inflicting bodily harm. The prosecutor referred the criminal matter to the district court, to the probation and mediation officer, to approach the accused and the victim to try and possibly resolve the offence of bodily harm via mediation.

? Evaluation – conflict perception from the viewpoint of the general and expert public:

We may ask the question how we see the conflict, what should we address in connection with mediation. In a case presented as above, we agree that the objective should be the payment of damages in the amount of EUR 986.- as appraised by the forensic expert.

? How did mediation proceed in this case?

Upon having read the criminal file, the probation and mediation officer (hereinafter referred to as the „mediator“) decided to hold the first meeting with the parties to the mediation in an indirect way. The reason was that the mediator was not familiar with the current state of the conflict, and he wanted to prevent the undesirable escalation of tension that persisted between the accused Peter and his daughter Eva.

The mediator summoned the injured Eva as the first party to ascertain the current state of the conflict, should the situation perhaps be settled with regard to payment of damages, what were the requirements of Eva with regard to the accused Peter, her father, etc.

The injured Eva appeared at the meeting with the mediator in time, her behaviour and conduct was rather tense, she did not keep eye contact with the mediator, she was mostly looking to the ground, she only sat on the edge of the chair as if she was just about to leave, and she kept pressing the fingers on her hand, etc. Such non-verbal and verbal communication was not in line with what the injured initially presented in relation to the offence that happened, in particular when she was asked to comment on the damages, on her requirements against her father Peter. She only plainly said during the talk that she did not want anything, that she would undersign everything that the mediator presented, that she just wanted this case to be over.

The eruditeness and ability of the mediator to read the verbal and non-verbal signals shown by the victim of the criminal offence was a basis for the mediator to apply any possible theoretical as well as practical experience relating to working with crime victims. The mediator was applying the eclecticism method in the various stages of mediation. Following the application of appropriate communication techniques, the victim Eva started talking more about the entire situation. She told, besides others, that her father had only been drinking for two years already after he lost his job, that when drunk, he kept threatening to throw her out with the children to the street, etc. Eva's financial situation is very bad, she only receives the parental benefit, her husband is not paying maintenance for the children, she also filed a criminal notice on him. Those yoghurts that her father Peter ate and the milk he drank was the only food that she had for her children for the entire day. The social allowance should only arrive next day, and her husband once again failed to pay the child maintenance. She commented on her behaviour against her father Peter that she was desperate when she saw the empty fridge and in the room next door three children were crying as they were hungry and wanted to eat. This was the reason why she approached her father Peter in a vulgar way,

and she added in one breath that as long as her father does not drink, he is a very good man and that then both she and her children liked him.

The mediator summoned the accused Peter as the second party to the mediation. Peter's conduct during the first contact may be assessed as conduct of a person who feels to be innocent. The accused Peter had a different perception of his conduct. He got annoyed that he is prosecuted for slapping his daughter in the face, how come, it was his daughter whom he slapped, not a third party, etc. Following the application of various mediation and communication techniques, the accused relaxed and switched from his offensive attitude that he had towards his daughter and towards the judicial system to appropriate communication. He said, besides others, that he had been unemployed for a long time, that he used to work as a driver for his entire life, he was not able to cope with the situation after his wife's death, and he started to drink. He did not have money, he was only receiving social allowance, and would find a temporary job from time to time, where he earned some money. As for the monetary compensation for bodily harm, he said that he had no money to pay the compensation for bodily harm in the amount of EUR 986.- to his daughter Eva. (It shall be added that the accused is prosecuted for the first time.)

This case study shall be interrupted from the viewpoint of presenting mediation, we shall continue after we have looked in more detail at the different areas relevant for the mediator from several aspects.

We consider it to be dangerous and risky if the mediator, without subsequent specific knowledge, drafted an agreement in the form as suggested by the victim, so that she can forget about the case and so that the criminal procedure is terminated.

Questions to review the current state:

- ? Is it important that the mediator is an expert and masters the methods and techniques of his profession?
- ? Can we talk about saturation of the victims' needs in such case?
- ? Is this not rather a resignation of the victim, which has nothing in common with mediation and with the restorative principle?
- ? Is it ethical to terminate such mediation?
- ? Is there a threat that the offence would be repeated (risk of recidivism) if the mediator has a superficial approach?

*To focus on the main objective of this article in the most efficient way, we consider it essential to have sufficient knowledge in communication, conflicts and mediation as such. We consider communication to be a necessary means of passing on and receiving news, expression of our feelings, emotions, needs, etc. We use it as a method of social interaction between the client and the mediator, as well as in other professions. We consider the familiarity with the specifics of verbal and non-verbal communication skills a necessary component of what the mediator should master if their job description is conflict and dispute resolution. The Association of Slovak Mediators describes the mediator as an important entity in mediation, who facilitates the dispute resolution between the parties as a qualified expert in *communication* and dispute resolution. This example also confirms that the field of communication is a necessary competence of any professional who should be able to read and distinguish various signals of verbal and non-verbal communication to then be able to address the conflict area in a more efficient way.*

If we think about the term conflict and reflect on whether we have experienced it at some point in the past, a probable answer will be that each of us had experienced some conflict in every phase of our lives, be it during childhood with another child (peer conflict) or with parents, when our behaviour was not in line with their expectations, etc. Nor can we avoid the word conflict as adult individuals, it is only up to us, up to our skills, capacities and interest whether we want to resolve the conflict and in what way. A common lay approach has its justification, as in such approach we mostly apply the behaviour patterns assumed from our parents, people we know, as well as acquired in the course of our lives. In the preface to his book „Konflikty medzi ľidmi“ („Conflicts among People“), Křivohlavý describes how much right his friend was when he told him that a person’s life actually is a continuous series of conflicts. If two people are unable to agree, where the relationships are disrupted to such extent that mutual communication is impossible (dangerous), there we see room, option for third-party involvement represented by an independent and impartial mediator.⁹

☑ **The term conflict** usually connotes something negative to us, something we try to avoid in common life situations, not to elicit such conflict behaviour by our behaviour, not to become a party to the conflict, but there are also opposite situations. It may be stated in this regard that this is personal knowledge that can also involve common interpersonal relations

⁹ KŘIVOHLAVÝ, J. 2002. *Konflikty medzi ľidmi. (Conflicts between People)*. 2. ed. Portál. 2002. 192 pp ISBN 80-7178-642-X

that generate conflict situations. From this viewpoint and lifestyle, these can be conflicts of social and financial, social and cultural, social and political differences, as well as conflicts of marginalised groups with the majority population, conflicts of the employer and the employee, etc. There is a whole range of possible sources of conflicts originating in everyday life as an interaction of differing ideas, opinions, attitudes and interests. They are mostly presented by at least two differing, mutually excluding options, they usually are of antagonistic nature. A mediator should also master these aspects of a conflict. In the following section, we shall take a closer look at this area in connection with crime and the restorative principle.

☑ **Basic principles governing the use of restorative justice programmes in criminal matters.**

To strengthen the legal position of criminal mediation, the already *4th Seminar to Facilitate and Enhance Judicial Capacities in Criminal Matters* was held on 26th-27th November 2008 in Omšenie (Slovak Republic). The project was recorded under number SK/06/IB/JH/02/TL, where Belgian experts such as Hans DOMINICUS – Federal Ministry of Justice of Belgium, Michaël DANTINNE – Liège University, criminology professor, Denis VAN DOOSSELAERE – Liège University, psychologist and criminologist, lecturer of the Faculty of Psychology and of the Criminology Institute, and Leo MULLENDER - Federal Ministry of Justice of Belgium, solicitor, head of the project on behalf of the Belgian side, agreed, besides others, on the definition of criminal mediation. They stated that „*mediation is an alternative and non-authoritative form of out-of-court dispute resolution between the accused and the victim, aimed at joint search for a mutually suitable and satisfactory solution that alleviates or reduces the currently existing conflict via mutual communication*“. (Seminar, 2008). Conclusions and recommendations for mediation were adopted via the final report relating to the conference at issue held on 17 July 2009, which was drawn up by the Ministry of Justice of the Slovak Republic and its partner representing a European Union Member State, the Federal Ministry of Justice of Belgium.

The alliance of non-governmental organisations operating at the UN in the field of crime prevention and criminal justice formulated a working definition of restorative justice and its possibilities in the following wording: „*Restorative justice is a process wherein all parties*

*involved in a certain crime meet for the purpose of a collective assessment of how to address the adverse consequences of the crime and its future consequences.*¹⁰

☑ Zeher¹¹ as the author of the book „*Úvod do Restoratívni justice*“ („*Introduction to Restorative Justice*“) and the founder of these ideas brings comprehensive and detailed information on the restorative principle from the viewpoint of restorative justice. We shall certainly not find any clear-cut and unambiguous answers therein, which we would expect, but it shall provide us with new insights, stimuli and experience in how we could administer justice. Zehr (2003, p. 8) concludes that: *„It is not the purpose of restorative justice to reduce recidivism. In an attempt to acquire recognition, restorative programmes are often presented and evaluated as a means of reducing recidivism. It may be stated that there are good grounds to think that restorative justice programmes do reduce recidivism. To date, research has delivered quite encouraging results, though it focused mainly on juvenile offenders. Although reducing recidivism is not the reason for existence of restorative programmes, it is just their side effect. Restorative justice is a right thing to do that has to be done right. We should deal with the victims and respond to their needs, the offenders should be involved in the process, not considering whether the offender grasps what this is about and whether we achieve a reduced rate of recidivism.”* Such view of conflict events and of the committed crime is specific, and therefore we cannot stipulate a single universal restorative programme or technique.

Continuation of the case study from practice:

§ Bodily harm (course of mediation meetings with the victim, with the offender, and conclusion)

The elements of the restorative principle were fully accepted and utilised by the mediator in terms of the mediation process. The conflict was perceived in broader relations, the mediator was able to decipher the expressions of communication presented by the victim Eva and by the offender Peter. What was an important factor was the signal of the victim, where she resigned at the beginning of the mediation. In this position, the mediator should try and

¹⁰ KARABEC, Z. et al. 2003. Probační a mediační služba v ČR. (Probation and Mediation Service in the Czech Republic) (manuscript)

¹¹ ZEHR, H. 2003. *Úvod do restoratívni justice. (Introduction to Restorative Justice)* Prague. 2003. Združenie pre probáciu a mediáciu v justícii (Association for Probation and Mediation in Justice).

respond to the actual needs of the victim, to ensure a permanent state of saturation of needs, and not just a temporary one. This state can only be achieved via appropriately worded open questions to stimulate the victim and to prevent them answering only yes or no. In addition to what is written in the minutes of the investigation file, the victim Eva described the entire atmosphere before, during and after the conflict in more detail. She agreed that at the next meeting the mediator could tell her needs and requirements presented during the interview, and she consented to a joint meeting with the offender Peter.

The victim Eva and the offender Peter met at the second meeting, where the mediator rephrased the information for them that he received from them during individual meetings. Then he presented a recap of the known state, and the parties to the mediation commented on it. The individual positions of the victim and of the offender were respected each, they did not interrupt each other, they took notes while the other was speaking, to be able to subsequently respond to what was said. Their communication always took place via the mediator. The individual stages of the mediation proceeded in this way until the moment when the parties were able and willing to communicate with each other. As the communication between the offender and the victim was bad, they learned the following about each other during the mediation:

The victim Eva *learned that her father had a very difficult time coping with the death of his wife. In turn, he was dismissed from his job, he was used to take care of the family financially, but when he failed to do so, he started drinking. She also learned that her father Peter wanted to commit suicide after a year of his unsuccessful search for a job, but a coincidental hiker saved his life. He perceived his inability to find a job and take care of the family as his personal failure.*

The offender Peter *learned during the mediation that his daughter was divorced, that it was not true what she was saying that her husband worked abroad. Moreover, Peter learned for the first time during the mediation what were the circumstances when his daughter swore at him - that he ate the only food she had put aside for the children in the fridge. He did not know either that Eva's husband was not paying maintenance for three children to her, stipulated by the court in the amount of EUR 430.-. He responded very positively to the requirement of the victim Eva to undergo a therapeutic stay to treat alcohol addiction. He added on this note that he needed help in this regard, but did not find enough courage himself*

to undergo the treatment. He is happy that the daughter still likes him, and he will do everything for her and for his grandchildren to keep them happy.

Mediation conclusion:

The outcome of the mediation was a written agreement between the victim Eva and the offender Peter, whereunder the victim did not require the damages in the amount of EUR 986.-, as she knew her father did not have money. In order to saturate her needs, the victim required the offender (father) Peter to undergo an institutional alcohol addiction therapy. Thus, the mediation was focused on the future. According to the victim Eva, her father is a very self-sacrificing and good man, unless he drinks. The requirement of the victim was worded in the agreement that she found it sufficient as a compensation of the damage that the accused (father) Peter underwent an institutional alcohol addiction therapy. The mediation at hand was concluded by conditional suspension of the prosecution with a trial period of 12 months. Before drawing up the final report on the accused Peter upon at the end of the trial period, the victim was summoned as well to comment on the current state, whether Peter accepted the requirement, whether he drank alcohol, or whether situations involving him causing her bodily harm were repeated. The victim stated that she was very glad that the outcome of the mediation was a conditional suspension of prosecution, the father underwent the institutional therapy, she was visiting him there with her children. Her father Peter was abstaining from alcohol now, he found a job, he works as a driver at a motorway construction site. The family relations improved, their communication is even better than prior to the offence.

The accused Peter, who presented documents on having completed the institutional therapy, was also present during drawing up of the final report. He told he was proud of his daughter that she helped him and that the quality of his life was now much better, he now enjoyed life.

This case study suggested one of the options how mediation can proceed, if there is an erudite mediator using the elements of the restorative principle in his work from the viewpoint of saturation of the victims' needs. The saturation does not always have to necessarily involve just pecuniary damages, there are many options, there is just a need to correctly set them and apply them in daily practice. For this purpose, the next part shall also discuss the principles of restorativeness that have a justified place in the mediation process.

☑ ***The actual direction towards restoration can also be seen via the following principles and values:***

- a) **Respect** – is one of the key values expressed both towards the person of the victim (the injured party) and towards other affected persons, as well as towards the offender.
- b) **Liability** – in this case, the offender of the crime assumes liability for the (non-)pecuniary damage incurred and the restorative process facilitates his motivation to restore the disrupted relationships.
- c) **Dialogue** – all restorative justice programmes and techniques are primarily based on various forms of dialogue between the parties to the conflict that arose between the victim and the offender or the community.
- d) **Participation** – restorative justice strives primarily to involve all parties to the crime, and/or their representatives in conflict resolution. The actual resolution of the conflict – event is in the hands of those affected by it, and not in the hands of a formal authority.
- e) **Balance** – achieving balance in the community may be included among the priorities of restorative justice. It actually involves striking a balance between the interests of the stakeholders and searching for a solution acceptable for the stakeholders.
- f) **Voluntarism** – the meaning from the viewpoint of restorative justice is that participation of the stakeholders in a „crime“ conflict resolution is always based on voluntarism, i.e. they cannot be forced to such involvement by any authority.
- g) **Community (involvement)** – the objective of restorative justice always is to involve the members of the community where the victim and the offender live. In this regard, the crime is not perceived as a separated and isolated act that should only be a private matter of the parties to the crime.
- h) **Individuality** – this refers to respecting the uniqueness of every person, which is always balanced in relation to the community from the viewpoint of restorative justice.

☑ The **definition** of the „*restorative principle*“ is in our opinion also determined by empirical practice and many years of experience, as also presented by the experts from Belgium (seminar, 2008), who state the following: „*Our several years of experience with*

*mediation gradually led us to word a draft definition. Restoration is not an identical term with getting back to the starting point.. Restoration is something else than **repair**, return to the situation prior to the crime. In this sense, crimes are actually irreparable. They leave traces, luckily not equally dramatic, however, something still changes in life. It is unfortunate when a person does not understand that this will not change even if the victim turns into an offender. Restoration cannot be reduced to pecuniary damages. In our experience, this approach results in the victim feeling sold, as if their suffering and humiliation was simply expressed as a certain monetary amount usually stipulated by external criteria. When the parties to the crime request restoration, they are expressing the need for a change of their attitudes towards the crime and its consequences, a change in incorporating the resulting experience into their lives.” These ideas are elaborated on in more detail in Van Garsse, L. (2001) „Op zoek naar herstelrecht. Overwegingen na jaren bemiddelingswer.“*

We also described mediation as a communication process with more or less unforeseeable content and outcome, however, this does not mean it is a process without any orientation. The definition of restorative mediation describes that mediation shall be focused on the conditions inducing settlement, i.e. “restoration”. Social interest can be easily revealed in the word “settlement” as well.

When the parties to the crime request “restoration”, they are expressing the need for a change of their attitudes towards the crime and its consequences, a change in incorporating the resulting experiences into their lives.¹²

☑ ***We wish to refer to the experience of the Belgian experts (2008) as an example***, who present restoration via several characteristics that should meet at least the following requirements:

- a) A clear, feasible objective to be attained, a subjective meaningful process.
- b) This process is relatively unforeseeable as for its duration, its content and depth.
- c) Neither the severity of the crime, nor the amount of pecuniary damage incurred are decisive indicators for inclusion of the case into the process. Many times, trivial physical attacks cover up a major personality issue concerning the ability to adapt,

¹² Seminar held in Omšenie, Slovak Republic, 2008.

whereas some very severe crimes are easy to discuss from the viewpoint of criminal law.

- d) As the process is unforeseeable, restoration cannot be speeded up or organised to attain a pre-agreed objective. The stakeholders will either accept the invitation for a meeting, or not.
- e) It is peculiar that restoration is requested simultaneously both by the victim as well as by the offender. The offender often tries to justify the attack and its consequences, to explain their past and its impact on their personality.
- f) Probably the most empowering element of the positive approach of the entire process are the signals of showing respect for the other person. We definitely don't exaggerate if we claim that showing regard (respect) is the essential driver of everything that happens in the restoration process.

Thus, the main task of the mediator is to create an environment of safety and respect for the stakeholders and to ensure that this feeling is also transferred to the relationships between the parties, thus helping to alleviate their tension and their defensive attitude. We can actually conclude that showing of mutual respect between the stakeholders (or their community) in concrete mediation situations results in unexpected turns in thinking. These are the moments referred to as „healing“ and liberation. Unfortunately, this cannot be organised, all that can be done is to create favourable conditions for the course of this mediation process.¹³

☑ ***One of the important aspects is also voluntarism***, while it may seem at the first glance that voluntary participation in mediation is self-evident. Mandatory participation would not only force authenticity out of mutual communication, but it would also infringe the legal right of the parties. This is clear with regard to the victim. And moreover, mandatory participation could result in secondary victimisation (we don't want to let the victim live through the adverse reality of the crime once again). From the offender's viewpoint, forced participation would be outside of the legal framework. If we really want to achieve their honest, genuine remorse, we can hardly get it by force. Therefore, according to international as well as national guidelines, mediators are expected to thoroughly inform their clients about the nature of the invitation to take part in mediation, as well as about the right to reject this

¹³ Methodology developed by Belgian mediation experts. 2008.

offer at the beginning or at any stage of the process. (Council of Europe Recommendation no. (99) 19)

Lawmakers as well as practitioners should ask the question whether an „*alternative choice*“ is really a choice. And balance is again at stake, depending on the context of the crime and on the need of the social environment; sometimes, a certain (moral) pressure on the stakeholders is unavoidable. If sometimes mediation is an open or masked part of the sentence or of imposed conditions, we are barking up the wrong tree. ***If participation is not genuinely voluntary, mediation will only become a tool for punishment or moralising of persons.*** As the „*perceived freedom of participation*“ is rather a subjective matter, mediators should verify with their clients in each single case, whether they don't just seek an advantage, but rather a genuine option to participate or not.

☑ ***Another clear principle directly linked to the definition of restorative mediation in the criminal procedure is confidentiality of information*** (observation of the non-disclosure obligation). This is discussed in the „general principles“ of the Council of Europe Recommendations. In our conditions, this principle also found implementation in Act no. 550/2003 Coll. on Probation and Mediation Officers.

Dolanská states the following on this issue: „*Pursuant to the Act on Probation and Mediation Officers, mediation shall refer to an out-of-court mediation of dispute resolution between the victim and the accused. Under the Act, mediation is understood as a specific non-procedural method of addressing the criminal matter, matching the meaning of the restorative justice concept, in cases of those crimes that are the result of a conflict relation between the offender and the victim of a particular crime. Mediation between the victim and the accused is based on the general principles of mediation, however, its specifics are determined by the context of the criminal procedure as the background for its application. Thus, here, mediation is defined in a narrower sense than usually understood, as it is explicitly bound to connection with the criminal procedure. It is thus an activity carried out in connection with the criminal procedure and aimed at settling the conflict state elicited by the crime as well as at alleviation of damages and consequences of the committed crime.*“¹⁴

¹⁴ DOLANSKÁ, R. 2011. *Postavenie a etické aspekty činnosti probačného a mediačného úradníka (Position and Ethical Aspects of Work of the Probation and Mediation Officer)*. In *Restoratívna spravodlivosť ako výzva (Restorative Justice as a Challenge)*. Michančová S. (Ed.) Prešovská univerzita (Prešov University). p. 32 – 41. 2011. 146 pp ISBN 978-80-555-0389-9

To round up the knowledge, we also state the opinion of Tony Marshall, who put emphasis on the important role of mediators in his 1996 article on restorative justice. The need to find a concrete solution to the issues they encountered in their day-to-day practice was more important to these professionals than theoretical knowledge. Looking back at the development of mediation, this really is the right direction. Mediation is above all inspired by practice and by the unceasing effort to understand the motives and needs of people.¹⁵

☑ ***Such insight and own empirical experience*** in restorative mediation, as well as the expertise passed on from the knowledge of other criminal mediators during trainings, can be presented in a way that:

- a) ***in restorative mediation*** it is difficult to predict the duration of the mediation process, the content and the final outcome, but above all, it is a subjective – personal, intimate and by its nature unique process;
- b) ***mediation in criminal law*** gets into an antagonistic position to the traditional notion of the criminal procedure comprising the qualities of objectivity, transparency, predictability and comparability.

A specific feature of criminal (restorative) mediation is the fact that criminal law is in an antagonistic position to criminal mediation.

☑ ***At a first glance, restorativeness and criminal law*** are presented as a closed system, based on rational criteria, aimed at reducing crime to a legal category followed by punishment. What we encounter in practice is a certain „*odd behaviour*“ of judges and prosecutors when assessing the extreme limits of the above mentioned rationality. One prefers morality, while others rather focus on the crime, on the expectations of stakeholders, on the wording of the judgment. What we find in the motivation of the pronounced judgment is a reflection of the (expected) perception of the victim, the (expected) wish and meeting of public opinion expectations. What is appearing in setting the sentence is an ever increasing and clear attempt to follow the ideas of particular persons seeking justice, when references are made to the relative severity of the crime, as well as to specific situational and personality traits of the offender, which come to light during the proceedings. And now we got far from

¹⁵ MARSHALL, T. F. 1996. *The evolution of Restorative Justice in Britain*. European Journal on Criminal Policy and Research. 1996. 4.4, 21-43

a direct, strictly rational application of law. We can justify this on the basis of principles of the actual judicial system. The basic principle of **legality** restricts the justification of the system to the small part of the society that creates the content of legal regulations in the strict sense of the word. It even restricts the scope and nature of what can be offered as an *ex offio* compensation. The **subsidiarity** principle stipulates punishment as a certain means of force of the society, means of protecting life, an ultimate means of correction. Both of the above principles lead us to the conclusion that criminal law is conceptually connected with self-restriction. It is clear that this system cannot be understood as a hermetically closed vessel or a closed decision-making system. Both of the above mentioned principles automatically result in generation of an “opposite”, the existence of a world escaping justice. **The legality principle** results in the need to direct and handle a variety of issues and conflicts that **are not** governed by any legal regulation. And this is even more true for the subsidiarity principle. If punishment, the exercise of societal pressure, is considered an „*ultimate correction*“, then the verification of this principle may only take place at the assumption of a large number of „such corrections“ in the given society. (Methodology, 2008).

☑ ***Mediation in Slovakia is only carried out subject to the consent of the victim and of the accused.*** If the accused is a young offender, the probation and mediation officer shall obtain consent with mediation from at least one legal guardian. Participation of all stakeholders in the mediation is voluntary.¹⁶

Mediation in the criminal procedure may be carried out on the proposal: of the legal guardian of the accused young offender, the accused, the victim, the investigating officer, the prosecutor, the presiding judge of the bench, the single judge, the attorney. The instruction to (consent with) mediation from the prosecutor, the presiding judge or single judge shall not be directed at the manner and outcome of the mediation.

☑ ***Mediation in the criminal procedure may have the following outcomes:***

- a) ***Conditional suspension of prosecution*** – in the procedure on a minor offence, for which the law stipulates a prison sentence of up to five years, the prosecutor may conditionally suspend the prosecution subject to consent of the accused upon pronouncement of the accusation until filing of the criminal charge upon proposal by a policeman and also without a proposal. *In this case the accused shall make a declaration that they committed*

¹⁶ Act no. 550/2003 Coll. on Probation and Mediation Officers.

the crime for which they are prosecuted, and there are no justified doubts that their declaration was made in a free, solemn and comprehensible manner. At the same time, the accused shall compensate the damage, if incurred due to the offence, or shall enter into an agreement with the victim concerning its compensation, or shall take other necessary steps to compensate it.

- b) **Settlement** – in the procedure on a minor offence, for which the law stipulates a prison sentence of up to five years, the prosecutor may decide on approval of settlement and suspend the prosecution subject to consent of the accused and of the victim.

If settlement is the outcome of mediation, the accused shall make a declaration that they committed the crime for which they are prosecuted, and there are no justified doubts that their declaration was made in a free, solemn and definite manner. The accused shall compensate the damage if incurred due to the offence, or shall take other steps to compensate the damage, or shall otherwise redress the damage incurred due to the crime, and shall deposit a monetary amount intended for a particular addressee for generally beneficial purposes to the account of the court or to the account of the prosecutor's office in the pre-trial procedure, unless such monetary amount is apparently inappropriate considering the severity of the committed crime and also considering the property situation of the accused.

☒ **Human dignity and its place in restorative justice**

The philosophy of restorative justice brings forward the ideas of submission and respect for human dignity as certain ethical challenges. In practice, in holding a mediation meeting, there is a continuum of reactions that can more or less come closer to the ideal state. Both the parties immediately affected by the crime as well as professional probation and mediation officers have to cope with inner uncertainty provoked by questions such as:

- ☐ *Is it mentally possible at all to separate the person from their deeds (to respect the offender while condemning the crime)? Or is this only a theoretical construct?*
- ☐ *What is the connection of responsibility for one's own deeds with human dignity and what practical consequences does it have?*
- ☐ *Are the parties really equal from the viewpoint of their human dignity?*
- ☐ *Does the assumption of equality bear some ethical risks? Can the assumption of equality favour one of the parties and harm the other?*
- ☐ *How to achieve that respect for the dignity of the offender does not cause an impression with the victim that the reality of the inflicted evil and injustice is belittled?*

- ❑ *Can we find a fair balance of interest in the needs of the offender and in the needs of the victim? Or do we prefer the needs of any party during mediation? Is it at all possible to maintain an attitude of impartiality and neutrality towards the parties?* (According to Dolanská, 2011).

The ethical principle of **impartiality** puts a duty on the mediator to maintain impartiality towards all parties. Impartiality means freedom from favouring (putting at an advantage) or bias, either in words or in actions. Impartiality includes the commitment to facilitate all parties (as opposed to a single individual) in achieving a mutually satisfactory agreement and/or a mutually satisfactory dialogue. Impartiality means that the mediator won't play the role of either the plaintiff or the defence lawyer. A mediator shall maintain impartiality and at the same time ask the parties questions necessary for them to consider the acceptability of the proposed solution options and of dialogue. Current impartiality of the mediator may be at risk for instance when they had any past social or professional relationships with any of the parties to the mediation. If the mediator provided professional services in the past to both parties, they shall not be allowed to continue in the mediation, unless this matter is discussed and unless both parties freely decide to continue in the mediation with the particular mediator. Current impartiality is also questionable if the mediator reacts in an emotional way on the parties (liking or antipathy) during the mediation. Ethical dilemmas are also elicited in mediators by the tension between impartiality and the temptation to suggest solutions or to direct the process towards achieving a fairer and just solution. It is also ethically challenging to handle the tension between maintaining a neutral attitude and provision of the necessary professional legal or therapeutic advice.

- ❑ *To what extent do we determine the needs of the victims and of the offenders? What needs are we willing to accept as justified?*
- ❑ *To what extent do the experiences of some parties take priority or impact the needs of other parties? Who shall decide about that? What are the implications?*
- ❑ *Can or should the effort to facilitate healing and to provide a symbolic reparation fully replace the punishment, revenge or prison?*¹⁷

¹⁷ DOLANSKÁ, R. 2011. *Postavenie a etické aspekty činnosti probačného a mediačného úradníka (Position and Ethical Aspects of Work of the Probation and Mediation Officer)*. In *Restoratívna spravodlivosť ako výzva (Restorative Justice as a Challenge)*. Michančová S. (Ed.) Prešovská univerzita (Prešov University). p. 32 – 41. 2011. 146 pp ISBN 978-80-555-0389-9.

We hope this viewpoint will also be helpful in better grasping the principle of restorativeness and the mediation process with emphasis on saturation of the victim's needs, which are not necessarily of financial nature only.

Glossary of terms used in mediation:

Mediation (from lat. *mediare* = to be in the middle) – is a task- and goal-oriented process. It is focused on the achievement of results, does not address the inner causes of conflicts. Besides the agreement itself as a primary objective, it also focuses on auxiliary objectives. Each stage of the mediation process has its objective achieved via fulfilment of particular tasks.

Mediator – helps two or more parties in a conflict to achieve consent (agreement). It is an alternative conflict resolution form, with concrete steps directed in favour of the parties to the conflict.

Conflict (from the viewpoint of mediation) – can be defined in various ways: in a softer definition, we perceive it as a disagreement with ideas, opinions or interests of (an)other person(s), in the less soft definition, we understand it as a fight, opposition and even hostility.

Facilitation – is an effective method of organising, chairing and handling a successful meeting or negotiation.

Facilitator – is responsible for the actual negotiation process, oversees the dynamics and efficiency of the session, comprehensibility for all parties and feasibility of the resulting solution. Impartiality of the facilitator is an important condition for the success and functionality of facilitation.

Conciliation – is an alternative conflict resolution method, where the parties to the conflict agree on the services of a **conciliator**, who meets them separately in order to resolve the divergences (conflicts) between them. A third party is responsible for the course of communication between them and facilitates the conciliation procedure.

Arbitration – this is an arbitration procedure where the arbitrator is not necessarily a lawyer. The parties to the dispute or their representatives present evidence and arguments to a neutral party (a person unbiased towards any of the parties), who decides on resolution of the dispute. The arbitrator's decision is binding. The arbitrator often „divides in halves“, they want to be

the same distance away or close to both parties, regardless of the parties' degree of contribution to the situation that arose. Arbitration is a dispute resolution remedy coming from the outside. Neither the authority nor the arbitrator is guided by our interests, but they decide according to the level of their knowledge, which the arbitrator can use to justify their decision if needed.

Restorative justice programme – is each programme that utilises restorative processes and is aimed at achieving restorative results.

Restorative process – is each process in which the victim and the offender, and any other individuals or community members affected by the crime, as applicable, mutually actively participate in addressing the matters following from the crime, usually assisted by a promoter. Restorative processes may include mediation, conferences and circles pronouncing judgments.

Restorative result – is an agreement reached as a result of the restorative process. Restorative results include answers and programmes such as reparation (compensation of damage), restitution and a publicly beneficial service, focused on meeting individual and collective needs and meeting of obligations of the parties, and achievement of re-integration of the victim and of the offender into the society.

Parties – include the victim, the offender and any other individuals or community members affected by the crime, who can participate in the restorative process.

Promoter – is the person responsible for just and impartial facilitation of the parties involvement in the restorative process.

Victim and the offender – in mediation, they usually have to agree on the basic facts of the case as a starting point for their participation in the restorative process. Participation of the offender shall not be used as evidence of pleading guilty in the subsequent court proceeding.

Differences leading to imbalance of powers – as well as cultural differences between the parties shall be taken into consideration in submitting the case to a restorative process and during the restorative process.