

Can restoration lead to better justice?

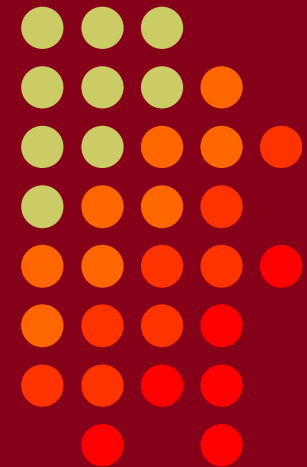
Attitudes of judges and prosecutors towards restorative justice in Hungary

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Background: State of RJ in Hungary



- **Legislation**
- **Institutional background**
- **Evaluation** (since 2007 8500 referrals (3000 cases/year), 80% agreement rate of which over 90% was fulfilled, 85% referred by prosecutors, difference between the counties: 7x)

[detailed overview by Fellegi, B., Torzs, E. and Velez, E. in Aertsen, I. and Miers, D. (eds.) (forthcoming), *Comparative Study of National Legislation of RJ*]

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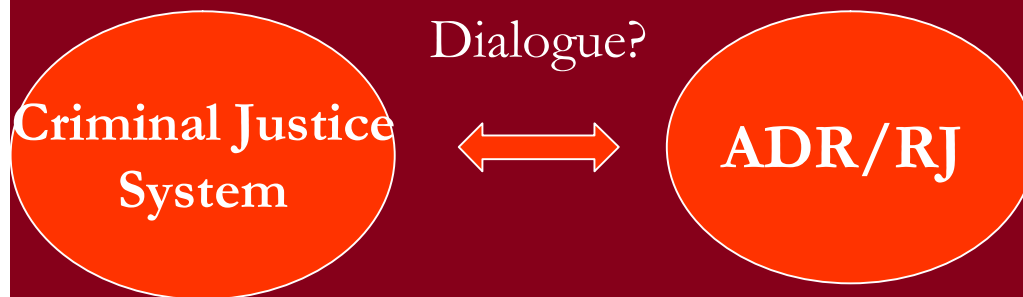
MY MOTIVATION



was to explore what the main concerns and motivations of judges and prosecutors concerning RJ are right before its implementation.

What do they think about their judicial role in general?

How can mediation fit into this context?

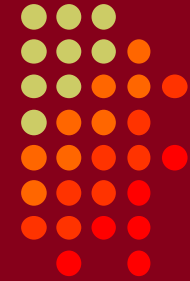




Who were these people?

- 44 professionals
- Profession: 62% prosecutors – 38% judges
- Specialisation: 30% juvenile – 70% adult offender
- Age: almost 90% is between 30 and 50
- Gender: 43% men – 57% women
- Location: Budapest: 30% - East: 25% - West: 45%

Views on the system



Justification and purpose of punishment

- **no individual definitions**

BF: - *How would you define the purpose of punishment?*

P: - The purpose of punishment? One does not think about it on a daily basis. One is doing it. He is doing it. Now that you are asking me, I realise I do not have an own definition. We are living in a system that is working by itself. Purpose of the punishment is defined in the Penal Code and we work according to it.” (Prosecutor: 27)

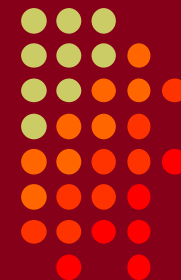
- **confusion between punishment and consequence**

P: - People want to see that if someone commits a crime, he gets a *punishment*. It cannot stay without *consequences*. Otherwise he doesn't understand either that his behaviour is unacceptable. You also need to educate with it. From the offender's point of you, it should prevent further crime. To make him feel, 'I cannot do it, otherwise it will result in these and those *consequences*..” (Prosecutor: 75)

- **controversy: punishment's goal is deterrence, although declared that punishment does not deter**

P: - We are just working and working, like a machinery. People get their punishment, each after each. But it does not reduce the number of crime at all, even imprisonment does hardly deter.”] (Prosecutor: 77)

J: - [the purpose of punishment is] to prevent from further crime. Although it is not the punishment that can deter. But on the other hand it should have a purpose ...”.] (Judge: 17)



What is effective in responding to crime?

- consequences are faced
- active responsibility taking
- ‘feel’ the effect of sentencing
- shortly after the crime
- shame feeling
- offender is encouraged to think
- feedback is given to the offender
- intensive control
- long term duration
- support
- consistency
- individualisation
- guarantees
- prevents from further crime
- stigmatises

*Think about the justice system
in your country.
Are these aspects represented in the
practice?*

Victims' needs in the court-room



- **Victim as a witness**

P: - From my point of you, it has no relevance how much the victim's damage is. It needs to be arranged with the insurance company. For me victims in traffic crimes are only those persons whose injuries last more than 8 days. A victim within 8 days is not a victim for me." (Prosecutor: 21)

- **No time for details** ("*Respond to the question, Miss!*")

- **Questioning the reliability of the victim**

- **If no cooperation with the authorities → punishment**

J: - What is quite effective (*in cooperation with witnesses*) when the victim gets an official letter that if she is not coming to the next trial, she will need to pay a 50 000 HUF (200 EUR) fine. Interestingly, they do present next time at the court... (Judge: 91)

- **The reconciliation-paradox: who are the 'good' victims for CJS and RJ?**

- 'the truth – justice dilemma'

J: - It is important to make sure the victim is not influenced during the procedure at all. Because if accusation is made, she will be an important witness in front of the court. It must be assured that the mediation process does not influence the victim's interrogation in any way...How to ensure that a mediation between victim and offender does not make the victim subjective, biased concerning the offender, when the case gets to the court? (Judge: 70)

Daily work I.

Risk of burn out: Overburdened professionals, routine, impersonality, paper-based subjects, no socialising effect on the offenders, delays in the procedure → no effect, no influence on the system



J: - Yes, the criminal procedure itself is not more than a harmful but necessary step...I have no illusions about it, that I will cure anyone. The maximum I can do is to prevent from further crime those people who recognise its significance. (Judge: 65)

P: - I see that after a while the colleagues totally burn out. They deal with the cases as papers. And this is not good. This is the reason why we tend to follow the simple ways. Lets him accuse and then something will happen. This is why they are afraid of new things. (Prosecutor: 88)

BF: - *Do you feel the chance that sometime you could influence the system?*

P: - Not really. We are those people that are told about their obligations. And all these reforms usually mean another extra task to do. Whatever we think, mediation will also be another new task for us. But we will accommodate. ..we will receive all the expectations (*guidelines*) from our authority (*High Prosecution Service*) that it needs to be done. And it will be done". (Prosecutor: 62)

Daily work II.

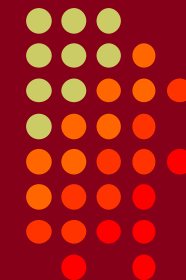


- **Isolation + hierarchical setting:** Segmentation, communication, influence, openness, training, leader's influence, 'lonely agent' operating

J: - The legislator treats the legal practitioner as the legal practitioner treats the client: similarly to a child, we protect, direct and punish the client when necessary. The legislator treats us in the same way. 'There is no trust.'
(Prosecutor: 96)

J: - As a result of this loneliness in the judicial work, it is normal that someone ends up thinking he is the smartest person in the world. This is quite unavoidable, since in the court room everyone shuts up (*no dialogue*).'' (Judge: 64)

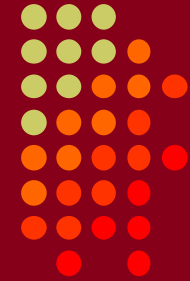
	Self-critical	The Pedagogue	The Philosopher	The Bureaucrat
Focus	„the self”	„the development of the personality ”	„the world”	„the process and the system”
Process vs. The Human	human	human	human	process
Aim of sanctioning	To help parties to closure the crime in themselves.	To reintegrate the offender.	To re-establish moral balance in the society.	To fulfill the legal obligations.
Attitude to VOM	Positive	Positive	Positive	Negative



Further variables:

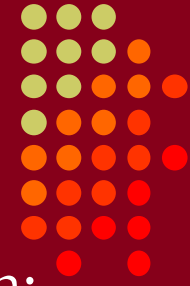
Micro/macro level, positive/negative approach to the world, emotions/rationality, individualisation/generalisation, self-critics, system-critics, self-confidence, belief in (making a) change, style, reason for sanctioning, belief in punishment

Attitudes towards mediation - Pros



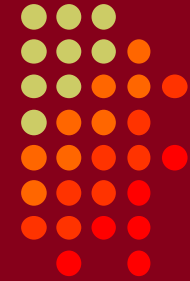
- Victims' needs
- Effective cooperation with parties
- Requirements towards effective sanctioning + emphasising the role of procedural elements: dialogue, informing, emotions, education, individualisation, personalised, humanised
- Happy to give out the decision power to the parties!
 - If procedural guarantees are assured
- Community sanctions
- A tool to make the CJS less rigid, to contribute to the paradigm-shift: from bureaucracy-orientation towards the victim-orientation
- Reducing stereotypes
- Trust in the probation system
- Special mission for mediation in case of juveniles

Attitudes towards mediation - Con(cern)s



- Fear of victims
- Projecting their negative attitudes to the parties (“they would not want”, “would not be genuine”), test question: “Would you accept to take part? Yes, of course!”
- Diversion = no consequence?
- Safeguards: fundamental rights are assured, no re-victimisation, genuine voluntariness
- Generalisation results scepticism
- Net-widening
- Difficult procedure, more administration, no clear guidance on applying discretion
- No trust in the civil society
- Institutional limitations (resources, infrastructure, training, routinisation, lack of awareness)
- Rich people: pays and goes?
- Lawyers as mediators?

Summary



- Importance of micro aspects (role of individual personalities, attitudes in decisions)
- Legislative constraints, bureaucratic obligations are more significant than individual views
- Different types (4) of legal practitioners
- Consequence is more important than pain
- While listing the requirements towards an ‘ideal’ CJS → mentioning the components of RJ
- No problem with giving out the decision to the parties
- Above all: they are human beings wishing for positive feedback from their environment

Instead of conclusions.....



What do we expect from a client?

- security
- self-esteem
- responsibility-taking;
- honesty
- articulation of own ne
- trust
- taking care of others
- recognising, listening
- understanding the other side
- cooperation, partnership
- giving and requesting feedback
- ability to self-criticism
- giving another chance
- communication skills
- win-win outcome
- l trust towards an
- iator
- the principles
- supporting others in making amends

Do we represent these principles in our daily work with each other?



**THANK YOU
FOR YOUR ATTENTION!**

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