

Communication as a Tool of Crime Prevention and Effective Justice

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ABSTRACT

Experiencing a crime has serious negative effects. Participation in the criminal proceedings, appearing as a witness of the victim, answering questions from the authorities is a serious psychological burden and involves reliving the events. If the victim is unable to process the trauma of suffering a crime, if he is not able to get answers to his questions, these will have negative consequences that affect his or her life. Because of our belief in the justice of the world and our insistence on our right to decide over our own lives, the victims do not understand why they have ended up in this situation. However, in the formal procedure there is no way – as this is not its function – to get answers to the questions burning in them. However, alternative techniques – such as mediation used in various mediation procedures or during diversion – can provide an opportunity to lay down psychological burdens and close the case.

However, the chapter not only takes into account the psychological characteristics of the victim situation and shows the positive effect of mediated communication with the perpetrator, but also discusses why these solutions can effectively help prevent re-breaking norms.

KEYWORDS

victim, offender, well-being, mediation, communication, crime prevention

1. Introduction – Diversion and Crime Prevention

The most serious attack on social norms is when the specific conflict provokes a reaction from those involved that is contrary to criminal law. At the same time, committing a crime in itself generates a myriad of direct and indirect conflict situations, thus undermining individual and social well-being. We are convinced that alternative conflict management techniques, especially mediation, can prevent or mitigate these negative consequences.

In criminal proceedings, the child, i.e. the person under the age of 18, may appear as a perpetrator, as a victim or as a witness. However, in the context of mediation, and

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in particular mediation, the position of a perpetrator or a victim may be particularly important (provided, of course, that the age, maturity and legal criteria are met).

In countries with decades of experience with, for example, various diversion options, such as mediation, out-of-court settlements¹ or victim-offender agreements², it has been long known that these are more effective in preventing recidivism and in helping the victim to heal than other responses available under criminal law.

For example, in Austria, following the introduction of out-of-court settlements in 1989, it was already true by the second half of the 1990s that around two thirds of all prosecutions of juvenile offenders were ended by informal diversion³. 87.6% of the prosecution of juveniles who had committed a conflict-resolving offence (e.g. assault, etc.) and 71.7% of those of adults concluded with out-of-court reparation. The follow-up studies⁴ clearly showed that the long-term impact was more than the application of a criminal law instrument for both parties. For example, 75% (!) of those involved in out-of-court reconciliation (accused, victim)⁵ were fully satisfied with the procedure and only 5% were dissatisfied.

2. Crime Prevention Attitude of Mediation – Focusing on the Perpetrator

In the case of juveniles who can be held criminally liable, criminal substantive and procedural law is also guided by the principle of distinctive treatment, keeping in mind the special prevention goal, the solution being education. In addition to the classic forms of punishment of criminal law, alternative sanctions and various legal institutions aimed at diversion are even more suitable for achieving the goal of (re) integration, while at the same time enforcing the educational effect more effectively⁶.

Referring to the former case, during mediation the victim becomes a living person for the young person from an “impersonal concept”, a character full of names, feelings, pain and suffering. All the experiences that arise from meeting the victim and the fact that the perpetrator understands the negative effects caused to the victim and unintentionally experiences the emotional outbursts caused by his/her actions can no longer be neutralised by the usual techniques. The experiences of mediation are so

1 „Außergerichtlicher Tatausgleich“ (ATA) – It is a mediation-like form of out-of-court redress operating in Austria, which has been part of the criminal law of juveniles since 1989 (pilot projects have been carried out in this regard since 1985).

2 „Täter-Opfer-Ausgleich“ (TOA) –The procedure with elements of mediation is known in Germany, which first appeared in the juvenile criminal justice system in 1990 after previous model experiments.

3 Csemáné Váradi, 2002, pp. 9–16.

4 For example, the two-year follow-up survey of perpetrators and victims involved in extra-judicial compromise at the Linz Mediation Service in 1996. The research and its results will be presented by Josef Lins, Professor at the Institute of Sociology at the Johannes Kepler Universität Linz. Lins, 1998.

5 The data was provided by 82% of the perpetrators and 65% of the victims.

6 See this in more detail: Csemáné Váradi, 2013, pp. 31–32.

strongly fixed in the young person that in the event of the possibility of a subsequent crime, they cannot be easily swept aside in the deliberation process preceding the act, and in a significant number of cases, the memories that arise are an obstacle to committing a new crime.

In relation to the latter, an important fact that enhances the educational effect is the quick and direct reaction to the crime. This is reinforced by the trust that society, the immediate community and the victim himself/herself provide through mediation, which advances to the young person. They take the victim's person seriously, and thus he/she becomes an active participant in the procedure; a person who has the freedom to decide but has to bear the consequences of his/her decision as a serious, "quasi-adult" partner. All this means a kind of increased pressure for the young person, who feels the expectations shown towards him/her. They are being treated as adults, given moral credit, and consequently, those affected anticipate and at the same time declare that they trust them: they are able to live up to the promises they have made, and are able to follow positive behavioural patterns. The "initiation into adulthood" of the young person in this sense strongly magnifies the educational effect associated with the entire procedure.

It is a fact that adults and juveniles who are defendants in proceedings using conflict management techniques have very positive recidivism rates compared to their peers sentenced to other formal sanctions, as confirmed by other *previous* studies⁷. For example, while the recidivism rate is 22% for those who commit light bodily harm sentenced to a fine by the court, and 47% for those with a criminal record, while the same is 10% and 30%, respectively, in the case of an out-of-court settlement! These results are convincing from the point of view of both the perpetrators and the victim – and much better than those measured in formal proceedings – even if, unfortunately, the change is not so positive for all perpetrators or victims.

On the perpetrator's side, the vast majority of the changes following the mediation procedure are primarily conclusions concerning the avoidance of similar situations in the future. The acquisition of the ability to understand, the opening up to the interests and feelings of the other party in conflict situations, and the stronger appearance of empathy are important prerequisites for staying away from committing a new crime. The outstandingly good relapse statistics related to mediation techniques can also be traced back to this to a significant extent.

3. Crime Prevention Attitude of Mediation – Focusing on the Mitigation the Consequences of Victimisation

The UN Guidelines on Justice in Cases involving Child Victims and Witnesses of Crimes use the term "child sensitive" to mean an approach "that assesses the child's

7 For more details see for example: Csemáné Váradi, 1993, pp. 155–170; Csemáné Váradi, 1994, pp. 207–234.

right to protection and takes into account the child's personal needs and opinions⁸". These are also important criteria in relation to mediation, regardless of the fact that it can only take place with the consent of the victim.

Among them⁹, some of the changes following the mediation procedure may be related to later (more conscious) behaviours that can better prevent re-victimisation, while the other part may be related to the attitude towards the perpetrator(s), referring to two important processes.

One is that a significant percentage of the victims involved in the study were able to move on, as a result of breaking away from the victim situation and the emotional distance from it, to process it on a cognitive level, and to draw the necessary conclusions.

The other is that many of them have become able to practice forgiveness, which is an important momentum of breaking away from the victim's self-image.

The victim situation is typically also a conflict situation. In order for such a tense state to be effectively resolved, the parties must acquire and bring forward a number of skills during the process. Thus, with the help of the mediator, they become capable of participating in the process in a meaningful way, of listening to each other, understanding their motivations, accepting each other, taking responsibility, apologising and accepting, and learning the lessons.

The lack of processing of the conflict situation, the victim role is a serious burden for the parties – psychological, physiological, psychosomatic, and indirectly physical and organic. As time goes on, it becomes more and more difficult for them to get out of this, and the other party involved in the conflict actually becomes part of their everyday life.

4. Direct and Indirect Positive Effects of Mediation

Although it is particularly important to understand the perpetrator or victim situation of minors, to prevent stigmatisation, slipping into a negative self-esteem spiral, and to help process psychological processes, the responsibility of professionals is increasingly present in relation to this vulnerable, sensitive group.

With forgiveness, the offended party actually gives himself/herself the gift of freedom and provides himself/herself with the opportunity to live all the experiences and apply the skills he/she had before. However, a number of questions and doubts may arise in those affected; The most important of these are those that are connected to themselves: would not this mean neglecting what has happened, and at the same time devaluing one's own person, giving up one's own protection? The answer is clearly no, since "forgiveness must be distinguished from pardon (which is a legal concept), forgiveness (which includes justification of the act), the search for

8 Committee of Ministers, 2012, p. 80.

9 For more details see: Csemáné Váradi, 2014, pp. 67–90.

excuses (which would imply that extenuating circumstances led to the act), forgetfulness (which means the fading of the memory trace of the offense), and denial (which refers to the fact that the person is unable or unwilling to face the wrongs he/she has suffered). Furthermore, forgiveness is not the same as reconciliation, which refers to the restoration of a damaged relationship.”¹⁰

On the perpetrator side, it should be emphasised that with regard to the criminogenic psychological factors characteristic of this age stage, it can be stated that possible negative experiences related to criminal proceedings, as well as solutions that make the moral element of the crime understood and are able to achieve actual remorse, also have an increased effect. Other advantages of the mediation procedure are important, such as the fact that it can also mobilise the microenvironment of the young person. The persons involved in the resolution of the original conflict, whether they are representatives of the family or the community, are themselves given the opportunity to express the negative effects caused by the act and to find a solution that takes into account the interests of those affected. In this way, mediation provides an opportunity to do what formal proceedings commonly do not: to actually resolve the original conflict between the perpetrator and the victim. Moreover, it is also necessary for the perpetrator to settle his/her relationship with both his/her wider and closer environment.

Mediation makes it possible to dispense with or reduce state intervention by mobilising the educational power of the juvenile’s microenvironment and, if necessary, by involving other areas of law (child protection, labour policy, social policy, local community policy, etc.) in prevention.

10 About the theory of McCullough and Witvliet see more details: McCullough and Witvliet, 2002, pp. 446–457 quoted by Szondy, 2006, p. 17.

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