

**OPPORTUNITIES FOR IMPLEMENTING
RESTORATIVE JUSTICE
INTO THE HUNGARIAN
INSTITUTIONAL SYSTEM
DEALING WITH CHILD- AND JUVENILE
OFFENDERS**

PhD proposal

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Supervisors:

**Prof. Lode Walgrave
Catholic University of Leuven,
Leuven, Belgium**

**Dr. Mária Herczog
National Institute of Criminology,
Budapest, Hungary**

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1. INTRODUCTION

1.1. Need for reforms in the Hungarian criminal justice system

In the early 1990s there was an unprecedented rise in crime and crime rates have stagnated at a high level since last third of the 1990s (420 thousand crimes became known in 2002). 12 per cent of all detected offenders are juveniles (11 689 youth offender and 3 959 child offender under the age of criminal responsibility, i.e. 14 years in 2002) whose overwhelming majority commit crimes against property. In the last ten years, every third robbery has been committed by a juvenile.

While research shows that the younger criminal behaviour starts, the higher the chance of repeated offending or the formation of a criminal lifestyle, the institutional responses to child- and juvenile delinquency are far from effective. For its illustration it can be mentioned that each year, an average of 16 000 youths are charged for summary offences. For the overwhelming majority of offending youths, only the commission of an unlawful act indicates to the child protection authority that the young person has a problem. On the other hand only 8-10 per cent of detected youth offenders appear in the records of endangered children.

It can be also assumed that young people are victims as well as offenders. Every year, over ten thousand people under the age of 18 fall victim to crimes. The number was 12,141 in 2002.

From a different approach, Hungary's continuously growing prison population should also be mentioned. In 2002, 17,844 persons were being held in accommodation with capacity of 10,800, (165% "saturation"), among which 57 per cent were recidivists (as a remark, the daily cost was 4 000 HUF/prisoner in 2002) indicating the efficiency of the current institutional responses to crime.¹

Additionally to these aspects, not only the increase of the actual victimisation rates but also the general fear of crime and insecurity might raise the question whether good public security can be achieved solely by the traditional law enforcement and criminal justice

¹ Based on the National Strategy for Social Crime Prevention, 2003: 6, 7, 46-48., 80.

services. According to the National Crime Prevention Strategy “there is also a need for programmes and techniques that encourage and mobilise society to raise the self-defence capabilities of large and small communities, institutions, economic actors and citizens, and enhance their protection against crime (National Strategy for Social Crime Prevention, 2003: 3).”

1.2. Why restorative justice?

In the last two decades restorative justice has been more and more widely used in the criminal justice systems in not only Western societies, but also in several Central and Eastern European countries.

There are numerous empirical research (Umbreit, 1995; Braithwaite, 1999; Kurki 2003; Sherman, Strang and Woods, 2000; Strang, 2002) suggesting that this way of responding to crime might be able to deliver key objectives of justice systems, especially in relation to the three following areas: firstly, it can improve victim satisfaction by making it possible to find answers to their questions connected to the offence and by helping them to get over the unpleasant or traumatic experiences. Secondly, it might reduce crime- and re-offending by holding offenders to account, by engaging them with their victim, and by mobilising their networks of support that can prevent further offending; thirdly it seems to be effective in building public confidence and reducing fear of crime.

A study of Strang (2002) suggests that 75% of victims who get involved in restorative justice report being glad to have taken part, also 75% of them received an apology, compared to 19% of court victims and according to other findings they tend to be more satisfied than their counterparts who go to court (Dignan and Lowrey, 2000). Other research found that 99% of the agreements between victims and offenders were completed by the offender (Umbreit and Greenwood, 2000). Findings of Umbreit and Roberts (1996: 29) indicate that 84% of victims who took part in mediation were satisfied with the process and outcome. In the comparison group of those who did not enter into mediation 58% were satisfied with the criminal justice system. Furthermore, victims who were involved in mediation were less likely to be afraid of further victimisation (16%) than those who were not (33%).²

² based on the summary of Masters (1997)

There are findings supporting its positive effect in reducing re-offending in violent offences (Sherman, Strang and Woods, 2000) and in more serious offences in case of persistent or high-risk offenders (Miers et al., 2001). However, studies have more mixed results in relation to what extent it influences re-offending.

1.3. International requirements

The actual structure, tendencies and figures of crime and its consequences would be sufficient to assume that the implementation of new institutions into the criminal justice system cannot be avoided. Moreover, several international regulations also make it necessary to discuss and plan reforms within Hungary's criminal and social policy with special regard to the institutionalisation of restorative justice and victim - offender mediation. As two of the most important regulations, the Council of Europe's Recommendation No. R(99)19 about Mediation in Penal Matters and the EU Council's Framework Decision of March 2001 on the Standing of Victims in Criminal Proceedings explicitly mention the need for restorative institutions in responses to crime. While the former one only "recommends", the latter one's Article 10 obliges each Member State "to promote mediation in criminal cases for offences." In addition, the State "shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account". It also declares that "Each Member State shall bring into force the laws, regulations and administrative provisions necessary to comply with this Framework Decision" before 22 March 2006 (EU Council's Framework Decision, 2001).

By signing other international agreements, such as the Beijing Rules, Riyadh Guidelines, UN Rules regarding the support of juvenile delinquents in confinement or the Convention on the Rights of the Child, Hungary accepted to meet the overall requirement of harmonising its criminal justice system with the social protection network as well as of providing complex social crime prevention programmes. According to these documents, diversionary institutions, which could serve as alternative to prison, should get priority in responding to crime, especially in the case of child- and juvenile offenders.

However, there is still a significant discrepancy between the provisions of these agreements and Hungarian legal practice. While several studies have explored and analysed the procedural elements of different restorative practices, the policy-related issues raised by them and their influences on communities both on micro and macro level, there has been

little emphasis on how its implementation can be effectively achieved in a post-socialist country, where the above mentioned international tendencies still have to compete with the traditions of the centralised legal system and the monopoly of the state in relation to responding to crime.

1.4. Hypothesis

The proposed study has several purposes. Firstly, it intends to give an overview about the legal and institutional reasons and possibilities for implementing restorative justice in the field of child- and juvenile delinquency. Secondly, it would emphasise the main underlying issues which might serve as the societal background for our current situation in the field of delinquency, the functioning of the social and criminal justice institutions and the expected challenges of introducing initiatives based on restorative principles.

However, besides this institutional approach, the “human” aspects should also be considered while planning any implementation processes. In other words, we need to know, who will actually realise the newly formalised initiatives, what do they think about it beforehand, what are their motivations and what are their concerns in integrating restorative elements into their work. Hence, my third goal is to investigate the main attitudes of professionals dealing with young offenders towards the implementation of restorative justice.

Needless to say, the fourth goal is to provide recommendations for successfully achieving the implementation purposes. However, whatever will be concluded, it will be based on the main hypothesis of this study, i.e. in order to successfully implement restorative justice in Hungary, both the institutional and the human factors have to be considered.

2. PROPOSED STRUCTURE OF THE DISSERTATION

The first part of the study intends to explore why it is important to discuss the restorative approach in relation to the Hungarian criminal justice system. While a “pessimistic” approach could emphasise the significant changes of the crime rates and structure of criminal offences since the political changes, an “optimistic” argument can be based on those reforms which have influenced both nationally and internationally the crime and social policy of the developed societies, namely the focus on preventive initiatives, the

emphasis on human rights and equal chances, and finally the support of alternative, diversionary institutions which might be more able to respond to individual and local needs and which are more and more significant besides the state-based centralised systems.

Furthermore, there is a strong emphasis on the inter-sectoral and interdisciplinary approach in relation to the institutional responses to social problems. It necessarily results the need for examining the current gaps resulted by the dysfunctional elements and co-operation of the social welfare, child protection and education system. Needless to say, the lack of the effective partnerships of these institutional systems have significant role in the increasing number of criminal offences, especially in relation to young people. In other words, if the child protection and education system or the signalling procedures within the institutional network are dysfunctional, there is an increased chance for young people to find themselves as the subjects of the criminal justice system.

A detailed discussion of these factors and the tendencies can lead to the conclusion that restorative responses have to be considered while looking for those tools which can firstly result in more effective institutional responses to criminal activities; secondly, which might be beneficial and make necessary the effective co-operation of the different sectors dealing with marginalised groups of the society and finally, those that take into account the above mentioned tendencies.

It is also important to explain the specific situation of Hungary concerning the implementation of restorative justice. The reasons for being one of the least developed countries in integrating restorative initiatives into its social and criminal policy compared to other Western, Central and Eastern European countries³ could be the subject of another study. However, the current paper does not focus on these issues. Instead, it accepts Hungary's "disadvantaged" situation and rather discusses the specialities resulted by these less ideal conditions. This "new born" status of Hungary is the primary reason for narrowing the subject of the current study to child- and young offenders. Since there has not been any experience about the effects of restorative sanctioning systems within the Hungarian criminal justice system, it can be presumed that the starting initiatives, the implementation attempts should firstly focus on less serious criminal activities which are more possibly done

³ A report of Miers and Willemsens (2004) gives a detailed overview about the intensive use of restorative justice within or besides the criminal justice system of 25 European countries, including Central and Eastern European societies as well, such as Poland, the Czech Republic, Albania or Bulgaria.

by young offenders than by adults. Furthermore, if we simplify sentencing principles, we can distinguish between two main categories: the retribution-based, more punitive and rehabilitation-based, more educative ideologies. Restorative justice is none of these approaches; it is a third way. By studying the Hungarian sentencing ideologies, we can presume that even if the punitive elements can generally be considered more significant than the treatment - educative elements, we still might say that in relation to child and young offenders the rehabilitative approach is far more accepted. Contrary to young offenders, the sentencing ideologies influencing adult offenders tend to be based on mainly the retributive approach. Therefore, it can be presumed that restorative justice - as a third way - needs to “compete” with the rehabilitative approach in the juvenile and the punitive approach in the adult system⁴. Referring back to the point how young Hungary is in relation to the use of restorative elements in the sanctioning system, it can be argued that the first steps of the implementation process should rather be thought over in relation to those groups which have already benefited from more alternative, rehabilitative and educative approaches, namely the child- and juvenile offenders.

The second major section of the study intends to describe the present institutional responses to child- and young offenders. Hence, this part would give a picture about what happens to the wrongdoers in the current legal and institutional system of Hungary. Besides a systemic overview about the present institutional responses of the Hungarian society to deviance, I intend to elaborate the main national and international tendencies in crime and social policy based on the most relevant recommendations and regulations of the European Union and the National Strategy for Social Crime Prevention, 2003. Following the overview of the present systems and their future directions, a detailed description intends to specify those points where restorative justice could and should be implemented. Since the discussed institutional reforms already emphasise the need for interdisciplinary approach both on a national and on an international level, needless to say that this study will equally focus on the implementation possibilities of restorative justice within the social welfare, education and criminal justice sectors.

The third chapter intends to provide a theoretical bridge between the description of the legal and institutional context and the empirical part of the study. According to the initial hypothesis, a pragmatic analysis of the institutional possibilities will not necessarily lead to

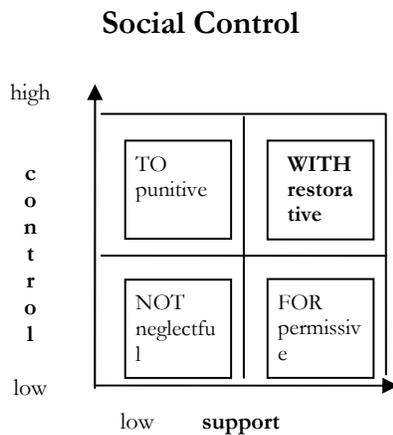
⁴ Based on a personal conversation with Prof. Lode Walgrave (2004).

successful outcomes in the implementation process. By thinking over the possibilities for institutionalisation it is also important to explore the human “ground” of the implementation in relation to the main principles and peculiarities of the system to be implemented. In other words, it might be crucial to investigate the main attitudes of the professionals who are supposed to be the future applicants of restorative justice, namely the experts who currently deal with child- and juvenile offenders and who will be the key actors in the future use of restorative justice. I do believe that if these professionals are motivated to be collaborative in using restorative initiatives in their practice, their positive attitude can have a huge impact on making the implementation process more effective and successful, while their hidden concerns might result in a resistance and might cause strong barriers in the use of restorative justice despite any possible legal and institutional reforms.

The first part of this chapter intends to summarise the philosophy, the main principles, the history, and current practices of restorative justice. This detailed introduction might lead us to the most crucial issues which will have to be investigated. The factors which might be relevant generally relate to two major areas: firstly, the basic questions of adaptation and implementation of this new philosophy and institution according to the main principles of restorative justice, and secondly the roots and status quo of the Hungarian criminal justice system and its “institutional atmosphere”.

In relation to the main philosophy of restorative justice and the potential paths for its implementation, one of the most interesting issues could be about how could the *participatory principle* of the restorative approach be represented. Is it possible to make reforms in the criminal justice system from a grass-root basis? Or the reactions to crimes should always be primarily evolved from centralised conceptions. If so, is it possible, and if so, how to formalise and institutionalise a system top-down which is primarily based on bottom-up roots (can we call this as a “quasi bottom-up” process)? How local, small communities’ needs could be respected in such a state-centred initiative? Can the participatory principle still be respected while the main steps need to be taken by centralised legislations and institutions? Moreover, the general issues concerning the *adaptation* of any new model should also be raised: how much of the practice can be purely adapted in another society following patterns of other countries? Shall we buy it as a “package” including all its already set particularities or it is necessary to revise each element and check their relevance in the current target group?

If so, this recognition leads us to the next major topic which is the analysis of the traditions of our society's institutional responses to wrongdoing. How could we describe Hungary's current sentencing system within the dimension of tough punishment (retributive approach) and treatment-focus (rehabilitative approach)? Can we assume that in relation to child- and juvenile offenders the rehabilitative - educative approach is more accepted than in case of adult offenders? Where could the restorative approach fit in these systems?



O'Connell, T. – Wachtel, B. – Wachtel, T. (1999: 78)

As the current figure shows, the restorative model is strong in both the support and the control aspects of the community while reacting to rule-breaking. Hence, the method, by which it focuses on the reintegration of the offender, necessarily represents a third way besides rehabilitation and retribution. But is reintegration of offenders an issue of the current criminal policy anyway? And if so, are the professional and institutional network prepared to extend their treatment approach with the aspect of giving *active* role to their subjects and make them feel their personal responsibility in their integration into the community?⁵

Another crucial issue concerning the roots of the Hungarian criminal justice system is the discussion of how any informal element – which is one of the main specialities of restorative justice - could be integrated into a system which is primarily or almost exclusively based on formal procedures. Could any *informal institution* be legitimate in the society concerning crime issues? What are the main difficulties in creating this legitimacy and how they could be explained? How could the Hungarian institutional system be described concerning its historical, cultural, political and legal roots in using informal elements? Do lay people have any space in its functioning or mainly professionals – especially legal experts - and formal institutions are those which have gained legitimacy in the eyes of the everyday citizen?

⁵ Retributive and rehabilitative principles are similar in that sense that according to their sanctioning ideologies and practices none of them encourage the offender for active participation and involvement while facing the consequences of his/her criminal act.

The above sketched questions might illustrate the necessity for broadly thinking over the main theoretical issues determining any research which not only intends to investigate the implementation possibilities of restorative justice into the Hungarian criminal justice system but also would like to gain some conclusions concerning the attitudes of social and legal professionals. Moreover, a structured overview of these questions could serve as a basis for the qualitative analysis of the gathered empirical data. The theoretical assumptions explored in this chapter might largely contribute to specify the relevant questions for the qualitative research and also could help to already be prepared for some “predictable” concerns and motivations expressed by the subjects.

The fourth chapter will explore the attitudes of professionals dealing with child and juvenile offenders towards the implementation and use of restorative justice. In this section I primarily intend to qualitatively analyse structured interviews and focus group discussions conducted with 50-60 professionals. Additionally, the analysis of narratives of expert meetings, public debates and media reactions concerning the reform processes of the criminal justice system, the tendencies of child- and juvenile protection systems and the integration of restorative elements into these might also contribute to understand the main arguments and emotions behind the different approaches.

On one hand the main purpose of this empirical research is to investigate the extent to which these professionals are supportive in implementing restorative justice to the current system, the reasons of their positive attitude, and on the other hand to examine their main concerns and the reasons for their possible resistance. Furthermore, this research intends to explore the ways the questioned professionals think restorative justice could and should be implemented within the current institutional system.

The main questions of the interviews would focus on the following topics:

1. What do professionals know about restorative justice? What are their main sources for gaining information about it?
2. How supportive/resistant are they in its future use?
3. At which point of the institutional and legal system and in what kind of cases are they supportive concerning the use of restorative justice? What are the main arguments behind their attitudes?
4. What are their personal attitudes concerning the main implementation issues such as the possibility for informal, grass-root initiatives within the criminal justice system,

the hegemony situation of the state and of the legal professionals and the formalisation processes of any practices in which the individual – local participation is crucial?

The analysis of the data will be based on the theoretical presumptions and models explored in the third chapter. However, it might be necessary to extend the studied factors and also ignore aspects which had been considered as relevant issues during the theoretical preparation but their empirical testing did not prove their significance. By the detailed presentation and interpretation of the collected data I also intend to mention practices and findings of similar research conducted in other Central and Eastern European countries which might serve as relevant references due to their similar political and economical background.

The final chapter intends to conclude the basic findings of the descriptive institutional and legal overview and the most important results of the qualitative research. Based on these conclusions I intend to create a model and an action plan about how it would be possible to systemically implement restorative justice. By these recommendations firstly I would like give an overview about the pragmatic and institutional possibilities; secondly summarise the basic motivations/concerns of the affected professionals in relation to the implementation. Finally I would like to highlight those points where these aspects could be integrated leading us to a policy strategy which intends to respect both the institutional and the human factors in relation to the implementation scheme of restorative justice into the Hungarian social welfare and criminal justice system.

2. SAMPLING

The qualitative investigation intends to give a representative picture about the target group primarily according to their active professions and the geographical location of their professional activity. Therefore, the current research would like to address police officers, prosecutors, judges, probation officers, social workers, youth workers, teachers and staff members of detention centres who primarily work with child- and juvenile offenders. The main institutions within the criminal justice system are structured according to their locations within Hungary's public administration, hence not only the individual activities but also the possibilities for any professional co-operations are largely dependent on the location of the

specific institution in the public administration system. Therefore, subjects from each profession should also represent the region and county where they work and by the analysis of their answers their geographical situation should also be taken into account. Although the final sampling conditions are not yet defined, it is already presumed that in the sample population there should be representatives from all the mentioned professions, from all the seven regions of Hungary and the subjects from different professions should represent the same county in order to guarantee the consistent analyses of the local systems.

4. METHODOLOGICAL CONCERNS

Needless to say that at this stage there is plenty of methodological questions about this empirical research, namely

- Information about restorative justice:
 - How much the expressed attitudes might be influenced by the extent to which the subjects have been previously informed about the particularities of restorative justice? In case of the significance of this factor, how it could be measured to which degree the questioned professionals are informed about restorative justice? In case of significant diversity among the subjects concerning the information they have, how possible is it to compare the expressed attitudes and opinions and make conclusions? In case of lack of objective information about restorative justice, is it necessary and if so, how to introduce restorative justice in a basic level before investigating their attitudes about it? How to take into account the possible misunderstandings concerning the principles of restorative justice?
- Language
 - How to provide a valid interpretation in English of qualitative data collected in Hungarian?
- Lack of Hungarian literature
- Political dependency
 - How to count with the continuously changing political situation in Hungary? Although this issue is crucial while discussing any policy-related reform, in case of crime policy the unpredictable political changes, the danger of

decision-making processes which are less based on scientific research findings, recommendations and preparations and more influenced by political motivations - such as attracting more voters by fast reforms which have not been thought over complexly from professional aspects - might be even more influencing due to the fact that the criminal justice system is one of the most state-centred issues within the different social policies.

5. SCHEDULE

TASK	TIMING	LOCATION
Literature review: Key areas: 1. The Hungarian legal and institutional background of child- and juvenile delinquency <ul style="list-style-type: none"> • Penal Code (1978), Chap VII., XIII. for juveniles; criminal procedural act; Child Protection Law (XXXI/1997); • National Strategy for Social Crime Prevention; regulations of the National Probation Service; Code of Ethics for Lawyers 2. International legal documents <ul style="list-style-type: none"> • EU Framework Decision, 2001; • Recommendations of the Council of EU; • Beijing Rules, Riyadh Guidelines; UN principles; Tokyo rules; Convention on the Right of the Child 3. The theory of implementation <ul style="list-style-type: none"> • The theory of restorative justice and the main implementation issues raised by it • Sentencing issues and the comparison of the conventional criminal justice system and restorative justice • Restorative justice in Central and Eastern European countries 4. “Social reality” in Hungary <ul style="list-style-type: none"> • Attitudes of legal professionals • Penal theories, policies, decision-making processes within the criminal justice system • Punitiveness of societies and of professionals 	Sept 2004 – February 2005	Belgium
2. Writing of the synopsis	30 May 2005	Belgium
3. Theoretical discussion	June 2005 – January 2006	Belgium
4. Preparation of the empirical part		
5. Collection and analysis of data	January – July 2006	Hungary
6. Writing of the dissertation	July 2006 – May 2007	Hungary

6. SUPPORTING FACTORS

Currently I am working at the European Forum for Victim – Offender Mediation and Restorative Justice as a project co-ordinator of an “AGIS” programme funded by the European Commission. The title of this project is “Facing the challenges of implementing restorative justice in Central and Eastern European countries” and it intends to help the implementation processes of restorative justice in the partner countries (Albania, Bulgaria, Czech Republic, Estonia, Hungary, Moldova, Ukraine, Poland, Romania, Russia) with supporting their exchange, networking, co-operations and partnerships with Western countries (Austria, Belgium, Germany, Norway and the United Kingdom).

I am also involved in other activities of the European Forum which all aim to help the communication and the information exchange among the European organisations and experts working in the field of restorative justice and victim – offender mediation.

It is also important to mention that the European Forum has been funded by professors of the Catholic University of Leuven, therefore the Secretariat of the Forum also functions at the Leuven University, Faculty of Law, Department of Criminology where I have to work until December 2005. This department is one of the European academic centres of restorative justice. During my work at this University I am doing my PhD research from Belgium under the supervision of Prof. Lode Walgrave, who is one of the main academicians and theoreticians of juvenile delinquency and restorative justice.

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