



Hungarian vs. American mediators and how to make communities more resilient

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ABSTRACT

Restorative justice practices are used in a wide array of criminal offence cases globally as it puts the need of victims and the community at the centre of the proceedings and focuses on repair and rehabilitation rather than judgement and punishment.

This study focuses on the different experiences of mediators in Hungary and in Bloomington, Indiana, United States. Two local government offices in Hungary and a non-profit organization, called Community Justice and Mediation Center (CJAM) were selected for this study. Six Hungarian and five American mediators from the local government offices and CJAM were interviewed in person and online.

Analyzing the interviews, we find that there are fundamental differences between the definitions, legislation, and the practices used in the two jurisdictions. The training of mediators is found to be similar in both countries but the way restorative practices are used is different. The system in Bloomington allows the process to be more flexible whilst in Hungary, the high caseloads and strict timeframes of the prosecutor's office demand that cases be very quick and efficient. This is likely the reason why at CJAM, co-mediation is the norm, with at least two but sometimes three or four facilitators working on a case, while in Hungary co-mediation only happens in the most complex cases.

However, it is apparent that the goal of mediation and restorative justice meetings is the same in both Hungary and Bloomington: to repair the harms and to help build a better community.

Key Words Restorative justice; mediation; alternative conflict resolution; Hungary; Indiana.

INTRODUCTION

Criminal justice systems around the world increasingly use restorative methods, but the legislation and policies vary from country to country, making it difficult to compare different practices.

There are ongoing debates around how best to define the term restorative justice. However, one widely acknowledged definition is Tony Marshall's (1996), which states that "[r]estorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (p. 37). It is important to note that this definition includes not only the victim and the offender of a crime but the wider community, as well, who might have been affected by the offence.

The present study focuses on restorative justice practices in Hungary and in Bloomington, Indiana, United States. The aim of this research is to present the experience of Hungarian and American mediators who facilitate communication between victims and offenders in criminal offence cases.

In Hungary, the term mediation is used as a synonym for restorative justice proceedings in criminal offence cases. However, in many other countries, mediation is not the same as restorative justice—it is, rather, a process where the focus is not on repairing the harm but on solving the problem at hand. In this article, mediation in the context of the Hungarian criminal justice system will be used interchangeably with the term restorative justice.

In 2006, the Hungarian Criminal Code was changed, allowing certain criminal offence cases to be referred to mediation after January 1, 2007 (Act C of 2012 on the Criminal

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Code). Since 2012, the types of cases that can be referred to mediation have broadened even more to include more serious and complex cases.

In the United States, there is no federal legislation in place for governing restorative justice, but there are certain rules that are applied state by state. Restorative justice practices are generally facilitated by non-profit organizations that are contracted by the different counties of the state on an annual basis.

This article will examine the similarities and differences in mediators' experiences in Hungary and Bloomington, with a focus on implementing best practices.

METHODS

The present research is a qualitative study in which observations were made and interviews were conducted. As the aim of the study was to learn about the work of mediators in Hungary and the United States, observing their tasks and asking them about their experience was considered to be the most appropriate way to get all the relevant information.

Ethical Approval

Permission for this research was granted by the Prime Minister's Office and the Ministry of Justice in Hungary. The Julius Rezler Foundation also approved the research plan to conduct interviews in the United States.

Participants

Participants provided informed consent to take part in the study. Six Hungarian and five American mediators were interviewed ($n=11$). The Hungarian participants were selected from two local government offices (Szabolcs-Szatmár-Bereg county and Heves county) where the author had previously conducted research for her PhD study. The American participants were selected from a non-profit organization called Community Justice and Mediation Center (CJAM) in Bloomington, Indiana, while the author spent a semester at Indiana University on a scholarship.

All participants are mediators who facilitate communication between victims and offenders in various criminal offence cases.

Measures

Observational research was conducted in the county of Szabolcs-Szatmár-Bereg in Hungary and online for cases at CJAM in Bloomington. The author observed victim-offender conferences, initial interviews with offenders and victims as part of the Victim Offender Rehabilitation Program, and sessions with offenders as part of the Shoplifting and Theft Education Program at CJAM. The observational research helped to better understand what the process is and how restorative methods are used in practice.

The interviews were semi-structured, and all interview questions were open-ended. At the beginning, there were some general questions on the qualifications and training experience of the mediators before they were asked about the legislation (types of offences that go to mediation, whether there are certain types of offences that need to be victim-initiated, etc.). The third set of questions was about the preparation of cases, and participants were then asked about

co-mediation. The topic of agreements (for example the types of agreements) was also covered, and there were questions around victims' and offenders' feelings and the difficulties and challenges mediators face.

Data Collection

The author conducted the interviews in person with four American mediators and online with one American mediator and with all six of the Hungarian mediators. The interviews lasted about 1 hour, and the author took notes and audio recordings with the consent of the participants. Data was collected from October 2022 to March 2023.

Notes from the observations and interviews and the audio recordings and the transcripts of the interviews are all password-protected and can only be accessed by the author.

RESULTS AND DISCUSSION

The 11 interviews with mediators were all analyzed using thematic analyses, and the emerging themes are discussed in this section. Using inductive coding, initial codes were generated, and the author looked for meaningful patterns and themes across the data.

Mediators

The first block of questions was about the mediators, their qualifications and their training.

Mediators' Qualifications

In Hungary, mediators who work with criminal offence cases can have different degrees (they mostly have qualifications in social work/teaching or related degrees) but are all probation officers who work for the local government offices. They have all received 60 hours of training in mediation and restorative justice, and some of them have also completed training on how to facilitate peace circles.

The American mediators also have qualifications from a variety of fields and must complete 40 hours of training in mediation and restorative justice. Some mediators are employed by CJAM and some work as volunteers. Two of the mediators interviewed were currently completing a university degree while volunteering for CJAM as mediators.

Importance of Neutrality

In terms of the qualities a good mediator possesses, the different guidelines and the interviewees all agree. One interviewee phrased it like this, when they were asked about the challenges mediators face:

It's so natural to [lead] and to try and solve [the problem] for them but you cannot do so. It's so crazy, when you don't, the solutions are more sustainable. Because when you solve it, you're technically not a facilitator, you're part of the community.

Neutrality is something that many mediators find difficult to achieve and yet is an essential part of facilitation (Bowling & Hoffman, 2000; Garcia et al., 2002). Neutrality means being completely impartial and unbiased towards both sides of the dispute to ensure a fair and just process. The mediator must set aside their personal beliefs and opinions

to take on the role of a facilitator. Whilst impartiality can be demonstrated by the mediator's actions, neutrality is more about the mediator's interest in the outcome. The mediator should be neutral to the outcome but not the process. As one interviewee explained the importance of being neutral, "You find that people are able to connect better when you're neutral rather than advocating even a little bit for any side."

Perhaps a better term than "impartial" is "omnipartial," as facilitators are still involved in the conflict they are trying to help resolve (Cloke, 1994). Omnipartiality means that the mediator is equally partial to all parties.

Defining Mediation and Restorative Justice

As it was discussed briefly in the introduction, there are differences between the Hungarian and American understanding of the terms mediation and restorative justice.

In Hungary, mediation is used as a synonym for restorative justice. Even on the Ministry of Justice website, both terms are used to explain what the process is (Ministry of Justice, n.d.). When asked about the difference between restorative justice and mediation, an American interviewee explained it this way:

Restorative justice, we see it more as kind of an advocacy and we kind of see facilitation more like fostering, empowering. We're empowering individuals and empowering the good in people to collaborate to really build community infrastructure, participatory governance, where the city runs as a community rather than as a separate entity.

Legislation

Just as there are differences in terms of the definitions, the legislation varies between Hungary and Indiana. In Hungary, there are two main laws that govern restorative justice. First, the "Act XC of 2017 on the Code of Criminal Procedure" sets the conditions for conducting a mediation procedure. According to Chapter LXVI, Section 412, "(2) With a view to conducting a mediation procedure, the prosecution service shall suspend the proceeding if a) the suspect or the aggrieved party initiates, or consents to, a mediation procedure, b) the suspect confessed to having committed the criminal offence before the indictment, and c) having regard to the nature of the criminal offence, the manner of its commission, and the identity of the suspect, ca) reparation of the consequences of the criminal offence can be expected, and cb) conducting a criminal proceeding may be dispensed with, or conducting a mediation procedure is not inconsistent with the principles of sentencing. (3) Suspending the proceeding for the purpose of conducting a mediation procedure shall not be prevented by the fact that the suspect has already voluntarily paid for, in whole or in part, the damages or pecuniary loss caused by his criminal offence or the value affected by the criminal offence, or he provided reparation for the injury caused by his criminal offence, in a manner and to an extent accepted by the aggrieved party." The other legislation that provides a strict structure for the mediation process is the "Law on mediation in criminal cases CXXIII of 2006," which regulates the activities and duties of mediators and related practical issues.

In the United States, there is no federal legislation around restorative justice, but there are different laws and rules

that vary from state to state. In Indiana, there are three statutes, and restorative justice is available diversionary/pre-trial, as intermediate sanction, and also post-sentencing (Sliva & Lambert, 2015). It is recommended for the juvenile population but is also available for the general population. It is evident that restorative justice is present in state laws across the United States, but very few of the states provide comprehensive support and structure, making system-level use difficult. Restorative justice is an ever-evolving concept in communities and states across the United States, presenting itself as an alternative to conventional justice systems (Pavelka, 2016). Many state statutes and codes now include language related to restorative principles, and there is a growing trend of incorporating restorative practices within the legal framework. However, implementation of these policies and laws varies significantly, with some being explicitly addressed while others remain implicit. Furthermore, there is a lack of comprehensive mandates and support structures to ensure systematic implementation, including adequate funding, which is essential for achieving policy objectives and successful outcomes in practice.

Co-Mediation

Hungarian and the American practices differ in terms of the frequency of co-mediation. In Bloomington, it is very rare that a case is mediated only by one mediator, and most restorative justice cases observed were facilitated by three mediators. In Hungary, co-mediation rarely happens due to the high case-loads and the strict timeframes set by the prosecutor's office. When it does happen, it is usually in complex cases such as domestic violence or serious assault cases. One American mediator explained it this way:

Sometimes it's good to be very flexible when you have two facilitators and let the other person come in if they are knowledgeable, and they'll serve better as a community member because, guess what, we are all community members. In a facilitation, you can still be a community member, but during certain sessions you play a certain role.

Mediators reported that co-mediation is helpful as they feel more comfortable and less pressure with someone else being present at the meetings. They explained that they overcome some of the challenges more effectively by discussing them with the other mediator. Cornfeld (1985) suggests that co-mediation is a better method than mediating solo as there are many benefits, such as more ideas are generated, there is a more relaxed and balanced atmosphere, and therefore fairer agreements can be achieved.

Impact of COVID-19

In Hungary, when the COVID-19 pandemic broke out and everything started to shut down, the mediation processes were all on hold as well. There was a period when mediation was allowed in person but clients and mediators had to wear masks. One interviewee mentioned how difficult it was to facilitate mediation during these times as nonverbal communication is a key part of mediation but masks were hiding people's facial expressions. However, as the referrals were still coming in, the legislation was soon changed to allow

mediation via telecommunication channels and mediators started facilitating meetings over the phone. Post-pandemic, facilitation is back to normal and it is very rare that a meeting is conducted online.

On the other hand, at CJAM, the majority of meetings still happen online, as mediators realized the advantages of online facilitation. One interesting finding is that mediation and restorative justice conducted online was found to be more accessible, and the attendance rate of clients increased. In the beginning, mediators were worried that not everyone would be able to access a smartphone or a computer to join the meeting, but these worries were unsubstantiated. Clients reported that it is easier to join the meeting online, as they do not have to worry about parking, and it is also easier to find a time for the meeting if they do not have to think about commuting to an office and can just do it from their workplace or home.

Successful Mediation

Mediators were all asked about what makes a mediation process successful and what the importance of restorative justice is. The answers were all very similar, and it is clear that mediators focus greatly on the well-being of clients and repairing harms. As one interviewee explained it,

A successful facilitation is when everyone feels heard, listened to and they have had a chance to listen and they're more open. They feel heard and they feel heard enough to listen. And they learn and they take in what's being said and then we move on from there. Solution is not really a part of facilitation. And respect, respect is a huge part of it too. That's when you know it was a successful facilitation.

Another interviewee mentioned the importance of sharing values: "A whole thing about facilitation is sharing values. And sometimes you have to find those values."

When asked about the importance of restorative justice, one interviewee said: "It's a really rewarding experience because I actually got to change the community for the better. You know, like Nelson Mandela: Be the change you want to see in the world. I actually got to do that." Another interviewee had this to say: "If we don't meet our goal [such as finishing a certain number of restorative justice sessions in a year] at the end of the year, that's okay. What we're really trying to do is to help the community."

One interviewee emphasized how important awareness raising is:

Mediation is something that could use a lot of awareness. I think there is an opportunity to bring awareness to mediation in a community and the value it can bring to them. Sharing what mediation can bring to the table is really important and you really are helping people make their own decisions. You could save time and money and potentially get to an outcome that would be better for all parties involved.

Just as in various parts of the world, mediators in Hungary and in Bloomington share the experience that people still do not know what restorative justice and mediation are (Shapland, 2014). When clients are first contacted, generally

they need to have the process explained to them and be told what the benefits for them could be.

Recommendations

1. There is a need for clearer definitions. It makes it difficult to evaluate and compare processes when terms such as restorative justice and mediation have different meanings in different countries and contexts. The Ministry of Justice in Hungary should make a distinction between the definitions of restorative justice and mediation based on international practice. It is recommended that the core restorative values and principles set out by the European Forum for Restorative Justice, whose general aim is to contribute to the development of high-quality restorative justice throughout Europe, be incorporated.
2. All mediators agreed that there is a lack of awareness in the public about what restorative justice means and the benefits of these restorative practices. Governments and organizations should focus on raising awareness so that people know of these processes that might be available. Raising awareness of restorative justice should involve a multifaceted approach to reach a broad audience. Effective strategies could include the following: (1) Educational campaigns to develop and disseminate informational materials, such as brochures and videos, explaining the principles and benefits of restorative justice. These materials could be distributed in schools, community centres, online platforms, and public spaces. (2) Workshops and seminars to educate key stakeholders, including law enforcement personnel, legal professionals, educators, community leaders, and the general public, about restorative justice practices and their potential impact. (3) Collaboration with media to partner with local media outlets to feature stories, interviews, and documentaries highlighting successful restorative justice initiatives. This will help increase public awareness and interest. (4) Engagement with schools and universities to collaborate with educational institutions to incorporate restorative justice concepts into their curricula. This will help young people understand the importance of alternative approaches to conflict resolution.
3. Co-mediation should be encouraged in Hungary. It was found to increase mediators' comfort about the process and can also help supervision as mediators can give feedback to one another and discuss the challenges of the case with each other.

Limitations and Future Research

The findings of this study have to be seen in light of some limitations. First, the study includes a small sample size ($n=11$) and whilst Hungarian participants were from two different counties of the country, the American participants were all from the same organization in one town of the state of Indiana. Therefore, while we can see tendencies in the findings, the sample is not representative.

For future research, it would be interesting to interview participants from other parts of Indiana and Hungary to have a bigger and more diverse sample. Moreover, for her PhD

study, the author asked victims and offenders who have taken part in mediation in Hungary to complete a questionnaire, and a number of participants were then also interviewed about their experience in the process. It would be useful to ask clients in Indiana to answer the same questions in order to compare the views of not just the mediators but the clients as well.

CONCLUSION

In conclusion, when comparing the restorative practices in Hungary and in Bloomington, we see many differences in terms of the definition, the legislation and how mediation and restorative justice are conducted in practice. However, the core values and aims of the process are the same—facilitators want to help empower victims, rehabilitate offenders, and strengthen communities.

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CONFLICT OF INTEREST DISCLOSURES

The author has no conflicts of interest to declare.

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LEGISLATION

- Act CXXIII of 2006 on Mediation in Criminal Matters (<https://net.jogtar.hu/jogszabaly?docid=a0600123.tv>)
- Act C of 2012 on the Criminal Code (<https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>)
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