Victim-Offender Mediation in Restorative Justice

Case Analysis of Hungarian Mediation Sessions

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Introduction

In this paper I will examine the relevance and impact of restorative justice practices, focusing on mediation and its implementation in the Hungarian criminal justice system by examining and analysing Hungarian mediation case descriptions and evaluating their results and their perceived influence and how well they fit into the theoretical framework of restorative justice.

Restorative justice is a relatively new phenomenon that has only a short history and development, yet it presents a very much needed different perspective from the usual traditional retributive justice practices that dominate most of the judicial methods. In any welfare state the efficient and fair practices of justice need to be functioning on a high priority. To find better and more just solutions and practices in criminal justice have to be re-evaluated and reformed. Restorative justice theory provides alternative solutions that are able to substitute many traditional methods, and in theory improve much of the shortcomings of these many times outdated practices. They could achieve a much-needed development that would benefit both the offenders and victims as well as society eventually. However, there are several limitations, both external imposed by the current laws and regulations and internal that come from the theory of restorative justice itself. By examining the restorative justice practices and ideologies I have completed a review of its relevance and influence to see how much viability it has in western societies and how likely it is to replace certain retributive methods based on the current available results.

The topic of restorative justice and alternative conflict resolution techniques have been in use many times during history and now they are being implemented into the somewhat rigid frame of criminal justice based on punishment. My motivation in choosing this topic has two main components, first is the scientific relevance of finding alternative solutions in the criminal justice system and also, I have held a personal interest in criminal justice related research.

My research has been concluded in the hopes of gaining a better understanding of the processes applied during restorative justice practices and how well can they be carried out in an environment where the opportunities are limited and is overwhelmingly reliant on traditional justice practises. My research question therefore is the following:

**How does victim-offender mediation fit into the framework of restorative justice?**
1. Literature Review

In the following I will present the literature I will be using as reference for my thesis. The articles and books are organised in thematic subgroups, according to which structural part of my thesis it should apply to. However, there are some articles that can be used in more than one of these subgroups, they will be firstly placed in the one that applies most prominently but there will be some that most likely be used in another structural section as well if it is possible. The three structural groups that I have identified and used to organize my literature review are the following: Restorative justice theory, Challenging the current paradigm, and Mediation practices.

1.1 Principles of Restorative Justice

The first structural element and subgroup of literature has to do with defining restorative justice as a theory and trying to give clarity to its meaning. As previously established, restorative justice is practised in many different ways and there are some instances when the term should not be applied even if the outcomes of such practices could be claimed to be restorative. Restorative justice and its meaning is still highly discussed and debated, there are certain elements being added and reconsidered continuously so this is important to look at the different theory that is being applied in all different cases by including several perspectives.

The first article I include in this section is ‘But What Does It Mean? Seeking Definitional Clarity in Restorative Justice’ (Doolin, 2007). In this article the author describes the definitional constructs that restorative justice needs to fulfil. In this article the author provides a very clear definition of restorative justice and applies a clear theoretical framework that makes it easier to keep focus on the basic elements of the theory. It establishes that in case of restorative justice the process and the outcome have to be considered equally. Restoration in itself is given a clear definition that can be used well going forward, which is a vital element of the theory.

The second article I wish to include here is ‘Situating restorative justice within criminal justice’ (Shapland et al., 2006). I found this article very informative on the certain requirements of restorative justice. It also gives a framework that can be used as
it describes restorative justice elements really clearly and give a wider perspective than the previous article mentioned. As it places restorative justice in the framework of criminal justice it provides its essential components and how they should be considered, for example, its role, tasks, outcomes and rehabilitation as well. The article also identifies some of the difficulties that the researchers and academics have to face when considering restorative justice as some of its elements are hard to identify and measure.

The last material that I included in my research is the book ‘Restorative justice, reconciliation, and peacebuilding’ (Llewellyn & Philpott, 2014). The book contains several interesting chapters that can be applied to my paper, just like ‘Accountability’ and ‘Traditional Justice’. While the book is mainly focused on the theory side at the same time it also is more theory oriented to practise. It has been collaborated by several scientists from different fields just like criminology, sociology and theology, and this creates a perspective where restorative justice is looked at from different perspectives and for several different uses as well. It gives a very wide scope of restorative justice including criticism and establishes the theory of how and why it works and how it fits into the legal system. It is a very good source to cement the theoretical framework for my thesis and it helps to also widen the scope of my research by addressing vital questions on how restorative justice can be implemented into criminal justice.

1.2 Challenging retributive justice

The second part of my structure is the paradigm change in theory that restorative justice presents. As it is a relatively new concept it raises many elements that need to be changed in the current ideologies and practices. The purpose of restorative justice is to challenge the current ideology and the practises it created and to see if the two can be used together to create better results. There are several articles that research this aspect of the theory and I found it important to include them as to investigate the effects and challenges of the new practises we need to look at how they differ and what shifts need to happen to successfully implement the fresh attitude.

The first article in this section is a case study, ‘Implementing Restorative Justice Under the Retributive Paradigm’ (Gerkin, Walsh, Kuilema & Borton, 2017) that shows how the restorative justice model can be implemented in the current circumstances. A case study like this can give a lot of information of the struggles and effects of such a program and also shows what would be the ideal conditions for such programs to operate
While this occurred in the United States where the conditions are somewhat different than in Europe it can be still useful as at the same time many practices that are of influence are the same and can be identified easily. The authors discuss how mediation fits into the restorative system just as well as how the program design currently works, also talking about the lack of funding that can create one of the most prominent issues in the system.

The second literature that I have included in this topic is ‘Debating Restorative Justice’ (Cunneen & Hoyle 2010). In this book the authors examine the theory of restorative justice and its limitations. In chapter V ‘Restorative Justice and Criminal Justice: Complementary not contradictory’ the authors discuss how restorative justices could be or should be implemented in the current criminal justice system that is based on punishment. The conclusion of the chapter is that restorative practices in the current system can only be used as additional devices to the current processes and only in cases of minor offences. Restorative practices could be used more frequently in lesser offences however there are cases that need the retributive practices to rely on.

The last article in this section is ‘Revisiting the Relationship between Retributive Justice and Restorative Justice’ (Daly K., 2000). The author takes a critical look on the relationship between restorative and retributive justice theory and how they should be considered to be implemented together instead of presenting them as extreme opposites. As they do stand in strong contrast of each other however by taking the best of both practices an optimal solution could be achieved by combining restorative, punishing and rehabilitating methods. It also discusses some of the critiques concerning restorative justice for example the possible ethical concerns as well as the issue with the mediators’ persuasive position.

1.3 Restorative justice in various settings

The third structural element consists of research concluded on restorative justice practices in prison and other institutional settings. This part is essential to see how the theory holds up in practice. This part has a lot of difficulties just like how to record the effects as they are notoriously difficult to measure and assess. I have gathered several articles that investigate the use of theory in practice also making sure that it is applied in a penal institution setting. I also made sure to find the elements that the researchers have had issues with or struggled with during their investigation to apply a critical approach and to remain unbiased.
The first article in this group is ‘The Effectiveness of Restorative Justice Practices: A Meta-Analysis’ (Latimer, Dowden & Muise, 2005). The article focuses on certain cases of restorative justice practices and gives a useful analysis on the practices themselves, also identifying issues that can occur during the assessment of these. I believe that it is advised to be clear of the certain problematic elements of certain practices to make sure that they are avoided and taken into consideration as well. It also gives data on specific measurements such as satisfaction with the program and the effect on the recidivism rate.

To also include a specific research the following article, ‘A Framework for a Restorative Society? Restorative Justice in Northern Ireland’ (Payne & Conway, 2011), gives a real-life example of the works of restorative justice. This includes wide-ranging research and concrete data that shows how the theory can be implemented. It shows the issues that have to be considered, such as funding, absence of trained staff or the lack of willingness for participation. While it does not report on effectiveness it is still a very useful piece as here theory can be observed in practice and this always brings up certain elements that cannot be foreseen only by considering a theoretical approach.

For the purpose of gathering further qualitative data on the implementation of restorative justice, the article ‘Implementing and Evaluating Restorative Justice Projects in Prison’ (Crocker, 2013), provides qualitative data on the implementation and evaluation of such projects. The article describes restorative justice programs concluded in three Canadian prisons that focused on raising awareness of participants on restorative justice practices and to help offenders understanding the effects of their crimes. The qualitative data is really valuable in this case and it also presents nicely the struggles of evaluating such projects as the usual evaluation tools might not be easy to use in these cases.

To delve into how exactly restorative justice programs work I wish to include a case study that has investigated the underlying processes of such programs by using various methods of research. ‘How Does It Work? Mechanisms of Action in an In-Prison Restorative Justice Program’ (Armour & Sliva, 2016) is a recent and very intriguing research paper that describes the results of an in-prison restorative intervention program. It shines a light on the mechanism of the program and also sets an example on how to conclude a successful research, which methods and tools provide the best and most true to fact results. During their research they have used both qualitative and quantitative methods as well examining and evaluating the mediation practices that have been implemented in this program. They have concluded that offenders’ motivation to change
their behaviour and their social identity both developed significantly due to the intervention.

**1.4 Mediation practices in the restorative justice framework**

In this section I would like to include a couple of resources that might not fit into the other categories and cannot fit into one specific category themselves either but can be still useful during my research. mediation

As theoretical background in mediation is quite prominent I have decided to include the book ‘Reimagining restorative justice’ (O'Mahony, D., & Doak, J, 2017) that describes the theory and basic framework of restorative justice and the purpose of mediation in it quite extensively. In the book the authors also develop the empowerment theory’s importance in mediation practises and how exactly it applies to the process. Just as well as how victims and offenders react differently to this specific practice. The book also contains a well-built theoretical framework on restorative justice and what is the best way to put the restorative justice theories into practice.

The next article in this section that I have used during my research is ‘The use of mediation to resolve criminal cases: procedural critique’ (Brown, 1994). The article provides a critical view on meditation practices in the criminal justice process, it lists issues with the process just like hoe victim-offender mediation can be disserving the victims by pushing forgiveness and deemphasizing the past. The other issue is with the biased selection criteria concerning offenders and how the non-defined community that the process could be non-existent therefore not providing any benefit on a social scene. The author also raises attention to how the process does not provide any deterrence or if it does its effects are questionable. These statements are important to consider gaining an unbiased view on mediation and its implementation in the criminal justice process.

The last article is ‘Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism’ (Rodriguez, 2007). In this article the author researches, how restorative justice can be used in case of juvenile offenders. The intervention involved different kind of less serious crime offenders to participate in mediation sessions through a 24 months period. The study concludes that mediation has helped a lot to the juvenile offenders to reconcile with their families and by meeting the victims they were able to resolve their inner conflicts as well as it had reduced the recidivism rate of the participants. Juveniles however are a small subgroup of offenders
and while the data and the research methods are very informative the special cases of juveniles have to be considered and cannot be compared directly with regular criminal justice practices.

2. Theories and definitions

In the following I will shortly introduce the theories that I have used during my analysis. I have chosen them to offer a structural framework that is useful in both examining and evaluating the mediation processes and can be applied to different cases to see what kind of requirements should be fulfilled during a mediation session. The first vital element in this proposition is to identify the key theories and definitions as to avoid any misinterpretation, so for this reason I have given a clear view on these terms and their present adaptations in practice. The two most important terminologies that have to be identified are ‘Restorative Justice’ and ‘Retributive Justice’. In the following I will provide a clear definition and distinction between them to illustrate the opposing ideologies they represent.

Following the clarifications in terminology I have investigated and mapped the current practices in Hungary to have the necessary background and context of my case analysis.

2.1 The magnitude gap

Baumeister (1996) refers to the discrepancy that characterizes the experience of an offence. Offenders feel like that their actions have less weight than what the victim has experienced during and after the offence. While victims feel a strong impact of the same occurrence. During the mediation session it is important to outbalance this effect and to bring all parties to the same level of understanding, how much the actual offence has impacted both of them.

2.2 Needs based assessment model of reconciliation

This theory has been proposed by Shnabel and Nadler in their 2008 research paper where they introduce their theory that the offender and the victim are impaired by the offence in different way and the goals of the mediation have different goals for them. In their study they examined several times how offenders and victims are damaged during an incident, and they came to the conclusion that it is usually the victim’s sense of power and the offender’s sense of belonging to the social structure that is harmed in most cases.
Therefore, the mediation process should mainly focus on repairing these to create a
discussion that enables them to overcome the consequences of the offence. This theory is
quite useful when one is evaluating and examining mediation sessions to see if it is
capable of satisfying all of the parties needs and what kind of challenges arise during the
process.

2.3 Empowerment Theory
Empowerment theory is concerned with the active participation of people to take control
of their potential and live with the opportunity to take part in democratic participation of
their community, also to enable the ones who lack resources to be able to do so. (Rappaport, 1987)

As in traditional justice the affected parties are usually strongly alienated from the
offence and the following practice itself, the system treats as peripheral during the process
and lose all kind of personal involvement. As in these cases, the conflict between the
offender and the victim move to a different focus, where it becomes a conflict between
the state and the act of the offence. This process disempowers all of the actors. However,
in the process of restorative justice practices the opposite is true as it is based on the
notion of involving the affected parties in the resolution and process.

Empowerment theory fits well into the restorative justice framework as many of
their fundamental values overlap in most cases, such as community involvement,
reintegration, reparation, responsibility and reconciliation. The characteristics that are
associated with successful restorative justice practices are ones that also have a strong
association of empowerment, the most notable examples are fairness, inclusive
participation, equality, consent, safety, non-punitiveness and non-judgement. (O'Mahony
and Doak, 2017)

By implementing empowerment theory, we can reassess the outcomes of
restorative justice processes as not merely by-products but as values that compliment
empowerment and should be a conscious goal of restorative justice encounters. By
recognizing these effects, we can better evaluate some programs based on the
empowerment they provide to the stakeholders.

The two values that generate empowerment in the restorative justice process are
agency and accountability. Restorative agency in this framework is defined as allowing
individuals to make choices that work towards restoration of the harm caused by the
offence while restorative accountability refers to the notion that offenders themselves take responsibility for their actions and not just passively accept it like in traditional justice ruling but also actively trying to make up for their actions.

Empowerment theory provides a great analytical tool for assessing the success of restorative justice programs as well as it enables the participants to connect to the structure that mostly alienate them in traditional criminal justice processes. It helps creating a framework where restorative justice criminal justice can more easily implement the restorative justice practices.

2.4 Restorative Justice Definition

Restorative justice has been hard to define and has been usually considered to be a respective opposition to traditional justice practices and theories. In the following I will present a couple of different definitions that together possibly are able to give a complete picture on restorative justice, based on its aim, process and values equally considered. As of a process-focused definition that has been put down by Zehr and Mika (1998) restorative justice is “a process of justice which maximises opportunities for exchange of information, participation, dialogue and mutual consent between the victim and offender.” Marshall’s (1999) definition is the following “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 implication of the future.” it has been also widely used as a process-based definition. Dignan’s (2005) definition states the three vital concepts of restorative justice, first that the harm caused by the offence has to be put right, second, focus on the offender’s accountability to all who have been harmed and last that it has to be a process that is inclusive and non-coercive.

As for a value-based approach of definitions, Pranis’ (2007) definition that divides “individual values”, that the process tries to achieve to draw out from the individual such as compassion, patience and open-mindedness; and “process values” that are the represented values of the restorative justice itself, these include respect, equality, inclusion and truth-telling. An alternative definition from Van Ness and Heetderks Strong (2014) lays down the four principles of restorative justice, that are the following: Restorative justice practices must be inclusionary, encounter based, furthermore the ones responsible for the harm have to take responsibility and reintegration must be facilitated for the individuals.
Based on the above definitions, restorative justice’s main goal is to mend the harm that was caused by the offence in question and do this by including all of the parties that have been affected and to create an environment where the parties can be honest and forthcoming with their experiences. This also needs to happen in context of a dialogue where everyone can freely express themselves. This strongly correlates with the process of mediation, so it is quite straightforward that mediation has become one of the most important and widely used tools in restorative justice practices.

2.5 Restorative Justice and Traditional Justice Practices

As restorative justice is mostly viewed in relation with traditional justice practices, that include retributive justice and rehabilitation, in the following I will present the most important differences between then as an overview to establish the theoretical differences. Daly (2000) has described the following comparison of the two opposing justice theories: In traditional justice practices, retribution is included as a punishment of the offence and rehabilitation as a treatment for the offender. In contrast, restorative justice focuses most importantly on the repairing the caused harm between the victim and the community itself and offender. Victims are usually only fill peripheral role in the process in traditional justice while restorative justice are vital in this perspective. The two also differ on the basis on how the community is represented, in traditional justice they are usually have a state appointed representative on the other hand in restorative justice the community members take an active role and are personally involved in the process. The final major difference is the relationship between the parties, as in traditional justice practices there is an adversarial relationship present while in restorative justice practices the relationship between the parties is characterised by dialogue and negotiation.

One of the most prominent challenges that restorative justice practices have to face is that they have to be integrated in a traditional criminal justice framework, as there is no system in charge where restorative justice principles would be the dominant. The alternative practices might be difficult to fit into the policies in effect and by limiting the use of these it might be hard to determine the actual potential effect that could be accomplished. As the main goals of the two can be described as contradictory. However restorative justice practices can be combined with traditional justice processes to achieve a compromise between the two different concepts. For example one of the desired
outcomes could be a decrease of recidivism rates. It is supported by several researches that restorative justice programmes do actively reduce recidivism rate among the offenders who participate. (O’Mahony & Doak, 2017) This could help the struggle of retributive justice with high recidivism rates that are proving to be an issue that cannot be solved with the currently implemented practices.

2.7 Restorative justice and mediation practices in Hungary

The following introduction to the Hungarian mediation policies is based on the information taken from the official webpage of the Hungarian Office of Justice as well as the article of Barabás (2017) researcher of the Hungarian National Institute of Criminology.

Mediation as a conflict resolution tool in the justice system has only been available in Hungary since January 2007 but other restorative measures have been implemented previously since 2003, where probation officers received access to methods that can help the reintegration and wellbeing of the offender. Since the implementation of the mediation process in 2007 there have been 40,000 criminal and misdemeanour cases that participated in mediation sessions.

In Hungary, restorative justice practices are still rare compared to the number of cases that are handled by the traditional punitive justice system. Restorative justice mostly manifests in mediation as an alternative and additional method of conflict management. However, several limitations prevent many cases from participating in these new projects. To be applicable for mediation the case has to meet several conditions, such as the sentencing of the crime cannot exceed 5 years, the offender cannot be a recidivist, the crime has to be committed against persons, property crimes and traffic offences. These create the exclusion of many potential cases that would strongly benefit from restorative practices and projects such as rehabilitation and mediation. The chance for mediation is only available before the sentencing process and cannot be implemented during the execution of the sentence.
3. Methodology and Approaches

3.1 Research Criteria and methods

I have used the online database recommended to search for peer reviewed journal articles and also found a few books in the library on ‘Restorative Justice’ that are relevant for my research. I have mainly focused on clarifying the definition of the term restorative justice and to see how connected practices have been applied and researched so far. As this is a quite recent phenomenon there has been limited research on the topic and further challenge is that its success or influence is somewhat difficult to measure. Nevertheless, there are many scientific articles that focus on the theory and definition of restorative justice that can establish a strong theoretical background for my thesis. My inclusion criteria included the following aspects: restorative justice theory in general and restorative justice practices in criminal justice context and especially focusing on mediation.

However, as the practices of restorative justices are exceedingly diverse there are a lot of different elements that have to be considered and each have different uses and results which made it a little difficult to create a comparable framework for my research materials. In this case it is important to establish that most of these cases have to be considered on their own account and comparisons should not be made hastily, only if a common ground can be found. The most common practices in restorative justice include victim-offender mediation, religious (mostly Christian) counselling and some sort of community service activities. However restorative justice has been practiced not just in prisons but other institutions as well just like education and corporate management as the theory can easily be applied to any offence and its resolution process. In my thesis, I will reduce the scope of restorative justice practises taking place in the penal institutions as while the effects of restorative processes can be observed in other fields, the special case of my research needs to be condensed to the prison environment. I have also made sure that the articles I include do not show signs of a biased outlook and remain impartial, especially considering the practical application of restorative justice. I have also tried to keep the articles as recent as possible to make sure that no seriously outdated information is included.

3.2 Theoretical Framework

To establish the theoretical framework that will form the basis of my analysis I have researched several scientific materials and examined the theories that they associate and
apply with restorative justice principles. During my research I have encountered many different scientific perspectives however the theories that appeared in most of the materials have been The magnitude effect, Needs based assessment approach and the Empowerment Theory.

To complete my case study, it was vital to find reliable case descriptions that involve unbiased and clear documentation of mediation sessions. The case descriptions that I have used for my research are publicly available in the Hungarian collection titled “A büntetőügyekben alkalmazható közvetítői tevékenység gyakorlata és módszertani kérdései válogatott esettanulmányok” (Kertész, 2008). I have examined all of the 24 cases that are presented in this collection and decided to choose five that I will analyse on a deeper level using different theories that can be applied to restorative justice processes. By completing this analysis, I wished to be able to give a well-informed opinion how the mediation practices carried out can be viable from a theoretical point of view and if they do fit into this established theoretical framework.

When looking for well documented case descriptions there were a lot of limitations imposed on my research as the confidentiality of these cases make any research difficult. The case descriptions that I have used in this research come from only one source, this could definitely be an issue as to draw conclusions at least another source of mediation case descriptions would be necessary. However as in Hungary there is a very limited number of groups that practice mediation and have accessible case descriptions I was limited to use this source only, being mindful and critical of the possible issues that could be present, such as impartiality and the limited perspective of the descriptors. The difficulty of finding professionals that apply such practices restricted my research to investigating already available case studies and relying on scientific literature. These issues are quite usual in this field of research as the measures set for the protection of the concerned parties raise obstacles for many social scientists and to access most of this information special requirements are usually needed.

During the case selection I have made sure to include cases that represent different outcomes and methods that were used during the mediation session. I also made sure to choose cases that have different characteristics as to include both typical and atypical cases as to avoid only examining successful sessions.
3.3 Introduction of the cases examined

As mediation is only one of the many methods that is used in restorative justice practices too far reaching conclusions cannot be derived based only on examining mediation cases however victim – offender mediation is the most widely used technique in the practical manifestation of restorative justice theory. For this reason, these examples are the most accessible and as they are the majority of the processes they provide an excellent overview of the current restorative theories in use. In the following I will analyse the detailed cases that have been concluded by the mediators of the Hungarian Department of Justice.

First to introduce the Hungarian source material titled “A büntetőügyekben alkalmazható közvetítői tevékenység gyakorlata és módszertani kérdései válogatott esettanulmányok” (Kertész, 2008) (The practice and questions of methodology in mediation used in criminal cases, selected case studies), it has been recorded and concluded by several mediators of the Department of Justice in Hungary. It is describing 24 individual cases, divided into distinct categories based on the characteristics of the individuals involved in the offence. This report provides cases with great variance that can display how versatile the mediation process can be and how many different cases can be optimal to reach a solution by restorative justice methods. All of the cases are of criminal offences in different points of the jurisdictional process. Most cases were involved in mediation services to prevent any involvement from the court authorities and to find a solution to the issue and substitute the case being brought to court. This presented a situation where both sides would rather settle outside of the court to avoid the costs and trouble of a court case. This would present a mutually beneficial situation for both parties and cooperation can be rationally expected as to gain the optimal outcome is a common goal of both victim and offender. However, the external influence of legal advisors or other connections can be felt and investigated in some cases the can have an undesired effect on the mediation process.

The cases have been documented and selected by mediators who have worked on the cases and they are written by providing a summary of the cases, the pre-existing information that was known to the mediators, then a description of how the session or sessions progressed, making special note if there were any separated discussions that involved only certain parties as well as a resolution and if available any follow-up information. The case descriptions also have a feedback from the professionals, in these
there are challenges that manifested during the process and the instructive notes for future reference.

4. Findings

4.1 Case Analysis

In my analysis, I have focused on several elements to evaluate and examine the relevance and practical use of mediation in the restorative justice framework. I have examined the cases based on the empowerment theory, to see how much agency people can regain after participating in the program. As I have only the description of the cases, that were recorded by the mediators the perspective of the cases can present a challenge, yet most of their resolution can be a great indicator of the success or lack of the process.

From the available cases, I have chosen five to include in this analysis on a deeper level as they are a good representation of the 24 recorded cases that are included in this collection. The five cases chosen are the following: II/3, IV/3, V/2, VI/2 and VII/4. The cases have been selected on the basis of providing as many different characteristics, as they are all chosen from different chapters they are examples from various subsections based on the victims’ and offenders’ nature. During the case selection I have paid special attention to include cases the display easy and complex solutions alike as well as analysing typical and atypical cases to investigate how they might fit into the established theoretical framework.

I have taken an analytical look on the recorded cases, examining them from the point of view of several theoretical approaches. First, I will use the magnitude gap theory that helps to differentiate the perspectives of the offenders and victims, how different their experience were. Secondly, I will use the needs assessment approach, to see if the victims and offenders received the essential experience from the encounter, and finally I will apply the empowerment theory, as how the individuals have been empowered through the mediation process, that can also provide a practical assessment on the efficiency of the mediation sessions. To give a conclusion to the analysis I will summarize my findings in a SWOT analysis.
4.1.1 First case “Stays within the family”

II/3 (Pp. 21-26)

This incident concerns a mediation session where the offence happened among family members, specifically the son has injured his mother, by hitting her during a domestic argument. The offender and the victim had previous history of intense arguments and their relationship in the past was full of tension. The offence was a peak of this already toxic relationship. The victim was scared to stay in the same house with her son after the incident, however sometime after it he moved back and their relationship started to decline again. In fear of another lash out, they decided to use mediation to prevent the situation to escalate and to resolve their conflict in hope of being able to live together peacefully in the future. The mediation session has been successful as the parties were able to communicate clearly with each other and were able to compromise and also admitting that in the future they will need external help to provide a long-term solution. They agreed that in the future they will take the other person’s perspective into consideration and be more thoughtful about their actions.

Magnitude gap: Based on the description of the different experiences of both the victim and the offender it is clear that the victim was very seriously affected by the attack and in relation, the offender acted on instinct and lost his patience only later realizing the seriousness of his out lash. However, the offender internally justified his actions as being provoked by the victim’s behaviour.

Needs assessment approach: The needs of the victim and offender collide somewhat as their common goal has been established as being able to share a living space in peace in the future as well as developing their personal relationship. The difference of the needs is from the victim’s side is to being able to voice her shock and to confront her son by talking about the harm he has caused. The offender’s needs include his request to being able to voice his issues that appeared during living together with his mother and to describe the reasons for his frustration with his mother not giving enough personal freedom and space for him. The offender also was able to take responsibility for his action and apologized as well during the mediation process. During the discussion, both parties were able to get closure of the incident as well as a better starting point for the future.

Empowerment theory: During the mediation session the setting itself already provided a sense of empowerment for the victim especially as the safe space and the controlled discussion process enabled her to be able to confront the offender. She was able to take agency of the situation and could also listen and accept her son’s requests and feelings
towards the conflict. The offender also received the same advantage from the mediation session and this helped him to accept his accountability in the case.

In conclusion, of this first examined case, it is a model of successful mediation session where both parties are able to address their own perspectives and eventually find a compromise where both of them are able to move on and progress their relationship. The known follow-up information of this case also suggests that they were able to put the agreed terms into action and their personal relationship progressed in a positive direction.

4.1.2 Second Case “Five teenagers in trouble”

This particular case is concerned with juvenile offenders that presents a special challenge for the mediators, as the guardians of the juvenile offenders need to be present during the session. This case is also a difficult one because it involves five offenders that can make the process much more complicated than in case of a simple one victim one offender situation. The case involves the group of teenagers going home after of partying and during their walk they broke into a pub from where they have stolen tobacco products as well as alcoholic beverages, eventually also entering the victim’s home and stealing some material objects from her possession. The primary goal of the process is to agree on providing monetary compensation for the caused harm for the victim, which the offenders and their guardians all agreed to pay for. However, the victim also would have liked to see all of the offenders take responsibility for their actions and a second session was needed, as one of the offenders was not able to attend the first session. During the second session, a separated discussion was also necessary with one of the offender’s mother, who was not open to accept her son’s responsibility in the incident.

The magnitude gap: In this case, it is very clear that the young offenders do not weigh their action on the same level as the victim has experienced the impact of their actions. The teenagers are all struggling to keep a serious attitude during the session, which also presents a further issue for the mediators. The robbery obviously affected the victim on a much higher level and the attitude of the young offenders upset her even further.

Needs assessment approach: The most important need of the victim in this case was to receive the monetary compensation that would cover the financial loss the offenders caused. She also wanted to make sure that the young boys would learn from their mistakes by taking responsibility for what they have done so she can have a positive resolution for
the case. The offender’s needs in this case were to handle this with a nature attitude and face the consequences accordingly.

Empowerment theory: The victim was able to address the incident head on by acquiring agency that otherwise would have been impossible. This way she was able to negotiate the required compensation and to connect with the offenders to see if they would be able to show real regret of their actions. The offender’s accountability has been also demonstrated as they were directly involved with the resolution of the case and to experience that they have to own up to their actions.

The resolution in this case is not as positive as in the first one, while here the issue was resolved the offenders never really opened up to apologize or to tried to actively work together with the victim and just relied on the simple solution of the monetary compensation. This case presents a semi success, as while the damages have been paid for, real progress from the offenders was only partial.

4.1.3 Third case “Power over emotions”

V/2 (91-95)

The following case represents a more atypical leaning as it presented the mediators with several challenges, as during the session there was an external influence present who tried to persuade the mediator to apply some special treatment for the offender. The case itself is a simple traffic accident, where the offender ran over a cyclist. The victim suffered minor injuries but had to stay at the hospital as one of her arms broke as she fell to the ground by the impact. The offender’s father who is a lawyer was also present during the mediation and took control over the discussion by trying to present his son’s case. The case escalated when the offender and his father would not agree to pay the requested amount of compensation and suggested to settle the issue differently that would have been not legal. After this was refused they would complain and criticize the work of the mediators present. Eventually the parties could not arrive to an agreement just as the session was about to be finished because of the lack of cooperation the offender and his father suddenly agreed to pay the already somewhat reduced compensation amount to the victim.

The magnitude gap: The incident in this case has been quite severe for the victim as she suffered physical injuries and developed some fears after the accident. The offender was taking some responsibility for his part in the accident initially but still looked for some excuses to lessen his control in the situation. Furthermore, his denial of full responsibility
showed even more when he would not agree on the amount of compensation the victim requested.

Needs assessment approach: In this case, the needs of the victim were only somewhat satisfied, as while after a lot of arguing the offender agreed to pay the monetary compensation he did not show any regret or given an honest apology that would have helped the victim’s position. The offender took a passive, defensive position where his most important goal here was that an agreement is reached as quickly as possible and that it should be most convenient for him.

Empowerment theory: In this case, empowerment was not fulfilled to the level that the previous cases represent. The offender was obviously not interested in accepting his accountability and would not consider the victim’s point of view. While the victim had some sort of agency by being able to negotiate and confront the offender but the resistance that she was presented with from the other party’s side did take away from the relief and felling of control that would be expected after mediation.

4.1.4 Fourth Case “When cleaning goes too far”

This case belong to the atypical examples as the offender is an older woman who has cleaned out some storage space, including throwing out things currently stored there at the time, in the apartment building without asking the owner beforehand. The offender in the case seemed somewhat oblivious of her action’s seriousness and felt blameless. The mediation session therefore moved forward very slowly as the discussion had to focus first on clearing the responsibility of the offender. For this reason, there had to be several separated discussions to be held by the mediator and the offender and the victim as well. By meticulous explanation and conversation eventually the offender came to understand the victim’s point of view and after a little negotiation a compensation has been settled.

The magnitude gap: The magnitude effect is greatly prevalent in this case as the offender did not at all comprehend the harm she had caused with her actions and provided her explanation as she acted in good faith by cleaning up for keeping the storage place up to expectations. Therefore, she could not understand at all how upset she made the victim, who lost a lot of her possessions that held her special value. During the mediation session however, the offender was able to understand the error in her action.

Needs assessment approach: The needs of the offender and the victim are also quite different here. As the victim would have like the offender first of all to take some
responsibility and also to pay her monetary compensation for the things that have been thrown out. She was also ready to take the case to court, as she was very determined to stand her ground and make the offender realise the harm she has caused. The offender’s needs in this case were to provide a setting where she can tell her side of the story and also to realise the weight of the issue.

Empowerment theory: The case presents a situation where through empowering the victim and working with constructing the discussion the offender was able to understand and eventually empathise with the victim. While in a court setting this might never have come clear and the offender would possibly still feel undeservedly punished. The agency that the victim received here was essential to resolve this conflict. As the offender accepted her accountability she also agreed to pay the monetary compensation in monthly instalments.

As a conclusion of this case we can say that working with older individuals in mediation presents its own challenges as it might be harder to involve them in the conversation and might need more time to process the presented issues and understanding the other party’s point of view. While there was no explicit apology involved during the session the acknowledgement of the offender’s responsibility was a huge progress in this case and by agreeing to pay the compensation the case was resolved successfully.

4.1.5 Fifth Case “An unexpected grant”

The last case I examined is peculiar in the way that the victim is a company that has been harmed by an accident and the offender was passively contributing to the problem. It started with a bank transfer that was made in error to a bank account of an 18 years old university student. The company noticed the discrepancy and started to investigate where the falsely made bank transfer has arrived and found out that the girl who received the money was not able to pay it back the amount as by that time she has already spent it. The offender denied the repayment as she stated that the company was the one who made an error. The employee who made the mistake has been also fired in the meantime by the foreign owner of the company and this caused even more distress for the company’s management. The company’s representative had the responsibility to settle the monetary harm that was caused by the offender. After disclosing the full damage that has been caused by the irresponsible actions of the offender they were able to come to the agreement of paying back the amount in several instalments.
The magnitude gap: In this case the offender was not conscious of how much damage she has caused first, especially that her action has caused someone to lose their jobs. The company and the employees however did experience a lot of distress and during the mediation it was easy to convey this to the offender who seeing this came to realise the weight of her actions.

Needs assessment approach: The victim was very strongly concerned about the monetary harm and as a company the pressure was even stronger here than in case of an individual. By resolving this issue without a court case was in the interest of both parties, as the offender was able to repair the harm without receiving a criminal record and the company could settle the issue the simplest way possible.

Empowerment theory: While the victim in this situation might not be in need of empowerment as the company might already possess more agency than an individual would this this position the resolution still made it possible for the offender and victim to connect and empathise with each other. As the offender showed regret and apologised after hearing how her immature decision costed someone’s job. By opening up eventually, she could reveal that her relationship with her family also suffered when they found out about this offence and they were greatly disappointed in her. She was able to take responsibility in the end and to atone for her mistake.

In this last example we can see that by simply coming forward with the details and consequences that someone’s actions have caused the offender could find empathy and honestly regret their actions. The distance that divided the offender from seeing the effects of her mistake caused her to feel distanced from the whole issue and not accepting the blame first, but by closing this distance she quickly accepted her accountability and was open to cooperate with the victim’s requests.
## 4.2 SWOT Analysis

As a closing evaluation I am presenting the SWOT analysis of the mediation process based on the examined cases and the summary that I have presented in the previous section.

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
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</thead>
<tbody>
<tr>
<td>• Flexibility of the structure</td>
<td>• Vulnerability to external influence</td>
</tr>
<tr>
<td>• Avoiding the escalation of conflicts</td>
<td>• Non-cooperative offenders</td>
</tr>
<tr>
<td>• Preventing potential further offences</td>
<td>• Surface level/short-term solutions</td>
</tr>
<tr>
<td>• Empowering victims and bringing accountability to offenders</td>
<td>• Difficulty of follow-up</td>
</tr>
<tr>
<td>• Providing closure and relief</td>
<td>• Dishonest participation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Threats</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Extension of policies to include more cases</td>
<td>• Policy changes</td>
</tr>
<tr>
<td>• Creating more awareness of alternative conflict resolution practices</td>
<td>• The limit of cases that can participate in the program</td>
</tr>
<tr>
<td>• More research into the effects and advantages of the method</td>
<td>• Misinterpretation of the purpose of mediation</td>
</tr>
</tbody>
</table>

In the SWOT analysis I have applied the findings that I have come to in my case analysis as well as my research that I have concluded preparing for the topic. To begin with the
strengths, the method is proving to be quite successful as an alternative conflict resolution method as it is easy to adapt to different specifics, such as more than one offender, juvenile offenders or offenders who do not recognise their responsibility. They offer a good solution in avoiding the escalation of the conflicts, therefore offering an easier solution than usual the court process that is time consuming and does not have the advantages of mediation. Successful sessions can also have the potential to prevent further offences that root from the initial conflict. By resolving these issues, the parties can both find solutions and compromises that benefit them in the long run. As well as the personal benefits that both offender and victim gain during the process helps them put the offence behind them. On the other hand, weaknesses include the potential vulnerability to external influences, for example advice from lawyers that can limit the success of the mediation. The involvement of non-cooperative offenders and dishonest participation can have the same effect as well. In general mediation is criticized as for only offering solutions on the short term and that monetary compensation enables offenders to buy their way out of the conflict. As there are few official consequences that would need monitoring, following up becomes difficult that makes it hard to determine how efficient the process has been.

Restorative justice practices in general and especially mediation have a lot of potential in future criminal justice if the process becomes more well-known as well as better documented and researched. If the exposure and create enough attention, then policy changes can enable them to be used in more cases and in better circumstances. One of the most threatening perspective is the policy changes and the limitation put on the participation of cases. As mediation is not part of mainstream criminal justice it can be also easily misunderstood as it can be seen as an alternative that cannot be implemented into the current system.
5. Conclusion

By closely examining the cases of the Hungarian mediation sessions the manifestation of the magnitude effect is quite pronounced. In the case descriptions, the difference perspective of the offence is easy to review as they all have the incident described from both the point of view of the victim and offender alike. Most experiences just as the theory suggests involving the offender underestimating the weight of their actions or just being completely oblivious that they caused any harm at all. The various cases show very different experiences from the perspectives of the offenders. By examining how the different needs of offenders and victims have to be satisfied during mediation we can see how the method brings an empathising atmosphere and usually a common understanding where the conflict can be resolved on peaceful terms. While most of the cases are outside of court authority as the victims wished to resolve the conflict without the lengthy juridical process, mediation can just as well work in cases where the court ruling is already in some stage of the process. By directly empowering the individuals and bringing them onto common ground mediation is a valid restorative justice method. The success of any mediation session relies on the professional ability of the mediators and how prepared they are to handle the challenges that arise in the atypical cases. As presented even in cases of several offenders a solution can be reached eventually. The atypical cases usually involve the uncooperative offenders who just take mediation as an easy way out and want to reach the quickest and most convenient solution for them without showing real regret or giving an honest apology. The effect on the community can be also noticed as by resolving these individual cases the wider community can greatly benefit as well. The offenders can be deterred from committing future offences without enforcing any retributive methods that would cost society more in the long run. Mediation can be a very powerful tool that works well with several theories that have been applied to restorative justice principles.

As a conclusion of my paper, I can state that based on my findings of the examined cases, mediation can be successfully implemented into the restorative justice framework and with this helping the development of traditional criminal justice practices. The theoretical
framework presented helps evaluating and further progressing the mediation process, which can in the long run help creating a more efficiently working system. It is evident that mediation and restorative justice will not replace the traditional criminal justice practices anytime soon. However, by using these substitute conflict resolution projects we can move in the direction of a more balanced system that serves the community better by focusing on providing a more humane treatment for both victims and offenders. This could contribute in creating a justice system that fights against recidivism and would be providing a competent system that can combine restorative and traditional practices.
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