

Mediation in Cases of Juvenile Offenders in Croatia

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I. Introduction

Although victim offender mediation is not a brand new idea it exists in Croatia only since 2001 and only as a pre-trial procedure for juvenile offenders. Its development was enabled by multiple changes happening simultaneously both globally and locally. During the nineties, Croatia was going through war and post-war problems. Transition to a new type of society included processes like democratization, differentiation, privatization, Europeanization and revitalization of religion. These processes created new needs and opportunities for citizens, as well as new personal and social problems. One of the problems was that existing strategies were not able to reduce new and old types of juvenile crime. On the other hand, this created an opportunity to get to know and to try to follow the world-wide changed perspective on juvenile justice. Focus was especially placed on restorative justice trends in Europe, children's rights movement as well as changes regarding trends of law and treatment in neighbouring countries, especially Austria and Slovenia.

A separate area of law concerning juvenile crime and a separate juvenile justice system has been in existence in Croatia for over 50 years. The new trends were included in the *Juvenile Court Act* passed in 1997 (see *Narodne novine* 1997, 1998 and 2002). The act contains provisions of substantive criminal law, provisions on courts and criminal procedures and provisions on enforcement of sanctions. It is applicable to two types of young perpetrators of criminal offences: minors (persons whose age at the time when the offence was committed was between fourteen and eighteen) and young adults (persons whose age at the time when the offence was committed was between eighteen and twenty one). The rules on the criminal law protection of children and minors are provided within this act as well.

Three types of sanctions for the offences committed by minors or young adults are defined by this act: educational and correctional measures, juvenile imprisonment and safety measures. For the offences committed by young minors (fourteen to sixteen years of age) only educational and correctional measures can be imposed. Educational and correctional measures are the bases of the juvenile justice system in Croatia. There are three types of such measures: cautioning (court reprimand, special obligations and referral to an educational centre),

intensive supervision (probation) and referral to different types of educational or correctional institutions.

Regarding the legislative background for victim offender mediation, special obligations are the most important sanction. As a new sanction, special obligations enable integration and implementation of *international standards*¹ in Croatian juvenile criminal law and the juvenile law enforcement (justice and welfare) systems.

II. Development of mediation in cases of juvenile offenders in Croatia

With the purpose of solving problems arising from juvenile offences out of court, the *Juvenile Court Act* introduced a pre-trial procedure based on the principle of opportunity. According to this principle, the public prosecutor for minors may decide not to request criminal proceedings to be instituted for a criminal offence punishable by a prison sentence of up to five years, even though it may reasonably be suspected that the minor committed that offence. Such a decision should be based on the public prosecutors' estimation that it would not be purposeful to conduct the proceedings against the minor (having in mind the nature and circumstances of the offence, as well as the perpetrator's personal characteristics and life circumstances). More specifically, according to Section 64 of the *Juvenile Court Act*, the public prosecutor may make his/her decision not to institute criminal proceedings on the condition that the minor is willing to fulfil one of the following four special obligations:

1. to repair or provide compensation for the damage done by the offence, according to the offender's abilities;
2. to get involved in the work of humanitarian organizations or in activities related to the community or the environment;
3. to undergo, with prior consent of the offender's legal representative, medical treatment for drug addiction or any other addiction;
4. to get involved in individual or group work of youth counseling services.

It could be said that the special obligation to repair or provide compensation for the damage done by the offence provides the legal framework for victim offender mediation (VOM).

¹For example: the Beijing Rules of 1985; the UN Convention on the Rights of the Child; the Riyadh Guidelines of 1990; etc.

On the basis of the *Juvenile Court Act*, criteria for applying victim offender mediation in cases of juvenile offenders in Croatia are as follows:

- reasonable suspicion that the minor concerned committed the offence should be established;
- the offence concerned should be punishable by a prison sentence of up to five years or by a fine;
- petty offences that could result with charges being dropped are excluded;
- first time offenders are a priority;
- recidivists are not excluded;
- offender has to provide his/her free consent to participate in the VOM process;
- victim has to provide his/her free consent to participate in the VOM process;
- the public prosecutor for minors is the only person entitled to make a decision on imposing obligations prescribed by article 64, as well as deciding if they have been successfully carried out.

Per year, there are approximately 3.000 to 3.500 offences committed by minors in Croatia. Since 1998 (the year in which the *Juvenile Court Act* came into force) between 35% and 45% of cases referred to the office of the public prosecutor for minors were being resolved out of court via pre-trial procedures. Considering yearly statistics, up to 25% of these procedures is victim offender mediation.

On these grounds, victim offender mediation was promoted by the project “*Alternative Interventions for Juvenile Offenders – Out-of-court Settlement*” which was developed by the Ministry of Health and Social Welfare, the Office of the State Attorney and the Faculty of Education and Rehabilitation Sciences of Zagreb University. The project started in the years 2000 and resulted in 24 professionals being educated and certified by Austrian mediators and educators from “*Neustart Graz*” – Johann Schmidt and Brigitte Power-Stary. The three year course covered approximately 450 hours of supervised practice and various theoretical approaches to mediation. Through the project, the Croatian model of out-of-court settlements for juvenile offenders was developed. The book describing the model was published in the year 2003. The Croatian Association for Out-of-Court Settlements was established the same year. Seventeen of the professionals who received training in the project started to work, and are still working on victim offender mediation for juveniles in three small victim offender mediation services in Zagreb, Osijek and Split. They operate as independent services, but

carry out their activities in collaboration with the local prosecutors' offices and the local centres for social work.

The Croatian model of victim offender mediation is presented in *Figure 10*. After an offence has been committed and police investigation has been carried out, the public prosecutor for minors is informed who then makes a decision to put the case through a pre-trial procedure. During the pre-trial procedure which is conducted in the office of the public prosecutor for minors, the victim and the juvenile offender are offered to participate actively in the process of resolving issues arising from the offence. Before the process of mediation starts, both parties have to give their free consent to participate to the public prosecutor for minors. The process of mediation is carried out in one of the three mediation services in Croatia by a licensed mediator. After the process is completed, the public prosecutor for minors is informed about its results. A report to the public prosecutor is made and if the mediation is pronounced successful by the mediator, the public prosecutor may decide not to institute criminal proceedings.

Criteria for successful victim offender mediation are:

- the juvenile offender accepts responsibility for the offence;
- victim and offender give their informed consent to participate in the mediation process;
- an agreement is reached and signed by both parties;
- fulfilment of the agreement;
- fulfilment of the agreement by both parties;
- report on the success of the mediation to the public prosecutor for minors;
- the public prosecutor decides not to institute criminal proceedings;
- no re-offending for at least three years.

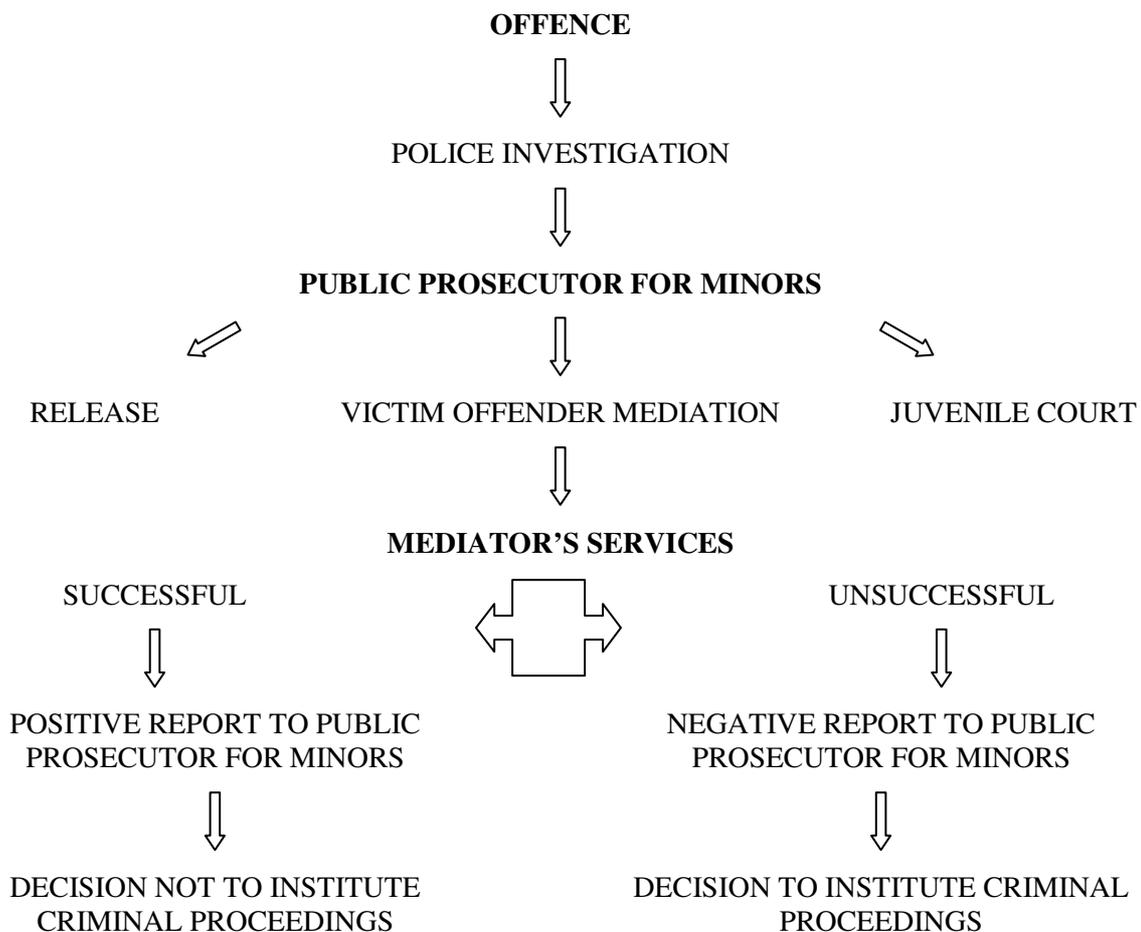


Figure 10. Model of juvenile victim offender mediation (adapted according to *Aussergerichtlicher Tatausgleich*, 1997; Koller-Trbovic et al. 2003)

III. Evaluation

Generally, evaluation has shown that the recidivism rate for juveniles who participated in victim offender mediation processes was significantly lower (10%) than for other types of sanctions for juvenile delinquents (30%). Also, all statistics and evaluation carried out until now in Croatia have demonstrated that this informal, educational and correctional measure aimed at solving problems arising from juvenile crime out of court is very successful and efficient.

Here are some of the results of evaluation (Kovačić 2008) carried out in 175 cases of victim offender mediation completed between 2001 and 2006 in Zagreb:

- mediation processes lasted up to 3 months in 80% of cases;
- at the time, most offences were: burglary (35%), aggravated assault (24%), theft (19%), violation of property (7%) and other, mostly violent behaviour of some kind (15%);
- almost 70% of offences were violent offences of some kind;
- most offences (61%) were committed by one offender;
- characteristics of victims included: 94% of victims were private persons, predominantly male, aged 21 or older;
- characteristics of offenders included: 95% were male; 60% minors (14 to 18 years of age) and 40% were young adults (18 to 21 years of age); 93% of offenders had not been previously known to the local centre for social work;
- most mediation outcomes were: in 58% of cases – apology to the victim and financial compensation; in 26% cases – only an apology; in 16% cases – other (financial compensation, humanitarian work, returning stolen things, joining treatment for drug addicts, symbolic compensation, etc.);
- victims were satisfied with the mediation process and the agreement in 95% of cases and offenders in 94% of cases;
- for 86% of cases, the public prosecutor for minors made a decision not to institute criminal proceedings;
- the rate of recidivism was 9.7% (17 offenders committed offences again – mostly in the case of possession of drugs).

IV. Conclusion

All conclusions that can be made regarding victim offender mediation in Croatia bring us to a paradox. Although this out-of-court sanction which is also a service to the community is very successful it is not developing in the sense that new mediation services are not being established in Croatia. It can only be hoped that in the next decade already existing plans for training new mediators, establishing new mediation services in all Croatian regions, developing the model of victim offender mediation to suit adult offenders and joining the European VOM network will be fulfilled.

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