

RESTORATIVE JUSTICE: AT THE BORDER BETWEEN CRIMINAL LAW AND MORALITY

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Abstract: *In this paper, I examine the criminal law institutions of restorative justice within Hungarian law through the lens of morality. In my view, in an era characterised by increasingly self-aware citizens, compliance with the law cannot be solely enforced through the fear of retribution. Consequently, the significance of any legal institution that facilitates emotional identification with legal consequences is amplified. In alignment with these considerations, my study will first elucidate the relationship between morality and law, subsequently explore the emergence of restorative institutions on the international stage, and finally concentrate on Hungarian legislation.*

Keywords: *Restorative Justice; Mediation; Criminal Law; Punishment; Morality*

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1. INTRODUCTORY THOUGHTS

Although we primarily associate criminal law with a legal positivist approach, because of its undoubtedly precise system of rules, we cannot, in my view, lose sight of the fact that the individual criminal offences ultimately embody social disapproval of deviant acts.

Natural law *sui generis* is a kind of 'ethical law'. Although natural law is not the same as normative morality and morality is not natural law, there is a synergistic relationship between them, and criminal law is the branch of law most closely linked to morality, so that, by virtue of the rule of congruence, criminal law and natural law are closely linked in this way.¹

Restorative justice is both a theory of criminal justice and an approach to rehabilitation purported to reduce future criminality.²

Starting from this line of thought, my aim is to show that the spread of restorative justice can help to enforce the moral justice that can most effectively serve specific prevention.

My paper aims to address the following research questions:

- What social processes have contributed to the emergence of restorative justice?
- What is the relationship between restorative justice and justice in the moral sense?
- How can the restorative toolkit be effectively integrated into Hungarian criminal law to enhance special prevention?

¹ Enikő Forró, 'A büntetőjog természetjogi megalapozhatósága' [The Natural Law Foundations of Criminal Law] (2015) (53), *Kellék* 117.

² Joanna Shapland and others, *Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes* (2008) Ministry of Justice Research Series 10/08 2.

To address these questions, the study initially examines the development of the restorative approach on the international stage, with a particular focus on the European Union. Subsequently, it explores the array of restorative tools available within the Hungarian criminal justice system. Given the opportunities afforded by the domestic regulatory framework, this section of the study places significant emphasis on analysing the legal institution of criminal mediation.

My hypothesis posits that the principles of the restorative approach align more closely with the concept of moral justice than the retributive criminal law model. Consequently, the implementation of restorative methods may enhance the moral legitimacy of criminal law. Therefore, it is imperative to investigate the potential inherent in restorative justice.

The research follows a doctrinal legal methodology based on the analysis and interpretation of legal texts and relevant academic literature, aiming to identify novel theoretical questions.

2. CRIMINAL LAW AND MORALITY

Morality and law have traditionally been considered as two separate sets of rules, but law, especially criminal law, expects behaviour that is reprehensible according to the dictates of morality and prohibits actions that are not considered ethical.³ In the long run, a legal system that is devoid of social acceptance cannot be sustained.⁴

The main difference between the rules of law and those of morality is the question of state coercion: law also uses public authority to achieve its ends.⁵ State coercion is most evident in the application of criminal law. In other words, we obey the rules of criminal law because we fear retribution and we obey the rules of morality because we have our own internal motivation. Moreover, by prioritising ethical considerations, criminal law can fulfil its purpose of delivering fair and just outcomes for all individuals.⁶

Lon Fuller posits that the law possesses an intrinsic morality. According to his perspective, it is widely held that a law failing to adhere to these internal moral standards is deficient not only as a legal construct but also in moral terms.⁷

The intrinsic connection between criminal law and morality is evident, as the fundamental elements of criminal law convert moral prohibitions into legal mandates.⁸

It is important to distinguish between a criminal offence and a breach of moral norms, as these are not synonymous concepts. For conduct to be classified as criminal in a legal context, it must transcend a mere violation of moral norms; however, not all prohibited actions are inherently immoral.⁹ In a developed constitutional state, it is understood that criminal offences are not those behaviours deemed harmful by arbitrary

³ Péter Miskolczi Bodnár, 'Az erkölcs és a jog szoros kapcsolata' [The Close Relationship Between Morality and Law] (2015) 11(4–6) *Polgári Szemle* 27.

⁴ Miskolczi Bodnár (n 3) 28.

⁵ Miskolczi Bodnár (n 3) 28.

⁶ Zeynep Sutasir, 'The Role of Ethics in Criminal Law: Justice, Fairness, and Moral Considerations' (2025) 31(1) *Journal of the International Academy for Case Studies* 1, 1.

⁷ James Edwards and Tarek Yusari, 'The Internal Morality of Criminal Law' (2023) 43(3) *Oxford Journal of Legal Studies* 475, <https://doi.org/10.1093/ojls/gqad005> accessed 30 May 2026.

⁸ Károly Bárd, 'Erkölcs és büntető igazságszolgáltatás – a hallgatás joga' [Morality and Criminal Justice – The Right to Silence] in Katalin Holé, Csaba Kabódi and Barbara Mohácsi (eds), *Dolgozatok Erdei Tanár Úrnak* [Studies in Honour of Professor Erdei ELTE Állam- és Jogtudományi Kar 2009] 12.

⁹ Richard C Fuller, 'Morals and the Criminal Law' (1942) 32(6) *Journal of Criminal Law and Criminology* 624, 630.

state decisions, but rather those that pose a threat to societal peace as a whole and are, therefore, subject to sanction.

One of the fundamental inquiries in legal philosophy concerns the distinction between law and morality.¹⁰ In contrast, my study posits that restorative justice may serve as a nexus between these two domains, not by separating them but by linking them.

I intend to substantiate this assertion with the following:

According to Karl Jaspers, a crime requires punishment. For this to occur, the presiding judge must, following the evidentiary procedure, find it justified to establish the criminal responsibility of the defendant.¹¹

In this context, the perpetrator assumes a 'passive' role; from the perspective of sanctioning, it is irrelevant whether they admit the crime, are willing to accept responsibility, or, conversely, feel no remorse. Although these factors are considered during sentencing, they are irrelevant in determining guilt.

Conversely, moral guilt engenders insight and, subsequently, repentance. Although this is an internal process, it leads to tangible consequences in the external world. Thus, law pertains to external actions and their objective consequences, whereas morality is associated with inner conviction, conscience, and personal responsibility.¹²

Restorative justice, therefore, provides a legal framework for recognising responsibility in the moral sense by employing restorative measures in response to an external act, resulting in personal acceptance of responsibility. Through restorative techniques, individual accountability can be achieved, thereby shaping perspectives and potentially mitigating the risk of recidivism.

Ultimately, this prompts the question: does not specific and general prevention benefit from the perpetrator perceiving the imposed punishment as just, thereby complying with it out of intrinsic motivation?

In this context, it is worth mentioning that current social changes have not left our attitude to criminal law untouched. For example, a modern conception of the enforcement of imprisonment can no longer be content with enforcing the disadvantages of deprivation of liberty, since the experience of the past centuries seems to show that the focus on creating and maintaining the strictest possible regime is not matched by even minimal results.¹³ As Szabolcs Szitka puts it, new strategies seem to be knocking at the door.¹⁴

There are five R's on which the methods of restorative justice should work:

1. Relationship
2. Respect
3. Responsibility
4. Repair

¹⁰ Héctor Wittwer, 'Moralische und strafrechtliche Schuld – ein Vergleich: zugleich ein Beitrag zur Unterscheidung von Recht und Moral' [Moral and Criminal Guilt – A Comparison: At the Same Time a Contribution to the Distinction Between Law and Morality] (2016) 1 *Rechtsphilosophie: Zeitschrift für Grundlagen des Rechts* 87.

¹¹ Wittwer (n 10) 89.

¹² Wittwer (n 10) 89.

¹³ István Budai, 'Resztoratív technikák alkalmazása a büntetés-végrehajtásban' [The Application of Restorative Techniques in Corrections] (2014) 1 *Börtönügyi Szemle* 38.

¹⁴ Szabolcs Szitka, 'Új lehetőségek felkutatása a fiatalok büntetés-végrehajtásában, reszocializációjuk elősegítése érdekében' [Exploring New Opportunities in Juvenile Corrections to Promote Resocialisation] (2008) 3 *Börtönügyi Szemle* 13.

5. Reintegration¹⁵

In the absence of these criteria, moral responsibility cannot be asserted. Restorative procedures have the capacity to conclude a criminal case through an agreement that fulfils both the victim's and the offender's sense of moral justice. Furthermore, if voluntary compliance is not achieved, these procedures can enforce the state's monopoly on punishment.

Consequently, the lack of moral responsibility does not imply an exemption from consequences; in instances where restorative justice is unsuccessful, traditional criminal law reasserts its prominence. However, as I endeavour to elucidate in the section of the study addressing the Hungarian legal framework, even without an agreement between the victim and the offender, employing restorative tools may prove more advantageous for all parties than relying solely on the sanctions provided by traditional criminal law. It is not an exaggeration to assert that restorative justice resides at the intersection of morality and law.

Therefore, in the following chapters, my study will focus on the presentation of a restorative face of criminal justice that can be used for specific prevention.

3. THE NATURE OF RESTORATIVE JUSTICE

3.1 Life-Giving Factors

Taking into account the various dimensions of the topic and the historical periods of their development in different continents, we can conclude, in agreement with Borbála Fellegi, that a systematic presentation of the roots would require a separate thesis.¹⁶ Given the criminal law orientation of my thesis, I will limit myself to an overview of the criminal policy reforms of the 20th century.

In multi-ethnic societies (e.g., New Zealand and the United States of America), community-based conflict management techniques have gradually been incorporated into formal legal systems that have emerged essentially as a result of European social development. Among other things, traditional decision-making models of the Maori indigenous peoples of New Zealand and the circular models of the North American and Canadian Indian tribes in the US and Canadian legal systems have become accepted.¹⁷

By the second half of the twentieth century, it had become clear that purely crime-, perpetrator- or victim-oriented concepts could not fulfil the requirement of either protecting society or 'correcting' the perpetrator.¹⁸

The restorative model of justice was developed by Howard Zehr. The aim of these procedures is to restore the harm to the greatest extent possible, and this can be achieved by a shared recognition by the parties to the wrong of their grievances, needs and obligations in relation to the harm.¹⁹

¹⁵ T K Ligi, 'Introduction of restorative justice practices in criminal justice system: An overview' (2024) 4(1) *International Journal of Criminal, Common and Statutory Law* 133 <https://www.doi.org/10.22271/27899497.2024.v4.i1b.77> accessed 30 May 2026.

¹⁶ Borbála Fellegi, 'Büntetés és/vagy helyreállítás? A resztoratív igazságszolgáltatás intézményesülése Magyarországon' [Punishment and/or Restoration? The Institutionalisation of Restorative Justice in Hungary] (PhD értekezés [PhD dissertation], ELTE Társadalomtudományi Kar 2008) 62.

¹⁷ Fellegi (n 16) 70.

¹⁸ Zsanett Schweighardt, 'A tevékeny megbánás – a mediáció szerepe a büntetőeljárásban, a jogintézmény jövője' [Active Repentance – The Role of Mediation in Criminal Proceedings and the Future of the Institution] (Magyarország Bírószágai) (2018) 6 https://birosag.hu/sites/default/files/2018-08/17_dok.pdf accessed 30 June 2026.

¹⁹ Howard Zehr, *The Little Book of Restorative Justice* (Skyhorse Publishing 2015) 37.

Several studies have demonstrated that victims were dissatisfied with the criminal justice system because they were only allowed to act as witnesses in their own cases. However, research by Strang and Sherman shows that victims require the following five aspects to be taken into account in the administration of justice:

1. Providing information on the legal fate of the crime,
2. The possibility of expressing an opinion on the consequences,
3. Emotional reparation and apology from the offender,
4. Financial reparation,
5. Fair and respectful treatment by the authorities.²⁰

The conclusion is that the modern man wants to be in control of his own destiny, and the legislator can no longer ignore this need.

From a theoretical point of view, the idea of restorative justice is the result of the convergence of several trends in criminal policy, namely the humanisation of criminal law and the system of criminal sanctions, the rise of criticisms of imprisonment, the spread of alternative sanctions, and the idea of victim-offender reconciliation.²¹ The initial conceptions even stressed that in time restorative instruments would fully replace traditional justice.²²

3.2 Difficulties in Formulating a Definition

It is essential to begin by acknowledging that, although there is variability between programmes, restorative justice is typically a voluntary process that involves convening the client, victim, and community to discuss the causes and consequences of the criminal act. This approach facilitates the expression of victims' voices and needs, empowering them to actively participate in the reparative process.²³

In addition, it is important to differentiate between restorative justice and restorative techniques. Restorative justice is characterised as 'an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue'.²⁴

In a narrow interpretation of the question raised, the concept of restorative justice is not a legal category, nor is there a single definition.²⁵ Every aspect of defining restorative justice is a challenge: defining it, grouping methods, and even naming the mindset.²⁶

Although a universally accepted definition has not been established, the common elements of some definitions suggest that restorative justice is a process that focuses

²⁰ Fellegi (n 16) 72.

²¹ Ilona Görgényi, 'A büntető ügyekben történő mediáció távlatai' [Future Prospects of Mediation in Criminal Matters] (Kriminológiai Konferencia, Szeged, MKT 2011) 160.

²² Klára Kerezi, 'Konfrontáció és kiegyezés. A helyreállító igazságszolgáltatás szerepe a közpolitikában' [Confrontation and Reconciliation: The Role of Restorative Justice in Public Policy] (Akadémiai Doktori Értekezés [Academical Dissertation], ELTE 2011) 166.

²³ Lindsay Fulham, Julie Blais, Tanya Ruge and Elizabeth A Schultheis, 'The effectiveness of restorative justice programs: A meta-analysis of recidivism and other relevant outcomes' (2023) 25(5) *Criminology & Criminal Justice* 14867 <https://doi.org/10.1177/17488958231215228> accessed 30 May 2026.

²⁴ Theo Gavrielides, 'Restorative Practices: From the Early Societies to the 1970s' (2011) *Internet Journal of Criminology* 2.

²⁵ Borbála Ivány, 'Magyarországi kezdeményezések, jó gyakorlatok az iskolai erőszak megelőzésében' [Hungarian Initiatives and Good Practices in the Prevention of School Violence] (2008) 8 *Új Pedagógiai Szemle* <https://ofi.oh.gov.hu/tudastar/uj-pedagogiai-szemle-090930-8> accessed 24 June 2026.

²⁶ Beáta Bodnár, 'Resztoratív igazságszolgáltatási megközelítések a Kúria ítéleteinek indokolásában' [Restorative Justice Approaches in the Reasoning of Curia Judgments] (2023) 18(2) *Miskolci Jogi Szemle* 210 <https://doi.org/10.32980/MJSz.2023.2.210> accessed 30 May 2026.

on conflict and its resolution, is based on the active participation of those involved, and is based on the interests of the victim, the perpetrator, and the community. By its very nature, restorative justice focuses on the future rather than the past and gives priority to repairing the harm caused by the crime.²⁷

3.3 Restorative Practices

As the lack of a universally accepted definition has already suggested, restorative practices are not themselves uniform in nature. It depends on the type of case and the personality traits of the participants in the procedure, which restorative technique is most likely to lead to the best results. In view of this, the most important issue in their application does not seem to be a precise definition but rather a classification of the alternative techniques.

Because of their diversity, some techniques will be more widespread, while others will be alien to the national practitioner. In order to discuss the present and future of restorative procedures in our region, we must therefore systematise them.

The number of participants is a primary demarcation point. It is understood that the concept of restorative justice means that the victim is not left alone with the offender, but the number of people other than the victim and the offender involved in the problem-solving process is also a factor.

The basic idea of mediation is that a third party, neutral in the dispute, assists the parties to the dispute in resolving the conflict, but without interfering in the resolution of the matter. Factors influencing the success of dispute resolution may include the duration of the mediation, whether it is mandatory or voluntary, and the extent to which the mediator can intervene in the substance of the process.²⁸

The most common approaches to mediation are the evaluative, facilitative, narrative, and transformative models.²⁹ Leonard R. Riskin has developed a model describing the mediator's intervention, according to which mediators can be typified according to whether they approach the subject of the dispute in a narrow or broad sense and whether the mediator's communication technique is evaluative or facilitative. According to this division, an evaluative mediator is one who contributes to the formulation of proposals for solutions or even expresses an opinion on these proposals, while a mediator who does not consider such intervention desirable is described as facilitative.³⁰

The democratic principle is most evident in the circle model. Its application may be particularly successful where a larger community has been adversely affected by the commission of a crime, for example, where youth disorder has led to damage to a symbolic building in the community. Instead of a series of dialogues, the right to speak is always given to the person who owns the so-called 'speaking object'. The members of the community address the problems along the circle, and the fact that the conflict is symbolically located in the middle of the circle, equidistant from everyone, expresses the

²⁷ András Szabó, 'A resztoratív igazságszolgáltatás elterjedése Kelet – Európában' [The Spread of Restorative Justice in Eastern Europe] (PhD értekezés [PhD dissertation], Pécsi Tudományegyetem Állam – és Jogtudományi Kar 2022) 20.

²⁸ Krisztina Rűzs Molnár, 'A mediáció az alternatív vitamegoldás rendszerében, különös tekintettel munkajogi szerepére' [Mediation in the System of Alternative Dispute Resolution, with Particular Regard to Its Role in Labour Law] (PhD értekezés [PhD dissertation], Szegedi Tudományegyetem Állam- és Jogtudományi Kar 2005) 27.

²⁹ Tibor Kertész, *Mediáció a gyakorlatban* [Mediation in Practice] (Bibor Kiadó 2010) 97.

³⁰ Leonard L. Riskin, 'Mediator Orientations, Strategies and Techniques' (1994) 12(9) *Alternatives to the High Cost of Litigation* 111, 113.

fact that the conflict is a problem shared by everyone and that everyone must therefore be involved in finding a solution.³¹

The two large groups of circle models are the conciliation circles and the adjudication circles. The speciality of the adjudicatory circle is that it involves the criminal justice actors in the process, and the sessions themselves are often organised in a courtroom.³²

In addition to the mediation process and the circuit model, the conference model is also known. This type of mediation is situated between the two restorative procedures described above in that it involves a wider community than victim-offender mediation, but rather than involving a larger community, such as the inhabitants of a municipality, it relies on the support of the victim and/or the offender's immediate environment.

In addition to the micro-context of the offender, the so-called reference persons, representatives of the authorities (e.g. police, probation officer) and support professionals (e.g. social workers, NGOs) are invited. The aim of the method is to see that the difficulties can be resolved in the long term by the person in difficulty and those closest to him/her, on the basis of their own plans and by using their own resources.³³

Although my study is of a criminal law orientation, as the restorative approach itself is cross-jurisdictional in nature, I highlight family law disputes as the most effective application of this type. It is a common phenomenon for parents in a dispute to look to the courts for a universal truth about the exercise of parental rights, rather than using their own capacity to be active participants in finding and then working out the details of a solution.

3.4 *Dichotomy or Convergence?*

In the early days of restorative justice, two opposing poles of justice were seen to be found in restorative and traditional justice, while today the prevailing view is that restorative justice tools can act as a catalyst for reform in criminal justice systems.³⁴

Daniel Van Ness distinguishes four categories of restorative justice. The grouping is based on their relationship with the traditional justice system. Accordingly, the following models can be identified:

1. The dual model: restorative and traditional justice coexist throughout the whole process,
2. Unilateral model: the sanction is also imposed by the restorative system,
3. 'Safety net' model: restorative elements are in place throughout the proceedings, but detection is carried out in close cooperation with the traditional justice system,
4. Hybrid model: the initial phase of the procedure is conducted according to the rules of retributive procedure, while restorative justice is only applied during the sanctioning phase.³⁵

It cannot be argued that a crime-free society would be too beautiful a utopia. In my view, the „hybrid“ model referred to in the third point is capable of guaranteeing the law enforcement interest in the success of the detection of crimes, while at the same time the restorative sentencing in the sanctioning process meets the need for complexity.

³¹ Fellegi (n 16) 77.

³² Fellegi (n 16) 77.

³³ Fellegi (n 16) 76.

³⁴ Kerezsi (n 22) 166.

³⁵ Daniel Van Ness, 'Creating restorative systems' in Lode Walgrave (ed), *Restorative Justice and the Law* (U.S. Department of Justice) 2003) 146 <https://doi.org/10.4324/9781843924814> accessed 30 May 2026.

In Europe, a convergence of traditional and restorative justice is taking place, which, according to Klára Kerezsi, will not lead to a merger, but to a clarification of the boundaries of competence.³⁶

In Europe, a discernible consensus has emerged regarding the potential of restorative justice as a favourable alternative or complement to conventional criminal justice methodologies. Restorative justice prioritises the needs of victims and the community, and research has consistently underscored its potential for reintegration for both victims and offenders, as well as the promising preventive effects such interventions may have on recidivism. This is noteworthy, even though the prevention of recidivism and re-victimisation is not the primary objective of restorative measures. Consequently, over the past four decades, an increasing number of European countries have integrated various forms of restorative justice within the criminal justice framework.³⁷

By 2025, the concept of restorative justice had been incorporated into the criminal proceedings of every European nation, albeit in a heterogeneous manner – manifesting at different procedural stages, under varying preconditions, and to differing extents. This diversity is evident not only in practical implementation but also at the level of legal foundations.³⁸

4. RESTORATIVE JUSTICE IN HUNGARIAN CRIMINAL LAW

4.1 *Relevant International Regulatory Environment*

According to the Directive 2012/29/EU of the European Parliament and of the Council on victims' rights, Article 2 restorative justice means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party. It is therefore clear that the definition of restorative justice in the Victims' Directive is clearly an open definition, allowing for different kinds of restorative justice processes and outcomes.³⁹

A restorative approach is expressed in the following lines of the Victims' Rights Directive: A crime is both a wrongful act committed against society and a violation of the individual rights of victims (Directive 2012/29/EU of the European Parliament and of the Council on victims' rights Recital (9)), with particular regard to the fact that the role of the community is indispensable in the management of restorative grievances.

Recommendation CM/Rec (2018)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters emphasises the importance of recognising the legitimate interest of victims to have their voices heard more strongly during criminal proceedings initiated due to offences committed against them, to communicate with the offender, and to receive reparation and satisfaction within the justice process.

Both legal documents establish baseline requirements for the States Parties and advocate for the implementation of restorative justice.

³⁶ Kerezsi (n 22) 167.

³⁷ Frieder Dünkel, Andrea Păroşanu, Marianne Lehmkuhl and Ineke Pruin, *Restorative Justice in Criminal Matters in Europe. Interim Report for the Penological Council of the Council of Europe* (2025) 4.

³⁸ Dünkel and others (n 37) 60.

³⁹ Brunilda Pali, 'Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU' (European Forum of Restorative Justice) (2016) 9 <https://www.euforumrj.org/sites/default/files/2020-01/efrj-briefing-paper-rj-in-the-victims-directive.pdf> accessed 30 June 2026.

Article 12 deserves attention, as it mandates that Member States ensure that victims opting to engage in restorative justice procedures have access to secure and competent restorative justice services, under the following conditions:

- Restorative justice services are employed exclusively for the victim's benefit, with appropriate consideration for security concerns, and based on the victim's free and informed consent, which may be revoked at any time;
- Prior to consenting to participate in restorative justice procedures, the victim is provided with comprehensive and impartial information regarding the procedure and its potential outcomes, as well as information about the mechanisms for overseeing the implementation of any agreement reached;
- The offender has acknowledged the fundamental facts of the case;
- Any agreement reached must be voluntary and may be considered in subsequent criminal proceedings;
- Discussions conducted during restorative justice procedures are confidential and are not disclosed thereafter, except with the parties' consent or if national law mandates disclosure for a significant public interest.

In most European countries, the criteria and procedures for selecting and referring cases to restorative justice programmes are predominantly associated with the characteristics of the offender or the nature of the crime, rather than the specific attributes or needs of the victim.⁴⁰

In my assessment, this approach presents certain challenges, given that while it is indeed beneficial for restorative justice to influence the offender's perspective, as previously discussed, the fundamental principles of restorative justice are intrinsically linked to protection of the victim. However, if the implementation of restorative justice is primarily action-oriented and fails to consider the victim's specific characteristics, it risks rendering the institution itself ineffective and devoid of substance.

4.2 Institutions of Restorative Justice in Hungarian Criminal Law

The background of criminal law is criminal policy, which is based on society. These three factors are interdependent: social changes induce the development of criminal thinking and the criminal policy paradigm, which in turn shape the substantive law.⁴¹

As a result of changes in the criminal policy paradigm, measures reflecting a restorative approach can be applied at all stages of the criminal procedure.

The prospect of a prosecution measure or decision is essentially a 'precursor' to alternative procedures, in which the prosecution may envisage the following:

- Suspension of the proceedings for mediation or, depending on the outcome, termination of the proceedings,
- The application of a conditional suspension by the prosecutor and, depending on the outcome, the termination of the proceedings,
- Termination of the proceedings with regard to the cooperation of the suspect or dismissal of the charges,

⁴⁰ Frieder Dinkel, Joanne Grzywa-Holten and Philip Hosfield, *Restorative Justice and Mediation in Penal Matters: A Stock of Legal Issues, Implementation Strategies and Outcomes in 36 European Countries* (Forum Verlag Godesberg 2015) 576.

⁴¹ Máté Kóhalmi, 'A fiatalokrákra vonatkozó büntető anyagi jogi szabályozás története' [The History of Substantive Criminal Law Regulation Concerning Juveniles] (2019) 2 *Büntetőjogi Szemle* 41.

- Taking the necessary measures to bring the case to trial or to proceed to a criminal conviction in the event of indictment.⁴²

The mediation procedure also plays an important role in the *judicial phase* through the active repentance provided for in Article 29 (1) of the Act C of 2012 on the Criminal Code of Hungary, since the offender cannot be punished if the conditions set out in Article 29(1) are met, whereas if the conditions set out in Article 29(2) are met, the offender must answer for his/her actions before a court, but the sentence imposed may be reduced without limit.

4.2.1 Mediation in Criminal Matters

In our current criminal law, we can distinguish between two so-called diversionary institutions, namely mediation and conditional suspension of the prosecutor. For each of these two diversionary institutions, it is possible to determine the circumstances of the case, linked to the nature of the offence or the person of the accused, in which the use of a particular form of diversion is justified.⁴³

The detailed rules of the mediation procedure in criminal cases are set out in the Act CXXIII of 2006 on Mediation in Criminal Matters.

According to the wording of Act CXXIII of 2006 on Mediation in Criminal Matters, mediation is a procedure to facilitate the reconciliation of the suspect and the victim, the reparation of the consequences of the crime, and the future law-abiding behaviour of the suspect, which may be applied at the request of the suspect or the victim or with their voluntary consent.

As indicated above, not all types of offences are suitable for mediation.

In view of this, the legislator has declared a list of offences for which mediation is possible and, if it is successful, the possibility of not imposing a sentence or of an unlimited reduction of the sentence if there is active remorse as a ground for non-criminalisation.

Act C of 2012 on the Criminal Code of Hungary, Article 29 (1) stipulates that mediation may be ordered in cases of offences against life, limb and health, against human dignity and certain fundamental rights, against traffic, against property or against intellectual property, or in cases of offences punishable by imprisonment for a term not exceeding five years, if the accused has confessed before the indictment. The legislator has further extended the scope of cases that may be referred to mediation under the provisions on juveniles under the heading of active remorse by allowing active remorse for a juvenile offender for the commission of a misdemeanour as defined in Article 29 (1) or a felony punishable by imprisonment for a term not exceeding five years.

I consider it important to highlight the legislative justification of Act XC of 2017 on Criminal Procedure, No. 412. In the explanatory memorandum, it is emphasised that criminal mediation may also be ordered for types of offences not declared in Section 29 of the Criminal Code, as the legislator took into account that the positive effects of restorative elements are not only felt in the termination of proceedings.

In the words of the legislator:

The mediation procedure has desirable effects that go beyond criminal proceedings, and therefore the proposal makes it applicable in a much wider context than in the past.

⁴² Viktor Bérces, 'A vádemelés alternatívái ügyészi szakban' [Alternatives to Prosecution at the Prosecutorial Stage] in Márta Ábrahám and Zoltán Attila Liktör (eds), *Fórum – Kúriai tanulmányok* [Forum – Curia Studies] (vol 1, Curia 2024) 312.

⁴³ Éva Plukovics (ed), *Jogi alapismeretek pártfogó felügyelők számára* [Basic Legal Knowledge for Probation Officers] (Magyar Közlöny Lap- és Könyvkiadó Kft 2018) 96.

It can no longer be used only in the context of a ground for non-criminalisation or other relief, but independently of it, as long as the objectives of the mediation procedure can be achieved. The proposal sets out the conditions which the legislator considers to be such as to make it impossible to achieve the objectives of the mediation procedure. Accordingly, the positive conditions for mediation are consent, the admission of the suspect, the likelihood of reparation and the fact that the conduct of the mediation does not conflict with the objectives of the criminal proceedings or the sentence.⁴⁴

To illustrate with an example; a perpetrator intentionally persuades a well-acquainted victim to consume alcohol with the intent of subsequently stealing their wallet. If the crime were executed without the inducement to drink, perhaps by employing an alternative distraction, it would be classified as theft. However, under these circumstances, it is deemed robbery as per point b) of Section 365 (1) of the Criminal Code. This classification is pertinent to our discussion because, according to Section 29 of the Criminal Code, the legal provision of active repentance is applicable to crimes against property, whereas it is not available for violent crimes against property.

In the context of this hypothetical legal case, it is evident that mediation can facilitate an agreement on restitution for the damage incurred by the crime, akin to non-violent property crimes. Although the perpetrator remains subject to criminal liability, the court may regard their willingness to engage in and contribute to the mediation process as a mitigating factor.

According to statistical data from the Interim Report on Restorative Justice in Criminal Matters in Europe for the Penological Council of the Council of Europe:

In Hungary the figures of referrals to mediation increased from 2,451 in 2007 to 4,794 in 2011 and even 6,410 in 2012 (i. e. figures have more than doubled, +162 per cent). Since then, the figures were rather stable on a case load level of around 6,000 annual cases. Since the entry into force of the Code of Criminal Procedure 2017, the number of mediation cases dropped because referrals by the court at the sentencing stage were legally excluded and mediation is now only available at the pre-trial stage. The referrals at the pre-trial stage remained rather stable between 4,631 in 2019 and 5,067 in 2022.⁴⁵

Looking at the international outlook, it is worth mentioning that in Europe the top 8 countries with a high level of mediation cases (more than 6 per cent of total cases) consist of Austria (youth justice), Belgium, Estonia, Finland, the Netherlands, Northern Ireland (only youth justice), Norway (youth justice), and Turkey (youth justice).⁴⁶

Apart from the mediation procedure, no other restorative process – for example restorative circle – is regulated by the legislature in our country. Fortunately, however, restorative justice can also appear in the application of law as something other than an independent procedural form.

The restorative approach is a punishment that can be imposed by the court, namely community service, while the measures are reparation work and probation supervision. For example, the supportive activities of the Probation Supervision Service significantly increase the chance of the offender's social reintegration. The probation supervisor involved in the case, by enforcing community sanctions and monitoring the offender in the community, assists in fully realising the consequences of the criminal law. In addition, by assessing the risk of recidivism, the supervisor contributes to the

⁴⁴ T/13972. számú törvényjavaslat a büntetőeljárásról, indokolással. [Bill No T/13972 on Criminal Procedure, with Explanatory Memorandum] (2017).

⁴⁵ Dünkél and others (n 37) 104.

⁴⁶ Dünkél and others (n 37) 105.

protection of the community as well.⁴⁷ Courts also play a significant role in this noble task of guidance: through specific behavioural rules set out in the operative part of the judgment, they can influence the process of the offender's reintegration into society.

5. PRACTICE-BASED FINDINGS

In the course of writing my study, I submitted a public interest data request to the competent registry authority.

According to the statistical data of the Office of the Prosecutor General, the table below illustrates the development of criminal mediation in Hungary since the introduction of the legal institution.

Number of offenders referred to mediation proceedings	2018 (second half)	2019	2020	2021	2022	2023	2024
Juveniles	79	248	295	233	284	269	240
Committed a crime under Section 29 (1) of the Criminal Code	79	246	288	228	276	266	236
The crime was not an offence under section 29 (1) of the Criminal Code	0	2	7	5	8	3	4
Adults	1099	3225	3462	3332	3834	3581	3276
Committed a crime under Section 29 (1) of the Criminal Code	1075	3139	3399	3260	3750	3502	3211
The crime was not an offence under section 29 (1) of the Criminal Code	24	86	63	72	84	79	65

We can state that after a slight decline in 2021, the figures peaked in 2022, then decreased in 2023 and again in 2024. This trajectory suggests that mediation appears to have become an established and widely used instrument within the criminal justice system.

Mediation is predominantly employed within the statutory framework delineated by Section 29 (1) of the Criminal Code.

From my perspective, this presents a problem, because, as previously demonstrated, mediation could theoretically be applicable to any criminal offence. However, legal practitioners tend to associate it almost exclusively with cases where active repentance may result in the cessation of criminal proceedings. In essence, mediation is primarily linked in practice to the potential for diversion. Nevertheless, considering the ethos and foundational philosophy of the legal institution, mediation may prove effective even when it does not culminate in the formal discontinuation of proceedings. It can still offer professional support to both the defendant and the victim throughout the criminal process, facilitating the constructive resolution of their conflict. In such instances, the trial judge would be able to concentrate predominantly on the legal

⁴⁷ Orsolya Czenczer and Máté Hollósvölgyi, 'Gondolatok a magyar helyreállító igazságszolgáltatásban rejlő lehetőségekről' ['Reflections on the Opportunities Inherent in Hungarian Restorative Justice'] (2022) 22(3) *Magyar Rendészet* 117 <https://doi.org/10.32577/mr.2022.3.7> accessed 30 May 2026.

issues, while the interpersonal and emotional dimensions of the conflict are addressed within a structured mediation framework.

In connection with this, practical experience further reveals a significant systemic issue: victims often wish to articulate during the trial the trauma they have endured and how they are managing its repercussions. However, the judge frequently lacks the time and institutional capacity to adequately accommodate these needs. Mediation could thus serve not only as a diversionary mechanism, but also as a complementary procedural tool that enhances victim participation, procedural satisfaction, and overall efficiency of criminal adjudication.

Contrary to common assumptions that mediation primarily serves juvenile justice, the data demonstrate that it is predominantly applied in adult cases. This is problematic because it is precisely in the case of young offenders that attitude-shaping and value formation could be applied most effectively. For example, it can be very helpful for the mediator if the victim is emotionally intelligent enough to approach the deviant young person. This is most naturally expected from adult victims. The mediator cannot always expect that the sight of the victim alone will help the experience of guilt and thus the development of empathy, but if the victim's behaviour does not reflect lecturing, but sincere pain, anger, feelings that the young person, whatever his or her background, has experienced, it will almost always lead to results.⁴⁸

6. CONCLUDING THOUGHTS

The penal system, even if not through such spectacular and revolutionary events as those that took place in the eighteenth century, is constantly changing throughout the world.⁴⁹ Although it has been realised and recognised by many authorities that restorative justice is not a viable option for all, it is most definitely an approach that needs to be more widely implemented into the justice system.⁵⁰

While the desire to punish the perpetrator is an understandable human emotion on the part of the victim and the emotionally affected person, the question arises: does it not help to shape attitudes, and thus ultimately society as a whole, if the legislator and, through him, the law enforcer, instead of imposing punishment focused on past events, concentrate on solutions that are future-orientated and take into account the needs of all parties?

As Staud put it more than seven decades ago: criminal law must correctly recognise the value of goods, so that its prohibition is received as the word of law and not the word of morality.⁵¹ Today, this is relevant not only to substantive law but also to the imposition of punishment. As explained above, just as the mediator is a bridge between the parties to a dispute, so too do the restorative procedures link the worlds of law and morality.

In alignment with Gavrielides, it can be asserted that, in the current context where policymakers are pursuing cost-effective crime prevention strategies,⁵² the integration of restorative justice into the conventional criminal justice system is advantageous for legislators, legal practitioners, victims, offenders, and ultimately society as a whole.

⁴⁸ Kertész (n 29) 255.

⁴⁹ József Földvári, *A büntetés tana [The Theory of Punishment]* (Közgazdasági és Jogi Könyvkiadó 1970) 18.

⁵⁰ Ligi (n 15) 134.

⁵¹ Ferenc Irk, 'Az erkölcs és a büntetőjog elméleti kérdései' ['Theoretical Questions of Morality and Criminal Law'] in J. Gödöny (ed), *Kriminológiai és Kriminológiai Tanulmányok XXVII [Criminological and Criminalistic Studies XXVII]* (Közgazdasági és Jogi Kiadó 1990) 62.

⁵² Gavrielides (n 24) 16.

I consider the current legislative framework of mediation to be generally adequate in Hungary; however, I would like to propose a few *de lege ferenda* recommendations as follows.

A future-orientated development of Hungarian criminal justice should include the explicit statutory recognition and regulation of restorative practices beyond traditional mediation. Although mediation remains the only restorative procedure with a clear legal basis, comparative international experience demonstrates the value of community conferences, restorative circles, and family group conferencing. Establishing a legislative framework for these practices would allow their application in cases where broader social involvement is essential to addressing the harm, and where mediation alone is insufficient.

For example, it may occur that the offender causes symbolic harm to the community beyond the criminal act itself. From the report of a practicing prosecutor, I learned that in 2024, during Christmas, the figure of baby Jesus was stolen from the nativity scene in the main square of a small village, which provoked strong outrage among the villagers. Later, it emerged that local youths had taken the figure as a prank. In such a case, conducting a restorative circle could have been a suitable solution, since incidents of this type require the involvement of a broader community, beyond the classic offender–victim–mediator mediation. Therefore, it would be beneficial if the legislative framework included detailed provisions for conducting restorative circles, not only for mediation.

Restorative principles should also appear in the earliest phase of the criminal process. Introducing restorative elements into the investigative stage – such as victim-need assessments, restorative-referral protocols for police, and restorative communication guidelines – could improve victims' perception of fairness and encourage voluntary offender participation. The success of restorative interventions often depends on the first authoritative contact; therefore, early-stage integration would reinforce both victim protection and offender accountability.

I would also like to highlight the issue of mediation in cases of intimate partner violence. Unlike in Hungary, in several other countries – for example, Austria, Greece, the United Kingdom, the Netherlands, and Denmark – prosecutors may refer partner abuse cases to mediation.⁵³ This requires the establishment of a comprehensive system and the employment of mediators with specialised knowledge.

In Austria, only psychologists, lawyers, or social workers may mediate such cases, while in England and Wales, mediators specifically trained in domestic abuse and sexual violence are authorised to conduct these procedures.⁵⁴ Following this model, I would propose regulating this area similarly in Hungary.

In most countries, mediation sessions are conducted by a male and female mediator together, and for the safety of the victim, preparation may take several months. Regarding the procedural implementation, I would like to highlight the Austrian Neustart method.⁵⁵ In this approach, mediation is divided into two clearly distinguishable phases. The first phase, called *Arbeiten zu zweit*, involves the two mediators presenting essential information to the parties. Subsequently, the victim and the offender meet separately but simultaneously with one of the mediators (*Gemischtes Doppel* phase). After this, all parties come together in one room, where the mediators reflect back to each other what

⁵³ Lisanne Drost, Birgitt Haller, Veronika Hofinger, Tinka van der Kooij, Katinka Lünemann and Annemieke Wolthuis, *Restorative Justice in Cases of Domestic Violence: Best Practice Examples between Increasing Mutual Understanding and Awareness of Specific Protection Needs* (Verwey-Jonker Institute 2015) 16.

⁵⁴ Drost and others (n 53) 22.

⁵⁵ Drost and others (n 53) 24-25.

they have heard (*Geschichtenspiegel*), allowing the parties to correct or respond only after their stories have been fully presented. This structure ensures that dialogue begins only after a sophisticated presentation of grievances, supporting both understanding and accountability.

Moreover, the Criminal Code should explicitly require courts to give greater weight to restorative outcomes during sentencing. Successful reparation (whether material, emotional, or symbolic) should be recognised as a significant mitigating factor, and even partial reparation should have a measurable effect on punishment. Predictable judicial consideration of restorative achievements would enhance motivation of the offender, contribute to victim satisfaction, and reinforce the moral legitimacy of criminal sanctions by aligning them more closely with the goals of repair, responsibility, and reintegration.

In conclusion, my proposed legislative amendments can be summarised as follows:

The development of Hungarian criminal justice should include explicit statutory recognition and regulation of restorative practices beyond traditional mediation. Although mediation remains the only restorative procedure with a clear legal basis, international experience demonstrates the value of community conferences, restorative circles, and family group conferencing.

Specific attention should be given to mediation in cases of intimate partner violence. Following international best practices from countries such as Austria, the United Kingdom, the Netherlands, and Denmark, prosecutors should be able to refer such cases to mediation, carried out by mediators with specialised training in domestic abuse and sexual violence.

To ensure consistency and professional quality, Hungary would benefit from the establishment of a unified national Restorative Justice Centre. This institution could serve as a methodological, training, and research hub, coordinate nationwide programmes, maintain a database of restorative outcomes, and provide supervision for practitioners.

The Criminal Code should explicitly recognise successful reparation (whether material, emotional, or symbolic) as a significant mitigating factor in sentencing. This would provide predictable judicial consideration of restorative outcomes, enhance offender motivation, contribute to victim satisfaction, and strengthen the moral legitimacy of criminal sanctions by aligning them with the goals of repair, responsibility, and reintegration.

