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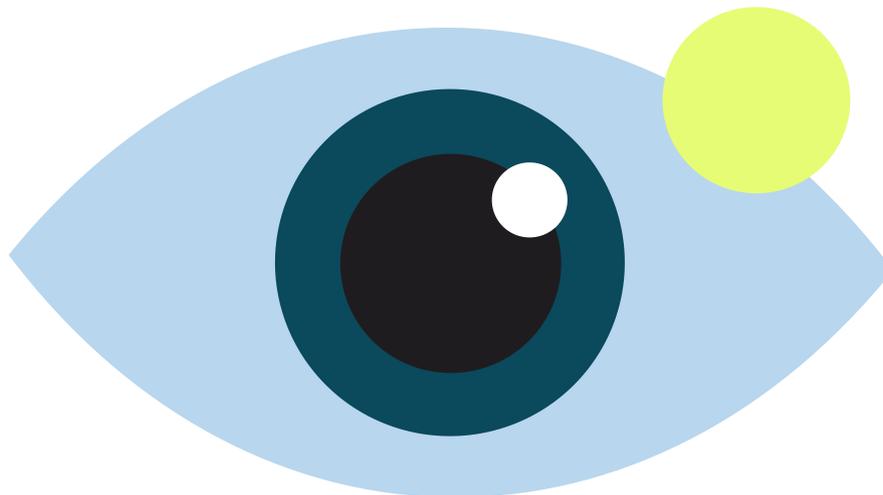
INSTITUT
PRO RESTORATIVNÍ
JUSTICI
IRJ



MINISTERSTVO
SPRAVODLIVOSTI
SLOVENSKEJ REPUBLIKY

JUSTIN Project Input Report

on the state of implementation of mediation
in criminal proceedings
in the Czech and Slovak Republics



OBSAH

About the JUSTIN project and restorative justice	p. 3
Basic concepts and transnational European legislation	p. 4
Mediation in criminal proceedings in the Czech Republic	p. 5
Mediation in criminal proceedings in the Slovak Republic	p. 13

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ABOUT THE JUSTIN PROJECT AND RESTORATIVE JUSTICE

The **JUSTIN project**, implemented under the Erasmus+ call in partnership between the **Czech Institution for Restorative Justice** and the **Ministry of Justice of the Slovak Republic**, develops the **possibilities of restorative justice in cases of serious crime**. Through its activities, the project builds the capacity of mediators conducting **mediations or similar restorative encounters in cases of serious crime** in both countries over a period of 22 months from April 2022 to February 2024, through the development of a methodological manual, cooperation between representatives of the partner organisations and **foreign partners from Belgium** (Moderator) **and Finland** (RISE), incl. study tour, training of specific mediators or facilitators of restorative meetings of victims, offenders and other participants and dissemination of the experience gained in the Czech Republic, Slovakia and other European countries in cooperation with the **European Forum for Restorative Justice**.

Restorative justice processes allow **victims and their families** or others affected by a serious crime to express their needs and feelings, the impact of the crime on their lives, and to take an active role in addressing the harm that has been done to them. In doing so, they significantly contribute to the healing of the trauma inflicted and strengthen the sense of justice in the criminal process.

“I don’t have to forgive, but I don’t have to hate.”

Restorative justice encourages **offenders** to take responsibility for their actions after hearing the specific consequences their behaviour has caused in the victim’s life, thus increasing their ability to empathise with victims. As a result of such awareness, the offender is encouraged to change internally and to make concrete amends for his or her behaviour towards victims. Together with other tools of post-penitentiary or other social or therapeutic work, he or she is guided towards lasting positive change in his or her life.

For further cooperation, the **JUSTIN project** partners have prepared reports on the state of mediation in criminal proceedings in their countries, updated as of 2 June 2022. The report for the Czech Republic was prepared by the team of the Institute for Restorative Justice, which thanks the management of the Probation and Mediation Service for their valuable comments on its content. The report for Slovakia was prepared by the Department of Probation, Mediation and Crime Prevention of the Ministry of Justice of the Slovak Republic.

BASIC CONCEPTS

Restorative programmes

A restorative programme can be understood as a programme that encourages the active participation of offenders, victims and other parties in repairing the harm caused by the crime and in efforts to alleviate the suffering caused by the crime. In spite of their diversity and possible different forms, they are based on the same principles and pursue the same objective, which is primarily to support victims in the context of their needs, to restore order and peace in the community, to heal relationships, to condemn the offence, to encourage the offender to accept responsibility, to promote internal change and to point to solutions for the future. The main types of restorative programmes are **mediation, conferences** (family group conferences, community conferences), **circles or programmes with restorative elements**.

Mediation

Mediation between the victim and the perpetrator of a crime means the out-of-court resolution of the consequences caused by the crime. It is a mediated dialogue with the participation of an impartial and independent mediator – a mediator.

TRANSNATIONAL LEGISLATION IN THE FIELD OF RESTORATIVE JUSTICE

- **Council of Europe Recommendation No R (99) 19 on mediation in criminal matters**
- Council of Europe Recommendation on Restorative Justice in Criminal Matters (CM/Rec (2018) 8)
- the follow-up [Venice Declaration on the Role of Restorative Justice in Criminal Matters](#), adopted in March 2021 at the Council of Europe
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum rules on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA

Mediation in criminal proceedings in the Czech Republic

1. LEGISLATIVE FRAMEWORK

The implementation of restorative justice in Czech criminal law practice was significantly influenced by the establishment of the Probation and Mediation Service in 2000. **Act No. 257/2000 Coll., on the Probation and Mediation Service** (hereinafter referred to as the „Act on the Probation and Mediation Service“), for the first time **legislated mediation in criminal proceedings**, namely in section 2(2), according to which mediation means out-of-court mediation for the purpose of resolving a dispute between a suspect or accused and a victim and activities aimed at settling a conflict situation carried out in connection with criminal proceedings. Mediation may be carried out only with the express consent of the suspect or accused and the victim.

In addition to the Probation and Mediation Service, mediation or other restorative programmes in criminal cases may be implemented by **other entities**. They have the possibility to obtain accreditation for their activities together with the state budget subsidy pursuant to **Section 39 of Act No. 45/2013 Coll., on victims of crime**, after meeting the specified conditions pursuant to Section 40 of the same Act.

The aforementioned Section 39(1)(b) of the Victims of Crime Act speaks of a **restorative programme**, but does not further specify this concept; Annex 2 to Decree No. 119/2013 Coll., on quality standards for services provided under the Victims of Crime Act, defines quality standards for the provision of restorative programmes only in very general terms.

In the context of the legislative framework, it is also worth pointing out the **European legislation** setting out minimum requirements for Member States regarding mediation in criminal matters or the application of restorative practices in criminal proceedings, see in more detail above „Basic concepts“.

In addition to mediation in criminal proceedings, mediation in non-criminal cases is also regulated by law¹.

¹ Mediation in **non-criminal cases** is regulated by Act No. 202/2012 Coll., on mediation, which defines mediation as a procedure for resolving a conflict with the participation of one or more mediators who promote communication between the parties involved in the conflict (hereinafter referred to as „the parties to the conflict“) in order to help them reach an amicable solution to their conflict by concluding a mediation agreement (Section 2(a) of the Act).

Decree No. 202/2012 Coll., on the examinations and remuneration of mediators, applies to the Mediation Act. In connection with its adoption, the Code of Civil Procedure was amended with regard to the possibility for courts to order parties to the proceedings to meet with a registered mediator for the first time, both during the preliminary hearing pursuant to Section 114 c(3)(d) of the Code of Civil Procedure and during the proceedings pursuant to Section 100(2) of the Code of Civil Procedure. Mediation is also reflected in the Act on Special Court Proceedings in the framework of the legal regulation of the court's care of minors (Section 474(1) of the Act) and in Section 12(1)(a) of the Act (c) the Act on Social and Legal Protection of Children.

2. MEDIATION DELIVERY SYSTEM

Mediation can be considered the most widespread restorative programme in the Czech Republic, which is at the same time a concrete representative of restorative justice and its principles for both the professional and the general public. The **main provider of mediation in criminal cases in the Czech Republic is the Probation and Mediation Service (hereinafter also referred to as the „PMS“)**. Its organisational structure makes mediation and restorative conferencing available in every judicial district of the Czech Republic (74 centres in total). **Other subjects** wishing to provide assistance to victims of crime under Act No. 45/2013 Coll. in the form of legal information or **restorative programmes may apply to the Ministry of Justice of the Czech Republic for accreditation** for the service in question (or both). Only such accredited entities can then receive a subsidy from the state budget for their activities. The list of entities accredited for restorative programmes can be found on the website <https://otc.justice.cz/verejne/accreditedSubject/seznam.jsf>, with the current list including the Diocesan Charity of Plzeň, Pro Dialog, z.s., the Civic Counselling Centre, o.p.s., the LOCIKA Centre, z.ú., KAPPA-HELP, z.s. and the International Prison Community, z.s. There is no detailed information in the register about the way restorative programmes are provided or their content. According to the information provided directly by these organisations, **mediation is provided by Pro Dialog, z.s.**, in the form of restorative dialogues carried out in the framework of work with families with children at risk, mostly at the initiative of the guardianship court, where, in relation to criminal proceedings, these meetings may take place before, during, after or completely outside the criminal proceedings; **Centrum LOCIKA, z.ú.** in cases of work with families of children at risk in the past years, similar restorative meetings were used, but in the current year they are not being implemented; **KAPPA-HELP, z.s.**, according to its website, provides mediations between the victim and the offender and also restorative conferences. For the purposes of this report, it was not possible to obtain more precise information on the number of such implementations. In addition, mediations can theoretically be provided by **other non-accredited entities**, typically social services or NGOs (based on a contractual relationship with the participants - clients), however, the outcomes of such cooperation would not usually be the basis for decision-making by law enforcement authorities (this is not excluded, it depends on the activism of the participants in the mediation and the consideration of the particular judge or prosecutor), but in any case they may be significant in terms of settling the conflict of the participants in accordance with restorative principles.

The basic prerequisite for mediation is the voluntary participation of the parties, to whom the essence of the whole process is explained in individual meetings prior to the mediation itself and their expectations and needs are identified, which the parties can express during the mediation itself and thus try to find a mutually acceptable solution to the harm caused. This may include an apology, financial compensation or other non-financial compensation, etc. **According to Act No. 257/2000 Coll. on the Probation and Mediation Service, mediation can be carried out at any stage of criminal proceedings;** however, in accordance with the provisions of Section 4(2)(b) of this Act, **mediation is used primarily in cases where it is part of the preparation of the grounds for the decision of the law enforcement authorities in the case and the application of one of the alternative punishments and diversions in criminal proceedings** is under consideration.

A request for mediation can be made to the Probation and Mediation Service by the victim or victim's representative, the offender, the defence lawyer, relatives or other persons who have been indirectly affected by the crime; mediation activities can also be initiated by the criminal justice

authorities (police, prosecutor or judge)².

The Methodological Standard for the activities of the Probation and Mediation Service in pre-trial proceedings and court proceedings, on which probation officers, as mediators, are based, is of key importance for the actual implementation of mediation. They work in all PMS centres corresponding to the judicial districts and undergo qualification training for probation and mediation and a system of further (specialisation) training - one of which is specialisation in mediation.

On the basis of the above, it can be summarised that victim-offender mediation (or sessions of a similar nature, e.g. restorative conferences) can be provided by the Probation and Mediation Service or another body (if applying for a subsidy from the Ministry of Justice, it must be accredited). **There is no legal barrier to such a programme being delivered at any stage of the criminal justice process and for any type of crime.**

Restorative programmes currently implemented in the Czech Republic in the framework of criminal proceedings:

Restorative programs:

- mediation, restorative conferences (mediation extended to include other participants beyond the victim and offender)
- Family group conferences (used with juvenile offenders, meetings expanded to include others affected by the crime and the community)³
- Building Bridges programme - still implemented by the International Prisoner's Fellowship z.s. (eight regular meetings of victims and incarcerated perpetrators of unrelated crimes for restorative dialogue, which take place inside prisons)⁴

Programy s restorativními prvky:

- I See You Too - a programme created by the Probation and Mediation Service, which is currently implemented by the Prison Service of the Czech Republic in 11 prisons and by the Probation and Mediation Service in five newly created workplaces - programme entres⁵ - the programme supports offenders in understanding the needs and emotions of the victim and accepting responsibility for their actions
- Some prison treatment programmes emphasising the impact of the crime on the victim and the offender's acceptance of responsibility, e.g. the Good Lives Model (Volonté o.p.s.)⁶, Prisoner's Journey (International Prison Fellowship z.s.)⁷
- other accredited NGO programmes according to the Ministry of Justice register, consisting mainly of counselling for victims⁸

2 2 Mediation between victim and offender, Probation and Mediation Service. Available from: https://www.pmscr.cz/wp-content/uploads/2021/12/letak_mediation.pdf. In addition, Section 4 of the Act on the Probation and Mediation Service, according to paragraph 7 of which *the Probation and Mediation Service shall exercise its competence in cases provided for by law or on the basis of a mandate from law enforcement authorities. Prior to the initiation of criminal proceedings, the Probation and Mediation Service performs acts within its competence only on the basis of a mandate from a law enforcement authority. After the initiation of the criminal prosecution may, in appropriate cases, carry out acts of mediation even without the authorisation of the criminal prosecution authority, in particular at the initiative of the accused and the victim; it shall immediately inform the competent criminal prosecution authority, which may decide that the case shall not be submitted to mediation and that mediation shall therefore no longer be carried out, and para. 9 The police authority and the public prosecutor shall inform the Centre of cases suitable for mediation; in particular in juvenile criminal cases, they shall proceed in such a way that mediation is used from the beginning of the criminal proceedings.*

3 e.g. implemented by PMS see <https://www.pmscr.cz/projekty/ukoncene/na-spravnou-cestu-ii/>, <http://www.ok.cz/iksp/docs/452.pdf>, or by Kappa Help z.s. see <http://www.kappa-help.cz/eRP/index.htm>

4 <https://mvs.cz/pomahame/>

5 <https://www.pmscr.cz/programova-centra-rozsiruji-cinnosti-probacni-a-mediacni-sluzby/>; <https://www.pmscr.cz/pro-pachatele/resocialization-projects/>

6 <https://www.volonte.cz/glm>

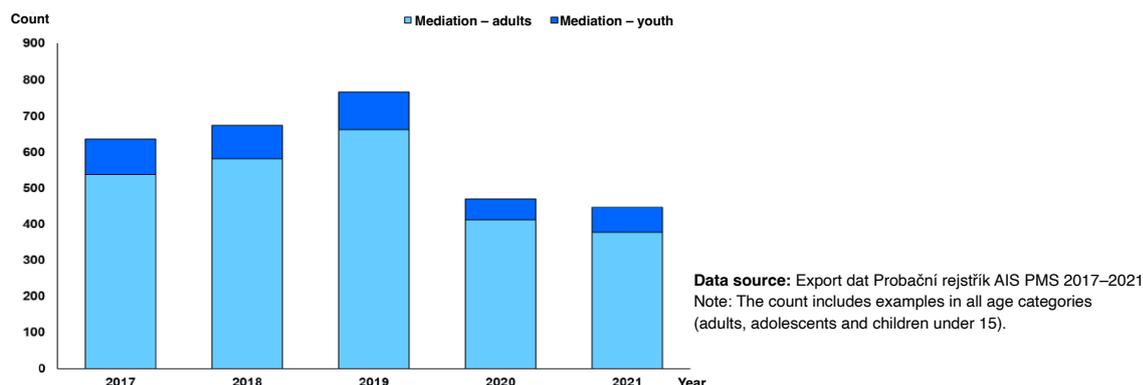
7 <https://mvs.cz/pomahame/>

8 <https://otc.justice.cz/verejne/akreditovanySubjekt/seznam.jsf>

3. NUMBER OF MEDIATIONS AND THEIR DEVELOPMENT

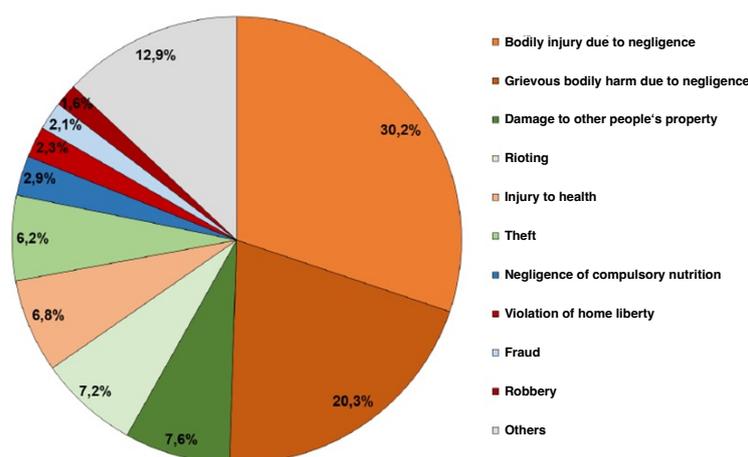
According to the PMS data, the highest number of mediations took place between 2012 and 2015, when the number of mediations was around 1 200 per year; since 2015, there has been a downward trend. For the period 2017-2021, a slight increase can be observed (see Figure 1) in the total number of mediations carried out during the standard operation of the organisation⁹. The subsequent decrease in the number of cases in 2020 (471 mediations in total) and 2021 is influenced by the anti-epidemiological measures taken in the context of the SARS Covid-19 disease pandemic.

Chart 1: Number of mediations for adults and young people¹⁰



In terms of the nature of the offence, in 2021, the **highest number of mediations was for the crime of negligent bodily harm, with this crime, as well as grievous bodily harm**, and bodily harm generally being the most represented in mediations, in terms of offences involving adult offenders (see Figure 2). In the case of juvenile offenders, the dominant offences are criminal damage to property and disorderly¹¹.

Chart 2: Structure of cases mediated in 2021¹²



Data source: Export dat Probační rejstřík AIS PMS 2017–2021
Note: This is a percentage of all recorded crimes (more than one crime can be recorded in one recorded case).
 The graph shows the structure of cases in all age categories (adults, adolescents and children under 15).

⁹ Source: 2017 - 2021 Probation and Mediation Service Agendas, Prague: Probation and Mediation Service, 2022. Available from: https://www.pmscr.cz/wp-content/uploads/2022/03/statistiky_agendy_pms_2017-2021.pdf

¹⁰ Ibid, p. 16

¹¹ Ibid, p. 18

¹² Ibid, p. 19

Since the beginning of 2022, the Probation and Mediation Service has adopted a number of internal measures at local, regional and national level to **increase the frequency of mediation and restorative conferences in both pre-trial and trial proceedings**. These efforts are being made by the PMS management in close coordination with the Chief Prosecutor and the President of the Supreme Court. The frequency of use of mediation has already increased in the first four months of 2022. Compared to the data for the previous period, as of 30 April 2022, 223 mediations were mediated by the Probation and Mediation Service, of which **7% (15) were mediations conducted in enforcement proceedings**.

Another restorative programme implemented by the Probation and Mediation Service in the case of criminal activities of juvenile offenders and children under the age of 15 are family group conferences. However, these are only implemented in a few cases per year¹³.

In terms of the **number of mediations conducted by the above-mentioned accredited entities**, the **Pro Dialog** organisation, which has been implementing restorative dialogue since 2012, has approximately 60 meetings per year (with almost every meeting taking place in the context of a guardianship proceeding with an individual relationship to the criminal proceedings); **Locika** does not organise restorative meetings for families in the last year (information from previous years could not be obtained); the number of mediations or restorative conferences organised by **Kappa Help** could not be obtained for the purposes of the report, we refer to the websites of both organisations¹⁴.

4. RESEARCH ON MEDIATION IN THE CZECH REPUBLIC

In the Czech Republic, the area of mediation is the subject of two research studies prepared by **the Institute for Criminology and Social Prevention**. The first of them, from 2008, on a sample of 1014 respondents aged 15 to 69, surveyed **public awareness of mediation and the Probation and Mediation Service in general**¹⁵. One important finding was that, **after providing respondents with basic information on the principles of restorative justice and mediation, 69% of them considered mediation to be an appropriate tool for solving crime** (although 53% of respondents would be willing to undergo mediation personally). Therefore, working with the general public's awareness of the possibilities and benefits of restorative justice is one of the key factors for its successful implementation..

In 2009, a follow-up anonymous survey was carried out, where 94 victims and 93 offenders who had undergone mediation meetings were contacted for their cooperation, focusing on their **experience of mediation** (with an actual participation rate of 53% for victims and 42% for offenders)¹⁶. The investigation is thematically very comprehensive and, in addition to obtaining the perspectives of both the victim and the offender, where it measures the motivation of the participants to engage in the process, their fears, needs and overall impressions of the mediation, it also focuses on the analysis of criminal files in cases where mediation has taken place, or on the experience

¹³ Ibid, p. 19

¹⁴ www.kappa-help.cz, www.centrum.locika.cz

¹⁵ More detailed research: ROZUM, Jan. Application of mediation in the criminal justice system I. Prague: Institute for Criminology and Social Prevention, 2009. Study (Institute for Criminology and Social Prevention). ISBN 978-80-7338-090-8. Available from: <http://www.ok.cz/iksp/docs/365.pdf>

¹⁶ More detailed research: ROZUM, Jan. Application of mediation in the criminal justice system II. Prague: Institute for Criminology and Social Prevention, 2010. Study (Institute for Criminology and Social Prevention). ISBN 978-80-7338-097-7. Available from: <http://www.ok.cz/iksp/docs/372.pdf>

of mediation conducted by probation officers - mediators. In terms of overall impressions of the mediation, **more than 80% of the victims appreciated the opportunity to talk to the offender about what he or she had done to them, and for almost 90% it was important that they could have a personal say in how the whole case should be handled. Mediation was also viewed positively by the overwhelming majority of offenders.** 95% of them, with almost 84% of them appreciating that they could apologise to the victim in person. More than half of the offenders only realised what they had done after mediation and more than 80% said that meeting the victim had influenced them to the extent that they would avoid further crime in the future¹⁷.

In the context of research activities, we can also mention a relatively recent document prepared by the Institute for Criminology and Social Prevention on the **effectiveness of family group conferences** in dealing with juvenile crime¹⁸.

5. CURRENT CHALLENGES OF RESTORATIVE JUSTICE IN THE CZECH REPUBLIC AND THE NEED FOR SYSTEMIC CHANGES

In describing the current state of mediation in criminal proceedings in the Czech Republic, it can be summarized that the Probation and Mediation Service has been active for more than 20 years in the centres of former district towns, which mediates in the context of ongoing criminal proceedings, mainly in cases of negligence or less serious crimes and in pre-trial or trial proceedings. The PMS also has experience, albeit less frequent, in mediations mediated in execution proceedings - e.g. in the context of preparation for parole or in the context of conditional release from imprisonment under the supervision of a probation officer. In addition to the PMS, a possible provider of mediation or similar restorative encounters in criminal cases are non-governmental sector entities, which can provide it even after the end of the criminal execution proceedings (or outside the ongoing criminal proceedings) - currently for Dialog, z.s., these services are not available in all regions of the Czech Republic or quite commonly offered or used.

In view of the above-mentioned practice, there is considerable potential for expanding the provision of mediation, both to increase the total number of mediations provided in the Czech Republic, to more serious types of crime, and also to the execution phase of criminal proceedings or after their conclusion.

With reference to the above-mentioned legislative anchoring of mediation and the provision of restorative programs and in accordance with European legislation and current practice described above, the following seems necessary:

- **Expressing clear support from the state to develop the use of restorative programmes** (in line with Directive 2012/29/EU of the European Parliament and of the Council, Article 12 – Restorative Justice Services and the RE Recommendation on RJ) so that they are accessible:
 - for all persons affected by criminal activity
 - **at every stage of the criminal proceedings and after the end of the proceedings** (not only mostly before the decision of the prosecuting authority)

¹⁷ Ibid, p. 180

¹⁸ More detailed research: family group conferences: an overview of the results of the Institute for Criminology and Social Prevention research. Prague: Institute for Criminology and Social Prevention, 2019. Available from: http://www.ok.cz/iksp/docs/iksp2019ix_rsk.pdf

- **for any criminal activity, including serious**
- **available locally** throughout the Czech Republic
- **financial and capacity support of the state to entities providing restorative programmes** (Probation and Mediation Service and NGOs), to build on the long-standing good the experience of the Probation and Mediation Service and its availability in each district, **thus creating a network and system of cooperation between this state organization and NGOs providing restorative programs**
- to raise the awareness of criminal justice professionals about the specific possibilities of using **restorative approaches in practice** (professional education or the current activities of the Restorative Platform in the project Restorative Justice: Strategies for Change)¹⁹ in accordance with the **Restorative Justice Strategy for the Czech Republic**²⁰, which is **part of the Programme Statement of the Government of the Czech Republic**, and thus also to support timely and high-quality information of victims and perpetrators of crime on the possibilities of using restorative programmes in a given case
- **Ensure the quality of the restorative programmes provided**, including the training of the staff providing mediation in criminal proceedings and the safety of their provision for the victim in accordance with the above-mentioned Directive of the European Parliament, since the **current accreditation of restorative programmes primarily examines the subject, not the actual content and quality of the specific restorative programme.**

Activities aimed at the development of restorative justice in the Czech Republic – summary:

- **Strategie restorativní justice pro ČR je obsažena v Programovém prohlášení vlády**
- **Within the framework of the Restorative Justice: Strategies for Change project, a Restorative Platform bringing together criminal justice professionals is underway, the aim of which is, among other things, to define concrete tools for the development of restorative justice in the Czech Republic and to prepare a Handbook for Restorative Practice in the Czech Republic for all actors involved in criminal proceedings**

¹⁹ <https://restorativni-justice.cz/projekt/#projektove-aktivity>

²⁰ <https://restorativni-justice.cz/zdroj/strategie-restorativni-justice-pro-ceskou-republiku/>

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- Act No. 45/2013 Coll., on Victims of Crime, as amended.
- Act No. 141/1961 Coll., Criminal Procedure Code, as amended.
- Suggestions and opinions of the members of the Restorative Platform presented in regular meetings.

Mediation in criminal proceedings in the Slovak Republic

1. LEGISLATIVE FRAMEWORK

In May 2000, the Government of the Slovak Republic approved a legislative plan to recodify the penal codes, one of the basic reasons being the need to modernize and adapt the legislation to new conditions, needs and tendencies of society. The Ministry of Justice of the Slovak Republic worked for three years on the introduction of the institute of probation and mediation into the legal system of the Slovak Republic. In October 2001, a working group set up to prepare a pilot project aimed at creating a probation and mediation service started its work. The Ministry of Justice of the Slovak Republic presented its intention to launch the project of a probation and mediation service at the conference Civil society and its ability to cope with conflicts with the participation of the third sector, with the participation of the Office of the Government Commissioner for Roma Communities of the Slovak Republic, as well as the Pedagogical Faculty of the Comenius University in Bratislava.

By fulfilling the conditions of accession to the European Union, the so-called *acquis communautaire*, the Slovak Republic adopted Act No. 550/2003 Coll. on Probation and Mediation Officers and on Amendments and Additions to Certain Acts (hereinafter referred to as „Act No. 550/2003 Coll.“), which covers the performance of probation and mediation in the criminal field.

The legal framework for the implementation of probation and mediation is Law No 550/2003. On Probation and Mediation Officers and on Amendments and Additions to Certain Acts (hereinafter referred to as Act No. 550/2003 Coll.).

The probation and mediation officer works as a civil servant at the district court in the district of the competent regional court, while under Act No. 549/2003 Coll. on court officials, he/she belongs to the court officials and is assigned to the general court department at the competent district court. Personnel-wise, the execution of probation and mediation in district courts is subordinated to the president of the competent regional court operating in the district of that regional court, while the execution of probation and mediation and the execution of control of decisions by technical means is methodically managed and guided by a probation and mediation officer in the function of a senior civil servant.

The methodological and conceptual activities in relation to all probation and mediation officers are provided by the Ministry of Justice of the Slovak Republic (Department of Probation, Mediation and Crime Prevention), through methodological guidelines in relation to probation and mediation officers, focusing on conceptual and substantive activities related to the performance of probation and mediation. The activities of the general court department are supervised by the president of the court or, within the scope of his/her authorisation, by the vice-president of the court or the director of the court administration.

Moreover, the adoption of Act No. 78/2015 Coll. on the control of the execution of certain decisions by technical means (hereinafter referred to as „Act No. 78/2015 Coll.“) expanded the activities of probation and mediation officers to include the area of electronic moni-

toring of persons methodically manages and directs the execution of control of decisions by technical means in the regional court district.

With the recodification of the criminal codes (Act No. 300/2005 Coll., the Criminal Act and Act No. 300/2005 Coll., the Criminal Procedure Code), the material approach to the concept of crime, which was applied in the previous legislation, was replaced by a formal approach to the understanding of crime, according to which the main task of the law enforcement authorities is to concentrate on the basic issues of criminal proceedings, namely the detection of the crime, its perpetrator and the punishment of the perpetrator.

The recodified criminal codes (Criminal Procedure Code, No. 301/2005 Coll.) provide for so-called alternatives to the way of dealing with the case, so-called diversions:

- conditional discontinuance of prosecution (Article 216 of the Criminal Procedure Code),
- conditional discontinuance of the prosecution of a cooperating defendant (Section 218 of the Criminal Procedure Code),
- conciliation - (Section 220 of the Code of Criminal Procedure - decision on approval of the conciliation and discontinuance of prosecution).

Mediation in criminal proceedings shall be carried out exclusively by a probation and mediation officer and shall be carried out in a state-employed capacity at the district court in the district of the competent regional court.

2. MEDIATION DELIVERY SYSTEM AND ORGANISATION (MEDIATORS, ETC.)

In the conditions of the Slovak Republic, the prevailing perception of restorative justice is that it is a solution for minor crimes offences with a sentence of up to five years. There is no probation or mediation service in Slovakia, but „only“ probation, mediation and electronic monitoring with a complex self-organisation.

Mediation can be carried out on the instructions of a prosecutor, judge. Mediation may also be carried out at the request of the accused, the victim, the legal representative, the attorney or the police officer. In these cases, however, the written consent of the presiding judge or single judge and, in the preparatory proceedings, of the prosecutor is required.

Mediation can result in:

- a) the conclusion of a settlement which is linked to the discontinuance of prosecution or
- b) agreement on compensation for the possibility of conditional discontinuance of prosecution.

The settlement is conditional on the consent of the injured party and the accused.

Although the legal regulation of a special regulation allows the probation and mediation officer

to carry out acts for the purpose of concluding an agreement on compensation for damages between the victim and the accused, regardless of the seriousness of the offence (Section 3(1) (c) of Act No. 550/2003 Coll.),

Criminal codes do not have a clear legal basis on how to deal with cases (to be applied/reflected in criminal proceedings) that follow the conduct of mediation in cases other than conciliation or conditional discontinuance of prosecution.

At present, 81 probation and mediation officers (+ 8 regional managers who do not have a case idea) provide the execution of probation and mediation throughout the territory of the Slovak Republic, while the annual case idea in probation is approximately 8 - 9 thousand cases (the year-end average of registered open probation files is approximately 11 - 12 thousand cases).

Thus, probation and mediation officers in the Slovak Republic provide mediation in addition to probation and activities related to electronic monitoring. Probation and mediation officers do not have support, administrative or other technical staff

3. A BRIEF OVERVIEW OF OTHER RESTORATIVE PROGRAMS IN THE STATE, NUMBERS OF MEDIATIONS CONDUCTED

In the conditions of the Slovak Republic, mediation is the only restorative programme implemented and enshrined in the legislative environment in Slovakia. Other programmes or restorative activities have not yet been defined and regulated for use in applied practice.

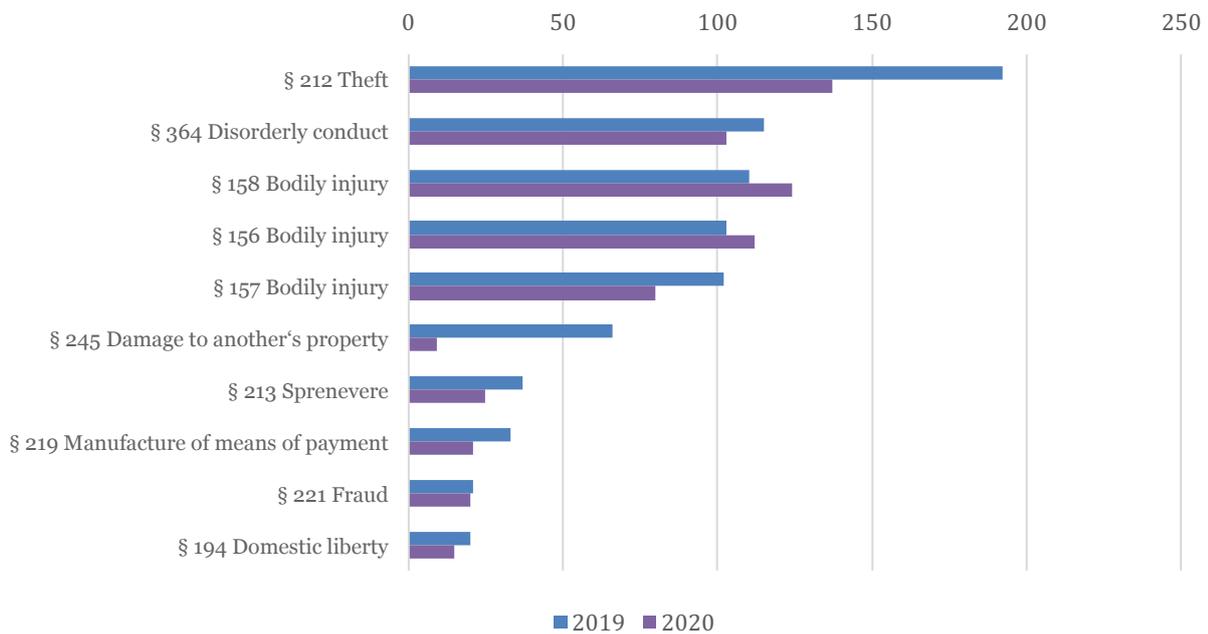
Table 1. Criminal agenda – selected indicators, 2016 – 2020

	Year 2020	Year 2019	Year 2018	Year 2017	Year 2016
The idea of probation	7 015	7 460	7 028	7 220	6 972
Live probation files 31.12. – transmission	12 807	12 908	12 938	12 896	12 096
Mediation – the idea	924	1 118	1 105	1 100	1 043
Total convicted persons	25 392	28 431	29 385	26 331	27 187
Proposal for conciliation	547	639	612	550	459
Motion to conditionally stop criminal prosecution	220	242	237	228	208
Draft mediation agreement on liquidated damages	31	51	47	59	30

Source: the Ministry of Justice of the Slovak Republic.

4. AVAILABLE STATISTICS

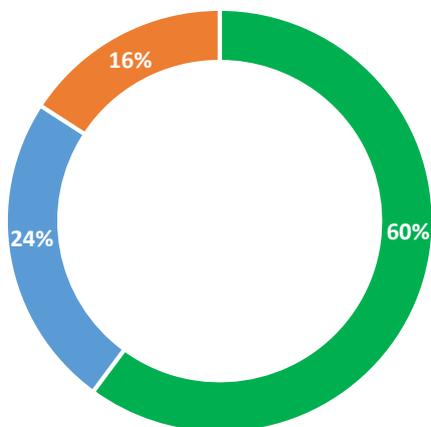
Chart 1: Structure of offences allocated to mediation – 2019 and 2020



Source: the Ministry of Justice of the Slovak Republic.

Figure 2:
Method of mediation – 2019

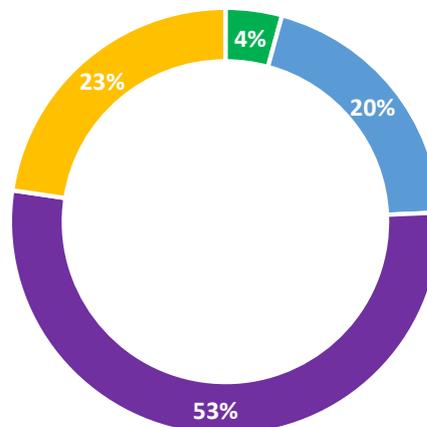
- Direct mediation
- Indirect mediation
- Mediation not mediated



Source: the Ministry of Justice of the Slovak Republic.

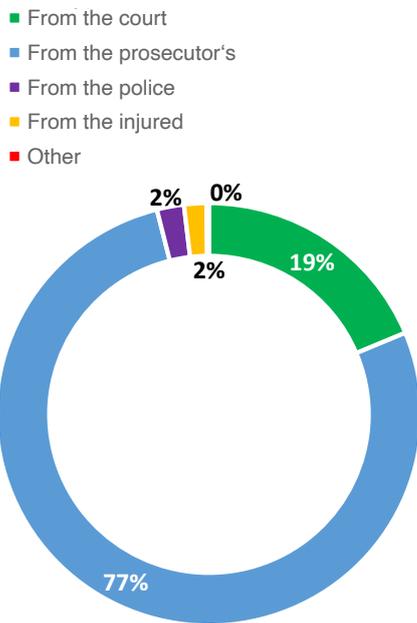
Figure 3:
Method of termination of mediation – 2019

- Damages agreement
- Motion for conditional discontinuance of prosecution
- Motion for conciliation
- In another way



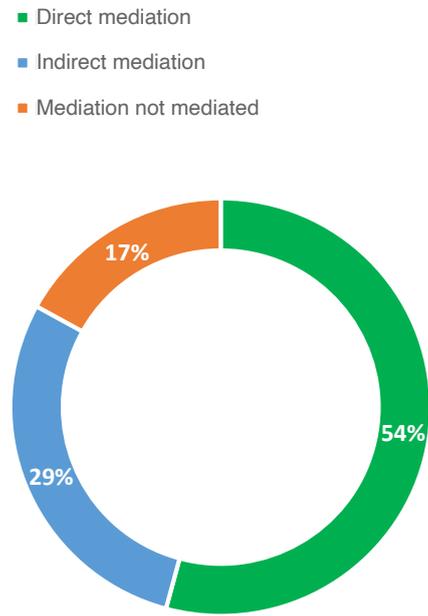
Source: the Ministry of Justice of the Slovak Republic.

Figure 4:
Mediation referrals – 2019



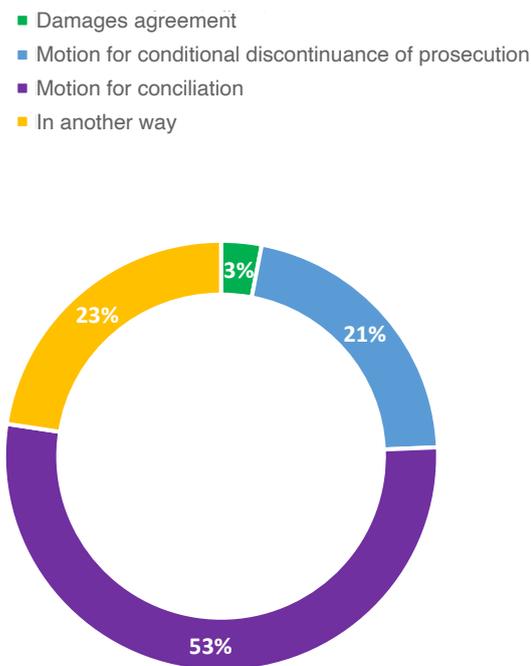
Source: the Ministry of Justice of the Slovak Republic.

Figure 5:
Method of conducting mediation – 2020



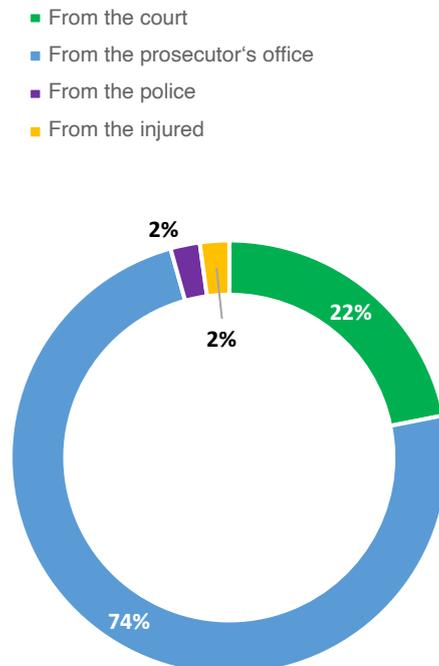
Source: the Ministry of Justice of the Slovak Republic.

Figure 6:
Method of termination of mediation – 2020



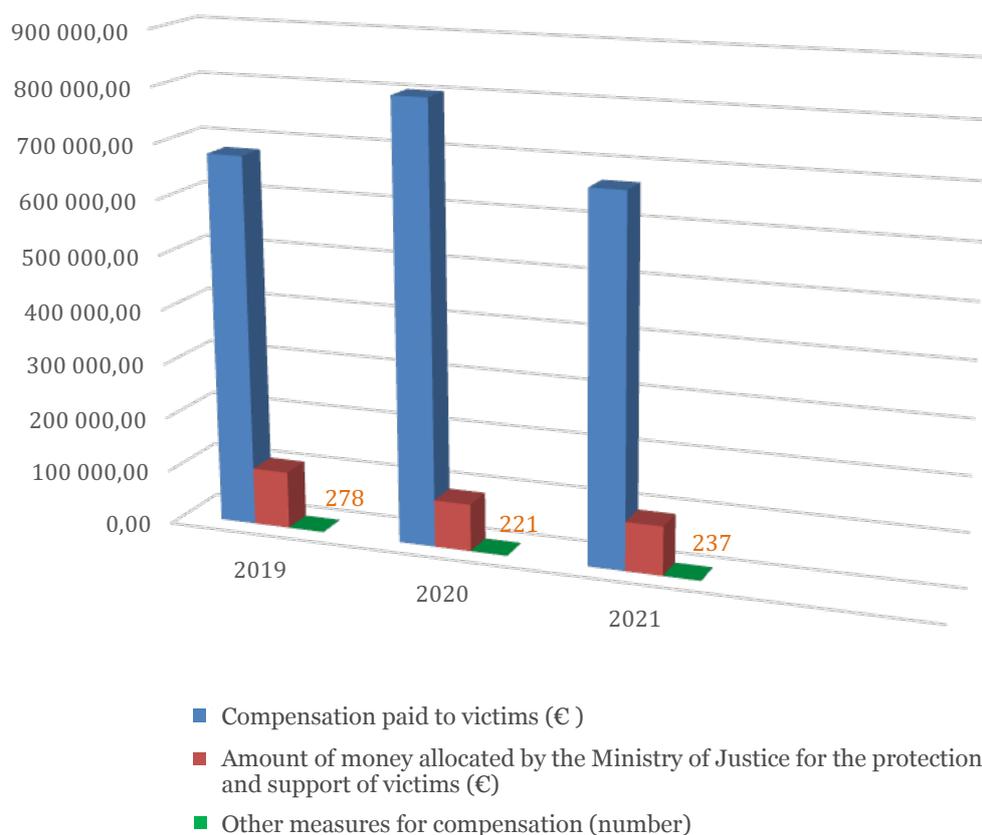
Source: the Ministry of Justice of the Slovak Republic.

Figure 7:
Mediation referrals - 2020w



Source: the Ministry of Justice of the Slovak Republic.

Chart 8: Yield from mediation, 2019 – 2021



5. RESEARCH ON MEDIATION IN THE STATE

The first „survey-research“ in the field of criminal mediation was carried out through questionnaires and interviews between 2007 and 2008. It was a continuous activity between training with the focus „to support and strengthen the capacity of the judiciary in relation to criminal mediation“. As a result of the training and the „research“ by the experts, the findings were also verified and incorporated in the „Final Report of 17.07.2009, for the beneficiary country MoJ and the partner Member State Federal Ministry of Justice of Belgium. Transition Fund 2006 UIBF 2006. Project number 2006/018 - 175.06.01, SK06/IB/JH/02/TL“. It can be stated that one of the findings and recommendations of the experts from Belgium was, among others, that it is **not appropriate for one PaMU to ensure the implementation of both probation and mediation institutes in the conditions of the Slovak Republic**. This kind of feedback was rationally, professionally and factually justified. The very existence of this knowledge remained only in the „status quo“.

In 2021, the Ministry of Justice of the Slovak Republic, with the support of the European Union, started to implement the national project „**Building and strengthening alternative dispute resolution through mediation and effective use of restorative justice tools in the Slovak Republic**“.

The aim of the national project is to raise awareness of **Alternative Dispute Resolution („ADR“)** – **alternative dispute resolution in the criminal and civil spheres**, while the core activity of the national project in the criminal sphere is to strengthen and make more effective the basic

principles of restorative justice and diversion in order to better perform the tasks of supervision of accused and convicted persons and mediation in the criminal field.

The project takes place in the district courts in the Žilina Regional Court, where different variations of case assignment and their application at regional and local level are ensured, e.g. the mediator provides mediation at the OS Námestovo, OS D. Kubín and OS Ružomberok. The selection of individual models is set up so that they are also applicable in other regions (SR) where smaller districts/courts exist. This particular **model allows us to ensure a qualified and professional approach to victims and perpetrators of crimes at the local level.**

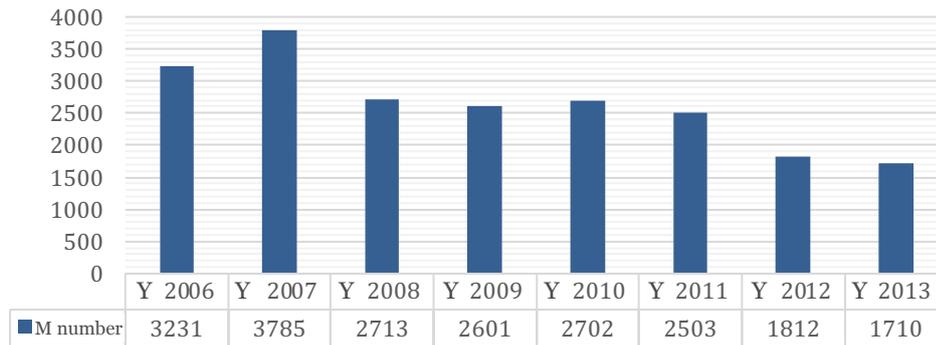
It was only on the basis of the existing „ADR“ project that an **analysis of the current state of criminal mediation** was carried out. The aim was to set up a system of „restorative justice programmes“ and their implementation in the conditions of the Slovak Republic in a new platform. At the same time, the existing programme „Criminal mediation“ has been revised, the competencies of the probation and mediation officer (criminal mediation specialist) have been strengthened, and the „conference“ program has been expanded. The established practice was largely „reset“ as it could not always be stated that it was good practice. Dealing with the past and setting new rules within the „ADR“ project, the first mediations in criminal cases that were carried out by two mediators (comediators) are about setting up a system for which criminal cases it is more effective (more appropriate) to use this model of approach. Last but not least, the conditions and possibilities of using „supervision.“ Their usefulness in application practice is most often used in more complex cases „before“ but also „after mediation“, where the knowledge gained is presented through joint mediation meetings. Supervision during the mediation was only carried out in relation to the criminal mediation process (impartiality, neutrality, etc.), which had a positive response especially from the „criminal mediation specialists.“

The aim of the project was, among others, to confront the current legal framework and the position of probation and mediation officers in the process of criminal mediation with the Recommendations of the Council of Europe²¹. Another of our ambitions was to clearly and comprehensibly name and define the field of „criminal mediation.“ It can be stated that the professional as well as the lay public is most inclined to this definition: „Mediation in criminal matters is an alternative and non-authoritative form of out-of-court dispute resolution between the injured and the accused; its aim is the joint search for a satisfactory and mutually satisfactory solution that will mitigate or reduce the currently existing conflict in relation to the crime committed.“

The final proposition of the national project in order to improve the current state of affairs will be the elaboration of **a concept for the development of probation and mediation in Slovakia with the proposed reform and the institutional design of the Probation and Mediation Service of the Slovak Republic.**

²¹ Council of Europe Recommendation No. (99) 19 on Mediation in Criminal Matters. See: The Status of Victims in Mediation (2004), European Forum for Victim Services, notes this risk. In the event of a victim's refusal to participate, they recommend offering offenders another option „restoration“, even if it is meant to be a symbolic gesture.

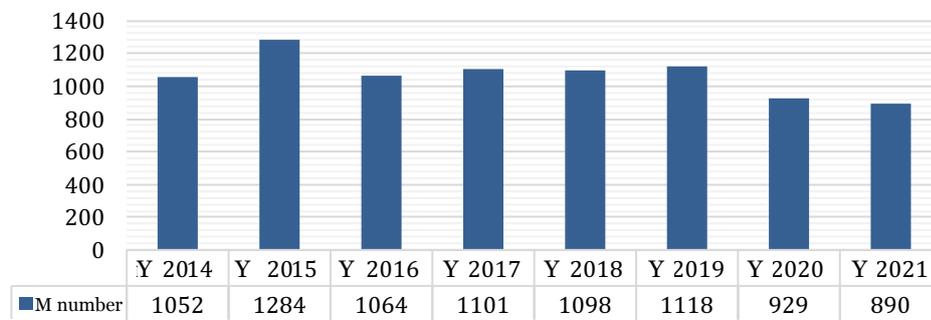
Chart 9: Number of mediations granted in the Slovak Republic from 2006 to 2013



Source: PhDr. Vladimír Cehlár, PhD.

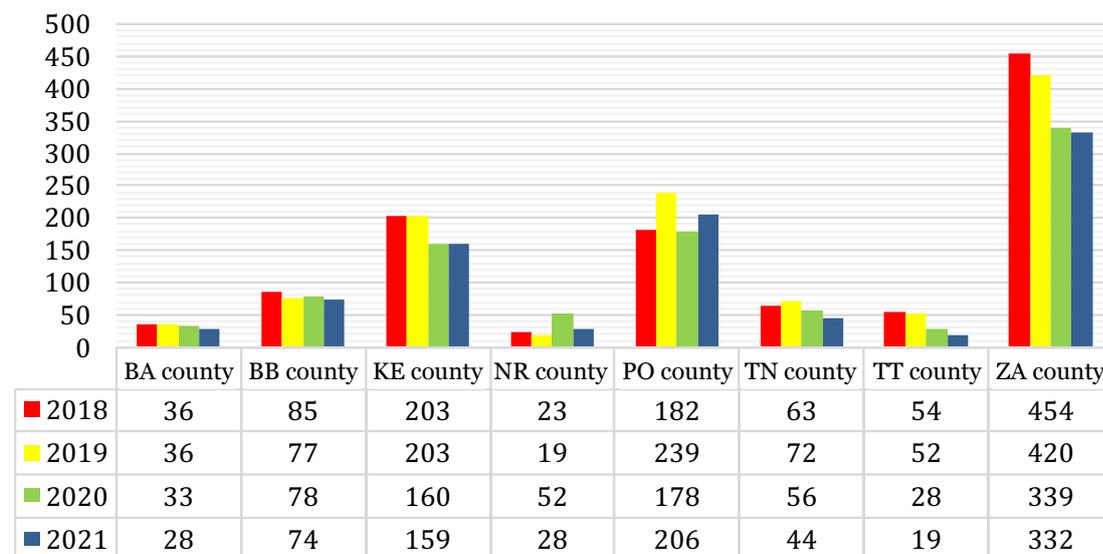
Chart 10: Number of mediations granted in the Slovak Republic for the years 2014 to 2021

Note: 2020 and 2021 - COVID 19



Source: PhDr. Vladimír Cehlár, PhD. and statistical yearbook of the Ministry of the Interior of the Slovak Republic

Chart 11: Number of mediations assigned for the period 2018-2021 (counties)

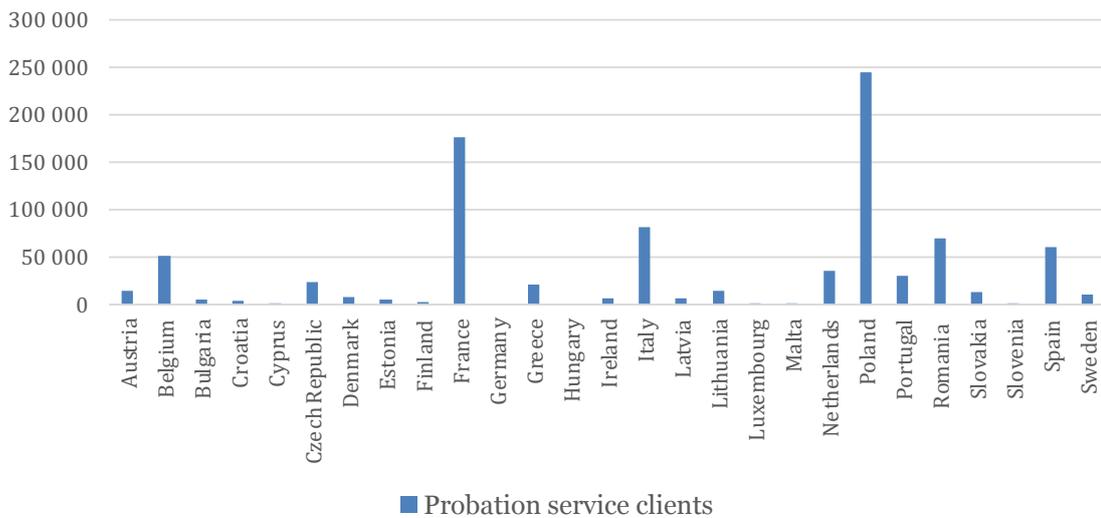


Source: PhDr. Vladimír Cehlár, PhD.

6. CHALLENGES AND NEED FOR SYSTEMIC CHANGE

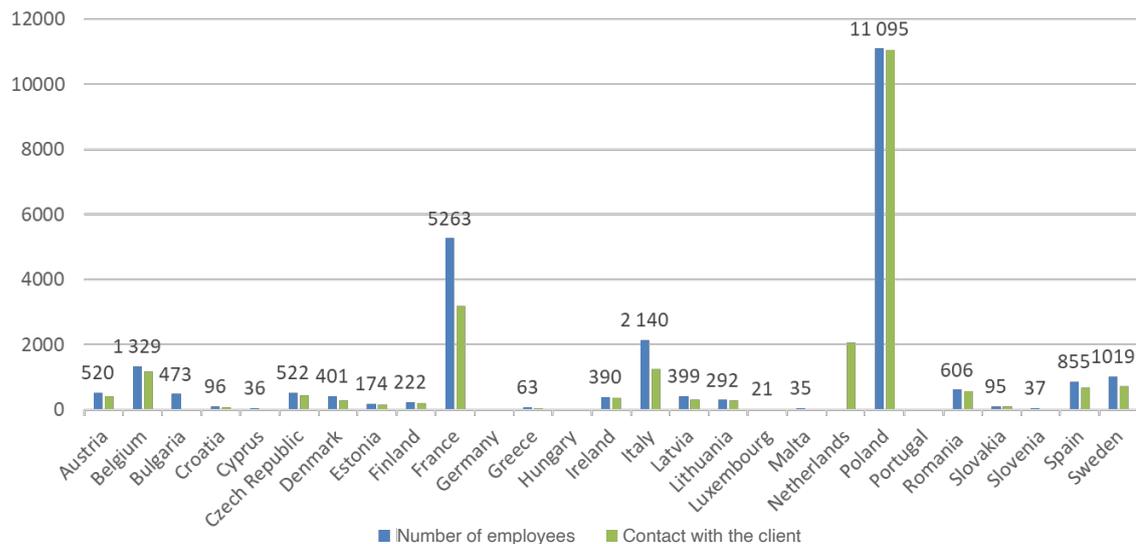
At present, 81 probation and mediation officers provide probation and mediation services throughout the territory of the Slovak Republic, which, with the long-term number of live cases at approximately 12 000, represents an average ratio of 148 cases per 1 employee. If the state is interested in the development, expanded use in criminal proceedings and sustainable provision of mediation or other restorative tools, it is necessary to deal with the deficit in capacity, especially personnel, as a priority.

Chart 12: Probation in the EU – number of clients in 2019



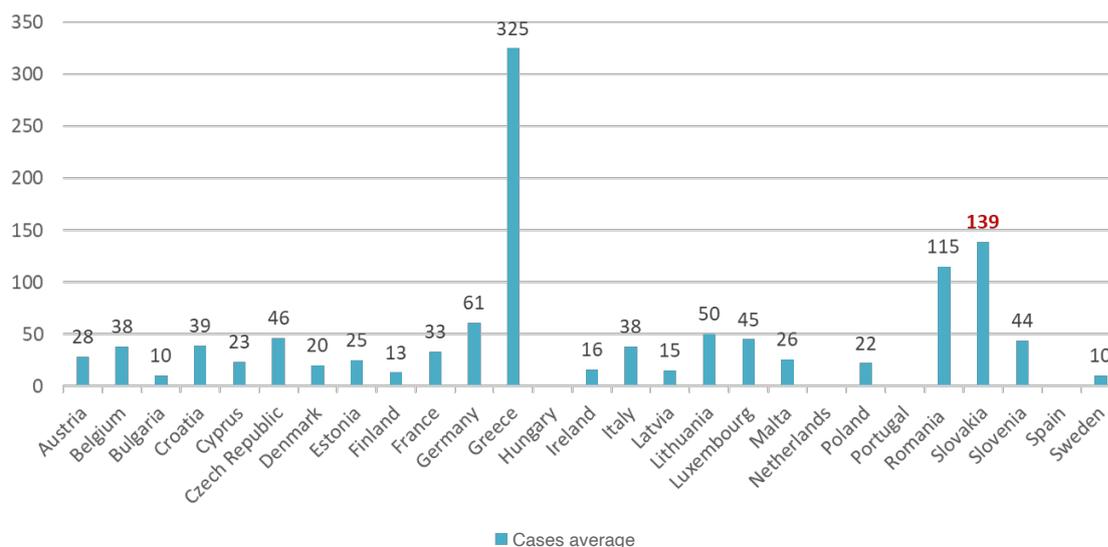
Source: Council of Europe – <https://wp.unil.ch/space/space-ii/annual-reports/>

Chart 13: Probation services in the EU – staffing 2019



Source: Council of Europe - <https://wp.unil.ch/space/space-ii/annual-reports/>

Chart 14: Probation services in the EU - staffing 2019



Source: Council of Europe - <https://wp.unil.ch/space/space-ii/annual-reports/>

At the same time, if in the criminal policy environment in the Slovak Republic, mediation has the status of a „supplementary“ tool for a defined category of „non-serious“ criminal cases (regardless of the actual interest and needs of the injured person), one can doubt the achievement and fulfilment of the objectives to which the European legislation responds - Directive 2012/29/EU of the European Parliament and of the Council of 25. October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA or Recommendation CM/Rec (2018)8 of the Committee of Ministers to Member States on restorative justice in criminal matters.

Therefore, the following changes can be defined as necessary for the environment in the Slovak Republic:

- building sufficient, i.e. adequate capacities for the full provision of the services provided (relieving the mediation field from the negative impacts of the organisation of mediation),
- structuring and specialisation of the handling of the agenda and professionalisation of capacities and processes - separation and specialisation of probation and mediation activities,
- preparing and creating the legislative and material environment for the fulfilment of the objectives defined in EU and Council of Europe acts:
- the availability of mediation for every injured person
- the use of mediation in criminal cases in general without examining and applying the criterion of relevance
- the availability of mediation at all stages of criminal proceedings, i.e. e.g. post-conviction in the execution of a sanction.
- In the application of restorative justice programmes, the primary focus should be on juvenile offenders and offenders close to the age of juveniles, in line with the Government’s programme statement as well as the panel discussions at the 14th UN Congress, which considered mediation to be the most effective element of restorative justice in terms of preventing recidivism among young people,

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