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In Lithuania an issue on implementing the restorative justice model is also raised, when speaking about one of the so-called alternative measures – mediation (reconciliation) as intermediation, the purpose of which is agreement between offender and victim as regards compensation to the victim for wrongdoing and damage, seeking accusatory-victim agreement, ensuring compensation to the victim, perception by the accusatory of his deed and consequences. Mediation should not always mean restitution of material or non-material damage. The conflicting parties may refuse fully or partially the compensation of damage, if, in their opinion, peace and order may be also restored in the society without applying such measures.

One of the problematic issues relevant to the implementation of mediation is the relationship between the criminal justice system and mediation process. The source of mediation process is the justice system in criminal cases; it is expedient to consider the mediation programmes as the institution maintaining the criminal justice system, an alternative method for increasing the efficiency of the justice system. In addition, mediation programmes may work only when the accusation is identified, this being dependent on the efficiency of the activity of the police and other procedural institutions. Therefore on the basis of the results of empirical research and the provisions of mediation, mediation should be functionally related to the justice system, whereas mediation programmes should be effected by the social services (institutions not belonging to the criminal justice system).

The results of empirical research conducted in the world show that as the object of competition of the mediation processes and the justice system may be recognized first of all property and not-serious non-violent criminal offences of juveniles, as well as sexual criminal offences of adults – to a very limited extent, moreover, by applying the mediation process in a proper way.

Certainly, serious crimes exist, in respect of which mediation may not be applied. It is necessary to have in mind the necessity of implementation of the preventive criminal punishment function in respect of the crime perpetrators dangerous to the safety of the

society and law and order. Therefore of special importance is the collaboration of mediation programmes and the justice system. One of the main mediation principles is voluntariness of this process and a possibility to withdraw in each stage of mediation process.

In the criminal law of Lithuania, the reconciliation institution (Criminal Code Art. 38)¹ is foreseen, as a conditional type of remission of criminal liability, releasing the person from criminal liability, imposing the probationary period of one year, if the perpetrator reconciled with the victim; reconciliation is not possible in the cases of serious and very serious crimes. Under Article 38 of the Criminal Code, person who has committed a misdemeanour, careless criminal offence, not aggravated or half aggravated criminal offence may be justified from criminal liability by court if: 1) he admitted having made offence and 2) has voluntarily compensated or eliminated damage done to natural or legal person or has agreed about the compensation or elimination of this damage, and 3) is reconciled with victim or representative of legal person or state institution, and 4) there are reasons to believe that he will not commit other criminal deeds. Pursuant to Article 38 of the Criminal Code, on the grounds under discussion a person cannot be released from criminal liability if he has been released from criminal liability earlier as the one reconciled with victim, if less than four years have passed from the day of reconciliation to accomplishment of new offence.

Remission of criminal liability after reconciliation of offender and victim is the conditional type of remission of criminal liability when a person who committed an offence is released from criminal liability establishing a one-year probationary period. According to Article 38 of the Criminal Code, the issue of remission of criminal liability is differentiated: 1) if within the period of one year the person has committed a new intentional criminal offence, the former decision to justify from criminal liability ceases being valid and court decides on the criminal liability of the person for all committed offences; 2) however, if a person has committed a criminal or careless offence or does not meet his engagements confirmed by court concerning conditions and procedure of

¹ The Criminal Code was adopted by the Seimas of the Republic of Lithuania on 26 September 2000 // Official Gazette. 2000, No. 89-2741 (further the CC), came into force from May 1, 2003. Reconciliation institution in the public accusation cases was regulated in 1993 (Criminal Code Art. 53, Code of Criminal Procedure Art. 9¹).

damage compensation without valid reasons court can abolish decision concerning remission of criminal liability and decide on the criminal liability of the person for all committed offences (Pt 3,4, Art. 38, the Criminal Code).

The Code of Criminal Procedure² (p. 5, Art. 212) foresees the termination of pre-trial investigation after the reconciliation of suspect and victim in the cases specified in Art. 38 of the Criminal Code. In this case, pre-trial investigation is terminated by a decision of the judge of pre-trial investigation³, which confirms the resolution of the prosecutor on the termination of pre-trial investigation (Pt 2, Art. 214 of the Code of Criminal Procedure).

Reconciliation process is known in criminal law of Lithuania also in the event of the procedure of private accusation cases. Article 407 of the Code of Criminal Procedure foresees criminal offences under the Art. 38 of the Criminal Code when a procedure is started only in the presence of a complaint of the victim or statement of his legal representative (private accusation cases). Under Paragraph 5, Pt 1, Art. 3 of the Code of Criminal Procedure, a criminal procedure may not be instituted, and, if instituted, must be terminated, where victim reconciled with the accused in the cases specified in this Code, i.e. when a procedure has been started only if a complaint of the victim or statement of his legal representative is present.

The detailed regulation of handling of private accusation cases is provided in the Code of Criminal Procedure. The Code contains the enforced norms, specifying the proceedings of conciliatory session. The course of conciliatory session in the private accusation cases is regulated by Article 413 of the Code of Criminal Procedure.

When a complaint of victim is received in the court according to the statement of private accusation or his legal representative, victim and (or) his legal representative, and person who is accused of committing criminal offence are summoned to the judge in order to be reconciled. (Pt 1, Art. 413 of the Code of Criminal Procedure). If these persons are reconciled, the process concerning complaint is cancelled (Pt 2, Art. 413 of

² The Code of Criminal Procedure of the Republic of Lithuania (further in the text CPP was approved on 14 March 2002 by the Law No. IX-785// Official Gazette. 2002, No. 37-1341, came into force on May 1, 2003.

³ Under Article 19 of the Code of Criminal Procedure, “pre-trial investigation judge is the district court judge, appointed by the district court chairman to carry out procedural actions foreseen by the laws and to take decisions”.

the Code of Criminal Procedure). Victim and (or) his legal representative and person accused of committing criminal deed during reconciliation may make a contract concerning compensation of damage (Pt 3, Art. 413 of the Code of Criminal Procedure). If victim and (or) his legal representative and person accused of committing a criminal deed are not reconciled, the judge decides to give over a complaint of victim for hearing in the conciliatory session (Pt 5, Art. 413 of the Code of Criminal Procedure)⁴.

Attention, however, is to be focused on two different situations: when a measure of educational impact is imposed by the court and when the parties themselves at their own free will agree on the compensation of material damage, apology, or unpaid work. In addition, victims may be forced to consent to the execution of the measure of educational impact, and their conflicts will be resolved only ostensibly. Therefore it would sought to achieve that in the case of reconciliation victims should not be forced to reconcile, their conflicts should not be resolved just superficially and without the opportunity for agreement thus reached to be retained in the future. Thus it would be possible to attempt to modify and modernize criminal law, introducing mediation institution. Therefore it is important to analyze the possibilities for applying mediation.

Speaking of the implementation of mediation in Lithuania, of special importance is that society and political parties would approve the initiatives of such type and collaborate actively in their implementation. Representative investigations of various strata of society and victims, conducted in many states, show that society is open to accept new tendencies in the approach to juvenile delinquency. Experts of the science and policy of criminal law are convinced that process of offender and victim reconciliation, the currently real alternative of penal measures, will gain still more importance in the future. Therefore, in addition to ensuring of staff training and financial funds, primarily it is necessary to look after the appropriate legal and administrative technical regulation.

In the part “Criminal and Punishment Execution Policy” of the National Crime Prevention and Control Programme of 20 March 2003, approved by the Parliament, the

⁴ Also, Article 261 of the Code of Criminal Procedure of 1961 foresaw that prior to instituting proceedings relating to victim’s complaint, the judge takes measures for reconciliation of victim with a person, against whom a complaint was filed. If they fail to reconcile, the judge institutes criminal proceedings and brings to trial a person, against whom a complaint was lodged or refuses to institute criminal proceedings, if no sufficient ground exists for bringing to trial a person, against whom a complaint was lodged, or transfers a victim’s complaint for consideration to a public organization.

striving of creation of the restorative justice system is indicated, its main aim being to restore the former situation between the subjects affected by a crime – victim, perpetrator, society⁵.

International recommendations encourage to make experiments on its implementation. Research conducted in different countries shows that efficiency of mediation is not less than other penalties and penal measures, not related to the efficiency of deprivation of liberty.

Certainly, serious violent crimes exist, in respect of which the mediation system could not be applied. One should have in mind the implementation of preventive functions of criminal punishment in respect of malicious perpetrators, accused of serious crimes.

⁵ Resolution No. IX-1383 “On the Approval of the National Crime Prevention and Control Programme” of 20 March 2003 of the Seimas of the Republic of Lithuania // Official Gazette. 2003. No. 32-1318.