



udruga za  
izvansudsku nagodbu  
i posredovanje u kaznenom postupku

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## CROATIAN ASSOCIATION FOR OUT-OF-COURT SETTLEMENT AND MEDIATION IN CRIMINAL PROCEEDINGS

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### History of the organisation

The Association for Out-of-Court Settlement and Mediation in Criminal Proceedings (or Association for Out-of-Court Settlement) was established in the year 2003. Its' main goal is promoting victim-offender mediation<sup>1</sup> in resolving conflicts caused by criminal offences of minors and young adults and spreading the idea of restorative justice. It has 40 members who are professionals (social pedagogues, social workers, psychologists) working directly with children and youth with behavioural problems (or who are in conflict with the law). The majority of them work on the execution of special obligation - mediation through out-of-court settlement (in accordance with article 72, Juvenile Courts Act, 2011) and were educated and certified by Austrian mediators and educators from Neustart Graz (ATA-E) as a part of the project "Special obligation – Out of Court Settlement" supported by UNICEF Office for Croatia from 1999 to 2001 as well as during the project "Implementation of the out-of-court settlement in pre-criminal proceedings for minor and young adult offenders" during 2013 and 2014 (also supported and funded by UNICEF Office for Croatia).

### The mission, aims and purpose (vision) of the organisation

The general aim of The Association for Out-of-Court Settlement is to help establish and develop the idea of restorative justice and out-of-court settlement.

To pursue this general aim, the Association will pursue the following objectives:

- Conduct the process of out-of-court settlement (victim-offender mediation) at the request of authorities.
- Conduct education and supervision of professionals in the field of out-of-court settlement (victim-offender mediation).
- Encourage international and domestic cooperation with institutions/associations who are into restorative justice.
- Participate in national and international conferences on the topic of restorative justice.

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<sup>1</sup> Victim-offender mediation is an international term for what we call „out-of-court settlement“ in Croatia. It is one of four models of restorative justice known in the world. These two terms will be used interchangeably in the text.

- Publish books, magazines, brochures and manuals regarding the association's activities and field of work.
- Inform the public.

### Organisational structure

The governing bodies of the Association are: Assembly, the President of the Association and the Steering Committee. The president and the steering committee are responsible to the assembly. The president is also responsible to the steering committee for his/her work.

**The Assembly** is the highest body of the Association made of all association members. It works in sessions (regular and exceptional). Tasks of the assembly during so-called regular sessions are:

- Adopt the statute and amendments to the Statute.
- Establish a work program and financial plan for the current year.
- Adopt the report and financial report for the previous year.
- Elect and dismiss the President of the Association, Vice President of the Association and members of Steering Committee.
- Examine a report on the work of the President of the Association and members of the Steering Committee and evaluate their work.
- Decide on the termination of the Association.
- Perform other duties as specified in the Statute.

The association president is also the president of the Steering Committee. The **steering committee** has five members.

Steering Committee roles and tasks:

- Governs association in accordance with the law, statute and the regulations of the Association and executes the decisions of the Assembly.
- Proposes amendments of the Statute to the Assembly.
- Prepares an annual work program and financial plan and reports on the activities and financial transactions of the Association.
- Decides on how to implement the plan of the Association taking into account work plans and development of the Association.
- Takes care of property of the Association, the collection and distribution of funds.
- Decides on the employment of people in the Association.

### ASSOCIATION'S PROJECTS:

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**Project title: Implementation of Out-of-court Settlement for youth in conflict with the law in Croatia**

**Period:** 2013- March, 2014

**Project leader:** Anja Mirosavljević, Ph.D.

**The purpose and overall goal:** The general goal of the project was to expand, implement and establish professional services for out-of-court settlement for juveniles in conflict with the law on the whole territory of Croatia.

**Specific objectives of the project:**

- Conduct four regional trainings for state attorneys for youth and expert associate professionals working in State Attorney's Office for Youth on the topic of out-of-court settlement for juveniles in conflict with the law
- Conduct four regional educational workshops for directors of Social Welfare Centres and other professionals
- Conduct one-year training for mediators (social pedagogues, social workers, psychologists and/or lawyers) during 2013 and 2014
- Develop, write and publish manual and leaflet about out-of-court settlement for youth in conflict with the law (1.500 manuals and 10.000 leaflets)

**Project title: Strengthening implementation of out-of-court settlement**

**Period:** December 2014 - March 2015

Project leader: Anja Mirosavljević, Ph.D.

**The purpose of the project:** to maintain and/or raise high quality standards of mediators, and set mandatory standardisation of criteria for imposing out-of-court settlement at state attorney offices in Croatia.

**The objective of the project:** to conduct professional supervision of 40 mediators and educate state attorneys and expert associates for minors on the out-of-court settlement imposing criteria

**Specific objectives of the project:**

- Organize and conduct four supervisions for 40 mediators (divided into four supervision groups) in Zagreb during December, 2014 (two parallel groups) and February, 2015 (two parallel groups)
- Organize four trainings (in Zagreb, Split, Rijeka and Osijek) on the topic of out-of-court settlement for juveniles in conflict with the law for state attorneys for youth and expert associates working in State Attorney's Offices in February and March, 2015

**Project title: Victim-offender mediation in cases of misdemeanor juvenile perpetrators**

**Period:** October, 2014-September, 2015

Project leader: Anja Mirosavljević, Ph.D.

**Purpose and overall goal:** to improve and enlarge the intervention continuum aimed at youth in conflict with the law in the context of Misdemeanour Law in accordance with EU pursuits to move towards restorative justice

### Specific objectives of the project:

- Organize and conduct two-day education/workshop for misdemeanour judges from the City of Zagreb and Zagreb County on the topic of imposition and conduct of victim-offender mediation for youth in conflict with the law
- Organize and conduct workshop with professional from centres for social welfare in Zagreb on the topic of victim-offender mediation in cases of misdemeanour juvenile perpetrators
- Conduct of victim-offender mediation cases in Professional Service Zagreb
- Monitor, evaluate and publish project results
- Create conditions for the further implementation of the program on the whole territory of Croatia

### ASSOCIATION'S RESEARCHES

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- Conducted and published three evaluations of the program in 2008, 2010 and 2016 (Kovačić, 2008, Mirosavljević, Koller-Trbović & Lalić Lukač, 2010, Modrić, 2016)
- Conducted and published qualitative research „Out-of-court settlement: Perspective of Victims and Youth in Conflict with the Law (Mirosavljević, 2015)
- Conducted and published qualitative research “Out-of-court settlement: Perspective of mediators” (Markulj, 2016)

### Other important (and selected) activities of the Association:

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- Association participated in the **International Restorative Justice Week** in November, 2014, 2015 and 2016 (organized by European Forum for Restorative Justice) with the aim of raising awareness about restorative justice together with Faculty of Education and Rehabilitation Sciences (University of Zagreb)
- **Elective course „Out-of-court settlement“ is studied from 2008 onwards at the Faculty of Education and Rehabilitation Sciences** (University of Zagreb). Lecturers-professor Koller Trbović and Anja Mirosavljević, Ph.D. are both Association members. Other members are guest-lecturers at that course.
- Association was **awarded for contribution in development of peace-building and reconciliation in the Republic of Croatia**, Zagreb, September, 2013
- **Code of Ethics for mediators in out-of-court settlement for youth in conflict with the law** was written, published and adopted by the Assembly of the Association in 2014.

- Anja Mirosavljević, member of the Association, was a trainer on the workshop “Accessibility and initiation of restorative justice” organized by European Forum for Restorative Justice in Zagreb, March, 2014
- Members of the Association participated on the workshop “Accessibility and Initiation of Restorative Justice” organized by European Forum for Restorative Justice in Belgium, Leuven, 2014
- Participation in the "Restorative Practitioner" training organized by International Institute for Restorative Practices in Hungary, Budapest, May, 2015
- In the „Midterm Review of the UNICEF's Programme 2012-2016 in Croatia“ out-of-court settlement is listed as **best-practice and programme example for youth in conflict with the law** in our country. In the Review UNICEF strongly supports further development of the model on other populations.
- Report on the work of **Ombudsman for Children** in 2013, 2014 and 2015 **recommends out-of-court settlement as a good practice example for children in conflict with the law** and strongly supports further development on the population of perpetrators of misdemeanours
- Professor Nivex Koller Trbović, member of the Association, **received an award for promoting and raising awareness of the idea of mediation and restorative justice** in Croatia, Zagreb, October, 2016
- Anja Mirosavljević, Association member went to one week study visit to professor Ivo Aersten at **Leuven Institute of Criminology (LINC)** (leading restorative justice scientist and institution in Europe) and to **European forum for restorative justice**- with the aim of collaboration and exchange of knowledge and experience in the field of restorative justice (June, 2016)

### Publications written by Association members:

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#### Book chapter written in English:

- Žižak, A. (2010): Mediation in Cases of Juvenile Offenders in Croatia. In: (Gonczol, K.): European Best Practices of Restorative Justice in Criminal Procedure. 171-176. Available at: [http://www.iars.org.uk/sites/default/files/Restorative%20justice%20report%20 %20 Hungary.pdf](http://www.iars.org.uk/sites/default/files/Restorative%20justice%20report%20%20Hungary.pdf)

#### Books/Manuals in Croatian:

- Koller-Trbović, N. (2013) (ed.): Out-of-court Settlement in Criminal Proceeding for Youth in Conflict with the Law in Croatia. Zagreb, UNICEF – Office for Croatia.
- Koller-Trbović, N., Cvjetko, B., Koren-Mrazović, M., Žižak, A (eds.): (2003): Out-of-court Settlement in Criminal Proceedings for Minors and Young Adults. Zagreb- Ministarstvo rada i socijalne skrbi RH, DORH i Edukacijsko-rehabilitacijski fakultet.

#### **Scientific and professional papers in Croatian:**

- Markulj, Anica (2016): Out-of-court Settlement- perspective of mediators. Master's thesis. Faculty of Education and Rehabilitation Sciences University of Zagreb.
- Modrić Ana (2016): Evaluation of the efficiency of out-of-court settlement for youth in conflict with the law in Croatia. Master's thesis. Faculty of Education and Rehabilitation Sciences University of Zagreb.
- Miroslavljević, A. (2015): Out-of-court settlement: perspective of victims and youth in conflict with the law. Doctoral thesis. Faculty of Law University of Zagreb.
- Miroslavljević, A., Koller-Trbović, N., Lalić Lukač, D. (2010): Evaluation of the Efficiency of Out-of-court Settlement in Professional service Zagreb. Criminology and Social Integration Journal. 18(2).77-97.
- Miroslavljević, A. (2010): Restorative Justice Models in the World for Youth in Conflict with the Law and Research Overview of its Effectiveness. Criminology and Social Integration Journal. 18(1).53-65.
- Kovačić, V. (2008): Evaluation of Out-of-court Settlement in Professional Service Zagreb. Master's thesis. Zagreb. Faculty of Education and Rehabilitation Sciences University of Zagreb.
- Koller-Trbović, N., Žižak, A. (2006): Experiences with Out-of Court Settlement (mediation) in Croatia. Victim-offender Mediation Model in Criminal Justice System. Kultura mira (Časopis za mir, nenasilje i ljudska prava). 10. 24-29.
- Koller-Trbović, N., Gmaz-Luški, V. (2006): Application of Out-of-court Settlement (mediation) in Precriminal Proceeding for Minors and Young Adult Offenders. Croatian Annual for Criminal Law and Practice. Croatian Annual for Criminal Law and Practice. 13 (2). 933-956.
- Koren-Mrazović, M., Koller-Trbović, N., Žižak, A., Cvjetko, B. (2003): Out-of-court settlement in Croatia. Croatian Review of Rehabilitation Research. 3 (2). 211-222.

#### Presentation of the model/program:

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##### **Selected conferences:**

- Miroslavljević, A., Koller Trbović, N. (2015): Victim-offender mediation in Croatia: perspective of crime victims and juvenile offenders“. The 15th Annual Conference of the European Society of Criminology „Criminology as unitas multiplex: Theoretical, epistemological and methodological developments“, Porto, Portugal.
- Miroslavljević, A. (2015): Victim-offender mediation in Croatia- perspective of crime victims and youth in conflict with the law. Zagreb, Croatia.

- Gmaz Luški, V., Miroslavljević, A. (2014): Mediation in criminal matters. Reconciliation Week. Croatian Association for Reconciliation. Croatia, Zagreb.
- Miroslavljević, A. (2014): Motives and benefits of victim-offender mediation for juveniles. International School of Social Work, Symposium „Social work with youth in conflict with the law“, Inter-University Centre, Croatia, Dubrovnik.
- Miroslavljević, A., Gmaz Luški, V. (2014): Victim-offender mediation for youth in conflict with the law in Croatia. Association of Mediators Slovenia. Ljubljana, Slovenia.
- Miroslavljević, A. (2013): Comparison of two victim-offender mediation subsamples in relation to the form of compensation. 13th Annual Conference of the European Society of Criminology. Budapest, Hungary.
- Miroslavljević, A. (2013): Evaluation of out-of-court settlement for youth in conflict with the law in Zagreb and some victim characteristic. 4th Annual Conference of Serbian Society of Victimology. Serbia, Belgrade.
- Miroslavljević, A. (2013): Comparing two victim-offender mediation subsamples in relation to the form of compensation. 13th Annual Conference of European Society of Criminology, Hungary, Budapest.
- Miroslavljević, A. (2010): Evaluation of the efficiency of victim-offender mediation in Zagreb professional service for out-of-court settlement. Conference of European Forum for Restorative Justice. Spain, Bilbao.
- Koller-Trbović, N., Žižak, A. (2005): Out-of-court Settlement- model of good practice of alternative measures. 3rd Slovenian Congress of Social Pedagogy. Ljubljana, Slovenia.
- Cvjetko, B., Koller-Trbović, N., Gmaz-Luški, V. (2005): Out-of-court Settlement in criminal procedure for youth. Tribune of Faculty of Law Zagreb and Club of Lawyers City of Zagreb. Zagreb. Croatia.

## ABOUT OUT-OF-COURT SETTLEMENT MODEL IN CROATIA

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### Situation analysis of out-of-court settlement in Croatia

In the year 2000 the Project called “Alternative Interventions for Juvenile Offenders: Out-of-court settlement” started. It was developed by the former Ministry of Work and Social Care, the State Attorney's Office of the Republic of Croatia, the Faculty of Education and Rehabilitation Sciences of Zagreb University and Neustart (organization for restorative justice) from Austria. The project was funded by UNICEF Office for Croatia. Through the project, the Croatian model of out-of-court settlements (victim-offender mediation/VOM) for juvenile offenders was developed. Seventeen of the professionals who received training from Neustart (Austria) in the project started to work in 2001 in only three towns (Zagreb, Osijek and Split). **Today** (after the project conducted by the Association in collaboration with UNICEF, Ministry of Justice and Ministry of Social Policy and Youth in 2013 and 2014) **we have 21 professional services in every Croatian county.** Mediation activities are carried out in partnership with the state attorney' offices and the centres for social welfare.

## Legal framework

Legislative grounds for victim-offender mediation for juvenile in conflict with the law is found in the **Juvenile Courts Act (2011)** more specifically in Section 72 and its pre-trial procedure called the *principle of opportunity*. This principle, as well as the Juvenile Courts Act, is applicable to two types of young perpetrators of criminal offences: minors (persons whose age at the time of the offence committed was between 14 and 18) and young adults (persons whose age at the time when the offence was committed was between 18 and 21). According to this principle, the state attorney for minors may decide not to request criminal proceedings to be instituted for a criminal offence punishable by a fine or prison sentence of up to five years, although there is reasonable doubt that the minor committed that offence. Such a decision should be based on the state attorney's estimation that it would not be purposeful to conduct the proceedings against the minor (having in mind the nature and circumstances of the offence, as well as the perpetrator's personal characteristics and life circumstances). More precisely, according to Section 72 of the Juvenile Courts Act (2011), the state attorney may make his/her decision not to institute criminal proceedings conditional on the minor's readiness to fulfil the special obligation – to get involved in the process of mediation through out-of-court settlement.

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

- The offence concerned should be punishable by a prison sentence of up to five years or by a fine
- Reasonable doubt that the minor/young adult committed the offence
- The first time offenders are priority
- Recidivists are not excluded
- Petty offences that could result with dropped charges are excluded
- Not recommended for the offences made in complicity
- Cruel and brutal offences or offences planned in advance, excluded
- Victim should be natural, not legal person (but legal persons not excluded)
- Offender has to provide his/her free consent to participate in the VOM process;
- Victim has to provide his/her free consent to participate in the VOM process;
- The state attorney for minors is the only person entitled to make a decision on imposing obligations prescribed by Section 72, as well as deciding if they have been successfully carried out

## Statistics and evaluations in Croatia

Every year, there are approximately up to 3.000 offences committed by minors in Croatia, out of which 45% of cases are referred to the State Attorney Office and resolved out of court within pre-trial procedures. Up to 25% of these procedures are victim – offender mediations. Evaluation show that the recidivism rate for juveniles who participated in victim offender mediation processes is significantly lower (13-17%) than for other types of sanctions for youth in conflict with the law (30%).

Table 1 shows the number of imposed out-of-court settlements. It is obvious that more than 1000 cases have been resolved through out-of-court settlement in the past 12 years.

Year	# of special obligations (Ar.72)	# of out-of-court settlements for youth	% of OCS in total number of special obligations
2004	2 086	75	3,59%
2005	1 994	121	6,07%
2006	2 034	156	7,67%
2007	1 827	146	7,99%
2008	1 816	146	8,04%
2009	1 929	130	6,74%
2010	1 897	175	9,23%
2011	1 698	162	9,54%
2012	1 461	126	8,62%
2015	1 159	170	14,7 %
<b>Total</b>	<b>17 901</b>	<b>1 407</b>	<b>8,2%</b>
<b>M</b>	<b>1 790,1</b>	<b>140,7</b>	<b>8,2%</b>

*Table 1: Number of imposed out-of-court settlements by State Attorney Office*

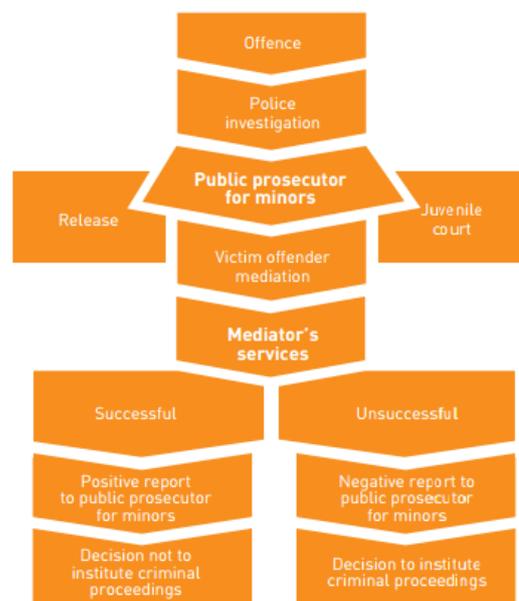
All statistics and evaluations (Kovačić, 2008, Mirosavljević, Koller Trbović & Lalić Lukač, 2010, Modrić, 2016, Mirosavljević, 2015, Markulj, 2015) carried out so far show positive results and demonstrate that out-of-court settlement (or victim-offender mediation) in Croatia for juveniles and young adults is very successful. Generally, the evaluation results show efficacy but some specificities exist. For example, there is an increased number of recidivists included in VOM and offences made in complicity. Evaluation has also shown that the recidivism rate for juveniles who participated in victim offender mediation processes was significantly lower (10-13%) than for other types of sanctions for juvenile delinquents (30%). Here are some of the results of an evaluation made in the Professional Service for VOM in Zagreb (Mirosavljević, Koller-Trbović & Lalić Lukač, 2010). The sample consisted of 209 juvenile and young offenders who participated in the VOM during the period from June 2006 until the end of 2009:

- Mediation processes lasted up to 3 months in 65% of cases.
- More than 60% of offences were property crimes (aggravated theft, theft, violation of property).
- More than 30% of the offences were violent offences of some kind.
- Most offences (40%) were committed by one offender.
- Characteristics of victims included: 84% of victims were individuals, predominantly male (63%), 62% were younger than 20 years of age.
- Characteristics of offenders included: 93% were male, 66% were minors (14 to 18 years old) and 34% were young adults (18 to 21 years of age).
- Mediation outcomes were: in 61% of cases – apology to the victim and financial compensation; in 31% of cases – only an apology; in 8% of cases – other (financial compensation, humanitarian work, returning stolen things, joining treatment for drug addicts, symbolic compensation, etc.).
- For 85% of cases, the state attorney for youth made a decision not to institute criminal proceedings (80% of the mediations were successful).

- The recidivism rate was 13,4% (mostly in the case of possession of drugs).
- Participants (victim's and offender's) perspective explored in the qualitative study done by Anja Mirosavljević (2015) highlights that **victims have positive experiences with out-of-court settlement (OCS)** which is evident from isolated themes named: OCS brings many benefits for victims, Experience of positive atmosphere, Positive perception of mediator as process “guardian”, Positive perception of the offender, Process leads to the relief for the victims. However, findings also indicated negative cases, which reflect disrespect of OCS standards and principles by mediators. Meanings that victim attach to the experience with OCS is described in two overarching themes called: Satisfaction with the process and OCS outcomes and OCS is sufficient for victims but not for the offenders.

**Offenders, as well as victims, have positive experience with OCS.** Although their motivation for participation is primary pragmatic accompanied by emotions of fear, discomfort, upon completion of the process they recognize many benefits for themselves and more modest for the victims. OCS is perceived as measure which is better for them than for the crime victims. Victims are perceived better than expected and often oriented toward helping the offenders. The perception of the mediator is positive. Many offenders experience transformation of emotions during the process. This means that the process leads to changes of emotions in most cases (from „negative“- fear, discomfort, embarrassment to a feelings of relief and happiness). But in spite of the above, disrespect of the principles and standards of OCS conduct by mediator, leads to problems during the joint victim and offender meeting and bring less restorative outcomes than those which in accordance with theories one might expect. Meanings that offenders attach to the experience with OCS is described in two overarching themes called OCS is oriented toward offenders and OCS is better than court for the offenders.

## Scheme of the model



**Figure 1**  
Model of juvenile victim offender mediation (adapted according to *Aussergerichtlicher Tatausgleich*, 1997; Koller-Trbovic et al. 2003)

After an offence has been committed and police investigation has been carried out, the state attorney for minors is informed who then makes a decision to put the case through a pre-trial procedure. During the pre-trial procedure which is conducted in the office of the state attorney for minors, the juvenile offender is offered to participate actively in the process of resolving issues arising from the offence.

Before the process of mediation starts, both parties must give their free consent to participate to the mediator. The process of mediation is carried out in one of the 21 mediation services in Croatia by a licensed mediator. After the process is completed, the state attorney for minors is informed about its results. A report to the state attorney is made and if the mediation is pronounced successful by the mediator, the state attorney decides not to institute criminal proceedings.

**Criteria for successful victim-offender mediation (Žižak, 2010):**

- The juvenile offender accepts responsibility for the offence
- Victim and the offender give their informed consent to participate in mediation process
- An agreement is reached and signed by both parties
- Fulfilment of the agreement
- Report on the success of the mediation to the state attorney for minors
- State attorney decides not to institute criminal proceedings.

## Who can be mediator in criminal matters in Croatia:

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**Helping professions** (social pedagogues, psychologists, social workers) who **must finish one year long education consisted of 170 working hours** (of lectures, theory, exercises, role-plays and practical work with mentoring, professional supervisions and individual work via homeworks, passed written restorative justice theory exam, passed VOM role play exam).

**Competencies developed after the education:**

- ✓ Define key theoretical and practical guidelines of restorative justice
- ✓ List basic elements and characteristics of different mediation models
- ✓ Point out benefits of out-of-court proceeding in comparison to court proceeding
- ✓ Describe key characteristics of out-of-court settlement
- ✓ Know how to assess criminal complaint regarding legal and professional criteria for out-of-court settlement
- ✓ Conduct full out-of-court settlement process
- ✓ Conduct following methods of work with both victims and offenders: standard, tandem, mirror, postman, waterwheel, mixed pairs
- ✓ Apply different forms and protocols used in mediation process
- ✓ Write final report aimed to State Attorney Office
- ✓ Know how to design outcome-evaluation regarding multiple criteria for success
- ✓ Conduct Balint's model of professional supervision

**Educators** are certificated mediators/ supervisors in the field of victim-offender mediation (**members of the Association of Out-of-Court Settlement**).