

Article

Between Pastoral Care and Criminal Mediation: Is the Prison Chaplain a Suitable Mediator?

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Abstract

In continental legal systems, the regulation of mediation in criminal matters is generally characterised by legislative restraint and a relatively low degree of normative elaboration. This is particularly evident in the case of post-sentencing mediation, especially mediation conducted during the execution of a custodial sentence, which in many jurisdictions lacks an explicit statutory basis. In some legal systems, the admissibility of mediation at the sentence-enforcement stage has not yet been conclusively determined. Paradoxically, however, this regulatory uncertainty creates a fertile field for scholarly inquiry, as *de lege ferenda* proposals may substantially influence both future mediation practices and the development of legal frameworks governing restorative justice. Against this background, this article explores the potential role of prison chaplains as mediators in penitentiary settings, examining both the opportunities and the limitations associated with such a model. The ministry of chaplains should not be viewed solely through the prism of their traditional pastoral and supportive functions towards inmates, but also in light of the professional standards and ethical requirements applicable to mediation. In this context, the study analyses the extent to which the role of a chaplain may be reconciled with the principles of mediator impartiality, neutrality, and professional competence. The article further argues that the development of a coherent framework for penitentiary mediation should encompass three distinct contexts: mediation conducted during pre-trial detention, mediation undertaken during the execution of a sentence following a final judgment, and mediation relating to new offences committed within penitentiary institutions against fellow inmates or prison staff. Drawing on mediation practice and empirical research, including interviews with prison chaplains, the study formulates criteria for determining mediator status and qualifications and compares them with the legal and organisational principles governing religious ministry in correctional institutions. The analysis ultimately contributes to the broader debate on the institutionalisation of restorative justice mechanisms within the penitentiary system.

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1. Introduction

According to the latest edition of the World Prison Population List (WPPL), there are approximately 11.5 million people in prisons worldwide (Fair and Walmsley 2024). This constitutes a large group of individuals. This enormous number of inmates entails a comparable—and equally vast—number of victims. Unsurprisingly, the question arises as to the possibility and legitimacy of mediation when one of the parties to the conflict is held

in a penitentiary or a pre-trial detention center. The issue has been analyzed on numerous occasions in scholarly literature, pilot initiatives are being implemented, and even legal provisions are being prepared. In this publication, we seek to address a specific issue: the possibility of a prison chaplain serving as mediator.

Chaplaincy is present in all penitentiary systems that are founded on the principle of a democratic state governed by the rule of law and respect the religious freedom of individuals. Chaplains accompany, assist and care for individuals in penal isolation in a variety of ways. Prison chaplains are eager to emphasize their therapeutic role. It has been argued that “prison pastoral activity is essential for coping with the injuries caused by incarceration and prisonization” because a state of existential emptiness and meaninglessness are among the greatest threats within prisons. Hence, it is the chaplain’s task to assist prisoners in overcoming the crisis of values (Miklósi 2021, p. 55). The distinctive qualities of chaplains and their affirmative approach to human beings could render them suitable candidates for mediators (Czelny 2019; Orr 2024; The Religious Society of Friends (Quakers) in Britain 2020; Todd and Tipton 2011; Váně and Dirga 2023). This study seeks to compare the essence and principles of mediation, in particular mediation during the enforcement of sentences, with the purposes of prison chaplaincy. The additional objective is to verify whether the mediator’s requirements and obligations can be fulfilled by a clergyperson.

The authors are aware that the concepts of restorative justice and mediation are not synonymous. A functional definition of restorative justice (RJ) was proposed by Tony Marshall: “Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Marshall 1999, p. 5). It is emphasized that this is a process and, at the same time, establishes minimal requirements for restorative programs. If we assume that such processes “must involve: 1. victims and their offenders in face-to-face meetings, where 2. they determine the outcome,” (McCold 1999), then only mediation, conferencing, and circles meet these requirements. Paul McCold identifies three models of mediation: community mediation (CM), victim–offender reconciliation programs (VORP), and victim–offender mediation (VOM). VOM is based primarily on dialogue, abandoning reconciliation in favor of the victim’s healing, the offender’s accountability, and reparation of harm. VOM is also distinguished by promoting a “humanistic” model of mediation, described as a “social work case development approach.” It places emphasis on building relationships between the parties and fostering trust in the mediator (McCold 1999). At the same time, it is emphasized that while mediation is outcome-oriented (settlement-driven)—focused on reaching an agreement—for restorative justice the process itself (dialogue-driven) is more important. RJ stresses voluntary meetings, discussion of emotions, the offender’s acceptance of responsibility, and reparation (the primary source of this distinction is the work: Umbreit 2001). However, the issue is clearly multifaceted and extends beyond the main subject of this study. For the sake of facilitating the discussion, we assume that restorative justice and mediation are very closely related concepts, often used interchangeably (Broński 2022).

The study has been carried out through an analysis of literature in three areas: mediation in penal matters, the enforcement of a penalty of imprisonment and pre-trial detention, and prison chaplaincy. The analysis has taken into account national and international legal regulations, as well as case law from bodies of various levels and types. The analysis has started with the Polish legal system, but the German regulations have served as a distinct counterpoint. Other measures have been cited as an illustration of a particular issue.

2. Framework—A Perspective of Conciliation: Mediation During the Incarceration of the Offender in a Penitentiary Unit

2.1. Specifics of the Criminal Mediation Process Carried out in a Penitentiary—Its Essence and Normative Foundations

Although, in practice, it has not yet been regulated in various criminal justice systems, the issue of penitentiary mediation is gaining increasing significance. Research projects are being carried out, pilot experimental mediation procedures are conducted in penitentiaries (Lewicka-Zelent et al. 2023), and legal doctrine is increasingly engaging with this subject in theoretical analyses. However, certain issues must be clarified at the outset. Many authors addressing the problem in question overlook the fact that prison mediation encompasses at least three distinct areas:

1. when an inmate is held in pre-trial detention and his or her criminal case has not yet been concluded by a legally binding judgment;
2. when an inmate is serving a sentence—the act, damage and guilt have been concluded by a legally binding judgment;
3. an inmate serving a sentence commits another offense, and the victim is either a fellow inmate or a prison staff member.

In the first of the cited areas, the accused has not yet been finally convicted and participation in mediation provides an opportunity for a reduced penalty (or potentially no penalty at all). In turn, the victim may have concerns that mediation will result in the offender's immunity from punishment (or may replace a penalty or diminish the strength of the obtained evidence). In this type of mediation, time plays a crucial role because the prosecutor or the court must assess the effects of mediation before making a decision regarding the offense under consideration. At this stage, emotions become more intense in connection with the offense—anger, fear, and humiliation on the part of the victim, fear of punishment and hope of its avoidance on the part of the offender.

In the second area, a judgment has been delivered and a penalty has been imposed, which may significantly reassure the victim. The accused can no longer formally expect a change in the judgement but can hope for a conditional release. However, a great number of sentenced prisoners do not accept their penalty (in a Croatian pilot project, only 58% of the sentenced prisoners responded that they deserved a penalty, and the others believed that the punishment was too severe; some of them responded that they should receive a suspended sentence, while others stated that they should actually be rewarded rather than punished. Ultimately, the majority of prisoners do not accept their penalty or respond that there is “no other way than to accept the punishment” (Knežević 2015, p. 93). Moreover, both parties may be more willing to engage in mediation because the concluded criminal trial revealed the shortcomings and flaws in the court's decision on the criminal case. In this type of mediation, time is no longer a decisive factor—the talks may continue for an extended period, in fact, until the completion of the sentence. Post-sentencing mediation is typically conducted many years after the offense, by which time the parties—particularly the victim—are able to assess the losses incurred, especially those of a mental nature, and can express their needs and expectations towards the offender with greater clarity. The doctrine underscores that “the post-sentencing state” means that the criminal justice system has already served its intended purpose. The parties then meet exclusively in pursuit of their own objectives. Both parties resolve to engage in the restorative justice procedure after the judgment has been delivered for various reasons and needs (taking responsibility, reconciliation, closure of a chapter, forgiveness, healing, etc.) (Hagemann et al. 2015).

In the third case (an offense committed in the course of serving a sentence)—on a formal level, the situation closely resembles the first model (the case has not yet been resolved). However, there are distinct rules governing prison culture and what is known as the culture

of violence, profoundly modifying the conflict's structure and the balance of forces at play. The legal framework related to the continuation of serving a penalty of imprisonment and the virtually nonexistent level of agency and decision-making capacity on the part of the offender of an inner-prison conflict mean that the room for a possible settlement and its substantive range are severely limited. An inmate cannot make an independent decision on changing the cell, the hours of a walk, etc. Moreover, a prison conflict constitutes a violation of prison discipline, typically triggering disciplinary procedures that can influence how the conflict is perceived by the involved parties and shape the view of a potential settlement through the prism of disciplinary measures. This type of mediation becomes particularly challenging.

A defining trait of the three cited types is the offender's incarceration in a penitentiary unit and the consequences of this circumstance. The offender's distinct legal situation considerably affects the mediation procedure, and various legal systems regulate these situations in different ways.

The idea and essence of mediation remain unchanged. As a point of reference, it is necessary to recall the now iconic definition developed by Christopher W. Moore, under which mediation is the intervention in a standard negotiation or conflict of a mutually acceptable third party, who has limited or no authoritative decision-making power but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of the issues in dispute (Moore 2014). The essence of mediation is to resolve a conflict with full respect for the parties to the conflict.

Restorative justice remains an unfinished project. Indeed, (Walgrave 2008, p. 11) has even asked: "Is it a (series of) practice(s)? Is it a (utopian) view?" The scholarly literature offers numerous and often divergent definitions of restorative justice. This diversity reflects the heterogeneous and evolving nature of restorative justice approaches across different jurisdictions and cultural contexts worldwide. Some definitions emphasize the participatory dimension of the process, focusing on encounters, dialogue, and the active involvement of stakeholders. Others highlight restorative outcomes, such as reparation, victim recovery, and the reintegration of offenders into the community.

Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future (Newell 2002; Shapland 2003). The restorative justice paradigm forms part of a broader and complex international debate concerning the regulatory reforms, implementation measures, and operational protocols that should be adopted within the justice system, correctional institutions, schools, social welfare services, and, more generally, within communities. The overarching objective of these initiatives is to promote individual and collective well-being, reduce recidivism, and foster a participatory sense of social safety, with a view to strengthening social, communal, and cultural relationships more broadly (UNODC 2020). The literature identifies four primary objectives of RJ, the main component of which is mediation: acknowledgement of responsibility by the offender, combined with repairing the harm and restoring a sense of security in the community, support the rehabilitation of the victim and those who are affected from offence, and an attempt to reintegrate the offender with the community (Johnstone 2003). Within the restorative justice paradigm, a variety of programmes exist, differing according to the participants involved and the context in which they are implemented. These may include family group conferences, restorative conferences, VOM, and community-building circles. According to a systematic literature review, the most frequently implemented restorative practice in correctional settings is the circle process ($n = 9$), followed by VOM ($n = 4$) and restorative conferences ($n = 3$). With regard to circle-based interventions, the following formats have been identified: prisoner–victim circles, prisoner-only circles, prisoner–correctional officer

circles, prisoner–family circles, and circles involving prisoners and members of the wider community (Perrella et al. 2024).

Indigenous peoples have traditionally used talking circles for decision-making, spiritual ceremonies, healing, sharing, and teaching. The circle process has subsequently been adapted for use within contemporary criminal justice systems. Circles may serve as a mechanism for enhancing sentencing processes and are considered particularly valuable in addressing intercommunity conflicts and hate crimes. They can also be employed to foster positive relationships and reduce violence within prisons and other custodial settings. Furthermore, circle processes may support the reintegration of incarcerated individuals returning to their communities, as well as young people re-entering school following a period of detention (UNODC 2020).

Restorative conferences, including community conferences and family group conferences, involve a broader range of participants than the primary victim and the offender alone. Within the conferencing model, other individuals affected by the offence—such as family members, friends, community representatives, and, depending on the specific model, police officers or other professionals—are brought together by an impartial third party who acts as the conference facilitator. This approach enables a wider exploration of the harm caused by the offence and promotes collective engagement in the process of accountability, reparation, and restoration (UNODC 2020).

Other applications of a restorative justice approach, particularly its participatory aspect, have emerged over the years which do not necessarily involve victim participation: community panels and boards, circles of support and accountability and victim surrogate programmes (UNODC 2020).

Mediation, has been gaining increasing popularity, also in Poland. When, however, the focus shifts to mediations in penal matters, their number may be disappointing. Each year, merely around 4000 out of 300,000 cases heard in common courts of first instance are referred to mediation (Ministerstwo Sprawiedliwości 2024a, 2024b). Even these modest numbers are impressive when compared with the level of interest in mediation at the stage of penal enforcement proceedings. Post-sentencing mediation is virtually nonexistent in Poland.

Polish legal regulations approach pre- and post-sentencing mediation in a different manner.

As regards the accused person held in pre-trial detention (the first situation), there are no detailed legal provisions. The provisions of the Polish Penal Code, the Code of Penal Procedure or the Regulation of the Minister of Justice on the mediation procedure in penal matters do not include a list of cases that cannot be referred to mediation, meaning that the incarceration of an offender (awaiting a sentence) is not a formal obstacle to conducting a mediation procedure in such cases. This view was also expressed by the Polish Constitutional Tribunal in the decision of 4 May 2011 (Ts 128/10). Notably, there are no regulations providing organizational and technical foundations for conducting a mediation procedure with a person deprived of liberty.

In Polish legal scholarship, there is an ongoing debate as to whether *de lege lata* there are normative foundations for conducting mediation at the stage of enforcement proceedings (Zalewski 2015). This dispute is due to the ambiguous legal regulation, and the state of uncertainty is generated both by the regulation itself and its localization. The entire Penal Enforcement Code (PEC) contains a single provision concerning mediation. It mentions mediation only in passing as one of the circumstances taken into account when considering the granting of conditional release. Article 162 § 2 PEC prescribes that the penitentiary court, among other things, takes into account a settlement agreement concluded as a result of mediation. In the opinion of the majority of scholars, the cited provision does

not constitute a basis for conducting mediation at the stage of enforcement proceedings and merely requires that a mediation procedure carried out prior to the delivery of the judgment be taken into account (Dąbkiewicz 2018; Hołda and Postulski 2008; Lelental 2010; Osiński 2023). However, the leading Polish victimologist Ewa Bieńkowska (1950–2018) was convinced of the legal possibility of applying mediation in enforcement proceedings (Bieńkowska 2009). We share the opinion that mediation can be used in enforcement proceedings, regardless of a sentence being served, based on Article 23a of the Code of Penal Procedure in conjunction with Article 1 § 2 PEC (Szymanowski 2004, 2012). In this case, the right to refer a matter to mediation lies with the penitentiary court or the prison director (either on their own initiative or at the request of the parties) throughout the duration of an inmate's non-suspended custodial sentence, irrespective of the length of the imposed sentence (Rękas 2011). The question arises as to whether the described normative and interpretative chaos is a decisive reason why mediation is effectively absent in enforcement proceedings in Poland.

The right to participate in various forms of restorative justice is affirmed by international documents and EU resolutions, including, among others:

- Council of Europe Committee of Ministers Recommendation No. R(99)19, adopted on 15 September 1999, according to which mediation in penal matters should be available at all stages of the criminal justice process;
- Council Framework Decision of March 2001, containing recommendations for member states, primarily concerning the provision of assistance and care for victims of crime; and also
- Recommendation Rec (2006)2-rev of the Committee of Ministers to member states on the European Prison Rules. Rule 103.7 prescribes that prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences. Under Rule 105.5, in the case of sentenced prisoners, part of their remuneration or savings from their work may be used for reparative purposes if ordered by a court or if the prisoner concerned consents.

Polish legislation is an example of criminal-law related monism, which is understood to denote the existence of three separate regulations: substantive, procedural and enforcement, which—in hierarchical terms—constitute the same source of universally binding law (that is, a statute passed by the Sejm and the Senate). As a rule, this approach makes it possible to shape a unified penal policy binding throughout the territory of the state in a more comprehensive and consistent manner and to implement the provisions of the documents cited above. From the perspective of the possibility of regulating the grounds and procedure for conducting mediation at the stage of enforcement proceedings in the future and the consequences of a settlement concluded during such proceedings, the applicability of a single regulation of a penal enforcement nature should additionally facilitate the adoption of specific normative regulations.

In this regard, the situation is different in the Federal Republic of Germany. Pursuant to the reform of the federal system (*Föderalismusreform I* 2003–2006), which was undertaken with the aim of reorganizing legislative competences, the issues related to the enforcement of a penalty of imprisonment were transferred to the individual federal states (Länder) (Schüler-Springorum 2007). In practice, this means that currently each state has separate regulations concerning the enforcement of that penalty. The majority of the federal states (10 of 16) patterned their legal framework on the jointly developed Model Draft of a State Prison Act (*Musterentwurf zum Landesstrafvollzugsgesetz—ME-StVollzG*), which was a model regulation providing the foundation for the subsequent provisions developed by the particular federal states. A review of the provisions introduced under the cited draft shows differences between them. The reform in the indicated area met with widespread

criticism from German penal enforcement law experts, social workers, psychologists and criminologists. It was argued, among other things, that under such a model, justice could vary based on geography, which could lead to an unjustified differentiation of conditions of serving a penalty of imprisonment. Less wealthy federal states could be less inclined to commit significant resources to the improvement of the operation of penitentiary units. On the contrary, they could seek to reduce expenditure on rehabilitative activity, which would substantially contribute to the destabilization of the penitentiary policy (Dünkel 2012; Maelicke 2015).

In practice, this means that the possibility of incorporating restorative justice mechanisms, both at the legal and factual level, was vested in the particular federal states. None of them took advantage of the opportunity to regulate explicitly the grounds and procedure for conducting mediation in enforcement proceedings (Laubenthal 2019). Despite the absence of these provisions, German scholars agree that the possibility of conducting mediation arises indirectly from two circumstances. First, § 73 of the previously binding Federal Law on the Enforcement of Imprisonment, Corrective and Security Measures Based on Deprivation of Liberty dated 16 March 1976 (*Strafvollzugsgesetz*—StVollzG) prescribed that the inmate shall be provided with support in his efforts to exercise his rights and to fulfil the obligations incumbent upon him, in particular with regard to the exercise of voting rights, the performance of maintenance obligations towards individuals entitled to alimony, and the reparation of damage caused by the committed criminal offence. This provision was implemented into the legislation of all the federal states (Dünkel et al. 2025). Second, redressing the consequences of the offence, both of a material and a non-material nature, is explicitly regarded as one of the essential elements of the individual sentence implementation plan (*Vollzugsplan*) in a majority (13 of 16) of the federal states (Weßels and Böning 2022). Conducting mediation at the stage of enforcement proceedings is therefore possible through the appropriate structuring of the individual sentence implementation plan and through the obligation imposed on the enforcement authority to support offenders in their pursuit of repairing the damage caused by the offence (Best 2013). In this regard, German scholars are in agreement that repairing the damage signifies something more than merely the financial compensation of the victim's legitimate claims (Bahl and Pollähne 2022). In addition, penal institutions are expected to undertake genuine measures rather than just formulate incentives. A good normative illustration of the institutionalization of such measures is § 7 item 4 of the Law on the regulation of the enforcement of a penalty of imprisonment in North Rhine-Westphalia (StVollzG NRW), which lays down that designated contact persons for matters concerning victim protection and the redress of harm caused by the offender's act are to be available in penal institutions (*Tatausgleich*). These individuals provide victims with an opportunity to have direct contact with a penal institution and gain individual support. The designation of these individuals significantly facilitates access to information, allowing for the consideration of victims' justified needs, and promotes the preparation and potential initiation of mediation (Arloth 2021b). Regrettably, this measure is available solely in North Rhine-Westphalia and Lower Saxony (Hagemann 2020). It has been highlighted in scholarship that a promising solution would be to standardize the specific procedures of restorative justice, since this would be associated with the obligation of penitentiary administration to implement and finance the procedures (Dünkel et al. 2025).

There is a consensus in the German doctrine of criminal law that a positive outcome of a mediation procedure, coupled with efforts to remedy the harm, may have a bearing (as in Poland) on decisions relating to conditional release (Bahl and Pollähne 2022; Dünkel and Păroşanu 2015; Laubenthal 2019) and granting prison furloughs and temporary leaves from prison (Best 2013, p. 700). As regards conditional release, reference is made explicitly to § 56 item 2 sentence 2 of the German Criminal Code (*Strafgesetzbuch*—StGB), which

prescribes that after an inmate has served half of a fixed-term custodial sentence, but not less than six months, the court may suspend the enforcement of the remainder of the sentence for a probationary period if an overall assessment of the offense, the inmate's personality, and his or her behavior while serving the sentence indicate the existence of exceptional circumstances.

Despite the lack of clear regulations, mediation between sentenced prisoner and victim is formally possible within the framework of enforcement proceedings in all the federal states of the Federal Republic of Germany. However, German researchers have pointed out that comprehensive projects encompassing elements of restorative justice are of a pilot nature and have been developed solely in some penal institutions (Dünkel and Păroșanu 2015; Dünkel et al. 2025). A study carried out in 2010 among the staff members of penal institutions across the whole of Germany showed that the vast majority of respondents (87%) were familiar with offender–victim mediation, whereas family group conferences and circles were largely unknown to them. The majority of respondents (78%) essentially supported the incorporation of restorative justice into the penitentiary system, but more than half of them expressed skepticism regarding the possibility of conducting mediation in their own penal institutions (Hartmann et al. 2012).

The space for conducting mediation between inmates and between inmates and prison staff members is made possible through the implementation of the provisions of § 73 item 1 ME-StVollzG by a majority (12) of the federal states (except for Baden-Württemberg, Bavaria, Hesse and Lower Saxony). The Model Draft of a State Prison Act provided that inmates bear responsibility for ordered coexistence in a penal institution and are obliged to ensure it through their conduct. The awareness of such responsibility is to be cultivated and strengthened (which is the duty of a penal institution), and inmates are to be prepared for the amicable resolution of disputes. In practice, the restorative dispute resolution takes precedence over disciplinary measures, which occurs through the conclusion of an agreement (Dünkel and Păroșanu 2015; Goerdeler 2022). The regulations of the federal states prescribe that as part of an agreement an inmate can, for example, undertake to repair the harm and apologize to the victims, carry out work for the prison community. The concluded agreements help restore peace within the penal institution and provide sentenced prisoners with the opportunity to learn how to resolve disputes and avoid them in the future (Walter and Lindemann 2022).

In 2019, voluntary dispute resolution was applied for the first time as an alternative to formal disciplinary measures in several federal states: in Baden-Württemberg (with no clear legal basis)—270 cases (4.5% of all disciplinary measures and mediation procedures); North Rhine-Westphalia—1083 cases (8.1% of all disciplinary cases); and Saxony—124 cases (4.7%). The national average was markedly lower, standing at 3.6% ($n = 1478$) of all disciplinary cases, which was due to the fact that five federal states did not report any mediation procedures (Dünkel et al. 2025).

In 2021, the share of mediation in the total number of significant disciplinary cases was low and amounted to 3.4%. The data from Rhineland-Palatinate, which were published for the first time, showed a considerably higher percentage of mediation procedures—21.7% of all disciplinary events. A relatively high proportion of mediation procedures was also recorded in Brandenburg (7.3%) and North Rhine-Westphalia (5.2%), with only individual instances in the remaining federal states (Dünkel et al. 2025).

The German experiences relating to mediation between sentenced prisoners and prison staff members developed in the context of the application of § 109 StVollzG. The provision prescribed that an application for judicial determination may be submitted against a measure intended to regulate individual matters concerning the enforcement of a custodial sentence or the implementation of isolation preventive or rehabilitative

measures. The application could also include a request for an order compelling the issuance of a measure that was either refused or omitted (item 1). The application for judicial determination was admissible only when the applicant alleged that, through the application of a measure, its refusal, or an omission, their rights had been infringed (item 2). Owing to the number of complaints lodged by sentenced prisoners and their ineffectiveness, a decision was made (despite the lack of a clear legal basis) to introduce several pilot projects aimed at resolving conflict situations using mediation (Fricke 2013; Vogt and Vogt 2015). In such instances, the judge served as mediator, acting either independently or with the assistance of a professional. Given the title of this article, it is appropriate at this point to cite the arguments formulated in light of the cited experience, assessing the respective benefits and drawbacks of a penitentiary judge serving as mediator in penal enforcement proceedings. On the one hand, it was argued that judges are “born mediators” and they act “in a mediative manner” very frequently. By virtue of their education and practical experience (even without specific mediation training), judges are well equipped to mitigate conflicts rather than resolve them in an authoritative manner. In this perspective, the handling of court cases by judges is regarded as open to some features of mediation practice, and the status of a judge is perceived as providing the added advantage of possessed authority, which is conducive to concluding mediation settlements. The indicated factors mean that court-oriented mediation (as conceptualized by Leonhard L. Riskin—Riskin 1996) shifts from the category of “mediation facilitative” to “mediation evaluative” (Fricke 2012). On the other hand, it was argued that the characteristics of the role of judge, including their authority, may adversely affect mediation and pose a threat to it. The professional authority was perceived as an obstacle to be overcome by a judge-mediator before a judge was ready to adopt the strategies essential for mediation. A further objection to a judge serving as mediator was that mediation participants, in particular participants in a mediation procedure as complex as the one carried out in enforcement proceedings, expect only absolute victory or absolute defeat and are open only to authoritative (coercive) decisions. In this instance, mediation itself can undergo modification: both voluntary participation and taking personal responsibility for the outcome of the procedure by the participants are limited by the proximity of the court, which holds the authority to resolve the conflict (Fricke 2012). Moreover, as noted by long-serving penitentiary judge Ulrich Kamann, the authority of the judge does not always meet the expectations placed upon it. His experience indicates that prison administrators present at a hearing frequently did not perceive themselves as one of the participants in the mediation process, but rather as a superior whose subordinate was unjustly attempting to hold them accountable. This was accompanied by the prevailing belief that in entering into mediation, the prison administration risks diminishing their authority in the eyes of sentenced prisoners even if it only partially agrees with them. The judge cited a comment by a prison administrator: “If the inmates *win* anything, they will run throughout the institution and say that the judge will put us in our place.” In his opinion, judge mediators are unsuccessful because they are unable to penetrate fully the decision-making sphere of a total institution such as a penal institution (Kamann 1993, pp. 19–21). Similar conclusions were reached in a study carried out by Melanie and Victor Vogt: representatives of a penal institution perceived their participation in mediation as putting them to the test in a direct confrontation with an inmate in the presence of a third party (Vogt and Vogt 2015). Notably, not all theorists consider in-court mediation to be mediation in the strict sense of the term. In the opinion of Horst Eidenmüller, the perception of mediation grounded in the backing of authority is typical of the development of mediation in Germany, which he believes is a misunderstanding (Eidenmüller 2000). In this context, the question posed by Lioba Fricke remains relevant and still open, namely whether it is possible to maintain the neutral

stance of mediator when one of the parties is literally deprived of liberty by the other party (Fricke 2013).

Currently, based on the Mediation Act (*Mediationsgesetz*—MediationsG), which entered into force on 26 July 2012, a mediator is an independent and impartial person without any decision-making power who guides the parties through mediation (§ 1 item 2 MediationsG). The mediator must possess the theoretical knowledge and practical experience to guide the parties through mediation in a competent manner. In turn, a person shall be permitted to call himself a certified mediator if he has completed relevant training (§ 5 items 1 and 2 MediationsG). Currently, in the German legal system, there exist out-of-court mediations, to be conducted by a mediator fulfilling the conditions envisaged in MediationsG, and in-court mediations consisting of a referral of the parties by the judge before whom the dispute is pending to a conciliatory judge (*Güterichter*) (Vogt and Vogt 2015). In the latter instance, the legal basis is set out in § 278 item 5 of the German Code of Civil Procedure (*Zivilprozessordnung*—ZPO), under which the court hearing the case may refer the parties to a conciliation session, as well as to further settlement attempts, before a judge appointed for this purpose, who does not possess decision-making authority (a conciliatory judge). The conciliatory judge can apply various conflict resolution methods, including mediation.

Mediation carried out during the enforcement of a sentence was introduced in various forms also in Great Britain and Northern Ireland (Liebmann and Braithwaite 1999). Apart from Great Britain, the programme was introduced in 2011 in 27 countries, for example, in Australia, Germany, New Zealand, the Netherlands, the USA (Liebmann 2010). Mediation during the enforcement of a penalty of imprisonment was widely introduced in Belgium (Van Droogenbroeck 2010). In 2000–2008, every Belgian penal institution employed a permanent restorative justice advisor, whose tasks were not limited solely to organizing mediation in individual cases but also included the shaping of the overall culture of Restorative Justice in a particular penal institution (Hodiaumont et al. 2005; Mariën 2010).

There are countries where penitentiary mediation, including post-sentencing mediation, is practically nonexistent. This is the case with Czechia (Ščerba 2013) and Slovakia (Strémy and Vráblová 2016). In Bulgaria, the legal status of mediation is regulated by the Mediation Act (Prom. SG. 110/17 December 2004, the last amendment SG. 17/26 February 2019). Mediation may concern civil, commercial, labor, family, and administrative disputes relating to consumer rights, as well as other disputes between natural and/or legal persons, including cross-border cases. Under Article 3 item 2, mediation is applied also in cases envisaged in the Code of Criminal Procedure. In practice, mediation is used in cases involving compensation for a criminal offense (civil cases) and in private cases (initiated at the victim's complaint) (Chankova 2011, 2024). In Hungary, mediation as a conflict resolution method has been used since the 1990s, primarily in disputes concerning labor law, family law, child protection, health, and consumer protection. Since 1 January 2007, victim–offender mediation is also applicable in criminal proceedings, but there is no regulation concerning post-sentencing mediation (Fellegi and Szegő 2015).

Importantly, numerous specialists hold the view that it is advisable to incorporate the institution of post-sentencing mediation into the legal order. In their opinion, it is appropriate to use mediation even in the case of serious crimes, when the sentenced prisoner is serving a multi-year custodial sentence. It has been argued that the greater the impact of a committed offense on the victim's life, the greater the need to engage in mediation (Van Droogenbroeck 2010). An earlier Polish study likewise indicated that sentenced prisoners and some victims were ready to engage in talks with the other party to the conflict. A study conducted in 2010 in Poland showed that a majority of individuals serving a sentence (in particular, a penalty of imprisonment but also non-custodial penalties) were willing to conclude a settlement with the victim (Sitarz et al. 2012b). This was confirmed by direct talks

to female sentenced prisoners, who declared willingness for talks and repairing the harm, while expecting, in return, an earlier expungement of the conviction from the National Criminal Register (A debate with inmates in the women's penitentiary in Lubliniec, on 13 December 2013). In the case where the harm was not repaired and the conflict with the offender was not resolved before the judgment, the victims likewise did not lose interest in mediation. The cited study showed that most respondents recognized the potential for reaching a settlement in numerous hypothetical instances of crime victimization (Sitarz et al. 2012a). Since that time, public legal awareness has increased and it can be assumed that the willingness for mediation is not lower than at that time. Numerous studies have shown that victims are willing to meet their offenders (for example, it is indicated that 82% of victims of serious victimizations are willing to meet their offenders (Gustafson 2004). There are multiple reasons behind such dialogues initiated by the victim, for example, asking questions that only the offender can answer, the willingness to explain to the offender the consequences of his or her actions, curiosity about who the person capable of committing the offense was, and consequently, greater potential for coping with fear, an attempt at reconciliation or the belief that the offender might significantly contribute to the victim's healing (Hagemann et al. 2015). It seems that the social perception of these measures could be positive, provided that reliable information is communicated to the public. As research indicates, the public prefer rehabilitation to harsh incarceration—there is even talk of Smart Justice (Clark 2018; Cullen et al. 2000).

The literature presents a fairly consistent list of beneficiaries of mediation in penal matters, indicating the victim, offender, the public and the justice system. Primarily the issue is to resolve a conflict and enable the victim to obtain satisfaction and compensation (Daly 2003a, 2003b)—all these benefits materialize within the three indicated potential areas of prison mediation. It is appropriate to reinquire (Sitarz et al. 2023) whether this list is applicable to post-sentencing mediation—who may benefit and in what ways from the conduct of mediation after a judgment delivered in a criminal case has become legally binding.

The benefits derived by the victim from mediation after a legally binding judgment raise no doubts. In the Polish (but not only Polish) context, a legally binding judgment fails to resolve the conflict and often even exacerbates it. Moreover, it is generally not an effective tool for enabling the victim to secure compensation or redress. Mediation can remove all these drawbacks, while also providing additional benefits (for example, the opportunity to name the harm and extend forgiveness for it). Notably, post-sentencing mediation can effectively alleviate the victim's anxiety about the offender completing his or her sentence. Reaching an agreement between victim and offender and the conclusion of a settlement can effectively provide the victim with a sense of security at the time when the offender is released from prison. Research has demonstrated that restorative processes achieve victim satisfaction rates of at least 85% and contribute to reducing victims' fear of future victimization. These outcomes are largely attributed to the opportunity for victims to recount their experiences, seek explanations for why the offence occurred, and articulate the personal consequences of the harm they have suffered (Perrella et al. 2024).

Sentenced prisoners may likewise benefit greatly from mediation conducted at the enforcement stage. Talks to the victim offer an opportunity to explain the reasons and circumstances and to apologize and ask for forgiveness; in short, mediation creates a chance for conflict resolution. This becomes particularly significant when the offender and the victim are connected by a (close or distant) family, professional, neighborly, or cellmate relationship. A great benefit for sentenced prisoners is undoubtedly the possibility to alleviate the severity of the sentence or its conditions and mitigate the effects of conviction (such as its expungement). Research has shown that restorative practices enhance prisoners'

sense of accountability for their actions by increasing their awareness of the harm inflicted on victims as a direct consequence of their behaviour. Compared with prisoners who have not participated in such interventions, participants demonstrate a greater recognition of the impact of their offences. Importantly, these effects have been observed even among individuals who initially exhibit little or no acceptance of personal responsibility for their actions (Perrella et al. 2024).

Both parties to the conflict receive a clear signal that conflicts can be resolved throughout all stages—even when the case is apparently completed and a judgment has been delivered.

Post-sentencing mediation can likewise be beneficial for the sentenced prisoner's family, who will bear lower emotional and economic costs of conviction as a result of a reduction in the sentence. The benefits to be gained by the justice system include lower costs of enforcing penalties and other penal measures in the case where, as a result of a settlement, a decision has been made to mitigate the sentence. Ultimately, the public as a whole, at both micro and macro levels, derives benefits from a post-sentencing settlement. In addition to instructional and educational values, post-sentencing mediation can have a profound rehabilitative dimension: offenders come to realize that the justice system functions effectively and that punishment is inevitable (in accordance with Beccaria's postulates) but at the same time understand and accept that through their own attitude and actions they can minimize the negative consequences of their previous wrong decisions. Successful rehabilitation means no reoffending, in other words, it increases objective social safety. Moreover, the Belgian experiences from post-sentencing mediation suggest that it is at times unfeasible to provide mediation before a trial. Mediation offers were frequently made too soon, in particular for the victim. It is associated with the process of coping with the offense. In some cases, victims also fear that mediation may benefit the offender, and therefore they are reluctant to participate in pre-trial mediation (Van Droogenbroeck 2010). At the same time, the experiences from past criminal cases involving mediation indicate that the greater the participation of the victim and the offender in the process of determining the scope, method, timing, and location of compensation, the greater its subsequent success (Hoffman and Wolman 2013).

Successful mediation alleviates the victim's fears of the offender. These concerns were also acknowledged by the Polish legislator, who introduced the obligation to inform the victim immediately about the release of the offender from prison (Article 168a PEC) and imposed on the court the obligation to notify the victim of a decision granting the offender permission to serve his or her prison sentence under an electronic monitoring system (Article. 43 lh § 5). In the long term, successful mediation enables the victim to avoid further victimization (it would be a mistake to talk of secondary victimization) because the conflict has been resolved and it does not escalate, as the offender is serving the sentence. Finally, successful mediation can lead to successful reintegration into society—the offender has the possibility of sustaining familial, neighborly, and possibly professional relationships, returning to his or her previous environment, which probably lessens, at least to some extent, the likelihood of recidivism or further deviance.

In the opinion of Teodor Szymanowski (1932–2021), post-sentencing mediation is a rational instrument for crime reduction (an institution modernizing criminal law) (Szymanowski 2004). The results of prior research support a cautiously optimistic outlook as regards mediation and the recurrence of violations of social norms (Charkoudian et al. 2016). It has been pointed out that although the impact of restorative justice on recidivism per population is debatable, numerous studies have shown that it decreases recidivism among participants. A meta-analysis of 19 studies involving 9307 juvenile offenders has shown that victim–offender mediation reduced the rate of reoffending among participants

by 33% within 6 months. The meta-analysis has also shown that among offenders who re-offended after mediation, those who had participated in mediation committed less serious offenses than those who did not do so. Other existing research consistently indicates that restorative justice is equally or more effective in preventing reoffending than conventional adjudication (Nugent et al. 2003).

It is therefore unsurprising that scholars argue that, where imprisonment remains the primary criminal justice response, restorative justice and restorative practices must be integrated into correctional institutions. Such integration would ensure that the benefits associated with restorative approaches are made available to offenders, victims, and society as a whole (Perrella et al. 2024).

International scholarship suggests that mediation can also serve as a remedy for prison overcrowding and the improvement of a defective process of “traditional” negotiating (“plea bargaining”) (Simms 2007). A similar position was expressed in May 2016 by the Council of Europe European Committee on Crime Problems, which published a white book concerning prison overcrowding. The document is based on Recommendation (99) 22 for the purpose of developing further recommendations. Mediation in penal matters is identified as a positive factor enabling the reduction in prison population (Raffaelli 2017).

The limitations arising from the isolation of the offender must not be overlooked. The offender has no liberty of movement, which substantially impacts multiple areas of his or her life. First of all, incarceration largely worsens the economic situation of an incarcerated individual, and consequently, the likelihood of financial compensation is low during his or her incarceration. Other compensatory measures are not feasible (for example, the personal rectification of the damage caused, restoration to the prior state). Consequently, not all of the victim’s legitimate expectations can be fulfilled. Moreover, the specific conditions of the offender’s incarceration may significantly obstruct or completely prevent the conduct of mediation (Bek and Sitarz 2025). It is important to consider whether and to what extent a long-term inmate (or detainee) is capable of making constructive decisions. Research shows that after many years of prison isolation, people released often experience so-called decision-making paralysis and are unable to take action on their own for fear of failure. Some of the respondents’ statements even point to exclusion itself, which becomes a strategy for avoiding further disappointments. Similar phenomena have been described in studies on social readaptation in the USA and the UK (Maruna 2001). Finally, the mediator’s role is demanding partly because of the sentenced person’s attitude: this applies only to the second identified area—post-sentencing mediation. On the one hand, it is indicated that the purpose of the penalty of imprisonment is to shape a socially desirable attitude in the offender (for example, Article 67 PEC). Consequently, in the case of committing an offense, it is important not only to serve a penalty of imprisonment but also to be willing to make amends for the harm caused (including repairing the damage) (Trojanowska 2018). By contrast, the findings of Polish studies show that among inmates serving a custodial sentence, the feeling of guilt and accountability for their actions tends to lessen, while their sense of grievance grows stronger (Poznaniak 1982).

We are aware of how much penal isolation amplifies the problem of defining the victim and his or her participation in mediation. “By the extension of the complaint right of the European Convention direct victims, including groups and nongovernmental organizations, indirect victims and people who may become victims in the future are entitled to make a complaint and are thus acknowledged as victims” (Hagemann et al. 2015, p. 6). It is indicated that a refusal to acknowledge someone as a victim can lead to secondary victimization. It should therefore be recognized that not only the person directly harmed ought to be regarded as a victim of a specific criminal offence, but also other individuals who are closely related to that person or who witnessed the event should

be included within this category. The latter group tends to be defined as indirect victims or co-victims (Hagemann et al. 2015). Another significant matter concerns the cited victim acknowledgment, in particular in the case of potential mediation in the third domain. From the perspective of the issue at hand, it should be noted that in their study on conflicts among inmates, Edgar and O'Donnell (1998) have come to the conclusion that it is frequently impossible for an outsider to determine who deserves to be labeled a “criminal” and who is a “victim”. It seems that both parties bear some measure of fault and responsibility. It is now generally accepted that harmed individuals deserve our solidarity and support. However, this perspective easily leads to a biased approach that focuses solely on one party involved in the original incident. Without knowing the causes and precise details of what occurred, every suspicion can contribute to the aggravation of harm (Edgar and O'Donnell 1998; Hagemann et al. 2015).

2.2. Mediators and Their Characteristics in Light of the Principles of Mediation from the Perspective of Penitentiary Mediation

Every type of mediation rests on the same core principles—voluntariness, confidentiality, impartiality, neutrality, disinterestedness, and acceptability. These principles must be complied with during penitentiary mediation. However, some of them acquire a specific meaning when the offender is incarcerated in a penitentiary or a pre-trial detention center.

The principle of voluntariness has particular significance precisely because of the absence of coercion to take part in mediation meetings. The option to withdraw from a meeting with the opponent gives a party a strong sense of security. Mediation is a result of a conflict—harm inflicted on one of the parties. The voluntariness of mediation safeguards the victim from incurring potentially excessive costs in the case of a face-to-face meeting. Being aware of the voluntary nature of meditation, a party notices the first modest gesture from the “opposing party,” who—although not obliged—attended the meeting. Council of Europe Committee of Ministers Recommendation No. R (99)19 sets out that mediation requires active participation by the parties and an ability to take decisions in their own interest in the course of negotiation, which may be hindered in the case of an incarcerated person. It may then be necessary to accept the limited (to a greater or lesser extent) decision-making capacity of a party. A mediator must be aware that despite sincere intentions, an incarcerated person does not have full decision-making autonomy and, despite good faith and the commitments declared pursuant to it, is unable to perform certain obligations. It is a mediator's task to ensure that the limitations arising from isolation do not entirely undermine the balance between the parties and ensure that the agreements reached by mutual consent fall within the decision-making capacity of an incarcerated person. Moreover, a mediator is to draw all participants' attention to these particular aspects of mediation involving an incarcerated person.

The principle of impartiality could also potentially be undermined. This principle entails, among other things, the mediator's responsibility to ensure that the place of mediation has been selected in accordance with the interests of the parties involved (it is typically a neutral place). Being a place of isolation and repression, a penitentiary unit may inhibit an inmate and intimidate a person who is at liberty and is unaccustomed to prison conditions.

The power of mediation lies in its confidentiality, which fosters open discussion. Consent to participate in mediation is not a guarantee of concluding a settlement. When discussing reprehensible and problematic matters, a party must be certain that they will not bear legal or procedural consequences of their sincerity in the event of an unsuccessful mediation. This principle has the force of law in the Polish system, though it is not of an absolute nature. It stands in direct conflict with the principles governing the enforcement of isolation measures, both in the form of pre-trial detention and a penalty of imprisonment

(taking into account the various “regimes” of enforcing that penalty, depending on the type of penitentiary unit in which a mediation participant is serving the sentence). Other individuals frequently take part in such mediation and the problem regarding electronic monitoring and recording devices emerges. Every penitentiary mediator must be aware of these issues and must take them into consideration when planning a specific mediation.

The principle of acceptability of a mediator is no less significant in penitentiary mediation. The person of the mediator must not be imposed in a way that exacerbates oppressive elements, especially if the mediator is a member of the prison staff. This principle is linked to the principle of impartiality, one of whose manifestations is that the mediator takes a neutral standpoint. Impartiality (in its subjective sense) also presupposes that the mediator should not be perceived by the parties as biased for any reason—including, for example, employment, formal relationships or professed religion. The issue lies not in objective impartiality but in the perception and associated feelings of either party to the mediation process.

Overall, post-sentencing mediation is a necessary and valuable institution in a contemporary democratic society, embodying both respect for the dignity of the offender and recognition of the victim’s right to compensation. It is clear that this institution must be explicitly regulated. In addition to the various issues arising from the nature of mediation that require regulation (including, for example, the principles of mediation, subjective and objective exclusions, legal consequences of mediation, and costs), attention must also be given to the status of mediator working in prison and the scope of his or her competence.

A mediator is to be distinguished by strong communication skills, empathy, a respectful attitude towards others, honesty, patience, perseverance and flexibility. Another key attribute is a sense of humor, as it enables a mediator to defuse tension tactfully, especially in difficult moments. A mediator in penal matters must not judge a party’s behavior—whether they acted rightly or wrongly, justly or unjustly, fairly or unfairly. Moreover, a mediator must not attempt to ‘educate’ any party or make any party “unlearn established patterns of bad behavior.” It may seem otherwise, but compliance with these principles is far from easy. Human beings have an inherent tendency to give others advice such as “don’t do that,” particularly when this tendency is additionally shaped (strengthened) by their professional practice (e.g., as a judge, lawyer, probation officer, or educator). As a rule, such individuals should not be mediators, unless they cease to practice their profession and free themselves from their “professional” habits (Wójcik 1998).

It is widely emphasized that mediators should: “possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties”. Facilitators and programme administrators must exemplify strong restorative justice values and be able to avoid bias and discrimination in their interactions with offenders, victims, and members of the community from different cultural or ethnic backgrounds. (...) Facilitators must understand the widespread impact of trauma and be able to recognize the signs and symptoms of trauma in participants in the restorative process, including in themselves. To ensure that they can avoid situations and interventions that may revictimize or retraumatize participants in a restorative justice process, particularly victims, facilitators must be trained in trauma-informed communication and interventions” (UNODC 2020, pp. 58–59).

Mediation carried out in penitentiary units requires numerous additional skills from a mediator. In the case of mediation with an incarcerated person, a mediator must be aware that he or she is not at liberty to choose the place of mediation and must comply with the particular constraints related to the setting and the parties involved. In mediation carried out in a penitentiary or a pre-trial detention center, a mediator must be aware that:

- it may be necessary to apply special precautions in the course of mediation, as determined by the relevant authorities, such as the use of cuffs or the presence of officers;
- both the mediator and other individuals present at a meeting may request the removal or application of cuffs on the inmate;
- the circle of participants ought to be kept to a minimum;
- the mediator must inform the other participants of the conditions of mediation in the penitentiary unit and of the potential presence of officers, and obtain consent of the other party to mediation in such conditions.

In the case of individuals held in pre-trial detention, a mediator must additionally be aware that:

- it is impermissible for anyone other than those specified in the decision to refer the case to mediation to participate in the mediation (apart from a defense attorney and a legal representative);
- in the course of mediation it is impermissible to hand over any objects, letters to the inmate by another person;
- in the course of mediation with a pre-trial detainee, it is impermissible to leave the detainee unattended in the presence of the other party.

A mediator carrying out a mediation procedure with a person held in pre-trial detention is to ensure, with particular diligence, that a party is free to provide consent for mediation and to determine the shape of the settlement, and to monitor that the mutual arrangements are within the decision-making authority of the incarcerated person, and make the other participants in the mediation aware of this (Bek and Sitarz 2025).

We believe that all the above remarks should be expressed in legal terms. In other words, the mediator in penal matters, in particular in penitentiary matters, should possess specific competencies, the possession of which ought to be a legal requirement for this function. It is regrettable that in the Polish legal system in 2026, the relevant provisions (i.e., Regulation of the Minister of Justice of 7 May 2015 on the mediation procedure in penal matters, Journal of Laws 2015, item 716) prescribe that a person authorized to conduct mediation proceedings is one who, in addition to meeting other formal requirements, has the skills and knowledge necessary for conducting mediation, resolving conflicts, and establishing interpersonal relationships, without imposing the requirement of completing a specific course or having standardized competences.

By way of a side note, within the Polish setting, the mediator should have modest financial expectations. In light of the Polish provisions, the remuneration of a mediator in penal matters is fixed and amounts to PLN 240 (approx. EURO 57 or USD 67.49) for the entire mediation procedure, and this rate is independent of the number of meetings. Under the law as it stands, a major unknown is the level of remuneration for the Polish “experimental” post-sentencing mediation procedures.

3. Framework—The Perspective of Religion: The Chaplain in a Penitentiary Unit

The comprehensive overview of the figure of chaplain needs to be further developed by remarks made by Leo von Deschanden, who has distinguished between the chaplain’s two roles: specific and diffusive. The former is associated with institutional religiosity. It encompasses many segments of the roles that a chaplain fulfills within religious and local communities. These include functions such as teacher of the faith, minister of the sacraments, leader of the parish community, spiritual guide for penitents, and mentor in temporal matters. The latter is associated with individual religiosity (selective and subjective) and encompasses various pastoral initiatives, including personal pastoral care for the faithful. In this role, the chaplain has the opportunity to reach numerous members

of the community with religious service, supporting them in resolving complex religious and moral dilemmas. This function also allows for the modernization of methods and tools used in pastoral activity (Deschwanden 1968, 1972).

Chaplains (diocesan or members of religious orders) are a distinct category of clergy. The etymology of this word derives from the Late Latin *capellanus/capella*, denoting a chapel, more specifically the shrine in which the so-called cloak of Saint Martin of Tours (*cappa brevior Sancti Martini*, c. 316–397) was preserved. As reported by Sulpicius Severus, the biographer of Martin of Tours, Martin tore his cloak into two parts in order to share it with a poorly clothed beggar. That same night he is said to have had a dream in which he saw the beggar wearing the fragment of his cloak upon his shoulders. In the dream, however, the beggar was Jesus, who said to the angels: “Here is Martin, the Roman soldier—he has clothed me.” The Frankish kings preserved half of the cloak as a relic and carried it with them on military campaigns. The guardian of this relic was referred to in Latin as *capellanus*, from the noun *cappa* (“cloak” or “mantle”). The term *capellanus* likely evolved into the English noun “chaplain”. The place where the relic of the divided cloak was kept came to be known as a *capella*, which subsequently gave rise to the word “chapel” (Encyclopedia Britannica 2026; Mitechaplaincy 2019; Trzcionkowski 2002).

In the Roman Catholic Church, having the most elaborate regulations on chaplaincy, by virtue of the Code of Canon Law, a chaplain provides pastoral care for some community or special group of Christ’s faithful connected with an institution—lay or religious (school, hospital, military unit, trade union, sport association) (Can. 564). Chaplains are to be appointed for those who, because of their condition of life, are not able to avail themselves of the ordinary care of parish priests (Can. 568). A chaplain must be given all the faculties which due pastoral care demands. Besides those which are given by particular law or by special delegation, a chaplain has by virtue of his office the faculty to hear the confessions of the faithful entrusted to his care, to preach to them the word of God, to administer Viaticum and the anointing of the sick, and to confer the sacrament of confirmation when they are in danger of death (Can. 566 § 1). In prisons, a chaplain has the further facility, to be exercised only in those places, to absolve from *latae sententiae* censures which are neither reserved nor declared (Can. 566 § 2) (Calvo 2023; Cenalmor and Miras 2021). The faculty to hear confessions relates to penitents who are in danger of death (Can. 976). In the exercise of his pastoral function, a chaplain is to preserve a fitting relationship with the pastor (Can. 571).

It is self-evident that prison chaplains are to fulfil the inmates’ religious needs. However, the range of specific activities they undertake depends on their personal commitment, their capacities, the openness of a particular penitentiary unit, and the applicable legal framework. In a study carried out by Pew Research Centre in 2012, a majority of chaplains declared that they performed a wide range of duties, ranging from conducting religious programs through training of volunteers to giving advice to other prison staff. In the opinion of numerous chaplains, their most important role, however, is the personal conduct of religious services, the provision of religious education, and the offering of spiritual support to inmates. More than nine out of ten chaplains reported that they: conduct religious programs (93%); cooperate with external religious and social organizations (92%); personally lead services, provide religious instruction, or offer spiritual counselling (92%); advise prison staff on religious matters and related regulations (92%); and supervise or train volunteers (91%). A substantial minority of chaplains (42%) reported that their work also involves educational activities or other secular rehabilitation programs. One third (33%) indicated that maintaining contact with inmates after their release is also part of their duties. According to the chaplains themselves, the most important activity is the personal conduct of religious services, religious instruction, or spiritual counselling sessions—approximately

three-quarters of respondents (75%) considered this one of their primary functions, with 57% identifying it as their top priority (Pew Research Centre 2012).

In a study carried out by Manuela Jarrett and her team (Jarrett et al. 2024) based on a systematic search and narrative synthesis, it has been found that the crucial roles to be fulfilled by a prison chaplain include: pastoral and emotional support and counselling, religious services or ministry, education and practical classes (e.g., watching religious films or reading sacred texts together), material support and administration (e.g., assistance in securing accommodation and meals after release from a penal institution). In turn, the areas in which the chaplain is considered to have an impact include: rehabilitation and prevention of reoffending, creation of community, forgiveness and atonement. In view of chaplains' involvement in interpersonal interactions with inmates, the authors of the review emphasize the need for providing chaplains with training in the area of giving psychotherapeutic support.

Pastoral ministry within a penal institution is a crucial area of support for inmates dealing with the challenges of isolation. Emptiness and existential void, separation from the loved ones (generating indifference and depressive episodes) are among the greatest risks inmates may encounter. In such conditions, a prison chaplain can play a significant role in balancing their sense of self-worth by constant and impartial care (Miklósi 2021). Chaplains serve as trusted figures for inmates, for whom the opportunity for personal meetings and conversations is of paramount importance. Through their work, chaplains enable inmates to maintain contact with the external world (Connor and Tewksbury 2015). Despite ongoing secularization (also in penitentiary units), the chaplain remains the person most likely to earn the trust of inmates, in part because chaplains cannot be classified as a formal part of the prison service hierarchy. Inmates' trust means that chaplains must conduct themselves in a manner that, on the one hand, fosters cooperation with inmates and, on the other, maintains proper relations with Prison Service officers (Müller-Monning 2022a). It is also occasionally noted that the role to be fulfilled by a prison chaplain include the prevention and reduction in religious extremism (Schmid 2023; Vellenga and De Groot 2019).

A study conducted by the authors (Sitarz et al. 2024) showed that the surveyed inmates expressed a desire for greater success to the chaplain. In addition to the traditional Christmas pastoral visit (known in Poland as "kołęda"), they expected more personal meetings, more frequent participation in services and other pastoral initiatives. A subsequent study by the authors (Sitarz et al. 2026) showed that chaplains strive to expand their activities in the unit in which they work (playing carols on the prison radio at Christmas time, holding retreats and meetings with external individuals, providing religious literature). The extent of their involvement depends on their cooperation with the administration of a specific prison and their additional responsibilities, such as serving as a parish priest or vicar, or as a religious instructor in school. The inmates experienced difficulty during the SARS-CoV-2 pandemic, when chaplains were temporarily denied access to penal institutions. At the same time, they were aware that it was a difficult experience for the whole society (Sitarz et al. 2024; Stüfen and Rottler 2022). Somewhat different findings were reported by (Mysiewicz 2020). In his study, as many as 73.23% of prisoners who actively participated in pastoral activities within correctional institutions indicated that the chaplain's primary role was the administration of the sacraments. By contrast, 27.46% of respondents expected chaplains to provide assistance in resolving personal problems (participants were allowed to select more than one response).

Chaplains can provide religious ministry in the form of voluntary service or based on a formalized legal relationship, most frequently being an employment contract. In Poland, under Article 17 of the Concordat concluded on 28 July 1993 with the Holy See, the state provides conditions for the practice of religion and access to religious services for

individuals held in penitentiary units (item 1). To implement this right, the diocesan bishop shall assign chaplains with whom the relevant institution concludes a respective agreement (item 3). By contrast, Article 32 item 4 of the Law of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland prescribes that the heads of the respective institutions enter into agreements with clergy assigned by the diocesan bishop regarding the voluntary, unpaid performance of chaplaincy duties. Despite the formal inconsistency between the two regulations, it was recognized through interpretation that upon the entry into force of the Concordat on 25 April 1998, it was possible to conclude agreements other than those referred to in Article 32 item 4 (Nikołajew 2022), including paid contracts. A similar evolution in the approach to forms of functioning of chaplains in the structure of penitentiary units can be observed in Scotland. As given by Sheena Orr, since 2004, based on the Chaplaincy Agreement concluded between the Scottish Prison Service, the Church of Scotland and the Roman Catholic Bishops' Conference of Scotland, in addition to their previous religious status, chaplains have become state employees, civil servants who are paid by the state rather than by the sending church. Since 2000, chaplains of the Islamic tradition have been employed under separate arrangements, with part of their working hours linked to a nationwide program PREVENT in Great Britain (Orr 2024).

For comparison, in the Federal Republic of Germany, chaplains' legal standing depends on the content of the agreement concluded by the particular federal states with religious associations based on federal agreements (Arloth 2021a) and the relationship between a specific penitentiary unit and specific chaplains (appointment, employment contract—in agreement with the religious community). Consequently, in some federal states (for example, Article 176 item 2 of the Law on the enforcement of a penalty of imprisonment and a penalty of imprisonment in relation to juveniles in Bavaria) chaplains constitute a separate professional group, whereas in others they do not. In the case of most Christian denominations, the conclusion of agreements does not cause fundamental problems (with the exception of the Church of Scientology), whereas in the case of religious associations identifying with Islam, such arrangements have not yet been developed. This is primarily due to the fragmentation of the Muslim community into multiple religious associations and the status of some imams (for example, from the association “Diyanet İşleri Türk İslam Birliği”), who are in fact Turkish civil servants (Jahn 2020; Müller-Monning 2022b). German scholarship has drawn attention to cases of integrating into the penitentiary structure those religious communities that were perceived as actors supporting rehabilitation, regardless of their status in the public law. In cases where a community was perceived as a threat to safety, it was excluded from the structure of a unit. Consequently, in practice, the perception of a religious community through the lens of institutional logic was more important than whether the community was legally recognized (Jahn 2015). Until 2017, the Jehovah's Witnesses community was perceived by the majority of penitentiary units as a “burdensome evil”; however, it is now publicly recognized in all federal states (Jahn 2020).

4. Discussion—The Chaplain as Mediator: Weighing the Rationale and Limits of the Role

There is growing interest in mediation conducted by chaplains. An increasing number of authors—both secular and ecclesiastical—regard prison chaplains as candidates for penitentiary mediators (Wojtas 2007). The starting point for the discussion is the view expressed by Jerzy Nikołajew, who has argued that a chaplain could not serve as a mediator in only one situation—namely, when acting as a representative of the sentenced prisoner. Acting exclusively in the interest of a specific sentenced prisoner, the chaplain would then fail to meet the criterion of impartiality toward the parties to the conflict. In the opinion of the author in question, a particular chaplain may serve as a mediator in all other cases

where they have not been designated as the representative of a specific sentenced prisoner (Nikołajew 2012).

First, we disagree with the view that social renovation and justice based on reconciliation, reformation and restoration can only be provided through religion (Isik 2008). It is also difficult to share the strong conviction that the most suitable place to put into practice RJ principles in the prison service is the chaplaincy department because it is the only place in which all the world religions are represented within the prison service (and all of the world's major religions share the goals on which RJ is based). This makes it possible to formulate the first decisive thesis: a mediator need not be a prison chaplain.

It is appropriate to consider the expectations placed on penitentiary mediators after a pilot program launched in Hungary. It was indicated there that a thorough knowledge of restorative justice is just as essential as familiarity with prisons in order to ensure the high quality of mediation practices. The successful implementation of these practices requires a person who represents the restorative background, acts within the prison and is able to perceive the hierarchical relationships among inmates, while simultaneously upholding order within the institution and ensuring that matters are handled and agreements reached in accordance with the institution's internal regulations and statutory requirements. From the perspective of a civil facilitator, acceptance on the part of an inmate is extremely important—it is ensured partly through the support of prison administration and partly through ongoing, collaborative work based on the restorative approach. In the opinion of the authors of the project, suitable candidates for a facilitator include a prison psychologist or a facilitator trained in prison, a former prison pedagogue, who is familiar with the functioning of the prison system but currently has no superior-subordinate relationships with the inmates and shares no direct mutual benefit with them. However, the authors have considered the conduct of mediation by "own correctional educators" to be the best solution. The authors have argued that the presence of an own correctional educator helps ensure the agreement's realism and its observance in the daily life of inmates. They are aware that the presence of an own correctional educator may hinder inmates' perception of the process as a partnership and may create a need for adapting to the expectations of the correctional educator, which results in a shift in motivation towards avoiding a penalty for conflicts and gaining benefits (Fellegi and Szegő 2015). These observations prompt a conclusion that a mediator should have a strong grounding in the prison system, be fully acquainted with its realities, and should in no way be perceived as an element of the prison structure (the issue of impartiality and acceptance). This indeed opens up space for chaplain mediators, although the authority of a clergyperson may prove insufficient, similar to that of a penitentiary judge, which was emphasized in the German research.

In light of her own research, Irene Becci has argued that inmates view chaplains very favorably and would not want chaplaincy to be removed from prisons. They described chaplains as "a teacher", "a good friend", "a person you can trust", all terms that one can interpret in the sense of spiritual care, as the outcome of individual support. There was a large consensus among inmates that for them the chaplain is "one who really helps", and this makes him "a wonderful person", "a very good person". One Italian inmate even said he was like "a father" to him (Becci 2011). However, Polish studies indicate (Mysiewicz 2020) that even among actively practicing believers (i.e., those who avail themselves of pastoral services), a substantial majority—73.23%—perceive the chaplain primarily as a minister of the sacraments, whereas a considerably smaller proportion (27.46%) expect assistance in resolving personal problems. The question also arises whether the chaplain is part of the prison system or an independent, external actor. In numerous systems (Switzerland, Italy, some German states), the chaplain is considered as part of the prison staff juridically, but has particular privileges compared to the other staff (Becci 2011). A valid point, which may

be generalized, is that: “The prison chaplains’ job is not possible without the cooperation of supervisors and guards. So that the prison chaplain may get in touch with the convicts this service cannot be neglected” (Miklósi 2021, p. 56). Many inmates may question the chaplain’s impartiality and their acceptance of the chaplain as a mediator would be apparent in nature (compelled by circumstances, particularly in situations where there were no secular mediators available in a given penitentiary). It also seems reasonable to ask whether the function or position of chaplain intimidates the parties, at least the one who is held in a penitentiary unit and remains under the chaplain’s influence (because, for example, he is the only confessor and spiritual guide).

Victims’ negative experiences in the context of RJ provide valuable information for mediators. Studies of the views of dissatisfied victims indicate that there are numerous common problems that lead to unsuccessful RJ from the victim’s perspective. The following are listed: “(a) that in some contexts the informality of the process means that there is no sanction against the offender if they fail to complete an outcome agreement; (b) feeling insufficiently or inappropriately prepared for the process; (c) sense that the facilitator lacked competence, training, expertise or professionalism; (d) being re-victimised during the process; (e) feeling coerced into participation, and (f) feeling more afraid as a consequence of the process” (Fellegi and Szegő 2015, p. 47). The problem mentioned in point (c) seems to be the underlying, initial cause of the problems highlighted in the other points. This inevitably raises the question of whether contemporary chaplains have the relevant competences.

It is appropriate to begin by stating that prison mediation essentially relates to the most serious crimes—only for such crimes, in states following a rational criminal justice policy, are custodial sentences or pretrial detention used. This implies a higher risk for “damage”/secondary victimization (one of the main intentions for the EU-Directive is to avoid this occurring). Furthermore there is a need for experienced and well trained mediators. In this light, modifications to the mediation process are necessary, at least greater emphasis on some of its aspects. The postulated modifications include, among others, more intense preparation, a careful analysis of the parties’ motivation to participate in mediation, an assessment of their “capacity” to engage in the process, and the identification of individuals to provide support. This implies more thorough preparation for handling highly emotional and intense meetings, as well as the provision of more detailed support after mediation (Hagemann et al. 2015). Mediation can pose a big emotional challenge for inmates, which they may find difficult to handle (attention is drawn to inmates’ emotional sensitivity) (Andvig et al. 2021). There is no doubt that mediation involving an inmate requires significant psychological competences.

Another interesting issue, which today constitutes a significant challenge for potential mediators, is the increasingly widespread “penitentiary nationalism” (Barker 2018). It is necessary to ask whether mediation in penitentiary units (in all three areas) will be made available also for individuals unable to speak a local language.

Consequently, the obligations of a penitentiary mediator are far greater than those faced by a mediator conducting mediation outside. The scale of difficulties involved in conducting penitentiary mediation is likewise incomparable. This implies that a penitentiary mediator must have exceptional theoretical and practical competences. It is therefore insufficient for a priest merely to be open to others, to have theological training, or to have pastoral experience (Nikołajew 2012). It is hard to accept the argument formulated by Włodzimierz Broński, that by virtue of their education (in philosophy and theology, with elements of pedagogy, psychology, sociology, Catholic social teaching, and canon law) and the mission they perform within the Church, clergy are able to engage in active listening and to demonstrate the flexibility, creativity, and imagination necessary to assist the parties in resolving their disputes through facilitative mediation. Although he points

out that the absence of empirical research allows him only to point to a certain tendency in behavior, which is likely to be displayed by the majority of clergy (Broński 2021), as in the case of the German argumentation formulated in relation to judges, it is difficult to endorse the thesis that one has an exceptional predisposition for being a mediator without specific preparation. Holding an office or performing a function (even for many years) is far from sufficient. The author rightly observes that none of the provisions of Polish law excludes members of the clergy from being a mediator and their willingness to practice this profession means that they must fulfil the same requirements as those imposed on all other candidates for mediators (Broński 2021). The problem requiring separate empirical research is the necessity to verify the hypothesis whether penitentiary chaplains are willing to acquire all the cited skills in addition to those gained during their priestly formation.

The increasing religious diversification (also in penitentiary units) (Pew Research Centre 2012) is not an argument in favor of mediation conducted by prison chaplains. A chaplain represents a specific confession, which may be a problem during talks between parties adhering to different religions. Even in disputes where religion was neither the cause nor the backdrop of the conflict, the religious identity of the mediator and one of the parties may prevent an agreement or even provoke a new conflict. A similar situation can occur during mediation between a religious person and a non-religious person. Clergy mediators are representatives of a distinct ethical dimension and embody a specific value system, which is difficult to set aside in the course of mediation procedure. Włodzimierz Broński has rightly argued that clergy mediators should respect the differing value systems of the parties to the dispute, while simultaneously seeking universal values shared by all participants in the mediation process. These shared values can serve as a foundation for dialogue, allow the parties to express and manage strong emotions, and promote constructive discussion as well as durable agreements. The author in question has additionally pointed out that it should be easier for clergy mediators than for secular mediators to refrain from judging people (Broński 2021). His observations are a description of a desirable (ideal) state, and he makes a reservation that his view can only be verified in the future by examining mediation practices in which clergy serve as mediators. It is hard to share this view, especially because clergy do not become more emphatic and capable of resolving conflicts than others by virtue of having completed the formation process in their religious community. It also appears mistaken to claim that British chaplaincy, owing to its inclusive and ecumenical nature, can bring together prisoners from different faiths (Isik 2008). The inclusivity of a team of chaplains does not remove the problem of conflicts between parties adhering to different faiths (or when one party is non-religious). The chaplain is always a representative of a specific religion. One possible solution could involve mediator teams—then mediation would be conducted by two mediators, chaplains of the respective religions. However, this solution seems rather impractical.

These outlined problems reveal yet another issue. The question is whether the parties can, should or should not declare their confession before mediation. Given the right to privacy, it certainly cannot involve compulsion (although in many systems inmates are expected to provide information about their religious affiliation). It cannot be excluded that an inmate does not reveal that he is a non-believer and will feel uncomfortable during mediation conducted by a Roman Catholic priest. Moreover, many believing Catholics, due to the difficult history of their Church, do not wish to maintain contact or cooperate with its clergy (Sitarz et al. 2026). These practical issues are scarcely discussed by scholarship. However, Márta Miklósi has pointed out in the context of the situation in Hungary that “there is some resistance by the staff to the activity of prison chaplains and missions,” and suspects an anti-religious attitude behind this (Miklósi 2021, p. 55). Thus another question arises—should the function of chaplain performed by a mediator also be subject to the

principle of acceptability? It seems so. This means that a chaplain mediator should always disclose his or her “additional” (chaplaincy) status prior to mediation. The chaplaincy role of a given individual is not necessarily known or immediately apparent to every inmate. Even more doubts are raised by the features of religious ministry, in particular those closely linked to the Roman Catholic confession.

Forgiveness is a strong component of the theology of Catholic morality. The question is whether this objectively positive approach ought to prevail in the mediation procedure. Forgiveness is not the purpose of mediation, a conflict can be resolved without forgiveness. It is appropriate to recall that “since both social etiquette and the reciprocal nature of empathy compel individuals to respond to an apology with forgiveness (Allan 2008), it is unsurprising that where cases of sexual violence are responded to with diversionary RJ that a third of the participating victims explicitly stated that they did not wish to receive an apology from their offender (Koss 2014). Furthermore, in the RISE project in Canberra (another diversionary project, including cases of moderate violence), only 39% of victims later reported forgiving their offender despite the fact that 86% of them had received an apology (Strang and Sherman 2003). However, an alternative explanation offered for the relatively low rate of forgiveness in response to an apology might stem from the growth in secularisation of both the US and Australia and the association between religious commitment and the perceived desire to forgive those who transgress against us (Worthington et al. 2000)” (Wagner and Wagner 2015, p. 38).

In our study, chaplains (of various denominations) declared that their concern was not the act itself but the person (Sitarz et al. 2026). A similar view is also expressed in other publications (Becci 2011). It is indicated that a consultation with a chaplain is an offer of an impartial relation because a chaplain encourages inmates to confront their own life and does not reproach them for their mistakes; there is no question of punishment (Miklósi 2021). In mediation, the act—or more precisely, the harm—constitutes the point of departure. The act is most frequently either the cause of the conflict or its consequence. A conflict cannot be resolved by focusing solely on the individual and their needs, without considering the harm caused by their actions. Occasionally upon request from either party, a mediator must focus on the conflict very closely.

It seems that it cannot be argued that the chaplain will be a stronger guarantor of the principle of confidentiality—the chaplain can be the guarantor of a secret. During mediation, the seal of confession applicable to Catholicism does not apply, but the limitations of the principle of confidentiality envisaged, for example, in Poland (Article 178a of the Code of Penal Procedure: A mediator may not be questioned as a witness regarding facts learned from the accused or the victim in the course of mediation proceedings, except for information concerning the offenses referred to in Article 240 § 1 of the Penal Code) apply to all mediators, irrespective of their status. This matter is indirectly connected with a contrary position. It appears that the performance of the function of mediator and confessor is irreconcilable. The issue is not only a specific situational arrangement—a particular chaplain is/was the confessor of the offender participating in mediation. The dynamism of life circumstances (including those of inmates) means that, in general, the confessor (and possibly a parallel function in other religions) cannot serve as a mediator.

Mediation may be disrupted by the absence of—using ecclesiastical terminology—*stabilitas loci*. The transfer of the sentenced prisoner to another penitentiary unit can adversely affect the dynamics of conflict resolution. If the victim expresses a desire for a personal meeting with the sentenced prisoner, they may lose interest and engagement in mediation if it entails the necessity to incur costs connected with travel and accommodation. The same may occur in the case of chaplain mediator. Were a competent bishop (or any other competent

ecclesiastical authority) to issue a decree transferring the chaplain to another parish or other ecclesiastical position, it should be expected that the mediation will not be continued.

Mediation is a time-consuming procedure, requiring the mediator not only to have solid substantive preparation but also to be accessible and flexible. In the Polish context, clergy serving as chaplains are also entrusted with other responsibilities. Very often, they serve as religious instructors in schools, vicars leading specific parish groups, or even as parish priests. They are obliged to fulfil other obligations. In our study (Sitarz et al. 2026), when explaining their inability to commit more extensively, chaplains pointed to, among other things, the lack of time resulting from other functions. This means that their ability to serve as a mediator is limited owing to other pastoral duties assigned to them.

In reference to an earlier remark, the question arises whether, in view of the embarrassingly low remuneration rates for conducting a standard mediation procedure, priests in Poland would be willing to work for such low rates or even for free (given the absence of regulations on post-sentencing mediation). Increasingly, chaplains expect a remuneration for their work (Bronskill 2020) and that their legal status be fully regulated (Sitarz et al. 2026).

5. Conclusions

The benefits of mediation in penitentiary units are indisputable. To generalize the benefits cited earlier, the mediation process is a preparation for social integration, taking responsibility for oneself and one's actions, making decisions, which is a break in life in a total institution such as prison. Learning to respect victims and fellow inmates can have a strong rehabilitative value (Blagden et al. 2016; Maguire and Peter 2017). In addition to restoring (or establishing) social peace, healing also constitutes a fundamental element of RJ. It is rightly argued that RJ particularly heals psychological, mental, and social wounds—the so-called invisible wounds (Hagemann et al. 2015). However, RJ is a concept of justice, not a special form of rehabilitative intervention; therefore, it is necessary to consider the perspective of the victim (Hagemann 2020).

The mediator has specific tasks in relation to the parties to a conflict, and the incarceration of (at least) one party in a penitentiary unit makes mediation an exceptionally difficult process defined by three areas of interest—legal interest (significance for criminal liability), emotional and ethical interest (profits and losses of the parties to the mediation procedure) and organizational (procedural) interest. Conducting mediation requires extensive (practical and theoretical) knowledge, in particular in the case of mediation in penitentiaries and pre-trial detention centers. Theological studies do not offer adequate preparation for such a demanding task.

It is difficult to deny the role of chaplains in promoting mediation and RJ, preparing individuals willing to engage in this process and supporting them throughout it (Volona 2000). However, a number of structural (place of chaplaincy in the penitentiary system) and theological (significance of forgiveness, confession) arguments prevent the assignment of the role of mediator to chaplains. They prevail in the overall assessment of the problem in question.

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