

What have we learnt from the implementation of restorative justice in Central and Eastern European countries?

Summary of the AGIS project of the European Forum

As it was reported in the previous issues of the Newsletter (Vol. 5., Issues 2-3), between December 2003 and December 2005 the European Forum was coordinating an AGIS project focusing on “Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe” with the financial support of the European Commission. The project involved experts from Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Germany, Greece, Hungary, Moldova, Norway, Poland, Romania, Russia, Serbia and Montenegro, Slovenia, Turkey, Ukraine and the United Kingdom.

In the following paragraphs firstly I intend to summarise the main motivations behind starting this project. Secondly, I will give an outline of the Final Report of the project, including the main issues discussed. Following this overview, some of the conclusions and points of further discussion will be sketched. The article is finished by discussing some of the important elements of the working progress.

REASONS FOR FOCUSING ON CENTRAL AND EASTERN EUROPE

After the fall of the Soviet Union, Central and Eastern Europe had to face particularly rapid and radical political, social and economic changes. This transformation from a monolithic to a pluralistic model of society affected the institutions of the political and legal system, the economy, the cultural and intellectual life, international relations and of course the everyday life of citizens. The (still ongoing) transitional period from socialist to democratic systems brings along some issues which make it worthwhile to study the possibilities of implementing restorative justice. Two main elements for this can be seen: firstly, the *requirement to guarantee compatibility of their domestic law with international agreements*; and, secondly, the *societal challenges* these societies have had to face during the transition.

Concerning the *societal changes* we should first of all mention that virtually all countries in Central and Eastern Europe had to deal with a dramatic increase in the number of crimes (Albrecht, 1999: 448), associated with a significant decrease in the efficiency of law enforcement (Walmsley, 1996: 16). Some of the reasons for this sudden and steep increase in the number of crimes were: the relative deprivation, the state of anomy of the society, the increase of social inequality, the anomalies of social standards, social tensions and conflicts. In short, these factors made it extremely difficult for citizens to adapt to the new conditions of the democratic system (Lévay, 2000).

However, the legal and institutional reform of these countries did not only have to give adequate responses to the abovementioned societal difficulties. It also had to meet the requirements of a democratic regime by shifting from the “once authoritarian and instrumental view on criminal law towards an understanding of criminal law characterised by the concept of justice (Albrecht, 1999: 460)”. Within this complex reform, legal reforms also had to consider how to implement the ‘new’ standards that were outlined by the international agreements listed above. In other words, these countries met another type of challenge, since their justice systems had to create new forms of extra-judicial control, community-based sanctions, alternative procedures, and diversionary measures, as well as provide effective victim support, provide possibilities for the social reintegration of offenders, and outline complex crime prevention strategies.

It is clear that, both in finding adequate social and legal responses to the suddenly increased crime rates and in searching for the ways in which international standards can be implemented in the justice systems of Central and Eastern European countries, the consideration of the possibilities for introducing restorative justice is very relevant. While several studies have explored and analysed the procedural elements of different restorative practices, the policy-related issues raised by them and their influences on communities both on micro and macro level, there has been little emphasis on

how its implementation can be effectively achieved in post-socialist countries where the abovementioned international tendencies still have to compete with the traditions of strongly centralised legal systems and with the continuing monopoly of the state in relation to responding to crime.

All these aspects were considered when the European Forum for Victim-Offender Mediation and Restorative Justice introduced an AGIS project on “Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe” in December 2003.¹

The AGIS project intended to help the exchange between the East and the West of Europe, which was beneficial for both parties since not only Central and Eastern European countries could use the experience of the West to try to find solutions to the specific problems they are encountering in the implementation of victim-offender mediation. Also Western European countries could learn from the options taken in the Central and Eastern regions of Europe. The stimulation of this exchange and accompanying networking activities also intended to be beneficial for the European Union since the project had aimed to define more detailed policy recommendations by the end of the project which could be considered in further policy development work on restorative justice at the level of the European Union.

The main activities of this AGIS project were the preparation, organisation and the follow-up of two expert meetings and two seminars. Each of these events provided two to three days for the participants to discuss the issues raised in the project.

By the end of the project, a final publication has been edited. It intends to give a detailed and up-to-date theoretical, conceptual and practical overview on the project’s main issues. In the followings, let me give a brief overview of this publication. Its structure and highlighted issues might give a deeper insight into the ways in which the complex questions and objectives of the project were dealt with during the working progress.

Overview of the Final Report

The publication firstly discusses the relevance of restorative justice in the European countries’ current criminal policies followed by an overview of the special importance of the Central and Eastern European region in this issue. After this introduction the *state of affairs of restorative justice* in eleven Central and Eastern European countries can be read. The country reports discuss the legal base, the scope, the implementation, the evaluation and the future tendencies of restorative justice in each country. These detailed descriptions already well illustrate the common elements as well as the significant differences amongst the countries involved.

The third chapter discusses the main challenges in relation to the process of implementation. It firstly outlines the general tendencies in the Central and Eastern European region, focusing on three main dimensions: the criminological, the sociological and the institutional factors.

As to the criminological dimension, issues, such as the radical changes in crime, the high level of punitive attitudes and the hegemony of the state in the justice system are more detailed. The sociological concerns mainly relate to the lack of ‘sense of community’ and its consequences on the societal level. As another impact of the transition, it is pointed out that the increased anomaly in social values could directly lead to the weakening of moral and legal principles in these societies. The lack of shared value-systems, thus, easily led to the dramatic increase of crime. Finally, the common elements of the so-called institutional difficulties are sketched, including the lack of NGOs’ credibility, services, information, experts and so on.

The chapter’s second section intend to give a deeper insight into four, so-called ‘hot-issues’. This part detail how 1) legislation, 2) fundraising, 3) the awareness of the general public and professionals as

¹ Reference number: JAI/2003/AGIS/088.

well as the 4) training and other organisational issues are dealt with within the process of implementing restorative justice. This chapter is finished by some recommendations that the participants highlighted in relation to the abovementioned topics.

The fourth chapter moves towards the supportive factors in this region. Amongst the general tendencies, changes 1) in the legitimacy power of the justice systems, 2) in the underlying principles of sentencing systems as well as 3) in the role of communities are particularly emphasised. The second part of the chapter intends to draw a picture on some concrete examples firstly by describing best practices from 16 countries. Besides these encouraging projects of the present, concrete actions plans for the future are also formulated by the involved experts. These strategies can be read in the last part of the chapter.

As a bridge from the already existing supportive factors to further needs in the process of implementation, the different forms and functions of international exchange activities are described in the fifth chapter.

Finally, a summary of the main needs can be read that Central and Eastern European experts emphasised as essential elements for their further activities in the implementation of restorative justice in their countries. Concerning the realisation of successful implementation and improvement of restorative justice, nine areas can be distinguished under which the main needs connected to implementation can be grouped. The mostly highlighted needs relate to the issues of: legislation, institutional building, pilot projects; exchange – networking; resources (financial, informational and human); standards and guidelines; training; research and finally the public promotion of restorative justice. It is important to stress that any of the listed activities are essential on both national and international level.

SOME CONCLUDING REMARKS AND POINTS FOR DISCUSSION

While searching for the ways in which restorative justice can be effectively implemented in Central and Eastern European countries with the involvement of Western experts, one can immediately recognise the enormous *differences* amongst European countries. The diversities are resulted mainly due to the different political, economical, historical and cultural background of societies. These factors inevitably influence the structure of the criminal justice system as well as the ways in which people respond to conflicts at any level in the society. Therefore, the potential of restorative justice is highly different in each context.

However, some *common elements* are recognisable amongst countries having similar and interconnected political history. Accordingly, it can be pointed out that within the Central and Eastern European region distinctions can be made among three groups: firstly, countries from the Central part of Europe (Poland, Czech Republic, Hungary); secondly, states that used to belong to the ex-Soviet Union (Russia, Ukraine, Estonia, Moldova); and finally, the so-called “Balkan” countries, including the South-Eastern and the ex-Yugoslavian states, such as Romania, Bulgaria, Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro and Albania show some similar elements mainly in the general attitudes in the public towards the system of judiciary (concerning its legitimacy, credibility, hegemony, etc. in the societies as well as the trust of citizens in them).²

Furthermore, the impact of the communist regime on all these countries’ past and the process of democratic transition both resulted in a kind of ‘common Eastern sense’ that was recognisable amongst the involved participants.

However, while searching for commonalities, yet a more provocative conclusion can be drawn. Concerning the main challenges, supportive factors, we can summarise that there are no significant

² This is just one way of categorisation. Concerning some countries, particularly Romania and Slovenia, it is highly controversial whether they really belong to the “Balkans”, since there are often disagreements between their ‘official’ classification and their self-identification.

differences, even between East and West; especially not regarding the main problems and needs. Although the 'levels' of these difficulties are usually considerably different (the lack of financial resources might mean other figures in, for example, Germany compared to Romania), the 'content' remain very similar in both Eastern and Western countries. Namely, fundraising, or the dominant position of the state in the criminal justice system, as examples, are crucial issues in both Eastern and Western countries.

Also, related to the main *needs* (listed above), one can conclude that the mentioned factors *are required at the same time* in order to stimulate the effective implementation and further development of restorative justice. In other words, it would not be wise to establish a hierarchy amongst the needs and try to define which of those might have higher priorities. They occur mostly parallel to each other and their common fulfilment is necessary for achieving success in the reform processes. Support is mostly required in three areas, namely in lobbying (political pressure), in resources (financial, human, and instrumental) and in know-how (all issues related to methodology). Support is welcome both from national and international organisations by actors representing various sectors, such as the system of criminal justice, social welfare, public administration, universities, etc.

Thus, if there are so many similarities between East and West, one can raise the question *how such an international exchange process can contribute* to further developments? Representatives of the Central and Eastern European countries seemed to be extremely committed and competent in their activities. Thanks to their intensive work and fast developments, some of the country reports of the first chapter are already out of date by the time this overview is finalised. However, the involvement of Western experts has a huge potential in keeping the long-term and broader aspects of the implementation in mind. Via the rapid reforms, the underlying objectives and principles can be easily forgotten. Therefore, the experiences, suggestions, recognitions and even mistakes of Western experts can largely contribute to their Eastern colleagues to keep the focus of their reform activities on the original goals.

As one participant concluded, the end of the project meant, at the same time a start for several new activities. It opened the door for a wide range of future programmes and partnerships. We can assume the same about the theoretical or practical findings of the project: while numerous issues have become much clearer by gaining a detailed picture about the implementation process in several countries representing several regions of Europe, the project – at the same time – has opened a number of *new questions*. In the followings, let us mention some of the main remaining dilemmas.

There are still diverse views on whether *restorative justice* should be discussed *within the framework of crime prevention* and *alternatives* to punishment in the traditional criminal justice system, or whether this concept should be separately dealt within justice issues. On the basis of several comments, it can be assumed that, particularly in Central and Eastern European countries, the main issue is about how to implement alternative measures *in general* into the conventional justice system. The ease with which alternative measures can be implemented also indicates how flexible a justice system is, and to what extent it provides space for more community-based interventions. In short, the scale of alternative measures in a criminal justice system also reflects on how 'democratic' a given society can be considered.

Due to the special history of the Eastern region, it can be assumed that judicial systems in most of these countries are still stricter and more rigid than in other parts of Europe where societies have had the chance to improve their democratic systems during centuries and not only during ten–fifteen years. Therefore, the primary challenge for the East currently might be to integrate *any* alternatives to punishment. One might say that in a criminal justice system alternatives to punishment can exist without including restorative justice, but restorative justice cannot evolve in any judicial-societal atmosphere that is not supporting and promoting other measures in addition to retribution.

Furthermore, the question should also be raised whether restorative justice can be considered as a *completely different view of justice* (a 'paradigm-shift' in the justice system), or whether we can talk about

only *integrating some 'restorative elements'* in the current, basically retributive justice systems. This issue is significant when we discuss whether restorative justice should be integrated only as a whole 'package'³, or alternatively, rather grass-root initiatives should aim to implement it step by step through their smaller projects and measures.

Furthermore, another argument could also be considered stressing that legal systems of Central and Eastern European countries are in a transitional phase anyway. Therefore, the *implementation* of restorative justice *into* these '*already moving*' systems might be an easier process compared to its integration in Western European countries' justice systems. The latter judicial models can be considered *more 'stabilised'* (evolved during centuries), in which reforms can only be done in a more gradual way, unlike in the Central and especially in the Eastern part of Europe.

Moreover, it can be concluded that post-communist societies have experienced *rapid institutional and legal changes* in the last few years. These reforms were resulted by two main factors: firstly, the democratic transition, secondly, their opportunity to become members of the European community equally contributed to some significant systemic changes. However, these institutional and political processes have *not* necessarily provided enough time for a *change in mentality* as well. The lack of this mentality change is mostly perceived in the general public's attitudes as well as concerning the actors of the governmental sector and the different criminal justice agencies of these countries. The difficulties resulting from this issue should also not be underestimated.

And last but not least, it can be supposed that the main difficulties in the concerned countries refer to the *lack of legitimacy of informal, community-based responses to criminal offences*. Although this is a general challenge in most of the countries, its effects can be more visible in Eastern than in Western societies. As a consequence, the legitimising and credibility-increasing role of formal frameworks, especially legislation, cannot be underestimated while discussing the effective ways of implementation. In other words, laws are one of the most significant instruments of the effective implementation, since they are crucial in providing reasons, justifications, clear positions, protocols, institutions, and credibility in the society from a top-down direction as well. Therefore, it can be concluded that promoters of restorative justice in East *need* legislation in the field of restorative justice, maybe even more than their Western colleagues do.

However, at this stage these issues are open questions rather than clear conclusions. Therefore, there is a great need not only for further international exchange and partnerships but also for the more detailed analysis of the previously mentioned issues.

SOME REMARKS ABOUT THE MEETINGS

The project could gain a unique stimulus by the special enthusiasm, competence and commitment of the participating experts. Besides all the concrete information summarised in the reports, the meetings provided a particularly good working environment in which effective and well-structured team working could be realised in a highly supportive and encouraging context.

It was clearly visible that experts – who often came from very difficult background concerning the social, economic and political situation of their countries – obtained significant support in their work by belonging to the core team of the project.

Meetings also resulted in several external recognitions from national policymakers as well as from representatives of international organisations, such as the European Commission, the Council of Europe and the United Nations. These types of feedback and evaluation also contributed to further developments in these countries and encouraged the advocates of restorative justice to continue their

³ This issue has also been emphasised within the debate about the 'maximalist' vs. 'purist' approach. While the former includes judicial sanctions in view of reparation as being partly restorative, the latter bases its model uniquely on voluntary cooperation by the stakeholders, rejecting any use of coercion under the restorative justice label. More about this topic can be found in one of the articles by Lode Walgrave (2000: 415-432).

activities, regardless of the many challenges they need to face regularly in their daily work.

The most efficient and successful way of working in focus-group was to precisely structure each session (including strict time limits) and meanwhile providing as much time as possible for interactive, small group exercises in order to actively involve the participants. It was important to recognise that participants appreciate such activities and can innovatively and effectively work within the agreed frameworks.

FUTURE DIRECTIONS

Due to the lack of further funding the current project is not continued in this format. However, from the very beginning participants were encouraged to establish partnerships and prepare further cooperation. As a result, a tri-lateral project was designed by the cooperation of the German, Austrian and Moldovan experts. A bi-lateral partnership is planned between the Austrian and Hungarian participating organisation.

Previously started partnerships have been further developed

- by Polish, Ukrainian and Moldovan experts; and
- between Norway and Albania.

The European Forum also intends to apply for future AGIS projects using similar programme-design in order to stimulate the implementation process of restorative justice in other European countries as well.

POST SCRIPT

Finally, I would like to express my gratitude to all the experts of the projects for their fantastic and stimulating attitude during the whole project. The success of this project was based on their competence and commitment. However, at the same time, the meetings meant unique occasions for creating friendships and giving personal support for each other for our current and future activities. It is clear that this AGIS project found some of the best possible partners in Europe both regarding their expertise as well as their personal attitudes. As a coordinator, it was an extraordinary trip for me, not only scientifically and geographically, but also emotionally. Thank you for all your support.

This article could discuss the project's main issues only in nutshell. If you are interested in the detailed overview of these issues and the recommendations of the project, please visit the website of the European Forum where the full text of the final report will be available (<http://www.euforumrj.org>) or contact the Secretariat at info@euforumrj.org.

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