



EUROPEAN FORUM FOR VICTIM-OFFENDER
MEDIATION AND RESTORATIVE JUSTICE

**MEETING THE
CHALLENGES OF
INTRODUCING
VICTIM-OFFENDER
MEDIATION IN
CENTRAL AND
EASTERN EUROPE**

**FINAL REPORT OF
AGIS PROJECT
JAI/2003/AGIS/088**



AGIS 2003

With financial support from the AGIS Programme
European Commission – Directorate General for Justice and Home Affairs



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by Borbala Fellegi



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Central and Eastern European countries

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European Forum for Victim-Offender Mediation and Restorative
Justice v.z.w.

2005

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FOREWORD

This report summarises the results of the AGIS project on meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe (JAI/2003/AGIS/088) that the European Forum for Victim-Offender Mediation and Restorative Justice coordinated between December 2003 and November 2005 with the financial support of the European Commission.

The responsible person for implementing the project as well as for writing the report was Borbala Fellegi with the support of Jolien Willemsens, Executive Officer of the Secretariat of the European Forum. However, many others contributed to the project. We are very grateful to them.

The views expressed in this report result from the many discussions throughout the project and from their further analysis by the author. They do not necessarily represent the point of view of the European Forum for Victim-Offender Mediation and Restorative Justice.

Many thanks go to the Department of Criminology and Criminal Law of the Catholic University of Leuven for 'hosting' the Secretariat and for providing an ideal academic environment for this research project.

Ivo Aertsen

Vice-chair of the European Forum for Victim-Offender Mediation and
Restorative Justice

ACKNOWLEDGMENTS

We would like to thank following people for their valuable contribution to the AGIS project and to this report:

- for their constant participation and enthusiasm as well as their valuable contribution as members of the project's 'Core Group':
 - Dobrinka Chankova, Bulgaria
 - Elżbieta Czwartosz, Poland
 - Rasim Gjoka, Albania
 - Magdalena Grudziecka, Poland
 - Szilvia Gyurkó, Hungary
 - Sorin Hanganu, Moldova
 - Ludmila Hasmánova, Czech Republic
 - Jim Hilborn, Estonia
 - Roman Koval, Ukraine
 - Stefania Kregel, Bosnia and Herzegovina
 - Aare Kruuser, Estonia
 - Tatiana Laysha, Russia
 - Rustem Maksudov, Russia
 - Karen Kristin Paus, Norway
 - Christa Pelikan, Austria
 - Frauke Petzold, Germany
 - Branka Peurača, Croatia
 - Diana Popa, Moldova
 - Dana Syslová, Czech Republic
 - Mihaela Tomita, Romania
 - Jožica Trost-Krusec, Slovenia
 - Bojan Vovk, Slovenia
 - Martin Wright, United Kingdom
 - Vira Zemlyanska, Ukraine
- for helping in the organisation of the project as members of staff:
 - Jana Arsovska
 - Zuzana Slezáková
- for the local organisation of the meetings and their unforgettably kind hospitality:
 - Christa Pelikan, Institute for the Sociology of Law and Criminology, Vienna
 - Igor Dolea, Sorin Hanganu and Diana Popa, Institute for Penal Reform, Moldova
 - Mária Herczog, Family, Child, Youth Association, Budapest
 - Vidia Negrea, Community Service Foundation of Hungary, Budapest
 - Dobrinka Chankova, Institute for Conflict Resolution, Sofia
 - and all their colleagues.
- for proof-reading the text of this report: Martin Wright and Jolien Willemsens.
- and last but not least, the European Commission for providing the financial background.

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1. INTRODUCTION

1.1. THE GROWING IMPORTANCE OF RESTORATIVE JUSTICE IN EUROPE

In the last two decades, restorative justice and victim-offender mediation have been more and more widely used in the criminal justice systems of several European countries. This publication intends to give a deeper insight in the main issues of its implementation, with a special focus on Central and Eastern Europe.

Before giving a more detailed picture of the most recent trends in restorative justice, first let us specify what is meant by restorative justice.

One of the definitions referred to by the United Nations (2002a) is the following:

“Restorative justice seeks to balance the concerns of the victim and the community with the need to re-integrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it.”

The following descriptions, provided by the United Nations (2002b), may shed a little more light on the restorative justice theory and practice:

“Restorative process means any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative processes include mediation, conferencing and sentencing circles.”

“Restorative outcome means an agreement reached as a result of a restorative process. Examples of restorative outcomes include restitution, community service, and any other programme or response designed to accomplish reparation of the victim and the community, and reintegration of the victim and/or the offender.”

From the above it can be inferred that this new model of responding to criminal behaviour intends to balance the needs of the victim, the offender and the community. One of its basic principles is that a response to crime should start with trying to repair the harm of those who were directly and indirectly affected by the wrongdoing. This approach therefore largely differs from traditional justice systems that are primarily based on retributive principles and mainly focus on punishing the offender. Restorative justice also emphasises the importance of encouraging offenders to understand the effects of their act on their victim and to accept responsibility for it. Restorative justice recognises that

providing an opportunity for victim and offender to enter into dialogue with each other can be very valuable, not only for the victim but also for the offender.

The underlying principles of restorative justice and restorative practices have received great interest not only from criminal justice practitioners and academics, but also from policy-makers in charge of defining criminal justice policies. This is reflected in the increasing number of restorative justice programmes that are being implemented at all levels of the criminal justice system, applied with different types of crimes committed by juveniles as well as adults.

It is estimated that more than 900 projects were already in operation in Europe in 1998 (Aertsen, 2001). Several Member States of the European Union are at the forefront, and there is a growing interest among others. There have been long-term projects and experiments in the field of victim-offender mediation in Austria, Belgium, Finland, France, Germany, Norway and the UK. Furthermore, several other countries such as Denmark, Sweden, the Netherlands, Luxembourg, Ireland, Spain and Italy, have provided opportunities for pilot projects in order to study the extent to which restorative justice might be able to lead towards more responsive justice systems which can take the needs of both the victim and the society into account in their response to criminal acts.¹ More recently, several Central and Eastern European (for example Poland, the Czech Republic, Slovakia, Slovenia, Albania and Bulgaria) countries have taken legislative initiatives in respect to victim-offender mediation. Meanwhile, other countries, such as Russia, Ukraine, Hungary, have launched interesting pilot projects in relation to restorative justice.

Also, at the level of international institutions it has been recognised that victim-offender mediation can make an important contribution to improving justice systems in European countries. In the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (Council of the European Union, 2001), Article 10 states that Member States are to seek to promote mediation in criminal cases for offences which they consider appropriate for this sort of measures and to ensure that any agreement between the victim and the offender reached in course of such mediation in criminal cases can be taken into account. According to Article 17, each Member State shall bring into force laws, regulations and administrative provisions to comply with Article 10 before 22 March 2006. The main contribution of this Framework Decision to the implementation of restorative justice is its mandatory effect on Member States. However, it does not provide detailed requirements or guidelines about how to realise it.

¹ A recent report of Miers and Willemsens (2004) gives a detailed overview of the intensive use of restorative justice within or parallel to the criminal justice system in 25 European countries.

Therefore, this regulation is well complemented by the detailed – and earlier issued – guidelines of the Council of Europe. With the adoption of Recommendation No. R (99) 19 on mediation in penal matters (Council of Europe, 1999), the Committee of Ministers of the Council of Europe has played a significant role in setting out the principles of victim-offender mediation and recommending governments to consider them.

This initiative also contributed to the document the Economic and Social Council of the United Nations (United Nations, 2002b) issued later on the *Basic Principles on the use of Restorative Justice Programmes in Criminal Matters*. This resolution is supposed to guide the development and operation of restorative justice programmes in the UN member states.

Moving to a broader level of international regulation of criminal justice policies, other Council of Europe recommendations and UN principles should be mentioned. Namely, Recommendation No. R (92) 16 of the Council of Europe on community sanctions and measures, or UN documents, such as the *Beijing Rules* (United Nations, 1985), the *Tokyo Rules* (United Nations, 1990) and the *Riyadh Guidelines* (United Nations, 1990) are important agreements in relation to the implementation of alternatives to punishment in the criminal justice system. By signing these documents, member states accepted to meet – amongst others – the overall requirement of harmonising their criminal justice system with the social protection network; supporting initiatives for community involvement in criminal justice matters; promoting the use of non-custodial measures as well as providing complex social crime prevention programmes. According to these documents, diversionary institutions, alternatives to prison and community sanctions should receive priority in responding to crime, especially in the case of child and juvenile offenders. Implementing the principles and practices of restorative justice therefore largely fits in the framework of the abovementioned international documents regulations as well. (There are also other legislative documents that offer support for implementing restorative justice. Their overview can be found on page 153-154.)

Not only the previously listed international standards, but also findings of several research projects show that it is worthwhile to consider the implementation and application of restorative practices in justice systems.²

A Canadian meta-analysis by Latimer, Dowden and Muise (2001) analysed 22 studies examining the effectiveness of 35 individual restorative justice programmes, and showed that restorative justice was more successful at achieving victim and offender satisfaction, fulfilment of restitution agreements and reduction of recidivism, compared to more traditional criminal justice responses such as incarceration, probation and court-ordered restitution.

² For an overview of evaluative research, see the study by Aertsen, Mackay, Pelikan, Willemsens and Wright (2004: 34-39). The findings mentioned here are taken from this overview.

Concerning the preference of the general public, findings of several research projects showed that knowledge of and familiarity with the whole approach of victim-offender mediation or conferencing clearly enhances public acceptance. Moreover, researchers have often pointed out that the attitude of the general public is not as punitive as is often believed or claimed by policy-makers or the judiciary (e.g. Weitekamp, 2000), while other findings showed that prosecutors can have more punitive attitudes than the general public (Sessar, 1992).

The cost-effectiveness of different restorative practices is difficult to calculate. However, in Finland it was calculated that the net cost saving of a mediation process in comparison to a court procedure was about 705 euro per case (Aaltonen, n.d).

After this short introduction of restorative justice, let us point out the reasons for paying special attention in this publication to implementation processes in Central and Eastern Europe.

1.2. 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 collapse of the so-called socialist regimes in the Eastern Block influenced those concerned countries in different ways. However, there are several common features due to the similarities of their former political systems. 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 domestic law with international standards*; and, secondly, the *societal challenges* these societies have had to face during the transition.

It is worthwhile to look into more detail at the implementation of restorative justice in Central and Eastern European countries since these countries have to bring their national laws into line with international laws and regulations, and also with international documents pertaining to restorative justice as described in 1.1.

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). The number of reported crimes, in particular the rate of traditional crimes such as crimes against property and violence, almost doubled in the beginning of the

transition (Albrecht, 1999: 449; Lévy, 2000: 37). Meanwhile, a significant decline in clearing-up rates, as well as the growing weakness of formal and informal mechanisms of control were experienced in all countries of the 'socialist block' (Albrecht, 1999: 449).

Some of the reasons for this sudden and steep increase in the number of crimes relate to: the relative deprivation, the state of anomie in the society, the increase of social inequality, the anomalies of social standards as well as social tensions and conflicts. In short, these factors made it extremely difficult for citizens to adapt to the new conditions of the democratic system (Lévy, 2000).

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.

Some of these concepts and alternative measures already existed during the communist regime in several countries. Moreover, while reforming their systems of administration of justice, many of the post-socialist countries have turned back to their pre-Second World War models that were basically shaped in line with the Western European standards (Bárd, 1999: 438). However, the process of moving towards legalism and the rule of law brought a tendency to mistrust informality and extra-judicial proceedings (Albrecht, 1999: 469) that were often abused in the socialist regimes and were mostly used for maintaining the controlling power of the State.³ Therefore, another shift (or return) towards informal and community-based measures in the judicial system, required by the international agreements, confronted these societies with a very new type of challenge.

It is clear that, both in finding adequate social and legal responses to the suddenly increased crime rates and in searching for 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

³ This sociological factor is discussed in more detail on page 67-68.

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.

1.3. THE AGIS PROJECT

1.3.1. GENERAL FRAMEWORK

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”.⁴

Since its establishment in 2000, the European Forum has been committed to its general aim of helping to establish and develop victim-offender mediation and other restorative justice practices throughout Europe. Moreover, it has been focusing on the promotion of international exchange of information and mutual help, as well as on the development of effective restorative justice policies, services and legislation.⁵

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 general objective of the project, which ran from December 2003 until November 2005, was to provide effective support to the development of victim-offender mediation in Central and Eastern European countries by:

- studying, at the conceptual and practical level, what the possibilities are for implementing victim-offender mediation in Central and Eastern European countries given their specific political, economical, cultural and legal background;

⁴ Reference number: JAI/2003/AGIS/088.

⁵ For more details, see the Constitution of the European Forum on <http://www.euforumrj.org/constitution.and.regulations.full.htm>.

- discussing the ways in which Western European countries can inform and support the development of victim-offender mediation in Central and Eastern European countries;
- preparing strategies for promoting the development of an integrated policy concerning victim-offender mediation in Central and Eastern European countries;
- actively working towards creating dynamics for exchange and cooperation (networking) between Central and Eastern European countries in this field;
- discussing what Western European countries can learn from the developments in criminal justice in Central and Eastern European countries;
- studying what can be learnt from the previous points in terms of policy development concerning victim-offender mediation 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.

The first expert meeting took place in Vienna (Austria) on 24-26 June 2004. It dealt with:

- studying, at the conceptual and practical level, what the possibilities are for implementing victim-offender mediation in Central and Eastern European countries given their specific political, economical, cultural and legal background;
- providing a summary of the state of restorative justice in the countries involved;
- discussing the main challenges and supportive factors in relation to the implementation of victim-offender mediation.

This first meeting was attended by 17 participants from 14 countries.

The first seminar, which was organised in Budapest (Hungary) on 14-16 October 2004, coincided with a major international conference, namely the biennial conference of the European Forum. 63 experts representing 21 countries were explicitly invited to attend the first seminar, but there was also interaction with the about 160 other people who attended the other sessions of the international conference. This first seminar dealt with following elements in the project:

- East meets West; presenting the findings of the first seminar;
- discussing what Western European countries can learn from the developments in criminal justice in Central and Eastern European countries;

- discussing the ways Western European countries can inform and support the development of victim-offender mediation in Central and Eastern European countries.

The second expert meeting was organised on 17-19 March 2005 in Chisinau (Moldova). It dealt with:

- discussing the main challenges in the implementation of restorative justice in more detail;
- preparing strategies for promoting the development of integrated policies in implementation;
- discussing the ways of further networking, starting the planning of future cooperation;
- continuing the discussion of what Western European countries can learn from the developments in criminal justice in Central and Eastern European countries.

This meeting was attended by 20 participants representing 16 countries.

Finally, the second seminar took place from 29 September till 1 October 2005 in Sofia (Bulgaria). It dealt with:

- presenting the main findings and summarising the project for a broader audience;
- defining recommendations for national and international policy developments;
- planning new projects based on bi- and multi-lateral cooperation.

This final meeting was attended by 56 participants representing 27 countries and 3 international organisations (European Union, Council of Europe and the United Nations).

As a result of these meetings, four reports have been edited based on the presentations and the discussions in the sessions. These documents were used and referred to repeatedly by the participants in the course of the project.

A constant emphasis has also been put on the communication between the participants in between the meetings. The information exchange took primarily place via electronic mailing, but a virtual discussion room was also created on the website of the European Forum⁶ which enabled the participants to send messages to all the other members in one time and to make all the replies readable for those having access to the room. All the experts who have been personally invited to participate in the project received access to this discussion room.

⁶ See <http://www.euforumrj.org/discussion.forum.htm>.

1.3.2. PARTICIPANTS

The following countries have been involved directly in the project:⁷

CENTRAL AND EASTERN EUROPE	NUMBER OF PARTICIPANTS			
	1 ST EXPERT MEETING	1 ST SEMINAR	2 ND EXPERT MEETING	2 ND SEMINAR ⁸
Albania	1	1	1	0
Bosnia and Herzegovina	0	1	1	1
Bulgaria	1	5	1	6
Croatia	0	1	1	1
Czech Republic	2	6	1	3
Estonia	1	1	1	1
Greece	0	0	0	2
Hungary	2	15	2	6
Latvia	0	1	0	1
Macedonia	0	1	1	0
Moldova	1	4	3	1
Poland	1	8	1	1
Romania	1	4	2	2
Russia	0	1	0	1
Serbia and Montenegro	0	4	0	1
Slovenia	1	2	0	1
Turkey	0	0	0	2
Ukraine	1	2	1	4

WESTERN EUROPE	1 ST EXPERT MEETING	1 ST SEMINAR	2 ND EXPERT MEETING	2 ND SEMINAR
Austria	1	1	1	1
Belgium	2	1	0	2
Germany	0	1	1	1
Italy	0	0	0	2
Netherlands	0	0	0	2
Norway	1	2	1	2
Portugal	0	0	0	2
Spain	0	0	0	1
Sweden	0	0	0	1
United Kingdom	1	1	1	4

OUTSIDE EUROPE	1 ST EXPERT MEETING	1 ST SEMINAR	2 ND EXPERT MEETING	2 ND SEMINAR
Tanzania	0	0	0	1
Turkey	0	0	0	2

TOTAL	17	63	20	53
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⁷ Staff members of the European Forum also represented four different countries, namely Belgium, Czech Republic, Hungary and Macedonia. The following chart includes the staff members as well and categorises them according to their country of origin.

⁸ Representatives of the international organisations (EU, Council of Europe, UN) are not included in this chart.

Participants represented the following sectors and professions:

SECTOR	NUMBER OF PARTICIPANTS
Non-governmental organisation	41
Research institute/university	22
Governmental organisation	4
Agency of the criminal justice system (police, probation service, lawyer, prosecutor, judge, prison worker)	12
International organisation (European Commission, Council of Europe, UN)	5
School	4

PROFESSION	NUMBER OF PARTICIPANTS
Mediator/staff member in an NGO/project manager/director	38
Civil servant	12
Researcher	17
University professor	6
School teacher	5
Probation officer	4
Lawyer	2
Prosecutor	2
Judge	2
Police	1
Social worker	1

In addition to the directly involved participants, a large group of people have been indirectly involved in the project. Here we are thinking not only of the about 160 people who attended the international conference during which the 1st seminar (see above) was organised, but also of all the members of the European Forum who have been informed about the project through the Newsletter and the website of the European Forum. Moreover, many of the directly involved participants put strong emphasis on disseminating the findings of the projects within their countries via their seminars, conferences, newsletters, other publications and websites.

1.4. ABOUT THIS PUBLICATION

This report intends to be neither theoretical nor scientific. It is rather a practical manual bringing together the findings of the project. Its main intention is to help advocates of restorative justice in their everyday work while thinking of, and planning for further activities in the field of implementing restorative justice in – or in cooperation with – Central and Eastern European countries.

The further chapters of this report are based either on presentations given by the participants that were already prepared before the meetings, or on the subsequent reports based on the discussions in the meetings.

Both types of sources have their specific contribution as well as their disadvantages. Whilst the presentations were thoroughly thought out and were based on the participants' long-term theoretical and practical experiences, their content was primarily related to those specific issues that their presenters had focused on before they attended the meeting. The discussions, on the other hand, were able to focus flexibly on the exact issues this project intended to deal with. However, because of their 'improvisatory' nature, these discussions and the notes based on them might not have been able to give an immediate, complex and comprehensive overview of the issues raised.

Furthermore, it has to be kept in mind that – due to financial limits – the project could only work with one organisation from each country, and in most cases only one expert could directly be involved from these partner organisations. The small number of people directly involved, on the one hand meant that these 'focus-groups' could work in a very effective way. On the other hand, however, it has to be taken into account that the thoughts, impressions and reflections of the individual experts are not necessarily representative for their countries.

Nevertheless, it can be said that all the materials referred to in this publication have at least one common intention: to draw a picture of the work that has been done within the framework of the current AGIS project, to highlight some basic issues that were raised during the project, and to present the main findings.

The next chapter of the report will give an overview of the *state of affairs of restorative justice* in those Central and Eastern European countries that were directly involved in the project.

The third chapter intends to give a more detailed picture of the findings by, firstly, discussing the *main challenges* and obstacles that Central and Eastern European countries have to face during the implementation process of restorative justice. The general overview is followed by a detailed discussion of *four particularly important issues*, namely the question of legislation, funding, public awareness and training. In the last part of the chapter are some *recommendations* by the participants in relation to these issues.

In the fourth chapter, the main *supportive factors* in the involved countries will be explored. This section also intends to present some best practices that are already taking place in these countries, as well as draw a picture of specific action plans the experts have designed regarding their future strategies in the implementation process.

As a bridge between the already existing supportive factors and further needs, the role of *international cooperation* will be discussed after the supportive factors.

The last chapter will give an *overview of the report and will summarise what is primarily needed* in Central and Eastern European countries in order to implement restorative justice effectively into their legal and institutional systems. Finally, the main conclusions of the project are summarised.

In the annexes the *contact details* of the participating organisations and the representatives are listed. In the last part of the report the reader can find a bibliography of sources referred to in this report, as well as a list of relevant *publications* in restorative justice of the countries involved.

2. STATE OF AFFAIRS OF RESTORATIVE JUSTICE IN ELEVEN CENTRAL AND EASTERN EUROPEAN COUNTRIES

INTRODUCTION

This chapter includes detailed overviews of the position and use of restorative justice in eleven Central and Eastern European countries that were involved in the AGIS project. The overviews have different sources: some texts were initially prepared for the publication edited by David Miers and Jolien Willemsens (2004), “*Mapping Restorative Justice – Developments in 25 European countries*”; some texts are the updated versions of the reports published in the above-mentioned book. Other overviews are based on the presentations given during the first expert meeting held in the framework of the project. Finally, some reports were written specifically for the purpose of this final report. All country reports try to follow the same template that comprises the following five sections: legal base, scope, implementation, evaluation of and future tendencies in restorative justice.

1. ALBANIA¹⁰

INTRODUCTION

The notion of restorative justice is a new one in the Albanian society, and there are no initiatives or special programmes in this field. In the seminars and workshops organised during the last three years with jurists, lawyers, judges and prosecutors, the possibility of applying restorative justice in the Albanian legal system was discussed.

On the other hand, mediation and reconciliation has been applied in many criminal cases in the stage before the judicial proceedings. The use of mediation and reconciliation in criminal cases is foreseen in the Albanian criminal legislation by a specific law. It is easy for actors of the justice system to accept and apply mediation in criminal cases as foreseen in the law, but it is somehow difficult to make a connection between restorative justice and victim-offender mediation.

⁹ The reports are reprinted with permission of the publisher.

¹⁰ Contributor: Rasim Gjoka (July 2004), reprinted from the publication “Mapping Restorative Justice” (Miers and Willemsens, 2004: 135-139.) with the permission of the publisher.

1.1. LEGAL BASE

The Albanian legislative system has created the necessary grounds for the application of mediation in criminal cases. According to the existing legislation, the court has the right to undertake actions and make efforts to solve the criminal cases through mediation and reconciliation. Thus, the court can undertake mediating action in criminal cases that can only start with the complaint of the victim towards the offender.

This can happen in two cases. First, referring to Article 59 of the Code of Criminal Procedure, for the category of criminal cases such as: beating, serious injury due to carelessness, non-serious injury due to carelessness, violation of the dwelling place, slander and other cases. The victim is entitled to present a direct request to the court to start a penal case and take part in the trial as a party, to certify the indictment and ask for the compensation of the damage. Based on the Code of Criminal Procedure, the court invites – in the above-mentioned cases – both the victim and the offender to resolve the case through mediation. If the victim is convinced to withdraw the request for court proceedings, and if the offender accepts this withdrawal as well, the court decides on the suspension of the case and the parties in the conflict address themselves to a mediator. Second, Article 284 of the Code of Criminal Procedure defines the cases of criminal conflicts in which the penal procedure is initiated by the prosecutor's office or the judicial police based on the complaint of the victim, and in which the complaint can be withdrawn by turning to mediation at any stage of the proceedings. These are cases of unintentional non-serious injury, murder owing to carelessness, offences and slander for duty reasons, etc.

Albanian legislation created greater opportunities for the application of mediation through the “Law on Mediation and Reconciliation of Disputes”, adopted by the Albanian Parliament in March 1999, and followed up by law No. 9090 of 26 July 2003 “on Mediation in Dispute Resolution”. The approved law on mediation includes a wide range of disputes, foreseeing the application of mediation in civil, property, family, commercial cases, etc. Article 2 of the mediation law institutionalises mediation as an alternative in criminal conflicts.

From the social point of view, the mediation service is presented as:

- a professional activity;
- an activity based on the equality between the parties and respecting their individual values;
- an out-of-court activity and an alternative in conflict resolution;
- service that is carried out by the subjects or centres that are licensed by the Ministry of Justice, and which are registered with the court. The list of names of mediators is deposited with the Ministry of Justice, as well as with the court and the prosecutor's office.

From the juridical point of view, the mediation service operates within the legal framework by bringing about the following juridical effects for the conflicting parties:

- Mediation interferes in the penal procedure and the judges and prosecutors have the legal obligation to suspend the cases they consider eligible for mediation and to recommend the parties involved in the conflict to the mediation centre.
- Mediation can be carried out at any stage of the trial or the execution of judicial verdicts.
- The parties involved in the dispute are entitled, in agreement amongst themselves, to accept one or several mediators. The mediation centre provides the conflicting parties with the list of qualified mediators, and they on their own will agree and are entitled to appoint the mediator, who will help in resolving their dispute.
- Mediation must be carried out within 45 days. When the case is successfully resolved, the court/prosecutor's office suspends the case or refuses to start the penal proceedings. When mediation is not successful, the file is returned to the court/prosecutor's office and the normal legal procedure is followed.
- The Reconciliation Agreement Act comprises an executive title to the parties and the court in all the cases when the observance of the law is achieved, but the latter is not obliged to decide according to its will if the parties object to the agreement act.

1.2. SCOPE

Based on the existing legislation, restorative justice in Albania is focused both on the victim and the offender. Victim-offender mediation is applied in the case of the offences foreseen in Articles 59 and 284 of the Code of Criminal Procedure. It can be carried out at any stage of the trial or the execution of the judicial verdict. It is an alternative to the criminal process. It may be applied to both adults and young offenders. Independent organisations and institutions, rather than the state legal institutions, mainly carry out the gate keeping function.

1.3. IMPLEMENTATION

There is no nationwide programme on victim-offender mediation yet. The workshops organised at the Magistrates' School, in cooperation with experts from the Council of Europe, are steps towards making the legal institutions in Albania aware about the possibilities of victim-offender mediation and restorative justice.

The Albanian Foundation "Conflict Resolution and Reconciliation of Disputes" (AFCR) is the main institution to apply victim-offender mediation. It is a non-profit organisation founded in 1995 by lawyers, sociologists and ethnologists, with the aim of offering mediation in different kinds of conflicts. AFRC is a

consolidated institution licensed by the Ministry of Justice.

Every year the number of conflicts treated and resolved by the Foundation's network of mediators is increasing, thus fulfilling the main objective. There are eight mediation centres in Tirana and in the districts. A network of 25 trained and licensed professional mediators work for the mediation centres. Next to these professional mediators, there is a network of 250 voluntary mediators who operate mainly in the rural areas but also elsewhere.

The criminal cases that are mediated and reconciled by AFCR amount to 500-550 cases per year. They make up about 40-42% of the total number of cases dealt with per year. AFCR has established partnerships with the Ministry of Justice, the Soros Foundation, the Ombudman's Office, the Magistrates' School, the Mediation Board in Oslo and other non-governmental organisations. They share the common aim of a more democratic, peaceful society without conflicts, etc.

AFCR is a founding member of the European Forum for Victim-Offender Mediation and Restorative Justice. AFCR has participated actively in the activities of this Forum.

Criminal cases can be referred to mediation in two ways:

- a) by the community: the parties ask directly for mediation
- b) by the court, the prosecutor's office or the police.

Special attention needs to be paid to victim-offender mediation in cases of blood feud or revenge. These cases come mainly from the rural areas in Northern Albania. The application of mediation and reconciliation in blood feuds and cases of revenge, the amount of which tends to decrease, is based on a better combination of the contemporary techniques of mediation with the traditional elements of reconciliation.

The increase of professionalism in applying mediation in general, and victim-offender mediation in particular, has been of primary importance in the training programme implemented by AFCR with the assistance of international experts. In the period 2004-2005, AFCR is implementing the project "Application of Victim-Offender Mediation in the Albanian Society" in 6 districts of the country. The project is a joint cooperation between the AFCR, the mediation centres in the districts and the Magistrates' Schools.

During the last years some other organisations in the North of Albania have been dealing with criminal cases, particularly in the field of preventing blood feud and revenge. They are mainly focused on the tradition of reconciliation, and have no knowledge about victim-offender mediation and restorative justice. The Centre "Justice and Peace" in Shkodra has made some publications and has organised some training on mediation in general. In some particular modules the training was focused on victim-offender mediation.

1.4. EVALUATION

Restorative justice is still in its beginning phase in Albania. It is far from being part of the justice system. The initiatives of victim-offender mediation are mainly applied by actors of the civil society. Training programmes with judges and prosecutors are aimed at making restorative justice practices more known and applied. The cooperation established with the prosecution offices is a basis for future progressive steps.

2. BULGARIA¹¹

INTRODUCTION

It is necessary to point out right away that Bulgaria is behind other European countries in introducing restorative justice practices. The Bulgarian legal system is still based on a punitive philosophy. The retributive approach prevails over the restorative elements in the Bulgarian criminal justice system. There are no nationwide restorative justice programmes and services or research projects launched or funded by the government. Although there have been some changes recently (as will be seen below in section 2.1.), restorative justice still attracts only peripheral attention from the state's institutions, and they do not show enough sensitivity to this issue. There are two explanations for this oversight: lack of information and prolonged postponement of this issue for the future.

While it is true that restorative justice, as an idea and practice, is relatively new for the Bulgarian legal environment, it is not absolutely unknown. The first articles and conference presentations appeared some years ago. Bulgaria had its representative in the Council of Europe's Expert Committee on Mediation in Penal Matters (1995-1997). Bulgaria supported the UN Resolution on Basic principles of the use of restorative justice programs in criminal matters. Bulgaria is a candidate country to the EU and just successfully finalised the negotiations. Bulgarian policy-makers are aware of the imperatives of the Council of the EU Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

The rationales for delaying are, of course, far from being unique to Bulgaria: the crime rate is too high, restorative justice is a too soft response to crime, civil society is not built yet, there are no financial and human resources available, etc. There are real problems related to the transitional period and the economic situation, but this issue can not be postponed for long.

While alternative dispute resolution methods were easily accepted in Bulgaria, restorative justice meets strong resistance, mainly from the judicial society. Victim-offender mediation and other restorative practices are considered as

¹¹ Contributor: Dobrinka Chankova (September 2005).

directly affecting the sovereignty of the state and its monopoly in matters of justice as well as threatening the lawyers' interests and territory. There are even expressed opinions that restorative justice is a 'shadow justice', 'second class justice' or denial of justice.

At the same time it is generally recognised that the existing criminal justice system in Bulgaria is far from effective, does not function in a satisfactory way and is in need of a change.

2.1. LEGAL BASE

Some typical restorative justice interventions, such as reconciliation and reparation, could be seen even in Bulgarian ancient customary law. In the operative legislation a few restorative justice elements can also be found.

According to the Code of Criminal Procedure (1975), reconciliation reached between the offender and the victim in cases of crimes requiring a complaint by a victim is a ground to exclude commencement of penal proceedings and a ground for their termination (art. 21 (5) 3). The court stimulates the parties to reach an agreement, but there is no more detailed regulation. These provisions have existed in the legislation for a long time and could be described as classical provisions'. Unfortunately, their application is very limited. Nobody associates them with restorative justice of modern days.

However, the last amendments to the Code of Criminal Procedure, adopted between 1999 and 2003, introduced a restorative spirit into the legislation, encouraging reparation of damages to the victim, caused by the crime, more specifically in relation to the agreement between the prosecution and the offender's counsel (art. 414 g).

The Bulgarian Criminal Code (art. 78 in connection with art. 61) allows in some cases for juvenile offenders to be released from penal responsibility by applying the appropriate correctional (educational) measure according to the Juvenile Delinquency Act (1958). Some of them have a restorative character: duty of apology to the victim; duty of attending the educational programs and consultancy with rehabilitative purpose; duty of removing the damage inflicted, where possible; and duty of community service (art.13, (1), 2, 3, 9 and 10). The rest are purely retributive measures. The implementing agency is the Commission for Combating Juvenile Delinquency (comparable to the YOT in the UK).

In 2002 the Bulgarian Criminal Code was amended in order to introduce probation in the Bulgarian criminal justice system. The amendments entered into force in 2005.

Until recently, victim-offender mediation and other restorative justice practices were more or less ignored by the Bulgarian policy-makers and legislature. In the Strategy for Bulgarian Judicial System Reform, announced in 2002, the introduction of alternative dispute resolution mechanisms was declared to be

one of the priorities. Introduction of victim-offender mediation and restorative justice was not explicitly mentioned.

The first positive step has, however, been taken. Article 3 (2) of the Bulgarian Mediation Act, promulgated on 17 December 2004, points out that “mediation shall also be performed in the cases envisaged in the Code of Criminal Procedure”. The amendments to the Criminal Code and Code of Criminal Procedure which will make victim-offender mediation work are under development (although subject of a considerable debate).

The National Strategy for Crime Counteraction, revised in December 2003, further promotes programmes and initiatives of the state agencies, NGOs and civil society aiming to support crime victims and to rehabilitate offenders, with a special focus on young offenders.

2.2. SCOPE

To the extent to which we can say that restorative justice provisions exist at all in the Bulgarian legal system, they are primarily offender-focused; crime victims continue to be neglected.

Restorative practices are applied to petty crimes and to crimes prosecuted on the grounds of a complaint by the victim. Restorative justice provisions are applied both to juvenile and adult offenders. Available at all stages of criminal proceedings, they are used mostly at an early stage of the procedure. Currently restorative justice interventions are mainly part of the criminal process and in exceptional cases they are applied as alternative measures to it. The prosecution and the court exercise the gate keeping function. However, it has to be stressed again that these practices only include restorative elements and that they are not ‘genuine’ restorative practices in the modern sense of the word.

2.3. IMPLEMENTATION

The lack of adequate state policy and nationwide programmes inevitably reflects on the state of affairs of restorative justice, but also leaves space for grass-root initiatives. The main actors on the restorative justice stage in Bulgaria are NGOs and academics. They have received big support from the Central and Eastern Europe Legal Initiative of the American Bar Association and from the United State Agency for International Development. Numerous articles have been published in our daily newspapers and scientific journals, booklets have been printed and distributed, conference presentations have been made, workshops and TV broadcasts have been organised. Recently the first books in Bulgarian on mediation have been published. Some of them include many proposals for adoption of legislation to enable restorative practices in Bulgaria.

The main promoter of restorative justice ideas in Bulgaria remains the Institute for Conflict Resolution - Sofia, which is currently implementing the project “Promotion of Restorative Justice in Bulgaria”. The centre of the project is: a permanent information campaign, an academic programme and research work.

Members of the Institute regularly take part in the numerous initiatives of the European Forum of Victim-Offender Mediation and Restorative Justice, Prison Fellowship International, Penal Reform International etc. The Institute has had a pilot victim-offender mediation project on its agenda for a long time. Its start has been postponed many times due to lack of funds.

Simultaneously with research and the lobbying for the application of innovative techniques of conflict resolution, an experiment was also started with restorative justice models such as mediation (peer and adult-led), problem-solving circles and restorative conferencing in order to be adapted in Bulgarian schools. The project is guided by the restorative justice principles as applied in school settings, developed by the Restorative Justice Consortium, UK. Although still at an early stage of experimentation, the first results are promising.

Partners-Bulgaria Foundation and HELP Foundation are also implementing some projects promoting a restorative climate in Bulgaria, namely in juvenile justice and custodial settings. They are experimenting mostly with mediation. The Centre on Mediation of the Partners-Bulgaria Foundation trains mediators and resolves various types of disputes, mainly in civil matters.

In 2004 the Association for Alternative Dispute Resolution in Plovdiv (second largest city in Bulgaria) has launched a project entitled "Mediator in School". The focus of the project is to educate pupils to be mediators. 20 pupils from 3 schools in Plovdiv, already selected, will be trained to conduct peer mediation during the summer months.

Some other centres of alternative dispute resolution have recently been established in Bulgaria as well. All of them are private, do not receive central funding and do not conduct victim-offender mediation.

A Club of Mediators was established in 1999. Periodically the members discuss current problems and exchange their experience. Professional and ethical standards for mediators have been developed and adopted by the club members.

The restorative justice idea is well accepted in the Bulgarian universities. The New Bulgarian University in Sofia introduced "Mediation in penal matters" into its curriculum. They are establishing a Laboratory on Mediation in that university. After successful lobbying, Alternative Dispute Resolution was introduced as a study subject in the university curricula of many schools of law in Bulgarian universities. Advocating for a Master's Programme on victim-offender mediation is going on in the academic circles.

2.4. EVALUATION

Although there is a suitable base for restorative developments in Bulgaria, the current state of affairs is far from satisfactory. Restorative justice in Bulgaria is

still a movement rather than a nationwide programme or policy. It is mostly considered to be on the margins of the formal justice system.

The objective is to establish restorative justice programmes within the auspices of the formal justice system, through education of politicians about the benefits of restorative justice and encouraging them to institutionalise restorative practices in the future.

However, restorative ideas are beginning to percolate into the criminal justice edifice. This idea has clearly a future in Bulgaria: there are people ready to work for this goal, their number is increasing every day and this is the best warranty.

3. CZECH REPUBLIC¹²

3.1. LEGAL BASE

The legislation authorising victim-offender mediation comprises the Probation and Mediation Act (Law No 257/2000), which came into effect on the 1st of January 2001. This Act created the legal base for establishing the Probation and Mediation Service (PMS). It details how the PMS should operate, provides for its organisational structure and defines its duties and responsibilities for work with victims and offenders. Specific sections of the Code of Criminal Procedure authorise two types of diversion, which are used in close relationship with mediation:

- Conditional cessation of prosecution (*podminene zastaveni trestniho stihani*) (Code of Criminal Procedure No 292/1993, ss. 307-8)
- Settlement (*narovnání*) (Code of Criminal Procedure No 152/1995, ss. 309-14).

3.2. SCOPE

Victim-offender mediation is defined as out-of-court intervention for the purpose of resolving conflicts between the offender and the victim, and intervention during criminal proceedings aimed at reconciling such conflict (Probation and Mediation Act No 257/200, section 2). Mediation may only be carried out with the express consent of the offender and the victim.

The three key objectives are:

- the integration of the offender into the community
- the participation of the victim in the criminal process
- the protection of the community.

Victim-offender mediation is available at all stages of criminal proceedings for

¹² Contributor: Lenka Ourednickova (updated in October 2005); reprinted and updated from the publication "Mapping Restorative Justice" (Miers and Willemsens, 2004: 37-41.) with the permission of the publisher.

both juveniles and adults, from the time before the offender is charged until the court imposes a sentence. Mediation can be used as a means of diversion from criminal proceedings (in conditional or unconditional form applied by both the prosecutor and the court) or as a source of information relevant to the decision about the sentence (the court's responsibility). It is also possible to refer the offender to mediation during the time that the sentence is served. In this case mediation is used as a means of meeting the sentencing aim (for example, to make amends for the damaged goods, etc.), or to strengthen its rehabilitative purpose. This is however limited to non-custodial sentences. In practice mediation is particularly used at the pre-trial stage as an aspect of the diversionary policy that applies to criminal proceedings.

3.2.1. CONDITIONAL CESSATION OF PROSECUTION (PARAS. 307-308 CCP)

There are two conditions specified by these paragraphs. The first is that the offence must be one where the sentence of imprisonment prescribed by law does not exceed five years. Secondly, the accused must admit the crime and must compensate or agree on compensation with the victim. If some other form of compensation is offered, conditional cessation may still be ordered if that is considered reasonable taking into account the offender's character and history and the circumstances of the case.

If the prosecution is suspended, a probation period of six months to two years is set. Provided that the offender leads a law-abiding life during the probation period, fulfils the obligation to make compensation and complies with any other conditions, the court or the prosecutor who made the original order will review the case. If the defendant's response is considered to be unsatisfactory, the prosecution will be resumed. This can also occur during the probation period.

3.2.2. SETTLEMENT (PARAS. 309-314 CCP)

There are three conditions for the application of these provisions. First, the offence must be one where the sentence of imprisonment prescribed by law does not exceed five years. Secondly, the accused must admit the crime and must agree to compensate the victim for the harm caused or to make reparation, or, in some cases, to make reparation and pay a sum of money to the court for a general welfare fund or a fund for the victims of crime. Finally, the victim and the offender must both agree to the decision to make a settlement. Both the public prosecutor and the court have the power to approve a settlement.

According to the Probation and Mediation Act, other agencies than PMS can provide victim-offender mediation in criminal cases. However, because of their unsystematic funding arrangements, non-governmental organisations other than PMS are only sporadically engaged. The statutory PMS plays a major role.

3.3. IMPLEMENTATION

3.3.1. AGENCIES: ESTABLISHMENT AND STRUCTURE

The PMS is a governmental agency within the Ministry of Justice, and is funded by the government. The service operates at all stages of criminal proceedings and is responsible for both probation and mediation. Its mission is to contribute to the achievement of criminal justice, primarily by offering alternative methods of dealing with offenders subject to criminal proceedings, by enabling effective use of community sanctions and measures and providing an appropriate response to crime. In working towards this goal, the PMS provides supervision and mediation, seeks to resolve conflicts between offenders and victims, and to promote confidence in the rule of law and the criminal justice process. An inseparable part of the mission of the PMS is the prevention of crime and reduction of the risk of re-offending.

The work of the PMS is firmly based upon the principles of restorative justice. Crime is a social event that has a real impact on the community within which it occurs. The solution must therefore recognise the needs and interests of the offender, the victim and the whole community/society. It aims to achieve a well-balanced solution for all the parties involved.

PMS has its headquarters in Prague. It operates centres in each of the 74 court districts. Each centre employs probation and mediation officers and other assistants. The present staff of the service consists of 157 officers, 61 assistants and 12 headquarter staff; in total 230 persons¹³.

The Council of Probation and Mediation is an advisory body to the Ministry of Justice. It works closely with the PMS, and is involved in planning and development. The members of the Council include representatives of the PMS, judges, state prosecutors and other experts from the field of justice and auxiliary professions.

3.3.2. AGENCIES: PRACTICE AND INTERVENTION TYPES

Referrals for mediation come most often from the court (41%) and the public prosecutor (24%). It is also possible for referrals to come from the parties themselves (18%) or the police (12%)¹⁴. In cases where the referral does not come from the prosecutor or the court, PMS is obliged to inform the proper state prosecutor and to request his approval to begin activities.

PMS staff first contacts both parties to invite them for an individual meeting that might be followed, if both parties agree, by the mediation session. Mediation can take the form of direct or indirect negotiation. It is conducted according to the PMS national standards. The outcome (agreement or the

¹³ Data provided by PMS (August 2003).

¹⁴ Statistics of PMS on the newly registered cases in the period 1 January – 30 June 2003.

report) is reported to the prosecutor or the court. They in turn may apply any of the diversionary measures or any of the broad ranges of alternatives to punishment, or possibly treat the mediation outcome as an alternative to imprisonment.

PMS staff may not perform the tasks of both probation and mediation in the same case.

3.3.3. REFERRAL NUMBERS AND OUTCOMES

Figures supplied by PMS show that the number of its newly registered files (that is, cases referred to it for mediation from the total of cases held at the pre-trial stage of criminal proceedings) were:

- in 2001, 2,401 (12.5% of all cases)
- in 2002, 6,323 (21.6% of all cases), and
- 3,228 in the first six months of 2003 (22% of all cases).¹⁵

These cases involve the preparation of pre-trial reports, alternatives to pre-trial custody, and preparing conditions for the application of diversion and mediation. Figures for 2002 and 2003 showed that more than 50% of cases at the pre-trial stage involved work on preparing conditions for conditional cessation of prosecution.¹⁶ In addition to the classic mediation activities, these included cases where PMS arranged for the offender to fulfil the formal conditions for this form of diversion (the agreement of the offender with conditions of conditional cessation of prosecution).

3.4. EVALUATION

Mediation between offenders and victims was first used as an experiment in a pilot project, 'Extra-judicial Alternatives for Delinquent Youth', which ran in the 1990s. As a sentencing alternative, mediation became a theoretical possibility for the court following amendments to the Penal Code in 1994 and 1996, but it was little used. A new system of probation officers located in several courts that was introduced in 1996 held out further diversionary possibility at the trial stage, but here as well there was limited application in practice.

The key development was the approval of the law on Probation and Mediation in the year 2000 (Law No 257/2000). This created the conditions for mediation to assume national significance.

There has not been carried any evaluation out in restorative justice (mediation) in the Czech Republic so far.

¹⁵ Statistics of PMS (2001,2003, June 2003)

¹⁶ Statistics of PMS on the newly registered cases in 2001, 2002 and the period 1 January – 30 June 2003.

3.5. FUTURE DIRECTION

PMS' aim is to strengthen the practical application of restorative principles, including its use at the post sentence stage. More generally, it aims to strengthen the role of direct mediation in all stages of criminal proceedings, and to reinforce victim-oriented probation work. PMS also fosters partnerships with criminal justice agencies and seeks to improve day-to-day cooperation.

The other important legal instrument concerning the operation of the Probation and Mediation Service and the future of restorative justice is the Law No. 218/2003 Sb, on the Responsibility of Youth for Criminal Acts and on Justice in Juvenile Matters (Law on Justice in Juvenile Matters). It came into effect on January 2004. According to this law, the Probation and Mediation Service has a role in the implementation of diversionary, educational and penal measures in dealing with juveniles offenders (age of 15 – 18 years).

The main principles of the act defined in § 3 are:

- giving preference to specific types of proceedings (i.e. diversion from the traditional proceedings), restoring broken social relations and serving as prevention preceding the imposition of criminal measures;
- proceedings should be aimed at ensuring that the victim receives compensation for damages or other forms of satisfaction;
- special professional training has to be provided for the police, state prosecutors, judges and probation officers working with juveniles.¹⁷

The priority is to create the conditions for the systematic operation of non-governmental organisations and other bodies in victim-offender mediation in order to widen the scope of services available to its clients. PMS is also seeking opportunities to pilot victim-offender conferences.

4. ESTONIA¹⁸

4.1. LEGAL BASE

The relevant amendments to the Code of Criminal Procedure on mediation in criminal proceedings are in preparation and will be presented in the Parliament during the autumn of 2005. The Ministry of Justice has planned to implement mediation in March 2006, which is in accordance with the Council Framework Decision 2001/220/JHA of the European Union. The process of mediation and other requirements will be regulated on the secondary level of legislation.

¹⁷ Ourednickova, Stern and Doubravova (2003: 69-102), updated chapter done within the project “Civil Probation University – European standards on the implementation of community sanctions and measures as alternative to the imprisonment”, Regional Fund – IGA in cooperation with SPJ and CEP, January 2005.

¹⁸ Contributor: Aare Kruuser (August 2005).

4.2. SCOPE

The draft provisions for mediation in criminal matters are mainly aimed to ensure a better position for the victim in the criminal procedure. It has also some elements which focus on the resocialisation of the offender. Besides the requirement of restoration, the offender's agreement to participate in social programmes or treatment programmes also might be possible outcomes of mediations. The mediation process will be led by an independent mediator.

Mediation can result in the waiving of criminal prosecution in crimes that are punishable with a maximum of 5 years imprisonment (following the opportunity principle). In more serious crimes the penalty can be decreased. There are no special provisions for minors, except the one stating that minors and juveniles can also be referred to mediation by Juvenile Commissions. The main official, who would decide which cases should be handled by mediation, is the public prosecutor. According to the expectations, the typical cases that will be referred to mediation will primarily be thefts, traffic accidents with injuries, serious public disorder with violence and minor and juvenile criminality.

4.3. IMPLEMENTATION

4.3.1. AGENCIES: ESTABLISHMENT AND STRUCTURE

From the Estonian perspective it is too early to talk about implementation. The implementing structure is currently under consideration between the Ministry of Justice and the Ministry of Social Affairs. One option is to use the Probation Service, which is operating under the Ministry of Justice. Another option is to use the Victim Support Service belonging to the Ministry of Social Affairs. The decision about the way of implementation will be made before September 2005.

The amount of cases referred by the prosecutor in the testing phase is expected to be around 100 cases in 2006, which is not much. However, it would allow adequate models for organising mediation in the future to be worked out. It would also provide opportunities for more specific analysis on how to widen the use of mediation in the Estonian criminal justice system. The process of mediation will follow internationally agreed principles.

4.3.2. AGENCIES: PRACTICE AND INTERVENTION TYPES

Mediation has not been used frequently. However, regarding juveniles it has been regulated under the Juvenile Sanctions Act, which was passed on 28 January 1998 and entered into force on 1 September 1998.¹⁹ According to this Act, mediation is on the list of the available sanctions. The Juvenile Committees decide which cases should be referred to mediation.

¹⁹ For more information, see http://www.legaltext.ee/et/andmebaas/ava.asp?tyyp=SITE_ALL&ptyyp=I&m=000&query=alacalise+m%F5jutusvahendite+seadus&nups.x=8&nups.y=9.

One of the reasons for the under-use of mediation by the Juvenile Committees is the lack of trained personnel in this field. If mediation will have a legislative basis, it might give possibilities for training more professionals and for establishing a formal system that might lead to an increase in the number of referrals.

The number of mediations in juveniles cases conducted according to the Juvenile Sanctions Act in 1999-2003 were:

	1999	%	2000	%	2001	%	2002	%	2003	%
Mediation	15	1	16	1	20	1	9	0,3	20	0,5

In the last few years in Estonia there has been more discussion on all levels on the issue of mediation. Victims of crime have also gained more attention.

In Estonia the first reforms towards restorative justice have been rather victim-oriented by improving the Victim Support system. Nevertheless, there is a clear tendency that mediation will also be included in the development of victim services. Therefore, it may be relevant to give a short overview of the Victim Support Act and victim support services in Estonia.

The Victim Support Act²⁰ regulates the state organisation of victim support and the procedure for the payment of state compensation to victims of crimes. It prescribes the persons who are entitled to victim support services and to state compensation. It also regulates the conditions and the procedure of compensation, including how to apply for it, and the way in which payment is decided and organised.

The victim support service is a public service aiming at helping persons who became victims of negligence, mistreatment, physical or mental or sexual abuse, in coping with their situation. Victim support services provide counselling and assistance to victims in consultation with lawyers and officials of state and local governmental authorities. Staff members of victim support services are required to have higher education and meet the ethical requirements of such work. Victim support volunteers are persons who provide victim support services in their free time without receiving remuneration.

To illustrate the increase of state compensation given to victims since 2001, please see the figures below:

Year	Compensation paid	No. of victims compensated
2001	48 100 EEK – approx. 3 075 EUR	9
2002	273 500 EEK– approx. 17 500 EUR	25
2003	361 600 EEK– approx. 23 000 EUR	30
2004	761 762 EEK– approx. 48 700 EUR	62

²⁰ Passed on 17 December 2003 and entered into force on 1 February 2004 <http://www.legaltext.ee/et/andmebaas/ava.asp?tyyp=SITE_ALL&ptyyp=1&m=000&query=ohvriabi+seadus&nups.x=23&nups.y=11>.

Concerning the services provided by the Victim Support Service in 2005, please see the tables below:

Victim Support Centre	Who has referred the case?			
	Nr of persons of VS	Over the phone	Police	Other officials
East Estonia	298	69	61	38
South Estonia	403	72	91	51
West Estonia	413	92	82	26
North Estonia	425	186	80	19
Total	1539	419	314	134

What was the reason for referral?			
Self-referred to VS	Domestic violence	Violence against children	Elderly people
199	67	38	60
261	121	13	84
305	125	51	52
326	92	23	36
1091	405	125	232

Hearing			
Other	Still in progress	Offender	Victim
133	35	9	8
185	61	20	53
185	96	18	69
274	34	48	133
777	226	95	263

4.4. EVALUATION

It is too early to give an evaluation of the practice, since Estonia is at the initial stage of implementing mediation into its criminal justice system.

5. HUNGARY²¹

Restorative justice and mediation in penal matters currently do not exist in Hungary neither for adult offenders nor for juveniles. However, mediation in civil cases is available and regulated by a specific law²², especially in commercial disputes, in cases within the health care system, in community conflicts, and in family- and child welfare issues.

Concerning mediation in criminal matters, there recently have been some important governmental efforts in different fields that will certainly help the institutionalisation and legislation of restorative justice in the future.

5.1. LEGAL POSSIBILITIES FOR INTRODUCING VICTIM-OFFENDER MEDIATION

The most significant development regarding the possibilities for introducing victim-offender mediation in Hungary was the reform of the Hungarian Probation Service. This reform is part of a broad systemic change that is currently going on in the criminal justice system. In the new legal tendencies, more emphasis is put on crime prevention, on the use of alternative sanctions as well as on creating possibilities for restoring the victim and the community.

Among other improvements, a favourable change was that the Government clearly expressed its intention to include the principles of restorative justice in the future activities of the Probation Service.

5.1.1. CURRENT POSSIBILITIES – INTRODUCTION OF THE “PRE-SENTENCE REPORT”

In order to create possibilities for more individualised sanctions, probation officers can, since 2003²³, intervene in the criminal procedure even before sentencing by preparing a pre-sentence report based on the individual circumstances of the offender.²⁴

The pre-sentence report is supposed to serve the principle of relative proportionality: since courts are obliged to take the social inquiry of these pre-sentence reports into account in their measures, they are able to differentiate among individual offenders who have committed the same kind of criminal act (Gönczöl, 2005: 185).

²¹ Contributor: Borbala Fellegi (September 2005).

²² Law on mediation No. 55/2002.

²³ Decree No. 17/2003 (VI. 24.) IM of the Minister of Justice on the Activities of the Probation Service and the Amendment of Related Decrees. Chapter II.

²⁴ Before this legal change, probation officers could only intervene in the criminal justice procedure after sentencing. Therefore, their experiences with the offender could not influence the judgment at all.

The preparation of this report is obligatory in all juvenile cases if the prosecutor decides to postpone the accusation. Concerning adults, reports are needed if the accusation is postponed and the prosecutor plans to include special behavioural rules in the final decision.²⁵

Postponement of accusation derives its authority from the official exercise of discretion by the public prosecutor in cases that would not exceed imprisonment of three years (for adults) or five years (for juveniles).²⁶ The Act on the Postponement of Prosecution mentions the possibility for the prosecutor to include a special behavioural requirement for symbolic or financial restitution to the victim and/or to the community.²⁷ The decision of the prosecutor on whether to include this special behavioural requirement is largely dependent on the pre-sentence report that might detail the offender's willingness and possibilities for restoring the damage to the victim and/or to the community.

It is also worth mentioning that according to the evaluation of the Office of the Prosecutor General of the Republic of Hungary between 1 July 2003 and 30 September 2004²⁸, special behavioural requirements, including restitution, were more frequently used in prosecutors' practice compared to the years before.

According to the legislation, in the pre-sentence report

“the probation officer shall, in particular

c) indicate whether the defendant is willing to compensate the injured party in part or in full for the damages caused by the criminal act, or to provide any other form of restitution,

d) indicate whether the injured party will grant consent for the proposed restitution,

e) demonstrate whether the defendant is willing and/or able to perform material provisions for some specific purpose, or to perform work in the interest of the community (restitution for the public).”²⁹

To conclude, with the introduction of the pre-sentence report restorative elements have entered the sentencing process. However, it is important to stress that currently victim-offender mediation is not yet a formally defined institution, although prosecutors can include the requirement of restitution in the special behavioural requirements. These enable probation officers only to ‘prepare’ the process of restoration (by asking the victim if he/she grants

²⁵ Postponement of accusation automatically leads to supervision of the offender by the probation service in both adult and juvenile cases. If the offender fulfils the behavioural requirements defined by the prosecutor, keeps regular contact with the probation officer and does not commit further crimes, after a period specified by the prosecutor, the case can be dropped and diverted from the court procedure.

²⁶ Para. 224 in the Criminal Procedure Act (19/1998).

²⁷ Para. 225 in the Criminal Procedure Act (19/1998).

²⁸ National study by the High Prosecution Office (2003-2004) (unpublished document).

²⁹ Decree No. 17/2003 (VI. 24.), Chapter II., Section 6.

consent for the proposed restitution) but they cannot conduct such meeting or refer the case to victim-offender mediation.

5.1.2. FUTURE PLANS IN LEGISLATION – REFORM OF THE CODE OF CRIMINAL PROCEDURE

In order to meet the requirements of the Council Framework Decision 2001/220/JHA, the Ministry of Justice clearly intends to implement penal mediation in legislation by 22 March 2006. The type of cases that can be referred to mediation, the stage of the criminal procedure where mediation can be used and the individuals who will be able to act as mediators will be regulated by the newly reformed Code of Criminal Procedure.

This reform is in progress and runs parallel to the preparation of a new Act on the Support of Crime Victims (see section 5.1.3.). According to the current draft³⁰, referrals to mediation will be possible at the level of the police, the prosecutor and the court. These authorities are obliged to inform the parties about the possibility of mediation. The process of mediation will be fully confidential. Mediations will be carried out – particularly at the initial stage of the implementation – by adequately trained probation officers.

The conditions for referring a case to mediation at the prosecutorial level are:

- the type of the criminal offence should not be punishable with more than five years of imprisonment;
- the suspect pleaded guilty and is willing to make some kind of reparation (material and/or symbolic) towards the victim;
- the voluntary consent of the victim and the offender.

If the prosecutor refers the case to mediation, the criminal procedure is suspended for 6 months.

In less serious crimes, successful restitution to the victim might lead to the unlimited reduction of punishment. In more serious offences the fulfilment of mediated agreements can be taken into account in the judgement.

As can be seen from the current proposal, mediation will be used mainly as a diversionary measure for less serious crimes, at least at the initial stage of the implementation. Consequently, victims of more serious crimes will not have access to mediation, although the extension of its use is not excluded within the framework of future reforms. Nevertheless, the diversionary character of mediation might raise the question of equal access of victims to mediation, since parties, who have suffered more serious harm and who could benefit from the possible restoration even more, would not have the possibility to participate in mediation at this stage. Moreover, the efficacy of this alternative measure will also be questioned, since, according to several researchers, the beneficial effect

³⁰ The text is available on <http://www.im.hu/?mi=1&katid=44&id=75&cikkid=2233>.

of restorative justice (regarding, for example, the reduction of re-offending) is more visible in serious crimes than in less serious cases (Miers *et al.*, 2001).

5.1.3. NEW ACT ON THE SUPPORT OF CRIME VICTIMS

On 20 July 2005 the Government accepted the Bill on the Support of Crime Victims³¹. This document, which will have to be promulgated by January 2006, also emphasises the importance of introducing victim-offender mediation in the criminal justice process as a right of crime victims according to the Council Framework Decision 2001/220/JHA.

5.1.4. NATIONAL STRATEGY FOR COMMUNITY CRIME PREVENTION

A final legal instrument that might contribute to the implementation of restorative justice in Hungary is the recently adopted National Strategy for Community Crime Prevention (2003). The comprehensive strategy presented in this document stresses the importance of setting up the conditions and applying victim-offender mediation within the framework of the probation service. It also emphasises the need for spreading “restorative judicial services, including compensation, small-community conflict management and mediation (p. 79)” and widening the “application of restorative justice tools (restitution, mediation, community conciliation) (p. 74)”.

Furthermore, the strategy addresses several sectors in promoting restorative justice. Firstly, courts and public prosecution services should promote restorative justice methods (restitution, mediation, reparation to the community). Secondly, courts and the probation service should intensively use the instrument of pre-sentence reporting. This instrument has the potential to bring restorative elements into the procedure, and may also serve as significant tools for preventing recidivism. And, finally, the media should be involved in publicising restorative justice (National Strategy for Community Crime Prevention, 2003).

Besides legislative changes, there is a strong conceptual support from the Ministry of Justice regarding the application of restorative justice. According to Katalin Gönczöl, the Ministerial Commissioner for Criminal Policy in the Ministry of Justice, “our effort is to reform the probation service and develop a coherent criminal justice policy based on a philosophy of restorative justice” Gönczöl (2006: 181). She adds that “the possibility of realising the sensitive balance between the rule of law and public order lies in strengthening the elements of restorative justice” (Gönczöl, 2006: 185).

³¹ “Bill on the Support of Crime Victims and the Role of State in Reparation” (“A bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről szóló törvény koncepciója”), 2004 <<http://www.bunmegelozes.hu/?pid=88>>.

5.2. RESTORATIVE JUSTICE IN PRACTICE

5.2.1. TRAINING

As can be seen from the overview above, the main actors in conducting victim-offender mediation in Hungary will be the probation officers. Although some of them have participated in specific trainings, seminars and conferences on mediation and on Real Justice, their nationwide and consistent training concept has still not been completely outlined, mainly due to the lack of financial resources. As a consequence, their preparation for practicing mediation is a rather fragmented activity at the moment: it is primarily based on the individual willingness of some probation officers whose training is covered by financial sources of temporary projects operated by the Service. However, it has to be mentioned that the Probation Service has expressed intentions towards the organisation of probation officers' preparation for providing mediation. As a result, the standardised training of sixty officers has started in September 2005.

Therefore, one of the main issues at the moment is to continue the establishment of the systemic and nationwide training of probation officers. It is based on two main conditions: firstly, stable financial conditions have to be guaranteed, i.e. training in mediation has to be included in the yearly budget of the Service. Secondly, it is also essential that their training be based on a consistent and standardised methodological system (preferably done by the same set of trainers, at least in the beginning of the process), in order to be able to ensure that victim-offender mediation by probation officers means more or less the same service in every part of the country.

Besides these top-down processes, the 'bottom-up promotion' of restorative justice also has to be mentioned, since it has a history in the Hungarian criminological thinking already from the 1990s³². Mediation and restorative justice have initially been recognised by a few academics in Hungary.

In October 1999, Paul McCold and Ted Wachtel from Pennsylvania, United States, ran the first training course and two Hungarian professionals (a lawyer and a psychologist) spent months at the Community Service Foundation schools in Bethlehem, Pennsylvania to learn and practice the method of Real Justice. In 2003 the Community Service Foundation (CSF) of Hungary was established by grants from the Community Service Foundation (CSF), the International Institute for Restorative Practices (IIRP) from the United States, and supported later by the Hungarian Ministry of Children, Youth and Sports, and the Ministries of Justice and of Social and Family Affairs. "CSF has established an experimental day treatment program based on restorative practices for both high risk and delinquent youth who are living either in their own homes or in nearby foster care or other institutions. [...] The program

³² For example Vigh, J. (1998), "Restorative Justice", (A kárhelyreállító (restoratív) igazságszolgáltatás), *Magyar Jog (Hungarian Law)*, Vol. 6.

seeks to achieve two empirical goals: to reduce the number of high-risk youth from committing criminal offences and reduce the number of delinquent youth from re-offending (Negrea, 2004: 5)³³.

The Family Child Youth Association also started an experimental project using restorative practices in schools in 2001. Thanks to this project, a high-school called “Zöld Kakas” (“Green Rooster”) – which was the partner organisation in this pilot programme – has been using the conferencing method in the everyday life of the school and has trained several peer-facilitators since then.³⁴ In addition, the Association provides Real Justice trainings for legal practitioners, social workers, teachers and other interested professionals.

Several law faculties have introduced a special course on mediation and restorative practices. In 2001 the Police Academy in Budapest also integrated the subject of restorative justice into its curriculum.

5.2.2. PRACTICE

Currently more than 200 active and trained mediators work in the field of labour, family, health, education and community conflicts. Furthermore, several professionals, who were trained in Real Justice, use this method in their activities in the field of education and social services. In 2000, a National Mediation Association was formed as an umbrella organisation. It intends to stimulate the cooperation of organisations working in the field of mediation.

There are some programmes offering family and divorce mediation since the legislation on mediation has come into operation in 2002. At least in principle those willing to divorce should be asked whether they have tried mediation, but most of the lawyers and judges have no idea about the new option and its possible forms (Herczog, 2002: 10).

Since 2004, according to the “child welfare mediation procedure”, the Public Guardianship Authority has the right to use mediation if the parties are unable to reach an agreement on date, frequency or type of keeping relations. This procedure focuses only on the relations between children and parents (grandparents and other entitled persons) (Herczog, 2002: 12). Within the child-welfare system, some foundations are offering mediation in custody-related issues as well. This voluntary and free service is primarily offered in cases in which one of the parents/grandparents have not seen the child for a long period of time: the custodian parent is obliged to let the child meet the other family members and can be fined for not doing so (Herczog, 2002: 10).

³³For more details, see the programme description on page 127-128 and the presentation by Vidia Negrea (2004) on <http://www.euforumrj.org/conferences.Budapest.htm>.

³⁴ For more details see the presentation of Borbala Fellegi on <http://iirp.org/Pages/nl03/nl03sessions.html#using>.

5.2.3. RESEARCH

As part of a three year-long research project funded by the National Research Fund (OTKA), the National Institute of Criminology, with the help of external experts, organised workshops for legal professionals in order to gain a deeper knowledge of their opinion, experiences and needs concerning the current sentencing system and their views on the possibilities for including restorative justice in it. Within the framework of this project, an empirical research project based on structured interviews with offenders about their attitudes towards restorative justice was also conducted.³⁵ This will be followed by an empirical research based on surveys about the attitudes and expectations of the Hungarian population towards punishment and the criminal justice system. The study will specifically focus on gaining a deeper insight into the public's general punitiveness and its opinion about the application of restorative measures in criminal cases.³⁶

In addition, more and more PhD researchers have started projects on investigating the legal, institutional and sociological aspects of implementing restorative justice. These projects include qualitative studies as well, for example about the attitudes of relevant actors, such as the legal professionals, victims or offenders towards the restorative approach.

Furthermore, Hungary is a member of the COST Action A21 focusing on the "Developments of Restorative Justice in Europe".³⁷ Within the framework of this Action, Hungarian members are responsible for a research mapping the training modules of legal practitioners in the field of restorative justice in the European countries.

5.3. FUTURE TENDENCIES

Agreements of international communities have the potential to significantly contribute to the effective reform of the Hungarian criminal justice and social protection system. Hungary became a full member of the European Union in 2004, and also has to adopt the requirements of the Council of Europe as well as of several UN declarations, such as the Beijing Rules, Riyadh Guidelines, UN Rules regarding the support of juvenile delinquents in confinement, Convention on the Right of Children, etc.

However, there is still a significant discrepancy between the provisions of these agreements and the Hungarian legal practice. The challenge to develop sensitivity to human dignity and embrace the basic liberties of the individual will require the adoption of special laws and procedures, the establishment of

³⁵ Barabás, 2004: 155-175.

³⁶ For more information, please see http://www.okri.hu/?lang=gb&menu=hungarian_project.

³⁷ For more information, please see <http://www.euforumj.org/projects.COST.htm>.

special authorities and institutions. In addition, extra-judicial problem-management should also be promoted by the authorities (Herczog, 2002: 11).

Concerning the Council Framework Decision 2001/220/JHA, due to the close deadline, there is a danger that the obligation towards the European Union on introducing mediation in criminal cases before 22 March 2006 will lead to the establishment of a too-quickly designed legal and institutional system instead of the construction of a consistent and efficient organisational framework that could efficiently introduce and develop the service of mediation. However, there is still hope that the Government will recognise the need for basic research, systemic training and a thorough consultation process before it introduces new legal institutions, such as mediation in criminal matters. Previous experiences have clearly showed that it is much more difficult to significantly change the concept of a law once it is promulgated. On the other hand, a well-designed legal reform can be essential in opening the doors to new innovative and effective institutions.

Moreover, it is essential that the media – having a significant impact on shaping public opinion – shift from the biased coverage of criminal offences that concentrates primarily on the scandalous aspects of crimes (Herczog, 2002: 11) and could inform the general public about the more complex issues behind the phenomena of crime.

As Herczog concludes (2002: 11-12), “in the present system child welfare services are adopted for delinquent children’s cases and the sanctions focus on education, reparation (e.g. reformatory) and insurance of children’s needs. Based on the regulations (to be precise, on the lack of regulation) within the Law on the Protection of Children the easiest way to introduce victim-offender mediation is in the field of child delinquency, because this method of mediation can be adopted in this system without any conceptual amendment”.

To conclude, due to the top-down and bottom-up activities as well as to the international standards, restorative justice has become an important issue on the agenda of the Hungarian justice system. The principles of restorative justice can well fit into the overall concepts of the current reforms. Interdisciplinary and multi-agency cooperation in the process of designing new systems as well as broad level consultation before making significant amendments in the criminal justice system might have a large potential in contributing to the efficiency of reforms. But it should not be forgotten: once this dialogue has started, it also has to be maintained. Since it is more a cultural than a legal or institutional issue, it might be one of the main challenges for the future.

6. MOLDOVA³⁸

In Moldova, as a former Soviet state still having a communist government, the so-called 'Gulag Mentality' is still recognisable. It results in the high punitiveness of the general public and the justice system and the strong support of tough responses to crime, such as incarceration.

6.1. LEGAL BASE

The new Code of Criminal Procedure (in effect since 12 June 2003) allows for conciliation between parties through mediation (Article 276). A detailed draft law on mediation in criminal matters has already received favourable expertise from the Council of Europe (June 2004) and is being analysed by the Moldovan Parliament.

According to this draft, in certain cases mediation would be available as a form of diversion. In the old Penal Code, there were only some types of cases (rape, theft between partners, etc.) in which parties could make a settlement. Following the settlement, the procedure was closed.

6.2. SCOPE

The legal provisions provide for the possibility for the parties to reach an agreement or to reconcile with the help of a mediator in cases of minor or less serious offences (punishable by less than 5 years of imprisonment). The prosecutor, the judge or the parties themselves can refer the case to mediation, though the mediation will not suspend the criminal trial. Mediation can be initiated in all stages of the criminal procedure, but no later than when the judge or the panel of judges enters into the deliberation room. The settlement agreement has to be transmitted to the competent person who referred the case to mediation, as a result of which the criminal file is closed.

6.3. IMPLEMENTATION

At the moment there is no restorative justice practice in Moldova, but preparations for a pilot project are under way.

There are experiments to be realised by the Institute for Penal Reform, a national non-governmental organisation, in partnership with the Ministry of Justice and the Prosecutor's Office, with financial and technical support from international donor organisations.

The recruitment and training of mediators started in June 2004. These are persons that studied law, psychology or social assistance, and who have completed a special training programme. They will mainly act as volunteers.

³⁸ Contributor: Sorin Hanganu (July 2004).

Due to successful exchange projects, the experiences and training systems of Ukraine, Poland and the Czech Republic are well used for constructing the Moldovan training system.

In relation to other interventions it can be mentioned that there have been activities in order to raise public awareness via TV and radio shows, published brochures and the internet. The Institute has also organised some workshops and conferences.

The curriculum of the training for mediators has been drafted and a draft ethical code for mediators has been elaborated. A training course for mediators has also started. Its curriculum is available in English.

The activities run by the Institute for Penal Reform are directed towards lobbying for the implementation of mediation and training of mediators, public awareness, aiming to prepare the field for good and effective mediation programmes.

6.4. FUTURE DIRECTION

There is a plan for developing a network of community justice centres. In 2005 the Institute plans to start to provide mediation services. Pilot programmes in the city of Chisinau (the capital) and in the town of Ungheni will also be started in 2005. These pilot programmes and their results will be used as a practical basis for the national implementation of mediation.

7. POLAND³⁹

7.1. LEGAL BASE

Articles 53(3), 60(2.1) and 66(3) of the Criminal Code and Article 23a of the Code of Criminal Procedure (CCP) specifically authorise the results of mediation in the case of adult offenders to be taken into account both pre-trial and pre-sentence.⁴⁰ These are very general in nature, allowing for referral to victim-offender mediation under certain circumstances. The results are to be taken into account when deciding on the conditional discontinuance of the proceedings, on the penalty or when other penal measures are taken (while deciding on applying extraordinary mitigation of the penalty (respectively sections 53§3, 60§2.1 and 66§3 c.c.).

According to section 23a of the CCP, the court, and in preparatory proceedings a state prosecutor, may, on his own initiative or with the consent of the parties,

³⁹ Contributor: Beata Czarnecka-Dzialuk (August 2003), reprinted from the publication "Mapping Restorative Justice" (Miers and Willemsens, 2004: 105-113.) with the permission of the publisher. Section 7.3. is updated by Magdalena Grudziecka (October 2005).

⁴⁰ Journal of Laws, no.88, item 535-555; the Code of Criminal Procedure has been amended with the Law of 10 January 2003 – Journal of Laws, no.17, item 155.

refer the case to an authorised institution or person in order to conduct a mediation procedure between the suspect and the injured party (§1). Paragraph 2 states that the procedure should not last longer than a month; its duration does not count towards the length of time set for the preparatory proceedings.

Some matters were left for the Minister of Justice to regulate. By virtue of CCP section 23a para. 5, the regulation of 13 June 2003 has replaced that of 14 August 1998.⁴¹ Its scope is now wider. It deals with the conditions to be met by institutions and persons authorised to conduct mediation, the methods of appointing and removing them, the scope of and terms under which they are given access to the case files, and the manner and the course of the mediation procedure.

The amendment of the Law on the Treatment of Juveniles of 26 October 1982, adopted by Parliament on 15 September 2000, provides that the family court may refer the case to be mediated by an organisation or an authorised person.⁴² The court may make the referral at any stage of the proceedings, acting on the initiative of or the agreement of the parties. The result of the mediation is to be taken into consideration in passing the sentence (section 3a §1 and 2). Paragraph 3 of section 3a specifies the matters to be regulated by the Minister of Justice; these have been dealt with in the Regulation of 18 May 2001. It also deals with the rules and procedures for conducting mediation and the matter of training, including the standards for mediators' training.

7.2. SCOPE

7.2.1. JUVENILES

The philosophy of the Juvenile Justice Act has historically been offender oriented. While accommodating the public interest, the Law on Juvenile Responsibility (1982) provides that criminal justice principles should be guided primarily in the best interest of the young person. Educational objectives should be given priority, and educational and corrective measures individualised. Article 65 of the Juvenile Justice Act provides that the objective of these measures is to encourage juveniles to accept their social and civic responsibilities. One of the corrective measures imposes an obligation on the young offender to apologise to the victim and repair any damage (Article 6(2)).

Only a family judge may make mediation referrals. As the Juvenile Justice Act imposes no conditions on when mediation may take place, referrals are typically made during the preliminary proceedings in order to agree on how the offender may make amends, such agreement being presented to the court at the sentencing stage. The agreement may justify lifting or amending the educational measure that would otherwise have been imposed, permitting conditional release from or suspension of a custodial sentence. Fulfilment of the agreement

⁴¹ Journal of Laws, no.108, item 1020.

⁴² Journal of Laws, no.91, item 1010.

may also become a condition of probation.

No formal limits on the offences amenable to mediation were proposed for the experimental programmes for juveniles, nor do they exist in the current legal provisions. Guidelines formulated subsequently provide that the case should be relatively straightforward, the injury or harm capable of being redressed by the offender, the victim (natural or legal persons) identified, and responsibility for the offence uncontroversial.

7.2.2. ADULTS

a) The prosecutor's discretion

Article 23a of the Code of Criminal Procedure provides that the state prosecutor may, at the parties' request, or on his own initiative and with their consent, refer a case to mediation. The prosecutor is required to take its outcome into account when making recommendations to the court. Where successful, these may have either a diversionary or a mitigating effect.

The prosecutor may, firstly, recommend discontinuance where, as is provided by Article 66(3) of the Criminal Code, "the injured party has been reconciled with the perpetrator, the perpetrator has redressed the damage or the injured party and the perpetrator have agreed on the method of redressing the damage".

Mitigation is permitted by Article 53(3) of the Criminal Code, which provides that the court "shall also take into consideration the positive results of the mediation between the injured person and the perpetrator, or the settlement reached by them in the proceedings before the state prosecutor or the court". The court may then either conditionally suspend the proceedings (Article 336) or, if the offender agrees, pass sentence without trying the case (Article 335). The court may monitor compliance with any obligation imposed in pursuance of these articles.

It should be noted, further, that reconciliation, or completed or planned reparation, may mitigate the sentence even in a case where the lowest penalty provided for the offence would be incommensurate with its seriousness ('extraordinary mitigation').

There is uncertainty about the types of offences that are amenable to mediation. Article 66 provides that discontinuance can only apply to offences that do not attract a sentence in excess of five years' imprisonment. However, Article 60(2), which authorises 'extraordinary mitigation' clearly contemplates a mediated settlement having an impact on an offence attracting a higher sentence. Dzialuk and Wojcik (2000: 314) conclude that there are no formal limits, even if a special case needs to be made out under Article 60(2).

Lastly, while not specifically authorised, the permissive nature of the Penal Executory Code has enabled the Prison Service to introduce mediation during

the term of an adult offender's custodial sentence. The interest in the use of mediation in prison was raised after nine mediations were conducted in penal institutions where the offenders were under pre-trial arrest. The law of 24 July 2003 has added sec.162 §1 to the Penal Executory Law (Article 1, p. 109), providing that when deciding on conditional release, the court must take the result of mediation into account.

b) The court's residual jurisdiction

Article 489 of the Code of Criminal Procedure authorises the judge, in a case where the prosecution is privately instigated, to order, with the parties' consent, that the case be heard by way of mediation. The procedures set out in Article 23a then apply.

7.3. IMPLEMENTATION

In 1994-1995 a Committee prepared an experimental programme of mediation between juvenile offenders and victims. When creating the programme the Committee took into account the basic principles and purposes of the juvenile law, the Polish traditions and the international standards, such as the principles of voluntariness and confidentiality. The requirements of professional skills, neutrality and impartiality of the mediator were also emphasized as basic standards.

The experiment was implemented (with the consent of the Ministry of Justice) in 1995-1999 in 8 family courts. Its results showed that mediation is highly effective: over 90% of the agreements reached were later implemented by the perpetrator. There were relatively few cases in which mediation was either not initiated at all (usually parents of juvenile victims did not give their consent), or the compensation was not fulfilled by the perpetrator.

In September 2004 the Polish Center for Mediation (PCM), with the Ministry of Justice, conducted a pilot programme "Mediation – a form of restorative justice" in three small cities: Bilgoraj, Lesk and Ursynów. The main objectives of the programme were:

- the integration of the offender into the community;
- the protection of the community;
- solving the conflict through the active involvement of both parties;
- ensuring more expeditious and real compensation for victims;
- reducing the fear of crime;
- allowing the parties to express their emotions;
- reducing re-offending;
- working towards reconciliation, social reintegration, and the reduction of judicial costs.

In the first programme mediators worked only with victims and offenders. In the second one mediators ran restorative conferences. These involved victims,

offenders, family members, representatives of local communities, local authorities, schools and other institutions.

From 1 December 2005, PCM started a new programme: “Back home again – application of restorative justice in social reintegration of juvenile offenders”. The project’s target group is juvenile offenders who are in reformatory institutions, educational centres or supervised by probation officers. This project aims to introduce restorative justice conferencing in three cities in Poland. It focuses on two elements: responsabilising juveniles and actively involving local communities in the process. In long terms it is hoped that the project will lead to the decrease of criminal acts committed by juvenile offenders.

The major operational goals are:

- spreading the restorative justice idea by preparing informational materials and distributing them in institutions helping and taking care of children and juveniles;
- convincing professionals working with juvenile offenders about the applicability and effectiveness of restorative justice ;
- preparing and training professionals to run restorative justice conferences.

Within the framework of the project, workshops for the following target groups will be organised:

1. professionals working with juveniles (staff members of reformatories, educational institutions, probation officers, representatives of the police, local and public government, local youth NGOs)
The workshop’s objective is to present the restorative justice conferencing method to the participants, prepare them to take part in such sessions and discuss the applicability of this method in their work with juveniles.
2. mediators who will become future coordinators of restorative justice conferences
The workshop is directed to experienced mediators, recruited locally. This way of selection intends to ensure the continuation and promotion of restorative justice conferencing all over the country, even after the project. Additional recruitment criteria will include experience in working with youth and in mediation between juvenile offenders and victims. The workshop’s main objective is to teach mediators how to run restorative justice conferences. Trained coordinators will carry out three restorative justice sessions in each town. The young people will be chosen by mediators and the participants of the first workshop.

The summary of the project will be published in a brochure. It will include guidelines, the structure of the course and the final effects of the project.

Conferences will intend to help juveniles to understand the mistakes they made and take responsibility for their acts. The preparation of action plans will hopefully be useful in protecting them from recommitting criminal offences. Therefore, it might be beneficial in decreasing the rate of juvenile offences. Restorative justice sessions might also have a positive impact on the family and on the local society. During the conferences, other members of the local society also try to understand the problems of the juvenile, and they can work on solutions and preventive measures together. Conferences have the potential to integrate participants in their communities, since it intends to help people to understand each other more and to work together on possible solutions.

7.3.1. AGENCIES: ESTABLISHMENT AND STRUCTURE

The Ministry of Justice's regulations provide that mediation services may only be provided by 'approved bodies'; it are the presidents of the provincial courts who register them. Mediators may operate independently or as employees of an approved body. In either case, they must meet specified conditions as to age (26 and above), citizenship (Polish), probity (no criminal record) and experiential background (social work, probation and the like). Their independence is entrenched in Articles 40-42 of the Code of Criminal Procedure, which provides that no one who has any current professional or occupational relationship with the criminal justice system may be employed as a mediator. Neither can they act where they have any relationship with the parties.

Approved bodies (and their mediators), as well as individual mediators, must be authorised by and registered with the Provincial Court. The total number of approved mediators is 630. The majority are independent mediators, but there are no figures on how many are active. The Regulations do not specify that mediators must be trained before approval, but over half of them are. Training programmes are chiefly run by the now independent NGO the Polish Centre for Mediation (PCM). PCM is the largest organisation running mediation centres. It runs 15 centres operating in different parts of the country. Their organisational structure varies according to their sponsor. These include local self-government (in Skarżysko-Kamienna), NGOs, the Church (Wrocław, Katowice) and centres of social assistance (Żory). The organisation also depends on how many mediators work in the centre. There are seven with one or two mediators, three with a few more and five with more than 10 mediators.

All of the 15 PCM centres deal with both adult and juvenile offenders. The centres are financed variously by local government, NGOs or charitable foundations. Some are located in government offices. Their organisation is informal. In the case of the juvenile programmes, there is some co-ordination by the centre supervisor, but mediators are responsible for their own cases.

There are also three mediation services led by another NGO: DOM (Lower Silesian Mediation Centre). The 64 Family Consultation and Diagnostic Centres are also officially authorised to conduct mediation in juvenile cases. The

foundation *Partners-Polska* also heads some mediation services but to date they have not mediated in any penal cases.

Although the Treasury pays them a fixed fee per case (about 40 Euro, which might be considered much too low), mediators are, in essence, volunteers. They tend to be retired or part-time employed, or otherwise have time to give. The majority is female and employed in the education sector.

7.3.2. AGENCIES: PRACTICE AND INTERVENTION TYPES

The practice of mediation, though undefined in the legislation, is governed to a limited extent by Regulations. They are, however, incomplete on such matters as confidentiality, mediators' access to files and the voluntary nature of the parties' engagement. Some matters are unregulated. For example, there are no rules on legal representation, even though some mediation services permit lawyers to speak for their clients.

The principal guidance is contained in materials prepared and published by the Mediation Committee, often as part of its training programme.

With an almost negligible exception (40 cases in four years referred by the prosecutor), referrals are made by the court. There is no self-referral. In the case of juvenile offenders, once the mediation centre has received a referral from the family judge and has accepted it, a mediator contacts the offender (and his or her parents) to explain the procedure. If the offender agrees, the victim is contacted. There will be separate meetings between the mediator and the parties to agree expectations by way of preparation for the direct mediation. Indirect mediation is rare.

The primary outcomes sought are reparation and apology. The time scale for the completion of the reparation is agreed in writing with the offender. The mediator monitors compliance. Being unenforceable of itself, the victim will have to obtain a civil judgement if this becomes an issue. In practice offenders seldom default.

7.3.3. REFERRAL NUMBERS AND OUTCOMES

a) Quantity and quality of referrals

There is no comprehensive or accurate system for collecting data about mediation. The numbers returned by the courts for the judicial statistics are a bit lower than the numbers returned by the judges to the Ministry of Justice. According to the data collected by the Ministry, the number of adult offender cases that were referred to mediation were, in the years 1999-2001, respectively 395, 850 and 690. The rate of the agreements is about 60%. Most frequent is the financial restitution to the victim (about 70%), apology (about 30%), and community work (over 10%).

In 1998, 16 adults were referred to mediation; in the first six months of 1999, 130. As far as the juveniles are concerned, there were about 200 mediations

during the experimental period (the number of juveniles involved is about 1/3 higher than for adult offenders). In 1999, 50 cases were referred to mediation and in 37 of them an agreement was reached; in 2000, 63 cases were referred to mediation with an agreement in 49 of them. Although at the time of the experiment the family court, and just after it was formally finished, the judges, showed an interest in mediation. Following the introduction of mediation into the juvenile law, the number of mediations has been low. Between June 2001 and the date of writing, there have been more than 150 mediations. Unfortunately, the mediated cases are not being properly registered. The Department of Statistics of the Ministry of Justice is endeavouring to collect this data. In 2001, 21 cases were referred; in 2002, 42 and only 29 were completed (with agreements reached in 19 of them). In the first three months of 2003, there have been 92 mediations; 59 have been completed, 47 with positive and 13 with negative results. Nearly half of the mediations conducted in 2000 (30) and 2001 (21) took place within the family diagnostic and consultation centres.

b) Referral outcomes

The evaluation of the experimental programme of mediation in juvenile cases has shown that of the total of 145 juveniles who took part in mediation, 137 (92.5%) negotiated and accepted the terms of compensation. 130 or 94.9% of those who had signed the agreement, completed their obligations. There were seven who did not. In one-third of the cases, the agreement consisted of apologies to the victim; 57.8% made financial reparation and 10% performed various services for the benefit of their victims.

The family court's most frequent decision was to discontinue the case (87.9%). In respect of the minority (6.3%) who continued, the following educational measures were applied: admonition, parental supervision, supervision by the probation officer and in one case placement in a corrective institution.

As to re-offending, 14.4% of offenders stood trial in the follow-up period; this was between one and 2.5 years after the completion of the mediation process. This proportion is not significant compared to the results of other studies on traditional measures that were carried out earlier. The repeat offenders were more likely to come from disturbed families and evince social dysfunction.

The majority of the offenders had committed offences against property (66.5%) and 31% against persons. Most of them were not grave acts and some could be classified as 'very petty' cases which would probably have been dropped by the judge anyway. However, there were also felonies which were very serious in terms of degree, their voluntary nature, violence and influence of alcohol. The number of violent offenders among the juveniles referred to mediation was significantly higher than among the total population of juvenile offenders. Young females were distinctly more likely to perpetrate acts against persons, such as minor bodily injury, the violation of bodily inviolability, participation in

a fight or beating or threats. The girls were also more likely to show indifference towards the victims than the boys. In approximately one-fifth of the cases, the negative factors (showing symptoms of social dysfunction, use of alcohol or intoxicants, aggressive behaviour, dropping out of school, pathological families) coincided, which may impede the juveniles' adaptation to society and may be conducive to their return to criminality. The research did not allow to support the contention that the acquaintance between the offender and the victim should bear on the result of mediation.

Among victims, the number of males was three times higher than that of females, and in twelve cases an institution was victimised. The victims of male juveniles were more frequently males (of whom approximately 50% were minors), while those of female juveniles were females who were usually their peers.

The feedback from the mediators provided insight into the mediation process. They have emphasised its emotive aspect. The intensity of emotions was similar for both parties (in about 60% of cases it was average; in one-fifth there was a high degree of emotional intensity and in the rest of cases there were no clear emotions). The types of emotions differed: the most frequent response of the victims was anger (25%), anxiety (20%), fear of the offender (10%), and a deep sense of harm (13.5%). The offenders experienced anxiety (33%), fear and concern about the decision of the family court (22%), shame (25.5%) and anger (only 2.6%). As a rule, the emotional intensity subsided towards the end of the face-to-face meeting.

Many victims have reported that it was important for the offender to apologise to them and to show regret. Thus the moral redress was not less important than the compensation for material damage. Also important was an opportunity to tell the offender how harmful his act was. Some victims explained that their involvement in mediation was motivated by their desire to exert an educative influence on the offender and to help him. After mediation 23% of the victims changed their attitude towards the offenders and came to believe they were not as bad as they originally thought. Examining whether parties had shown hostility, aggressiveness or (verbal) domination over the other party resulted in the statement that the vast majority of the offenders (92.7%) and of the victims (72.4%) did not show such behaviour. Hostility and aggressiveness was shown by 4% of the offenders and 9% of the victims, and an attempt to dominate the other party was made by 3.2% of offenders and by as much as 18.7% of victims – more likely the adult victims.

The attitude of parents who participated in mediation and their cooperation with mediation were in most cases appropriate. However, some of them were inclined to whitewash the behaviour of their children or to dominate them, not allowing them to play an autonomous role in mediation.

Fifty percent of victims stated that the experience of mediation had changed

their opinion of criminality and the family court. 90% of them expressed their satisfaction with the participation in mediation as well as with the performance of the agreement. Similarly the juvenile offenders changed their attitudes towards the victims (65%) and no longer thought that all the victim wanted was to take revenge. They also understood that their act had caused harm.

7.4. EVALUATION

7.4.1. CONTEXT

Of recent origin, the introduction of victim-offender mediation in Poland was the product of two separate sets of interests. While of separate origin, these interests have worked together and the initiatives were the result of their joint action.

The first was associated with Patronat, an NGO that works with prisoners and their families, the second with concerns raised by academics and researchers about the adequacy of the State's response to juvenile crime, in particular with its impact on the victim. Following a visit to some German mediation centres, a meeting organised by Patronat in 1994 resulted in the establishment of a mediation initiative to be targeted at young offenders. Patronat's Mediation Committee is now an independent NGO: the Polish Centre for Mediation. It comprises a wide range of central and local government representatives, researchers, criminal justice practitioners and employees of the Prison Service.

With the Ministry of Justice's approval, the first five programmes commenced in 1995. With limited resources and changes in criminal justice personnel, their implementation was patchy. Their extension to adult offenders also required the enactment of amendments to the Criminal Code. They came into effect in September 1998.

Restorative justice has recently been acknowledged on a broader professional level in Poland by two important steps: the year 2005 was announced to be the "Year of Restorative Justice" by the Ministry of Justice and in October 2005 the Social Board for Alternative Methods of Dispute Resolution was created under the coordination of the Ministry of Justice.

7.4.2. CURRENT EVALUATION

There has been limited use of the mediation possibilities permitted by the legislative initiatives described above. In part this is attributable to a lack of interest on the part of criminal justice professionals, and in part to their reluctance to allow cases to assume timetables over which they have little control.

Juvenile mediation has been the subject of a number of evaluations. For these purposes, 'success' was conceived as the completion of the agreement. On that measure they were successful. Victims expressed satisfaction about the return of their possessions, or about being compensated in some tangible way; offenders

were satisfied that participation meant that they were not subject to the usual sentence for their offence. Some victims were reluctant to participate; the parents of young victims were concerned about secondary victimisation during the process.

The Ministry of Justice has commissioned research on adult mediation that has yet to be completed. This will measure 'success' at least in terms of the reaching of agreements and the completion of the obligations.

7.5. FUTURE DIRECTION

Recent increases in offending coupled with low clear-up rates are not conducive to extensions in diversionary procedures that a number of influential politicians see as being soft on crime.

8. ROMANIA⁴³

8.1. LEGAL BASE

The Romanian legal system still operates on a basically retributive philosophy. Restorative justice therefore only attracts peripheral attention from the state agencies.

In the case of minor or less serious offences, legal provisions provide the possibility for the involved parties to reach an agreement and to reconcile with the help of a mediator. The prosecutor, the judge or the parties themselves can refer the case to mediation.

The Romanian legislation contains particular stipulations concerning the organisation and exertion of the attorney's activity in mediation. However, despite the existence of some legal basis, there is no explicit and direct provision that would effectively stimulate the implementation of mediation in Romania.

Mediation in penal matters is an option stipulated by a recently drafted law that was sent for the first reading to the Romanian Parliament. It is expected that by the end of the year 2005 a mediation law will be promulgated. A law on mediation would provide judicial control and would assure the representation of the legal principles during the mediation process as well as in its outcomes. Moreover, it would give a legal ground for public prosecutors and other professionals to apply mediation in their practice.

It is clear that mediation is considered as a new profession in Romania and mediators will need to acquire a specialised knowledge in order to practice mediation.

⁴³ Contributor: Mihaela Tomita (August 2005).

8.2. SCOPE

In the last years, deficiencies regarding community safety have become more and more evident in the context of local problems. In order to solve the social and economic problems at the community level as well as to encourage local authorities to take action in this direction, the Romanian Government created the foundations for implementing a so-called “working together” model. This model aims to realise multi-agency cooperation between the state administration and the civil society.

Meanwhile, the Romanian Government intends to harmonise the Romanian legislation with the relevant standards of the European Union by emphasising the alternative methods of conflict resolution in ensuring community safety.

8.3. IMPLEMENTATION

Developments in the field of alternative methods in solving conflicts are currently essential challenges in Romania. This is the very first time after many years that the civil society might have larger possibilities to be actively involved in the judicial system. The present judicial environment discourages parties of disputes to reach fast reconciliation. Therefore, a more effective method such as mediation is largely needed in the society.

In Romania, the first restorative justice projects have been initiated by some NGOs since 2001. Restorative justice projects are designed firstly, to establish partnerships with agencies of the criminal justice system; secondly, to develop a system of rules and procedures through which cases are outsourced for mediation; thirdly, to train victim-offender mediators; and finally, to increase the public’s awareness of the theory and practice of restorative justice by the media, websites and also by organising workshops for representatives of the legal system. Restorative justice is actively on the agenda of academic institutions and of NGOs. Some universities are already engaged in the dissemination of restorative justice initiatives. Besides all these favourable factors it has to be stressed that for consistent implementation the Government’s commitment is essential.

The practice of victim-offender mediation in Romania has been piloted in Bucharest and Craiova. The two experimental centres have been set up in 2002 based on a partnership between the Department of Reintegration of the Romanian Ministry of Justice, the Centre for Legal Resources and the Family and Child Care Foundation. Experts of the Department for International Development (DFID) from the UK have provided the technical assistance for the project. According to the aims and objectives of the victim-offender mediation experiment, only those types of crimes have been selected which were based on the criminal complaint of the victim (battering, assault and other crimes against the person, insult etc). Voluntary consent of both parties was a condition for mediation.

Moreover, the project focused on raising the public's awareness about mediation, on increasing the mediation capacity as well as on developing supporting legislation. The project had two general purposes: firstly, to establish a network of conflict-resolution centres in Romania where teams of mediators work on resolving family and community conflicts; secondly, to strengthen these mediation services by building the local capacity of NGOs. A prerequisite for reaching the latter goal was to raise the public's awareness of the need for mediation services, and to prepare the new mediation law.

Although some NGOs have already started to provide mediation services, they could not be effective because of the lack of a legislative framework and regulation that could have encouraged the use of this type of alternative conflict resolution services. Nevertheless, the creation of a network of community mediation centres is necessary to resolve community disputes and standardise the different approaches. Within this procedure another difficulty is that while some NGOs attempt to serve a community mediation function, many have differing approaches according to the type of conflicts and disputes they address.

The Pilot Mediation Centre in Craiova started its activity in 2003 after the Court of Justice and the High Court of Justice in County Dolj had referred the first cases. The staff of the Centre consists of volunteer mediators with different professional backgrounds, such as attorneys, teachers, engineers, jurists, etc. They were trained by mediators from Washington DC (USA). In 2005 the Mediation Centres in Craiova and in Iasi have organised professional programmes for mediators and for members of the Romanian Bar Association. By August 2005, 240 mediators were trained in 6 groups.

Mediation is recommended either before or during the court procedure. The mediation session involves one or more discussions between the directly involved parties, their attorneys and the mediator. The mediation procedure is not binding. The mediator does not have power to impose any decision or to force the parties to accept an agreement. The mediator's role is to assist the parties in their discussion, to identify the obstacles of the settlement and to develop strategies to overcome them. The mediation is private and confidential. Usually the mediation takes place in a private office or in a private mediation room. Mediation may lead to settlement even if all the previous attempts before mediation that aimed to reach an agreement have failed. At the end of the mediation procedure, the parties complete a questionnaire to evaluate the mediation session. According to the previous evaluation data, almost 95% of the parties choosing mediation consider that mediation is a viable choice for the Romanian judicial system.

In 2003, "RO-Mediere" was a joint project of the Community Mediation and Safety Centre (CMSC) in Iasi, Romania and the Victim-Offender Mediation Association (VOMA). It intended to build the practice of mediation in Romania firstly, by increasing the mediation capacity through the introduction of new

services; secondly, by developing and introducing the necessary legislative background; and finally, by increasing the public's awareness.

Since 2004 the mediation centres of Romania have organised professional programmes and training for mediators. Training of mediators for criminal cases often varies from project to project. While some training programmes are very intensive, some mediators are only trained in the basics of the mediation work and some mediators are not trained at all. The evaluation of the different training models is essential in order to develop nationwide standards for training victim-offender mediators.

Training is provided by experienced trainers from different European countries and from the USA. Moreover, the involved experts contributed to the discussion on developing national standards for the training system. As a result, a draft recommendation concerning the training of mediators in Romania is now available. Meanwhile, other initiatives for further cooperation between the foreign and Romanian experts have also been taken.

In order to improve the cooperation between the legal practitioners and the mediation services, training programmes for legal professionals have also been developed.

Meanwhile, an Association of Professional Mediators has been set up as a professional, national, independent organisation that includes specialists in alternative conflict-handling methods. Its main objectives are to promote, organise, implement and control the professional activities in the field of alternative dispute resolution. The Association has been acknowledged as an outstanding and reliable partner in relation with authorities.

Some media and public awareness campaigns have been launched to enhance the general knowledge in the public about alternative methods of conflict resolution. Representatives of governmental and funding agencies as well as of the Parliament, the criminal justice system, the mediation centres, and the national press were also present within the framework of these campaigns.

8.4. EVALUATION AND FUTURE TENDENCIES

Different kinds of NGOs have taken the initiatives to set up mediation services. However, currently the evaluation or a general overview of their activities is highly difficult. Firstly, because the different mediation projects have aimed at different objectives; secondly, only a small number of criminal cases have been referred. Furthermore, there is a high need for a uniform documentation system in order to conduct comparative studies. Currently only a small number of projects collect data about their activities in a systemic way. And moreover, these data are often used only for internal purposes.

Concerning the promotion and implementation of restorative justice, there is no explicit model that guides the developments in Romania. The work of the NGOs is based on the general principles of restorative justice. In other words,

it aims to achieve a well-balanced solution for all the parties involved. Its mission is to help the criminal justice system, primarily by offering alternative methods of dealing with offenders as well as by making the use of community sanctions and measures more effective and by providing appropriate responses to crime.

There is a general interest in the use of mediation, especially in the fields of civil disputes and school mediation. However, there is no nationwide programme on victim-offender mediation yet. The workshops and trainings organised by the NGOs in cooperation with experts from abroad can be considered as important steps towards increasing the awareness of legal actors in Romania on the possibilities of victim-offender mediation and restorative justice.

Restorative justice is still in its initial phase in Romania; therefore, it is far from being part of the justice system at the time of the current overview. Initiatives are mostly taken by actors from civil society. Training programmes for judges and prosecutors aim at making restorative justice practices more widely known and applied. The cooperation established with the prosecution offices and judges is the basis for future progressive steps towards the main goal, namely the nationwide implementation of restorative justice.

Concerning future intentions, it is planned to establish an Institute for Restorative Justice. The principal role of the Institute would be to promote restorative justice in Romania via information campaigns, academic programmes, research projects, study visits and workshops in a coordinated way. The Institute would also work on developing a standardised system in order to evaluate the effectiveness of the current restorative justice models. Additionally, one of the main activities would be to invite practitioners and academics from other countries in order to stimulate the exchange of experiences as well as to motivate and activate local practitioners in their future projects.

9. RUSSIA⁴⁴

9.1. LEGAL BASE

The use of restorative justice in Russia is not regulated by a specific law. The Code of Criminal Procedure of the Russian Federation does not mention victim-offender mediation as such. Nevertheless, activists in the field of restorative justice in Russia are guided by the necessity to comply with norms and principles of international law and of international treaties that Russia belongs to.

International treaties that the Russian Federation signed contain obligations to ensure the administration of justice that promotes the reintegration of juvenile

⁴⁴ Contributor: Tatiana Laysha (August 2005).

victims of inhumane or degrading forms of treatment as well as the reintegration of juvenile offenders.

Restorative justice is guided by the concept of human rights and a right to protect them by all means not prohibited by law. These principles are clearly expressed in the Constitution as well as in the Code of Criminal Procedure of the Russian Federation:

“Everyone shall be free to protect his rights and freedoms by all means not prohibited by law.” (*Article 45., para. 2 of the Constitution of the Russian Federation*)

“The purpose of criminal justice procedure is to:

- 1) Protect the rights and lawful interests of individuals and organisations that are victims of crime;
- 2) Protect individuals from unlawful and arbitrary accusation, conviction or restriction of their rights and freedoms.”

(*Article 6, part 1, para. 1, clause 1 of the Code of Criminal Procedure of the Russian Federation*)

9.2. SCOPE

Restorative justice procedures intend to support juvenile offenders and their victims. Victims and offenders are both in focus as much as possible. Restorative justice can be applied in mercenary crimes; violent crimes, except sexual violence; murders and in cases where the offender is under arrest. Restorative programmes are used at the stage of the investigation in court. It is a part of the criminal process.

9.3. IMPLEMENTATION

9.3.1. AGENCIES: ESTABLISHMENT AND STRUCTURE

The implementation of restorative justice in Russia is supported by judges, lawyers, specialists of the social services supporting the reforms of the criminal justice system. Therefore, mostly these professionals carry out restorative justice programmes.

Usually NGOs are the primary types of agencies that run restorative justice projects in Russia. However, activities have recently been started by two state organisations in Moscow and Tyumen. These projects are financed by local governments.

9.3.2. AGENCIES: PRACTICE AND INTERVENTION

The mostly used form of restorative justice is victim-offender mediation. In all programmes the offender’s participation is voluntary. In virtually all cases, the victim and offender are separately approached prior to the mediation session via individual pre-session meetings.

The programmes have identified the most important tasks of the mediator: facilitating the dialogue between the victim and the offender; making the parties

feel comfortable and safe; and assisting the parties in negotiating a mutually acceptable plan for restitution to the victim. Apologies and reparation might be important results of the process.

“The court provides the social worker with the information on juvenile offenders who were not subject to preventive punishment of imprisonment. After the period of pre-trial consideration of the case expires or during court sittings the court shall enter in the record the report of the social worker and psychologist who worked with the minor. The report on this work shall not be binding on judges, and its conclusions shall be considered as recommendations. The report may be used by judges while deciding on the possibility of impunity of the minor, on conditional release, on the punishment, other than imprisonment (Art. 430 RF CPC), on the release from criminal liability with the use of compulsory measures of educational measures (Art. 431 RF CPC, Articles 90-91 RF CC) or on other grounds (Articles 25, 26 RF CPC). It is also necessary to acquire information on post criminal behaviour of the minor, which in some cases may be extenuating circumstance, while determining punishment.” (Extract from the Final Report of the project “Restorative Justice in Russia”).

This process is used in practice in some courts in Moscow, Tyumen and Dzerzhinsk. Victim participation in the mediation programme is voluntary in all cases. The handling of one case takes about 1-2 weeks.

9.3.3. REFERRAL NUMBERS AND OUTCOMES⁴⁵

(between January 2003 and February 2005)

Moscow

The number of cases referred to the restorative justice programme was 27. The number of victims involved was 32. Amongst 44 accused people (27 criminal cases) 19 people (16 minors and 3 adults) have completed the programme and reached reconciliation agreements. Additionally, 3 juveniles took part in the programme in other ways (without meeting the victim). In the case of 2 juveniles the programme is currently being conducted (one victim refused to meet, the other agreed).

Tyumen

70 cases were referred to the restorative justice programme. 61 offenders and 62 victims took part and 56 agreements were signed. In 1 case only one of the two victims participated, but an agreement was signed with him.

⁴⁵ Based on the Final Report of the project “Restorative Justice in Russia” prepared by the Centre for Legal and Judicial Reform for the Department for International Development (March 2005).

Dzerzhinsk

The number of referred cases was 26. The number of offenders involved in the programme was 42. 26 victims accepted to participate. In 16 cases a meeting was arranged between victims and offenders. In 15 cases reconciliation agreements were signed. In 10 cases involving 16 offenders and 11 victims mediations were arranged without meetings.

In Dzerzhinsk (Nizhny Novgorod region) mediation could be arranged at different stages of the criminal procedure: it could take place at the level of the police as well as at the level of the prosecution within the investigatory phase, prior to any court involvement. In virtually all cases restorative justice programmes could lead to the diversion of the case.

Most cases were referred by the offenders' parents, investigating officers or prosecutors.

Unfortunately this project was terminated after a circular letter of the General Prosecutor's Office was published. However, nowadays the regional Prosecution Office is staying neutral and does not challenge the activities of the NGO to further implement restorative justice.

9.3.4. OTHER INTERVENTIONS

Restorative practices are applied in the following contexts:

- 1.) Restorative justice programmes in penal cases, and in unreported criminal offences – in Moscow, Dzerzhinsk, Irkutsk;
- 2.) Restorative justice programmes with offenders under the age of criminal responsibility – in Dzerzhinsk, Tyumen, Irkutsk, Moscow, Velikii Novgorod;
- 3.) Restorative justice programmes in schools – in Moscow, Ural, Tyumen
- 4.) Restorative justice programmes in working with families in crisis (abandonment-prevention and healing intra-family relationships) – in Moscow, Arzamas, Velikii Novgorod.

9.4. EVALUATION AND FUTURE TENDENCIES

The implementation of the restorative justice approach in Russia started in 1997 when the Moscow-based Interregional Centre for Legal and Judicial Reform (Centre LJR) started systematic efforts to launch victim-offender reconciliation programmes (VORP).

The jurisdiction's present restorative justice provision was based on the achievements of approximately five regional and two international pilot projects which were carried out between 1997 and 2005 by the Public Centre for Legal and Judicial Reforms and its regional branches and partners.

A programme evaluation was conducted within the framework of the joint

British-Russian project “Restorative Justice in Russia” in May 2004. According to its results there are significant positive results in victims’ and offenders’ satisfaction as well as in the issue of re-offending. As an example, data provided by the Dzerzhinsk local office of the militia shows that the rate of re-offending of those young offenders who had participated in restorative justice programmes was 2% which was significantly less than the average re-offending rate (17%) during that period (2003-2004).

On June 7-9, 2004, the Second International Conference “Restorative Justice in Russia: Experience and Perspectives for the 21st Century” was held in Moscow. The Conference became a relevant event and gave a new stimulus to restorative justice developments in Russia. Several high-level judicial experts attended the event, such as the Council of the Constitutional Court of Russia, a retired judge of the Constitutional Court of Russia, the Deputy Chairman of the President's Council for Justice Improvement, a Judge of the Supreme Court of Russia, the Deputy Chairman of Rostov-on-Don regional court, as well as representatives of the General Prosecutor’s Office, the courts, juvenile commissions and regional social services.

As an outcome of the conference, its participants and organisers agreed to organise a joint conference devoted to “The Convention on the Rights of the Child” in the context of restorative justice for juvenile offenders. This is now being actively promoted and organised by representatives of the Supreme Court, the Constitutional Court and the General Prosecutor’s Office of Russia.

However, there are still some challenges in the inter-sectoral cooperation, as Rustem Maksudov, president of the Public Centre for Legal and Judicial Reforms in Moscow summarised:

“The relevant role in opposing to ideas and techniques of restorative justice and juvenile justice as well as to pilot projects in the regions is played by the Department for Juvenile Offenders of the General Prosecutor’s Office of Russia.”[...]

“In this situation for the next 3-5 years, I believe the main strategy for advancing juvenile justice in Russia is to achieve official recognition (General Prosecutor’s Office, the Supreme Court and the Ministry of Internal Affairs) of the constitutionality and legality of our work in the regions where juvenile justice elements are being approved. It will encourage the other regions to join us in our work. In this connection it is necessary:

1. to create a working group with participation of judges for analysing and supporting the regions, where restorative justice and juvenile justice elements are being introduced;
2. to advance the package of draft laws directly aimed at supporting the regions, where restorative justice and juvenile justice elements are being introduced;

3. to support the creation of coalitions for advancing the ideas and techniques of restorative justice⁴⁶.

Furthermore, it is essential that the Mediation Service becomes a multi-agency independent organisation and the training system of restorative practices and mediation be available in Russia.

10. SLOVENIA⁴⁷

10.1. LEGAL BASE

In the case of adult offenders, authority is contained in Articles 161a, 162, 444(1) of the 1995 Code of Criminal Procedure as amended in 1999, and, in the particular case of juveniles, Article 77(2) of the Penal Code. The revision of the Code of Criminal Procedure (the Code) in 2001 considerably broadened possibilities for victim-offender mediation in the later stages of the criminal proceedings.

10.2. SCOPE

10.2.1. ADULTS

a) The prosecutor's discretion

Before 2001, it was possible for the state prosecutor to initiate victim-offender mediation before the commencement of formal criminal proceedings, i.e. before filing the charge. There were two types of settlement between the offender and the victim which could result in diversion. These actions may be:

- the repair of or compensation for any damage;
- payment of a contribution to a public institution, a charity or the fund for the compensation of victims of criminal offences;⁴⁸
- completion of community service; or
- the payment of child maintenance.

If the suspect fulfils the obligation undertaken within six months (twelve in respect of the obligation to pay child maintenance), the criminal complaint is dismissed.

The second was introduced in 1999 by Article 161a of the Code. The prosecutor may refer for mediation offences punishable by fine or a term of imprisonment not exceeding three years. In making this referral, the prosecutor

⁴⁶ Maksudov, R. (2003).

⁴⁷ Contributor: Marko Bosnjak for sections 10.1.-10.2. [reprinted from the publication "Mapping Restorative Justice" (Miers and Willemsens, 2004: 121-122.) with the permission of the publisher] and Bojan Vovk (July 2004) for sections 10.3 – 10.4.

⁴⁸ Arrangements for the establishment of such a fund have yet to be made. This possibility is therefore a theoretical one.

must take into account the nature, quality and circumstances of the offence, and the offender's personality and criminal record, if any. It has never been a legal requirement of the exercise of the state prosecutor's discretion that the offender accepts his or her responsibility for the criminal act before the case is referred for mediation. In practice, however, it is highly unlikely that the prosecutor would refer a case for mediation where a defendant denied his or her guilt and refused to accept responsibility as such a case has no real prospect for success.

Each case is mediated by a lay mediator. In the case of a successful mediation (that is, the offender's completion of the terms of the agreement with the victim), the state prosecutor dismisses the criminal complaint.

Since the 2001 revision came into force, it has been possible for the prosecutor to refer a case for mediation at any stage of the criminal proceedings but before the court passes judgement (amended Article 161a of the Code). If the prosecutor wishes to refer a case for mediation after the main hearing has already started, the court will suspend further proceedings for a maximum of six months. The decision to suspend is a matter for the discretion of the state prosecutor. This decision is not subject to any judicial review or approval by the court: the court's temporary suspension of the judicial proceeding is automatic after the state prosecutor has requested the suspension.

If the referral is successful, that is if the victim and the offender reach a settlement and the offender completes his obligations, the prosecutor will withdraw the criminal charge against the offender (new Article 443a of the Code).

In the case of proceedings against an adult, there are no options for victim-offender mediation or other restorative justice practices once the court has passed judgment.

b) The court's residual jurisdiction

A diversionary possibility arises when a private prosecution first comes before the court and is a matter which falls within the jurisdiction of a single judge. The judge may, before scheduling the main hearing, order the private prosecutor (the victim) and the offender to appear in court on a future date and without representation; with a view to an early termination of proceedings (Article 444(1) of the Code). This appearance is designed to encourage the parties to reach a settlement, on the basis of which the private charge may be withdrawn.

10.2.2. JUVENILES

First, since 1999 all provisions concerning victim-offender mediation possibilities within the state prosecutor's discretion relating to adult offenders apply equally to juveniles (Article 466(2) of the Code). When a case concerning a juvenile offender is referred for mediation, his or her parents may also take part.

Secondly, the Penal Code provides for a special sanction for juveniles (persons aged 14-18 at the time of the offence) who have been convicted of an offence. One of these 'instructions and prohibitions' requires the juveniles to reach a settlement with the victim by means of payment, work or otherwise, as a means of repairing the harm done.

10.3. IMPLEMENTATION

The application of mediation was started by the State Prosecutor's Office in 2000 after an introductory training of 259 volunteer mediators (60% men, 40% women; 46% lawyers, 6% social workers). The training covered such subjects as the theoretical basis, the content of the criminal information, conflict resolution skills, negotiation and communication.

Table 1: Numbers of active mediators

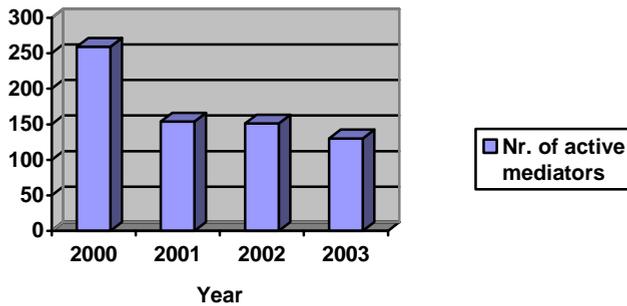


Table 2: Numbers of cases per mediator

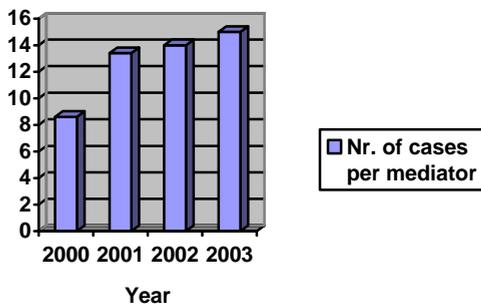
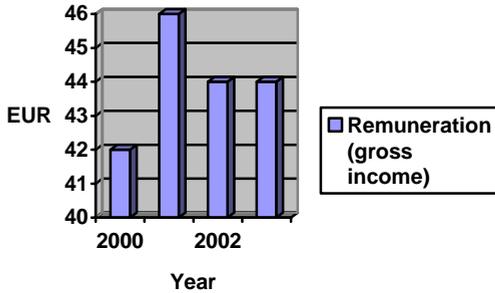


Table 3: Remuneration (gross income) per case (net remuneration = 70% of gross income - income tax - all costs of mediation procedure (e.g. paper, place rent, post costs...))



10.4. EVALUATION

The results of the evaluation of the work of the mediators of the past four years are available. The trends of the assigned cases are as follows:

Table 4: Number of all dismissed cases, assigned to mediation, and successful mediations

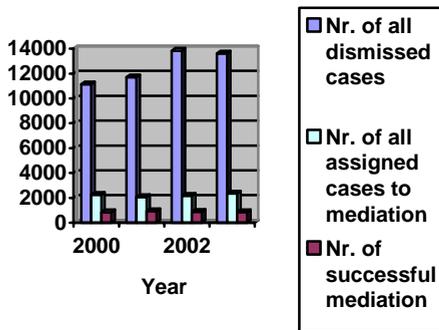


Table 5: Percentage of cases dismissed after successful mediation

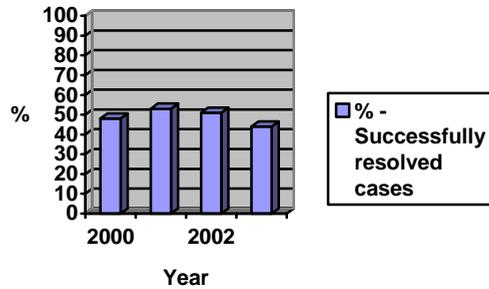


Table 6: The most frequent criminal offences

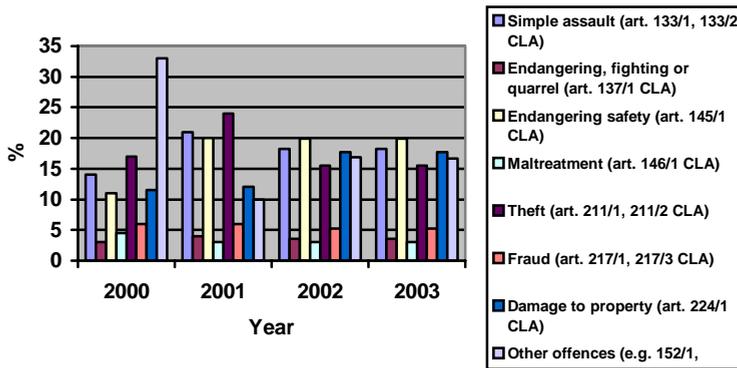
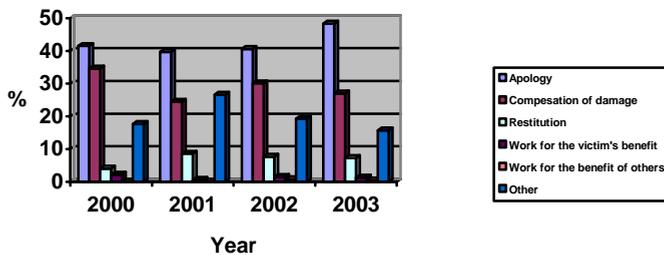


Table 7: Percentage of duties deriving from achieved VOM agreements



11. UKRAINE⁴⁹**11.1. LEGAL BASE**

The new Ukrainian Criminal Code (adopted by Parliament in 2001) contains some provisions for the application of restorative justice. Article 46 permits the court to use the outcome of the victim-offender reconciliation procedure and to close the criminal proceedings in cases of first time, minor offences (minor offences punishable by less than two years of detention or by other mild forms of punishment such as community service, fines, etc.). There are other articles in the Criminal Code, for example Articles 44, 45 and 47, allowing for the use of reconciliation for first-time offenders who are accused of crimes otherwise punishable by less than five years of detention. But, the term reconciliation is only explicitly used in Article 46. Unfortunately this provision is rarely used. It is poorly understood by the judiciary and it also lacks a well-established procedural framework for implementation. However, the doctrinal interpretation of Article 46 of the Criminal Code states that its provisions apply to mediation – a widespread method to resolve criminal conflicts abroad.

The Code of Criminal Procedure at the same time does not contain any provisions regarding the victim-offender reconciliation procedure. It only provides for reconciliation procedure outcomes, which are relevant to provisions mentioned in the Criminal Code (Articles 6, 7-1, 7-2, 8 and 27). There are no other provisions in the Code that allow for reconciliation to be reached through mediation or with the support of a mediator. However, the work on the new Ukrainian Code of Criminal Procedure is in progress and it is still possible to incorporate provisions for the basis of the mediation procedure, the terms as well as the justice system bodies and representative that can refer cases for mediation.

The Resolution of the Plenum of the Supreme Court of Ukraine on “Practice application by Ukrainian courts in cases of juvenile crimes” adopted on 16 April 2004 contains some provisions for the implementation of restorative justice in cases of juveniles. Article 21 of this Resolution says: “Courts are recommended to support activities of those non-governmental organisations that aim to achieve reconciliation between victim and juvenile offender before court/trial. Courts are recommended to provide these organisations with the necessary information, to inform accused persons and their representatives about the activities of such organisations in a region or a city, to provide victims and offenders with the possibility to apply to these organisations in order to get assistance in conflict resolution and the attainment of reconciliation. Reconciliation between victim and offender reached with the assistance of such organisations, and full compensation of the material and moral damage might

⁴⁹ Contributors: Roman Koval and Vira Zemlyanska (July 2004), reprinted from the publication “Mapping Restorative Justice” (Miers and Willemsens, 2004: 150-153.) with the permission of the publisher.

be used as a ground to close criminal proceedings, or be taken into account as extenuating circumstance”.

11.2. SCOPE

Restorative justice provisions in Ukrainian legislation are mainly focused on offender, depending on the type of the offence. These provisions apply equally to both juvenile and adult offenders. It is hard to answer what restorative justice is in Ukrainian legislation because it is not institutionalised today and it is unknown how it will be institutionalised in the future.

There is a legal basis for the implementation of mediation in Ukraine. However, there is no explicit and direct provision to that effect. At present, it is neither an alternative, nor a part of the criminal process. However, if the parties choose so, it may become part of the criminal process. In that case only a judge exercises the gate keeping function since the provisions of the Code of Criminal Procedure do not regulate it.

11.3. IMPLEMENTATION

The first restorative justice project has been initiated by an NGO – Ukrainian Centre for Common Ground (UCCG) – and it is functioning on a pilot basis in Ukraine since January 2003. The restorative justice project is designed for 3 years. It sets the following tasks for itself:

- Establish partnership relations with justice system institutions.
- Develop a system to establish rules and procedures through which cases are outsourced for mediation.
- Train victim-offender mediators.
- Implement the system as a pilot in Kiev.
- Extend the project to regions outside Kiev.
- Develop an evaluation mechanism to assess the effectiveness of the current restorative justice model.
- Increase public awareness of the theory and practice of restorative justice through media, website development and training workshops for representatives of the legal system.
- Use opportunities for institutionalisation at national and sub-national levels.

After just one and a half year of restorative justice implementation, following things were achieved:

- A mechanism for the use of restorative justice within the Ukrainian legal system in the stages of inquiry, preliminary investigation and court proceedings has been developed. The Supreme Court of Ukraine has informally approved the procedural mechanism for the referral of cases to the lower courts.
- 20 volunteers were trained to be victim-offender mediators in the pilot programme in Kiev.

- The restorative justice model has been implemented in the Darnitskiy district court in Kiev. On the basis of agreement with the Darnitskiy district court, volunteer mediators review criminal cases to see if they are appropriate for mediation. Since the beginning of August 2003 till the end of July 2004, 98 cases have been reviewed for the possibility of mediation. 24 cases have been selected during that period and four of them have resulted in reconciliation between the parties.
- To assess the effectiveness of the model, a Monitoring Committee was formed within the Ukrainian Centre for Common Ground. It has conducted a survey on the current restorative justice model and possible ways for its improvement.
- The survey was presented at the Evaluation Seminar, conducted by UCCG in Kiev on February 26-27, 2004 and was taken into account for the improvement of the restorative justice model. Modifications have been made in order to increase the role of judges in the referral process.

11.4. EVALUATION

11.4.1. CONTEXT

Despite the existence of some legal basis for the implementation of mediation in Ukraine, there is no explicit and direct provision to that effect.

11.4.2. CURRENT EVALUATION

At present there is informal support for restorative justice by the Academy of the General Prosecutor's Office, the Academy of Judges, the Supreme Court, the Ministry of Justice, the Ministry of Family and Youth Affairs and Kharkiv Regional Court of Appeals. All of them are interested in the implementation of restorative justice. At the same time, the establishment of a partnership between UCCG and the Police and the Public Prosecutor's Office is still undecided.

The UCCG has stated on various occasions that the development of restorative justice in Ukraine is one of its strategic goals and it will continue to disseminate information and methodology over the country. At present, the UCCG is in the process of developing and implementing the restorative justice model in five regions in Ukraine. It has already identified additional collaborators in Kiev and partners in the regions, and has trained 15 more regional victim-offender mediators in July 2004.

11.5. FUTURE DIRECTION

As to the future of restorative justice in Ukraine, it would be fair to say that a lot will depend on how this experiment goes in Kiev and the five pilot regions. The results of the pilot stage will be used to institutionalise restorative justice at the national and sub-national levels. It is likely that Ukraine will follow the Polish model of restorative justice because of its similar legal background, legal system and European integration tendency.

3. THE MAIN CHALLENGES IN CENTRAL AND EASTERN EUROPEAN COUNTRIES CONCERNING THE IMPLEMENTATION OF RESTORATIVE JUSTICE

While thinking about the terms ‘crime, restoration, justice, transition or implementation’, one can easily recognise the complexity of each of these issues. Nevertheless, in the next pages we try to map some of the main aspects that were highlighted by the experts involved in the project. The next chapters intend to give a deeper insight into the following questions:

- What are the main challenges of implementing restorative justice in Central and Eastern European countries, considering their political, economical, cultural and legal background?
- What can be mentioned as supportive factors in this process?
- What is the potential of international exchange in stimulating effective projects? How can both East and West learn from each other?
- What is primarily needed from policy-makers and practitioners on both national and international level?

As a first step, a short overview will sketch the typical challenges the post-communist countries have had to face. It is followed by the discussion of some ‘hot issues’, such as the questions of legislation, funding, awareness about restorative justice and training.

3.1. COMMON CHALLENGES OF CENTRAL AND EASTERN EUROPEAN COUNTRIES

According to the thorough discussions between representatives of Central and Eastern European countries, as well as the basic criminological literature in this field, the factors that make the implementation of restorative justice in the concerned countries difficult can be grouped under the following three themes:

- 1) changes in crime and in criminal policies;
- 2) sociological and cultural factors;
- 3) institutional aspects.

3.1.1. CHANGES IN CRIME AND IN CRIMINAL POLICIES

a) The crime wave

The political transition these countries have gone through has been accompanied by a dramatic *increase in the volume of crime* in almost all the countries. With the exceptions of Slovenia and Macedonia, in most of the Eastern countries the recorded crime nearly doubled between 1991 and 1994

compared to the period between 1986 and 1989. In Moldova, Estonia and Bulgaria crime rates almost tripled (Jasinski, 1999: 377).⁵⁰ However, as Lévy points out (2000: 39), “it has to be emphasised, that the starting point of the increase in crime [...] is not the collapse of the socialist regime”. In a number of countries, such as Hungary, Poland and Czechoslovakia, “the slow rise of crime started in the middle of the 1980s (Lévy, 2000: 40)”.

There has been a considerable *change in the structure of crime* as well. The number of property crimes – especially the proportion of thefts and burglaries – has considerably increased (in most of the countries it was almost 80% of the total number of crimes) (Lévy, 2000: 40). The role of violence in the offences, the number of homicides, especially against people who were unknown to the offender, as well as the volume of organised and economic crime has significantly risen during the transitional period (Lévy, 2000: 41).

These sudden and unexpected changes in crime coincided with the realisation of the ineffectiveness of the state and the crime control agencies. Criminal justice agencies therefore could not handle effectively the dramatically increased number of offences. Accordingly, extremely *low clearance* rates and the overall *weakness of the law enforcement* agencies were experienced. All these factors have largely contributed to the increase of *fear of crime* in the general public. While for example in Europe according to the International Crime Victim Survey of 1992 an average of 30% of respondents felt a bit or very unsafe when walking outside after dark, this number was around 43-45% in Czechoslovakia and in Poland.⁵¹

b) Punitive attitudes

As a result of the previously mentioned changes, tough punishment became largely supported by the general public. Since safety issues are crucial points in every political campaign and their significance has become even more pronounced in the transitional period, the populist promotion of tough criminal policies could well respond to the ‘needs’ of the public. The strong *punitive attitudes of policy-makers and actors of the criminal justice system, as well as of the public* received even more support via the media. As one of the experts pointed out: “Never ask the public regarding death penalty. Just go ahead and abolish it!”⁵²

One of the most visible signs of a society’s general punitiveness is its rate of *incarceration*. Countries from Central and Eastern Europe do not convey a

⁵⁰ Although it is a known fact that crime statistics were artificially kept low, the study by Joachim Savaelsberg (1995: 208), as summarised by Lévy (2000: 39), showed that “the sudden and steep increase in the number of crime during the transition may not be explained by the manipulation of data in the past or the change in the reporting and registering activities of the police”.

⁵¹ Krajewski (1996: 149), cited by Lévy (2000: 43).

⁵² At the Final AGIS Seminar in Sofia, 1 October 2005.

homogeneous picture, since in states of the former Yugoslavia (such as Slovenia), for example, imprisonment rates are very low. On the other hand, some countries of the region, especially those belonged to the former Soviet Union, are among the countries having the highest prison rates in Europe. While the prison population per 100 000 individuals is 146 in England and Wales (the highest in Western Europe), this figure is 566 in Russia⁵³ (the second highest in the world after the United States with 724), 398 in Ukraine and 331 in Estonia.⁵⁴

As a Moldovan expert pointed out, the ‘Gulag-mentality’ in the post-communist countries is still very strong: instead of searching for alternative ways of sentencing, such as community-based measures, the ‘adequate’ response to rule-breaking is to lock up the rule-breakers for as long as possible and increase the capacity of the prison system. As Albrecht stresses (1999: 460), after communism “sentencing patterns either did not change or despite changing sentencing patterns, changing crime patterns contributed to the fast rising prison population”. Moreover, not only long-term incarceration, but also short term imprisonment is favoured in some countries. As an example, Hungary used to apply short-term (even one day) custody in order to offer the opportunity for criminal courts to mete out “symbolic sentences of imprisonment” (Farkas, 1993: 47).⁵⁵

c) The dominance of the state in the criminal justice system

While experiencing high crime rates and strong punitiveness in a society, policy-makers tend to centralise criminal justice processes in order to assure stronger central control in the fight against crime. It is often mentioned that the biggest obstacle for implementing victim-offender mediation or other restorative justice practices is the *paternalist attitude of the state* by which it monopolises and formalises the majority of the institutional responses to crime. It has been argued that crime is an act against the public and therefore it is only the State that can provide justice.

Moreover, as Albrecht stresses (1999: 469), “the new move towards legalism and the rule of law has brought upon a tendency to *mistrust informality and extra-judicial proceedings*”.⁵⁶ The way in which societies in transition think about informal procedures represents a very interesting social phenomenon. First, it has to be noted that community-based control mechanisms are not new in the post-communist countries; they were intensively used in the former regimes. However, the controlling function of smaller communities (for example the so-called ‘social courts’ or ‘comrade courts’)⁵⁷ was primarily focusing on

⁵³ Although it should also be added that the prison population in Russia has fallen from 1 060 000 in 2000 to 763 100 in 2005 (Walmsley, 2005).

⁵⁴ Walmsley (2005).

⁵⁵ Cited by Albrecht (1999: 461).

⁵⁶ Italics added.

⁵⁷ The possible link between these institutions and the resistance towards mediation was

representing the State's norms (i.e. obey the Party's rules) and not on the communities' own values. In short, informal control and decision-making was largely abused during the communist regime.

Second, the judicial transition has resulted in a clear shift from the so-called 'socialist' criminal justice model to the Western European model (Bárd, 1999: 435) by introducing the safeguards of democratic systems and by creating a consistent commitment to the rule of law and the principle of legality. This rapid change explicitly contrasted with the past system. Moreover, via this legal-institutional reform there was a general intention to take out every element from the new model that could have had any roots in the previous regime. Since community-based control mechanisms, indicated in the previous paragraph, were broadly used and often abused during the communist system, it is quite understandable that after the fall of the communist system a general mistrust of informal and extra-judicial procedures was experienced in the societies concerned. However, this phenomenon has made it significantly more difficult to move towards a 'higher' level of democracy, based on a justice system in which decentralised institutions and pluralistic approaches would have the duty to maintain social order, with the active participation of the civil society.

Figure 1 intends to illustrate the difference between the Western and the newly born Eastern democracies. The transition from the monolithic, socialist, one-party system to the democratic model highlighted the importance of 'strict legality'. However, this quick process resulted in the other extreme: the disadvantages of the current democracies are the monopoly of rules, laws and professionals which do not leave sufficient space for the participation of the civil society. Advocates of restorative justice fell in this 'gap' between the two systems by promoting the necessity of informal processes in a democratic justice system. As a consequence, according to some concerned supporters of restorative justice, their strongest opponents are often those professionals who used to fight most vigorously for the democratic changes from a legalistic point of view.⁵⁸

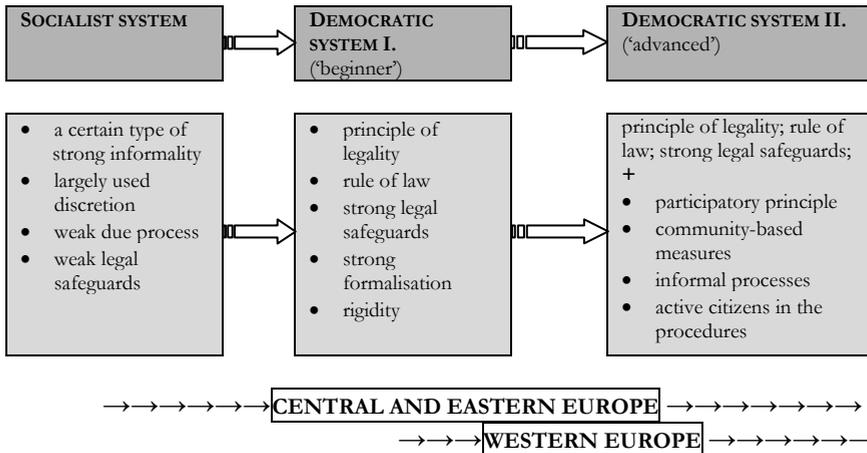
It has to be emphasised that the 'evolution' of democracy as described here is a theoretical and rather 'idealistic' process. It merely intends to demonstrate the main direction of such a process. However, one certainly cannot assume that the different models exist as clearly distinguishable 'blocks'. Accordingly, several various societies could not be placed in any of these blocks since resistance towards informality and flexibility in the justice system can be experienced in almost all European countries. In other words, this figure is more about a continuously ongoing development than about clear 'stages' of

originally pointed out by Krapac (1995).

⁵⁸ Related to this issue, the possibilities of making restorative justice more predictable with adequate legislation are discussed in more details on page 76).

such a progress. On the other hand, it can help in thinking about different countries' relative position on such a line.

FIGURE 1: THE PROCESS OF DEMOCRATIC TRANSITION



In addition, the general distrust towards informal procedures is also the underlying reason why courts do not tend to follow the principle of relative proportionality, according to which they should “differentiate among individual offenders who have committed the very same kind of criminal act” (Gönczöl, 2005: 185). In other words, there is a strong *resistance* from the criminal justice practitioners *to giving* more *individualised responses* to crimes and making sentences more case-specific.

To illustrate, let us quote from an article by Rustem Maksudov that emphasises the difficulties the Russian Centre for Legal and Judicial Reform needs to face due to the resistance of state institutions:

“In the document prepared by this department [Department for Juvenile Offenders of the General Prosecutor’s Office] and sent to all prosecutors’ offices of Russia, the deputy general prosecutor of Russia [...] says that the fact that the community interferes with the work of the courts contradicts article 118 of the Constitutions of the Russian Federation where it is stated that justice in Russia is administered by courts only. [...] Besides, no attention is paid to the fact that public organisations working with the minor in the framework of the projects realised by the Centre for Judicial and Legal Reform in the regions do not interfere with the activity of the Militia, Prosecutor’s Office and courts, do not influence the evidentiary base, do not determine the measure of punishment. Yet, the representatives of the

Department for Juvenile Offenders do not want to consider carefully the activity of the Centre and the work it accomplishes.

What are the grounds [...] for refusing to understand the idea of the pilot projects and initiatives of the community? In my opinion, the main reason here is to make the activity of courts, the Prosecutor's office and the Militia as closed as possible so that the community could not participate in the work with offenders. Offenders are to be eliminated from the life of the community, branded and isolated at the first slightest opportunity. In fact we have here the tradition of excluding a part of the society as people's enemies, and the role of the community here is to disclose such enemies. According to this understanding, the initiatives of the community should always support the activity of law-enforcement bodies and should 'appear' by the order of the authorities."⁵⁹

Furthermore, there is a general and strong *offender-orientation* in almost all the criminal justice models in the post-socialist countries. It necessarily results in the *weak position of the victim* in the criminal justice system. Although basic victims' rights have been implemented by the legal reforms, strengthening the active participation of the victim in the process – which is a crucial element of restorative justice – might require a much longer time since it has no real tradition in the modern history of the post-communist countries' judicial systems.

While promoting the implementation of restorative justice, almost all the involved experts expressed their difficulties with overcoming the strong resistance of policy-makers and the different actors of the criminal justice system, such as the police, prosecutors, judges or staff members of prisons in supporting extra-judicial procedures and involving other actors, such as civil organisations in the justice system. Policy-makers and professionals within the criminal justice system continue to think in terms of the legal principles with which they are familiar. The task of restorative justice advocates is therefore to show them that the aims and safeguards of the restorative approach are compatible with the current legal system and even offer some benefits which criminal justice does not provide at present.

3.1.2. SOCIOLOGICAL – CULTURAL FACTORS

Restorative justice is based on the assumption that there is some cohesion in communities. After the fall of the socialist regimes, however, almost all the Eastern countries have had to face the *weakness of their communities*. This is one of the main obstacles in the implementation process.

⁵⁹ Maksudov (2003).

During the socialist – communist era, the ‘sense of community’ almost disappeared: people relied heavily (and often exclusively) on the state authorities for solving economic and social problems and state authorities were perceived as the sole responsible institutions for economic and social well being. This resulted in the *passivity of the civil society* in which people accepted the “status of a subordinate rather than a citizen (Jasinski, 1999: 374)”. Therefore, one of the main questions in these countries is how to stimulate people to play a more direct role in conflicts, occurring in their community. It also leads to the general question of how to motivate citizens to become more conscious about social problems around them and how to encourage them to involve themselves actively in public issues.

Another consequence is the *lack of tradition of multi-agency, interdisciplinary cooperation* in dealing with social problems. Even creative and committed actors working for ‘better societies’ often show lack of confidence towards the activities of other colleagues. This distrust can be perceived both horizontally (between actors of the same sector) as well as vertically (between different professions). It also contributes to the fact that criminal justice professionals have hardly any trust in extra-judicial organisations, such as NGOs, and do not favour ‘sharing the work’ with them.

Since the concept of ‘common interest’ was often used for maintaining the ideology of communism, this objective used to be largely disrespected in the public. As a result of the lack of tradition of common interest, a *competitive attitude* among organisations and professionals instead of cooperation became much more typical. It caused *difficulties in team working and dialogues* within and among different professions.

The increased *social inequalities*, the extreme extent of social polarisation and the problems of social adaptation also contributed to the increase in the volume of crime and to the general ineffectiveness of the current institutional responses to crime.

The *anomalies of social standards* can be mentioned both as a reason for and as a result of crime. As Jasinski points out (1999: 383), “Central and Eastern European countries were completely unprepared for the adoption of free market” and this *quick jump into the free world* caused a complete anomaly of social standards. There was simply *no time for establishing shared value systems*. At the same time, it is clear that promoting restorative justice among people who have no ‘sense of community’ and no shared values is highly challenging.

In the past regime, rules and norms were established top-down and there was no discussion about the principles underlying these rules. Once this coercive power decreased and changed, societies have gone to the other extreme: the weakened state “has created the feeling in people that laws are to be known and looked at rather than obeyed” (Jasinski, 1999: 384). In addition, another challenge of the implementation is the recognition that in these young

democracies there is hardly any culture of discussing values and establishing common principles based on dialogue. This can also be illustrated by the strongly authoritarian school systems that many of these countries still maintain.

3.1.3. INSTITUTIONAL FACTORS

Although finding experts to prepare draft laws during the reform processes was relatively easy, almost all the involved participants agreed that *building of new institutions* which could make these laws work was much more difficult. The general *lack of services* in assisting offenders' social reintegration, in victim support or in stimulating community participation are still significant obstacles in the process of effective implementation.

Furthermore, the *lack of*

- *information* about restorative justice;
- translated *materials*;
- competent *experts*;
- *training*;
- concrete and visible *experiments* in restorative justice;
- and personal *experiences* of actors of criminal justice systems with victim-offender mediation

are still making the reforms difficult.

The already mentioned problem of the strongly *centralised* character of the *institutional systems* dealing with crime and social problems can be repeated as an institutional disadvantage as well.

Furthermore, agencies often suffer from the *constraint* of justifying all their interventions with *statistical data*. Although record-keeping and follow-up monitoring are obviously important in order to maintain standards, the dominance of quantitative aspects in proving efficiency towards funding bodies can easily lead to the *decrease of the quality* of the services.

While discussing the phenomenon of and the adequate responses to crime there is a great need for *multidisciplinary exchange*. However, the importance of cooperation between the different sectors dealing with social exclusion (e.g. education, social welfare system, criminal justice system) has still not been recognised in most of the countries.

The main challenge of the *non-governmental organisations* is the increase of their *credibility* in the eyes of state institutions and their actors as well as in the eyes of the general public. This issue is closely related to the previously mentioned problem of the dominance of state institutions in dealing with crime. In most of the countries in transition governments still have not created a consistent policy for cooperating with NGOs. Furthermore, in some countries (e.g. in Bulgaria) the ongoing '*commercialisation*' of the NGO sector is an often experienced process by which services tend to focus on profit-making and their

societal ‘mission’ tends to be a secondary factor in their activities. There are also concerns about the future *monopolisation* of mediation services by a limited number of agencies. Concerning the ongoing projects, there is a general *lack of* thorough and objective *evaluation* (internal and external) as well as of consistent *monitoring* systems. As a consequence, the national implementation of pilot projects is much more difficult and often suffers from the lack of professional *standards*.

And finally, it should not be forgotten that although we talk about the development of “bottom-up” services, these cannot emerge through an exclusively grass-root process: their *top-down support and stimulation* (i.e. the conceptual and financial support from the state) might even be more essential in Central and Eastern European countries than in the Western European societies.

3.2. ‘HOT ISSUES’ IN IMPLEMENTING RESTORATIVE JUSTICE

Experts from fifteen Western, Central and Eastern European countries were asked during one of the meetings⁶⁰ of the project to indicate the three most important challenges they face in the implementation and improvement of restorative justice in their countries. It was interesting to see that almost all of the 45 problems mentioned could be put under following headings: 1) *legislation*, 2) *fundraising*, 3) *awareness* of governments and practitioners of the criminal justice system as well as of the general public and 4) *training* and *organisational* matters in the field of restorative justice.

Another important finding in this international exchange process was that the countries and experts are facing very common problems. There are obviously differences between countries that have only recently started to introduce restorative justice into their criminal justice system and those that already have experience for some years, as well as between societies with a communist past for forty to fifty years and older democracies. However, the discussions clearly showed that supporters of restorative justice have to face very similar problems all over Europe and the main differences usually only relate to the *level* or seriousness of these problems. To illustrate this, it can be mentioned that fundraising and other financial issues are crucial aspects in the practice of restorative justice in Moldova or Bulgaria as well as in Germany. However, the levels of these problems are of course different: e.g. while in Moldova and in other Eastern countries the question is how to start small-scale projects from the very beginning, in Western countries financial issues rather concern the question of sustainability of already-running activities. Nevertheless, the underlying conceptual issues behind these challenges draw a very similar picture regardless of the countries concerned. Therefore, the following sections –

⁶⁰ Second expert meeting, 17-19 March, 2005, Chisinau, Moldova.

which intend to give a more detailed analysis of these issues based on the thoughts and discussions of the participants – will mainly map the general points that were made. Consequently, regional differences will be emphasised only in exceptional cases.

3.2.1. FROM INFORMALITY TO FORMALITY – THE ROLE OF LEGISLATION IN RESTORATIVE JUSTICE

3.2.1.1. The need for legislation

Restorative justice practices are often characterised by the informal nature of their procedures and organisation. Through its ‘grass-roots evolution’, this approach has the potential to build less formal ways of dealing with conflict in a society and to include more participatory elements in the criminal justice system.

However, since we are talking about intermediate structures between the citizen and public authorities concerning criminal offences, clearly there is a need for some regulation. The relation of victim-offender mediation to criminal law and criminal justice highlights the importance of legal protection and safeguards that should be provided by the system.

As Heike Jung, one of the Scientific Experts in the Committee of Experts on Mediation in Penal Matters, has stated:

“Mediation is about adding a new quality, and not about doing away with the achievements of the process of civilisation in the realm of law. Referring to elementary supranational due process categories implies that mediation is not meant to be tied into an intricate web of legal formalism. But it has got to abide by some basic human rights requirements, such as those which have been enshrined in the European Convention on Human Rights”.⁶¹

According to Aertsen *et al.* (2004: 46), there are at least three types of general arguments supporting the necessity of a legal framework for restorative justice programmes. Firstly, based on the ‘*principle of legality*’, in most of the continental European countries “police and prosecutor have, in principle, no discretion whether to proceed with apparently provable cases brought before them”, unlike countries following the ‘*opportunity principle*’, according to which the prosecution has a discretion whether “prosecution of provable cases is in the public interest and may dispose of cases accordingly”.⁶² This distinction also means that any procedure, including victim-offender mediation – at least when applied in criminal justice systems that are based on the principle of legality – has to be strictly regulated by formal legislation.

⁶¹ Cited in Aertsen *et al.*, 2004: 46.

⁶² Elsner, 2005: 3, 15.

Secondly, legislation can *stimulate* the broader, more frequent and systemic *application of restorative justice* in criminal cases as alternatives to the traditional sanctioning measures. Finally, laws on mediation can provide procedures of judicial control and *legal safeguards*. The assurance of the principle of equality, proportionality and ‘non bis in idem’ (no double jeopardy) or the requirement of predictability and certainty are essential elements of criminal justice systems. Therefore, if mediation is included in the criminal justice system, legal safeguards have to be built in order to ensure that these principles will be followed by the restorative interventions as well.

The need to frame mediation legally was also recognised by the European Union Council *Framework Decision* of 15 March 2001 on the standing of victims in criminal proceedings. Its Article 10 stipulates that each Member State of the European Union “shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure”, and “shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account”. To implement this rule, Member States “shall bring into force the laws, regulations and administrative provisions” by 22 March 2006 (Article 17).

Additionally, one more reason could be mentioned that highlights the need for legislation. Several countries, especially those that have only recently started to implement restorative justice, suffer from the *general lack of legitimacy of informal, community-based responses to criminal offences*. As a consequence, the *legitimising and credibility-increasing impact* of formal frameworks, especially of legislation, on the judicial profession as well as on the general public cannot be underestimated while discussing effective ways to implement restorative justice. In other words, laws are one of the most significant instruments of effective implementation, since they are crucial in providing reasons, justifications, clear positions, protocols, institutions, and credibility in the society from a top-down direction (balancing the original ‘grass-roots characteristics’ of restorative initiatives). Therefore, it can be concluded that promoters of restorative justice *need* legislation in the field of restorative justice, particularly in those countries that are in the initial stage of implementing this concept into their justice systems. This point will be considered further in Section 3.2.1.3.

Concerning the contributing role of legal frameworks in the implementation process, it is important to highlight the significant role of *secondary regulations*, bylaws and protocols as well. Several research findings show that even in countries where there has been a long tradition of restorative justice, there could be many more referrals, for example, to victim-offender mediation, than there are currently.⁶³ According to discussions with experts working on the

⁶³ In a country like Germany for example, with 400 local mediation programmes, it has been calculated that the number of judicial files on assault that could be taken into consideration for mediation is about 100.000 a year, compared to the 15.000 cases of all crimes effectively selected for mediation (Weitekamp, 1999: 123).

implementation of restorative justice in several European countries, one of the reasons behind this gap is the lack of clear protocols in the referral procedure. Hence, in order to avoid the future under-use of restorative justice, experts often mention that it is not enough merely to codify laws allowing mediation in criminal matters. From the very beginning institutions and formal agreements should also advise the actors of the criminal justice system in which ways referrals should be done and what types of cases are suitable for referral.

On the other hand, defining the legislative background of restorative justice might seem a quite paradoxical ambition as well. The main question is *how to formalise an institution* and philosophy that is, by definition, *based on informality*. Moreover, how to raise the level of an originally community-based approach – in which the main emphasis is on the dialogue and the active as well as personal participation of citizens – to the macro level that might result in a formal, impersonalised system? One of the ways in which this controversy can be solved is to keep continuously in mind that these are not specific institutions but rather some underlying principles are the main elements that we need to stick to while designing formal frameworks. By such consistency it might be possible to regulate micro activities on a macro level without losing the fundamental concepts.

As mentioned before, there is a general agreement that restorative interventions should guarantee the fulfilment of the requirements of legal principles – such as equality, predictability or certainty – as much as possible. On the other hand it has to be taken into account that restorative practices – due to their personalised approach and case-specific focus – might not meet these fundamental demands. As a consequence, we can assume that legal frameworks have the potential to counterbalance for this possible dysfunctional aspect of restorative justice. This purpose can be served by integrating rigorous safeguards in the system in which restorative interventions take place. Clarifying firstly the meaning of the above-mentioned legal principles, secondly defining methodological and ethical standards in restorative practices and finally ensuring the willing participation of the parties in restorative programmes, can be largely beneficial in guaranteeing these essential needs.

3.2.1.2. Is restorative justice ‘more unjust’ than the traditional criminal justice system?

It can be considered as a common view that *restorative justice* might lead to ‘unjust’ consequences of criminal cases because it does not give priority to the principles of *predictability*, *certainty*, *equality*, or *proportionality*. On the other hand, *legal codes* claim the potential to *guarantee* meeting these requirements. Since advocates of restorative justice are often confronted with these claims (mainly emphasised by criminal justice practitioners), and such concerns might result in resistance against the implementation of restorative justice, it is important to point out that the *differences might not be as black and white* as it seems at first instance.

Firstly, before assuming that the legal system has *predictability* while the restorative process does not, we have to keep in mind the *discretionary power of judges* and the unpredictability that might be caused by the different interpretations and subjectivity of judges. In other words, we cannot assume that criminal justice systems basing their interventions on the principle of legality are completely predictable.

On the other hand, we cannot conclude either that restorative justice is necessarily an unpredictable measure. A high level of predictability can be achieved firstly by ensuring the necessary *methodological standards* in providing mediation (e.g. the mediators always have to keep in mind the ways in which the balance can be maintained between victims and offenders during a mediation session); secondly, by building *adequate safeguards* into restorative justice practices; and finally, by clarifying the relation of the restorative process vis-à-vis the criminal justice process (i.e. ensuring that the conventional criminal justice process remains available at any stages of the procedure for parties who are not willing to or change their decision about participating in restorative interventions).

Furthermore, it also has to be pointed out that *legal certainty and equality* in conventional justice systems are by no means straightforward. Legal defence is intended to have an important role in providing 'justice'. However, the consideration of any rule-breaking as well as the legal consequences of offences have largely become dependent on the skills of defence lawyers in finding legal justifications, mitigating factors etc. for the act as well as in trying to minimise the severity of punishment for their clients. As a consequence, the clients of highly skilled lawyers – who can afford to pay their experienced advocates – might have higher chances for receiving more lenient reactions for the same act than those ones who cannot afford the same quality of legal defence. Moreover, the basis of the judicial decisions concerning criminal acts consists predominantly of legal qualifications and arguments, rather than the actual story of the suspect. In short, in the current system searching for legal excuses for rule-breaking can be much more 'beneficial', from the offenders' point of view, than admitting personal responsibility and honestly detailing the background factors behind an offence. As a result, the question whether current justice systems are really designed to encourage offenders to face the real consequences of their offence at all should also be asked when analysing the different paradigms in the criminal justice system. Moreover, not only the principles of equality and certainty but also ethical and moral issues are raised by this latter dilemma concerning the conventional justice system's functioning.

The next issue is whether legislation can impose an *external control* on the outcome of mediation as well. Defining minimum standards that have to be respected by restorative practices (e.g. not accepting highly disproportionate or imbalanced agreements between the parties) can unquestionably have a controlling effect. If these standards are defined on beforehand, it can be

beneficial in directing the mediation process towards realistic paths without endangering the autonomy of the parties involved. However, once the minimum requirements of restorative practices are laid down, agreements and decisions of the directly involved parties should be maximally taken into account by the judicial system. Since the philosophical approach of restorative justice (in which the main focus is on repairing the harm) can be fundamentally different from a retributive ideology (in which the primary consequence of any crime has to be the punishment of the offender), it is questionable whether an agreement that was made in a restorative atmosphere could or should be revised on a retributive basis. In any case, 'hybrid' processes that could result in more harm for the parties compared to the consistent use of a pure restorative or retributive system should be avoided. Furthermore, restorative justice offers the parties the opportunity to consider what form reparation should take, but if their agreement is overruled by a court, they are likely to feel that this offer has been denied to them, unless the reasons are very carefully explained.

While several writers on continental legal systems argue that the *principle of legality* has rather a 'contra' than a 'pro' role in reasoning for the implementation of restorative justice, some thinkers consider the principle of legality as primarily a *contributing* factor towards the recognition of the need for implementing restorative justice. They highlight the crucial role of justice systems in not only *reacting* to wrongdoing but also in being more *proactive*, and providing the possibilities for a more interdisciplinary, inter-sectoral approach to dealing with crime by cooperating with agencies of e.g. the welfare and educational systems. They also emphasise that while the criminal justice system can only act in very specific conditions and to a very limited extent (according to the principle of legality), restorative justice could play a role in referring the case to those sectors that could consider the more complex background of each crime. As a result, more effective services could be used in order to restore the damaged emotions and social bonds of individuals and communities. However, these interventions can hardly become an integral part of criminal justice systems without having specific legal frameworks regulating their functioning.

Concerning legal principles that can be reflected on in the context of restorative practices, two additional elements, the *subsidiarity* and the *participatory principles*, should also be mentioned. Subsidiarity means taking decisions at the most local level possible, and participation in this context means that the parties involved in an event should have the opportunity to take part in deciding how to respond to it. Although they might not have the same priorities as the principle of legality – which is probably a more fundamental concept, particularly in continental legal systems – they definitely have a gradually increasing role in justice systems. Therefore, they should also be taken into account while thinking about the possibilities of restorative justice since it clearly includes these two principles by definition.⁶⁴ Furthermore, restorative justice also might

⁶⁴ See the definition of restorative justice on page 1.

serve as a complementary instrument since it has the potential to ‘compensate’ citizens for some dysfunctions of the criminal justice system regarding their lack of subsidiarity and participation. In other words, if the state monopolises criminal justice processes, the chances for subsidiarity are very low. Hence, if we cannot offer alternatives that allow victims and offenders to actively participate in their case and to *voluntarily* offer a personal commitment to deal with their conflict, it is highly questionable whether the participatory principle can be realised at all in traditional justice systems.

3.2.1.3. The limits of the law

The previous paragraphs tried to shed a light on some of the possible reasons for promoting legislation on restorative justice. However, besides thinking about all the ‘pro’ arguments, it is worthwhile to consider the possible *dangers* of legislating. As mentioned before, one of the main issues is how to realise the *formalisation* of an initially informal institution *without losing* its underlying *principles*. How to *avoid co-optation* of restorative justice *by the traditional criminal justice system* so that it becomes simply another measure within a basically retributive framework?

Moreover, the process of formalisation necessarily raises the question of how to *prevent* restorative interventions from losing their personalised and case-specific characteristics and from becoming measures working on a daily *routine*. And last but not least, we need to take into account that creating formal frameworks increases the role of professionals in the relevant field. Once the issue of *professionalisation* is becoming more and more significant, there is a danger that the original idea of ‘giving the conflicts back to their owners’⁶⁵, i.e. to the citizens, is less and less followed. Accordingly, people might have the tendency to give their responsibility back to the professionals. This process might jeopardise the consistent commitment to the underlying principles of restorative justice, even if from now on the new profession would be called ‘mediators’ and not ‘lawyers’.

3.2.1.4. Defining the final goal: strict legislation or broad implementation

To conclude, legislation has a crucial role both in implementing restorative justice as well as in continuously representing those fundamental principles without which justice could hardly be imagined. However, instead of purely discussing the legislative aspects of restorative justice, this issue should be considered on a broader level. Therefore, the necessity of raising the question of *integration at a complex level* could be emphasised. Although legislation might be one of the major, if not the most important, themes of integration, the legal framework is *not the only* important aspect that has to be considered. Otherwise, it is very well possible that we will not be able to see the wood for the trees while implementing restorative justice. In other words, if the effective

⁶⁵ Christie, 1977: 1-15.

implementation is our ‘wood’ that we want to see, we have firstly to identify all those principles that should be represented in it and should not allow the different legal intentions (as ‘trees’) to divert our attention from the wood.

In short, we might say that we should not necessarily be dominated by particular legal institutions, but rather that we should stick to the *underlying principles* in the process of institutionalising restorative justice. Thus, instead of limiting the use of restorative justice within the criminal justice system and only focusing on the necessary legal framework, we should also look at how, for example, the education system might be able to represent similar restorative values. In other words, underlying principles in different institutions should reinforce each other.

Therefore, the main challenges are, firstly, to *agree on the underlying principles* we want to keep to; secondly, to *keep them continuously in mind*; and, finally, to *revise our actions*, regulations, institutions and practices from time to time to check whether the reality still reflects the originally identified purposes. With such a process it might be possible to combine the advantages of both systems through the formalisation of an originally informal institution

3.2.1.5. Main issues related to legislation according to the participating experts

Restorative justice – more precisely victim-offender mediation and in some cases conferencing – has been legislated for in several Western and Eastern European countries. The already existing *legislation* is integrated in the following *three main ways*: firstly, some countries apply mediation as a diversionary measure and mention it in their juvenile justice acts (e.g. in England and Wales, Germany, Poland); secondly it can be integrated in the criminal codes (e.g. Finland, Poland) and/or in the criminal procedure acts (e.g. Austria, Belgium, Slovenia); and finally, there can be a more detailed specific law on mediation, also providing a procedural and organisational framework for the practice (e.g. Norway and the Czech Republic).⁶⁶

Although in a number of countries restorative practices are not yet regulated by law, legislative aspects are clearly on the restorative justice agenda of all countries. Several countries still do *not have* nation-wide *legislation* (e.g. Hungary, Romania). However, even those countries that *already have legislation* referring to the possibility of mediation in criminal cases (e.g. the United Kingdom) have to consider difficult legal issues.

Countries without specific legislation have to face the complexity of the implementation process and have to find ways of starting pilot projects without the legitimising and credibility-increasing role of legislation. These countries also need to accept that the possibility for their initiatives to move from the margins towards the mainstream of the justice system is much less at this initial

⁶⁶ Aertsen *et al.*, 2004: 49-50.

stage. On the other hand, countries with general or more specific legislation often suffer a lack of real understanding and implementation of the underlying principles of restorative justice in the practice.

One of the main structural questions behind legislation is the way in which restorative justice can be integrated into these young democracies' continental criminal justice systems. In Central and Eastern European countries (which are all based on continental legal systems), the *principle of legality* and the assurance of legal safeguards are strongly emphasised. However, sometimes these principles are used as arguments for 'excluding' the possibility of restorative justice, for example by resistant legal practitioners. Moreover, this tendency might be more visible in the Central and Eastern European region compared to Western countries having democratic traditions for a longer time.

The experts emphasised that the process of the practical institutionalisation can become highly difficult (as the example of Bulgaria showed), if laws have been quickly drafted without adequate consultation, and if the institutional system and bylaws are not already in place. More detailed regulations are the basis of designing and following clear procedures that allow cases to be actually referred to mediation. Hence, attempts should be made from the very beginning to define clear procedural regulations in order to try to avoid the future 'under-use' of restorative justice.

Last but not least, countrywide standards are necessary to assure the *principle of equality*. In other words, people should have nationwide access to mediation. This possibility should not be dependent from the various protocols of jurisdictions or the personal commitment of the police officers, prosecutors, and judges towards mediation in the different judicial districts.

The experts also pointed out that *research* has a significant role in contributing to a well-tailored legislation. However – as for example in Hungary and the UK – often assessments and studies have not been given the opportunity to advance legislation or significantly influence future legislation. As an example, in Hungary draft laws are kept confidential for a long time during the preparatory phase and even at later stages the possibilities for public debate that could significantly influence the final text are limited.

Regarding the connection between legislation and implementation, the following question was raised by the experts: What comes first? Do we first need *pilot projects* and then a *legal framework*, or do we need a legal framework in order to have successful pilot projects? The participants representing different countries and legal systems had different opinions on the possibilities and priorities according to their legal and institutional possibilities for pilot projects. However, there was a general agreement that these are the two milestones that have to be passed before realising a consistent national implementation. Concerning the question which of these essential factors should precede the other, examples from particular countries can be mentioned.

- where there is no legislation at the moment but there are already successful pilot projects (even if only partially) related to restorative justice (e.g. the introduction of Real Justice in schools in Hungary⁶⁷). These projects can indirectly contribute to the process of implementation, but project leaders are aware that the condition for applying restorative justice in criminal cases (even only in pilot experiments) is to have a legal framework, therefore the legislative reform is unavoidable before starting projects in criminal cases;
- where there was no legislation, but restorative justice advocates could establish cooperation with representatives of some District Courts and the Supreme Court and pilot projects could start based on these partnerships. As a result of such cooperation detailed resolutions supporting victim-offender mediation were issued by judicial authorities later on (e.g. in Ukraine);
- where recent legal changes have opened the door for starting pilot projects (e.g. Bulgaria);
- where victim-offender mediation projects can fit in an already existing legislative framework. However these were mainly pilot projects that could efficiently stimulate the application of restorative justice on a broader level (e.g. Albania);
- and finally, where pilot projects could not have started without the necessary legal framework. Therefore, restorative project leaders had firstly achieved reforms of their legislation and then started pilot projects (e.g. Moldova).

The importance of lawyers in the implementation process was also pointed out. They should have a primary role, examining the legislation in order to see what has already been done and how legislation could be improved in the future to allow the effective implementation of restorative justice practices.

Participants agreed that letting people experience restorative justice for themselves in good and successful pilot projects is among the most efficient ways of persuading governments and donors to support the implementation. It was also pointed out that in several countries there is legislation but nothing much is happening. This showed that pilot projects are more important because presenting actual experiences of clients and professionals is the best way to persuade people.

Concerning some more practical issues, the importance of *public debate* about *clear definitions* was emphasised by the participants. Good definitions are needed because if the different concepts and terms are confused at the start, it might become difficult to solve the possible problems and inconsistencies in a later stage (for example while conducting evaluation studies). The need to set up pilot projects in an *interdisciplinary* way is also unquestionable since it allows

⁶⁷ For more details see the best practice of Hungary on page 127-128.

representatives of several professions to participate in and contribute to the effectiveness of initiatives and to consider many different aspects during the implementation process. In addition, *community involvement* is crucial in pilot projects. It can be achieved by for example referring cases to NGOs or by using volunteer mediators.

Following the experimental projects, publications and evaluations need to be disseminated. Furthermore, parallel to improving *legislation* based on the experiences, the *nationwide extension* of the project as well as the *training* of different actors of the criminal justice system also need to be prepared. Meanwhile, it is advisable to be personally involved as *consultant* in policy negotiations in order to be able to guarantee as much as possible that the right principles are represented in legislation and in policy developments.

To conclude, the discussions about the issue of legislation started with the question whether pilot projects without legislation should precede changes to the law, or whether legislation should come first. Following this question, the main organisational components (evaluation, public debate, involvement of legal officials) and the content-related aspects of an effective pilot project (clear guidelines, adequate training) were elaborated. Thirdly, the importance of mutual cooperation and relations were highlighted, especially with the different actors of the criminal justice system. Effective partnerships with justice officials were considered as essential conditions of realising successful projects and improvement. Hence, having a close personal relationship with judges and prosecutors can be a great of value.

Among *organisational* aspects the following were highlighted:

- make it possible to fit restorative justice in the criminal justice system;
- make a project interdisciplinary;
- involve legal and governmental officials in the process and do not let the NGOs stand alone;
- transfer the responsibility of reforms to other professionals;
- evaluation should be done by those who have a deep understanding of the subject but are not directly involved in the project;
- stimulate public awareness and public debate before and during the passage of legislation;
- organisations should fit well in the system and be based on interdisciplinary teamwork;
- raising public awareness is important, parallel to the process of institutionalisation.

Concerning the *content* of restorative initiatives it is important to:

- follow and keep in mind the underlying principles of restorative justice;
- stimulate the dialogue between the victim and the offender;

- achieve agreements that reflect the interests of both the victims and the offenders;
- support victims whose offenders are not known and work out schemes for their compensation as well;
- provide support for the offender in carrying out the agreed reparation;
- provide supervision and continuously deal with the motivations and concerns of the staff members or services.

3.2.2. FUNDRAISING

Funding plays a central role in the practice of restorative justice. This issue largely influences not only the implementation, but also the sustainability and the possibility for the continuous improvement of restorative practices.

Usually public donors (local and national governments or international communities) and private organisations such as charitable or philanthropic trusts and commercial companies are the main potential funding bodies. The extent to which they are open to support for example

- initial pilot projects;
- mainstream (long-term) projects;
- relevant research studies and evaluations;
- services of local or national NGOs supporting and promoting restorative justice;
- the supply of restorative justice services;
- professional exchange activities

on local, regional, national or international level is a crucial aspect in the efficient implementation and application of restorative justice.

Concerning this issue, the participants raised the following three main questions: firstly, how to make structural funds present; secondly, how to create the capacity to have access to the funds and, finally, how to make use of the pilot projects based on these funds?

It was concluded that there are a number of similarities between Central and Eastern European countries (such as for example between Croatia and the Czech Republic) regarding their financial possibilities. Several countries can benefit from numerous external donors and funding bodies. However, the grants and available funds are sometimes not used in the most appropriate or effective way. This can result in an increased number of restrictive rules for applying for funds. Even if pilot projects successfully apply for funds and can start new activities, these funds are not available anymore after the first or second year, and no official resources are offered for continuing the projects. Hence, the biggest problem of pilot projects is the question of *continuity*. Although funding might flood into the countries, if it is not effectively used on

the systemic level, or not used in accordance with the agreements, ‘taps’ will be closed later on.

It was also emphasised that pilot projects often do not know about each others’ work and they do not share information or cooperate. The exchange among them is not efficient; therefore there is no integrative and consistent lobby towards long-term legislation and funding on the national level. The *lack of cooperation* and exchange makes it very difficult to think and act in large-scale and long-term projects. Consequently, having access to more structural funds becomes also one of the main challenges, even if it is unquestionably the condition of more complex actions and a systemic change in a country’s criminal justice system.

This highlights the need for more communication among the fragmented pilot projects. Although ministries might already have budgeted or can expect significant financial support for new initiatives from international bodies such as the European Union, in many cases they do not have consistent information about already-running successful projects. Hence, they often do not use these sources efficiently. Therefore, participants stressed that it is important to ‘educate’ the ministries (provide information) about the already existing mediation projects.

It was also pointed out that, while there is a need for thorough *evaluation* and *monitoring* in order to follow-up the ways the available funding is spent, the beneficial roles of evaluation and monitoring are not recognised sufficiently. In other words, these ‘exercises’ are hassles for project managers and policy-makers rather than instruments with the potential to point to good directions for later developments.

Furthermore, participants mentioned that it is also important to have skills in *promoting projects* via high-quality reports. Therefore, there is a need for restorative justice managers who are able to adopt a strategic approach to funding that embraces effective communication. The adoption of sound practice principles, and the recruitment and retention of high calibre personnel as mediators, managers and Board members are also essential factors in the implementation process. However, all kinds of organisations, but particularly NGOs, suffer from a lack of human resources and skilful fundraisers. Another challenge is to promise guarantees while applying for grants, since donors prefer fast, clear and sure evidence before deciding upon funding activities. It significantly decreases the opportunities for innovative, ‘risky’ projects.

The participants also shared information about the *current* sources of *funding* and resources of their organisations and projects. According to this, we can summarise that the main funding bodies are the national governments, ministries, international institutions (the European Union, Council of Europe, United Nations), embassies (e.g. Swedish, Norwegian, Danish, UK, Dutch,

Finnish, American), international foundations, bar associations, churches and some private donors.

To conclude, it can be pointed out that in respect to fundraising:

- Exchange of good practices should be encouraged. More communication can contribute to the integration of fragmented projects in order to lobby successfully for larger grants and more structural funds.
- While applying for funds it is worthwhile to aim not just to ‘pilot’ but also ‘to develop a model of restorative justice for the country’. Moreover, these sources are essential not only for sustaining activities, but also for realising structural changes on a systemic level.
- Strategically planned fundraising is more efficient than ‘emergency’ fundraising.
- Continuous communication with donors (sharing information all the time, not just at the end of the project) is essential as well as staying open with donors.
- It is important to have good projects and annual reports, personal presentations, explanations, continuous consultation and ‘proactive’ consultancy.
- It is important to keep governments’ actual ideas, issues, policies in mind while designing, planning, and applying for new projects (as an example, initiatives such as the ‘Year of Restorative Justice’ in Poland in 2005, can be well used).
- It is necessary to ensure human resources for continuous fundraising. Project managers have to be aware of the fact that fundraising is a job in itself requiring several specific skills and a full time employment. Therefore a pool of experts and professional fundraisers might be useful for organisations in developing their human resources.
- Restorative justice can be funded within the framework of more general issues that are currently relevant for Central and Eastern European countries and that are important objectives on governments’ political agendas. Therefore significant financial and institutional support can be gained for restorative initiatives if they can be embedded in mainstream strategies of governments. The following issues are important in all European countries and have a significant role especially in the transitional process of Central and Eastern European countries towards democracy:
 - the reduction of (re)offending and fear of crime,
 - the reform of criminal justice systems and adequate responses to the inefficiencies and dysfunctions of the current criminal justice systems;
 - victims’ support, healing of victimisation;
 - reintegration of offenders;
 - crime prevention;

- improving the school system;
- peace-making;
- community building;
- institutional building;
- the promotion of democratic conflict-handling methods;
- improvement of human rights;
- reducing exclusion - increasing inclusion in the society.

In addition to the above-listed objectives, restorative practices can gain financial and institutional backing up within the framework of other social services. If there are already relevant services in a country, that have the potential to include the restorative approach in the initial phase of its implementation, a thoughtful combination of interventions can also be useful in finding sources for starting and running restorative practices. In order to map what kind of other social services can be linked to restorative practices, the restorative justice typology by Ted Wachtel (Figure 2) may be useful.

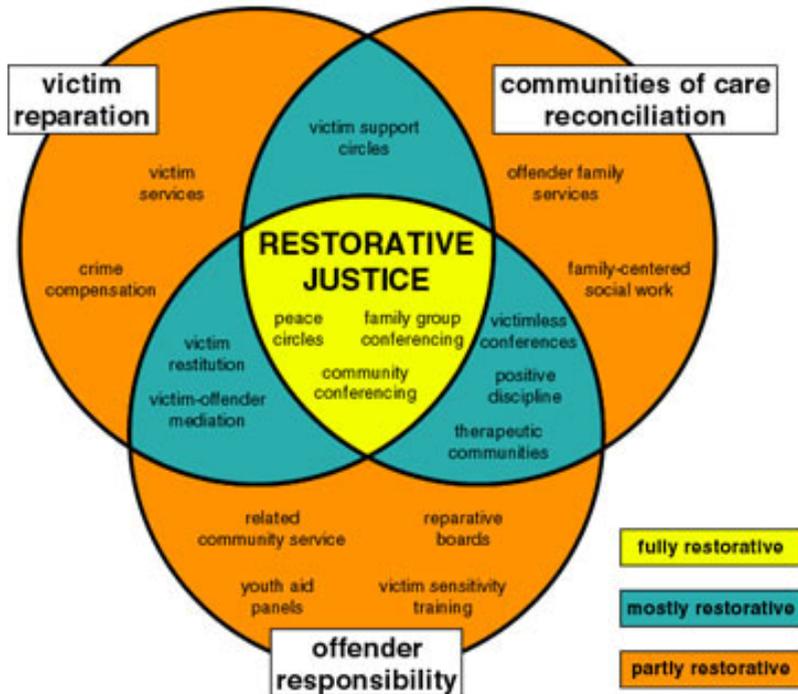


Figure 2: Restorative Practices Typology⁶⁸

⁶⁸ <http://www.realjustice.org/library/paradigm.html>.

3.2.3. AWARENESS ABOUT RESTORATIVE JUSTICE

The openness of the public towards restorative justice is largely dependent on its general attitude towards crime and punishment. Although there is a common concern, especially in Central and Eastern European countries, that the 'public at large is strongly punitive', this perception is often a result of over-simplification.

Furthermore, surveys measuring public attitudes can sometimes be of questionable methodological reliability. Such studies can ask significantly different questions and can produce diverse responses accordingly. As an example, if the public is asked about whether the criminal justice system should open more to restorative justice measures as 'softer responses' to crime, people tend to react in a more punitive way and would resist to 'soft' methods. On the contrary, if surveys ask everyday citizens about their attitudes on including the element of restoration in the sentencing procedure, it is usually highly supported by members of the general public.⁶⁹

Additionally, punitiveness is an ambiguous issue in itself. Sometimes the general public's perception about criminal justice systems' leniency is inconsistent with the actual practice of sentencing. As an example, according to some research studies, the general public tends to perceive that offenders receive lighter sentences than they actually receive.⁷⁰ Another very recent study pointed out that the "German statistics of police-recorded crime show a decline in total offences over the past 10 years up to 2003. In contrast to that trend, survey-based evidence shows that the German public believes or assumes, on balance, that crime has increased (Pfeiffer, Windzio and Kleimann, 2005: 259)". Concerning the 'real need' for punishment in a society, there are also diverse approaches based on whether the views of criminal justice system professionals or of everyday citizens are measured. To illustrate, according to the study of Dölling and Henninger (1998: 360), in less serious crimes the public was less punitive than professionals of the justice system. Only in cases of serious crimes was similar punitiveness shown by the public and the justice system.

A recent study by Roberts and Hughes (2005) exploring public opinion on youth crime and justice in England and Wales also found a number of misperceptions about juvenile delinquency. Few respondents rated youth courts as doing a good job, and most thought that sentences imposed on young offenders are too lenient. Accordingly, a considerable gap existed between the sentences that respondents wanted to see imposed on young offenders and the sentences that they assumed would be imposed, since expected sentences were less harsh than favoured punishments. However, when respondents were asked to impose sentences in case scenarios, there was significantly less support for

⁶⁹ As useful overview of research studies illustrating this trend can be found in Aertsen *et al.* (2004: 76-78).

⁷⁰ Griffiths and Verdun-Jones, 1994: 419-422.

custody as a sanction when the young offender had made some restorative steps such as writing a letter of apology and promising to make compensation to the victim. When asked about alternatives to imprisonment, significant proportions of respondents found alternatives to be satisfactory substitutes for imprisonment.

According to Aertsen *et al.* (2004: 76-77), in 1982 a survey of burglary victims found that victims generally wanted the offender to repay his 'debt' in a useful way, through restitution or working for the community. Furthermore, remarks like 'Prison does no good to anyone' were common among the responses. Another survey of nearly 1000 respondents concluded that 85% thought it was a good idea to make some offenders do community service instead of going to prison, and 66% wanted to make them pay compensation to their victims. According to the British Crime Survey in 1984, 49% of victims would have accepted the chance of meeting the offender in order 'to agree a way in which the offender could make repayment for what he had done', and 20% would have liked an agreement without a meeting. The same survey in 1998 found that 41% would have accepted the chance "to meet their offender in the presence of a third party [...] to ask offenders why they had committed the offence and tell them how it had made them feel" (Wright, 1989; Maguire and Corbett, 1987: 227-231; Mattinson and Mirrlees-Black, 2000).

All these examples show that legislators and administrators may be confident that "restorative justice can be presented to the public as a measure that is neither 'tough' nor 'lenient' but appropriate and reasonable, an expression of 'common sense' (Aertsen *et al.*, 2004: 77)".

Concerning the awareness and attitude of the general public, *experts'* initial *questions* related to the definition as well as to the identification of the concept of 'community' in our societies and the issue of how to develop civil society. There was general agreement that the role of communities has changed considerably in the last decades, especially in the post-communist societies. On the one hand the significant *decrease in the strength and cohesion of local communities* might contribute to the increase in the volume of crime.⁷¹ On the other hand, it makes the acceptance and efficacy of restorative justice much more difficult, due to the lack of awareness about shared values and interdependency.

As a main difficulty, it was highlighted that the perception of high crime rates might easily result in a punitive attitude of the public. Meanwhile, communities often do not recognise their and their members' *responsibility* in the resolution of conflicts, i.e. they avoid being involved in their own conflicts. However, there are significant differences among the societies and the role of communities in the European countries that have to be taken into account during policy

⁷¹ Several criminological theories, such as for example the 'social disorganisation' theory (Sampson and Groves, 1989) or studies on 'collective efficacy' (Sampson, Raudenbush and Earls, 1997) have analysed this correlation.

reforms. As examples, some countries can count a lot on the input of volunteers and civil organisations (e.g. Poland, Norway, UK), while other societies mostly base their services on central and state institutions (e.g. Czech Republic, Hungary). Finally, it was stressed that it is important to have different types of state support for efficiently involving communities in public actions (top-down support for bottom-up developments).

Participants agreed that the lack of awareness, knowledge and recognition of benefits of restorative justice in the public is a crucial issue in every country. It highlighted the importance of *re-strengthening the links between the state, local governments and local communities*, for example by organising round table meetings (like in Estonia). It is a current challenge, even in Norway which is famous for its tradition of an active civil society and voluntary sector. Involvement of local citizens in social initiatives and public issues, especially increasing the input and activities of volunteers, can be the most efficient bridge towards communities. The most difficult challenge is to change citizens' mentality concerning their willingness to take responsibility for their or their communities' conflicts and to minimise the number of cases in which only authorities are addressed. Stimulating the recognition that citizens should not hide behind judicial institutions in order to avoid handling their conflicts themselves is still an issue, even in Western European countries.

Regarding the attitude and *awareness of policy-makers in governments and of the current criminal justice stakeholders* concerning the underlying principles of restorative justice, participants raised the following main issues:

- In several countries restorative justice stays on the margins of the criminal justice system as diversionary measure and could not become an integral part of the judicial system (even in countries with many years of experience with restorative justice, such as Austria or Norway).
- Restorative justice is often considered as merely another instrument of the criminal justice sector and there is a danger that it will be co-opted by the retribution-based traditional justice system.
- There is a possible danger that the integration of restorative projects into sentencing leads to net-widening of the criminal justice system, i.e. instead of empowering the parties to get involved directly and actively in their cases, it only broadens the punishing and controlling power of the state.
- The punitive attitude of governments and criminal justice practitioners of several Central and Eastern European countries is still very strong. It is illustrated by the fact that restorative justice, which is often considered as a 'soft' option, is not on the agenda of several governments that prefer to follow more popular ideologies and focus on 'being tough on crime'. Furthermore, the high imprisonment rates as well as the intensive use of long-term incarceration are quite typical in Central and Eastern European countries. It also shows that retribution and restoration are competing

paradigms, and the possible ways of their combination are still crucial concerns, especially in the Eastern European countries.

- Several countries of the region (Croatia, Bosnia and Herzegovina) still have to deal with post-war issues that have higher priority in governments' policies.
- The lack of cooperation by justice officials, judges and prosecutors as well as the significant differences among jurisdictions and the personal motivations of stakeholders have a clear impact on imposing different sanctions and measures.
- Some countries still suffer from the lack of political will in realising significant and systemic reforms in their criminal justice systems.

Providing information and a *basic knowledge* of what mediation and restorative justice are, for the actors of the criminal justice system, can help considerably in establishing good cooperation. If 'gatekeepers', administrators, prosecutors, judges and other potential partners who make important decisions about the handling of individual cases and the allocation of resources gain a basic knowledge of restorative justice, the efficiency of partnerships and further developments can be increased considerably.

Benefits related to the cost-efficiency of procedures should also be stressed. Not only the reduction of workload of courts, but also the prevention of criminal justice procedure's stigmatising effect on offenders can be an important result of restorative justice. As one of the participants pointed out, legal practitioners and policy-makers should recognise that "less imprisonment would require less resocialisation".⁷²

In addition to *in-depth training* for criminal justice personnel or professional exchange, it is also useful to *introduce* restorative justice already *in the university* curricula of law schools or social and political science faculties.

As a channel towards the general public and the professionals, effective cooperation with journalists is also important. Promoting success stories and making journalists interested in the topic of restorative justice can be highly beneficial, since by regular press releases the main messages of restorative justice can be delivered to the public. Establishing effective communication strategies for different audiences are important tasks of supporters of restorative justice. The contents of the various 'reports' should have a different focus and structure according to the targeted audiences so that it could highlight the main points, specifically for politicians, prosecutors, and judges as well as for the general public. The care for victims and their support should always be stressed as much as the effects on offenders.

Individuals with personal experiences should have the opportunity to participate in media programmes. Particularly the local media have a significant

⁷² Comment at the Final AGIS Seminar in Sofia, 30 September.

role to play. They can considerably increase the credibility of the restorative approach by inviting local people – who are often personally known in a community – to talk about personal feelings they experienced while participating in a restorative project. In short, projects can become visible by showing that real people can turn to them with their real problems.

Individual stories might have a great importance. However, on the other hand, it has to be kept in mind that journalists have a tendency to stereotype and generalise. Therefore, it is advisable to take care of how cases are reported in the media because misinterpretations of restorative justice can have a strong damaging impact on the public's attitude. (For example manipulative headlines, such as the one in an English daily paper: "Say sorry and you can skip court, criminals are told (Daily Mail, 23.07.2003)"⁷³ might even increase the resistance in the general public towards the restorative philosophy.) All in all, the media unquestionably shape the opinion of the public to a great extent and journalists should be encouraged to be interested in the topic so that they regularly report about cases in a competent way. As an example, the importance of presenting restorative practices in interactive TV shows, in which people can call and ask their questions, was discussed. Representatives from Moldova presented their methods for campaign including 'personal selling', i.e. personally explaining the principles of restorative justice and the projects' main objectives and benefits. They also stressed the importance of distributing attractively produced posters and leaflets with clear and simple statements and definitions of mediation and restorative justice on them and about changing attitudes in conflict handling (e.g. 'say yes to mediation'). All these methods might increase the visibility of their projects in the communities.

Legal practitioners have to be addressed firstly via their professional media (journals, websites) and by publishing specific literature focusing on their particular interest. In order to increase the awareness of professionals, inviting legal practitioners or international experts can raise professionals' interest the most. As illustrations, we heard about the beneficial influence of the presentation that Prof. Nils Christie gave in Albania for legal practitioners and about the successful campaign in Poland which succeeded in naming 2005 'The Year of Restorative Justice'.

However, before designing public awareness campaigns, it is advisable to clearly identify the targeted audience and the main messages to be delivered in order to make the campaign strategically designed and effective. Furthermore, peer mediation in schools can make children and their parents aware of mediation. It might increase the chance for children to grow up as 'mediation-conscious' citizens. All in all, promoting restorative justice may help to build civil society and democracy anywhere.

⁷³ The accompanying cartoon has a burglar saying to his mates, as they carry a television set out of a house: "Hang on, lads, I'll just make a note of the address so we can write and apologise!".

3.2.4. TRAINING AND ORGANISATIONAL ISSUES

“Mediation between people who have been divided by crime is one of the most skilled and sensitive tasks to which anyone could be assigned (Marshall, 1999)”.

Mediating between victims and offenders requires a wide range of personal skills, such as: “good communication skills, particularly deep listening skills; problem-solving and negotiation skills; a commitment to equal opportunities; the ability to feel empathy for different kinds of people; a good understanding of local cultures and communities; the ability to acknowledge, recognise and deal with their own preconceptions and prejudices; the ability to remain neutral and non-judgemental; the ability to handle strong and difficult emotions in others; patience; the ability to control the process while empowering the parties to take control of the content; mental agility; the ability to offer and receive constructive feedback; a commitment to learning and developing one’s own mediation practice; a commitment to regular supervision (Aertsen *et al.*, 2004: 55)”. Additionally, mediators need to have a deeper understanding of not only restorative justice and mediation, but also of the criminal justice system, victimology, legal rights of participants and services linked to the criminal justice system.

Therefore, the question of how to recruit and train highly skilled mediators is a crucial issue in all countries – at the beginning of the implementation process as well as later on. However, the establishment of a stable training system is undoubtedly a bigger challenge at the start of the process of introducing restorative justice. Therefore, a good training system is both a condition and the result of efficient implementation. In other words, by the ways in which either national or international trainers are able to gain a foothold in a country by showing the practice at the very beginning of the implementation process, they can significantly contribute to the future success of introducing the restorative approach. Well-designed training programmes, suitably tailored to the local culture and possibilities, can open doors for establishing successful pilot projects as well as stimulate the introduction of quality services in a country. Moreover, as mentioned before, providing practical training and information on restorative justice can positively influence the attitudes of criminal justice professionals.

Furthermore, training is an important issue concerning the further improvement of restorative practices. The Council of Europe Recommendation R(99)19 emphasises in its Explanatory Memorandum, that “[Mediators] training should continue throughout the course of their work”. Hence, the possibilities for professional exchange, supervision, study visits, gaining information about different models can significantly contribute to providing high-standard restorative services in all countries.

In Central and Eastern European countries the most visible improvements have been experienced in the field of training and education. In several countries

training is already organised on a nation-wide level. For example, in the Czech Republic it is centrally organised and provided by the national Probation and Mediation Service (PMS), while in Poland training programmes are mainly run by an independent NGO (the Polish Centre for Mediation – PCM) in several parts of the country. In other countries the implementation process started with the training of volunteer mediators by an NGO; in Ukraine, for example, by the Ukrainian Centre for Common Ground (UCCG). Meanwhile trainers of this NGO had already started cooperation with Moldovan colleagues and contributed to the development of a Moldovan training system. In some countries, such as Albania, Hungary and Russia, experienced trainers from Western countries (Norway, the United States and the United Kingdom) helped the implementation process by providing thorough training for committed NGO activists working on the local institutionalisation. However, some NGOs, such as ‘Ars Publica’ in Croatia, started the introduction of the restorative approach mainly on the basis of a local training programme. A different but equally important initiative is the introduction of restorative justice into the university curriculum. Examples of this can be found in Bulgaria and in Romania, where restorative justice became an important subject in the formal education system of lawyers and social scientists thanks to the innovations of local NGOs and academics.

Despite these improvements, participants of the project highlighted some basic needs in relation to training and organisational issues, such as

- the need for higher quality in mediation services;
- the need for more awareness of the underlying principles and clearer standards in practice;
- the need to clarify selection criteria for training practitioners and of criteria for good training;
- the need for educational standards, ethical and procedural rules for mediators;
- the need to pay equal attention to victims and offenders;
- the need for better cooperation between agencies working for similar aims (such as mediation- and victim support-projects);
- the need for a thorough education of the actors of the criminal justice system about restorative justice as well as for increasing their general awareness about the restorative philosophy;
- the need for more capacity, more trainers and trained people as well as more appropriate institutions and infrastructure;
- and lastly, as one of the most important needs of Central and Eastern European countries, the need for external support (funding and expertise) in order to increase the number of high-quality trainings.

The experts highlighted the importance of a balance between professionals and local citizens as a significant factor in practice. In other words, it is an important goal to train professional mediators, but on the other hand the connection with

the community should also be kept. This approach is also represented by the widely accepted idea of basing the mediation system on a *'hybrid' scheme* in which professional and voluntary mediators are both employed. According to the suggestions and experiences of participants, more serious or complicated cases (or specific categories such as domestic violence) could be referred to professional mediators, while less serious ones could be mediated by volunteers who symbolise the link to the community. However, it is important to point out that volunteers can and should work on a 'professional' level and their voluntary status does not mean at all that they do not have strong skills and provide high-quality services. By supervision and intensive consultation, professionals can support the everyday work of volunteers.⁷⁴

Continuous interpersonal interaction and close *supervision*, as well as the constant follow-up and *evaluation* of the activity of mediators, can be significant factors to improve the quality of services. Participating in these supervisory activities after providing the formal training course can also be a condition for obtaining – and retaining – a certificate.

The considerable role of administrators of mediation services was also recognised. It was discussed how important it is that they understand both the theory and the practice of restorative justice.

Concerning both the practice and the selection of mediators, defining basic standards is also important. Therefore a consistent *accreditation system* – preferably coordinated by an umbrella organisation – and *selection procedure* is needed in order to assure an adequate quality of services. *Ethical codes* for mediators can have an important role in this. Furthermore, it was highlighted that the selection procedure should be as personal as possible. It can be very useful if the selected mediators represent different groups of society according to factors such as age, gender and ethnicity.

Regarding the selection and training of mediators, participants considered the practice in Norway (*see the text in frame*) as a particularly useful model to study. It includes several elements that might be important for Central and Eastern European countries while designing their own model of selection and training.

⁷⁴ As an example, see the best practice in Germany on page 126-127.

MEDIATION SCHEME IN NORWAY BASED ON VOLUNTEERS

Mediation services in Norway are primarily based on volunteer mediators under the coordination of a paid staff member in each office (in 2003 there were 36 Mediation Services and about 700 mediators⁷⁵). Their training and coordination are organised in a very complex but also in an interpersonal way with the intention to realise flexible, adequate and responsive services.

Availability of positions for volunteers is advertised in local papers. Usually there are many more applicants than available vacancies. The selection procedure before training is based on a first interview which is primarily to explore the applicant's motivations and the reasons why s/he wants to take this task. Humanitarian aspects, personal skills and willingness to learn are the most often mentioned reasons for applying. By selection they also try to balance the different backgrounds of volunteers so that they could represent the different age, ethnicity and gender groups of the society.

As parts of the training procedure, volunteers observe mediations as well as participate in face-to-face talks with experienced mediators for receiving feedback and for discussing their main questions. There is a strong emphasis on interpersonal and continuous supervision, as well as on personal reflection in order to assure that volunteers gain the necessary skills for providing good quality services.

In some jurisdictions, as for example in Kristiansand, volunteer mediators work in pairs. It makes it possible to reflect upon the process and give clear feedback and guidance to each other. It is a useful safeguarding process providing continuous reflection to the mediators. It happens in only few cases that a mediator is advised to leave the service after this 'introductory phase' because of not having the necessary qualities.

The role of the code of ethics and the general learning culture within the organisation are also very important. Seminars with invited experts from different fields are also organised to talk about questions related to crime, such as the issue of immigration, severe violence, etc. Volunteer mediators also have workshop activities, including several role-plays so that they could learn more about their own experiences, including mistakes as well.

After having provided a detailed overview of the main challenges of implementing restorative justice and detailing the issues of legislation, fundraising, awareness and training, let us move towards some concrete recommendations regarding these topics.

⁷⁵ Miers and Willemsens, 2004: 100-101.

3.3. RECOMMENDATIONS IN RELATION TO THE ‘HOT-ISSUES’⁷⁶

Based on the discussions presented in the previous chapter, participants in the project formulated a number of recommendations. This list of statements is basically a summary of the main conclusions relating to the issues of legislation, training, fundraising, awareness of professionals and the general public, and the role of international cooperation. Since participants represented almost 20 countries from several regions of Europe, instead of formulating very specific guidelines, the experts intended to clarify only some common elements that are significant aspects of the implementation in all these countries.

It is clear, however, that identifying more concrete recommendations is an important next step, but it would be the objective of another project. By the time of this publication, participants have gained thorough information about the situation in each country involved and could gain a deeper insight into the common challenges and supportive factors. Hence, a reasonable future step could be to formulate well-structured recommendations that give suggestions on the effective implementation

- with respect to the different national and regional *differences* (consideration of the diverse historical, cultural, political and economic situation of the countries);
- concerning the *main objectives*, the *content* and the underlying *principles* of policies;
- for *short-*, *middle-* and *long-term* processes;
- for *local*, *national* and *international* bodies;
- for *public* and *private* actors.

At this point, the recommendations below are intended to provide a general overview on the most highlighted aspects of implementation.

3.3.1. LEGISLATION AND POLICY DEVELOPMENT

Preparation of the legislation

1. Nationwide legislation should be prepared in three main steps: firstly, the already existing legislation should be studied; secondly, pilot projects followed by rigorous evaluation – also in function of possible legislation – should be conducted and, finally, the legislation and practices of other countries should be analysed in order to assist the establishment of a legal framework. Moreover, these activities should not be limited to the preparation of legislation. Findings of such research activities and evaluation should contribute to further policy developments in the future as well.

⁷⁶ Based on the discussions at the second expert meeting in Chisinau (17 – 19 March 2005) and at the final seminar in Sofia (29 September – 1 October 2005).

2. Prior to the establishment of specific legislation concerning restorative justice, the possibilities for victim-offender mediation within the existing legal framework should be explored (e.g. in the case of unreported crimes; mediation within the probation system, in educational or in correctional institutions, etc.).
3. Research needs to be conducted about the attitudes of the general public towards the sentencing system. The public's needs, experiences, expectations concerning the current justice system as well as its openness to alternatives and reparative measures need to be mapped.
4. Politicians need to be convinced about the necessity of such legislation. Firstly, it has to be clarified that restorative justice is not 'against' the existing legislation. Practice in the form of pilot projects should be able to start without a specific permissive legal base. Secondly, presentations on recent research studies on the public's attitudes towards sentencing and about their expectations towards the justice system should be used to stress the public's openness towards alternative measures and reparation. The involvement of key people and opinion-formers can largely support this process. Thirdly, strong emphasis needs to be put on gaining information about other countries via the exchange of their legislative documents and good practices.

Establishment of the legislation

1. Restorative justice should not be limited to the application of a couple of techniques, such as victim-offender mediation or community service. On the contrary, the implementation of restorative justice should be an ongoing process of including constructive answers to crime in the criminal justice system. Moreover, the broader institutional and legislative background should provide space for the parties involved (individuals, agencies as well as the society at large) to actively participate in giving adequate responses to crime.
2. Restorative justice should not only be about diversionary instruments for handling minor offences, but should be gradually available at any stage of the criminal procedure (namely in the phases of prevention, investigation, court, probation as well as during the execution of the sentence), even in cases of more serious crime.
3. In order to avoid the future under-use of restorative justice, it is not enough merely to codify a law permitting mediation in criminal matters. From the very beginning guidelines and formal agreements (such as bylaws, procedural regulations) should also advise the actors of the criminal justice system in which ways referrals should be done and what types of case are suitable for referral.

Further legal and policy developments

1. Nationwide standards and procedural guidelines are needed to assure the uniformity and coordination of restorative programmes. Such standards should be established and continuously improved. The revision of national standards as well as the further policy reforms should be based on permanent multi-agency consultation and cooperation between policy-makers, practitioners and academics.
2. Further legislative and institutional developments should be based on multi-agency cooperation. In addition to permanent consultation, specific joint action projects and local experiments can also contribute to policy developments. All types of cooperation should aim to include representatives of the state and local administration (policy-makers, civil servants); of the criminal justice agencies (judges, prosecutors, advocates, police services, staff members of correctional institutions); of the educational system (teachers, assistants); of public and private social services (working with victims, offenders, communities, minorities, children, etc.) as well as of universities and other research institutes.

3.3.2. FUNDRAISING

1. Project applicants should make sure that the project they are composing is
 - realistic;
 - ‘good looking’;
 - innovative;
 - does not include formal or grammatical mistakes.
2. While defining the main objectives of the project, it is important to have a broad range of ideas in mind as well as to focus on the actual political agenda.
3. An overview of the current funding possibilities/calls for proposals, as well as the collection of information before preparing project proposals are important in designing well-tailored projects.
4. Acquiring the specific necessary skills of fundraising is an essential condition of success; therefore, external experts or the improvement of internal staff members’ skills in fundraising can be a great of value. Fundraisers need to stay enthusiastic, persistent and patient.
5. High-quality promotional materials, annual reports and other documents are also essential tools for fundraising and should be frequently used.
6. Service providers should continuously communicate with donors about the
 - needs of both parties (donors often have a very clear idea about their expectations and the projects they would like to support);
 - the expected and realised outcomes;
 - the successes of the project.

7. Fundraising should be an integral part of a complex strategic (and business) plan of the organisation.
8. Fundraising should be supported by other networking activities. Cooperation with other projects/partners on the local, national, international and inter-sectoral level and the exchange of information about possible financing schemes, project proposals, and project implementation can be highly useful in successful fundraising.

3.3.3. AWARENESS OF THE GENERAL PUBLIC

Concerning the target group

1. A balance should be kept between the top-down (convincing policy-makers and the judiciary) and the bottom-up (public) approaches.
2. Public campaigns should first focus on informing people about the existence of alternatives to the court system in general. More information about restorative justice as an alternative to the conventional justice system should be provided in a second stage.
3. It is important to persuade everyday citizens to get involved and take responsibility for dealing with crimes in their own communities.

Concerning the message to be sent

1. The outcomes of restorative processes and its benefits for victims, offenders, communities and for the society need to be emphasised.
2. As a first step, the main needs and complaints of the citizens concerning the justice system need to be mapped (e.g. lack of trust in the justice system, slow criminal justice procedure, marginalised victims, unanswered questions and needs of victims, etc.) in order to stress the ways in which restorative justice could answer these needs. The outcomes of the current criminal justice system need to be presented in order to emphasise the importance of restorative justice as an alternative.
3. It is important to specify the main message with clear statements, such as for example, “away from conflict towards peace-building”.

Concerning the format

1. Along with general publicity, it is also important to create a culture of using restorative justice (e.g. via school mediation programmes children might become future applicants and promoters of restorative justice).
2. Partnerships with organisations of the criminal justice system and with other criminal justice-related service providers should be used as supportive elements in the campaign.

3. There is an urgent need to educate people in the media in order to report objectively and positively about the philosophy and practice of restorative justice.

3.3.4. AWARENESS OF THE PROFESSIONALS

1. The identification of specific target groups and their needs is essential before designing awareness building campaigns.
2. The human nature of restorative justice, as a real motivating factor, should be reflected in the campaign. Moreover, legal professionals should also be treated as 'human beings'. Their emotions, attitudes and personal opinions about conflicts are the main elements that can lead to their effective involvement and cooperation.
3. Actors of the justice system need to be regularly informed about restorative justice activities and successes, especially by presenting success stories.
4. Personal relations with legal system practitioners and policy-makers are highly important in order to convince other members of the judiciary and of the state administration system. They listen the most to their own colleagues.
5. Legal practitioners need to be involved in the practice of victim-offender mediation in order to personally experience its mechanism and dynamics.
6. Regular information and training sessions should be available to sensitise prosecutors and judges about restorative justice. Such activities should be used for activating and stimulating them to use mediation more intensively in their practice. Moreover, these forums should provide space for asking their professional feedback and evaluation concerning ongoing services.
7. Restorative justice should be part of the formal education system of legal practitioners. Its integration in their general curriculum could largely contribute to their general awareness and to the strengthening of nationwide protocols.

3.3.5. TRAINING AND PRACTICE

1. Training should be considered as a continuous process. In addition to the initial and in-service training, in-service training should also be available on a life-long basis in order to constantly develop mediators' knowledge, attitudes and skills in their field.
2. Before designing a training system, the already-available resources and the expected outcomes of trainings should be assessed.
3. Besides defining some concrete aspects of training, such as the duration, form, structure, etc., clear requirements need to be included regarding the expected training outcome (e.g. which skills exactly should the participants

acquire) and the kind of awareness/basic attitude the participants should gain via the training.

4. Training organisers have to make sure that there is a structured system of mentoring after the training and before the start of the autonomous work of the newly trained mediators.
5. Regular consultation and supervision should be included in the training and practice of mediators in order to provide space for exchange, mutual feedback, evaluation and sharing of personal concerns. Mentoring support, supervision, reflection groups and peer-reviews of cases should be used as integral part of mediators' and facilitators' formation and continuous education. Accordingly, different certification systems should be available that distinguish between completing x hours of training and completing more complex courses, including mentoring, supervised practice/co-mediation etc.
6. Training should be formally and legally recognised and acknowledged.
7. The licence duration (unlimited or limited) and ways of de-certification in case of violation of codes or failure to keep up the standards need to be clarified.
8. Training specification and requirements should reflect on the particularities of the field in which restorative justice will be specifically applied in each case.
9. The training and practice of mediators should be based on nationwide standards and on an ethical code. Such frameworks can largely contribute to the assurance of legal safeguards (including the principle of equality) as well as of the representation of the basic restorative justice principles in the practice. Their revision and adaptation should be done in consultation with practitioners.
10. Service providers should try to combine both volunteer and professional mediators in a so-called 'hybrid-scheme'.
11. Efforts should be made to assure that the composition of staff and volunteers of services providing restorative justice programmes represent the different gender, age, ethnic, minority, etc. groups in the society.

3.3.6. INTERNATIONAL COOPERATION

1. International cooperation should focus on the empowerment process of newcomers and it should be recognised that countries with experience of restorative justice also still have much to learn.
2. Space needs to be provided for dynamic peer-cooperation. The exchange of knowledge and experience should mutually contribute to the development of restorative justice in the involved countries.

3. The demonstration of very concrete and practical examples is essential in the cooperation.
4. The use of interpreters and translators is highly useful in order to increase the understanding of differences and similarities.
5. Activities should stimulate further and personal relationship-building as well as networking between the respective countries' representatives (e.g. by activities that involve mixed groups of professionals).
6. Experts with international knowledge and experiences should contribute to finding ways of solving multicultural-ethnic conflicts in their countries.
7. National institutions, such as governments, should recognise their responsibility in developing and maintaining international cooperation by financial, infrastructural and human support as well as by creating policy guidelines that emphasise the importance of international exchange.

4. SUPPORTIVE FACTORS IN CENTRAL AND EASTERN EUROPEAN COUNTRIES CONCERNING THE IMPLEMENTATION OF RESTORATIVE JUSTICE

After discussing the main challenges that advocates of restorative justice have to face in Central and Eastern European countries during the process of implementation, let us move towards the supportive factors that might help the policy developments in these regions of Europe.

Firstly, some general political and criminological tendencies will be summarised that characterise the recent transition of post-communist societies. There will be a special focus on how these factors might help the implementation process. Following this introduction, the next part intends to give a more detailed picture of supportive factors in the different countries from the project participants' point of view. The third part will give an overview of some concrete projects by which the exchange between East and West can be illustrated. Besides giving examples of the types of collaboration that are currently taking place in the countries concerned, these examples also sketch some ways of mutual learning between East and West. In other words, one of our main intentions is to emphasise that these international projects are equally beneficial for Eastern and Western professionals. This overview is followed by a collection of best practices of sixteen countries. These short summaries of ongoing projects aim to give an impression of recent achievements. They may also provide practical ideas for the reader in planning future projects and partnerships. While best practices are about the present activities, the final part of this section will try to give a very concrete picture about some of the future tendencies in these countries. The discussion of supportive factors finishes with an overview in which some of the action plans that were outlined by the experts are collected.

4.1. HOW MIGHT GENERAL TENDENCIES IN CENTRAL AND EASTERN EUROPEAN COUNTRIES SUPPORT THE PROCESS OF IMPLEMENTATION?

In short, we could say that most of the difficulties that were detailed in the beginning of this publication as challenges⁷⁷ could also be listed as supportive factors in the process of implementing restorative justice. We may consider mediation as an approach that intends to fill in the gap resulting from the dysfunctional mechanisms of the traditional criminal justice system. Consequently, we can assume that its introduction, indeed, requires a relatively

⁷⁷ For the summary of challenging factors, see page 65-73.

flexible atmosphere that is able to provide space for dealing with crime issues in more decentralised ways as well.

On the other hand, the challenges of the transitional process are not only 'contras' but also 'pros' in relation to the introduction of mediation. Firstly, the recognition of the current system's dysfunctional mechanisms; secondly, the highly complex social problems that have been experienced by the post-socialist societies can equally be considered as strong arguments *for* introducing alternative approaches such as restorative justice.

Putting all these points into practical terms, we can argue that the disadvantages of the transitional period – such as the dramatic increase in the volume of crime; the difficulties of shifting from socialistic legal systems to democratic ones; the change from the one-party model to the pluralistic political model; the weakening of the state and so on – simultaneously provide reasons as well as gateways for introducing mediation.

On the general level we can divide the supportive factors into three groups according to the dimensions in which they occur⁷⁸: during the last ten-fifteen years there have been significant changes, firstly, in the everyday citizens' attitudes towards the criminal justice system; secondly, in the underlying principles of sentencing systems and, finally, in the role of communities in the society.

4.1.1. CHANGES IN ATTITUDES TOWARDS THE CRIMINAL JUSTICE SYSTEM

The political shift from a dictatorship (or in some countries from a so-called 'soft dictatorship') towards more democratic and pluralistic systems resulted in a kind of release from the tight grip of the communist state. As its most visible consequence, societies' formerly perceived mistrust and fear towards the criminal justice authorities (particularly towards the police) have significantly decreased. Meanwhile in some countries the profile of the police force has also changed from a 'military image' towards a more society-serving concept that has gained stronger legitimacy power in the public's eye than before (Jasinski, 1999: 377, 378).

Although there are debates on the exact increase in the absolute number of crimes during the transition, there is agreement on two points: firstly, the significant rise of crime rates cannot be merely explained by either the manipulation of statistical data or by the under-registering activities of the police in the past (Lévy, 2000: 39); secondly, there was an absolute increase in crime reporting, and responding patterns to crime have significantly changed during the last two decades (Albrecht, 1999: 448-449).

⁷⁸ However, it has to be stressed that these dimensions cannot be totally separated, since they are interconnected and mutually influence each other.

Behind these changes of crime reporting patterns another social-psychological process can be outlined: after the collapse of the socialist regime, safety issues have become much more highlighted in the society. It can be explained by the fact that significantly larger groups of people have been affected directly or indirectly by crimes. Furthermore, crime as a former 'taboo-subject' has become a primary issue for the public and has gained a particular importance, for example, in the mass media (Albrecht, 1999: 450).

From the perspective of mediation, these changes also indicate that the legitimate power of law-enforcing agencies has been strengthened in the societies. Meanwhile, everyday citizens have tended to accept more their responsibility in dealing with the problem of crime. Furthermore, they showed more openness towards cooperating with actors of the criminal justice system.

However, these processes were only slightly visible. Furthermore, one can argue that several other tendencies counteracted these beneficial processes (as was also illustrated by the summary of the difficulties). Moreover, the trust of the public in criminal justice agencies is only the first step towards supporting restorative justice. It provides a basis for citizens to be generally involved in the problem of crime. On this more solid ground, parallel to the increase of state institutions' legitimate power, it can be expected that autonomous decision-making processes also emerge in society in general. Meanwhile, empowerment of citizens can help individuals to believe that they can also deal with their own conflicts, without 'giving them up' to the authorities.⁷⁹ However, at this point we are on a different level: there has been basic progress, and the need for communal responses to wrong-doing is already recognised and it unquestionably can support the acceptance of the restorative philosophy in the long term.

4.1.2. CHANGES IN THE UNDERLYING PRINCIPLES OF THE SENTENCING SYSTEM

“The transitions from the ubiquitous use of corporal punishment and the death penalty to the modern prison and the transition from imprisonment as the regular approach to punishment to alternatives such as fine, probation, suspended sentenced and other types of intermediate penalties and, most recently, the attempts to shift the focus from punishment to mediation and reparation demonstrate the enormous changes sanctioning systems and underlying philosophies have undergone in history and point towards the potential for change actually available for criminal law reform (Albrecht, 1999: 451)”.

In addition to the above-indicated changes in sentencing principles, basic normative demands on re-designing sanctioning systems from the perspective

⁷⁹ This process is more detailed in Christie's famous article on "Conflicts as property" (Christie, 1977).

of human rights standards (Albrecht, 1999: 460) also support the wider spread of the restorative philosophy. Restorative justice advocates' emphasis on victims' rights and their intention to make the justice system more humane for all involved parties fit well in these recent tendencies.

However, restorative justice could be well harmonised not only philosophically with criminal law systems' newly defined underlying principles; but instrumental factors have also played a significant supportive role .

In most of the countries, growing caseloads since the 1960s have created significant capacity problems for criminal justice systems (Council of Europe, 1988). The recent general increase in the volume of crime in the Eastern countries, as well as the criminalisation of many social acts by legislative reforms (Tak, 1999: 426), inevitably resulted in a considerable increase of reported crimes. Hence, their adequate handling has become one of the biggest difficulties for the law-enforcement agencies. It also resulted in an increasing gap between the number of law violations and the number of reactions. Although we have already mentioned this process as a challenging factor, from another point of view this difficulty can be considered beneficial for the concept of mediation: the simplification of procedures and the sanctioning system has become one of the major objectives of national and international policy developments⁸⁰. Therefore, the potential of mediation in simplifying procedures can be considered as a strong point while arguing for its institutionalisation.

Meanwhile, policy-makers have gradually recognised the advantages of community participation in handling crime problems by alternative sanctions such as probation, community service, restitution, day-fines, day-centres etc., by which responsibilities concerning responses to crime have become more efficiently reallocated in the society. Furthermore, it has clearly resulted in the possibility of reducing the costs of the justice systems. As a result, "the topics of reparation, restitution, compensation, victim-offender mediation or reconciliation have received considerable attention [...] also in the countries of Central and Eastern Europe" (Albrecht, 1999: 469).

Meanwhile, even in countries that basically follow the legality principle, criminal justice systems have considerably moved towards justice systems following the opportunity principle by increasing the discretionary power of the prosecution in dealing with criminal cases (Tak, 1999: 426). This process has opened doors for introducing victim-offender mediation within the criminal justice procedure and highlighted the extremely important 'gate-keeping' role of prosecutors in its development.

⁸⁰ As an example, see the Council of Europe Recommendation No. R (87) 18 concerning the simplification of criminal justice.

4.1.3. CHANGES IN THE ROLE OF COMMUNITIES

As was mentioned above, most of the social processes experienced during the political and economical transition can be considered both as challenges and as supportive factors concerning the implementation of restorative justice. However, among the different factors it is probably the role of communities that most strongly presents this dual character.

On the one hand, we mentioned the anomalies of social standards, social disorganisation and the lack of shared values as difficulties that post-communist societies have had to face. It was pointed out that these social phenomena are both causes and results of high crime rates. But how can this contribute to the introduction of restorative justice?

The adequate response to the anomalies of values in a society would be to try to clarify some shared values and stimulate dialogue on them among the affected parties. For the retributive ideology, punishing an offender is seen as the confirmation or reinforcement of the negative relationship that already existed. Furthermore, its main focus is on proving that the law was broken by the offender. In this process the moral authority is the judge whose job is to determine the wrong and impose punishment. Hence the possible moral message through the punishment does not necessarily reach the offender (Braithwaite, 1989) and there is hardly any way for discussing the underlying principles of the broken laws. Therefore, even if law-enforcement agencies were efficient in giving responses to most of the crimes (which is not the case as we have seen before), the retributive ideology and punishment could hardly contribute to the strengthening of common value systems in a society.

On the contrary, following the restorative approach in responding to crime, “expressing moral disapproval [...] is possible without additionally imposing hard treatment [...] and it is essential that the disapproval is communicated in such a way that it is understood and accepted by those concerned – offenders, [...] victims [...] and the broader society”⁸¹. The possibility for the direct communication between the offender and those who were affected by the crime therefore might have the potential to move us towards our initial goal: to clarify and strengthen shared values in a community.

Therefore, we can argue that, if a society is suffering from the anomalies of values, one adequate response, in fact, might be to promote direct communication on values and principles. Thus, the introduction of institutions that have the potential to directly discuss the moral impact of crime can be well used for the above mentioned purpose. In other words, one can say that the lack of shared values in a community is also a *reason for* introducing practices that can stimulate dialogue, ‘educate’ and raise the awareness of community members about common principles. Due to its procedural characteristics,

⁸¹ Walgrave, 2001: 28.

restorative justice can be beneficial also in re-strengthening value systems in a society.

However, it has to be pointed out that restorative justice alone cannot take responsibility for re-establishing shared values in a society. This is a complex and long-term process in which several sociological, cultural, political and economical factors have to contribute to re-strengthening social cohesion. Hence, one has to be aware that restorative justice has an important, although limited, potential in this progress.

The already mentioned perception of the 'weak state' and the erosion of the state monopoly in crime control were largely disadvantageous because of their effect on the increase of crime. Furthermore, they have created serious obstacles in establishing the rule of law and implementing criminal law reforms (Albrecht, 1999: 450).

Without going into too much detail, the post-modern approach in criminology could also be mentioned here. The relevance of this concept is evident while analysing changes in post-communist societies. By emphasising the effects of trans-national and global tendencies, some authors following the post-modern approach (e.g. Bottoms and Wiles, 2002) highlight the process by which states gradually lose their power as the exclusive authority controlling social acts. Meanwhile, with the decline of the state, the increasing role of local communities can be emphasised as a complementary process, especially in the issues of law-making, crime control, and responding to crime.

Hence, by following this argument, one can assume that parallel to the weakening of the state and of the central law-enforcement agencies, the role of families and local communities in maintaining social order significantly increases.⁸² This is again good news for restorative justice since it puts emphasis on the potential of communities (the role of 'significant others') in giving adequate responses to rule-breaking. As an illustration of the relation between strong communities and the volume of crime, the example of Slovenia can be mentioned where the ratio of criminal offences to the total population is much lower than in any of the other Central and Eastern European countries. Experts in Slovenia pointed out that it is the consequence, among other things, of the strong informal control and the importance of the family (Kanduc, 1995).

⁸² However, compared to Western European societies, this process is still less visible in Central and Eastern European countries due to the factors indicated in the previous paragraphs.

4.2. SUPPORTIVE FACTORS ACCORDING TO THE PARTICIPANTS

4.2.1. GENERAL OVERVIEW

Concerning the most important supportive factors it was difficult for the participants to distinguish between that which already exists, hence already has a beneficial influence on the implementation process, and that which is needed for the effective institutionalisation but does not exist yet. In other words, some of the expressed supportive factors rather indicated the needs of these countries in the implementation process than presented supportive aspects in the current situation.⁸³ Nevertheless, the main findings pointed out that legislation on victim-offender mediation and restorative justice is crucial before taking any further step in national implementation. However, before starting legal reforms, pilot projects need to show what really works. It is noteworthy that there are significant differences in the regions concerning the limitations and the credibility of these pilot projects. As already mentioned, some countries can do pilot activities without specific legislation (e.g. Poland); in others it is much more difficult or not possible (e.g. Czech Republic, Estonia.). It is essential for any consistent legislative reform, firstly, to examine the current legal and institutional systems of the countries; secondly, to conduct pilot projects and finally, based on the results of these small-scale experiments to integrate new elements into the legislation.

Besides the pragmatic discussion of changes in the legal codes, it is also important to support wide consultations among the representatives of different institutions and professions. Discussion about the underlying functions of legal provisions might be essential in helping agencies to be not just reactive in operating according to the law (and to the daily routine), but also to be proactive in the continuous evaluation and development of services.

Furthermore, the importance of networking as well as the necessary links between research and practice were emphasised.

Concerning the international dimensions, the importance - and also the difficulties - of the harmonisation of national institutional systems with the international documents and recommendations were pointed out by several experts. Legal instruments of the European Union and the Council of Europe, such as the Framework Decision, communications and recommendations, are essential in providing standards for practices.

Networking can also be used to stimulate the exchange and partnerships between experts operating in both civil and penal mediation, especially in designing and evaluating pilot projects.

⁸³ For the summary of main needs, see page 160-162.

The introduction of peaceful conflict resolution in general education as well as academic teaching on mediation is also important. Furthermore, translated publications and high quality training are essential for the effective promotion of restorative justice and victim-offender mediation.

Generally it can be concluded that despite the challenges mentioned before and the long list of needs that will be presented later, a significant number of the represented countries have managed to

- start pilot projects;
- translate and write publications in their languages;
- integrate the philosophy and the practice of restorative justice into the general and higher education system to some extent;
- start training for professionals;
- find possibilities to widen their networks;
- be involved in international projects;
- benefit from belonging to international organisations, including the European Forum for Restorative Justice, and started to adopt their recommendations.

Some of these countries have already successfully requested the inclusion of specific articles on the use of restorative justice and victim-offender mediation in their national legislation.

4.2.2. COUNTRY BY COUNTRY

A description of general tendencies is useful in gaining an overall picture of the main processes but necessarily diminishes individual differences. Since the involved countries represent many different regions of Europe, it may be interesting to see in more detail what the expert(s) of each country highlighted as main supportive factors in the implementation process.⁸⁴

ALBANIA

- the existing legal framework;
- social environment and public understanding of mediation;
- good practices;
- investment in training;
- influence of the Council of Europe.

AUSTRIA

- useful research projects;
- cooperation among judges, prosecutors, researchers and administrators.

⁸⁴ Based on the discussion of the first expert meeting (24 – 26 June, 2004, Vienna).

BELGIUM

- strong influence of grass-root movements;
- possibilities for experiments and pilot projects;
- good cooperation among academics, practitioners, actors of the criminal justice system, policy-makers and ministers; high chances for successful lobby activities;
- ‘negative stimulators’: the influence of serious crimes, such as the ‘Dutroux’ case, and the continuous increase of the right wing ideologies made the government realise that changes have to be made in the criminal justice system; the dysfunctional mechanisms of the justice system also contributed to the recognition of the need for new initiatives; as a result, financial resources have become available for alternative sanctions.

BULGARIA

- to be involved in projects such as the current AGIS programme;
- networking on the domestic and international levels;
- dissemination of best practices, publications and books;
- legislation, including the possibility of mediation in criminal cases.

CZECH REPUBLIC

- the existing legal base for mediation and restorative justice activities (Probation and Mediation Act; Law on Justice in Juvenile Matters);
- systemic approach towards the nationwide use of restorative justice;
- focus on the victim and the community besides the focus on the offender;
- good cooperation between the Probation and Mediation Centre and NGOs.

ENGLAND

- innovative projects, such as restorative conferencing by the Thames Valley Police;
- the attitude of some Home Office officials;
- possibilities for gaining information on different schemes established in Australia and New Zealand;
- strong support and publicity from the NGO sector;
- awareness on the victim’s perspective.

ESTONIA

- recognition of the limitations of the current system;
- being a member of the European Union.

MOLDOVA

- development of alternatives to punishment;
- the possibility for learning from others due to the ‘late start’;

- easier implementation process because of the small size of the country;
- the support of the Bar Association.

HUNGARY

- The chart below shows that there are several already existing, supportive factor, but also a number of related tasks that are necessary for actually *benefiting* from these factors.
- Supportive factors
 - dialogue with the government via white papers;
 - political missions which are consistent with the principles of restorative justice;
 - legislation emphasising the importance of prevention and the use of alternative sanctions;
 - supportive government at the moment;
 - more than two hundred trained mediators in the civil area;
 - curriculum in high schools and universities including victim-offender mediation and restorative justice;
 - obligations concerning the implementation of international regulations;
 - available funds from the EU.
- Still should be done
 - the consultation should be more structured; more time should be available for preparing commentaries;
 - the institutional-financing system should also reflect them;
 - planning systemic and realistic institutional reform rather than outlining too ambitious objectives that are finally not achieved;
 - political structure that – in case of governmental changes – ‘motivates’ the new government to continue with useful reforms after the elections;
 - more cooperation among these trained mediators
 - teachers should be able to recommend institutions where these enthusiastic students could use their theoretical knowledge in practice;
 - systemic strategies for fulfilling these requirements instead of ‘last-minute’ reforms;
 - organisations and experts who actually have the necessary skills and capacities to apply for them.

NORWAY

- good timing for starting the political-institutional developments;
- strong support from the authorities and from the general attorney;
- the significant role of volunteer mediators;
- adequate legislation;
- supportive political will.

POLAND

- supportive political atmosphere;
- research findings;

- good cooperation with the Senate Committee and with NGOs;
- exchange of information and experiences on national and international level;
- supportive media.

ROMANIA

- being involved in the international restorative justice movement and its beneficial influence on the domestic policy;
- international exchange on different restorative practices;
- increasing number of restorative justice advocates in the country.

UKRAINE

- possibility to find like-minded people among representatives of the legal system who share restorative justice values and who are interested in spreading this idea; close partnerships have been created with representatives of the Supreme Court, the Academy of Judges of Ukraine and the Ministry of Family and Youth Affairs, who expressed their commitment to develop mediation on the national level;
- efficient ways for disseminating information on restorative justice, as well as on its basic principles and procedures; involving judges and prosecutors in role-plays on mediation in order to raise their awareness about the practice of mediation;
- the promotion of restorative justice in the mass media and in specialised legal journals and newspapers;
- increasing number of trained volunteer mediators;
- beneficial influence of belonging to international organisations such as the Council of Europe and the United Nations; the future possibility for joining the European Union; the contribution of the international policy standards to the domestic developments.

4.3. BEST PRACTICES

4.3.1. OVERVIEW

Having discussed challenging and supportive factors that Central and Eastern European countries face in the implementation of restorative justice, let us illustrate the overview with practical information on ongoing projects in those countries

This section will first highlight the importance of international partnerships, and then present some best practices from Eastern, Central and Western European countries, so as to .give a better view on

- some possible forms of partnerships;
- the main areas in which small-scale projects can be started;

- and, finally, practical details that might serve as useful tips for other professionals working on implementation issues.

Although these projects focus on different objectives: they all aim to implement restorative justice in the given society.

On the one hand, the *diversity* illustrates the differences between the European regions. The background of the different practices authentically reflects on the various histories, cultures, social needs, and political and sociological state of affairs of each country. On the other hand, even though restorative justice might have a very diverse position in each society, there are several *common aspects* regarding the ways in which pilot projects started, in the motivations of stakeholders, as well as in the challenges and the responses given to them in each part of Europe.

First let us stress the importance of *international partnerships*. As described in the introduction, one of the objectives of the current AGIS project was to “actively work towards creating dynamics for exchange and cooperation” as well as discussing what Western and Eastern Europe can learn from each other. As will be seen from the best practices as well as from the discussion about the general importance of international cooperation (see page 153-158), these possibilities are essential tools for mutual exchange. Sharing of policies, experiences, knowledge and activities inevitably contribute to make the implementation and development of restorative justice more successful by, firstly, helping project leaders in their *lobbying* activities; secondly, providing financial and informational *resources* for initiatives and, thirdly, by improving the *know-how* or methodology of practices (for a summary, see Table 11 on page 163).

Let us illustrate some of the benefits of such partnerships with some specific bilateral projects that symbolise *four typical ways* in which international activities might help both Eastern and Western partners.⁸⁵ These projects are examples of

- cultural exchange;
- establishing collegial partnerships;
- experimenting with ways of implementing schemes in different contexts;
- how policy developments can be influenced by the experiences of local pilot projects.

This overview aims to highlight the *mutual* aspects of each project, i.e. how they could contribute to the learning process of both partners.

The main ‘speciality’ of the cooperation between the Norwegian Mediation Services and the Albanian Foundation for Conflict Resolution and

⁸⁵ At this point projects are just briefly mentioned. Their more detailed description can be found within the best practices on page 119-141.

Reconciliation of Disputes (AFDR) is the possibility for mutual *cultural exchange*. According to the project initiators, due to their very diverse cultural and background factors, both partners can learn a lot from each other by recognising the differences in the way they deal with their conflicts, their traditions, the role of communities in their societies and in several other aspects. This way of cultural exchange is an important eye-opener that might be helpful in the further development of restorative justice in both involved countries.

Another type of partnership is the cooperation between the Moscow-based Centre for Legal and Judicial Reform (Russia) and the Community and Criminal Justice Research Centre at De Montfort University in England. This project was working on institutionalising restorative justice in Russia by establishing pilot services in different regions. Colleagues in this initiative, amongst other benefits, managed to define some basic standards on how to work efficiently together with experts from other countries. One outcome was a set of recommendations regarding this issue, which was a positive 'side-effect' of the cooperation besides the originally planned activities. Romania has started the implementation in a very similar way by introducing pilot projects based on the cooperation of Romanian professionals and experts from the United Kingdom.

One of the Hungarian pilot projects on introducing restorative practices in educational settings is a good example of how *complete programme structures might be adopted in a very different sociological and cultural context*. This experiment is based on an initiative of the American-based International Institute for Restorative Practices (IIRP) and the Community Service Foundation, Pennsylvania. In cooperation with a Hungarian psychologist, they established a day-treatment school for troubled youths, based on a specific school model originally developed in the United States. This project raises all the important issues on how far already prepared models can be implemented in different contexts and what changes can or should be done in order to tailor the original scheme to the local needs. This is again an underlying issue of implementation which more and more Western and Eastern project managers are interested in due to the increasing number of international adaptations of different practices.

Finally one could mention the *potential of multinational organisations*, such as the Council of Europe or the United Nations, to *influence macro-level policy developments* by introducing local pilot projects. The restorative justice approach is highly emphasised by the following two initiatives that have several common elements. A pilot project, introduced by the Council of Europe in Bosnia and Herzegovina in Canton Sarajevo, as well as a UNICEF project in Serbia and Montenegro in cooperation with the Juvenile Correctional Institution in Krusevac, chose the juvenile justice system in those two post-war societies for introducing new ways of conflict-handling methods. Although these experimental projects are *local initiatives*, they have a significant role in the general reform processes of the countries towards the implementation of democratic institutions and respect for human rights. At the same time, these

practical initiatives fit in the *overall policies of these international organisations*. Findings of such pilot projects, besides supporting transitional societies in their reform progress, also help the Council of Europe and the UN. Thus, these international institutions can gain a picture of the extent and the ways they can practically contribute to implement the required political and legal changes in their member states.

Following some possible benefits of international exchange, let us give an overview of some best practices that will be presented hereafter in more detail.⁸⁶

Some practices will shed light on the potential of *widening* the scale of the *application* of restorative justice. While the Austrian presentation highlighted the importance and the first experience in cases of *domestic violence*, the Czech and Polish cases showed the capacity of restorative justice to handle *serious* and *violent* cases. Recent changes and initiatives in Germany also broadened the scope of restorative justice. This country has been famous for its long-term tradition of basing its scheme on professional mediators. However, through the presentation of a project that is focusing on the *training and involvement of voluntary mediators*, we gained an idea about ways in which new elements can be integrated into a nationwide and quite stable model of mediation. According to the presentation of the Croatian representative, it can be assumed that in post-war countries one of the main challenges – besides the extreme consequences of the war – is to be able also to include the everyday conflicts and crimes in the public discourse. If this is achieved, the role of restorative justice can be highlighted among the adequate responses. Despite or maybe as a result of these difficulties, *training in alternative dispute resolution and mediation* has been more and more widely requested in Croatia. Thus, by providing such training, some NGOs can contribute to integrating the philosophy of restorative justice in the activities of professionals. *Academic training* and education of the future practitioners of the criminal justice system have unquestionable roles in the effective implementation and use of restorative justice. It was recognised by both the Bulgarian and Romanian experts who presented their pioneer activities in recently introducing courses on restorative justice in the university curriculum of lawyers (in Bulgaria) and of social workers (in Romania). Experts from countries that used to belong to the Soviet Union presented interesting initiatives that are primarily focusing on *raising awareness* about restorative justice *in the general public* (Moldova) and *in the professional – legal – governmental sphere* (Ukraine). Moldovan representatives detailed their high-quality ‘marketing’ activities and the efficient ways of producing convincing documentary movies and posters on restorative justice as well as ways of creating effective cooperation with the actors of the mass media. The Ukrainian example also showed how effective a successful conference might be as a main starting point in the institutionalisation process. By stimulating exchange and partnership

⁸⁶ Based on the presentations of country representatives at the second expert meeting (17-19 March, 2005, Chisinau, Moldova).

among the key actors of the criminal justice system, it illustrated how such an event can lead to further planning of legal and institutional reforms. The Estonian presentation emphasised in more detail the process of *legal reforms*. It highlighted the ways in which restorative justice could get on the Estonian government's agenda and could point out the main ways in which the restorative philosophy can be integrated into a still strongly punitive country's legal system in the future. The system in the Czech Republic is quite exceptional in the Central and Eastern region of Europe, since *mediation* in criminal cases is provided on a nation-wide basis *by a governmental organisation* (Probation and Mediation Service). The main advantages and some of the difficulties of this system were also thoroughly discussed. Among others, one of the most important advantages of this scheme is the stability and legitimacy of mediation. However, as a disadvantage it was pointed out that this model can be less flexible. Hence, it might make it difficult for NGOs and smaller, more community-based organisations, to take part in the provision of mediation services. Initiatives for facing these challenges were presented by the Czech representative.

4.3.2. COUNTRY BY COUNTRY

ALBANIA

THE ALBANIAN – NORWEGIAN COOPERATION IN IMPLEMENTING VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE FOR YOUNG OFFENDERS⁸⁷

The effective cooperation between the Albanian Foundation “Conflict Resolution and Reconciliation of Disputes” (AFCR) and the prosecution office, police and local authorities in Tirana can be mentioned as a good experience. These organisations were in partnership during the implementation of the pilot phase of a project on victim-offender mediation and restorative justice focusing on the young age groups (14 - 20 years old). The initiative was organised in the capital, Tirana. The main partner in the project was the Norwegian Government.

This project started in November 2004, and the results were presented at a national conference held in Tirana in April 2005. One of the main purposes of this piloting phase was to gain a more detailed picture of juvenile crime in the area and choose some cases for mediation and reconciliation according to the existing legislation. In order to select suitable cases for the project, the Tirana Mediation Centre established a model of inter-institutional cooperation.

⁸⁷ Based on the presentation by Rasim Gjoka given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

The most typical cases of conflict in the young age group were disputes, quarrelling, insulting, accidents, robberies, fighting, etc. An average of 12-17 cases per month of criminal conflicts were identified and mediated during the project. 80% of them were transferred to the Mediation Centre by the police and the prosecution office. Both of these institutions were able to refer cases and support the project. It is also remarkable that this is the very first time that the AFCR could establish a close relationship with the police authority. The involvement of the community was also very important, since – according to the future plans – the local authority will be a crucial gate-keeper and case-referring body.

An important element of this project is the evaluation and monitoring phase, which is planned to be carried out by external experts, namely jurists from the School of Magistrates. The further orientation of the project for the next months depends on the outcomes and recommendations of the evaluation report. However, it can be already mentioned that the current attention is mainly focusing on training and the increasing of awareness among professionals and in the general public.

AUSTRIA

VICTIM-OFFENDER MEDIATION IN CASES OF DOMESTIC VIOLENCE⁸⁸

Recent findings of research projects by the Institute for the Sociology of Law and Criminology (Vienna) have shown that in cases of domestic violence important and basic principles of the restorative justice approach, such as recognition and empowerment, can be brought together.

Within the framework of a pilot project restorative practices are used in domestic violence cases in Vienna. The project follows a specific method, called 'mixed double'. It starts with a male mediator first meeting the perpetrator and separately a female mediator talking to the woman who has experienced violence. During the mediation session the two mediators tell each other the stories they have heard previously. Following this, the parties are invited to start a direct exchange and find a way to either agree on the terms and conditions of ending the relationship, or on securing a non-violent life together in the future.

This process works predominantly via the recognition of the woman's experience by the mediator and by backing up her right to live free of violence in her partnership. Summarising the results in a slightly provocative way, one could say that via this method 'it is not primarily the men who get better but the women who get stronger'.

⁸⁸ Based on the presentation by Christa Pelikan given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

Often the mediation is about clarifying the needs of both sides, stating the right for a violence-less life; mutual recognition of the needs and empowering the victim. This procedure assures victims that they acted in the right way and can give them security in themselves again. Often the male social worker takes up the role of supporting the woman in order to set an example for her and help her in trusting men again. Empowerment of the victim is the main purpose. Hence, this method is undoubtedly strongly victim-oriented. Sometimes it helps young men to change, but this is not the main purpose.

The practice of victim-offender mediation in partnership-violence cases is therefore a good example of a 'true' restorative approach by which the emphasis in the first instance is not on the rehabilitation or resocialisation of the offender – although in several cases the process served as a stimulus for the man to fundamentally change his attitude – but on the empowerment of the victim and on the interaction between the victim and the offender.

BOSNIA AND HERZEGOVINA

INTRODUCING RESTORATIVE JUSTICE FOR JUVENILES: A PILOT PROJECT ON THE IMPLEMENTATION OF ALTERNATIVE MEASURES AND MEDIATION⁸⁹

A recently adopted law on educational recommendations, included in the Criminal Code of the Federation of Bosnia and Herzegovina (BiH) in 1998 and in Republika Srpska in 2002, gives judges and prosecutors the possibility of diverting juveniles from formal criminal prosecution. Diversion is possible in cases of criminal offences punishable by a fine or a prison sentence of up to 3 years. Its condition is that the juvenile take responsibility for committing the offence and show willingness to make amends to the damaged party. If these requirements are fulfilled, the judge or prosecutor, in collaboration with the juvenile's parents and institutions of social care, can order one of eight educational recommendations. These recommendations include personal apology to the injured party, compensation of the damage to the injured party, community service and regular school attendance.

The recommendations are predetermined and selected by the judge without consulting the juveniles. However, this law could represent a first step in the direction of implementing the restorative approach in the juvenile criminal justice system, for four main reasons: firstly, this measure has a restorative rather than punitive nature; secondly, it provides possibilities for including the parents and social workers in the decision-making process; thirdly, the juvenile must be willing to make amends; and finally, the recommendations might be the results of an agreement formulated in the framework of a victim-offender mediation.

⁸⁹ Based on the presentation by Stefania Kregel given at the first seminar in Budapest, Hungary (14-16 October, 2004).

However, in practice educational recommendations were hardly ever pronounced due to the lack of rules of procedure and infrastructure for their implementation. In other words, the law does not define the implementation of educational recommendations precisely. Moreover, social workers are not adequately trained and the methodology of implementation is not elaborated either.

The fact that this provision has literally remained unused for years cannot only be a result of lack of infrastructure. The provisions on educational recommendations were introduced in a 'less-friendly' environment for the following reasons: firstly, the awareness and knowledge about restorative justice among citizens and practitioners were extremely low. Secondly, juvenile delinquency is perceived to be on the rise independently of statistics. It leads to fear and demands for more punishment, higher imprisonment and stronger police action. Thirdly, the media reinforces this attitude by reporting on juvenile delinquency in a sensationalist manner, creating a predominantly negative image of juveniles: young offenders are shown as individuals causing their own problems, while the society's responsibility towards them is mostly not addressed.

On such grounds, substantive changes could hardly be made without involving the local community and it was not surprising that mentalities and public opinion could not develop along with the legislation.

Based on this recognition, the Council of Europe Office in Sarajevo in cooperation with local judges, prosecutors and social workers has developed a model for the practical implementation of this law. A pilot project was also started in Canton Sarajevo, including the introduction of victim-offender mediation.

A crucial precondition of the successful outcome is that the community as a whole be well-informed and be involved in formulating the underlying principles of the new approach. Therefore, a public information campaign was organised to inform the public about the benefits of alternative measures and to familiarise the community with the principles and methods of restorative justice. In addition, a database was created, including all the organisations and services to which juveniles can be referred.

Seminars on the principles and methods of restorative justice with examples of best practice from other countries were also organised for all actors involved in the juvenile justice system. Training in mediation was provided for social workers participating in the project.

Mentalities might not change overnight and are dependent on many different factors. However, starting with a small project and attempting to involve the community as well as training the practitioners might be a good start in this direction. Although there is an overall tendency in BiH to seek the punishment of juvenile offenders rather than focusing on reintegrating them into the society, when people are in a concrete situation where mediation is offered to them as a possibility, they tend to accept it gladly and appreciate it as a better solution. Such

practices have the potential to responsabilise people and make them believe that they can contribute to public safety themselves without relying solely on distrusted authorities and institutions.

BULGARIA

RESTORATIVE JUSTICE IN THE UNIVERSITY CURRICULUM⁹⁰

A new course on “Mediation in civil and penal matters” was introduced in the curricula of the New Bulgarian University in Sofia. It is a 45 academic hour course of lectures and interactive exercises (designed with the help of the European Forum and the American Bar Association), including role play, simulations, etc. designed for the 4th year students of the Law Faculty. The aim of the course was to provide general knowledge about conflict resolution and restorative justice practices and to create a friendly environment for further developments of the restorative justice idea. This goal was achieved. The students were very interested in the subject and they asked for extra hours. Practising mediators were involved in the programme and a “Mediation laboratory” was also created. Two movies on mediation were produced. The evaluation of the course was positive and in 2005/2006 it will be introduced in the curricula of some other faculties as well.

CROATIA

STARTING THE IMPLEMENTATION WITH INTRODUCING VICTIM-OFFENDER TRAININGS

Ars Publica is a non-governmental organisation founded in 2003 with the aim of interdisciplinary working on conflicts at the practical and the policy level. In its activity mediation was found to be a particularly useful tool for communities (especially for those directly suffering from the consequences of the armed conflict) in order to ease the tensions and attempt to restore the harmony as well as prevent further violence.

In the first year this NGO undertook some pilot activities, experimenting with the optimal duration, format and recruitment strategies of mediation trainings. Projects aimed to establish the most appropriate ways of teaching and to implement mediation under the specific circumstances and culture of Croatia.

It was concluded that short-term mediation training without structural changes and advocacy might help individuals and their organisations to grow, but does not

⁹⁰ Based on the presentation by Dobrinka Chankova given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

prepare them to conduct mediation sessions on their own, if systemic continuous support is lacking. Besides training there is an essential need for opportunities for practising mediation under supervision.

During the second year Ars Publica compiled their findings in a mediation manual, which was the first publication of this type in the region written by local authors. It aimed not only to provide an overview detailing the necessary skills and the mediation procedure, but also the history of peacemaking efforts that provided a framework for introducing mediation in Croatia in the early 1990s. Additionally, useful tips were summarised for those who intend to start mediation practice in their communities.

Currently, a two-year project is being conducted in cooperation with an NGO from the Eastern part of Croatia that covers all of the aspects that were formerly missing: creating conditions in communities to start mediation centres (including regular contacts with local authorities, police and judges from the area), recruitment, follow-up meetings and opportunities for using mediation in practice.

In 2005 Ars Publica has provided two 4-day training sessions for judges and court mediators, one 4-day training for community mediators and will give one 4-day training session for police officers. All trainings are followed by practical work. Trainees now stay in touch and work together in advocating mediation in their communities. A core-group of judges will also join this team. Meanwhile Ars Publica was able to influence the legislative consultation process by proposing different bylaws to the Ministry of Justice.

CZECH REPUBLIC

EXPERIENCES WITH NEW METHODS – INTRODUCING VICTIM-OFFENDER MEDIATION IN MORE SERIOUS CASES; INVOLVING MORE PARTICIPANTS⁹¹

The mission of the Czech Probation and Mediation Service (PMS) focuses mainly on working towards the integration of offenders, supporting victims and protecting local communities. The activities of the PMS are rooted in the restorative justice approach.

The system of PMS is a good practice in itself concerning its legal framework, standards, supervision-system, and the special working groups of the team of mediators. There is strong emphasis on multidisciplinary cooperation.

However, there are some disadvantages of the system: the 75 regional centres of PMS all depend on local actors concerning developments and additional

⁹¹ Based on the presentation by Ludmila Hasmanova given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

activities. If they are not innovative, the centres cannot develop sufficiently. Nevertheless, there have been some recent developments on the regional level, which can be illustrated by the following two examples:

- “Wider mediation” – a new model of mediation developed in Zlín; by this method a higher number of participants can be included in mediations. It was implemented in cases where there are more than one victim (or representative of the community) or more than one offender (e.g. graffiti cases, car crashes). There have been approx. 15 cases but no evaluation is available so far.
- “Mediation in serious cases” (Karlovy Vary)
To illustrate this programme, a typical case might be mentioned: a young man, who was epileptic and was lying on the ground, was killed in a fatal driving crash. Regarding the special circumstances (bad visibility, glazed roadway), the judge realised that the question of guilt was highly complicated. Mediation was used at the pre-sentence stage of the criminal process, and resulted in a settlement and the reconciliation of the parties.

ESTONIA

A HISTORY OF LEGISLATION⁹²

Criminal proceedings are regulated since 1 July 2004 by a new Code of Criminal Procedure (hereinafter: CCP). But the CCP does not include the reconciliation of the victim and the offender as a basis for terminating criminal proceedings.

In 2002, a working group was set up in the Ministry of Justice, which was responsible for drafting a conciliation regulation. The proposal of the working group was to organise conciliation via the probation supervision system. An agreement on remedying damage was seen as an obligatory component of the conciliation agreement. The Committee for Legal Affairs at first supported that proposal and voted for the inclusion of the amendment in the draft. However, during the further proceedings the amendment was again voted out of the draft. The indicated reasons included, among other things, the absence of the institution of conciliators.

When the CCP was being discussed in the *Riigikogu* in 2003, representatives of the Government made a proposal about adding the conciliation regulation to the CCP.

Currently the Ministry of Justice is discussing whether to include the implementation of conciliation in criminal proceedings in the work plan of the

⁹² Based on the presentation by Aare Kruuser given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

Ministry for 2005-2006. One of the main supportive factors for it is provided by the Framework Decision of the Council of the European Union of 15 March 2001 on the standing of victims in criminal proceedings, since it obliges the Member States to implement mediation before 22 March 2006. A final decision concerning the national regulation has not yet been made.

At the same time, conciliation as an alternative manner of conflict resolution is used in cases of minor offenders (regulated by the Juvenile Sanctions Act since 1 September 1998). The sanctions, specified in the Juvenile Sanctions Act, shall be used for offenders 1) who are less than 14 years of age, i.e. who are not capable of guilt and cannot be punished for committing a misdemeanour and criminal offence and 2) who are between the age of 14–18, if their punishment is not obligatory and the criminal proceeding can be terminated in their cases (CCP § 201, the same as former CCP § 10).

GERMANY

INVOLVING VOLUNTEERS⁹³

The organisation “Waage-Hannover eV.” has been working for 13 years on victim-offender mediation for adult offenders and their victims. This NGO has about 650 cases a year with three full-time employees. 85% of the cases are personal injuries and serious personal injuries.

A few years ago new legislation on domestic violence was put into force. Since then about 50 – 60% of the referred cases have come from the field of domestic violence. There is a good network in Hannover with institutions for the support of women and institutions for men providing social training for changing offenders’ violent behaviour. There is also a round table specifically for domestic violence cases.

In order to prevent running out of funding and, at the same time, deal with the increased number of cases, a pilot project was started in cooperation with the TOA-Servicebüro (umbrella organisation for victim-offender mediation in Germany). This project aimed to integrate volunteers in the work with victims and offenders.

After advertising the availability of voluntary positions in local papers, the NGO received 130 applications. From these, 11 volunteers were selected in three steps: firstly, 60 people were selected on the basis of their applications; secondly, 3 group meetings were organised during which interviews were conducted with 20 people at each meeting. Following these meetings, 12 people were selected and individual interviews were made with them. Finally, 11 applicants were selected

⁹³ Based on the presentation by Frauke Petzold given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

who received 180 hours training (the training for professionals in victim-offender mediation takes 120 hours). The course took about one and a half year and it was a mixture of practice and training (some of the volunteers had already done mediation training before they applied for this position). Following the training, volunteers started to work as mediators, but only in co-mediation with professionals.

Their expenses are covered by 25 Euro/month and they received a certificate for the 180 hours victim-offender mediation training, which is recognised and accredited by an umbrella organisation. They are in the office 1-2 times a week. They are supposed to work in this position for two years.

The volunteers represent different professions (priests, bank managers, teachers, etc.), so it is an advantage also for the professionals to learn from their professional backgrounds. They have good ideas also for promoting and advertising mediation and the NGO. Some of them, who are retired now, in the meanwhile have some time and capacity to make publicity for the project in their communities.

Volunteers work only in 'simpler' cases, such as personal injury in pubs or 'street-fighting'. The professionals work in cases of domestic violence that might be too difficult for the volunteers. Volunteers are now working on their cases with other volunteers in co-mediation, and meanwhile they are still supervised by professionals.

HUNGARY

RESTORATIVE PRACTICES IN REINTEGRATING TROUBLED TEENAGERS⁹⁴

In 2003 the Community Service Foundation of Hungary established a day treatment programme in the most problematic district of Budapest for high-risk and delinquent youths who are living either in their own homes, in foster care or in other institutions. The methodology used in this centre is based on restorative practices.

This programme is supported by the International Institute for Restorative Practices (IIRP) and by some smaller grants from the Hungarian government.

The Centre operates from 8am to 2pm on weekdays, providing both counselling and educational tutoring for boys and girls between the ages of 12 and 18 who have been referred by schools, child- and youth agencies and by probation officers.

⁹⁴ Based on the presentation by Negrea Vidia given at the first seminar in Budapest, Hungary (14-16 October, 2004).

The aim of this project is to empower students, parents and professionals to share responsibility for managing their conflicts and problems by focusing upon repairing harm, strengthening relationships and communities. The programme seeks to achieve two empirical goals: to reduce the number of high-risk youth who commit criminal offences and to reduce the number of delinquent youth who re-offend.

The few currently available results have already shown some similarities with the research made by IIRP: the programme can significantly reduce offending rates, improve self-esteem, and develop pro-social norms, usually after the youths had spent at least three months in the programme. More than half of the involved students were able to go back to their home school having a positive attitude towards it. They could continue their education in a successful way, despite a very long history of serious misbehaviour.

As an additional service, Community Service Foundation of Hungary offers training in “restorative practices” for teachers, caseworkers, counsellors and others. This is a practical training teaching effective strategies for handling ‘difficult’ students.

Based on the experience of CSF of Hungary the Ministry of Justice and the Ministry of Education may promote this experiment as a model to be developed within the probation and child protection system in Hungary.

MOLDOVA

RAISING AWARENESS ABOUT RESTORATIVE JUSTICE⁹⁵

The main NGO in Moldova working on the implementation of restorative justice is the Institute for Penal Reform (IRP). An important issue in their activities is how to raise the public awareness effectively. They have three main directions in this field:

1. giving informative seminars;
2. producing informational materials;
3. involving the mass media.

IRP organises informative seminars for judges, prosecutors and police officers, where these actors are informed about the concept of restorative justice, the role of mediation in the criminal procedure. They are also involved in finding common strategies regarding the possible cooperation between mediation services and the institutions they represent.

⁹⁵ Based on the presentation by Diana Popa given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

During these seminars information materials are distributed. The materials include informative cards, booklets and posters with a clear message about restorative justice for judges, prosecutors and police officers. A movie was also prepared about community service in order to promote this new institution among the legal practitioners and in the general public.

The third type of public awareness activity is the involvement of the mass media in informing the public about mediation, about the consequences of it and the possible cases in which it can be used. As an example for this type of cooperation, when the Mediation Centre of the IRP was opened on 1 February in 2005 several journalists were informed and this activity was broadly reported in newspapers, on the radio and on TV.

NORWAY

DISCOVERING NEW WORLDS – THE COOPERATION WITH ALBANIA⁹⁶

The cooperation between the Norwegian Mediation Services and the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFRCR) is of great importance to both parties, regarding its influence on basic ideas, methods and implementation. This initiative is a Solidarity project funded by the Norwegian Ministry of Foreign Affairs since 1998 and was originally initiated by Denmark.

The main objectives are:

- 1) the exchange of knowledge to develop the skills of both partners in the field of mediation;
- 2) to contribute to developing a new institution for mediation in the Albanian society based on the local traditions and on the models established in Norway.

The project activities are the following:

- workshops for Albanian and Norwegian participants, including presentations about concrete cases from both countries, discussions and role-plays;
- seminars and workshops on specific topics and methods, like ‘conferencing’;
- study trips for key persons representing authorities such as the prosecution authority, the police, courts and other partners;
- translation of articles;
- production of a documentary film presented in the Albanian National Television.

By using interpreters there is a strong intention to ensure the understanding of the similarities and differences of the presented practices. The role of interpreters

⁹⁶ Based on the presentation by Karen Kristin Paus given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

is essential for a real exchange of knowledge. Even though both parties can speak English, it is highly important that the involved experts could discuss the difficult issues in their native language.

The experienced differences are equally inspiring for the partners. In Albania there is a tradition of mediation in civil cases with intensive community involvement. On the other hand, in Norway partnerships are primarily created with the authorities. The role of prosecutors is the most significant, since they refer the majority of cases to mediation (both in penal and civil cases).

Furthermore, the type of cases handled via mediation and the methods used are also different. In Albania (in addition to the normal court proceedings) mediation is successfully used in serious violence cases, such as blood feuds. The mediators often work on these types of cases for several months, involving all relevant parties, the family members etc. Furthermore, they use a more indirect mediation method. In Norway parties are brought together quite quickly into a face-to-face meeting, at which parties' networks are usually not represented .

The influence of the Albanian experience has been highly inspiring for the Norwegian partners, regarding two main aspects: firstly, the types of cases handled by mediation; secondly, their vision of mediation, which has been a new experience for the Western partner. Via the Albanian practice, mediation can be seen as an important instrument in local communities and it effectively contributes to the societal development towards democracy.

At the same time, in the Norwegian practice there is a danger that the original principles of mediation are subordinated to the cost-benefit and other efficiency requirements. It results in a tendency to increasing the number of cases without ensuring sufficient resources.

On the other hand, the Norwegian experiences might contribute to the development of victim-offender mediation in penal cases in Albania. It also intends to encourage the establishment of effective relations between the involved NGO and the other agencies of their criminal justice system (such as the police and the prosecution).

Moreover, working with international contacts seems to be a door-opener for both countries. During the last two years the project initiators have experienced a lot of interest and support from various partners in both countries (from authorities, scientists, the general public etc.) and have gained a lot of attention concerning the different activities. It is hoped that as a result of this project Albania will be successful in negotiating for future state funding for establishing a nationwide victim-offender mediation service.

POLAND

**RAISING AWARENESS ABOUT NON-VIOLENT COMMUNICATION VIA
RESTORATIVE JUSTICE COMPETITIONS IN SCHOOLS⁹⁷**

The Polish Centre for Mediation (PCM) has 28 mediation centres in Poland. It is the first such association to have initiated mediation procedures in Poland. It was created in 1995 within the non-governmental Penitentiary Association “Patronat”. In 2000 it became an independent non-governmental association.

PCM has prepared and implemented the first experimental programme of mediation between victims and juvenile offenders (1995-1999). As a result of the successful lobbying activities of researchers, consultants of the PCM Programme Board and experienced mediators, in 1998 victim-offender mediation was included in the Penal Code and Criminal Procedure Code. In May 2001 mediation was integrated in the new Polish Juvenile Procedure Act.

PCM has been preparing and implementing training programmes since 1996. These are one of the most important activities of the Association. PCM currently conducts weekend-trainings (16 hours) and 6-day trainings for prospective mediators. Restorative justice is highly emphasised in all of them, but particularly in those provided for mediators. There are separate trainings for judges and prosecutors. In those trainings primarily the main differences between the penal and restorative justice approaches are highlighted.

PCM has intensive cooperation with governmental and non-governmental institutions, such as the Institute of Justice at the Ministry of Justice, with the Ombudsman and the Children’s Ombudsman Office, with the Polish Academy of Sciences as well as with the Parliamentary Justice and Human Rights Commissions. Currently there is an ongoing cooperation, including universities, focusing on creating a bill about implementing mediation in the Civil Code.

PCM is providing family mediation in Warsaw and conferences for juvenile offenders in Warsaw, Bilgoraj and Lesk. Furthermore, the Association focuses on raising the awareness of the public and of the professionals about the restorative approach by informing them about its beneficial aspects as well as by preparing and distributing promotional materials.

The Competition “*Solve disputes without violence – what do you know about restorative justice?*” was initiated and prepared by the PCM Board of Directors in 2001. It has become one of most important methods to promote mediation and restorative justice in Poland. It is important to mention that findings of a recently conducted research in Poland (with the participation of the Medical Centre of Psychological and Pedagogical Aid at the Ministry of Education and Sports and Gdansk

⁹⁷ Based on the programme summary of Magdalena Grudziecka sent on 1 September 2005.

University) showed that about 20% of primary and high school students are active perpetrators of pathological violence and about 80% become victims of aggression and violence.

In 2002 the Children's Ombudsman Office and the Ministry of Education and Sports took patronage over the competition and started to financially support the Association. The competition is also sponsored by UNICEF and the Batory Foundation.

The most important purpose of the competition is to familiarise Polish youth with the concept of restorative justice, which was hardly known before. Moreover, it is also important to direct the attention to the basic principles of mediation and the importance of restoring social balance.

The pilot competition was implemented in selected high schools in several Polish cities (in Łódź, Lublin, Lubin, Olsztyn, Szczecin, Gdańsk, Toruń, Zielona Góra, Pila, Pszczyna, Skarżysko, Kamienna and Warszawa). It involved 3500 participants, pupils, teachers, parents and other school employees.

In 2003 37 schools and 7000 participants were involved. In the last competition (started in September 2005) the number of training hours was increased. Compared to the initial training hours (6-10) currently 35 hours are provided for children, 35 for teachers and 15 hours for parents.

The main objectives of the training are:

- to raise awareness amongst the students about how to communicate with each other without violence;
- to demonstrate the importance of developing the concept of restorative justice in Poland;
- to solve conflicts without violence; and
- to apply negotiation and mediation in conflict situations.

PCM wrote and published a brochure, called "Law and Dispute Resolution". Schools also receive the book "Mediator's Code of Ethics" (also published by PCM) and specially prepared leaflets.

Mediators who act as coordinators of the competition receive a kit of materials which is their main source of information for preparing training for students, teachers and parents. Significant parts of these materials are devoted to restorative justice, and particularly to the comparison between retributive and restorative justice, as well as to the development of restorative justice in Poland.

The first competition was organised in September - November 2002, the second started in September 2003 and took until June 2004. The last one started in September 2005 and will finish in June 2006.

The programme is composed of two stages. In the first stage students describe a real or imaginary conflict and its possible solutions. The second stage includes training about communication without violence, active listening, various forms of

conflict resolution, the introduction of the main principles of restorative justice and its impact on the society as well as on the justice system. In this stage students take a test and prepare art-works for illustrating the advantages of mediation and restorative justice. They also write papers on “What can I do to decrease the amount of physical or mental violence in my school?”. These essays are sent to the Competition Commission in Warsaw. The Commission is composed of representatives of the Ministry of Education and Sports, the Children’s Ombudsman’s Office, the PCM Programme Board and active mediators. Members of the Commission read and mark each paper individually and give a final mark as a sum of all points granted for each paper. After the previous competitions official celebrations were organised in the Senate and in the Polish Parliament.

Children participate in the programme with their a positive attitude and genuine enthusiasm. Their active and creative imagination offers several solutions that can be well-applied in the practice and often useful lessons even for adults.

Children quickly understand the idea of non-violent dispute resolution based on the restorative approach. The programme is considered an important innovation for all involved participants.

Representatives of the Ministry of Education and Sports and the Children’s Ombudsman Office are convinced that the competition is becoming a necessary element in preventing crime and violence amongst children. Future support of the programme has been offered from the Ministry of Education and Sport.

ROMANIA

STARTING THE IMPLEMENTATION WITH EXPERIMENTAL PROJECTS⁹⁸

Two experimental mediation centres have been set up in 2002 in Bucharest and Craiova based on the partnership between the Department of Reintegration of the Romanian Ministry of Justice, the Centre for Legal Resources and the Family and Child Care Foundation. Experts of the Department for International Development (DFID) from UK have provided the technical assistance.

The criterion for the cases selected for the experiment was the criminal complaint by the victim. The main types of crimes included battering, insulting, assault and other crimes against the person. Victims and young offenders were involved subject to their voluntary consent.

Activities within the framework of these projects had two general purposes: firstly, to establish a network of conflict resolution centres in Romania; secondly, to strengthen conflict mediation services in Romania through building the

⁹⁸ Based on the project summary by Mihaela Tomita (October , 2005).

capacities of local NGOs. The projects also aimed to raise public awareness about mediation and to develop supporting legislation.

Some NGOs have started to provide mediation services. However, they still need to face many challenges, since there has not been any legislative framework in Romania so far that could regulate and encourage such activities and the application of alternative conflict resolution methods.

The Mediation Centre in Craiova started its activity in 2003. The Court of Justice and the High Court of Justice in County Dolj referred the first cases. The staff of the Centre includes volunteer mediators from different professional background (mostly attorneys, teachers, engineers, jurists). They were trained by foreign experts.

In 2003 “RO-Mediere” has started as a joint project of the Community Mediation and Safety Centre (CMSC) in Iasi, Romania and the Victim Offender Mediation Association (VOMA).

The objectives of the project were to build the practice of mediation in Romania by:

- increasing mediation capacity through the introduction of new services;
- introducing legislation regulating mediation services;
- increasing public awareness.

The mediation centres in Romania have organised trainings for mediators from 2004. Previously selected representatives of the Romanian Bar Association were also involved in the trainings. The trainers came from different European countries and from the USA. Until now 240 mediators were trained in 6 groups. Meanwhile, experts have exchanged information about the different training models as well.

During the last months, Mediation Centres have been successful in promoting mediation. At the end of each mediation session the involved parties filled in an evaluation questionnaire about the mediation session. According to this questionnaire, most of them were highly satisfied regarding the neutral conduct, the outcome and the mediation session (see Table 8).

It could also be mentioned that meanwhile a substantial academic activity has evolved in Romania in the field of restorative justice. A university post-graduate programme in restorative justice at the Faculty for Social and Human Sciences was recently started. Currently a master programme is also promoted. The translation of two books and ethic codes of different countries will be published in the short future. The current trainings mainly focus on educating social workers, jurists and psychologist.

It is hoped that the experiences of the Mediation Centres and the involved practitioners/academics will significantly contribute to the implementation of the profession of mediator throughout Romania.

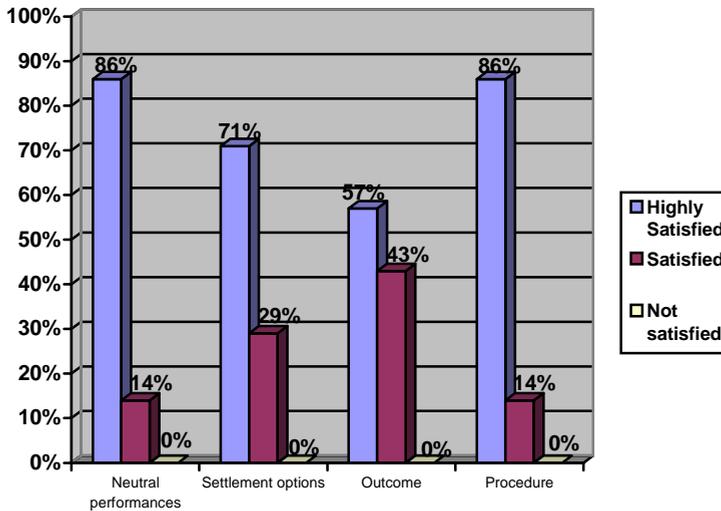


Table 8: Satisfaction with the neutral conduct, settlement options, outcome and the procedure of the mediation.

RUSSIA

COOPERATION WITH THE UNITED KINGDOM IN INSTITUTIONALISING RESTORATIVE JUSTICE IN RUSSIA⁹⁹

The Moscow-based Centre for Legal and Judicial Reform (CLJR) is the leading organisation in developing restorative justice in Russia. Since August 2002 they have been working with the Centre for Social Action and the Community and Criminal Justice Research Centre at De Montfort University, UK. Funded by the British Government's Department for International Development the organisations were working on institutionalising restorative justice in Russia through a joint project that ended in February 2005.

The working relationship was based on professional accountability. Both DMU and CLJR had key areas for which they took responsibility. DMU was directly responsible to DFID for the overall programme; CLJR was responsible for the project delivery.

⁹⁹ Based on the presentation by Rustem Maksudov and Eamonn Keenan given at the first seminar in Budapest, Hungary (14-16 October, 2004).

Restorative justice programmes were set up in three pilot areas in Moscow, Dzerzhinsk and Tyumen. Working groups were established to achieve the goals of the project.

In Dzerzhinsk 20 cases were handled and 16 restorative programmes were run with 42 young offenders and 24 victims. 11 programmes resulted in actual meetings of the parties (18 accused offenders and 9 victims). In 5 cases, 10 offenders and 5 victims were involved without meeting each other.

In Tyumen, 26 cases were dealt and 23 restorative programmes were run with 24 victims and 30 young offenders. Preliminary meetings took place in 24 cases. Twenty-five victims and 27 offenders agreed to take part and attended the meeting. Twenty-one cases ended in reconciliation meetings. Reconciliation agreements were signed in 19 cases.

In Moscow programmes were completed in 55 cases (of juveniles and young adults). Two social workers were involved in the project. They worked with 76 young people. In the 19 cases in which restorative justice was started, 31 offenders, 23 victims and 6 legal representatives took part. Nine programmes resulted in reconciliation of the parties (16 offenders and 10 victims). In 3 cases actual meetings of the victim and the offender did not take place but mediators ran restorative programmes for those offenders.

In order to create steering groups steadily operating in Moscow, Tyumen and Dzerzhinsk CJLR plans to organise working teams in which representatives of the state and of the community could work in partnership. The CLJR will continue to work towards the institutionalisation of restorative justice in the Russian Federation by adopting a strategic approach. Among the future initiatives CLJR intends to educate and inform potential partners through highlighting best practices on the national and international level. At the same time, cooperation with key state agencies, such as the Prosecution Department, Militia, judiciary, Presidents committee and MP's in the Federal Duma will be stimulated in order to create changes in legislation.

The key lessons learnt through the working partnership were the following:

- the importance of the equality of status between partners, rather than status being given to agency-interest, funding-capacity or the size of agencies;
- the need for commitment and support from senior management and staff within the partner agencies;
- building up mutual honesty, confidence and respect towards each other; providing sufficient time and opportunities for learning how to work together with respect to the participants' knowledge, their agendas and the cultural differences;
- building effective two-way communication systems and problem-solving processes.

SERBIA AND MONTENEGRO

INTRODUCING MEDIATION IN A JUVENILE CORRECTIONAL INSTITUTION¹⁰⁰

On 1 September 2003, UNICEF entered into agreement with the Government of Serbia and Montenegro and the Swedish International Development Agency (Sida) to launch a cutting edge Juvenile Justice (J J) project in Serbia and Montenegro entitled “Children’s Chance For Change”. This three-year project is supporting the republican governments in their J J reforms. These efforts aim at increasing the respect of the rights of children in conflict with the law and harmonising the national legislation with the relevant international - European standards.

The Juvenile Correctional Institution in Krusevac (JCIK) is a reform school for juveniles charged for committing crimes between the age of 14 and 18 years. It is the most severe sentence that a young people under 16 years old can get. It is the only institution in Serbia and Montenegro of this kind, and there are between 150 and 200 juveniles living there. This institution was selected as a pilot site for the development of an alternative and community-based care and prevention programme.

Conflicts between inmates at JCIK are frequent and due to low level of security in the facility, these can result in serious consequences (serious damage of JCIK property, body injuries, self-harming, suicide attempts, suicide). These conflicts often have all the characteristics of a criminal act. If they are recognised by authorities at JCIK, they usually result in disciplinary measures for juveniles. These disciplinary measures range from losing some privileges to being sent to confinement rooms.

These incidents called for the introduction of a conflict resolution method tailored to the specifications of JCIK. Since in the conflicts between inmates at JCIK it is not always clear who the victim and the offender is (often both parties are damaging each other), the title of “mediation in conflicts” was suggested as a more appropriate term to depict the mediation carried out at JCIK

The Mediation Service (MS) is the first victim-offender service established in Serbia and Montenegro in closed settings. It was developed in a fully participatory manner, as a result of the partnership between the JCIK, the Ministry of Justice of Republic of Serbia and the UNICEF.

In September 2003, a basic five-day training in victim-offender mediation was organised for 23 selected professionals from JCIK (managers, personal officers, security officers, teachers, vocational instructors), conducted by Ms. Marian Liebmann (UK), expert trainer in victim-offender mediation.

¹⁰⁰ Based on the presentation by Jasna Hrcic, Zivica Pavlovic and Slobodan Milosavljevic given at the first seminar in Budapest, Hungary (14-16 October, 2004).

In October 2003, the Mediation Service at JCIK was established. In the following months the Service was fully developed, i.e.: specialised departments were formed, the Ground Rules were created, relationships with other services at JCIK were regulated, administrative procedures and record keeping were defined and informational materials were prepared.

Finally, the Service became fully operational in February 2004. In March 2004, a refresher course and a cultural diversity mediation course (five day training with Ms. Liebmann as international trainer) was organised for 20 professional from the staff of JCIK and for four professionals from the Centre for Social Work in Krusevac (CSWK). As a result of that training, three professionals from CSWK became members of Mediation Service at JCIK, which is to be considered a step towards directly involving the local community in a traditionally closed setting.

The Service is currently composed of 20 volunteers - staff members of JCIK and CSWK. The Mediation Service at JCIK, as the first programme in the country providing such type of services, is still under development and facing considerable challenges in its closed setting.

Concerning the results, among a dozen cases referred to the Service, some were successfully solved, some are still in process, and some remained unresolved due to lack of voluntary participation of both parties in the conflict.

The goal of the Mediation Service at JCIK is to facilitate and encourage positive resolution of conflicts between inmates where another person's rights were violated, through systematic use of mediation processes in which an impartial third party helps parties in the conflict to communicate directly or indirectly.

The specific objectives of mediation at JCIK are to improve the quality of life for juveniles through opening opportunities: for the offender to be redirected from the restrictive measures and to be rehabilitated through reparation; for the victim to support his/her recovery; for the institution to prevent further escalation of conflicts; to improve pro-social capacities of juveniles through the development of their communication, negotiation and problem solving skills; and to decrease anti-social behaviour of juveniles by encouraging their understanding about the consequences of offensive behaviour, by motivating them to take responsibility for their acts, and promoting the reparation of harm.

The most challenging issue is how to deal with gang fights and with bullying in cases of considerable unbalance of power between the involved parties.

Inmates at JCIK are organised in informal groups, i.e. in gangs. Gang conflicts are not rare, and they ask for special attention and skills by mediators. Until now, one gang conflict has been challenged by mediators at JCIK, and although a positive solution was not reached upon till now, it was considered as a first step toward offering constructive and non-violent solutions in case of gang conflicts.

Power unbalances between parties in conflict can be very considerable at JCIK and have the potential to jeopardise the mediation process. However, there is a

hope that such conflicts will also be able to be resolved through mediation in the future. This is mainly dependent on the further possibilities of gaining experience in the mediation of such cases.

Improving cooperation with other services at JCIK is also a critical issue. There is a strong intention to open communication channels within the staff for regular formal and informal discussions. Moreover, it is important to inform the broader community about the activities of the Mediation Service and to involve other services of the JCIK concerning the future development of mediation.

Developing a need for mediation and trust in its effects among inmates have been a slow process which is based on sharing information and on the activities of the Mediation Service (participatory discussions about mediation in conflicts with inmates organised by personal officers and members of the Service, spreading leaflets and posters on mediation, etc.) and providing possibilities for inmates for sharing success stories of mediation among themselves.

Working with cultural diversities is a sensitive and critical issue considering that one third of the inmates is of Roma origin. This issue is very challenging, since, for example, interpretation services for Roma language are scarce due to lack of qualified interpreters in Krusevac community. Furthermore, most of the Roma children do not now how to read and write in Roma language. Some special informational materials are planned to be developed to address that issue.

Coordinating mediation work with other working duties is also a challenge, especially for members of the security service at JCIK. Due to the special character of their duties (security issues, work in shifts), they often cannot leave their working place when it would be necessary. Hence, their participation in mediation activities is more difficult to arrange compared to other JCIK professionals.

The future steps will focus on the formalisation of the activities of the Service. Its functioning will be integrated in the official documents of the JCIK, such as the Institute's House Rules and its other organisational policies.

To conclude, it is largely hoped that victim-offender mediation as an alternative measure for juvenile offenders will be accepted and recognised as a positive conflict resolution and conflict prevention method.

UKRAINE

**HOW TO START EFFECTIVE COOPERATION WITH LEGAL PROFESSIONALS –
A SUCCESSFUL CONFERENCE ON RESTORATIVE JUSTICE¹⁰¹**

The international conference on the formation of a Ukrainian model of restorative justice took place in Kiev on 10-11 February 2005. The conference was organised by the Ukrainian Centre for Common Ground (UCCG) with support from the Supreme Court and the Academy of Judges of Ukraine. Funding for the conference was provided by the European Commission, the International Renaissance Foundation, the Institute for Sustainable Communities and the USAID. The aim of the conference was to develop and strengthen social partnerships for the implementation of restorative justice in Ukraine.

Restorative justice was introduced in Ukraine in 2004 through a pilot programme run by the UCCG in Kiev. The pilot programme succeeded in establishing a working partnership with the judicial system, developing a mechanism for cooperation with the courts and training a cadre of specialists in victim-offender mediation. Due to the achievements made during the pilot programme, the UCCG was encouraged by representatives of the legal system and non-governmental organisations (NGOs) to expand the project to other regions of Ukraine. Since the summer of 2004 victim-offender mediation programmes have been developed in five regions of the country. Cooperating with state and legal institutions in each region, Ukrainian NGOs have developed a variety of mechanisms to implement restorative justice programmes. These activities have had a significant impact. The conference in February sought to analyse the various experiences of restorative justice programmes in Ukraine and systematise the already used practices. The conference culminated in the definition of the Ukrainian model of restorative justice.

The conference programme was designed to explore Ukrainian and foreign experiences in the field of restorative justice as well as analysing and evaluating various implementation strategies. Participants discussed the need to develop a legal basis for restorative justice programmes in Ukraine. As a result, representatives of the legal system and NGOs drafted a Resolution on Necessary Actions for the Implementation of Restorative Justice Programmes within the Criminal Justice System in Ukraine. The resolution was endorsed by the conference council and received support from the majority of the conference participants.

¹⁰¹ Based on the presentation by Roman Koval given at the second expert meeting in Chisinau, Moldova (17-19 March, 2005).

4.4. ACTION PLANS

While the best practices aimed to draw a picture of some of the projects currently taking place, the next part intends to give an overview of the future plans in the involved countries.

During the second expert meeting, the invited participants were asked to think over and formulate specific action plans concerning three particular issues that, in their countries, have the highest priority according to them. The questions concerning each indicated issue were the following:

- The specific problem/issue which is significant for effective implementation;
- What have they learnt during the meetings of this project concerning the possible ways of facing these problems?
- What are their main concrete goals to be achieved by 2007 concerning this issue?
- What (strategic) actions have to be taken to achieve these goals?
- What kind of support is/will/should be available during the process; from where?
- How will they evaluate the achievement of the goals?

Experts mainly highlighted action plans that related to the following areas:

- start pilot projects;
- draft and codify legislation on mediation in criminal cases;
- implement already existing projects on a nationwide level;
- start training courses and improve existing training systems;
- conduct research projects in order to prepare for effective implementation;
- stimulate national cooperation and project activities based on interdisciplinary teams;
- start international cooperation, especially bi- and trilateral partnerships for stimulating exchange of experiences, supporting common actions; helping experts to get to know training models and legal and institutional systems in other countries;
- raise awareness about restorative justice in the general public;
- raise awareness among civil servants and policy-makers as well as among the different professionals of the criminal justice system;
- establish mediation services, institutions, training and employing more personnel in order to make mediation available as generally as possible;
- create standards and protocols in services and in training, formulating accreditation systems; formulating ethical codes for mediators;
- broaden the scope of application by introducing and promoting restorative justice in more serious cases;

- focus on networking, lobbying activities; improve cooperation with policy-makers, actors of the criminal justice and potential funders of projects.

In respect to what participants learnt from the meetings in relation to the highlighted issues, we have to stress not only the exchange of practices of fifteen countries, but also the possibility for brainstorming together and for exchanging very practical suggestions.

Concerning the question of what kind of support participants found the most important for realising their goals, primarily the external experiences and access to expertise were highlighted. The importance of financial support was also emphasised.

For both types of support not only the role of national institutions and governments, but also the role of international institutions and organisations were stressed, such as the European Commission, the Council of Europe or the European Forum for Victim-Offender Mediation and Restorative Justice. The expectations towards these institutions were mainly connected to their potential to stimulate international cooperation, networking and lobby activities. Their possible help in making structural funds more accessible for the purposes of reform activities was also pointed out.

The following table (Table 9) summarises the action plans of fifteen countries, formulated during the second expert meeting.

TABLE 9: ACTION PLANS

ISSUES		LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
ALBANIA				
development of RJ/VOM for juveniles	examples and programmes presented by different countries;	increase the number of criminal cases that may be handled and solved through mediation; to identify relevant partners in this project (juveniles, local government, prosecution office); working towards making agreements with the Ministry of Justice, police authorities, prosecution office; media campaign on this issue	support from donors, continue partnership with Norwegian partner; support from agencies of the Albanian criminal justice system	
training course on VOM and RJ for mediators, lawyers, social workers and social scientists	best practices presented by UK and Ukraine; publications that are presented in this meeting	increase the capacities of the target groups: trainers, facilitators, mediators, etc.; raising awareness of lawyers, social workers; establish partnership and cooperation with the ministries and educational institutions; making publications and dissemination of information through the media; develop training manuals	experts in RJ/VOM from the European Forum; cross-border projects; trainers, experts from the Norwegian partner	
research, publications and needs assessment on RJ as tools for implementation	publications of the European Forum; research on the penal reform carried out in Moldova as a good example	explore the possibilities of RJ in society; to have a clearer picture about criminal cases and about the possibilities for using alternative sanctions; to publish the main results of the research; to translate books on RJ; preparation of a good project proposal; setting up a research team to conduct the study	financial support from donors; help of other experts who have experience in conducting research in the field of the criminal justice system	
AUSTRIA				
establishing bi- and tri-lateral international cooperation	tri-inspiring examples such as the partnership between Albania and Norway	receive financial support from the European Commission and establish more intensive mutual exchange; check the different sources of funding available	from the Secretariat of the European Forum	

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
improving the training systems in CEE countries		incorporate the recommendations of the European Forum, formulated in its AGIS 1 project on “Training of mediators and legal professionals”, into regular practice	
BOSNIA AND HERZEGOVINA			
how to raise awareness in the communities, how to change the widespread punitive approach and inform the public	best practices in other countries about involving students, volunteers and train journalists	to implement mediation as an alternative method of conflict resolution in juvenile cases; positive media coverage; introduce peer mediation in schools; publish project manual with outcomes; involve the universities in the evaluation of the project; organise information workshops for NGOs; regular contact with media-actors	support and assistance from other countries that have implemented similar projects and actions by sharing their experiences
lack of resources and infrastructure	keep sustainability and long-term perspectives in mind while introducing models on national level after the pilot projects	secure funding for the juvenile justice mediation project; fundraising; raising awareness of RJ among donors; propose success stories from other countries	financial support from donors; partners providing services; resourced from local authorities; investment in services
lack of partners within BH to cooperate with in the implementation of RJ	useful contacts with partners in other countries	raising interest in RJ among local actors in BiH; creating a network with partners in neighbouring countries; regular information exchange; keeping in touch with developments and projects in other countries	exchanging information, experiences, assistance and training from international partners
BULGARIA			
legal framework, although it is partly solved	the different legislative approaches and decisions presented during the meeting	adoption of relevant legislation and its enforcement additionally to the current Mediation Act which opens the door but is not specific enough; developing and submitting proposals “de lege ferenda” (what ought to be in the law)	materials helping the comparative analysis of legislations

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
training of mediators	good training practices in other countries	establishment of national training system; developing training programmes; probation – accreditation	access to training manuals of countries with good experiences
'institution building'	good practices in interdisciplinary cooperation	establishment of a mediation system on a national level; create a unified registry for mediators on national level	technical assistance, exchange of experience
CROATIA			
lack of alternatives in the criminal justice system; punitive attitude in the general public	be more persistent and find personal contacts rather than whole institutions for cooperation; promoting international partnerships as door-openers; good cooperation with the media	establishing community mediation centres; national policy on referrals formulated by the Ministry of Justice on the basis of input of the practitioners; organising workshops to inform the professional groups; simultaneously targeting policy-makers, municipal authorities and identifying open and supportive people; raising public awareness through media campaign	
lack of funds tailored to the initial stage of RJ development	the need to educate donors; presenting already ongoing activities to them; NGOs and ministries should put their efforts together in getting structural funds	educate donors about the benefits of mediation and convince them about the importance of supporting the work of more than one organisation	credibility from the EU; experts from the European Forum, especially from CEE countries

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
CZECH REPUBLIC			
PMS has not enough capacity to increase the number of mediations	pilot VOM projects that are provided by external providers	improve the efficiency of the PMS in the criminal justice system; involve NGOs in providing mediation; prepare proposals and the concept of legislative changes in relation to improving the efficiency of the PMS in the criminal justice system; prepare accreditation, basic standards for external providers of mediation in suitable cases; use volunteers	financing; political will; organisational capacity of NGOs to prepare and implement pilot projects
lack of effective coordination among the different agencies of the criminal justice system; justice officials and prosecutors have very different views on how to implement alternatives into the criminal justice system	importance of PR and information activities	work in multidisciplinary teams; organising multi-agency cooperation between the PMS, prison services and judicial authorities	financing; political will; organisational capacity of NGOs
ESTONIA			
increase the government's and the public's support in implementing RJ/VOM	experiences in implementation from other countries	prepare guidelines; promote good practices; doing research work; lobby; organising roundtables; networking with governmental and local governmental officers, crime-prevention organisations; increase the publicity of RJ/VOM	information on good practices; comparative legislation from different countries; manuals/guidelines about how to implement RJ and VOM on the state and local levels

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
making coordination and leadership more efficient in the implementation process	finding the key persons is one of the most essential elements of the implementation process	effective leadership on the level of Ministry of Justice and on the governmental level	information about good practices; manuals/guidelines about how to implement RJ and VOM on the state and on local levels
increasing the number of conciliators	the importance of the professional skills of volunteers; the need for setting up standards in mediation	create an institution of conciliators; identify qualification standards and guidelines; create an ethical code; start the training system	information about good practices; manuals/ guidelines
GERMANY			
more effective and attractive advertising/ public relation on VOM in the communities	create interest from the public and from the government; the Moldovan practice	develop a good public relation campaign; create attention in the community and the government;	experiences from others; funding for the campaign
improve international relations by creating partnership with a country in CEE in order to exchange ideas and experience	best practices about international cooperation; the cooperation between Albania and Norway	partnership with a certain country and working on issues like training for mediators and training for legal professionals	funding from the governments and from the EU
creating European standards for training in mediation for mediators, trainers and legal professionals	the need for more mutual support among the countries, since in some countries there is a serious lack of training and trainers	creating common standards based on the Recommendations of the European Forum's previous AGIS project and on the evaluation of other projects; finding partners; Summer School project (June 2005) organised by the European Forum; improving the already existing recommendations	support from the European Forum in order to establish connections with other countries and projects; support from the European Union in order to try out these standards in different countries

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
HUNGARY			
changing the general public's attitude in relation to RJ and VOM	the importance of educating journalists through personalised relationships and using international relations as 'door-opener' instruments	changing attitudes, disseminate information about RJ and VOM; training for journalists and other media actors	Financial support from EU projects (e.g. PHARE, Access); personal networking with journalists
how to influence the legislation and the practice of different authorities, if the implementation is already over	continuous lobby in the ministries and using international relationships as door- openers	influencing the legislation on VOM for adults and the new Domestic Violence Act; continuous informal lobby with the relevant ministries and using international relationships as door-opener	support from the public prosecutors; scientific support from the European Forum
fragmented, separated, isolated projects and NGOs	essential need for cooperation	Creating a non-profit umbrella organisation for the coordination of the relevant projects and NGOs	
MOLDOVA			
legal framework	find an 'open door' in the present legislation and use pilot projects to promote new, adequate legislation	draft law on mediation to be passed; disseminate the law and the information about it to each institution and actors, which have key roles concerning mediation; lobbying; advocacy; establishing working groups	informational support from countries with a richer experience; support in lobbying from the Council of Europe; support from the European Forum
training of mediators	the importance of pre-selection of mediators by a set of clear criteria; the involvement of volunteers in the mediation process	having national trainers; protocols for selection of mediators; ethical code for mediators; according to the accumulated practice; publishing of training materials; organise training of trainers; publishing manuals for mediators	informational support from other countries; help from the European Forum in finding international experts; financial support

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
Involvement of legal practitioners	the importance of mass media in promoting RJ; to present good practices; to inform about successful examples; the importance of standards in training legal practitioners	increase the number of referrals to mediation; improve the cooperation between mediators and legal practitioners; informing legal practitioners (by seminars, presentations, personal discussions, informational materials); establish cooperation-agreements with officials at the national level	financial support; best practices; human resources
NORWAY			
make RJ an alternative to imprisonment	focus on cases of serious offences in the early phases of implementation as well	increased use of VOM as a condition of conditional release; discussions first with a few key persons in order to formulate strategies; organising study trips	cooperation with the probation offices, district courts; and the prosecution authority
not enough cases of serious violence/ domestic violence handled by VOM	experience of VOM in cases of domestic violence from Poland, and research from Austria	increase the skills as facilitators for VOM in cases of violence in general and in domestic violence in particular; initiate new projects and evaluations in order to change attitudes towards VOM also in these types of cases	
POLAND			
services should become more visible in the society and be more active in the local communities	the importance of public awareness and the use of media	increase the number of civil cases by direct referrals from the parties; cooperation with local authorities, local organisations, schools, etc.; improve strategies towards the media	Support from the national government and from the Secretariat of the Mediation Services
lack of information about RJ in the public		conference to be organised in October - December 2005	
need for accreditation systems and standards in VOM		establish working group in order to create standards	

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
<p>cooperate with juvenile judges in order to persuade them to refer more cases to mediation</p>	<p>organisation of trainings and information meetings in cooperation with the Ministry of Justice</p>		
ROMANIA			
<p>setting up an NGO responsible for coordinating the implementation and development of RJ</p>	<p>main supportive factors and difficulties concluded at the expert meetings</p>	<p>start pilot VOM projects within the existing law and later propose changes in the legislation for the national implementation</p>	<p>experts in RJ from the member countries of the European Forum and experts from Romania</p>
<p>setting up a coordinating group based on experts in RJ</p>	<p>other countries' experience in using human resources in an efficient way</p>	<p>extending the circle of interested groups and persons, who can contribute nationally or internationally to the implementation of RJ practices on a wider scale</p>	<p>support from the European Forum</p>
<p>Organisation of a conference about VOM in Romania</p>	<p>Budapest conference, as an example of a successful conference</p>	<p>by such a conference constituting a platform for communication and information for the governmental and non-governmental institutions interested in the implementation of RJ in Romania</p>	<p>human resources and financial support from the government; active participation of criminal justice professionals, especially public prosecutors, judges and police officers</p>

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
UKRAINE			
lack of professional mediators and difficulties in training them	training capacities in other countries; hybrid system of mediators' (professionals – volunteers work together)	develop national training courses, standards, guidelines, accreditation system	training capacity from other countries with developed training systems; funding
low level of people's awareness	use success stories; get journalists interested; issue regular press releases; develop (strategic) relationships with organisations; use of interactive TV and radio shows; be visible at the places where people come with their problems; persuade those people to whom the government listens	producing educational videos for a wider audience and broadcast it on TV channels; translate books on RJ	continued funding of the pilot project "Institutionalisation of RJ in Ukraine";
absence of legislative background for RJ implementation	make it really restorative; include serious cases as much as possible; accompanying research and agreed criteria are needed; support of victims (including them even when the offenders are not known or the meeting is not possible); support for offenders while making reparations; public debate before passing the law; adequate training and supervision of mediators; raising RJ]-awareness for personnel	research the existing examples abroad; draft the law and stimulate its adoption	examples of relevant legislation in other countries; financial support for covering translation costs

ISSUES	LEARNT	GOALS – STRATEGIES	SUPPORT NEEDED
<p>UK</p> <p>persuade the people to whom the government listens</p>	<p>develop high-level contacts and international connections</p>	<p>write in the media and in journals read by judges and prosecutors; publicise conviction rates of prisons; draft a model legislation and guidelines; persuade governments that cutting prisons is a desirable target; increasing the awareness of the government that prisons are part of the problem and not part of the solution</p>	<p>public endorsements of [R] by prominent figures; publicise research; publicise success stories</p>
<p>too little involvement of victims and of adult offenders and the need to find restorative response to cases where VOM is not possible</p>	<p>need to educate the actors of criminal justice system</p>	<p>collect figures about real involvement in restorative justice; show increased percentage of cases dealt restoratively; discussions with the actors of the criminal justice system</p>	
<p>inadequate training</p>	<p>training to be a mediator and raising awareness about mediation are not separate;</p>	<p>adopt guidelines and to make trainees aware of them during the daily practice; Council of Europe Recommendation (99)19 should be more publicised and used</p>	<p>Help of the European Forum in developing a training programme</p>

5. INTERNATIONAL COOPERATION

5.1. OVERVIEW OF THE CURRENT INTERNATIONAL ACTIVITIES IN THE FIELD OF RESTORATIVE JUSTICE

As the reader can see, throughout this publication the international dimension is discussed between the sections about ‘supportive factors’ and the ‘main needs’ of Central and Eastern European countries. This is because multinational cooperation is important in both contexts’.

As can be seen also from the previous table (especially from the column of “support needed”), as well as from the summaries of the discussions, participants constantly emphasised the particular importance of international exchange in the field of research, best practices, know-how and policy developments.

Demands for multinational cooperation are related to initiatives that are already in operation, as well as to new ideas for cooperation that might have an essential role in supporting restorative advocates.

The following table summarises the main international activities that have a significant influence on the current theoretical, policy and practical development of restorative justice in the European countries.

PARTNERS	ACTIVITIES IN RELATION TO VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE
INTERNATIONAL INSTITUTIONS	
Council of Europe ¹⁰²	<ul style="list-style-type: none"> • Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure; it emphasises the importance of compensation by the offender to the victim (Art 10-11); it also recommends the governments to examine the possible advantages of mediation and conciliation schemes (II.1) • Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation; its Art. 17. “encourages experiments [...] in mediation between the offender and his victim” • Recommendation No. R (99)19 and Explanatory Memorandum on Mediation in Penal Matters; • Integrated projects of the Council of Europe on 1) “Responses to violence in everyday life in a democratic society” (2002-2004), and on 2) “Children and violence” (2005-2007) emphasising the importance of restorative justice in tackling the problem of violence

¹⁰² For the victim-related recommendations, see <http://www.victimology.nl/onlpub/international/ce.html>.

European Union	<ul style="list-style-type: none"> • 1999: Communication on Crime Victims in the European Union: Reflections on Standards and Action¹⁰³; this document makes a plea for additional research and pilot projects in victim-offender mediation • 2001: Council Framework Decision of 15 March 2001 (2001/220/JHA) on the standing of victims in criminal proceedings; this document obliges Member States to promote mediation in criminal cases and to ensure that any agreement between the victim and the offender reached in the course of mediation in criminal cases can be taken into account in the criminal procedure; • 2002: Proposal for a Council Decision by the Belgian government to set up a “European network of national contact points for restorative justice”¹⁰⁴ • Granting several Grotius and later AGIS projects supporting partnerships of organisations from different countries, which focus on specific themes within restorative justice and victim-offender mediation;
United Nations	Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters ¹⁰⁵
INTERNATIONAL PROFESSIONAL UMBRELLA ORGANISATIONS AND NETWORKS	
Conférence Permanente Européenne de la Probation ¹⁰⁶	This European umbrella organisation for probation services is giving high priority to restorative justice approaches in its activities.
European Forum for Restorative Justice ¹⁰⁷	The aim of this NGO is to help to establish and develop victim-offender mediation and other restorative justice practices throughout Europe. To further this general aim, the Forum seeks to: promote the international exchange of information and mutual assistance; promote the development of effective restorative justice policies, services and legislation; explore and develop the theoretical basis of restorative justice; stimulate research; and assist the development of principles, ethics, training and good practice.
European Forum for Victim Services ¹⁰⁸	In the communications and seminars of this network, the influence of a restorative approach on victims is an important issue. It recently published a statement on the position of the victim within the process of mediation.
Penal Reform International ¹⁰⁹	This international NGO is a prominent partner in developing restorative justice practices in Eastern European countries and beyond.

Prison Fellowship	Several prison-based initiatives, including a 12-week victim-offender
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¹⁰³ COM (1999) 349 final, Brussels, 14 July 1999.

¹⁰⁴ Ref. No: (2002/C 242/09) Official Journal of the European Communities, 8.10.2002.

¹⁰⁵ UN Commission on Crime Prevention and Criminal Justice, Restorative justice. Report of the Secretary-General, Vienna, E/CN.15.2002/5/Add.1.

¹⁰⁶ See <http://www.ccp-probation.org>.

¹⁰⁷ See <http://www.euforumrj.org>.

¹⁰⁸ See <http://www.euvictimservices.org>.

¹⁰⁹ See <http://www.penalreform.org>.

International ¹¹⁰	mediation programme, of this world-wide organisation are based on the restorative justice philosophy; furthermore, they provide information about the most recent projects and literature in restorative justice via their exhaustive e-library and website ¹¹¹ .
Search for Common Ground ¹¹²	This organisation runs thirteen field programmes on four different continents and some of them put strong emphasis on restorative justice (e.g. in Ukraine).
INTERNATIONAL RESEARCH NETWORKS AND TRAINING INITIATIVES	
International Network for Research on Restorative Justice for Juveniles	This network is primarily organising annual conferences on restorative justice research.
European Family Group Conference Network	This professional community is mainly organising informal workshops on family group conferencing.
COST Action A21 on “Restorative justice developments in Europe” ¹¹³	In order to deepen knowledge on theoretical and practical aspects of restorative justice in Europe, this network of researchers has been created through the European Forum on Restorative Justice to: <ul style="list-style-type: none"> ▪ exchange and discuss research needs, methods and results; ▪ co-ordinate research projects in the respective countries; ▪ stimulate or support further (common) research projects.
European Master in Mediation coordinated by the University Institute Kurt Bösch in Sion, Switzerland ¹¹⁴	This post-graduate educational programme, organised in a partnership of several European universities, is oriented to international exchange and relates to different fields of practice: family mediation, school mediation, community mediation, victim-offender mediation, environmental mediation, international mediation, mediation in commercial disputes, and so on.

Table 10: International activities contributing to the development of restorative justice

¹¹⁰ See <http://www.pfi.org>.

¹¹¹ See <http://www.restorativejustice.org>.

¹¹² See <http://www.sfcg.org>.

¹¹³ See <http://www.euforumrj.org/projects.COST.htm>.

¹¹⁴ See <http://www.iukb.ch>.

5.2. MAIN REFLECTIONS OF THE AGIS PARTICIPANTS ON ISSUES RELATING TO INTERNATIONAL EXCHANGE IN THE FIELD OF RESTORATIVE JUSTICE¹¹⁵

Following a general overview of international activities in the development of restorative justice in the European countries, let us give a deeper insight into the personal views of experts that were involved in this AGIS project. Firstly, their feedback on the current project will be summarised. It will be followed by a broader overview of the main needs they highlighted concerning activities on the international level.

Regarding the current AGIS project, participants expressed their general satisfaction with this international collaboration and emphasised its main beneficial aspects. According to several experts, the *Interim Report* (edited and distributed among the participants in November 2004) presented a useful overview of experiences in introducing and developing restorative justice in different European countries. This report was also considered as an important step in developing a comparative analysis of restorative justice, with special focus on the current situation and progress in Central and Eastern Europe. The already-produced materials were considered as useful instruments to present the know-how of different countries in more detail. They could also be used to describe some of the ongoing practices of other countries to policy-makers. Some participants have already used the summarised information during their seminars for judges, prosecutors and police officers.

According to the experts, the most significant contribution of the current AGIS project was that it provided possibilities for *exchanging* practices and experiences, as well as informing people about different projects and schemes in other countries. Possibilities for *brainstorming* sessions in groups were also found useful in the participants' own planning activities. Furthermore, it was emphasised that *clarifying common issues* such as the main difficulties, supportive factors, similarities and differences in the different societies could significantly contribute to the identification of the most important issues and to design well-tailored projects in each involved country. Participants were happy about the fact that after less than a year, the project could already identify concrete *recommendations* that might be useful while advising national governments and policy-makers on the international level about how to improve the justice system in general and how restorative justice could fit in it on a systemic level.

One of the main purposes of the project was not only to help specific experts from the partner countries to be personally involved in the information exchange concerning the most recent developments of restorative justice, but also to stimulate their *networking* opportunities and activities, both within their

¹¹⁵ Primarily based on the Report of the Second Expert Meeting (17-19 March, Chisinau) where this topic was discussed in more details.

countries and internationally. As a consequence, the meetings organised within the framework of the project could significantly contribute to

- strengthening *already existing* successful cooperation and giving opportunity to the partners to present their ongoing project (for example participants gained a detailed picture of a successful ongoing cooperation between Albania and Norway);
- stimulating the creation of *new* partnerships (as an example Moldova intends to use the Hungarian National Strategy for Crime Prevention as a model to create their national prevention strategy);
- supporting the information-exchange on the *national* level (as an example, participants showed strong commitment during the project to broadly disseminating the results, main findings and the reports of the programme);
- widening the *international* network of the participants (each meeting included participants from a minimum of fifteen countries and provided opportunities for planning further cooperation);
- motivating *intra-sectoral* communication (for example, two universities from Hungary which were represented at the first seminar were able to discuss their future collaboration); as well as
- promoting *inter-sectoral* exchange (as examples, in countries such as Bulgaria, Albania and Romania, both NGOs and governmental organisations have set up important projects in collaboration with universities).

Concerning the next steps of cooperation, it was agreed that the common *preparation of concrete project proposals* would have the largest benefit for the future. Regarding the most useful types of activities, mainly the importance of *study visits* in other countries was emphasised. Participants also agreed about the necessity of developing a common *system for supervision* in problematic fields regarding the implementation of restorative justice. By organising *further international meetings* among policy-makers, practitioners and researchers, these exchange processes could largely help in sharing the main difficulties and in brainstorming about the possible solutions. Regarding the forms of future cooperation, it was pointed out that the most effective ways of working together are based on activities and discussions primarily done in small, interactive and informal groups and contexts.

During the project several participants expressed their willingness to start closer cooperation and realise *concrete activities* with other countries in the group (for example Austria, Moldova and Germany intend to work together). Moreover, future steps of some ongoing partnerships (for example between Albania and Norway) were also outlined. However, the majority of the involved experts considered this AGIS project as a tool helping them in the *initial stage* of their long-term *networking* activities that has the potential to open the doors for future collaboration. Hence, the planning of concrete partnerships and projects was

regarded as a next step in this process. Unfortunately, due to the time limits of the project, the current AGIS project could not provide a framework for this.

There was also a general discussion about the importance of *lobbying* and *fundraising*, as well as about the difficulties connected to these activities. It was clearly expressed that there is an enormous need for help in fundraising for not only the new and smaller NGOs of Central and Eastern European countries, but also for the more stable institutions of the Western countries. It was also emphasised that fundraising is a profession as such and it requires a full-time employee, who has the qualities needed to fulfil the complex practical and structural requirements of international funding bodies.

To conclude, *international guidance* in policy issues as well as the possibilities for *exchange* in theoretical and practical questions are the main supporting factors in implementing restorative justice. In Central and Eastern European countries, standards, recommendations and other official documents adopted by the Council of Europe, the European Commission and the United Nations are the tools that provide the largest support during the process of implementation. The most important contribution of these instruments is their potential to increase the credibility of reform processes in the recently-formed democracies of Central and Eastern Europe. In other words, guidance prepared by the mentioned international communities has an essential role in legitimising policy developments and making the implementation more efficient. The participants had also high expectations vis-à-vis the European Forum for Victim-Offender Mediation and Restorative Justice. They highlighted its potential in helping the lobbying processes in these countries as well as in 'delivering' the practices, achievements and main needs of the member countries towards the European institutions.

6. SUMMARY AND CONCLUSIONS

6.1. SUMMARY OF THE REPORT

This report is intended to present the findings of a two-year project on the implementation of restorative justice in Central and Eastern Europe.

It firstly discussed the relevance of restorative justice in the current criminal policies of European countries, followed by a short overview of the special importance of the Central and Eastern European region in this issue. The introductory part concluded by presenting the structure of the project including some facts and figures of the working process.

The second chapter presented the state of affairs of restorative justice in 11 Central and Eastern European countries. The reports discussed the legal base, the scope, the implementation, the evaluation and the future tendencies of restorative justice in each country. These detailed descriptions could already illustrate the common elements as well as the significant differences amongst the countries involved.

The third chapter discussed the main challenges in relation to the process of implementation. It firstly outlined the general tendencies in the Central and Eastern European region, focusing on three main dimensions: the criminological, the sociological and the institutional factors, after a section mainly discussing the impact of the political and economical transition on the concerned societies.

As for 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, were dealt with in more detail. The sociological concerns mainly related to the lack of 'sense of community' and its consequences on the societal level. As another impact of the transition, it was pointed out that the increased anomalies 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 in crime. Finally, the common elements of the so-called institutional difficulties were sketched, including the lack of credibility of NGOs, services, information, experts and so on.

The third chapter's second section is intended to give a deeper insight into four, so-called 'hot-issues'. This part details how legislation, fundraising, the awareness of the general public and professionals as well as training and other organisational issues are dealt with when implementing restorative justice. At the end of the chapter some recommendations are presented that were highlighted by the participants in relation to the abovementioned topics.

After elaborating the difficulties, the fourth chapter moved 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, were particularly emphasised. The second part of the chapter is intended to draw a picture of some concrete examples, firstly, by describing best practices from sixteen countries. Besides these encouraging projects of the present, concrete action plans for the future were also formulated by the experts. These strategies can be found in the last part of the chapter.

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

Finally, let us give a summary of the main needs expressed by Central and Eastern European experts for their further activities in the implementation of restorative justice in their countries.

6.2. SUMMARY OF THE NEEDS

In relation to the realisation of successful implementation and improvement of restorative justice, the following nine areas (see Figure 3) can be distinguished under which the main needs connected to implementation can be grouped. It is important to stress that any of the listed activities are essential on both *national* and *international* level.

1. Legislation

- multi-agency lobbying activities
- interdisciplinary working groups for preparing drafts
- political pressure
- efficient ways of informing policy-makers and practitioners within the criminal justice system
- exchange on legislation
- open consultation on draft laws
- possibilities for pilot projects and research before promulgating laws

2. Institutional building

- establishing mediation and restorative justice services with adequate infrastructure and human resources

3. Pilot projects

- possibilities for small scale experiments and projects in order to provide recommendations on how to tailor the future regulation, structure, methodology and protocols of nationwide services as much as possible to the local needs

4. Exchange - networking
 - between different professions and different sectors (e.g. between the state and NGOs)
 - personal exchange among experts in the field of policy, practice and research
 - constant consultations with representatives of criminal justice agencies
5. Resources
 - financial resources
 - access to information on different legislation, schemes, models, know-how, training systems, research findings
 - personal consultation with experts
6. Standards and guidelines
 - protocols that guarantee the basic safeguards and qualities of services
 - regular revision of these as well as interdisciplinary consultation about their improvement in order to ensure the constant representation of the underlying principles of restorative justice both in regulation and in practice
7. Training
 - training of practitioners, training of trainers and continuous supervision among practitioners
 - training of other specialists of related professions, with particular focus on legal professionals
 - availability of experts for training and supervision
 - translated training materials
8. Research
 - cooperation in research programmes
 - regular exchange of information about the main findings of research projects
9. Promotion
 - dissemination of the results of best practices
 - 'personal selling' of the restorative approach; organising frequent information sessions for interested professionals
 - cooperation with actors of the media
 - information campaigns with the help of the media in order to raise awareness about crime issues and restorative justice in the general public.

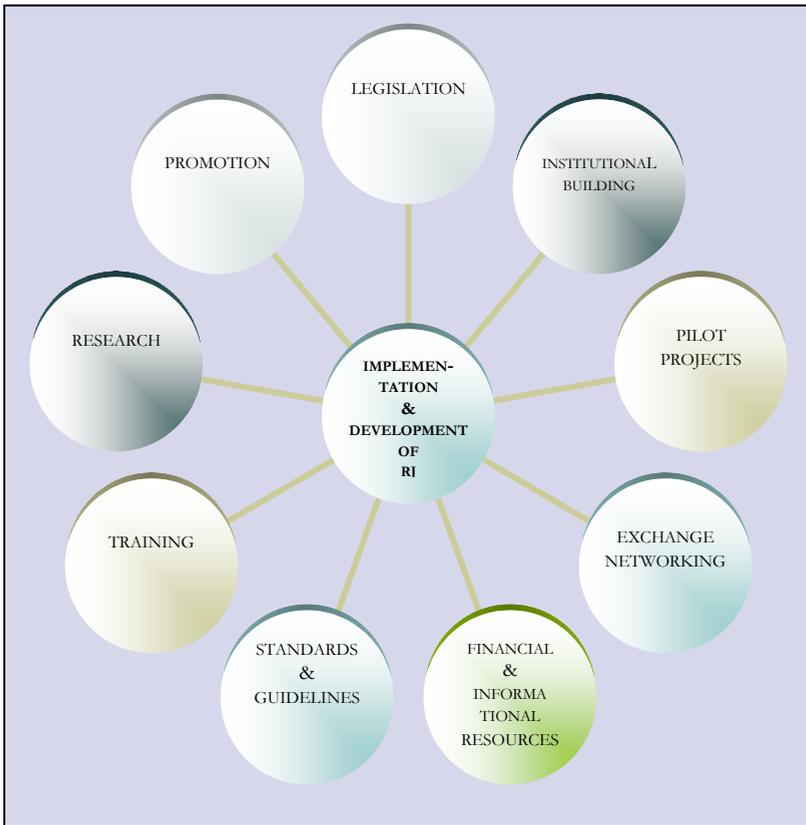


Figure 3: Main needs of Central and Eastern European countries towards the efficient implementation and further development of restorative justice

While the previous list and figure indicate the main needs and activities that are essential for the effective implementation, the table below (Table 11) intends to give an overview of the *partners* on the national and international levels, from whom different types of support are expected during the process of implementation and development of restorative justice. Although these actors can be largely beneficial concerning all the previously mentioned activities, we might group the potential supporting organisations under three main areas: political pressure, financial resources and know-how.

It is hoped that this overview of activities, needs and partners will contribute to further discussion on how to, both at a national and international level, stimulate the improvement of criminal justice systems and the implementation of restorative justice in European countries.

		TYPE OF SUPPORT		
		Political pressure (lobby)	Financial resources	Know-how
LEVEL OF SUPPORT	Nationally	<ul style="list-style-type: none"> - Agencies of the criminal justice system - Victim support - Academic sector (universities, research centres) - Media 	<ul style="list-style-type: none"> - Governments - Foundations - Private donors - Companies 	<ul style="list-style-type: none"> - Multi-agency cooperation and exchange among practitioners from the following sectors: victim support, education, social care, dispute centres, church, agencies of the criminal justice system, university, policymaking - Professions: teachers, psychologists, professional mediators, volunteer mediators, social workers, priests, lawyers, judges, prosecutors, police officers, probation officers, policy-makers, academics, researchers
	Internationally	<ul style="list-style-type: none"> - European Union - Council of Europe - UN - European Forum for Restorative Justice 	<ul style="list-style-type: none"> - European Union - Council of Europe - UN - Foreign Governments – Embassies - International foundations (like Soros Foundation) - International networks, umbrella organisations in criminal justice, RJ, victim support, offender support, community building (e.g. European Forum, Prison Fellowship International, International Centre for Common Ground) - Bar Associations - International Companies 	<ul style="list-style-type: none"> - European Union - Council of Europe - UN - European Forum - International professional organisations - Foreign universities, research team - Foreign NGOs - Foreign individual experts

Table 11: Supporting actors in the implementation process

6.3. CONCLUSIONS AND 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* between European countries. The diversities result mainly from the different political, economical, historical and cultural background of these 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 society. Therefore, the potential of restorative justice is very different in each context.

However, some *common elements* can be seen in countries having similar and interconnected political histories. Accordingly, it can be pointed out that, within the Central and Eastern European region, a distinction can be made between 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-Yugoslav states such as Romania, Bulgaria, Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro and Albania. These show some similar elements mainly in the general attitude of the public towards the judiciary system (concerning its legitimacy, credibility, hegemony, etc. in society, as well as concerning the trust that citizens have in it).¹¹⁶

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

However, while searching for commonalities, a more provocative conclusion can be drawn. Concerning the main challenges and supportive factors, we can summarise that there are no significant differences even between East and West, especially 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’ remains very similar in both Eastern and Western countries. Fundraising, as an example, is a crucial issue in both Germany and Romania.

Also related to the summary of main *needs*, one can conclude that the listed factors *are required at the same time* in order to stimulate efficient 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

¹¹⁶ 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.

might have higher priority. They occur mostly parallel to each other and their common fulfilment is necessary for achieving success in the reform processes.

Another outcome of the discussions was the *typology of needs*. 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 development, 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 to keep the long-term and broader aspects of the implementation in mind. Because of the rapid reforms, the underlying objectives and principles can be easily forgotten. Therefore, the experience, suggestions and even mistakes of Western experts can contribute to keep the focus of reform activities of Eastern colleagues 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 of 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 what follows, let us mention some of the main remaining dilemmas.

There are still different views on whether *restorative justice* should be seen as a form of *crime prevention* or as an *alternative* to punishment, or whether the principles of involvement of the victim and reparation of harm make it an entirely different concept. On the basis of several comments, it can be assumed that, particularly in Central and Eastern European countries, the main issue is how to implement alternative measures *in general* in the conventional justice system.

The ease with which alternative measures can be implemented 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 how ‘democratic’ a given society is. 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. As a consequence, these countries first need to focus on opening the doors of their justice system for more decentralised community-based responses to crime and for the issue of prevention. The discussion about the possibilities for implementing restorative justice can only be successful after this initial stage. Therefore, in the process of structural planning of legal and policy changes, restorative justice cannot be isolated from the general discussion of alternatives. On the contrary, it needs to play an integral part in a more systemic reform process. However, this ‘second-rate position’ of restorative justice in these transitional processes is difficult to accept, since it can be clearly seen from Western or other Euro-Atlantic countries’ examples that restorative justice is much more than just an instrument for crime prevention or a measure of the sanctioning system.

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’¹¹⁷, or alternatively, rather grass-root initiatives should aim to implement it step by step through their smaller projects and measures. The latter – more ‘piecemeal’¹¹⁸ – type of reform can only gradually change the current underlying concepts and principles of justice systems. Nevertheless, well-designed and disseminated projects unquestionably have the potential to bring some of the new elements and the philosophy of restorative justice into the institutional and legal framework. In other words, concepts of implementation can have a more ‘*inductive*’ or a more ‘*deductive*’ approach, depending on whether these young democracies are ready to adopt significant reforms in their legal systems already, or whether this is a too ambitious expectation at the moment, and restorative justice advocates should rather search for the legal ‘doors’ through which this new concept could enter the system and change it from within.

¹¹⁷ 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 Walgrave (2000: 415-432).

¹¹⁸ This term is used by Groenhuijsen (2004: 63-80).

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 the justice systems of Western European countries. 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 the result of two main factors: firstly, the democratic transition, and 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*. The lack of this mentality change is mostly perceived in the attitude of the general public, as well as in 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 these countries arise from 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 effective implementation. In other words, laws are one of the most significant instruments of 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 the 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 a more detailed analysis of these issues.

But why does it matter after all? Let us give a normative answer: simply, just to make our societies more inclusive and strengthen the cohesion of communities by enabling their members to resolve their conflicts constructively.

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