



AGIS Project

GOING SOUTH

Restorative justice
in Southern Europe



European Forum for Restorative Justice



AGIS 2006

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WHERE ARE WE NOW?

○ First expert meeting - **EXPLORE AND ANALYSE**

- What are the possibilities for implementing RJ practices in SE countries given their specific political, social, cultural and legal background?

○ Lisbon seminar - **WORK TOGETHER**

- Legal practitioners, policy-makers and the RJ collective to:
 - Develop a better understanding of the needs
 - Tackle the underlying causes
 - Discuss how these can be met - find concrete solutions

○ What will come next? **TAKE ACTION**

- Design concrete strategies to meet the needs
 - Create dynamics for networking and co-operation
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The state of affairs of
restorative justice in
Southern Europe

A FIRST APPROACH



RJ in GREECE

- **Juveniles:** Act 3189/2003 introduces VOM
 - Diversionary effect
 - Mediator: probation officer
 - **Adults:** Art 393 par. 2, room for VOM?
 - Release can be granted to the offender that repairs the damage to the victim
 - Recent legal provision introduces VOM for **intra-family offences**, Act 3500/2006:
 - Applicable to juveniles and adults
 - Content of the process is fixed by the law
 - Positive outcome results in the suspension of the sentence
 - Mediator: public prosecutor
 - Absence of guidelines for implementation
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RJ in ITALY

- **Juveniles:** Code of Juvenile Criminal Procedure (1989)
 - No explicit legal base but two main possible entry doors:
 - Art. 9 Personality assessment
 - Art. 28 Rehabilitating activities under 'supervision'
 - Application differs from region to region
 - New bill has been prepared by the Juvenile Justice Department
 - **Adults:**
 - Justice of the Peace (DPR 274/2000)
 - Possibility to settle down a dispute by a negotiated process
 - Commission for the study of 'Penal Mediation and Restorative Justice'
 - Created in 2002 within the Penitentiary Administration Department - MJ
 - Aim: to develop a 'sentence execution model' in accordance with RJ principles
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RJ in MALTA

- New legal reform: conversion from the punitive paradigm into the rehabilitative paradigm
 - Openness towards the restorative model
 - **Juveniles:** *Juvenile Court Act 1980*
 - Humanisation of the process
 - Systemic approach
 - **Adults:** new amendments to the Criminal Code 2006
 - Probation order and order for suspended sentence
 - Possibility to include obligation to make restitution
 - Increased recognition of victims' rights with the amendment to the Criminal Code 2002
 - 2004 Mediation Act:
 - Out of court settlement for civil disputes (family matters).
 - Creation of a 'Malta Mediation Centre'
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RJ in PORTUGAL

- **Juveniles:** explicit legal base, *Educational Guardianship Law 166/99*
 - Evidentiary phase:
 - 'Plan of behaviour'
 - Diversionary effect
 - Jurisdictional phase: different guardianship measures
 - Institute for Social Reinsertion '**Mediation and Restoration Programme**'
 - **Adults:**
 - New Law 'creating a penal mediation system' approved on 4 April 2007
 - Before?
 - No legal base for RJ practices but 'entry doors' and measures with restorative character
 - Empirical research project 'Restorative and Mediation Project' – Criminology School of Law Faculty of Porto University
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RJ in SPAIN

○ **Juveniles:** explicit legal base

- Law 4/92 regulating jurisdiction and trial in the juvenile courts Law 5/2000 regulating the penal responsibility of juveniles
 - Mediation - reparation, as a diversionary or complementary measure
- Implementation varies from autonomy to autonomy
 - Degree of application
 - Methodology – practice

○ **Adults:** no explicit legal base but different entry doors

- Mediation as a means to reach the reparation of the damage or realising the rehabilitative aim of prison
 - Numerous attempts in different autonomies
 - Currently only 2 programmes are fully operative
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RJ in TURKEY

- Comprehensive reform of the Criminal legislation in 2004 introduced VOM (currently amended by the Law no: 5560)
 - The same legal base applicable for juveniles and adults.
 - Eligible offences defined
 - Prosecutor **must** offer mediation
 - Judge is **allowed** to offer mediation
 - Diversionary effect
 - Mediators: lawyers, legal scholars and prosecutors
 - Some Bar Associations have set up a mediation service
 - Inexistence of regulations concerning:
 - Referral protocols
 - Mediator appointment procedure
 - Guidelines or standards of practice
 - Accreditation process for mediators or training required
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CHALLENGING FACTORS

- Legal system
- Policy and implementation
- Social context – general public
- Restorative justice collective



LEGAL SYSTEM

○ Positivism – Legality principle

- Absence of a (clear) legal base
- Mandatory prosecution

○ Safeguards in Criminal Law

- 'Informalism' raises concerns
- Disempowerment of the most vulnerable

○ Scarce communication between criminal justice system and RJ

- Concerns and needs
- Inexistence of training programmes

○ Underdeveloped victims' rights

POLICY AND IMPLEMENTATION

- **Lack of information on RJ**
 - **Inexistence of administrative or organisational structures** specifically devoted to RJ
 - Disconnection between related departments, no follow-up
 - Complex state structure adds difficulties
 - **Deficient implementation policy**
 - Inexistence of guidelines nor provisions on how to enforce and perform the legislation
 - No allocation of resources is foreseen
 - Poor dissemination of information
 - **Inequality:**
 - Irregular coverage, access not guaranteed for all citizens
 - **Evaluation based on 'inappropriate parameters'**
 - Quantitative-economical criteria of efficiency
 - Non-consideration of the long term benefits
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SOCIAL and CULTURAL CONTEXT

- **Lack of awareness of RJ**
 - **Increase of fear and sense of insecurity** leading to a punitive mentality
 - Demographical changes and social transformation
 - The way media deal with crime reporting
 - **Low civic participation**
 - Individualism
 - 'Costumer' attitude
 - **Confrontational approach to conflict**
 - Scarce culture of peaceful conflict resolution
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○ **Weak 'common ground'**

- Different working principles
- Divergent interests

○ **Lack of communication and networking**

- Tendency to work in isolation
- Absence of instruments for exchange

○ **Incomplete monitoring and research**

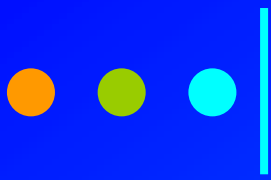
- Unsystematic data collection
- Inadequate evaluation schemes
- No involvement of the University

○ **Unavailability of training for mediators**

- Insufficient number of practitioners
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SUPPORTIVE FACTORS



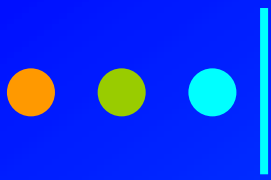
SUPPORTIVE FACTORS

- Favourable political attitude at the moment
 - Co-operation and networking between:
 - Government and 'third sector'
 - Victims support and offenders support
 - Support and good relations with particular judges and prosecutors
 - Engagement of researchers and the academic world
 - Use of mediation in other fields: family, neighbourhood, schools, labour law
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AVAILABLE KNOW-HOW

- Experience and knowledge gained at a national level by
 - Piloting projects based on 'entry doors'
 - Stable programmes in the juveniles field
 - Availability of training programmes and trained mediators
 - Participation in international events
 - Exchange
 - Co-operation projects and partnerships
 - Support
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SUPPORTIVE FACTORS

- Pressure of international regulations
 - Generalised disappointment with the judicial system
 - Restorative justice movement
 - Multidisciplinary setting provides solid theoretical framework
 - Inherent constructive message
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NEEDS

and possible strategies



LEGAL SYSTEM

- **Clear and explicit** legal base for the use of VOM or RJ schemes
 - Ensure equal interpretation
 - Study different ways in which RJ can be regulated by the law
 - **More enforceable and binding** regulations on RJ at the supranational level
 - European Union?
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LEGAL PRACTITIONERS and POLICY-MAKERS

○ Establish collaboration relationships

- Create regular and stable instruments at the structural level
- Effective means to make information available to policy-makers

○ Raise awareness

- Customised training programmes
 - Facilitate the involvement in international events and projects
 - Devise systematic mechanisms to disseminate information
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POLICY and IMPLEMENTATION

- FORESEE instruments to enforce the realisation of legal provisions
 - Bylaws, guidelines, codes of ethics
 - Referral procedures, accreditation processes...
- PLANNING
 - Resources: stability and quality
 - Information and training for legal practitioners and related agencies
- Design monitoring and follow-up mechanisms
- Bring about a STRUCTURAL CHANGE in the government organisation
 - Specific body responsible for RJ

- **To formulate RJ as a right**

Every victim and every offender should be able to opt for it

- **Priority on the political agenda**



RJ COLLECTIVE

- Build more consistent identity and **cohesion** between RJ professionals:
 - Improve networking at the national level
 - Develop participatory processes and forums to create common understanding
 - Establish **training** programmes and introduce RJ and mediation topics in the university education
 - Develop **standards** for training, quality, best practices....
 - Umbrella organisation or coordinating body?
 - Develop **appropriate evaluation** instruments
 - Improve quality and build capacity for new situations
 - Gain recognition and legitimacy
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SOCIAL CONTEXT – GENERAL PUBLIC

- **Raise awareness** about RJ
 - Work for a **change of the punitive mentality** of society
 - Tackle the generalised sense of fear and insecurity
 - Education, information
 - **Media**
 - Engage them and co-operate
 - Education and training
 - Promote proactive and more **responsible** citizenship
 - Stimulate bottom-up or **participatory** processes
 - Make **peaceful conflict resolution skills** accessible to the citizen
 - Promote the use of **mediation in other fields**
 - Introduce them in the adult education?
 - Volunteer mediators?
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Some reflections

... work to do



Some reflections

- **EQUAL ACCESS** to RJ schemes for every citizen should be guaranteed
 - The existence of **legal basis does not suffice**
 - **BALANCE**
 - Gaining stability: funding and recognition
 - Without renouncing to essential RJ principles: confidentiality, voluntariness
 - **EASIER TO BUILD THAN TO FIX**
 - Possibility to construct the own model based on the experience of others
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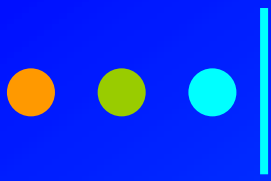
Some reflections

○ Develop an **integrated communication strategy**

- First: carry out qualitative **research** on
 - What information is needed?
 - Which are the appropriate means?
- Second: devise the strategy

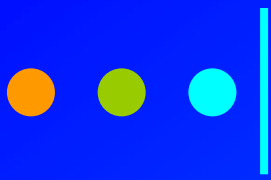
○ Ensure that **RJ is anchored in society**

- Pay more attention to stimulate active involvement of citizens
 - Create a demand
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DIVERSITY

- Behind the commonalities on the needs, there are very relevant differences on the historical, social and cultural background leading to diversity
 - Unique ways to develop RJ schemes
 - What can be considered RJ and what not?
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DIALOGUE

- Need to establish a **regular systematic dialogue** between different 'languages, cultures, disciplines' about the **meaning of RJ**
 - Acknowledge diversity and **allow room** for developments on **different directions**
 - Develop a **common language** that enables exchange
 - Create instruments and forums that should be active and **operative by definition**
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Thank you

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