



AGIS Project

GOING SOUTH

Restorative justice
in Southern Europe



European Forum for Restorative Justice



AGIS 2006

With financial support from the AGIS Programme
European Commission - Directorate-General Justice, Freedom and Security



CONTENTS

1. Stage of the project
 2. RJ in the Southern European countries
 3. Overview of the challenging and supportive factors
 4. Needs and possible strategies
 5. Some reflections
-

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
-



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
-



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
-



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'
-



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
-



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
-

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
-



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
-

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
-

○ **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**

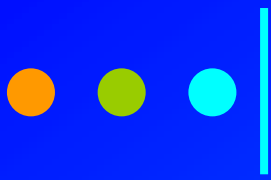
- Unsystematic data collection
- Inadequate evaluation schemes
- No involvement of the University

○ **Unavailability of training for mediators**

- Insufficient number of practitioners
-



SUPPORTIVE FACTORS



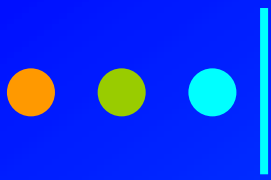
SUPPORTIVE FACTORS

- 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
-



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
-



SUPPORTIVE FACTORS

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



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?
-



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
-

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
-

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?
-



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
-



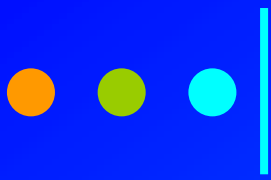
Some reflections

○ Develop an **integrated communication strategy**

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

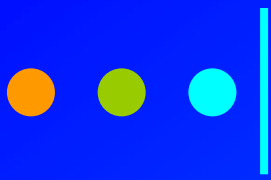
○ Ensure that **RJ is anchored in society**

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



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?
-



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**
-



Thank you

Clara Casado
clara@euforumrj.org
www.euforumrj.org