



**WORKSHOP 4:**

**PART 3**

**INTRODUCING RJ IN CENTRAL AND EASTERN EUROPE, AGIS**

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**1. INTRODUCING RESTORATIVE JUSTICE FOR JUVENILES IN BOSNIA AND HERZEGOVINA: A PILOT PROJECT ON THE IMPLEMENTATION OF ALTERNATIVE MEASURES AND MEDIATION**

*by Stefania KREGEL, Project manager of the Council of Europe (Bosnia and Herzegovina)*

A restorative approach in dealing with juveniles coming into conflict with the law seemed to be introduced in Bosnia and Herzegovina (BiH) with the adoption of the **law on educational recommendations**. This law, included in the Criminal Code of the Federation of Bosnia and Herzegovina in 1998 and in Republika Srpska in 2002, gives judges and prosecutors the possibility of diverting juveniles from formal criminal prosecution in cases of criminal offences punishable by a fine or a prison sentence of up to 3 years. In such cases, if the juvenile admits to having committed the offence and is willing to make amends to the damaged party, the judge or prosecutor, in collaboration with the juvenile's parents and institutions of social care, can order one of eight educational recommendations, including personal apology to the injured party, compensation of the damage to the injured party, community service and regular school attendance.

Although the recommendations are predetermined and selected by the judge without consulting the juveniles, they reflect provisions usually resulting from victim-offender mediation, of a restorative rather than punitive nature. Furthermore the inclusion of parents and social workers in the decision-making process as well as the precondition that the juvenile must be willing to make amends also suggest that this law could represent a first step in the direction of a restorative approach to juvenile crime for BiH.

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

The fact that this provision has literally remained unused for years cannot only be a result of lack of infrastructure; it once more shows that significant change cannot be brought about only by adjusting legislation to conform to internationally accepted standards, as is often being attempted in BiH and in other Eastern European countries. Indeed, the basis for a law to be effective in a democratic state is that it be accepted by its citizens and reflect their ideas and values: legal authority that is not clearly grounded in the community's moral authority proves to be hollow and ineffective. The provisions on educational recommendations, although reflecting European standards, were introduced in an environment where firstly the awareness and knowledge about restorative justice among citizens and practitioners are extremely low; secondly juvenile delinquency is perceived to be on the rise independently of statistics, leading to fear and demands for more punishment, higher imprisonment and stronger police action; and thirdly the media reinforces this attitude by reporting on juvenile delinquency in a sensationalist manner, creating a predominantly negative image of juveniles, who are shown as causing their own problems, while society's responsibility towards them is mostly not addressed.

On this ground, attempting to introduce restorative measures without involving the community and ensuring that mentalities and public opinion develop along with the legislation inevitably results in **cosmetic rather than substantive changes**. In order to really give a meaning to educational recommendations, the **Council of Europe Office in Sarajevo** has developed a **model for their practical implementation** which is to be piloted in Canton Sarajevo. The details of the project are being developed in cooperation with local judges, prosecutors and social workers and include the introduction of victim-offender mediation as a possibility to determine



which recommendation is to be ordered and the details of what the recommendations entail, so that the restorative intention of this law might be fully expressed.

A crucial precondition for the project to be successful is that the community as a whole be involved: as the community has a vital role in a restorative approach to juvenile justice, it must be well informed and a consensus must be developed for the principles of restorative justice to be implemented in practice. A public **information campaign** will be organised to inform the public about the benefits of alternative measures for the juveniles as well as for the community and to familiarise the community with the principles and methods of restorative justice. Also, the juvenile justice system cannot succeed in changing the behaviour of juvenile offenders or in improving public safety without the active **involvement of the community**. All resources available will thus be mapped and mobilised and a **database** of all organisations and services where the juveniles can be referred will be compiled.

**Seminars** on the principles and methods of restorative justice with examples of **best practice** from other countries will also be organised for all actors involved in the juvenile justice system so that they are familiar with the concept behind the legislation and the possibilities of implementation. **Training in mediation** will be organised for the social workers participating in the project and supervisors will also be adequately trained

Mentalities might not be changed overnight and are connected to many different factors. However, starting with a small project and attempting to involve the community as well as training the practitioners can prove to be a good start in this direction. Indeed, although there is an overall tendency in BiH society to seek the punishment of juvenile offenders rather than their reintegration in society, when people are in a concrete situation where mediation is offered to them as a possibility they accept it gladly and appreciate it as a better solution. Offering this possibility can help to responsabilise people and show that they can themselves contribute to public safety without relying solely on distrusted authorities and institutions.

Thus, in addition to providing clear rules of procedure and the practical conditions for the implementation of educational recommendations, we hope that this pilot project might constitute a first step towards a change in perception of juvenile justice, showing people that they can take conflicts in their own hands and find the best solution for themselves, and provide a useful example for the rest of Bosnia and Herzegovina.

## **2. RESTORATIVE JUSTICE IMPLEMENTATION IN UKRAINE**

*by Roman KOVAL, President of the Ukrainian Centre for Common Ground (Ukraine)*

### **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 for itself the following tasks:

- establish good 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, web-site development and training workshops for legal system representatives;
- use opportunities for institutionalisation at national and sub-national levels.

The first year of the project was focused only on restorative justice implementation in Kiev, but now there is an intention to spread restorative justice practices into five regions in Ukraine.

After just one and a half year of restorative justice implementation there are the following achievements:



- UCCG has established good relations with the Academy of the General Prosecutor's Office, Academy of Judges, the Supreme Court, the Ministry of Justice, the Ministry of Family and Youth Affairs, the State Penitentiary Department of Ukraine and Darnitskiy District Court in Kiev.
- A mechanism for the use of restorative justice within the Ukrainian legal system on the stages of inquiry, preliminary investigation and court proceedings has been developed. The Supreme Court of Ukraine has informally approved the procedural mechanism for case referral for the lower courts.
- 20 volunteers were trained for the pilot program in Kiev to be victim-offender mediators and 15 more mediators have been trained to conduct victim-offender mediations in 5 regions of Ukraine.
- A restorative justice model has been implemented in Darnitskiy district court in Kiev. On the basis of agreement with Darnitskiy district court, volunteer mediators coordinate 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 and coordinated during the reported period and 4 of them have resulted in reconciliation between the parties.
- Ukrainian/Russian-language web site “Conflict Resolution Practice – from Competitiveness to Cooperation” has been developed and can be found on [www.commonground.org.ua](http://www.commonground.org.ua).
- The Monitoring Committee of Ukrainian Centre for Common Ground has conducted a survey on the current restorative justice model and possible ways for its improvement.
- The book “Changing Lenses: a New Focus for Crime and Justice” written by one of the main restorative justice ideologists Howard Zehr was published.
- UCCG has prepared 9 articles dedicated to restorative justice and mediation, which were published in Ukrainian and foreign legal editions.

## Legislation

1. The new **Ukrainian Criminal Code** (adopted by the 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 a criminal proceeding in cases dealing with first time, minor offences. There are other articles in the Criminal Code, for example Articles 44, 45, 47, containing provisions for possible outcomes of Restorative Justice processes for first-time offenders who are charged with crimes otherwise punishable by less than 5 years’ of detention. The term reconciliation itself appears only in one Article (Number 46) and one of the commentaries to this Article (doctrinal interpretation) states that its provisions apply to the method of mediation and criminal conflict resolutions, wide spread abroad.

2. The **Code of Criminal Procedure** at the same time doesn't contain any provisions regarding 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, 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 Code of Criminal Procedure of Ukraine is in progress and we hope that with our lobby it will incorporate provisions for the basis of mediation procedure, its terms as well as justice system bodies and representatives that can refer cases for mediation.

3. **Resolution of the Plenum of the Supreme Court** of Ukraine “On practice application by Ukrainian courts in cases on juvenile crimes” adopted on April 16, 2004 contains some provisions for Restorative Justice Program application in juvenile cases. Article 21 of this Resolution says:

“Courts are recommended to support activities of those non-governmental organizations 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 activities of such organizations in a region or a city, to provide victims and offenders with possibility to apply to these organisations in order to get assistance in conflict resolution and reconciliation attainment.



Reconciliation between victim and offender reached with assistance of such organisations, and full compensation of the material and moral damages might be used as a ground to close criminal proceedings, or be taken into account as extenuating circumstance.”

This Resolution was adopted by the Supreme Court as a result of fruitful cooperation between UCCG and the Supreme Court. It is perceived as a serious step forward in promotion of Restorative Justice.

### **Factors that make the implementation of restorative justice difficult in Ukraine**

Factors (or problems) that make the implementation of Restorative Justice difficult in Ukraine are dividable into two major categories: *systemic problems and discrete ones*.

*The systemic* problems in Ukraine are mostly connected to post-totalitarian environment, which includes:

- very low level of civil society activism as a result of post-Soviet mentality, particularly in the participation of the promotion of Restorative Justice. It was difficult to find regional partners for piloting Restorative Justice model in the regions;
- extremely punitive, post totalitarian character of the justice system (especially police and prosecution);
- poor economic situation in the country which makes potential institutionalisation of restorative justice very difficult and uncertain, in terms of future financial support and sustainability either in a state or municipal budget;
- corruption.

The future institutional model for restorative justice is still unclear since most state institutions are very formal, poor, bureaucratic and have inherited the post-Soviet inhumane characteristics, whereas the non-governmental sector is undeveloped.

*The discrete problems* at the same time having global impact on restorative justice development in Ukraine include:

- low level of people awareness and, in particular, low level of knowledge in restorative justice among citizens and legal system representatives; absence of relevant literature and any native language information sources;
- low level of professional qualification of Ukrainian mediators and limited number of mediators in general. There is a great need for advanced mediation training to be conducted by experienced mediators/trainers. As a next step, trainers should be able to spread methodology and transfer skills and knowledge throughout the country (training of trainers is a need as well). More methodological and training materials in Russian and Ukrainian language are also highly needed.
- undeveloped legislation;
- lack of practice and as a result lack of credibility among justice system representatives.

Since Ukraine can be considered as a big country (big territory and 48 million people population), its scale makes it difficult to develop any new idea throughout the country.

*Factors that would support restorative justice implementation in Ukraine*

- possibility to find like-minded people among representatives of the legal system, who share restorative justice values and who are interested in spreading out this idea. Such people have been already found in the Supreme Court, Academy of Judges of Ukraine and Ministry of Family and Youth Affairs of Ukraine. They are ready to develop mediation on a national level.
- the fact that Ukraine has announced its interest in European integration and has ratified most of international and European Union legislation. (Recommendation of the Council of Europe “Mediation in Penal matters” and United Nations Resolution “Use Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters”).
- dissemination of information on restorative justice, its basic principles and procedures. As for example, if judges or prosecutors participate in role-plays on mediation, they are more open to refer cases to mediation.
- restorative justice promotion in mass media, in particular in specialised legal journals and newspapers.



- mediators who are ready to work on volunteer basis in order to help people deal with consequences of crime.
- available funding from the European Commission and from other donors, such as the Institute for Sustainable Communities and the British Embassy.

### **3. ROMANIAN JUVENILE JUSTICE SYSTEM TOWARD ITS WAY TO RESTORATIVE PRACTICES**

*by Doina BALAHUR “A.I.Cuza” University in Iasi (Romania)*

#### **The Reform of Romanian Juvenile Justice and the Restorative Justice Practices<sup>1</sup>**

##### *Acknowledgement*

This presentation has been structured around the topics and problems identified by the Report of the first expert meeting of Agis project on *Meeting the challenges of introducing VOM in Central and Eastern Europe* (Vienna 24 – 26 June 2004)

Since 1990, Romania is involved in a process of reform and transition to a democratic society. Within it, and as a priority, the reform of the criminal justice system is of a paramount importance for several reasons. Criminal law and procedures were in the totalitarian society a mean for repression and human rights infringements. That is why, and not randomly, the first images about Romania, have been about the abuses made in all the parts of the criminal justice system, starting with police investigation and ending with the execution of criminal sentences in penitentiary. Meanwhile, Romania became a member of the Council of Europe and started the negotiations to adhere to the European Union. Therefore, as it is well known, within each international organization it is regulated the so-called “*clause of conditionality*”, of Human Rights promotion and protection, against which each candidate country is evaluated.

The main directions of the reform processes of the criminal justice system were:

- harmonisation of the new criminal laws and regulations to the European standards
- re- organisation of the criminal justice system; within this process new institutions have been set up such as probation agencies, juvenile courts, police of proximity etc.
- reform of the management of the criminal justice system towards decentralisation and partnership with the civil society
- cooperation with different Western European countries and organisations (EU, Council of Europe) in order to transfer good practice in the field of CJS: diversion strategies and measures (mainly from the UK); VOM experiments; reform of penitentiary system (mainly from Spain) etc.

#### **The VOM experiments undertaken under the technical (know-how) and financial support of Department For International Development (DFID),UK and the European Commission**

The practice of VOM in Romania has been experimentally undertaken in Bucharest and Craiova. The two experimental centres have been set up in 2002 based on the partnership between the Department of Reintegration from Romanian Ministry of Justice, Centre for Legal Resources and the Foundation Family and Child Care. The technical assistance has been provided by the experts of DFID from UK.

According to the aims and objectives of the VOM experiment only those types of crimes have been selected which are based on the criminal complain of the victim (battering, assault and other crimes against the person, insult etc). The persons - victims and young offenders - have been integrated based on their voluntary consent.

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<sup>1</sup> More details on the issue of the Reform of Romanian Juvenile Justice System in Doina Balahur (2004) *Probation and Community Reintegration*, Research Report, Buc., Ed. Didactică și pedagogică

**Resources of the implementation of VOM into the Romanian criminal justice system**

a) **The decision of legal authorities to generalise the practice of VOM** starting in January 2005. In this order of ideas a new law of the Romanian Parliament is under examination. According to this project probation agencies will become competent to provide VOM services for the victims of violent crimes and for the ones of domestic violence as well.

**b) The attitude of the offenders towards the victim<sup>2</sup>**

Variable	Group	Frequency	%
Indifference	Gr. 1 (custody)	16	35,6%
Aggressive attitude		10	22,2%
Regret attitude		19	<b>42,2%</b>
Indifference	Gr. 2 (probation)	11	35,5%
Aggressive attitude		2	6,5%
Regret attitude		18	<b>58,1%</b>

**c) The attitude of the offenders (taking responsibility) towards their criminal acts and their effects**

Variable	Group	Frequency	%
I do not know	Gr. 1 (custody)	1	2,2%
My personal guiltiness		33	<b>73,3%</b>
Shared guilt		3	6,7%
Parents		1	2,2%
The victim		3	6,7%
Friends		4	8,9%
I do not know	Gr. 2 (probation)	2	6,5%
My personal guilt		21	<b>67,7%</b>
Shared guiltiness		5	16,1%
Parents		2	6,5%
The victim		0	0%
Friends		1	3,2%

**d) The attitude/mentality of the officials in the criminal justice system (judges, prosecutors, probation officers)**

The interviews carried out with officials in the CJS (prosecutors, judges, probation officers) displayed two major trends. One of them (represented mainly by younger officials trained in RJ practices) adopted the values and practices of RJ in their professional activity (especially where young victims and offenders were involved). The second trend displayed mistrust on the effectiveness of RJ values and practices based on the belief that “the best place for offenders is in prison”. The persons in this group seem to be (too) attached to the retributive philosophy and values in traditional criminal law.

<sup>2</sup> This data presented are based on the interviews (carried out in 2003) of two groups of young offenders (one in custody in penitentiary Iasi, and the other one under supervision of Probation Agency in Iasi). The interviews were conducted as a part of the research project I have undertaken on Restorative Justice practices in Romania.



### Summary of the resources and difficulties of VOM implementation in Romanian criminal justice system

<b>Resources of VOM implementation in Romania</b>	<b>Difficulties of VOM implementation in Romania</b>
the legislative dynamics (a new law is on its way to be adopted by the Parliament)	the tension between the need to reform the CJS according to the European standards and the pressure of the public for safer communities
the technical and financial support granted through the European Commission projects	economic difficulties
the development of cooperation and partnership between the formal institutions of CJS and NGOs	the mentalities/attitudes of some officials in CJS;
the positive attitude of the younger officials in the CJS (prosecutors, judges)	corruption in the system
training programmes and courses supported (both in terms of know-how and funds) by the European Commission and Council of Europe	low level of civic culture and the resistance of community
the economic aspects of VOM implementation (it is expected that both in terms of financial and social costs of crimes VOM is cheaper and more efficient than the formal system of CJS); the attitude of offenders towards the victim;	people's mistrust in the legal systems
the attitude of the offenders towards the offences	low level of knowledge about RJ among citizens and legal system representatives; the poor information and documentation sources on Restorative Justice practices and outcomes