

# Restorative justice in Greece<sup>1</sup> (up to date until February 2008)

## 1. Legal base

Prior to the establishment of restorative measures through law, informal practices of dispute resolution have been taking place in Greece, without, however, having a statutory basis.

First of all, at a police level, in the case of offences prosecuted after the lodging of a complaint, police officers may attempt to bring together the offender and the victim and reach an extra-judicial settlement in order to avoid sending the case to the prosecutor.

At a prosecutorial level, the prosecutor, on the pretext of his/her proactive role, can advise those in conflict to seek a peaceful solution for their differences (it is claimed that 80% of complainant cases that reach the public prosecutor's office in Athens are settled through this channel).<sup>2</sup>

Finally at a court-based level, right before the hearing of the case, the judge may attempt to reconcile the parties in order for the complaint to be withdrawn. In this case, if a settlement is achieved, the prosecution is definitively ceased.

### 1.1. Juveniles

The introduction of restorative schemes for juveniles was part of a wider shift attempted by Act 3189/2003 ('Reform of the Penal Legislation for Juveniles and Other Regulations') towards a more justice-based youth system. Up until 2003, the Greek juvenile justice system was largely influenced by a long-standing welfarist tradition. The new Act, which amends articles already included in the Greek Penal Code (PC) and the Code of Penal Procedure (CPP), promotes mainly:

- diversion and de-institutionalisation practices and
- respect for due process rights.

Within this context, it also introduces victim-offender mediation, compensation and community service both through diversion (art.45A CPP) and as educative orders (art.122 para.1 PC).

### 1.2. Adults

Community service can be applied to adult offenders since 1991 (art.82 paras 7 and 8 PC).<sup>3</sup>

Art.393 para.2 PC provides that the accused of some very specific actions (i.e. certain types of theft and fraud) may be released in case the accused fully compensates his victims prior to the court hearing. This means that there is some space for mediation here, although it has never been implemented.

In October 2006, Act 3500/2006 introduced 'penal mediation' for cases of domestic violence (arts 11-14).<sup>4</sup> The Act came into full force on 24 January 2007.

## 2. Scope

### 2.1. Juveniles

According to art.45A CPP (diversion from prosecution), when the minor commits a petty offence or a misdemeanour, then the prosecutor may refrain from pressing charges if he/she believes that prosecution is not necessary to prevent the young rule-breaker from committing further offences (permissive character of the regulation). Diversion from prosecution may be accompanied by the application of one or more educative measures. In this respect, victim-

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<sup>1</sup> Panagiota Papadopoulou.

<sup>2</sup> Sakkali, D. (1994). Settlements: An Approach on Issues Concerning Reconciliation and Compensation from Punishable Acts, in KOURAKIS, N.E. (ed.) *Crime-prevention Policy: Twenty Six Disquisitions Concerning Its Theoretical Issues and the Neglects throughout Its Implementation*. Athens, Ant. N.Sakkoulas, pp.205-236 (in Greek).

<sup>3</sup> See Kourakis, N.E. (2004). *Juvenile Delinquents' Law*. Athens-Komotini, Ant.N. Sakkoulas, p.288 (in Greek).

<sup>4</sup> The measure is applicable to juveniles too, although in such case, the procedure is run by the special public prosecutor for juveniles.

offender mediation, compensation and community service can be imposed as a means of diversion.

All three initiatives can also be applied as educative measures to all minors (irrespective of their consent)<sup>5</sup> of eight to 18 years of age by a juvenile court (art.122 para.1 PC). Introducing restorative schemes as sentence alternatives reveals the intention to place the emphasis on the outcome rather than the process.

The measure of victim-offender mediation (art.122 para.1 e PC) takes place through the intervention of juvenile probation officers and aims at the minor offering an apology to the victim, repairing the damage caused by his/her act. During the hearing of the case, the court carefully examines the genuine intention of the minor to make amends and seeks the consent of the victim. In most cases, the focus is on compensating the victim, so the conflict is not really resolved.

Initiated by a statement of a judge, the measure of compensation (art.122 para.1 f PC) consists of payment to the victim or reparation of the damage by any other means, and is usually imposed in combination with other penalties, especially mediation. Community service (art.122 para.1 g), on the other hand, contributes to the enhancement of the minor's responsibility and accelerates the process of his/her reintegration into the society. Both measures take also place through the intervention and monitoring of the juvenile probation service.

As it results from the above discussion, the measures' application is not restricted to complainant cases but involves *ex officio* prosecuted offences too. In general, however, even under the scope of court orders, the measures target trivial offences, mainly petty theft and assault.

The process is offender-focused. The Recommendatory report of Act 3189/2003 states that mediation is introduced as an attempt to bring the offender closer to the victim and make him/her assume responsibility for his/her act, and compensation is established as a means of having a positive impact on the young person.<sup>6</sup>

In the case that an imposed measure is not effective (i.e. refusal by a party to reconcile in the case of mediation) it is possible to alter it. The proposition is made by the probation officer and the public prosecutor's office brings the case to court again; the measure is replaced usually with a heavier one.<sup>7</sup>

## 2.2. Adults

According to art.11 of Act 3500/2006, in cases of domestic violence, prior to pressing charges, the public prosecutor considers the possibility of penal mediation. Penal mediation is applied mainly to cases concerning offences against life and health, threat and force to action, all within intra-family relations. It is used as part of the criminal process rather than alternatively.

The conditions, in order for penal mediation to be applicable are:

- a) the crime is not a felony;
- b) the public prosecutor acknowledges the potential of and proposes mediation but the offender may initiate the procedure as well;
- c) the victim agrees to the procedure.

What can be deduced from the legal provision is that the public prosecutor himself runs and directs the procedure. The legal text also describes the content of the process:

- a) The offender has to make a promise in a formal way as foreseen in the Greek law<sup>8</sup> that he will never cause any intra-family violence again and that he agrees, if he used to stay in the same house with the victim, to stay away from him for a while, should the victim make such a proposal.

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<sup>5</sup> Although case law suggests that the consent requirement is nearly always sought

<sup>6</sup> Recommendatory Report of the Bill of Act 3189/2003

<sup>7</sup> Personal communication with a member of the judiciary, 6.7.2005.

<sup>8</sup> The law foresees a negative consequence if the person who promises breaks his promise.

- b) The offender has to register with a Public Health Service and follow advisory and therapeutic programmes.
- c) The offender has to fully compensate the victim and restore all damages.

If these provisions are followed, the legal process is suspended for a period of 3 years. With the completion of this period and if the offender has complied with all the prerequisites of the mediation agreement, the case is fully dropped and may never be reopened again.

If the public prosecutor finds that the offender has not fulfilled all his obligations of the mediation agreement, he brings back the case and the formal criminal procedure follows without any possibility for further mediation.

It is essential to make the remark that the mediation procedure does not require the offender to admit any of his actions. It is clearly a facilitative procedure to help the offender and the victim to come closer and have the opportunity of a dialogue.

### **3. Implementation**

#### **3.1. Juveniles**

The Juvenile Probation Service carries out the RJ work. The Juvenile Probation Service is a Department of the Greek Ministry of Justice (Act 378/1976 decree 49/1979). Its main mission is to prepare, during the stage of the juvenile's interrogation, a social inquiry report,<sup>9</sup> and to exercise and monitor the execution and progress of educative measures.

According to the information provided by the Juvenile Probation Service of Athens, the new RJ measures were applied in very few cases during the first year of their introduction (judicial year 2003-2004). Out of 1,288 educative measures imposed on minors by the juvenile courts of Athens, VOM was applied in 6 cases (0.46%, 4 of which with additional measures), compensation in 1 case (0.07%, with an added measure) and community service in 2 cases (0.15%, with supplementary measurements). In addition, during the same year, art.45A CPP (diversion from prosecution) was only applied in 15 cases.<sup>10</sup> The figures regarding the judicial year 2005/2006 are more discouraging. Mediation and compensation were not imposed at all. Community service was imposed in one case (0.1%) out of 933 educative measures applied during that year.<sup>11</sup>

The situation in Thessaloniki seems to be slightly different. The Thessaloniki probation officers stress the fact that community service was supported and exercised as an additional requirement even before the introduction of Act 3189/2003, and that it is still promoted as a measure in its own.<sup>12</sup> They claim that mediation and compensation (applied through mediation) were very rarely exercised during the first couple of years of their establishment. Little by little, however, the measures started being applied and are nowadays practiced in a fair number of cases.<sup>13</sup>

The limited number of mediated cases does not allow for general comments on the potential and impact of the specific schemes. However, probation officers appear to be positive.

#### **3.2. Adults**

The procedure itself of penal mediation is not described in the law and, thus, it will be the Public Prosecutor's job to structure it in the near future. The Greek magistracy needs to analyze it and understand the theoretical and practical impediments that may occur. It is not clear yet whether the prosecutor will act as a mediator or not.

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<sup>9</sup> Concerning the minor's moral and mental situation, past life, family conditions and generally, his/her environment.

<sup>10</sup> Personal communication with the former Director of the Juvenile Probation Service of Athens, 2005.

<sup>11</sup> Unpublished data provided by the Juvenile Probation Service of Athens.

<sup>12</sup> Personal communication with probation officers from the Thessaloniki Probation Service in 2005 and 2007.

<sup>13</sup> Unfortunately, there are no statistical data available by the Probation Service of Thessaloniki concerning the use of the new measures.

Furthermore, one of the main pre-requisites of the process is that the offender voluntarily participates in a therapeutic programme run by a Public Health Service. The lack of such programmes makes it impossible so far for penal mediation to be applied.<sup>14</sup>

#### **4. Evaluation**

##### **4.1. Context**

The introduction of restorative programmes in Greece seems to be part of a wider effort to present a more competent system (reduce court caseloads) as well as improve victims' rights within the context of the penal procedure. Greece has been largely mobilised by EU's participation in criminal justice matters.

##### **4.2. Current evaluation**

The introduction of RJ in Greece seems to have taken place a-systematically with no evidence from previous piloting programmes suggesting how the specific criminogenic factors or local conditions could assist or undermine the measures' implementation. So far, the schemes have encountered attitudinal as well as implementation problems, resulting in their constrained use. Since their establishment, the application of restorative schemes for juveniles is very limited. Penal mediation in cases of domestic violence, on the other hand, has not been exercised at all.

The negative attitudes on the part of legal professionals relate to the lack of information concerning the concept of RJ in general. There are no developments in ADR in other fields and neither training nor educational programmes in place for legal practitioners. Furthermore, until today, there has not been any significant preparation within the public prosecutor's office or the Ministry of Justice itself.

The inexistence of bylaws or circulars that clarify the aims and objectives of the new schemes (and their relationship with the formal criminal justice system) and that explicitly explain the process to be followed creates a sense of distrust and resistance. In this respect there have been negative reactions concerning the effectiveness of mediation and the constitutional aspects that this process entails for criminal matters.

On a different note, the court-based schemes available for the adjudication of minors have been condemned by some academics and criminal justice practitioners due to their coerciveness. The imposition *per se* of the restorative initiatives is said to diminish the value of RJ, since there is no potential for genuine, voluntary restoration. Even when functioning through diversion, the measures provide only for extra-court settlements and not for extra-judicial ones.

This lack of guidelines and information has affected the attitudes of the public too. Some victims seem to be more interested in reparation *per se* and do not appreciate the therapeutic intentions of RJ in general.<sup>15</sup>

The implementation obstacles, on the other hand, relate to issues of funding resources and organisational infrastructure. The lack of specialised and trained staff, and the absence of financial support hinder the development of RJ in Greece. Having said that, the new initiatives have the firm support of a proportion of criminal justice practitioners and academics, who do see a potential in the implementation of even court-based schemes.

##### **4.3. Future direction**

There is indication that restorative justice in Greece can have an impact and if obstacles are confronted the new measures can be run successfully. The future of RJ in Greece depends largely on the political and financial support directed towards the new measures. The government can prove its will to encourage and endorse RJ practices by providing adequate financial resources for the effective operation of the new schemes.

A central mechanism needs to be created that will provide information and guidelines as mentioned above, it will ensure the best use of RJ practices and evaluate the effectiveness of the new approach within the specific social and cultural context of Greece. By monitoring and

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<sup>14</sup> Personal communication with C.D. Spinellis, 2008.

<sup>15</sup> Personal communication with a probation officer from the Thessaloniki Probation Service, 2007.

evaluating the success of RJ, the challenges – both attitudinal and organisational – could be tackled and the use of the new RJ initiatives could be increased.

There is also need to raise the public's awareness of the possibility for mediation. Citizens must be informed about alternative means of dispute resolution in order to adopt gradually a less punitive response to conflict.

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