

# Restorative justice in Italy<sup>1</sup> (up to date until December 2007)

## 1. Legal base

In Italy the main areas of application of RJ are concerned with two different jurisdictions: the juvenile CJS and within the adults' field, the justice of the peace.

The code of juvenile criminal procedure (DPR 448/1988), implemented in 1989, provides victim-offender conciliation. The law establishing the possibility for the justices of the peace to apply RJ or mediation came into force in 2002 (Legislative Decree n°274/2000).

## 2. Scope

In the Juvenile context RJ is mainly offender-focused. According to mediators VOM main purpose are:

- Establishing a communication between victim and offender, thus facilitating their exchange of feelings and emotions
- Getting the offender acknowledge his/her responsibility
- Providing support to the victim

In principle there is no restriction regarding the type offences that can be referred to the VOM centres. Any type of crime should be amenable if that can be more educative for the offender and the victim agrees. However in practice, the experts noted that there are certain elements that play a determinant role for the judge or the prosecutor to decide whether to refer the case to mediation or not. In general the cases referred meet the following conditions:

- There is a relationship between victim and offender
- The juvenile is a first time offender
- Preferably it is a crime against persons

Regarding the stage and the use of RJ we can say that:

### **2.1. The juvenile criminal justice system**

The Italian juvenile jurisdiction is separate from the adult justice system. Cases might be reported to the prosecution offices either by individuals, the police, welfare agencies or other agencies.

The treatment of cases is governed by the principle of mandatory criminal action (equivalent to the principle of legality) which entails that when a crime is reported, prosecution must always follow.

The juvenile Code of Criminal Procedure includes two norms currently used by magistrates to apply VOM and RJ: Articles 28 (probation) and 9 (personality assessment).

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<sup>1</sup> Based on information and updating provided by the presenters and in the article about Italy published in D. Miers and J. Willemsens (eds.) (2004), *Mapping Restorative Justice. Developments in 25 European countries*, Leuven, European Forum for Victim-Offender Mediation and Restorative Justice, written by Anna Mestitz, updated by Elisabetta Ciuffo and Isabella Mastropasqua.

According to Article 28 DPR 448/1988, the judge (frequently the judge at the preliminary hearing) may suspend the proceedings and refer the case to the VOM centres with the aim of 'conciliation', 'reparation' or 'mediation' if it has been stated in the 'supervision project' devised by the juvenile social workers. It must be noted that the concept of probation differs substantially from its application in other countries. It is not a sentence, but a postponement of the sentencing decision; during the time of suspension, the young person will be placed under 'supervision' meaning that he or she will undergo the activities agreed with the social workers aimed to his/her rehabilitation. These activities can involve either educational programmes or voluntary work and it is also foreseen to do activities in favour of the victim reparation. In case the activities are properly fulfilled, the judge could dismiss the case. In some cases, when the agencies delivering the social services for offenders, have this service available, VOM can be included as a part of this project.

According to Article 9, during the pre-trial stage, either the judge or the prosecutor may refer the case to the VOM centre. In these cases the mediation process itself functions as an instrument that helps to assess the personality of the young person.

Social service officers for minors can refer the case to VOM centres as well. Within the probation period (art 28).

**Concerning the stage at which VOM is used:** 66% of the referrals are made during the pre-trial stage by the judge (9, assessment of offender's personality) 33 % of the referrals are made either by the judge or by the prosecutor during the trial stage (art 28, in case of offender placed under supervision or probation). The average elapsed time is 1 year.

**Is it an alternative to or a part of the criminal process?** It is part of the criminal proceedings, yet: VOM contents are fully confidential, mediators cannot act as witness at trial, a very short VOM brief will be submitted to the judge, all the VOM centres are located outside Juvenile Justice premises. So one could say that VOM is somehow distinct from the criminal trial, yet the court's acknowledgment and support are essential for VOM centres functioning, as most cases are referred to mediation by Judges and State's Attorneys (Keep gating functioning: 59% of the referrals are made by the state's attorney, 32% are made by the youth welfare offices and 6% left is the proportion of referrals made by judges).

## **2.2. The justice of the peace**

The new law relating to criminal proceedings before the justice of the peace came into force in the beginning of 2002. The innovative element of this new legislation is the fact that it allows the justice of the peace to settle the dispute according to the outcome of a negotiated process between the parties.

Justices of the peace deal with minor offences. They have no power to impose custodial sentences or any other form of detention. They can impose fines, community service orders (minimum 10 days to a maximum of six months) and a sentence called '*permanenza domiciliare*', which requires the offender to stay at home for a specified period (fixed in the order) not exceeding 45 days.

The new law relies upon the idea that it is necessary to emphasise the role of the victim, who has been neglected in ordinary criminal proceedings in the Italian system. Paragraphs 4 and 5 of Article 29 of the law no. 274/2000 authorise the judge of the peace, at the first hearing of the case '*udienza di comparizione*', to order the parties to try to reach a reconciliation of the conflict. In making the order, the judge suspends the hearing for a period not exceeding two months. He may also refer the case to any mediation services existing in the area if that appears to be helpful. This referral is discretionary. The judge does not have to refer the case to the mediation services, but can carry out mediation between the parties on his own. If the mediation is successful, the complaint is discontinued; otherwise the proceedings continue their ordinary course.

Whatever the outcome of mediation may be, statements made by the parties during the mediation sessions may not be used in any decision at any subsequent stage of the proceedings. A record of the mediation event is kept. This records the complainant's withdrawal of the complaint and the offender's recognition.

### **3. Implementation**

#### **3.1. Agency: structure and establishment**

All the VOM services that deal with juvenile offenders are based on collaboration between judicial authorities, juvenile justice services and the third sector. VOM Centres are funded by local bodies, such as city councils, district and region.

Currently there are three common elements in the organisation and funding of the VOM services:

- They are public services, being funded and staffed by the local governments (regions, provinces, municipalities)
- Magistrates and lay judges have played an active role in the foundation of these services.
- The collaboration and agreement of the social workers has been an essential condition for the functioning of victim-offender mediation services.

VOM centres spontaneously arose in the second half of the 1990s; most of them as a result of a shared concern between social workers and certain juvenile justice magistrates in the search for a proper response to youth offending.

At present 17 are fully operative and 5 are starting up.

This reduced availability of centres is a restraining factor for a better implementation of RJ in Italy.

The VOM centres are located in separate facilities not related with the courts.

Mediators are responsible for carrying out the mediation process.

In 1999 a National Commission, created for the coordination of the relations between the local agencies and the Regions (*Commissione Nazionale Consultiva e di Coordinamento per i Rapporti con le Regioni, gli Enti Locali ed il Volontariato*), approved a document containing the guidelines for the practice of mediation in criminal matters with juveniles.

Together with the basic principles of RJ and VOM, this document refers to the mediator's role and describes the phases of the mediation process<sup>2</sup>.

Some basic rules that influence the relation between the CJS and the VOM services can be identified:

- The main source of referrals is the judiciary (either the prosecutor or the judge)
- The VOM process is totally informed by the principle of confidentiality.
- Mediators can not be summoned before the court as witnesses concerning the case in which they have been working.
- Mediators have to submit a brief report to the court in which the report on the outcome of the VOM process.

#### **3.2. Agency practice**

The methodology used is only mediation, as neither circle sentencing nor family group conferences have thus far been promoted in Italy. Currently the majority of VOM processes include a direct meeting.

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<sup>2</sup> The document was called 'The activity of mediation in the field of criminal justice for juveniles. Guidelines' (*L'attività di mediazione nell'ambito della giustizia penale minorile. Linee di indirizzo*), and it aimed not only at the promotion of mediation for juvenile offenders, but also at providing common standards for the practice of VOM with juveniles. It can be found at: [http://www.giustizia.it/minori/areapenale/rnm\\_d102\\_medpen.htm#c1](http://www.giustizia.it/minori/areapenale/rnm_d102_medpen.htm#c1)

Some centres, together with VOM, provide mediation services for conflicts in other fields such as family, neighbourhood disputes or school mediation programmes.

Some community mediation centres have been put in place in certain towns of Italy like Modena, or in some small villages of the region Emilia Romagna (San Lazzaro di Savena, Zola Pedrosa, Casalecchio di Reno, Sasso Marconi, Crespellano) or in the neighbourhood called Quartiere Reno in Bologna<sup>3</sup>.

Family mediation is also developed in Italy but it is mainly conducted in the private field by liberal professionals on request. In that field there are also numerous training programmes developed.

### 3.3. Agency intervention

The approach to VOM is inspired by the theories and the methodology devised in France by Jacqueline Morineau (see, for example, Morineau, 1998)<sup>4</sup> who trained the majority of Italian mediators. This approach conceives mediation as a means of pacification and reconstruction of a broken relationship.

Mediation is always carried out by two mediators. The majority of mediators report that the objective of VOM is to establish communication and to create a relationship between victim and offender (Mestitz, 2002). Additional objectives frequently reported by mediators are: facilitating the sharing of feelings and emotions between victim and offender (36%), making the offender responsible (34%) and providing support to the victim (26%).

Despite the fact that the theoretical approach appears as neutral, some experts expressed the concern that in the practice the equal consideration of both, offender's and victim's concerns, does not always take place.

### 3.4. Referral numbers and outcomes

#### a) Quantity and quality of referrals

Year	Cases referred to VOM	VOM processes actually carried out	+	-
2002	321	133 (41%)	114 (86%)	17
2003	412	189 (46%)	167 (88%)	22
2004	425	214 (50%)	173 (81%)	41
2005	426	153 (36%)	135 (88%)	18

#### b) Referral outcomes

Direct reparation to the victim	
Financial compensation	21
Activities	12
Activities and financial compensation	12
Symbolic redress	23
Indirect reparation	
Social activities linked with the kind of damage	5
No information available	3
<b>Total</b>	<b>76</b>

<sup>3</sup> Those have been run by an Association called Equilibrio. More information available in: <http://www.ass-equilibrio.it/index.htm>

<sup>4</sup> Morineau, J., (1998) *L'Esprit de la médiation*. Editions Érès. Paris.

## **4. Evaluation**

### **4.1. Context**

The introduction of RJ as a part of probation before the commencement of formal proceedings in 1995 demonstrates the attention paid to alternative and diversionary procedures in the Italian juvenile justice context (Mestitz and Colamussi, 2000).

It was in fact a small group of juvenile magistrates of Turin – inspired by the French introduction of '*médiation pénale*' in 1993 – who promoted VOM in Italy inspired by the need of providing a more educative instrument to tackle young offending behaviour.

On the other hand, as in other countries having a civil law tradition, in Italy little attention is given to the victims' interests and needs. This is a factor that might have contributed to put the accent on the offender's interest when performing VOM.

### **4.2. Current evaluation**

In 2000 the results of research on juvenile probation, conducted in a southern juvenile social service, showed that restorative practices were applied in the large majority of probation cases (Mestitz and Colamussi, 2000).

In 2001 a national research was held, with the purpose to compare different Italian VOM services. This project, which was conducted by Anna Mestitz and her collaborators at the Research Institute on Judicial Systems of the Italian National Research Council (IRSIG-CNR), aimed to collect information from three groups: mediators, magistrates (both judges and public prosecutors) and social workers.

The findings from this research show that the role of VOM in altering the Italian juvenile justice landscape is quantitatively marginal.

The public opinion in Italy is not favourable to this approach; it might be due to their lack of knowledge about what RJ is.

## **5. Future direction**

Despite the situation described, it seems that nowadays there are good opportunities that favour the implementation of RJ.

All the services are being monitored by the Ministry of Justice since 2002. Furthermore, in the last year the Ministry of Justice has been making a glossary of terms most commonly used in mediation as a means to provide a useful tool for the service providers and fostering the creation of a common ground for practitioners. The fact that the few operative services hold differing approaches and concept makes it difficult to reinforce their activity and work in the same direction. In the same direction in the last months 4 international conferences has been organized (with Michèle Guillaume-Hofnung, Director of the Mediation Institute, France; Mark Umbreit, Center for Restorative Justice & Peacemaking, Minnesota; Roberto Gimeno Vidal, Mediator and trainer, Spain and Siry Kémeny, Norway). The conference videos and all the collected materials will be provided to the VOM Centres. Moreover in these days Italy started an international project called "Tools in network" that will set up a multimedia platform for a RJ e-learning, whose beneficiaries will be social workers of the different justice systems.

In addition, very recently, a commission to prepare a bill concerning VOM in juvenile justice has been created. This opens an opportunity to introduce a better regulation of RJ and VOM. Although the presenters believe it will not be easy, if this new legislation takes the opportunity to improve this aspect and provide a more clear regulation for RJ, this will help to improve its application.

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