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Access to mediation for victims of domestic violence

The conference was co-organized by the European Forum for Restorative Justice (EFRJ) and the Criminology Department of the Institute of Law Studies, Polish Academy of Sciences. It took place in the historic building of Staszic Palace¹ in the Warsaw city centre on May 22, 2015. The Mirror Hall hosted 48 participants from twelve countries (eighteen people from Austria, Estonia, Germany, Italy, Latvia, Lithuania, the Netherlands, Northern Ireland, Russia, Spain and Portugal and 30 Poles).

The idea to restrict access to mediation in domestic violence cases (DV) is controversial, and the conference goal was to exchange views, both critical and supportive, to present experiences from practices in different countries, elaborated there special safeguards.

It was extremely interesting to learn about the first findings of the European project on restorative justice in cases of intimate partner violence (*Annemieke Wolthuis, Verwey Jonker Institute, Vice-Chair EFRJ*). International rules and regulations are not consistent. The national legislations, as well as practice in six researched countries, differ significantly. Common purposes for both positions – the critique and the advocacy of the use of RJ in this kind of cases were identified: empowering and restoring victims and preventing reoffending. Problems of voluntariness, safety, proper screening, training of mediators in intimate partner violence were discussed. It was appreciated that works on guide are in progress.

The developments of mediation in domestic violence cases in Poland were discussed from various points of view – of researcher (*Barbara Pawlak*), public prosecutor (*Tomasz Mielczarek*), judge (*Tomasz Pronobis*), mediator (*Magdalena Grudziecka*) and the chief expert from the Office of the Government Plenipotentiary for Equal Treatment (*Katarzyna Wolska – Wrona*). Most important questions are: very big selection of the DV cases in the justice system, quite high percentage of mediations in DV cases in whole mediations input, high efficiency of mediation proceedings in terms of the agreement reached and parties' satisfaction, however there were cases where the choice to engage in mediation was not as informed or as voluntary as it should (some victims felt they can't refuse to take part in the mediation proceedings as they are proposed mainly by the judges who are viewed as the highest authority and as such must not be contested). Insufficient execution mechanisms can lead to loss of accountability on the part of the offenders and. in consequence there are cases where there is danger of re-victimization rather than the empowerment of the victims.

¹ Designed by A. Corrazzi, built in 1823 as a seat of Society of Friends of Sciences

Even if some mediation organizations, as the Polish Center of Mediation, provide special training for DV cases, there is a risk that the case is referred to mediator who did not get the training. However, recent concluding observations of CEDAW concerning the use of mediation in DV in Poland have been questioned and a need for sustaining research of victims' opinion has been underlined (*Beata Czarnecka-Dzialuk, Institute of Law Studies, Polish Academy of Sciences*).

Christa Pelikan, (*Institute for the Sociology of Law and Criminology (IRKS), Wien*) presented her views and information on attempt to cancel the access to mediation in DV cases in the drafted amendments of criminal legislation in Austria, that thanks to negative reactions from different part of Europe seems not to happen, that is shared in this Newsletter. The information of good practices in Austria and in Germany has been shared (in the last case by *Frauke Petzold, Waage Institute, Hannover*), stressing that even if attitude change of violent men is not reachable through short-term intervention like mediation, it can be the initial point for a positive development (i.e. social training for perpetrators, therapy, relationship counselling). Therefore there is need of cooperation of different institutions. The risk of further violence, of not lasting (pseudo-) solutions and of privatization of DV, which is not a private problem, was mentioned. On the other hand, victims often have no big benefit from punishment of the offender; manifold conflicts are to be clarified (i.e. separation, finances, objects, association/visitation with children, social environment); VOM can add to the strengthening of the woman and can reduce the risk of further violence. To the standards of VOM in DV cases belong: mixed gender co-mediation at all times, one-on-one-interviews separately at all times, often using indirect mediation and mixed double in direct mediation processes; follow-up sessions - sustainability of the agreement.

Patricia Esquinas (*University of Granada*) pointed out negative effect for the victims of "zero tolerance" policy for gender violence, based on paternalistic approach – loss of all control over the judicial process, immediate restraining order enabling contacting each other for any reason deprives of any opportunity to manage her private relationship independently. Mediation may still be effective in a few cases, where dealing with a first, sporadic and isolated violence and an aggression which is not integrated into a long spiral of violence., and if a routine of mutual physical violence exists in the relationship, even if the man is the one who attacks more often and more strongly. In the discussion the need to control whether victims position and interest are well protected was stressed. There is need of further research, similar to those presented, in other European countries.