

Editorial

Dear Members,

As the new Chair of the European Forum for Restorative Justice (EFRJ), I am really pleased to open this last Newsletter of the year. The Editorial Committee selected some of the articles published throughout the year in our digital Newsletters (valuable resources viewable on the EFRJ website) and we are happy now to reach your homes during this winter holidays.

This edition of the Newsletter demonstrates the width of scope of both the practical application of restorative justice and its theoretical orientation. No one has had a greater influence upon the underlying values and principles of restorative justice than the Norwegian criminologist, Nils Christie, who died in May 2015. Brunilda Pali's personal and moving recollections of her encounters with him beautifully capture how his character and humility reflected what it is to be restorative.

No one has had a greater influence on how restorative practices have been applied than Ted Wachtel. He offers his thoughts on governance, authority and definition in restorative practices. In doing so he is interested in "how those in charge use their authority". This connects to Christie's thesis that professionals use their authority to 'steal conflicts' from people. However while Christie might say that the system should serve ordinary people, Wachtel envisages the science of restorative practices bringing the world in which people live into the system.

This edition also includes three reports from countries in Eastern Europe. Duško Kostić describes how mediation in the Roma community in Croatia has contributed significantly to this community's integration

and participation in society. Rokas Uscila explains how mediation was introduced into the Lithuanian probation system and its very promising results. Finally, Gjylbehare Bella Murati argues for the relevance of dialogue and restorative justice in a country, Kosovo, emerging from violent inter-ethnic conflict. It is clear that addressing the need for justice felt by victims of violence committed by the army and victims of sexual violence is necessary to achieve reconciliation and a society that is at peace with itself.

All of these valuable contributions show that the EFRJ committed to promote the right to access high quality restorative justice services in all Europe and to encourage those countries where restorative justice is still an emerging practice in need of further support and development.

We hope that you find this current edition stimulating and thought-provoking! Feel free to share your thoughts with us and contribute to the future editions of the EFRJ Newsletter. The Editorial Committee (which was recently reconfirmed and includes now a new Swiss member, Catherine Jaccottet Tissot) is always searching for new inspiring articles to be shared with our restorative justice community.

With very best wishes,

Tim Chapman

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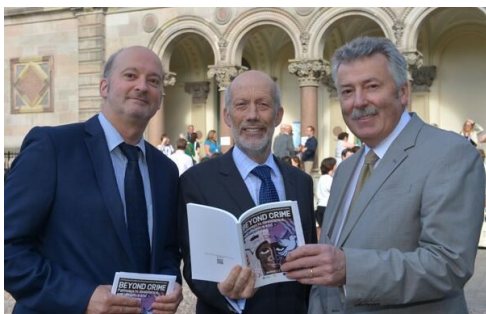
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News from the Board

The new Board met in November and elected its Executive Committee: Tim Chapman (Northern Ireland) as Chair, Annemieke Wolhuis (The Netherlands) as Vice-chair, Bart Claes (UK) as Treasurer and Brunilda Pali (Belgium) as Secretary. Roberto Moreno (Spain) and Lars Otto Justad (Norway) will lead on training, the summer school and the conference. Annemieke Wolhuis, Michael Kilchling (Germany) and Aarne Kinnunen (Finland) will be responsible for policy and Brunilda Pali will liaise with the Newsletter Editorial Committee.



Michael Kilchling and Tim Chapman (former and new Chair of the EFRJ Board) with David Ford (former Northern Ireland Minister of Justice) in Belfast (2014).

Our Secretariat team of Edit Törzs, Executive Director, Rik Defrere, Finance and Admin Officer, and Emanuela Biffi, Communications and Events Officer are working very effectively under an increasing workload. In the new year, we will appoint a Policy Officer and this will complete the team.

We are thankful for the commitment of those members of the Board and the Staff who left us this year. Beata Czarnecka-Dzialuk (Poland), Bruno Caldeira (Portugal) and Karolien Mariën (Belgium) finished their mandate at the last Annual General Meeting in Leiden. Daria Nashat and Mirko Miceli decided to leave the EFRJ secretariat at the end of the summer to move on into new adventures. Visit our website to know better 'who we are' currently at the EFRJ Board and Secretariat.

In June we had a very successful conference in Leiden. We will build upon what we learnt from it and we are currently deciding the 2018 conference should be held. Thanks to all those members who sent their candidature to host our 2018 conference! In 2017, our main event will be the EFRJ Summer School which will be held in Como (Italy) on 23-29 July. The 2017 Annual General Meeting will be held in Berlin on 1 June. We are working on a position paper on the EU Directive on victims and this will be presented at the Criminal Justice Platform Europe (CJPE) conference on Victims in Brussels on 23 February. Together with the members of the CJPE, we are organising a short summer course in Barcelona on 4-7 July, bringing together professionals from restorative justice, prison and probation.

Forum 15

A priority for the Board, the Secretariat and membership in the coming year will be to make progress on the Forum 15 initiative. The EFRJ will work towards the vision that every person in Europe will have the right of access to high quality restorative justice. We will strive to be recognised throughout Europe as the primary, independent network connecting those working towards advancing restorative justice to a high standard of quality and advocating for the inclusion of restorative justice in all policies addressing criminal and social justice questions. To this end, the EFRJ will focus on:

- raising public awareness of restorative justice and its benefits;
- influencing public policy so that restorative justice is available, is well resourced and accessible to all who need it;
- improving continuously the quality of practice.

We have adopted a wider definition of the scope of restorative justice to include the contexts of justice and security, peace building, education, social development, family support, children's rights and wellbeing, and organisational life.

The EFRJ is an organization with a membership of organisations and individuals throughout Europe and beyond. This is what makes the EFRJ distinctive. We wish to activate the tremendous resources within the membership. To support our vision, please consider:

- telling us about the best restorative practices in your country so that we can promote and learn from them;
- telling us about the areas of restorative practice that need to be developed in your country and what support you need;
- telling us if you have expertise in policy, training, consultancy, research etc. that you would be willing to offer other countries or organisations;
- encouraging organisations, government departments and individuals in your country to become a member of EFRJ;
- advising us on sources of funding so that we can increase the capacity of the EFRJ to meet members' needs.

If you are a member active and/or expert in one of the initiatives above mentioned, please contact our Chair of the Board, Tim Chapman, at chair@euforumrj.org, and our Executive Director, Edit Törzs, at edit.torzs@euforumrj.org.

We wish you wonderful winter holidays and a new year filled with peace and happiness. We are looking forward to meeting you again in 2017 and reinforce our commitment and strength to bring restorative justice beyond our community.

Board Members of the EFRJ

Governance and the use of authority: encompassing diverse definitions of ‘Restorative’

Diverse definitions

‘It has become commonplace to say that restorative justice cannot be defined’ (Daly, 2016, 9). This article employs the wide-angle lens of participatory governance to encompass the diverse definitions proposed by various ‘restorativists’ (Marder, 2016).

As a criminologist, Kathleen Daly would prefer to define restorative justice (RJ) narrowly as a ‘justice mechanism.’ She is an American who came to Australia in the early 1990s to evaluate RJ programs and stayed. ‘The popularity of the idea has affected a broad range of humanities and social sciences ... Thus, analysis of definitions, practices, and effects takes different forms, depending on an analyst’s disciplinary field and research interest’ (Daly, 2016, 11). Daly concludes that the popularity and diversity of restorative justice has made it difficult to aggregate the definitions, interfering with empirical and theoretical study. ‘As a concept, RJ has become too capacious and imprecise’ (2016, 22)

On the other hand, University of Illinois clinical psychologist Elaine Shprungin (2011) likes to think broadly of a ‘restorative revolution ... in the way we approach justice, transgression, punishment, crime and every day conflict among ordinary people ... a transformational, society-wide, lens-shifting, all-affecting revolution the scale of the 1960’s civil rights and women’s rights movements, a revolution in how we think about who we are and how we live, work, and love together.’

The European Forum for Restorative Justice (EFRJ) itself has debated a more expansive definitional framework for restorative justice at various intervals in its history. For example, the EFRJ dropped the explicit practice of ‘victim-offender mediation’ from its name, but has since resisted the idea of changing its name to ‘restorative practices.’ Nonetheless, the EFRJ provides an expansive forum at its biennial conference — including educators and others whose interests lie beyond criminal justice. At its general membership meeting preceding its recent conference in Leiden, EFRJ board member Tim Chapman (2016) presented a paper which made the case for ‘enhancing the scope of restorative justice’ to include not only justice but ‘security, peace-building, education, social development, family support, children’s rights and well-being, and organisational life.’ The definitional language, if adopted, would also open the door to the EFRJ’s involvement with proactive restorative processes by not just ‘addressing harm’ but also ‘the risk of harm.’

The International Institute for Restorative Practices (IIRP) has

long defined restorative justice as a subset of restorative practices (RP), thereby distinguishing between the two. We found schools and social care agencies more receptive to the word ‘practices’ than ‘justice.’ We delineated restorative justice as a response to crime and other wrongdoing after it occurs (Wachtel, 2013a). For the purposes of criminology research, our definition is consistent with Daly’s definition of *restorative justice* as a ‘mechanism’ that ‘is a meeting (or several meetings) of affected individuals, facilitated by one or more impartial people ... at all phases of the criminal process — prearrest, diversion from court, presentence, and postsentence — as well as for offending or conflicts not reported to the police’ (Daly 2016, 21). However, IIRP contends that *restorative practices* have a larger purview, including both formal and informal strategies that proactively build relationships and a sense of community that prevent conflict and wrongdoing in all sorts of settings (Wachtel, 2013b).

Unifying fundamental hypothesis

The IIRP has identified a fundamental hypothesis that unifies the wide potential of RP and suggests outcomes worthy of evaluation. ‘[H]uman beings are happier, more cooperative and productive, and more likely to make positive changes in their behaviour when those in positions of authority do things with them, rather than to them or for them (Wachtel, 2013a, 3). The way that ‘things’ and ‘with’ manifest themselves will differ, depending on the setting, but *the common denominator for all restorative practices is a paradigm shift in the nature of governance and how those in charge use their authority.*

Australian criminologist John Braithwaite has noted that ‘the lived experience of modern democracy is alienation. The feeling is that elites run things, that we do not have a say in any meaningful sense’ (Braithwaite and Parker, 1999). In contrast, restorative practices serve as a ‘crucial vehicle of empowerment where spaces are created for active responsibility in civil society to displace predominately passive statist responsibility’ (Braithwaite, 1999). Engaging stakeholders in making critical decisions, rather than relying solely on experts or authorities — doing things with people rather than to them or for them — builds social capital and strengthens social bonds (Fatic, 1995; Habermas, 1996).

Rob van Pagée described how the family group conference (FGC) has been used extensively in the Netherlands. By giving people more voice and more choice, these restorative approaches foster a new kind of welfare state ‘in which the government is retreating and citizens are exerting their

responsibility and power to resolve issues that previously presupposed government intervention' (Van Pagée, 2014, 7). Evaluation of FGCs indicates that when families are meaningfully engaged in decision-making, government's cost per case decreases and plans are more effective (Eigen Kracht Centrale, 2011, 2).

Judge Barry Stuart, formerly of the Yukon Territorial Court, recognised the limits of his authority and expertise and saw the critical need to directly involve family and community. He removed his judicial robes and stepped down from the bench to convene a 'sentencing circle' with the family and neighbours of the accused, a young aboriginal man in a remote community (Leonardy, 1998). Most Canadian judges would have sent the young man to a federal penitentiary but, after engaging with the community in the circle, Stuart gave him a two-year suspended sentence and returned him to his home with a plan for support from others in the circle (Duhaime, 2010).

A sentencing circle is, Stuart pointed out, a community choosing to 'roll up its sleeves' in the grandest traditions of civil society to solve its own problems. 'We're living now in this la-la land where nobody really participates,' he wrote. 'It's all done by professionals ... we've outsourced everything' (Libin, 2009). Stuart echoes the sentiments of Norwegian sociologist Nils Christie whose landmark paper, 'Conflicts as property,' criticised our modern court systems for allowing criminal justice professionals to steal people's conflicts from them (Christie, 1977).

Collapse of family and community

Israeli historian Yuval Noah Harari, in his internationally best-selling book, *Sapiens: a brief history of humankind*, provides historic evidence of the sweeping professionalization of most tasks and decisions previously handled by families and their communities of care.

Yet all of these upheavals are dwarfed by the most momentous social revolution that ever befell humankind: the collapse of the family and the local community and their replacement by the state and the market. As best we can tell, from the earliest times, more than a million years ago, humans lived in small, intimate communities, most of whose members were kin. They glued together families and communities to create tribes, cities, kingdoms and empires, but families and communities remained the basic building blocks of all human societies. The Industrial Revolution, on the other hand, managed within little more than two centuries to break these building blocks into atoms (Harari, 2015).

Harari's historical account supports German sociologist Jürgen Habermas' long standing assertion that the modern 'system' of government and business has pushed aside the 'lifeworld' of family, friends and community. Habermas juxtaposes the two

words to represent two competing but related explanations of how society operates (Habermas, 1987). The system is modern society with administration, laws, politics, economy, organisations and paid professionals, while the lifeworld is the network of relationships among family and friends who, unlike those in the system, look out for each other not because they are paid, but because they care. Restorative practices bring the lifeworld into the system and help restore the balance between the two (Wachtel, 2015).

Restoring community through participation

In 2006, the Pennsylvania Department of Education authorised the International Institute for Restorative Practices as a specialised master's degree-granting institution dedicated to a single discipline — based largely on the argument made in a 22 page submission entitled 'Case for a new academic discipline.' The IIRP successfully established that, '*Restorative practices is the science of restoring and developing social capital, social discipline, emotional well-being and civic participation through participatory learning and decision-making*' (International Institute for Restorative Practices, 2005).

As an emerging social science RP provides an evidence base for an emerging global social movement dedicated to 'restoring community.' In *Dreaming of a new reality* (Wachtel, 2013b) I identified positive anecdotal and quantitative results, from schools, businesses, criminal justice, treatment programs, special education, social care and other settings, that affirm the IIRP's fundamental hypothesis. The most significant implication of these findings to date is a possible 'theory of everyone' — that all social entities, whether families, classrooms, organisations, workplaces or whole countries, would function better if authorities in each setting gave stakeholders more voice and more choice in exchange for stakeholders taking greater responsibility (Wachtel, 2015).

For example, Anke Siegers and Gert Jan Slump, at the 2016 EFRJ conference in Leiden, shared how '*Samenlevingsproces*' or 'Community processing' was used to deal with the bitterly contested closing of a community hospital in the Netherlands. Siegers convened 22 interest groups (including hospital administration, insurance companies, unions, government, patients, community) in a 14-hour marathon negotiation. Technology made it possible for each group to watch the negotiation by video at off-site locations, which were nearby so that the 22 representatives in the negotiation sessions could visit with their respective groups to caucus and then return to the meeting. Critical to its success was the fact that the group process was not advisory but had the authority to conclude a legal agreement on behalf of all interest groups. The negotiation produced a detailed plan, signed by all parties that reopened the hospital (Siegers and Slump, 2016).

Peter Block, an American organisational development consultant, has dedicated A Small Group to ‘restoring and reconciling’ Cincinnati, Ohio. Rather than use circles, his approach convenes small groups of three, as part of a larger meeting, to join in the Six Conversations he designed to ‘engage the disengaged’ (A Small Group, 2016).

David Van Reybrouck, a Belgian contemporary historian and author of *Against elections: the case for democracy* (Van Reybrouck, 2016), initiated the G1000 Citizens’ Summit in Brussels. One thousand citizens, more than half of whom were randomly selected, came together in 2012 to ‘discuss topics related to a better democracy in Belgium.’ The summit used social media to engage others outside the meeting. Another G1000 summit was held in 2014 in Amsfoort in the Netherlands to address more local topics. Van Reybrouck explains that ‘The basic idea behind democracy is that of delegation. Each citizen has power for only one minute, once every four years. You give your vote and you outsource your power. Today that is no longer necessary’ (Synthetron, 2016).

Conclusion

Restorative justice can be narrowly or broadly defined, depending on the context and purpose. However, by explicitly recognising a beneficial shift in the nature of governance and authority as the common thread in all restorative practices, we may unify a social movement that might otherwise fragment. Doing things *with* people rather than *to* them or *for* them characterises the ‘revolution’ that Elaine Shpunigin foresees. When all is said and done, the allure of a more just, democratic and participatory society is the ‘sizzle’ that makes ‘restorative’ exciting.

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A world with Nils

I first met Nils in 2005 in Tirana. I was working in the Foundation for Conflict Resolution, which was at the time organising a conference on mediation where Nils would give a plenary speech. The head of the organisation, Rasim Gjoka, tried to convey how special this visit would be, but until I saw Nils myself I had absolutely no idea.

The day he arrived, it was a beautiful sunny day in Tirana. I had the absolute pleasure to take Nils around, and show him my favourite places in town, where he followed humble and curious. The way he looked, the way he listened, the way he spoke were so primordial, so out of time, and yet so eternal, I was inebriated. I still remember this day with a thickness of details, of smells and sounds, the way we remember only moments that leave a deep trace. We spoke little of restorative justice in the sense of the term, but we spoke about the gift and vocation of our mediators deep in the northern mountains who are able to stop blood feud, we spoke about our little countries, so similar and yet so different. I remember I talked to him about the way prisoners were perceived in Albania, and suddenly he told me I must travel the world and bring the Albanian prisoners home. At the time, it sounded abstract and absurd, but nevertheless imperative, like some path I must undertake in a way or another. And that for me was the path of restorative justice.

I left Albania for good myself, and in 2008 I started working in the EFRJ. I visited Nils again in 2009, in his office, where he showed me proudly his books translated in all languages, Russian, Chinese among others. We spoke of my newborn son and my new family, he was worried I would settle in and give up my struggles. We spoke of a struggle he was having with somebody regarding definitions, he was getting ready to defend himself like a chevalier, and all of us against the danger of definitions. He told me he had written a little book on words, which is not translated into English. We spoke of Ivan Illich, we continued to tell stories, into his home, until night in a little restaurant in his neighbourhood. He loved his neighbourhood, poor but lively, he said, seemingly poor but rich he said. Seeing Oslo today, I really know what he means, and Oslo rich but poor in many ways. I always insisted in seeing him every time I could and treasured our encounters as one treasures some rare form of beauty, something that is in danger of extinction, something so deeply human, and yet divine.

I met Nils again in Liege during the European Society of Criminology conference in 2010 when he received the European



Gro Jorgensen, Karen Paus, Per Andersen and Brunilda Pali with Nils Christie in 2009.

Criminology Award. The speech was so provocative, so true, that it made on me again a huge impression, it was almost an anti-criminologist or anti-criminology manifesto. I laughed again at this wise man, at the power of his simple words at touching people, creating in some anger, in some power, in some amazement, but leaving none untouched, because he spoke truth and nothing else but truth, and we know truth can take any form, from a rainbow to a deadly storm. Again as I stood there listening to his words, I prayed and hoped to always remember them, as if I knew there was a danger to forget them, all around me, in the world without Nils.

This is the way I have felt when Nils died, that now there was a world without Nils. Difficult to acknowledge, difficult to accept, difficult to bear. And yet, none has been able to leave more traces in the world than him, with his actions, with his words, with his personality, with his life. Now that I look back at all the times I met him, I wrote to him, I spoke to him, or I read him, I try to understand what was it that touched me so deeply, beyond trying to fall into sentimentalism, or adoration, for somebody that was truly so great that simple words fail to describe. But another imperative from Nils was the use of simple words, so I have to try. For me, I think he has stood for all things I have treasured in life since childhood until today, not life itself, but life lived in truth, courage, and kindness.

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Mediating in the Roma community

My hometown, Beli Manastir, is situated in the plains near the Danube river, on the border with Hungary and Serbia. Before the war broke out, many ethnicities lived there in peace: Croats, Serbs, Hungarians, and my co-nationals, Roma. When they were expelled from Romania several centuries ago, the Roma found a home in the rural areas of Eastern and Northern Croatia where they settled and made a living as craftsmen. There were, and still are, strong prejudices against them. However, in comparison with the Roma who moved to big cities in the 1970s and 1980s from Kosovo and from Macedonia, the Roma in Beli Manastir were better integrated. Children attended schools and adults held seasonal jobs in agriculture and in construction. Those Roma men who held permanent jobs were mostly employed by the municipality of the nearby city Osijek, where they collected communal garbage and swept the streets.

During the war I was attending high school, which was fortunate for me: I was too young to be drafted into the army. Many Croats fled at the beginning of war in 1991 and many Serbs fled at the end in 1995. Many people were displaced and many properties were occupied by the refugees from other parts of Croatia. There were many resentments in the community towards the people who made the different choices of fleeing or staying: towards people who left without saying goodbye to their neighbours or towards the newcomers who occupied the houses of those who fled.

After I graduated from high school, I worked in construction and in agriculture until 1998 when I became a volunteer in the Center for Peace, Non-violence and Human Rights, a grassroots NGO from Osijek that promoted dialogue and peacemaking in Eastern Croatia. This widened my horizons. I attended many workshops organised by the Center and I discovered so many new things on volunteering, community organising, integration of ethnic minorities, human rights, work with children and young people ... So I started transferring the skills I had acquired to the Roma children and young people and to the children in foster care. At the same time I started to empower their parents in their attempts to rebuild their lives in the new circumstances, with all the traditional jobs held by Roma gone, even those of garbage collection; since, during the war, their daily commute to Osijek was not possible, their jobs were lost.

As working with children and their parents took more and more of my time, I tried to learn as much as possible about

how to work with them. In order to learn how to support young people and motivate them to stay in school instead of dropping out, I attended several 'training for the trainers' seminars. On one of those seminars, I met a participant who was a mediator and what she told me about the skills and processes seemed so appropriate for the needs of my community. At that time, people still suffered from the war and trust and relationships among people were severely damaged, especially among neighbours. I thought that with mediation skills I would have been in a much better position to help them and I was so happy when, a couple of years later, the Center for Peace, Non-violence and Human Rights organised training in community mediation led by Katharina Sander from Germany. That training was something completely new, something that did not exist in Croatia before, and it attracted like-minded people with whom I became friends and who later supported me in my work in Beli Manastir after I founded the Association of Roma Friendship "LUNA" which became a place where children, young people and their families gathered and where Roma and non-Roma met. I often get asked how come so many Roma folk dancers from "LUNA" are blond, and I answer that they are not Roma; they just enjoy dancing and getting together. In my view, working with everyone is the best way to decrease discrimination and prejudice.

After the training I started applying the approach and communication skills in my everyday contacts with people. Before the training, I was uncomfortable with conflict and I thought that aggression was the only way to defend one's interests but I hated aggressive behaviour around me and didn't want to do the same. Therefore, I tried to avoid conflicts and I withdrew from them. The mediation training I had attended provided me with new insights into new ways of communicating that did not require me to push for my own solution, but allowed me to be in a role that will facilitate their communication and help them to figure out their own solutions.

After the training, the Center had a follow-up project in Beli Manastir with three volunteers who attended their mediation training. I was one of the volunteers; the other two were a young unemployed woman and an employee of the local court. We had good media coverage, that not only advertised our mediation centre, but also portrayed people who referred cases; for example, a newspaper wrote a story about a young employee of Beli Manastir whose tasks included responding to

various grievances, from dogs barking too loud to irregularly parked cars, who was very happy to refer the neighbourhood disputes to the mediators.

Unfortunately, despite the fact that we mediated without financial compensation, administration and management of the mediation centre required some resources, which were not available after the first year of operation. Moreover, the Center for Peace, Non-violence and Human Rights abandoned community projects and focused more on direct human rights protection and advocacy. This, combined with the turnover very common for the poorly funded local NGOs in Croatia, left me to my own devices. I continued to practice mediation in “LUNA.” One typical example of conflict is a neighbour dispute between two families, one Roma and one non-Roma that shared the fence between their gardens. The non-Roma family complained about the garbage lying around and then being burned, which caused an unpleasant smell and smoke. During the mediation, the Roma family members told about their growing up in provisional shacks without utilities, where ‘letting be and than burning’ was the only way of getting rid of the garbage. This made the non-Roma neighbours understand the inhuman conditions in which their neighbours were raised, and the Roma neighbours realised what kinds of consequences burning garbage had for their neighbours’ family. They promised to start collecting and disposing of garbage according to the municipal rules. Since the mediation, they did not have other conflicts — or they were able to solve them without me.



In 2011 Duško Kostić was the first European to receive the Student Peace Prize awarded biennially on behalf of Norwegian students.

(Source: <http://foto.samfundet.no/>)

also proud to see that my shuttling back and forth among the young Roma women who dropped out of school, their parents and the schools they just left, and my attempts to hear their fears and hopes, resulted in their agreement on the way that they would support the girls when they returned to school. In three years, fifteen girls went back to school. In a Roma community with a little over 400 members, that is a very significant number.

The way people perceive me in the community has changed since I first became a volunteer. Whenever I need to talk to someone in the welfare centre, in one of the local schools or in the employment office, I always find that people are willing to listen and to cooperate. I think they see me as the one that connects people, and that is persistent in that work, regardless of the difficulties.

Translated by Branka Peurača

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In the meantime, I enrolled in the University of Osijek Faculty of Teacher Education and, after completing a five year program, I got a master's degree in primary education. It was not easy to go back to school in my late thirties but studying at the university gave me great joy. I was the first Roma in Beli Manastir and in its surroundings to get higher education. I am proud to see several young Roma following my steps. And I am

Mediation in the Lithuanian probation system

Since 2015 Lithuania has introduced a methodologically and practically based mediation model into the probation system. During 2015–2016 fourteen specially trained mediators started their work in five probation services in Lithuania.¹

A progressive (two step theoretical courses, simulation, modelling and supervision) mediators training system was applied. The training was conducted by practising mediators and university researchers. Probation officers were given the opportunity to lead the mediation whether providing it independently or co-mediating with a mediator. But it was not basic practice. Mediators are not officers; they work under separate contracts with the probation service, while their basic education is a social area (psychologists, lawyers, social work, etc.).

Over twelve months (February 2015 to February 2016) 1771 cases were referred for mediation; mediation was used in 871 cases (49%).

Victim-offender mediation in Lithuania is provided free of charge for people in their place of residence in the five regions. This government-guaranteed service was used by 1791 persons (over 12 months). In 51% of cases mediation was not taken because some cases did not meet the rules of mediation and eligibility criteria while some parties refused to participate in the mediation. Usually crime victims refused mediation due to:

- fear,
- distrust of a new and unknown ‘procedure’,
- referring the case to bailiffs,
- their lawyers not accepting the transfer of the case to mediation, etc.

whereas offenders refused mediation due to:

- manipulation,
- lack of motivation to participate in mediation and problem-solving,
- recognising guilt,
- lacking the skills to take an independent decision, and so on.

However, of the 871 cases where mediation was used, 788 (90.4%) of cases ended with the specific arrangements (protocols signed/liabilities accepted).

Lithuanian mediation practice in the probation system showed that the mediation process is more successful when combined with other probation measures. It had a positive impact if the offender was sent to the mediation after attending motivation programmes as well as when he had completed behaviour change programmes or drug rehabilitation programmes.

A specific aspect of the practice was the application of mediation in cases of violent crime. The analysis of mediation practice showed that a third of the cases examined by the mediators in the probation service have conflicts of interest arising from domestic violence. There is no unanimous opinion because the application of mediation in cases of violent crimes increases the risk of a secondary victimisation or even repeated victimisation. Without denying the potential risks to the victim, in those cases a special form of conducting mediation and

tactics are required with additional security measures. Mediators apply the full set of security measures, which are aimed at the victim’s physical protection, including indirect mediation, or ‘shuttle mediation,’ in which tactical mediation meetings are held separately with each party in turn, providing confidentiality.

Moreover the European Crime Prevention Network recommendations are being invoked in the procedures of mediation. Recommendations emphasise that mediation in violent crimes is possible, but requires special mediators’ training, specialising in working with violent cases. In such cases it is necessary to evaluate the situation and potential risks in advance (before mediation). For this purpose the mediator uses specific questionnaires for victims and offenders that provide additional information and ensures victims’ informed consent to participate in the mediation, as well as the right to withdraw from the process. In addition, it is stressed that mediation in domestic violence cases gives more positive results when the violence is psychological or economic and when the victim does not suffer more serious health disturbances. Mediation in domestic violence cases is not oriented to conciliation between parties, but seeks adequate, rational decision making for both parties in conflict.

In order to analyse mediation practice it is necessary to assess the feedback of the parties participating in the mediation process. Thus information was collected from parties to the conflict after the continuation of the mediation process in order to allow the assessment of the current model and predict the direction of improvement. Overall, 75% of mediation parties named mediation as a ‘useful’ and ‘very useful,’ while 24% who evaluated this process negatively. In addition, 78% of victims and 87% of offenders were satisfied with the agreement adopted and rated it as ‘good’ or ‘very good.’

Another important indicator of mediation is the motivation of the mediation parties to use mediation services in the future. 59% of offenders and 60% of victims believed that if needed again they will take advantage of mediation services, which points out the need for services and the need to develop a built-in model.

Currently decisions have been taken to continue the mediation application in the probation system. It is planned to improve the legislation to allow the application of the mediation more broadly.

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(1) In January, 2014 ‘The Implementation of Mediation in Probation Services’ project began, being one of the six projects funded by the Norwegian Financial Mechanism. Mediation is an effective way of solving conflicts arising from criminal offences as it allows people to arrive at a decision which meets the needs of the two conflicting parties, provides opportunities to diminish the number of people who fall into formal procedures and acts as a preventive measure to reduce the risk of recidivism. On 30th April 2016 the project reached its conclusion. Over nineteen months of hard work, 14 mediators and 68 probation officers had been prepared to implement mediation; they had handled 1011 mediation cases (892 of them were successful) involving 2084 clients.

Paving the way for a restorative justice in Kosovo

Seventeen years have been passed since Kosovo's conflict. The country has undergone a major political transformation, from an internationally administered territory to a declared independence that still waits recognition from almost half of the UN nations. Yet the country continues to remain under strong control of the international community.

The international community has become very active not only in resurrecting public institutions and establishing democracy, but also in providing direct services with regards to the implementation of international standards of transitional justice within domestic jurisdictions. Currently, there are three judicial mechanisms that operate in Kosovo. The International Tribunal for Former Yugoslavia (ICTY), international courts (hybrid courts, UNMIK/EULEX) that date from the time of UN administration and a recent one, the so-called Special Court for Kosovo. The continued involvement of the international judges/prosecutors into post-war Kosovo came as a result of the common perception among the international community that local judicial structures lacked the capacity and impartiality to conduct fair trials, in particular in serious cases involving war crimes and cases involving ethnic crimes.

This Special Court was established in 2015, with a mandate to try serious crimes committed by the Kosovo Liberation Army during and in the immediate aftermath of the Kosovo war.

It is not an international tribunal, but a Kosovan national court, composed of international prosecutors and judges that will administer justice outside Kosovo. The court is still not operational yet.

However, it remains to be seen whether this newest layer of justice will prove successful.

My main concern regarding this court is its capacity to search for justice after seventeen years. Most cases involving eyewitness testimony depend on accuracy of long-term memory. Testimonies that have been taken later in legal proceedings are very often filled with half-truths and, all too often, outright lies. So, in this regard, one may have difficulty in accepting as accurate the testimony of witnesses after such a long period of time knowing that their memory may have faded over time.

In addition, a Special Court is seen with suspicion by a majority in Kosovo. There is a common opinion that it will share the same destiny as the hybrid courts in Kosovo which have been surrounded by a range of shortcomings, lengthy procedures, interferences of external factors that resulted in selectiveness of justice and subsequently have limited their contribution to truth, justice, and reconciliation.

Yet despite the incapability of the international justice mechanisms to properly deal with the atrocities committed in the past, there is a strong desire for retributive justice in Kosovo society. As a consequence, the engagement of responsible authorities in the area of restorative justice remains elusive.

Whom to blame?

I would say both. On the one hand, national and international actors (UNMIK and EULEX) failed to identify the past abuses that need to be restored. Taking into consideration the mandate of international actors, they should have been equally engaged in restorative justice, in particular with regard to the need to clarify the fates of missing persons and deal with sexual violence cases and material reparation in order to help prosecutions as well as criminal justice trials complete their tasks. On the other, the Kosovan government should have been more active and more demanding towards the international community, instead of relying and placing all hopes on international actors.

What has been done so far?

Only in 2011 did the Kosovan authorities promulgate the Law on Missing Persons. However, the law failed to impose upon all competent organs in Kosovo the obligation to provide assistance and available information to family members searching for their missing relatives 'under threat of sanctions.' The main competency has been vested in the hands of a government unit composed of various government agencies.¹ Moreover, the law fails to empower victims to demand compensation for the harm suffered. Overall, this law may give some hope to the relatives of the individuals that went missing as a consequence of crimes committed by members of the Kosovo Liberation Army, but regrettably not to the relatives of the Albanian victims. At the moment, they are left in the dark as to the whereabouts and condition of their relatives, as this information remains in the hands of the Serbian government. Taking into consideration the political constraints between Kosovo and the Serbian government, it is doubtful whether this issue can be advanced without external political pressure.

The first move has been undertaken with regards to the issue of sexual violence that occurred during the conflict. Unfortunately the issue of sexual violence remained a totally detached subject for a very long time. The victim-survivors refused to talk for a long time and consequently have been left without protection. Even today, many of them refuse to talk about their past because of fear of being marginalised. They continue to be under constant pressure. Last year, all of a sudden, interest in raising awareness about sexual violence became part of Kosovo's political agenda. It came as a result of an artistic installation "Thinking of you" by artist Alketa Xhafa-Mripa and producers Anna di Lellio and Fitim Shala, who organised a collection of clothing around the country (women's dresses and skirts) to pay tribute to the inhumane treatment committed against the women. The aim was to open a debate about sexual violence against women and encourage them to speak out. This was a big challenge for patriarchal structures. Subsequently, the journalists got mobilised and as such managed to move an unheard issue to regular and very constructive reporting.

The former President Atifete Jahjaga took part in the campaign and promised adequate institutional support for the victims of rape. This in

turn has encouraged the Kosovo Women's Network to be more persistent in their claims for obtaining compensation for wartime rape victims.

However, it is necessary to stress that little has been done with regard to material reparations such as financial compensation and restitution. Neither responsible international structures nor domestic ones found themselves responsible for setting up a reparation programme, in particular with respect to restitution and compensation. Given the fact that the most serious atrocities were committed by the previous Serbian regime, it is largely considered that such a responsibility attaches to the current Serbian government. However, it should be noted that given the present political circumstances in Serbia it is unlikely that it will be achieved in the near future. The Serbian government continues to use the same rhetoric and tries at all cost to obstruct Kosovo in becoming a functional state within the international arena.

Although there have been ongoing negotiations between Serbia and Kosovo since 2012, unfortunately no major results have been achieved.

Is Kosovo's civil society capable of serving as facilitator for reconciliation?

The involvement of Kosovo's civil society in the transitional justice process is very limited. So far the issue of missing persons was the only subject that would be discussed and that was mainly initiated by the family associations of missing persons.

Kosovo's civil society continues to be divided into sharp ethnic lines. A small number of civil society organisations insist on maintaining links within and outside borders and working towards inter-ethnic dialogue.

Among them, the Youth Initiative for Human Rights organised an informal dialogue between Albanian and Serbian young people living in Kosovo in 2011 by trying to challenge the participants with sets of issues arising from different topics such as freedom of expression, freedom of movement, inter-ethnic prejudices, etc. Moreover, Community Building Mitrovica, a Mitrovica based NGO, has worked on several projects to facilitate inter-ethnic dialogue.

Since 2012, Interfaith Kosovo, a civil society initiative supported by Kosovo's Ministry of Foreign Affairs and several international agencies operating in Kosovo, has organised a range of events on religious dialogue, tolerance and reconciliation, providing a platform for the promotion of harmony and coexistence between different faith communities in Kosovo. Although its particular focus is religious tolerance and mutual acceptance, it can, however, serve as a good example to those who bear the primary responsibility for promoting justice and reconciliation in and after the war in Kosovo.

At the moment the Humanitarian Law Centre retains the most important role in the area of transitional justice, raising awareness regarding both retributive and restorative justice.

It is considered that the aim of restorative justice is to identify obligations and propose solutions, and in this way promote dialogue and mutual agreement between former enemies (Zehr, 1990, pp 80–81). This in turn may lead to our desired goal, the reconciliation. I would say that 'restorativeness' can open a door to reconciliation. In

this context, taking into consideration the current political climate between Kosovo and Serbia, the chances of identifying possible obligations and solutions of restorative justice between former enemies are small. Such a situation makes it difficult for other actors, namely non-governmental actors, to engage in promoting restorativeness in society.

Never too late

The responsible authorities should continue to initiate credible prosecutions and as such focus on producing a sense of justice in society because the slow pace of the trials has significantly undermined the perception that justice is being done. Consequently, the entire society is steeped in polarised thinking and mutual grievance. This has narrowed the chances for civil society to promote the parties' 'obligations' and suggest solutions for restoring the past and, most importantly, open a debate on reconciliation.

For the long time all the hopes were placed on the international community, hoping that political pressure exercised by relevant international entities might oblige the Serbian authorities to be more responsive towards justice.

At the beginning, I saw the negotiations between the Kosovan and Serbian governments as an opportunity for initiating 'restorativeness'; however, taking into consideration the circumstances that followed the negotiating process, there is little hope that the issue of restoration will ever be on the negotiating table.

As a consequence, the cultural preference for retributive over restorative justice will become 'a dominant preference' and as such close the door on any debate that may call for reconciliation of our divided society.

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(1) Article 9 para. 1 of the Law on Missing Persons

International RJ WEEK 2016



The International RESTORATIVE JUSTICE WEEK took place on 20-27 November 2016. Almost 40 events were organised across Europe to raise awareness about restorative justice. Some members of the EFRJ planned some original activities, such as a 'restorative flashmob' (Sassari- Italy), a RJ postcards' campaign (Flanders- Belgium), the design of new RJ flyers (Zagreb- Croatia) and RJ posters (Como- Italy) made by students, a workshop on forgiveness with prisoners (Lisbon- Portugal), a meeting between mediators and probation officers (Bucharest- Romania) and a 'menu' including speakers and actions to be 'ordered' to organise a local RJ activity (The Netherlands). We are really proud of the engagement that our RJ community shows every year on the occasion of the RJ WEEK!

Also the EFRJ organised some events in Belgium. We focused on the potentials of storytelling for restorative justice, looking at different forms of arts, such as films, comics, theatre, which create the space for telling, sharing, listening to and understanding different stories. About 40 people participated in the different activities, either discussing the promising use of theatre in prison settings, or drawing a comic story on a victimisation experience, or creating a short video of a personal story on feeling of powerlessness and injustice.



Information about these events (including short reports and pictures) can be found on the EFRJ website, or on social media using the hashtag #RJWeek. We are looking forward to celebrating with you the next RJ WEEK in November 2017!

SEE YOU IN 2017!

- **23 FEBRUARY** Brussels | CJPE experts' seminar on the EU Victims' Directive
- **1 JUNE** Berlin | EFRJ Annual General Meeting & seminar
- **4-7 JULY** Barcelona | CJPE summer course
- **23-28 JULY** Como, Italy | EFRJ Summer School
- **19-26 NOVEMBER** | International RJ WEEK 2017

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