INTRODUCTION

The Sixth Conference of the European Forum: 'Doing Restorative Justice in Europe. Established Practices and Innovative Programmes' intended to focus firstly on providing an opportunity for displaying and discussing the width and breadth of practices and methods used throughout the continent and secondly on the developments in the field of conferencing as one of the more innovative restorative justice practices. The third theme announced in the call for workshop contributions was 'cooperation with legal practitioners'. Although a need for such a theme and generally, for paying more attention to the role of the legal practitioners was expressed by members of the EF, it drew only few proposals for workshop presentations.

There were on the other hand a large number of different topics addressed in the course of the three days, ranging from RJ in prison settings (the MEREPS project), RJ and Domestic violence, the victims' perspective, evaluations of RJ programmes, as well as reports on developments in different countries and regions of Europe and other continents.

We have assembled workshop presentations (predominantly PowerPoint presentations) and whenever available the reports of the note-takers who had been asked to turn their attention and their efforts to the discussions following the presentations in the workshops.

We will also present the plenary presentations of Joanna Shapland on Conferencing, the presentations of Gema Varona and Ignasi Terradas and Ivo Aertsen's speech at the closing plenary.

Day 1: Thursday 17 June

Plenary One: The development of the practice of restorative justice

Presented by Howard Zehr

Chair: Niall Kearney

Howard Zehr is widely known as "the grandfather of restorative justice". His impact has been especially significant in the United States, Brazil, Japan, Jamaica, Northern Ireland, Britain, the Ukraine, and New Zealand. More than 1,000 people have taken Zehr-taught courses and intensive workshops in restorative justice. He was an early advocate of making the needs of victims central to the practice of restorative justice. A core theme in his work is respect for the dignity of all peoples.

Where did restorative justice come from and how was it developed in the last three decades? In this talk Dr. Zehr will share some "founding stories" and describe some of the tributaries feeding into the restorative justice stream. He will also trace some of the directions the field has taken and some of the challenges it faces, both in theory and in practice. Although this will focus somewhat more on the United States context, Dr. Zehr has travelled widely and will seek to incorporate other experiences as well.

Workshop Session One

Workshop One – Practices and methods

1.1 Doing RJ in Spain and Norway: a juvenile case

Team coordinators: Clara Casado Coronas (Spain), Kjersti Lilloe-Olsen and Tone Skåre (Norway)

Clara Casado Coronas works as a mediator with victims and adult offenders in the Catalonian Justice Department programme since 2005. In the period 2007-2008 she joined the European Forum as project officer of the AGIS project "Restorative justice: an agenda for Europe – Going South". She has been practicing mediation since 2003 in community based services and has given training in restorative justice and conflict resolution.

Kjersti Lilloe-Olsen is an adviser at the National Mediation Service (NMS), Oslo and Akershus County, a mediator since 1992, a national instructor in training of mediators, and also a facilitator and trainer in conferencing. Her main responsibility is the cooperation between the police and the NMS. Since the 1st of January 2010 she is manager for a project on domestic violence.

Tone Skåre graduated in Economics in 1994 and has in addition a Masters Degree in Management. She has been an adviser in the Ministry of Environment and the Ministry of Trade and Industry. She is now Head of Office in the National Mediation Service, Oslo and Akershus. She has been a mediator since 2002 and trainer for mediators since 2006. She is also a facilitator and trainer in conferencing.

Workshop notes

The purpose of this workshop was to allow room for discussing and analysing the 'practice and methods' used in different schemes to conduct a RJ process. Hence the emphasis was placed on observing the different means and skills used by mediators and facilitators to explore crucial issues, handle obstacles or advance on the process stages and any other relevant aspects shaping the communication process between victim, offender and practitioner. On this occasion the practice of Norwegian and Catalonian mediators was under the spotlight.

A team of mediators from Konfliktradet, the Mediation Service of Norway, and from the Catalonian Justice Department prepared a performance displaying how they conduct a first meeting with a victim (and offender in the Norwegian performance). The performance would serve as the basis for a comparative analysis of their respective practices. In order to make it more comparable both teams had previously agreed the main features of the offence and the parties involved (the victim is an old man of 70 years old who is very upset and disappointed with the justice system, the offence involves three minors of 16 to 17 years old accused of property damage and bodily harm). Departing from there, each team elaborated a script to ensure that key aspects they considered more interesting in terms of practice would stand out during the performance. The actors were the actual mediators that had previously rehearsed the script.

After the performance by the Norwegian and the Catalan team, participants were divided in two groups for discussion. Each team of mediators had the opportunity to debrief some 20' with each group of participants about the differences and similarities just watched. Many questions and ideas were shared/raised not only comparing the Norwegian and Catalan practice but also with regard to

the practice in the participants' countries such as Russia, Finland, Austria, Sweden or Germany amongst others.

In what follows an outline of the background of mediation in criminal matters with juvenile offenders in Norway and Catalonia is provided. The script of both performances will not be included here nevertheless the aspects that could be more distinctive are sketched to give a sense of what actually happened in the 'mediation room' in Norway and in Catalonia. Next, the most relevant issues addressed during the discussion time are summarised.

THE CASE

As mentioned earlier, the victim is an old man of 70 years old, Mr Frank, who together with his wife were strolling around their town. Passing by a square that had been recently built they saw three boys vandalising some brand new benches. He couldn't stand the sight of public property being ruined and asked the boys to stop. They replied in a challenging and disrespectful manner and quickly the discussion escalated. Hence things went out of hand and one of the boys ended up beating Mr. Frank. The old man stumbled and fell down on the floor losing his glasses. The boys continued to kick him while some step backwards. Totally paralysed, Mrs. Frank was witnessing the whole thing terribly scared. During the endless minutes that the assault lasted, Mr. Frank, unable to see anything without his glasses couldn't do anything but fearing for his own life. Finally someone raised the alarm but the boys managed to run away right before the police arrived.

They found Mr. Frank in shock not able to stand on his feet. When he came back to his senses he realised that on top of the injuries his glasses were lying totally broken on the pavement and his mobile had been stolen. Right there, still aching all over, Mr. and Mrs. Frank had to give a detail account to the police about the incident. Only after the police officers had finished with all the usual routine questions and paper work, they were left alone at the hospital.

Some months later, the mediator contacts Mr. Frank on the phone to know about his situation and inform him about the possibility of participating in a mediation process. Mr. Frank however has a very hostile attitude. He sounds very angry and when the mediator suggests to arrange a first meeting, Mr. Frank immediately reacts claiming for harsh punishment. He does not want to hear a word other than the boys have been sentenced and locked up so that he and his wife will not have to see them again. He expresses that it is very unfair that the boys are still wandering around confidently without facing any consequences whereas he and his wife are struggling with many issues resulting from the offence, mainly attending to appointments and comply with requirements with the police, the courts and the insurance company amongst others. And all of this has happened why? Why did the boys react so aggressively while he had never done anything wrong to them? Why were they vandalising the benches in the first place?

Mr. Frank expresses that although his wife wants to forget everything, he needs to get an explanation, he needs to understand why. Therefore despite his indignation with the public institutions for the treatment received, he does not decline absolutely and accepts to attend to a first informative meeting with the mediator.

THE NORWEGIAN PRACTICE - KONFLICTRADET

Presented and performed by: Kjersti Lilloe-Olsen and Tone Skåre

1. BACKGROUND

On the 15th of March 1991 an act on mediation was adopted in Norway establishing that "It is the duty of the Mediation Service to mediate in disputes arising because one or more persons have inflicted damage or loss or otherwise offended another person". Since then the Service is organised as part of the government, placed under the Ministry of Police and Justice, and rendering mediation available for both criminal and civil cases. It can be accessed by everyone regardless of the age, including those under the age of criminal responsibility (15 years old). Mediation is delivered through 22 Mediation Service offices, locally based and run by 85 employees and a total of 700 volunteer mediators who are connected to the community where they practice.

Participation is voluntary and free of charge. Cases are usually dealt with within two weeks after the referral has been received.

Referrals are possible from three parties. First, the prosecutor's office and the police, as an alternative to the criminal justice process, can refer a case. Second, by the court as a supplement to other sanctions: as a part of a sentence with community service, as a condition in a suspended sentence or as a civil case supplementing a criminal case. Third, by the parties which are involved. This however only applies to civil cases.

If the offender admits guilt to the police, in Norway the case is then referred to mediation, but a mediation process will only be initiated if both parties are willing to participate. If the outcome of the mediation is positive, the charges will be dropped and no mark is given on the criminal record when the case was referred as an alternative to other penal sanctions.

In civil cases, the prerequisite is that both parties acknowledge that there is a conflict and they are both willing to take part in a mediation process.

2. OUTLINE OF THE PRE-MEETING

In all cases the mediator will first contact each party separately. This pre-meeting can take place on the phone or can be an actual meeting depending on the type of case and/or if the parties want to meet the mediator beforehand. The purpose of the pre-meetings is to create predictability for the parties by giving them as much information as possible. It is our experience that the more clear the information is they get on how the meeting will work the safer they feel throughout the process.

The following is a guide that Norwegian mediators use to make sure they formulate the relevant questions and provide both parties with the essential information they will need for the face-to-face meeting:

- 1. Thank you for coming.
- 2. Introduction of the mediators/facilitators
- 3. Information about the National Mediation Service.

- 4. Mediators' duty of confidentiality.
- 5. Pre-meetings will be held with all the parties connected to this case during today or tomorrow.
- 6. The topic for the mediation/conference will be...... acknowledge responsibility.
- 7. Those invited to the meeting are.....
- 8. What are your thoughts about meeting these people?
- 9. Is there someone else you would like to be present at the mediation meeting?
- 10. Discussing the sitting arrangement. Do you have any thoughts about who sits where?
- 11. Ground rules for the meeting.
- 12. Some of the questions the mediator will ask you during the meeting: What happened? What were you thinking? How did you feel? Who has been affected? What do you need to know now?
- 13. Think through what you want to get out of the meeting.
- 14. Information about the agreement.
- 15. Consequences of reaching an agreement or not (especially with regard to a criminal record).
- 16. Do you have any concerns associated with the mediation?
- 17. Are there any special needs or challenges (psychological, physical or others)?
- 18. Any further questions?
- 19. Remember to set aside enough time for the mediation/conference.

THE SPANISH/CATALONIAN PRACTICE - MEDIATION AND REPARATION PROGRAMMEME FOR JUVENILES (- CATALONIAN JUSTICE DEPARTMENT)

Presented by Mònica Albertí; Performed by Clara Álvarez and Fran Jodar

1. BACKGROUND

The Prosecutor's Office for Minors (*Fiscallia de Menors*) is concerned with the offences involving young persons aged between 14 and 18 years old. The Law 5/2000 regulating the criminal responsibility of minors establishes that at the first stages of the proceedings the decision about whether to dismiss the case or to impose a particular type of measure lies with the prosecutor. In either case the prosecutor will base his decision on a report about the educational and family situation of the minor and their social environment which is prepared by the Mediation and Advisory Technical Service (SMAT - *Servei de Mediació Assessorament Tècnic*), functionally dependent on the

Prosecutor's Office. The SMAT's main functions are to prepare these reports upon the prosecutor's request and to carry out the mediation processes when the requirements are met.

For certain offences the law provides that if the young person has successfully repaired the harm the prosecutor can conclude the file on the proceedings. Therefore in such cases if the parties are willing to participate the SMAT will carry out a mediation process. When mediation is successfully completed, the case is referred back to the prosecutor, together with the agreement and a report informing about the minor's attitude over/along the process. If the mediation outcome makes it clear that the harm has been repaired, the prosecutor will dismiss the case. Hence mediation at this stage has a diversionary effect.

2. OUTLINE OF A FIRST MEETING WITH THE VICTIM

In the case chosen the type of the offence is precisely one of these for which the Law 5/2000 provides that the prosecutor can discontinue the proceedings if the young person repairs the harm to the victim. Thus a mediator from the SMAT will assess the viability of mediation. In the first place a meeting with the minor and his/her parents or caregivers will be held. They are informed about mediation and its legal implications making it clear that participating is voluntary. Only when the young person is willing to take responsibility and the requirements are met, the mediator will contact the victim through a letter sent on behalf of the Juvenile Justice Department.

The letter that Mr. and Mrs. Frank have received addresses the following points:

- The Public Prosecutor has initiated judicial proceedings with regard to the incident in which they have been affected.
- If they, as victims of a crime, wish the case can be handled through mediation by the SMAT a service belonging to the Catalonian Juvenile Justice Department which works in collaboration with the Public Prosecutor's Office.
- Participation in a mediation process provides them a safe space where they can be heard. In
 particular the Juvenile Justice Department is interested in knowing how Mr. and Mrs. Frank
 have been affected by the offence and what their needs are at the moment.
- To that end a mediator has been appointed and the victim is invited to call the service to obtain more information.

In this case Mr. Frank has not contacted the SMAT so the mediator has called him to explain what mediation can offer. Mr. Frank reacts in an angry outburst and voices to the mediator his outrage and frustration with the way the whole thing has been handled by the public institutions. Since the offence they have received no help from the neighbours and let alone from the city council or from the courts. They have been required to comply with paper work, show up here, give statement there and yet they have been left bloody alone facing all the problems ensuing from the offence including their physical injuries. On top of all this, now that they are trying to have everything settled they get this letter talking about mediation. Mediation with these vandals?!? Mediation for what? There is nothing to mediate. They have to be locked up in jail right away. Mediation is out of the question! Once in jail, they will have plenty of time to think about what they have done.

But in another phone call some days later, the old man expresses that even if they try to turn the page, there is that 'why' recurrently banging in his head. Therefore the mediator will start the process by setting private time with each party which Catalonian mediators call 'interview' or 'individual session'. The purpose of the individual session is to inform about mediation, contextualising the offer in the framework of the legal process in the juvenile justice system and identify the victim's needs. The ultimate goal of this session is to assess whether mediation is viable, which mainly depends on the willingness of the parties.

If the parties give informed consent and viability is clear, the mediator will prepare the victim for the meeting with the offender, during the same first interview. It is however also possible that a second interview is necessary for the person to be ready to set priorities with regard to the way he wants the case to be handled or to clarify any concerns that will help the victim to build more trust on mediation.

Although the crucial aspects to be addressed with each party at every stage are clear, Catalonian mediators do not follow a guide with a set of questions in a certain order. The project description establishes the minimum conditions that have to be met in order to start a mediation process as well as the principles and the approach that should inform their practice. Within that framework every mediator acts according to their own style which in general is meant to be flexible in order to cover the issues necessary while at the same time accommodating to the thread that the person follows.

It might be necessary to first give the opportunity to talk about concerns and fears regarding the legal proceedings or to solve other urgent issues related to the offence before assessing whether mediation is possible. It might also be that the party needs to deepen into the story telling before even being informed about mediation. This is precisely the case with Mr. Frank. Since the mediator knows it is essential to set a clear framework for the interview and mediation in general, ideally she would start by explaining what mediation is and which its legal implications are so that Mr. Frank is aware of what he can expect from the interview and mediation. However, the mediator has hardly mentioned some aspects of mediation when in an outburst of anger Mr. Frank interrupts the mediator complaining of how unfair their treatment from public institutions has been and how poorly everything is organised. He describes in detail every problem and inconveniences they have been through since the offence and in particular he underlines that they barely dare to go out as a result of the offence. The mediator makes the usual short interventions summarising or paraphrasing what Mr. Frank says. It is clear that one of the most distressing issues for Mr. and Mrs. Frank is their feeling of security since it has strongly affected their daily routine. Gradually Mr. Frank feels more at ease and expresses how hard it is for him to get over the offence without being able to find an explanation. How can youth be so aggressive? He did nothing that could justify him being battered. This leads the mediator to ask what has happened and then Mr. Frank starts to tell his story.

As the interview evolves it is usual that the mediator jumps back and forth the different basic subjects (mediation offer, legal framework, story telling, impact of the offence, needs and priorities, expected outcome, preparation of the meeting, etc.). Being flexible might be helpful as sometimes more trust needs to be built on the process.

The communication with Mr. Frank becomes more fluent when he identifies that his frustration and resentment comes to a great extent from the fact of not understanding the boy's behaviour. At the

time of the offence Mr. Frank felt fear, shame and anger and he confirms that these feelings are still very strong. He and his wife have been feeling completely unattended and helpless and they need reassurance that they boys will not retaliate. They are badly in need to feel safe again when they walk out in the street. At that moment Mr. Frank carries on and opens up about what seems to be a core issue: he and Mrs. Frank had recently moved from Barcelona to this little town looking for peace and quiet. They were longing for a quiet place where people share a common sense of community and what do they get in return? They have been left unprotected and helpless with feelings of fear and insecurity. The mediator suggests that the impact of the offence seems to be way beyond the physical injuries and financial loss, but it has shattered their dream of living in a peaceful community.

At this point, when the storytelling is finished and some of the strongest feelings are identified, the mediator thoroughly explains the legal consequences of mediation and how an actual mediation would work. But when Mr. Frank finds out that it is possible that the charges against the boys will be dropped, his indignation surfaces again as he suspects that the boys are only participating to be scotfree. Although he is furious again, Mr. Frank is not at the same point as before. Contrary to his previous experience, he now feels that he is being taken into account. The mediator then further explains that mediation requires the boys to reflect and be accountable for what they have done. They don't get scot-free but will have the opportunity to listen to what Mr. Frank has to say and they are ready to make amends.

The expression in Mr. Frank's face softens and he now remains silent and thoughtful. The mediator asks what would make him and his wife feel better. For Mr. Frank it is crucial that he and his wife will feel safe again when they are walking in the street. Making the boys aware of all the damage they have caused and the numerous problems they have been through as a result of their behaviour is also very important. He wants to see with his own eyes whether they are actually sorry and that they want to acknowledge responsibility. Furthermore Mr. Frank is also interested in knowing the role that the boys' parents have been playing in all this. Financial compensation for the cell phone and his glasses is self-evident. He further points out that the boys should somehow pay back to the community the damage caused to the benches. These boys have to understand that respecting public property concerns us all.

The mediator takes the opportunity to stress that these are precisely the issues that can be discussed in a mediation meeting with the young people. She also introduces some more practical details concerning how a mediation meeting works in practice and starts to work on expectations.

Although mediators of the SMAT do not rely on a check list, a common practice has been developed within the team that draws on their know-how and the core principles of the programme. The fact that all mediators have taken training on mediation has clearly shaped a common ground in how to conduct a mediation process and the dynamics they establish with victim and offender.

By talking about the actual meeting, Mr. Frank is becoming clearer about his needs. In order to help to set priorities, the mediator raises the question on the outcome he would like to get from the process and what he thinks is actually possible. Mr. Frank immediately replies that the financial issue of his glasses and the mobile has to be sorted out otherwise it would be very unfair. But more importantly he wants to hear an explanation from the boys. Why did they beat him? Why did they continue to kick him when he was already down on the floor? And why did they vandalise the

benches in the first place? Also, to hear an apology would be a good way to get over this. Then the mediator asks him to imagine how he will like to see this happening. For Mr. Frank it is clear that the apology has to be sincere. He further points out that the boys should somehow pay back to the community the damage caused to the benches.

In a collaborative way Mr. Frank and the mediator summarise the topics that will be dealt with during the meeting. Mr. Frank also discusses the way he would like to convey the messages and the questions he wants to get answered. He is somehow anticipating possible scenarios and reactions to these questions. Deepening in the expectations and anticipating how the meeting will unfold is meant to create predictability and another opportunity for the victim to weight whether, and how, his needs and expectations will actually be met.

Before finishing, other practical arrangements are made such as the timing and the people who will actually be attending from the offenders' and the victim's side. Then the interview is over.

Discussion

Three questions were asked to get the discussion started:

- ➤ Have you identified any similarities and differences between the way certain situations have been handled by Norwegians and Catalonians and the way these would be handled in your programme?
- Which are your thoughts about the mediator's role?
- Is there anything in the mediator's performance you would take home to improve your own practice?

One of the key issues addressed concerned the choice on who has to be contacted first: the victim or the offender. It was argued that some schemes consider that giving the victim the choice of starting the mediation process is essential in order to preserve a balanced approach between victims' and offenders' needs. If once informed and heard, the victim is willing to participate in a dialogue with the offender, then the mediator will contact the offender.

In contrast with this practice, in Austrian and Spanish schemes generally the offender is contacted first. Only when it is clear that he is prepared to acknowledge responsibility and is willing to repair the damage, the mediator will contact the victim. The aim is to prevent the victim from being bothered and creating expectations that couldn't be met if the offender eventually declines to participate. It was added that the Norwegian scheme is more flexible, whether the victim or the offender will be contacted first depends on the type of the case and the origin of the referral. It would not be wrong to say that both possibilities have their downside, thus the question remains on whether it is actually more effective or more restorative to contact the victim or the offender first.

Possibly the most relevant difference between the two schemes was the way the topics were addressed. For example, nobody disagreed that an apology plays an important role in a restorative process, however different opinions were voiced with regard to the way this should addressed. Catalonian mediators for example will try to make sure during the first interview that the offender

will actually want to make an apology when he sits in front of the victim. His private time will help him to find his way to properly apologize. An Austrian participant mentioned that they work the same way in her scheme. The bottom line is again to avoid the disappointment of the victim. Norwegian mediators however will not necessarily address the topic explicitly unless the person mentions it. The story and the reflection of victim and offender about the incident should come out for the first time during their meeting.

In fact part of the audience seconded the idea that the apology, the storytelling and the rest of the questions and answers should come up 100% fresh when the parties meet. This is the reason why Norwegian mediators inform the victim and the offender about the questions they will ask during the meeting. The mediator want to make it clear that he does not want to hear the answers now but he wants the victim and the offender to think them through before the meeting. The core issues are not to be discussed with the mediator during the pre-meeting but the victim and the offender, but by thinking about these questions before the meeting they have the opportunity to prepare what they want to say. It was suggested that the more prepared the issues are with the mediator, the less the parties would keep ownership of the process.

On the other hand, as the Catalonian performance showed, other schemes prefer that the storytelling first comes out in the private time with the mediator. Feelings, impact and current needs of the victim and the offender are thoroughly addressed with the mediator before they are brought together at the meeting. This is also meant for the parties to foresee the way the other person may respond to a certain comment or question. By anticipating how the communication will evolve and the possible difficulties with this communication, these can be addressed beforehand and expectations can be more realistic.

The debate arose on the pros and the cons of relying on a check list or a script with an established order of the topics or questions. Having a check list helps to keep the balance between the issues dealt with by each party. Some participants replied that sometimes preserving such 'balance' might not be appropriate since needs of the victim and the offender might differ. Therefore, having a looser framework that allows following the party's thread without leaving any essential topic uncovered might also be very helpful.

On a different note, the young person's parents' role was also brought to the fore. In the Catalonian scheme, generally parents will only take part in some of the individual sessions with the offender but they will not be present at the meeting between the young person and the victim. It is intended to give the young person the opportunity to accomplish what the restorative justice process entails on his own: understanding why his behaviour was wrong, being accountable for the damage caused to others and making amends. It was argued that the parents could interfere negatively if they were be present at the meeting.

On the contrary, in Norway parents participate directly in all the meetings. It is possible that they attend the individual session with their children and they will be prepared by the mediator for the meeting with the victim. This is also the trend in other countries and it is based on the idea that the adults responsible for the young person should be engaged in the process. This becomes particularly

¹ What happened? What were you thinking? How did you feel? Who has been affected? What do you need to know now?

important when you take into account that they possibly will have to supervise the fulfilment of the restoration plan. The direct involvement of the parents in the process might also be indispensable when the child is very young.

A remaining concern is however that, even assuming that the parents' presence is necessary, there is still the risk they will take over the meeting and overshadow their child. Against this background some strategies in order to have the parents taking part while at the same time ensuring the young person will still have to play the main role were suggested: preparing the parents thoroughly during the pre-meeting, stressing the importance of the child having a say and undergoing the process; arranging the room in a way that the parents sit in a rather secondary row while the victim and the young person take the lead; and organising two meetings, one where only victim and offender will be present and a second encounter where parents and supporters are involved.

It is worth mentioning that during the discussion often the topic moved from talking about very specific practices or even techniques, to analyse the rationale behind them. This brings to the fore that practice can sometimes be considerably shaped by the particular restorative approach of the scheme as well as by the context in which it originates.

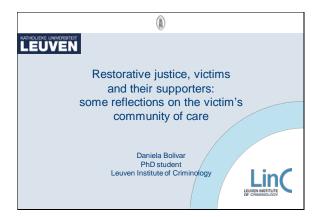
Conclusion

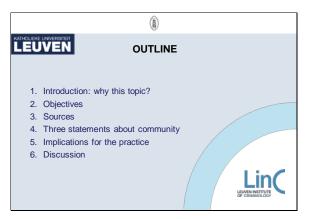
The general impression was that, when comparing the practice of the different countries, there are more similarities than differences. According to participants' comments the issues addressed during a first meeting were quite similar across the different schemes including the Norwegian and the Catalonian one. More significant differences were however noticed with regard to the actual way that certain topics are dealt with.

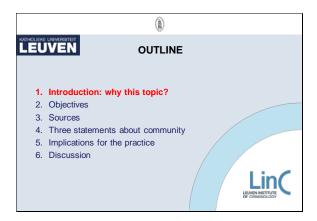
Workshop Two – Conferencing Chair: Brunilda Pali

2.1 RJ, victims and their supporters: some reflections on the victim's community of care Presented by: Daniela Bolivar (Belgium)

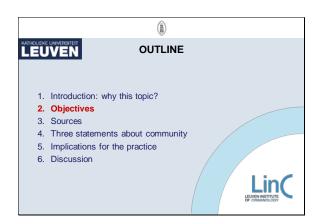
Daniela Bolivar is a PhD-researcher at the Leuven Institute of Criminology. She holds degrees in Psychology and Community-Psychology. She has worked on the topic of victimology from both the professional and the academic field. Currently, she is doing research on the role of mediation in victim's recovery.

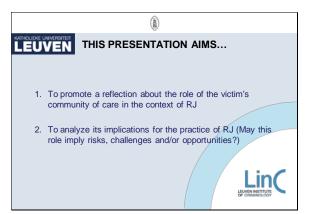


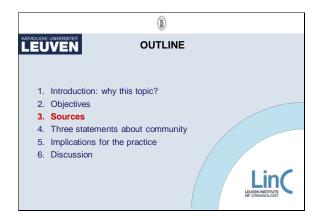




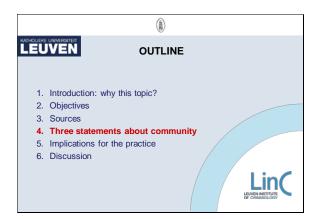


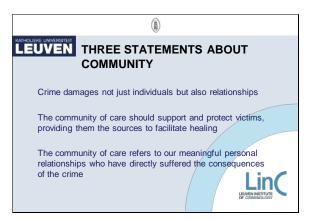


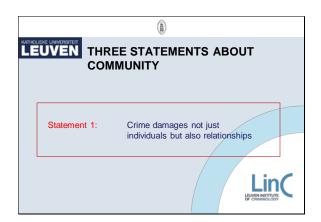


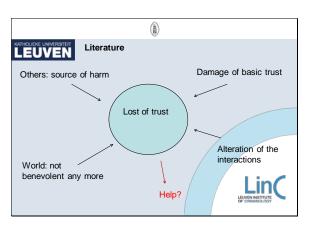


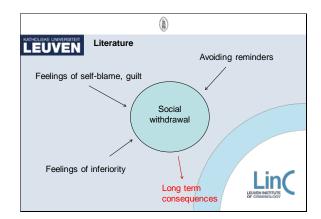


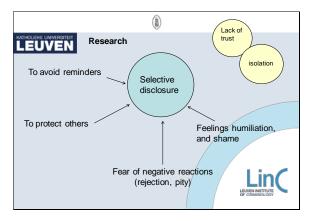


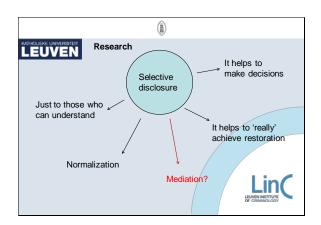


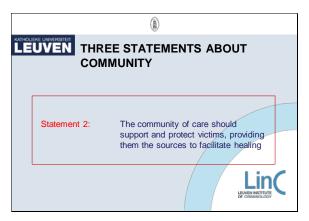


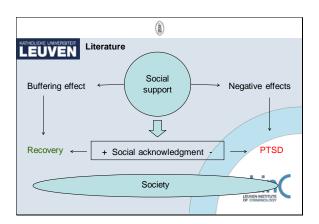


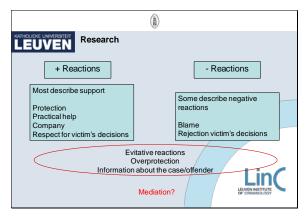


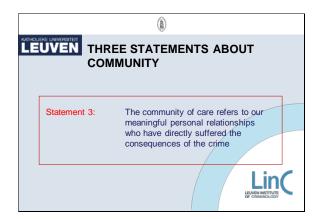


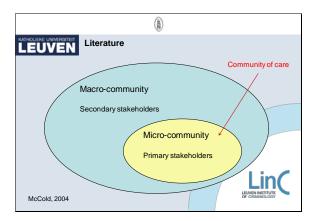


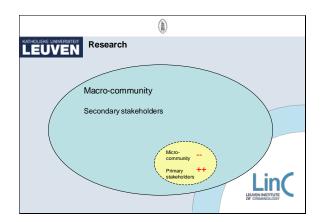


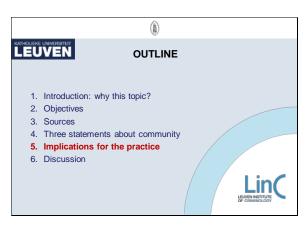




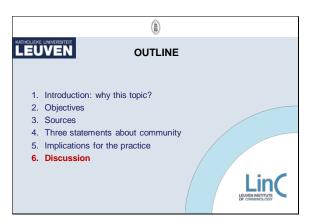












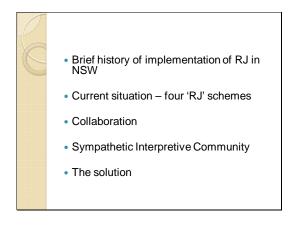




2.2 Progressing RJ: Strategies to turn silos into a community of concern Presented by: Michaela Wengert (Australia)

Michaela Wengert has worked in the adult and juvenile criminal justice systems for over eighteen years, after many years working with offenders in community settings. For the past twelve years she has been regional manager of a legislated scheme based on restorative justice principles. She is committed to incorporating emergent research into practice, through policy development and the delivery of training to practitioners and stakeholders.





Brief history

First process based on RJ principles - juveniles

- 1989 ratification of CROC
 - commitment to victims' rights
- 1990 Kids in Justice report reform of JJ
- 1991 'Wagga Wagga experiment'
- 1993 Govt green paper (community aid panels)
- 1994 Govt white paper (emphasis on diversion)
- 1995 pilot: Community Youth Conference Scheme
- 1996 Evaluation of CYC scheme
- 1996 Victims Rights Act
- 1997 Young Offenders Act

Young Offenders Act 1997

- · Hierarchy of interventions:
 - warnings
 - police cautions
 - youth justice conferences
 - criminal proceedings
- · Bipartisan support of parliament
- · Commitment of senior bureaucrats
- Implemented in April 1998

Youth Justice Conferencing 1997 - 2007

- Independent Directorate within Juvenile Justice
- Coordinated development of policy and procedures
- Monitoring of compliance
- Issues resolved centrally
- Single point of contact between YJC and partner agencies
- 18 locations across NSW
- statewide meetings every four months
- Convenors / facilitators independently contracted to run conferences; recruited and trained locally

· Independent evaluations positive

- BOCSAR
- Statutory review
- · Partnerships with police, courts and community

<u>BUT</u>

- Internal partnership with juvenile justice
- Resource poor
- Little documentation of corporate knowledge and experience

Youth Justice Conferencing 2007 - 2010

- · 'Integration' into Juvenile Justice
- YJC Director position deleted
- YJC Directorate abolished
- YJC Managers supervised by JJ Area Mngrs
- Structured into three regions
- Statewide (or regional) meetings discontinued
- high attrition of existing YJC staff
- no structured training for new staff
- lack of knowledge by executive & senior mngt.
- inconsistencies in practice

Creation of internal 'silos

Forum Sentencing

2005 - 2007

- Attorney General's Department
- Pilot program, based on positive evaluation of YJC
- Adult offenders aged 18 25 years
- Court referred only
- Two initial locations
- Similar process to YJC, although a few differences
 - determine 'suitability'
- outcome agreement forms part of sentence
- Facilitators independently contracted (like YJC)
- Evaluations (relatively) positive

2007

- Government commitment to expand to 25 locations across NSW over five years
- Age restriction lifted
- Some eligibility restrictions retained (likely to announce further changes soon)

2010

- Currently in four locations
- at least two more next financial year

Restorative Justice Unit

- · Department of Corrective Service
- · Small unit of full-time staff
- Post-sentence RJ processes for serious offenders
 - Initiated by victim or offender
- significant resource investment in preparation
- · Small number of conferences each year

Circle Sentencing

- · Attorney General's Department
- · Available to adult Aboriginal offenders
- Aim is to empower Aboriginal communities in the sentencing process and provide more appropriate sentencing options
- Pilot scheme in 2002
- · Currently available at 8 locations around NSW
- Can involve victims and respected community members
- Magistrate still determines sentence, after the circle discusses issues and makes suggestions

So....

- Four schemes, three separate departments
- · Any interactions are personality driven
- No formal or informal mechanisms for sharing expertise, information, experience...
- No formal interactions with other relevant parties eg universities, researchers...
- Partnerships with stakeholders (eg police) have deteriorated through lack of commitment

Why did it happen

- Organisation and government level:
- absence of any high level commitment to cross-agency partnerships
- not recognised as important (internal silos)
- Lack of resources core business -v- 'extras'
- Focus on 'outputs' (how many conferences) rather than 'outcomes ' (how restorative was the conference)

... And, does it matter?

- Robyn Keast Collaboration
- Julia Black Sympathetic Interpretive Community

Collaboration

- Increasingly, collaboration is presented as 'the way forward' in responding to complex problems and driving system reform
- · Collaboration is about Big Picture, inclusive thinking
- Combines different views, objectives, philosophies, resources and working practices to address a common challenge
- Draws individual and organisational knowledge, expertise and resources to a 'collective space'
- Creates opportunities for innovative responses to problems and ideas for implementing social change
- Increases the skill set of participating individuals through shared learning

Benefits of collaboration:

Policy Makers and Strategic Planners:

- Enhances development of a consistent policy framework across agencies – stronger position politically
- Policy development is informed by a greater knowledge base, broader understanding of issues
- Opportunities to identify and incorporate current thinking and innovative strategies into policy and planning
- Policy decisions may have greater acceptance and traction in the community – consider broader concerns, relate a consistent message

Researchers:

- Opportunities to share information, pool knowledge and resources to create added value
- Explore collaborative research opportunities and partnerships
- Sharing research increases learning across agencies and identifies further avenues for exploration
- Opportunities for peer review and also input from practitioners and policy-makers

Service Delivery:

- Not a single service delivery model, but...
- Shared language, informed knowledge base
- Coordinated strategic direction and planning
- Consistent response to theoretical developments, research etc
- Articulate where a particular service 'fits' under the RJ umbrella
- Explain the benefits to the NSW community of each process, and advocate collaboratively in the political and social domain

Sympathetic Interpretive Community

Julia Black - rules and regulations (1997, 2001)

Since rules need to be interpreted to be applied, they need an 'informed audience' who understands the context of assumptions and practices in which the rule is based, which gave rise to it and which it is trying to address

For the rules to 'work'... then the rule-enforcer has to share the rule-maker's interpretation of the rule; they have to belong to the same interpretive community

The greater the shared understanding of the rule and the practices it is addressing, the more the rule maker can rely on tacit understandings as to the aim of the rule and context in which it operates, the less the need for explicitness and the greater the degree to which simple, vague rules can be used.

Through the development of interpretive communities it is possible to overcome the inherent problems of uncertainty and indeterminacy in rules...

- RJ is dynamic, evolving practice, heavily reliant on principles rather than 'rules'
- Getting the balance right in delivering RJ processes
- facilitator is 'neutral', but also the protector of the rights and safety of each participant
- Concerns are that discretionary application may lead to inconsistent and arbitrary practices, including outcome agreements
- Building an interpretive community is about developing shared understandings of the goals, principles and values of restorative justice

- Julia Black argues that where shared cultures or definitions do not exist they can be created through training and education, and through conversational dialogue across all levels and between all parties / stakeholders
- Advocates 'conversational' dialogue. Not a monologue, not 'top-down', but a participatory process
- 'Conversation ... has the capacity for qualification, clarification and embellishment'

Developing a strong interpretive community will improve consistency in practice, quality of service delivery, outcomes for participants....

- Breaks down internal silos and builds bridges between organisational silos
- Opens communication between stakeholders researchers, practitioners and policy-makers

Filling the void

- Providing opportunities for interaction, collaboration and interpretive conversations...
- Independent of any key agency / department
- Support of Sydney Institute of Criminology
- Series of activities aimed at meeting different needs and interests

Seminar series

- Six monthly, 3 hours duration
- Focus on topics of broader interest, 'bigger picture' issues
- · Aimed at engaging with a wide audience
- Emphasis on networking opportunities
- Every fourth will become a biennial conference

Practitioners' Forums

- Held every two months, in between seminars
- Two hours duration, single topic of focus
- Aimed predominantly at people working in service delivery
- Pre-reading, 'expert' presentation or analysis
- Small group discussions, sharing experience, practice issues etc
- Feedback from small groups to larger audience
- Opportunity for response from service delivery managers
- IT accessible for regional and remote practitioners

Policy Forum

- Six monthly (at least initially)
- Two hours duration, usually single topic
- Aimed predominantly at people making strategic policy decisions at both the service delivery and system levels, including ministries such as Treasury and Premier & Cabinet
- Usually based around emerging research
- Influential supporters and advocates to promote RJ

Research Hub

- · Six monthly, two hours duration
- Nominate to present on:
- completed research
- progress report
- commencing research
- research proposals
- response to research
- Ideas / Needs (The White Board)
- Focus is on both peer (academic) feedback and practitioner/service delivery feedback

Initial response

- · Overwhelmingly positive
- Relatively high attendance at first event
- Survey results:
- greatest interest in seminars (95%)
- around 70% each for other activities

Also strong interest in training and skill development opportunities

In summary...

While it is important to maintain professional networks within disciplines and ensure training and development are available within agencies, it's also important to provide opportunities for cross-agency and cross-discipline interactions.

It's not always clear who should drive this, but ...

If you build it, they will come.

-fin-

But...

- 40% of collaborative projects fail
- It takes time, effort and resources to organise regular interactive opportunities
- Shared power, no-one is 'in control'
- Focus is on interests not positions
- Allowing uncontrolled space and synergies can be risky
- Requires a culture of working together.....

Which is difficult for organisational silos

2.3 A civil twist on common law models: Comparisons between the Belgian, New Zealand and English approaches to Youth Justice Restorative Conferencing

Presented by: Katherine Doolin (UK)

Dr. Katherine Doolin is a Law Lecturer at the University of Birmingham, UK and Director of the Institute of Judicial Administration. She has published in the area of restorative justice and recently was awarded British Academy funding to undertake research into the use of restorative justice with juveniles in Belgium (Flanders) during which time she was a visiting scholar at the Catholic University of Leuven. She has also been a researcher on government funded evaluations of restorative justice schemes in England and Wales.

Why the topic had been chosen

In previous research comparing the use of youth justice family group conferences in New Zealand with restorative justice approaches used with young offenders in England and Wales, I concluded that the application of restorative justice in these examples is still primarily offender focused – that more needs to be done to involve, restore and, thus, empower victims. This was considered a particular limitation of the English approaches provided for in legislation, where research studies have shown that victim attendance is low [e.g. Newburn, Crawford, Earle et al, The Introduction of Referral Orders into the Youth Justice System: Final report (Home Office Research Study 242, Home Office, London 2002) 41]. However, even with New Zealand family group conferences, which have been hailed by a number of commentators such as Crawford and Newburn as being one of the most important practice contributions of restorative justice [Youth Offending and Restorative Justice (Willan Publishing, Cullompton 2003) 27] and Daly as being the 'most developed and systemic model of restorative justice in place' ['Restorative Justice in Diverse and Unequal Societies' (1999) at http://www.gu.edu.au/school/ccj/kdaly_docs/kdpaper5.pdf], victim attendance rates remain at about 50 per cent [Maxwell, Kingi, Robertson, et al, Achieving Effective Outcomes in Youth Justice. Final report (Ministry of Social Development, Wellington 2004), 84].

Nevertheless, I also concluded that the New Zealand approach to restorative youth justice is more effective than attempts in England and Wales and has more restorative potential. A main reason for this is that the New Zealand approach of family group conferencing is underpinned by a strong and clear legislative status — the importance of legislation in placing restorative decision-making processes at the heart of the system. We can see this in the New Zealand example where conferencing is at the centre of how they deal with youth offending. This attempts to ensure the commitment of state resources to the process and should help to resolve structural and procedural problems. [See Doolin, 'Translating restorative justice into practice: Lessons from New Zealand's family group conferencing approach to youth offending' (2008) 4(1) *International Journal of Restorative Justice* 1-24] Whereas attempts at restorative youth justice in England and Wales lack such a clear legislative direction — mediation and conferencing occur on an *ad hoc* basis and on the margins of the youth justice system, and the restorative emphasis in the legislation is diluted by a competing emphasis on more punitive and managerialist measures.

Thus, I wanted to investigate whether these conclusions played out in another legal culture:

- Does a strong and clear legislative status make the difference in terms of effective restorative justice in practice?
- Could the New Zealand model of family group conferencing be adapted into a different legal and social culture?

As New Zealand and England are common law systems, I chose to switch focus to a civil legal culture - Belgium, in particular Flanders which from 2000 started to offer family group conferences to juveniles based on the New Zealand approach. Part of this research was conducted while I was a visiting scholar at the Catholic University of Leuven in Belgium in the summer of 2008 followed by a visit in February 2009.

Aim of paper

The aim of this paper was to consider the adaptation of the New Zealand model of family group conferences in Belgium, in particular the Flemish model of conferencing used with juvenile delinquents. The purpose of the paper was not to provide a quantitative evaluation, for example about number of victims involved or the number of conferences that have taken place to date. My purpose was to:

- Compare and contrast the conceptual underpinnings of these approaches
- Consider the differences in application in the two legal cultures and
- Assess how necessary a strong legislative status is to effective implementation of conferencing. In this respect, I drew on the use of referral panels for young offenders in England and Wales, which in part have taken inspiration from a conferencing model.

The paper began by looking at the main values/concepts/points of focus for comparing the different approaches.

Focal points for comparing and contrasting the selected examples

These are a number of important questions to consider when implementing restorative conferences into practice including:

- Referral/point of entry how are youngsters referred to a youth justice conference/restorative process? Should there be diversion by the police? Should conferences be court-referred? Should conference processes remain voluntary running along side the traditional criminal process? Or can conference type processes be part of court orders/sentencing?
- What is, and should be, the role of the key stakeholders in the conference process?
 - Role of the victim key to restorative justice is that victims are central to the process; process should empower them – able to participate, be listened to, attempts to restore them. Should victims sign any agreement/contract that results from the conference? Should they speak first before the offender?

- o Role of the offender Offender responsibility; offenders should be encouraged to take responsibility for their wrongdoing required to take part in process and to make amends take steps to restore harm. However, as part of the widening victimisation recognised in restorative justice, offender has also been harmed. Attempts should, thus, be made to reintegrate offender into his/her community. Where should the emphasis be in the process and outcome of conferencing? Should the offender speak first? Should there be equal emphasis on rehabilitation and reintegration of offenders with reparation to the victim? Does this detract from a necessary focus on the victim and repairing the harm to the victim?
- o Role of the community should this be the micro community/ the community of care? Should conferencing also involve the wider, more macro community (such as lay representatives/volunteers from the community)? Should the community participants (however conceived) sign the conference agreement?
- Role of the state should state representatives (such as police/prosecutors) be involved in the process? Should they sign the conference agreement? Should they facilitate the conference? Should they have a symbolic or a decision-making role?
- How should all the different needs, roles and responsibilities of victim, offender, community and state representatives be balanced in a one-off conferencing process?

The use of family group conferences in Belgium

Before discussing the use of family group conferencing in Belgium, an overview of the New Zealand model on which it is based was given. The following points were covered:

- Legislative status the Children, Young Persons and their Families Act 1989;
- Example of a decision-making process, which incorporates a number of core restorative justice values;
- How NZ youth justice family group conferences operate in practice who they apply to, referral procedures (police referred and youth court referred conferences), roles of participants, nature of agreements etc.

The focus of the paper then turned to the implementation of family group conferences in Belgium and, in particular, the Flemish practice. Restorative conferencing has been offered in Flanders since 2000 when a pilot study of conferencing for juveniles based on the New Zealand approach began. The success of this pilot study was influential in the extension of conferencing for juveniles to the rest of Belgium through the Juvenile Justice Act 2006.

The 2006 Act stipulates that a prosecutor when considering how to deal with a youngster is required to consider a restorative justice response first – mediation, which can be referred by the prosecutor, or conferencing, which can be referred by the youth court judge. The referral process to both mediation and conferencing was then explained. Whether to take part in mediation or conferencing is voluntary for both the youngster and the victim. However, voluntariness is a qualified notion. A victim, for example, may feel pressurised to take part (examples were given) or a young person might

agree to mediation to avoid what he or she perceives as harsher consequences (referral to court having refused the offer of mediation).

Attention then turned to the Flemish practice of juvenile conferencing in order to explore how the New Zealand model of youth justice conferencing has been adopted and adapted to fit Belgium's civil legal system and legal culture. A number of key issues were addressed:

- 1. The use of conferences only for juveniles who have committed serious offences
 - Follows New Zealand model that reserves conferencing for medium to serious offences (except murder and manslaughter)
 - Why reserve for serious cases only?
 - o Conferences are resource and time intensive
 - Mediation is already offered in cases and was considered by those interviewed to be working well
- 2. Located at the youth court level/ a restorative conference can only be referred from a youth court judge
 - Different from New Zealand model where conferences can be referred from a police officer as well as a youth court judge
 - Why referral from youth court only?
 - o Civil legal system and legal culture
 - Legal competency of the police no discretionary power to divert case away from prosecutor or court
- 3. Role of the police officer in a conference
 - From interviews I conducted with those responsible for introducing and implementing family group conferences into Flanders, it was clear that involving the police in conferences was one of the key reasons why the New Zealand approach was preferred (as distinct from other conferencing models where the police facilitate the process)
 - But what kind of involvement does/can/should police officers have in the Flemish example?
 - Legal competency of police in a civil legal culture affects the role they can take in a conference process
 - Symbolic represent State and wider harm to society/seriousness of the offence/assurance to victim and community that harm is being taken seriously
 - o Police officer does not sign any agreement that might result from the conference
 - While police officers attend conferences in the Flemish practice, such presence is not mandatory
 - Different from the police officer in a New Zealand youth justice conference where they have symbolic and decision-making roles/ mandatory police presence
 - Should the prosecutor attend a conference in Belgium because of the civil legal culture? This was considered by those implementing conferences as part of the pilot study in Flanders.
 - o main reasons why this was not considered viable
- 4. Role of the victim
 - Differences noted between discussing *attendance* of victims at conferences and their *participation* in conferences
 - Differences noted between the New Zealand and Flemish practice regarding the extent to which the victim has to agree/sign the agreement resulting from the conference

- o Juvenile Justice Act 2006 (Belgium) 'declaration of intent'
- While the 2006 legislation is silent on this issue, it appears that in practice the victim
 is required to agree only with the first aspect of the conference agreement –
 reparation of harm to him or her and does not have to agree with proposals about
 how the youngster can make reparation to the wider community and how to address
 his or her offending.
- o Limitations of this approach?
- o Comparisons with New Zealand approach regarding role of the victim in deciding/agreeing to outcome
- 5. Role of lawyer in a conference
 - Access to legal advice considered an important part of due process/legal safeguards
 - Comparisons made with New Zealand approach
 - What is (should be) role of the lawyer?
 - Should lawyer be present when family discussing in private with the youngster his or her offending and what can be offered to repair harm to victim and address offending behaviour?
 - How balance collective and consensus decision-making of the key stakeholders with the concern to protect legal safeguards?
 - o How to ensure the lawyer does not detract from participation of key stakeholders?
- 6. Private family time where youngster and his or her family/community of care discussed how youngster can attempt to repair harm to the victim and how he or she can address problems and offending behaviour.
 - Comparisons with New Zealand approach distinctive feature of New Zealand model of conferencing
- 7. Agreement sought as part of outcome of a conference
 - Follows New Zealand approach agreement should address:
 - o Repair harm to victim
 - o Repair harm to wider community/society
 - o Actions to prevent re-offending
 - Who signs the agreement? Some differences noted with New Zealand approach (in particular see role of victim discussed above)

Comparisons with referral panels used in England and Wales

The final part of the presentation considered, by way of comparison only, referral orders, which are youth court orders used in England and Wales mainly for youngsters for their first conviction who plead guilty. While referral panels are a different process from New Zealand and Belgian family group conferences, they provide a useful comparison as in part they draw some inspiration from conferencing and, similarly, are provided for in legislation.

After a description was given as to the nature and operation of referral orders, a number of similarities with the New Zealand and Flemish models of conferencing were noted including:

- Panel meetings are an informal, out of court process;

- Panel meetings involve the youngster and his or her family in making a plan/agreement with the panel members a 'contract of behaviour', which should include an element of reparation to the victim or the wider community, and measures to address the offending behaviour;
- The victim is invited to attend and participate in a panel meeting (although questions remain over the extent of the participation);
- The process has a legislative basis.

However, it was argued that referral orders differ significantly from the Flemish and New Zealand conferencing processes in a number of respects, which lessen and detract from the restorative potential of panel meetings:

- Referral/point of entry referral orders are an order of the court sentence of the youth court mandatory/coercive nature.
- Role of the victim panel meetings have the most limited participatory role for the victim out of the three models examined. Victim lacks any formal decision-making capacity in panel meetings; the contract of behaviour is between the youngster and the panel members (a Youth Offending Team member and at least two volunteers from the community). Whereas in New Zealand, for a successful outcome to be reached, the victim has to agree to the conference plan and in Flanders the victim has to agree to at least the part of the plan to do with the reparation he or she will receive.
- Involvement of the wider community referral orders involve the wider community in a way that the selected conferencing models do not. Referral panels have at least two members of the community, one of whom is required to chair the panel meeting. As members of the panel, the community volunteers have a decision-making capacity; agree the contract of behaviour with the youngster. The paper considered the role of community volunteers, and the limitations and challenges to their role in practice (e.g. non-representative of youngster's community of care or wider community; dominance of panel members; another form of magistracy).
- Role of the police police officers do not attend panel meetings.

Towards a Conclusion

It was concluded that referral orders lacked the restorative potential of the two conferencing models examined for a number of reasons including low attendance rates of victims, dominance of panel members in the panel meetings, offender focused nature of panel meetings, limited participatory role given to victims, and their coercive/mandatory nature as orders of the youth court. Significantly, referral orders were introduced into England and Wales at around the same time as other legislative youth justice measures that are more punitive and managerialist in nature. It was argued that there are too many competing values in the youth justice system in England and Wales and, therefore, restorative justice lacks a strong and clear legislative status.

With this in mind, I expected that the Flemish practice of conferencing to have been strengthened by the Juvenile Justice Act 2006. However, despite conferencing now having a legislative basis in

Belgium since the 2006 Act, there appears to be fewer conferences taking place in Flanders (except for Brussels) than when the pilot conferencing study was being conducted.

The paper concluded by considering why there appeared to be a fall in the number of conferences taking place in Flanders. Is there is sufficient space for restorative conferencing?

- In many cases, the prosecutor has already referred the case for mediation by the time it comes in front of the youth court judge. This means that a number of suitable cases for conferencing will have already gone through the mediation process and, thus, cannot be referred for conferencing. From those I interviewed, it was considered this is likely to continue since the Juvenile Justice Act 2006 stipulates that prosecutors should first consider a restorative justice measure when deciding how to deal with a case.
- Victim offender mediation is still the predominant model of restorative justice process in Europe.
- Concern was raised by some of those I interviewed about the involvement of the community; it was felt that the focus on the offender and their community of care could detract from the important emphasis on reparation to the victim, which was considered to be more easily achieved in mediation.
- Reluctance by some practitioners those who facilitated the conferences in Flanders were trained mediation first. Some felt that conferencing was not that much different from mediation; some mediation preferred the process of mediation; some felt that mediation was more victim focused than conferencing.
- Conferences were considered more resource and labour intensive than mediation.

Conclusion

While many of the characteristics of the New Zealand model of youth justice family group conferencing are evident in the Flemish adaptation, the civil law system of Belgium has led to some significant differences in application, particularly in relation to the role of the police officer and lawyer, and the decision-making capacity of the victim in conferences.

Further, in comparison with England and Wales where restorative conferencing is not provided for in legislation and occurs on an *ad hoc* basis, it was contended that the Belgian system with the introduction of the Juvenile Justice Act 2006 has a stronger legislative basis.

Nevertheless, it was concluded that legislative status is no guarantee to the successful implementation of restorative justice. There are other factors that can hinder the application of restorative processes, including the socio-legal context, legal culture, ethos of practitioners, referral procedures, and the role and attitudes of police, prosecutors and the judiciary.

Workshop Three – Wider application of RJ Chair: Stojanka Mirceva

3.1 Early interventions as prevention – An innovative approach to restorative practices within a Scottish authority

Presented by: Shiona McArthur and Ellie Moses (UK)

Shiona McArthur is a Lecturer in Sociology at Perth College of the University of the Highlands and Islands. She is currently running two research projects into restorative practices and is also engaged in developing a restorative practices post graduate programme.

Elinor Moses is a researcher employed by Perth College of the University of the Highlands and Islands. She is currently working as researcher with Shiona McArthur and is enrolled as a student on MSc Applied Social Research, Stirling University.

Workshop notes

In this first contribution to this workshop Shiona McArthur and Ellie Moses elaborated on the possibilities of applying restorative justice approaches in a school setting, illustrated by a Scottish example where restorative practices are introduced in 89 schools throughout Scotland. Addressed were the development and implementation strategies, the successes, difficulties and of course the challenges they are still facing. For example questions like how to ensure schools comply with this initiative, how to assure the quality of the trained school professionals, the need for evaluation, and the question how to implement this initiative in a context – school system – where allot of other initiatives are being launched, so how to get attention for this particular restorative justice initiative. Reactions on this initiative came from Norway and Finland, where they have a practice of peer mediation, which could help to change the mindsets of school, especially the teachers. From England came the remark that mediation and restorative justice are of course related, but it is not the same. This discussion came back later on, after the next presentation

3.2 Perspectives for the use of Alternative Dispute Resolution Techniques in cases of discrimination in Serbia

Presented by: Olivera Vucic (Serbia)

Olivera Vucic is the ADR Task Force Manager and one of the authors of the report. She is a graduated economist, with an MA in Human Resources Management, and 11 years experience in combating discrimination and managing projects in this area. She is a certified mediator by the Centre for Mediation of Serbia.

Workshop notes

The presentation of Olivera focused on one of the outcomes of the project "Support to the implementation of Anti Discrimination Legislation and Mediation in Serbia. She elaborated on a survey that was carried out to demonstrate how forms of alternative dispute resolution techniques

can support the implementation of anti discrimination legislation and which technique is the most efficient in preventing, managing and resolving conflicts resulting from the existence of discrimination. One of the challenges was still to get recognition within the broader public in Serbia of the advantages to use alternative dispute resolution techniques in cases of discrimination. Another challenge was to encourage voluntary participation, the equality of parties involved, and sufficient financial resources.

The discussion focused upon the question whether this practice of alternative dispute resolution such as mediation, which is most used in discrimination cases, can be regarded as a restorative justice practice. Another discussion point was how you can determine which technique will be suitable for that particular conflict.

As the chair Stojanka Miceva summarized, the question whether mediation is a restorative justice practice or not is also at stake in other European countries, but that for these conflicts the focus should be put on the needs of the participants in order to be able to choose the suitable approach.

3.3 Mediation and a need of verbal capacities?

Presented by: Alice Delvigne (Belgium)

Alice Delvigne, since July 2004 has been active as a victim-offender mediator for Suggnomè, forum for restorative justice and mediation in Belgium. She has experience in working as a mediator in cases before and after trial. Alice studied moral philosophy in Ghent University and criminology in Leuven University and afterwards went volunteering in Bulgaria in an institution for juveniles who committed crimes.

Workshop notes

Alice focused on the so called difficult mediation cases, where she argues that mediation is often seen as especially suitable for middle class people, who are able to express their feelings into words. She argued that mediation is also possible for those people with less verbal capacities, but that this has consequences for the role of the mediator. She also argued that a mediation where there is a meeting between the victim and the offender, who express their feelings in a verbal way and talk about the impact of the criminal fact is a cliché that does not reflect reality.

She illustrated this with a case of a 13 year old girl – with a lower IQ and lack of verbal capacities – who was sexually abused by her father, where she was involved as a mediator and where the outcome was not the mentioned cliché. Not only because she had chosen the option of indirect mediation – without face to face contact between father and daughter – but also the way she interpreted the answers and expectations of the daughter as a victim, and the way she confronted the father with the needs of his daughter. Her conclusion was that an indirect mediation can also be valuable and that we should not only focus on the direct face to face meetings. Even if the verbal capacities are lacking, it is still possible to do valuable mediations, for both the victim and the offender, although it has no cliché outcome.

In the discussion that followed the focus was on the subject of the risks of secondary victimization.

A more theoretical remark was made about the risks of secondary victimization, especially when for example an offender confesses the offence – the act of sexual abuse – but when he is not convinced that he did anything wrong: should you start a mediation then? Or does the father in this case have to confess and accept the wrongdoing, as a condition prior to the mediation process? And what is the role of the victim in this respect, for example if she wants to mediate regardless if the condition is met?

The outcome of the discussion was that there should be awareness by the mediator about this problem, and that in such cases you should also address the underlying beliefs of the offender, which can be combined with an indirect mediation. Just asking if the victim wants to participate in a mediation session in severe cases does not automatically imply that secondary victimization will occur.

Workshop Four – RJ in Portugal and Brazil Chair: Vicky De Souter

4.1 The Portuguese public system of mediation in penal matters: the advantages and disadvantages

Presented by: Cátia Marques Cebola (Portugal)

Cátia Marques Cebola is an assistant Professor, teaching Civil Law and Alternative Dispute Resolution, at the Polytechnic Institute of Leiria, Portugal. She has a Bachelor and a Master degree in Civil Law by the University of Coimbra, Portugal. She is Doctoral candidate in the Faculty of Law of the University of Salamanca, Spain preparing a PhD thesis on "Mediation – a complementary way to the Administration of Justice". She has conducted several research studies about Alternative Dispute Resolution such as The pre-court mediation in Portugal: analysis of the new law; Environmental Conflict Resolution (ECR): a new reality in Portugal; The transposition into Portuguese law of the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, on certain aspects of mediation in civil and commercial matters; The Portuguese public systems of mediation: comparative analysis with the Spanish experience.

Workshop notes

This workshop discussed the institutionalisation of penal mediation in a number of districts in Portugal by Law 21/2007 of 12 June 2007, and the extension of the programme to more districts in the country in 2009 (the programme is expected to cover the whole country soon). The Law, Ms Marques Cebola explained, is a very important step for penal mediation in Portugal. This is because there was a need for legal safeguards to guide the mediation process. The law was not really meant to regulate the whole mediation process – that would not be possible or desirable. Instead it was meant to institutionalise minimum rules so as to *facilitate* mediation. It is supposed to make sure that the process finishes as soon as possible, which is necessary for victims' well-being.

Ms Marques Cebola explained that if the penal mediation is successful, the case does not go to court. If the agreement reached between victim and offender respects legal limits, the prosecutor

homologates, after which a waiver of the complaint follows. If however the offender does not carry out the agreement, the victim can renew its complaint within one month.

The discussion focused, first, on the fact that, as Ms Marques Cebola explained, the mediators that guide the mediation process get paid more when their mediation session was successful than when the session did not result in an agreement. The public was quite astonished to find out about this because obviously, the focus of the meeting can change as there is more pressure on the mediator to make sure the parties reach an agreement. Ms Marques Cebola acknowledged these worries and agreed that this situation should change as soon as possible.

Second, there were some questions considering the role of the public prosecutor. The prosecutor is the one who decides which cases go to mediation and which cases do not. The whole process of mediation therefore hinges on the prosecutor. The public was interested to learn whether the prosecutor gets any specific training for this, and how much prosecutors know about the mediation process. Ms Marques Cebola responded that prosecutors do not receive a particular training on mediation but that it has been introduced in prosecutors' general training so that in time, all prosecutors will become more acquainted with mediation.

Third, there was curiosity about the selection criterion for young offenders: penal mediation is excluded for offenders under the age of 16, but on the other hand, the prosecutor is extra encouraged to pass cases with offenders between the age of 16 and 21 to mediation. Some extra explanation was given on this. Also, some were interested in the fact that, as Ms Marques Cebola mentioned, the parties can ask for mediation by mutual agreement (if the prosecutor decides not to send a particular case to mediation, for example). Questions were asked about how those parties came into contact. Ms Marques Cebola explained that usually lawyers propose mediation in these cases, since the victim and the offender often do not know about the option of mediation.

4.2 Government or society, what's the way to start? A comparison based on the Portuguese Penal Mediation System

Presented by: Bruno Caldeira and Pedro Morais Martins (Portugal)

Bruno Caldeira is the Chairman of the board of Associação de Mediadores de Conflitos. He is also a trainer in mediation and a mediator in penal, family and civil systems.

Pedro Morais Martins is the Chairman of the board of IMAP (Portuguese Institute of Mediation and Arbitration), a trainer in mediation and Restorative Justice, a supervisor of mediation internships, and also Former Coordinator of Mediation Services for the Lisbon Justice of the Peace.

Workshop notes

Mr Caldeira and Mr Morais Martins, two Portuguese mediators, talked about the difference between restorative justice systems that were created bottom-up, which means based in the community, and systems that were created top-down, which means guided by the government. Portugal is a particular case in the story of restorative justice, because the mediation procedure in Portugal was the first government based system. For this reason, the presenters said, it is not only innovative but

also credible to the public. The downsides are that, first, the magistrates do not feel that the system of mediation is "their" system and, second, that no evaluation of the programme has been done yet.

The workshop had a specific design, in that Mr Caldeira and Mr Morais Martins invited all participants to share their thoughts about the difference between these systems, writing them down on large sheets that were put on the wall. Participants were asked to write down their reflections about the differences in objectives and motivations of the systems. Then they discussed these two aspects with a view to the Portuguese system of penal mediation. The main *objectives* of the Portuguese system of penal mediation, Mr Caldeira and Mr Morais Martins explained, were (1) to comply with the European Union request that all countries should have mediation programmes by March 2008, and (2) to give credibility to mediation. The main *motivation* behind the Portuguese system was to withdraw a number of cases from the courts. Mr Caldeira and Mr Morais Martins further explained how mediators are trained and presented a number of data about the mediation process (e.g. number of referrals, average duration of proceedings).

There was not much time for discussion after this workshop, neither was there time left to discuss the things the public had written on the sheets on the walls, but the topic of penal mediation in Portugal had already been discussed thoroughly after the first presentation by Ms Marques Cebola. Also, some questions relating to the prosecutor's role and the closure of the case after successful completion of the agreement were responded during the presentation.

4.3 RJ programmes in Brazil: practical and theoretical analysis

Presented by: Daniel Achutti and Rafaella Pallamolla (Brazil)

Daniel Achutti has a Master's degree and is a PhD Student in Criminal Sciences at Pontificia Universidade Católica do Rio Grande do Sul (Brasil). He is Assistant Professor of Penal Law and Criminology at Faculdade Cenecista de Osório (Brasil), a counselor of the Instituto de Criminologia e Alteridade and also a criminal lawyer.

Raffaella Pallamolla has a Master's degree in Criminal Sciences at Pontificia Universidade Católica do Rio Grande do Sul (Brasil). She has a Master's degree and is a PhD Student in Public Law at Universitat Autònoma de Barcelona (Spain). Raffaella is an Assistant Professor of Penal Law and Criminology at Faculdade Cenecista Nossa Senhora dos Anjos (Brasil), a counselor of the Instituto de Criminologia e Alteridade and also a criminal Lawyer.

Workshop notes

Mr Achutti and Ms Pallamolla presented the Brazilian state of affairs of mediation practices, opening with the statement that the Brazilian reality is quite different from the European one. First, there is Brazil's mere size, which makes it difficult to talk about the whole country during one single presentation. Second, one must take into account the Brazilian punitive discourse. In Brazil, it is difficult to talk about a non-violent approach to conflict; the climate is one "where everyone wants to kill anyone". Violence rates in Brazil are reducing but it is still a violent country where it is difficult to tell people that it is not necessary to send people to prison. Third, statistical evaluation of restorative practices is not as common in Brazil as it is in Europe.

In 2005, the Brazilian Ministry of Justice started pilot projects on restorative justice in three cities. At this very moment one of these programmes is closed, one is doing well, whereas the third has been institutionalised. Mr Achutti and Ms Pallamolla explained the programmes and one of their main conclusions is that in Brazil, restorative justice highly depends on persons: if a judge dies, for example, the programme dies with him. Since not many people practice restorative justice, it is also hard to gain knowledge about restorative justice.

The Brazilian story by Mr Achutti and Ms Pallamolla raised some questions. First, the public wanted to know more about the political reasons for the fact that one of the pilot programmes died. The presenters explained that the programme was evaluated by the university, but the results were negative. The people that ran the programme felt personally attacked, and this is how the programme died. A second question related to the reason why in Brazil, few statistics are available. The presenters could not answer that question. The lack of statistics is part of the broader culture: there is no tradition of keeping statistics. However, they added that the statistics that are available are quite amazing. Third, a Brazilian judge present at the workshop added that the strength of restorative justice depends on the way it is accepted by the community. She further noticed that not having legislation on mediation is somehow a problem but sometimes also a solution.

Workshop Five – RJ developments in South-eastern Europe Chair: Peju Solarin

5.1 RJ for juvenile offenders in Greece: Does it give effective responses to a rapidly changing social and penal landscape?

Presented by: Constantina Sampani (Greece)

Constantina Sampani studied law at the University of Athens. She also obtained an LLM in International and Commercial Law by the University of Kent at Canterbury and a PhD in Criminology and Criminal Justice by the University of London, Queen Mary College. She worked as a lawyer for six years at a law firm in the City of London and is now running her own law practice in Athens. She lectures at the BCA College and actively continues her research on different subjects of criminology and criminal justice.

Workshop notes by Radoslava Karabasheva

Does Restorative Justice for juvenile offenders in Greece give effective responses to a rapidly changing social and penal landscape? This is the ambitious question that Constantina Sampani attempts to answer. Her presentation about the Greek situation rose variety of questions.

One key element to evaluate restorative practices progress in a country is trough the civil societies' involvement. In Greece, their involvement and initiatives seem to be limited even if the need of programmes is significant, especially at school, where the pupils are often from different even conflicting groups and origins, because of the important migrations explained in the presentation.

As presented, the Greek juvenile justice system was improved with eight more measures to be implemented. Nevertheless, the contribution is very imperfect. Due to the lack of material infrastructure to implement the community work, for instance, the measures could not be put in practice. Among the three cases of mediation that took place the last year, none was executed properly. In one of the cases, the offenders presented excuses to the victim, but no material tools were provided to do the community service they have engaged with. In a nutshell, in theory, restorative measures are in the law, an increased number of measures is applicable, but *de facto*, there are not enough practical infrastructures.

Another remark was to try not to stick on a direct link between the offence and the measures applied to restore the relationships. The key role of creativeness was pointed out in order to encourage the personal reflection of the offender on their own behaviour. Something should be taken "outside the box", and not necessarily linked to the matter of the offence. The importance of respect was also underlined. It may be helpful for the self esteem of an offender to see that what he is doing benefices. The result of respecting abstract rules is harder to perceive.

The next questions concerned the actors. It was clarified that the prosecution in Greece is mandatory (art. 45A, CLP) and that they are to decide whether a case is suitable to go to mediation. Then we turned to the mediator who is usually a lawyer, a legal specialist, a criminologist, a psychologist, a social worker, etc. The need for mediators with intercultural experiences and from different origins, languages, traditions is pressing, since a big part of the conflicts is either intercommunity or intraminority. A person from the community might help to better understand the conflict and help in the search of better solutions. This need was present in the experiences of many participants. In Norway, for example, conflicts between persons from two communities in bad relations happen. In practice, they try to find a mediator from the same community and sometimes translators are engaged. In Germany, a country with a long tradition in restorative justice, intercultural conflicts exist as well. The Greek situation is complex, because of the strong cultural resistance from Greek people, not only to "foreigners" being mediators, but also for foreign practices, worried about protecting their "Greekness". One of the participants, an Italian professor of penal law, suggested that cultural mediation is needed before penal mediation.

Concerning the success experienced in Greece and Italy, it was shared that in Italy only a pilot project for restorative justice and mediation is currently applied. The project shows very positive outcomes in the North of Italy (Trento, Bari...), but not in South Italy. While in Greece the measures are not practically applied even after successful mediation, the decision is hardly executable. The atmosphere in the workshop was positive and it was suggested that more practice is needed. In both countries, it was considered that the practices were really restorative and not just arbitration, as the parties are asked to find their own solution and should agree with them.

Finally, I would say that the presentation and the discussion that followed gave the possibility to participants and presenters to familiarize with each other and their practices. The absence of the presentation on the VOM in Turkey was regretted by many participants and particularly a German representative. Nevertheless, it gave us more time to discuss and share different experience. In the end, a friendly recommendation was made by one representative from Albania, that the conclusions of Mrs Sampani's presentation should be submitted to the Greek government for further action.

5.2 Workshop Five: VOM practice in Turkey
Presented by: Özlem Ayata Özyigit (Turkey)

Özlem Ayata Özyigit is an independent lawyer in the areas of labour, human rights and women's rights law. She has worked with legal aid service of the Istanbul Bar Association. She has supported VOM projects in Turkey, and helped translation of UNODC Handbook on Restorative Justice Programmes into Turkish. Her LLM thesis focused on evaluation of VOM implementation in Turkey in the light of the restorative justice principles. Her PhD studies will commence this fall.

The aim of this study was to evaluate the implementation of victim-offender mediation in Turkey, as one of the models of restorative justice. Victim-offender mediation came into law in Turkey as part of a Penal Code and Criminal Procedure Code adopted in 2005, in a form of a "reconciliation" process. It is used as a diversion mechanism for mostly minor offences. Judges and prosecutors are those who make an offer of participation in the process to the parties, and the law even allows them to mediate directly. Lawyers also can act as mediators (non-lawyers cannot). However, none of these actors are required to obtain any training before they start acting as mediators. The study, thus, focused on evaluating whether a system set up in such an ad-hoc fashion can deliver any restorative justice outcomes. With that in mind, in-depth interviews with prosecutors, judges and mediators (lawyers) were conducted, as well as with victims and offenders who participated in the process. Judges and prosecutors interviewed were asked to explain how they went about making an offer of mediation and how they felt about the process in general. Interviews with mediators were used to learn more about how they conduct the process, given their limited knowledge and training. Victims and offenders were interviewed about how they felt throughout the process, what they felt it did for them, and how satisfied they were with the experience. Further, they were asked about their understanding of the process and their reasons for accepting the mediation offer.

Workshop Six Chair: Jose Manuel Finez

6.1 La mediación en la hoja de ruta de la modernización de la Justicia en España Presented by: Margarita Uria and Celima Callego (Spain)

Workshop Seven
Chair: Ansel Guillamat

7.1 Mediación penal juvenile en la Comunidad Autónoma del País Vasco
Presented by: Patxi López Cabello and Serafín Martín (Spain)

Workshop Session Two

Workshop One – Practices and Methods

1.1 Doing RJ in Spain and Norway: an adult case

Team coordinators: Lourdes Fernandez Manzano (Spain), Tale Storvik and Espen Andreas Eldoy (Norway)

Lourdes Fernandez Manzano is a Certified Mediator by the University of Houston Law Center. Blakely Advocacy Institute. A.A. White Dispute Resolution Center (Texas, USA). She is certified in Family Mediation by the UPV-EHU (Spain). Lourdes is an attorney at law and mediator in the Criminal Mediation Service of the Government of the Basque Country in Donostia.

Tale Storvik is an adviser at the National Mediation Service, Oslo and Akershus County, a mediator since 1999, a national instructor in training of mediators, and also a facilitator and trainer in conferencing. Her main responsibility is administrating proceedings in the cases received from police or public, guiding mediators and working towards making mediation possible and accessible in prisons.

Espen Andreas Eldoy is an adviser at the National Mediation Service in Norway, Oslo and Akershus County. He has been a mediator since early 2009, as well as a facilitator in the conferencing model. Espen has a Master's degree in law from the University of Bergen, with a specialization in alternative dispute resolution completed at Bond University, Australia. His main responsibility is to administrate the proceedings in the criminal- and the civilian cases, received by the mediation service.

Workshop notes

This workshop focused on the pre-meeting stage of mediation. By mean of a role play – the same case was performed by the Spanish and the Norwegian teams – the presenters showed the differences between the pre-meetings with the alleged offender in both their systems. Both the Spanish as the Norwegian team handed out an overview with the main points of their system, in particular concerning the pre-meeting phase. Also the 'scenario' of the case was handed out.

After the role play of the two teams the audience was split up for a short time: one group discussed with the Spanish team, the other with the Norwegian team. Afterwards, a plenary discussion took place.

A first topic addressed in the discussion was the admittance of guilt. In Spain, this is not a preliminary condition, while the alleged offender must accept the facts/the description of the facts in Norway.

The second difference between Spain and Norway addressed in the discussion is the question of the first contact. In Norway, the first contact takes place by a letter sent by the police of the mediation service. In Spain, the first contact is done by phone, due to the distances.

Another topic was the training of the mediators. This training is very different in Spain and Norway since mediators are volunteers in Norway and professionals in Spain. The professional mediators in

Spain are engaged by the Ministry of Justice, but the competence to decide on the content of the training belongs to the autonomous communities. The work with volunteers in Norway is inspired by the idea that mediators should be located within the community where they mediate. They are on a list for 4 years and they receive a training of 2 days, 8 weeks of observing and 2 days again. If they want to do conferencing they must follow an extra training. Because of an increase of demands for mediation, a discussion is going on to consider the engagement of professional mediators. Every volunteer does a minimum of cases each month. Every county has approximately 1500 à 1600 cases a year.

The time between the incident and the first meeting was next addressed. In Spain, this can vary a lot depending on the criminal process. Sometimes it can even take to 2 years. In Norway, the referrals by the police vary a lot, from weeks up to 6 months. There is however an agreement with the police for a quicker referral in cases with minors.

The next topic, networking with the referring authorities, is important for both practices. They are both confronted with reticence of these authorities regarding the mediation practice. In case of the judges this seems to be caused mainly by the fear that it will lengthen the process.

A final topic that came up in the discussion was on the follow-up and the numbers on non-executed agreements. In Norway, the mediation service is responsible for the follow-up until the fulfilling of the agreement. In 90 % of the cases, the mediation will lead to an agreement and 59 % of these agreements are fulfilled. In case of non-fulfilment of the agreement, the case will be brought before the court. In Spain, a fulfilled agreement will lead to a dismissal of the case. However, due to a lack of resources, staff and time they are not able to do a proper follow-up of the execution of the agreements.

Workshop Two – Conferencing Chair: Inge Vanfraechem

2.1 The Flemish practice in conferencing

Presented by: Bie Vanseveren and Koen Nys (Belgium)

Bie Vanseveren (Bemiddelingsburo Brussels) and Koen NYS (Bemiddelingsdienst Arrondissement Leuven), work both for Alba vzw.



Prof. Lode Walgrave

- A visit in New-Zealand
- Learning the New-Zealand method: Conferencing for serious juvenile delinguency



Experiment executed by Inge Vanfraechem

- Implementation of the New-Zealand model
- Implementation at the level of the juvenile court
- Serious crimes
- No script
- Youth protection system



<u>Five mediation</u> <u>services in Flanders</u>

- Learning the model by Allan Mc Rae
- Every month reunion: discussions of the practice



<u>Specifity</u>: 'restorative justice in group'

Dynamic of the group: people, who aren't directly involved in the crime, think about reconciliation to the victim, the society and the future.







HERGO definition

HERGO is a conference focusing on constructive solutions for the consequences of a crime, committed by a youngster. The victim, the offender and their supporters gather and look for reconciliation to the victim and the society and how to prevent recidivism.

HERGO preconditions

- major crime
 - Act of serious violence
 - Act against property with aggravating circumstances
- youngster does not deny
- victim suffered damage



HERGO initiative

Offer: by the judge of the juvenile court to victim and offender (and parents)

Initiative:

- judge
- public prosecutor
- social service
- lawyer
- (offender, victim)

HERGO proceeding

- Preparation
- Conference
- Plan / Intentions
- Execution of the plan



HERGO proceeding (1) Preparation

- Visits to victim and offender (+ parents)
 - · Explain HERGO
 - · Listen to their story
 - · Check willingness to participate
 - · Search for support people
- Contact & inform other participants: police officer, lawyers, social worker(s), supports
- Look for place and time for gathering



HERGO proceeding (2) Conference

- Introduction: welcome/confidential/purpose/who is who
- reading + admission (non-denial) of the
- Story telling: victim/offender/others
- Expectations of the victim
- Private time: preparing the plan
- Proposition of the plan
- Discussion and draft of the plan



HERGO proceeding (3) Plan of intentions

- intentions: excuses and fin. compensation
 - working for victim or oneself

 - volontary workschool/leisure/home
 - therapy / learning project
- Approval and signing
- Court session: ratification / judgement



HERGO proceedings (4)

Execution of plan

- Execution and follow-up (± 6 months)
- Final report
- (evaluation in court)



Conference participants (8 to 20)

- Victim (+ parents) + support persons (+ lawyer)
- Offender + parents + support persons + lawyer + social worker
- Police officer
- Facilitator + co-facilitator

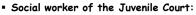


Role of professional participants (1)

- Police officer:
 - representing society
 - reading out the criminal facts
 - guard of reparation towards society
- Lawyer:
 - support of youngster
- guard reasonability of the plan
- follow-up



Role of professional participants (2)



- support of the youngster
- follow-up
- Facilitators:
 - leading the conference
 - support of participants
 - follow-up
 - (- co-facilitator may represent the victim)

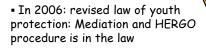


Succes vs. fall-out

- No adequate HERGO registration in Belgium
- Louvain 2009:
 - 15 files, 22 victims, 26 youngsters, 14 files started with 25 youngsters <u>Age</u>: victims: 11-86, Offenders: 13-17

 - 11 HERGO's, 8 files, 12 victims, 15 youngsters: 15 plans
 - fall-out: victims: 5 files; offender: 1 file
 - 'succes: 60 %': Acts of violence (8 files): 50%, acts against property (6 files) 80%





- Offer of HERGO throughout Belgium: Flanders and Wallonië
- Formation of the facilitators by OSBJ and by first facilitators



Problems with the implementation:

- Questions about the HERGO procedure
- The referrals
- Questions about the role of some actors: the police, the laywers





<u>HERGO</u>	<u>2007</u>	2008	2009	
Bemiddelingsburo	14	13	18	
BAL	5	9	25	A
HSB-OVL	5	8	8	`₹
BIC	0	3	1	
Elegast	5	6	11	
ADAM	7	22	24)
Cohesie	5	5	7	\
BAAB	0	4	1	1
BAAL	2	2	7	
Caft Caft	0	3	8	(
Divam	0	0	2)
Total	43	75	112	





2.2 How can RJ prevent crime and repair harm with serious and persistent young offenders? **Presented by:** Tim Chapman (UK)

Tim Chapman is a lecturer on the Masters in Restorative Practices at the University of Ulster. He has been involved in the practice and training of restorative justice and mediation for the past ten years. Prior to that, he worked in the Probation Service in Northern Ireland for 25 years. He has published widely in the fields of the supervision of offenders and youth justice including Time to Grow (2000 Russell House). With Hugh Campbell he wrote the Practice Manual for restorative youth conferences for the Youth Justice Agency in Northern Ireland. He has also developed restorative approaches within schools and children's homes.

The workshop will outline a pilot in Northern Ireland by the Youth Conferences Service, Youth Justice Agency, which is an effective restorative justice model for persistent youth offenders. Northern Ireland has delivered over 8000 restorative Youth Conferences for young people who have committed medium and serious offences. Most of our work comes from referrals from the Youth Court. Our victim attendance rate continues to be around 66-70% and our reoffending rate compares favourably to other disposals from the court. We are mindful those more challenging young offenders who continue to offend require enhanced interventions to prevent offending.

The N.I. Youth Conference Service, Youth Justice Agency, commenced a pilot in 2009, to expand the youth conference model to develop a Circles of Support and Accountability model, which blends intensive supervision with the Youth Conference and maintains a restorative ethos.

The process of transition will be described on moving from a court referred youth conference to statutory supervision with a youth conference plan agreed by the victims and the young offender. It will describe an intensive model of Circle of Support and Accountability for the delivery of the supervision through restorative principles.

The presentation will describe the outcomes for the project and the learning for success. Specifically, it will address success to reduce harm to potential victims, reintegrate young people into resources in their community through restorative reparation and rehabilitation to desist from offending. The

COSA model is described as a balance of meeting the needs of victims, community safety and the needs of young people to prevent crime.

2.3 Doing RJ – The practice of the Nenagh Community Reparation Project

Presented by: Carolle Gleeson and Alice Brislane (Ireland)

Carolle Gleeson is a Probation Officer and also Co-ordinator of the Nenagh Community Reparation Project. She has worked in Probation both in the U.K. and Ireland and has been involved with The Restorative Justice Project since August 2003. Her responsibilities include the training of Project volunteers and reporting to the various Oireachtas Committees, the latest being the Joint Commission on Restorative Justice.

Alice Brislane is the Cathaoirleach of the Nenagh Community Reparation Project and has been involved as a volunteer in the Nenagh Community Reparation Project since its commencement in 1999. She is a Housing Officer for the North Tipperary County Council and is also active in her own community as Chairperson of the local school Board of Management.

DOING RESTORATIVE JUSTICE. (IRELAND)

The practice of the Nenagh Community Reparation project

THE PROCESS

- ferral through the Criminal Justice System.(Initiated by Judge/Gardai/Defendants

- sent by Defendant. is an identification this person is first contacted by the Co-ordinator and and the panel meeting and /or use the Co-ordinator as a conduit, to tell their press their needs regarding the Contract of Reparation. contacted and invited to phone/meet with co-ordinator prior to Panel meeting estanding of process and explain role of vicini in panel meeting, invited to attend panel meeting comprising, a member of An Garda oloce)
- eting takes place where a contract of Reparation is agreed comprising two 1. Issues leading to offending behaviour must be addressed. 2. Reparation and to Victim/community.
- The Contract is presented to Court for approval and an adjournment sought for

RISK ASSESSMENT

- · Using Probation LSI-R Risk assessment instrument.
- Statistics January 2009 May 2010. 31 participants.
- Low risk of re-offending 13%
- Medium risk of re-offending 19 61%
- · High risk of re-Offending 8 . 26%

OFFENCES

- · 31 Participants, 52 offences.
- MDA drugs including, cocaine, amphetamines, cannabis, 16 offences

Theft

3 2

- Burglary
- 2
- Possession weapon Assault
- 6
- · Theft of vehicle • Public Order, Sec 4,6,8.
- 1 22

RE-OFFENDING RATE

- From June 1999 to January 2009, a total of 136 offenders were referred to the Reparation Project.
- 115 of these completed their contract.
- · 30 re-offended after completion of contract. 26% of total.
- 74% success rate.

STRUCTURE OF PROJECT

- We deal only with adults, male and female offenders over the age of 18 years referred through Criminal Justice System.
- Community based group comprising representatives from Police, Justice system, Voluntary/Statutory agencies, and unpaid volunteers from wide section of the
- · All participants undergo a risk assessment.
- Two independent evaluations to date.
- Funding currently 40,000 euro per annum, this includes employment of a part time administrator, rent, all running

MAIN BENIFITS

- Partnership of (Gardai) Police, community, Judiciary and other agencies working for a common aim. To reform, repair and re-integrate. Healing, rather than retribution is sought.
- Opportunity to address the underlying factors leading to the serious problems of crime, disorder and drug use within the community.
- . Enabling community to take responsibility for its own.
- Early intervention in problems of addiction and lack of control.
- Re-integration of offender back into the community.
- Possibility of using this model as a way of dealing with some types of criminal behaviour in a developing multicultural society and within indigenous minority groups.

PRACTICE IN A SPECIFIC **CULTURAL CONTEXT**

Volunteers; we try to ensure that our Volunteer group is well representative of the community. Nenagh is a town of some 90,000 plus inhabitants. It has a sizable traveller (Gypsy) group, many of whom have lived in the area for generations and in the earlier stages of the Project were represented on the Panel of volunteers.

whom have lived in the area for generations and in the eather stages or be in types, were represented on the Panel of Outstreets.

The Judiciary. We have been pro-active in briefing a sometimes, sceptical judiciary both at District and the provided of the provided provided in the provided provided by the commission on Restorative Judiciary.

The Gardis, (Police) Student Gardia, are often invited to observe a Panel meeting in action. This is with the full agreement of both the offender and volunteers. We also provide a resource facility for commissions and the provided present of the provided provide

objective approach to the participant.

and is not immune to the attitudes to alcohol and drugs along with a youth culture which is alien to its more traditional and conservative approach to problems. In this respect, we are all on a learning curve and more creative ways of making repeatation to the community have been used to encourage integration and a greater understanding of the harm done to community-further. This encourage integration and a greater understanding of the harm done to community-further. This recommendation is to the community-further than the community-further than the community and has hard some considerable success.

ISSUES FOR DISCUSSION

· Mindful of the current debate in our own Judicial area regarding the appropriate disposal of offences committed by those referred to the Reparation Project. We have usually recommended that the criminal matters be struck out, following completion of their contract, thereby allowing a fresh start for the offender, without the handicap of a criminal conviction. We have always viewed this as the 'carrot' as opposed to the 'stick' approach. .DISCUSS.

Workshop Three – RJ models in Belgium Chair: Eirik Lereim

3.1 Working with volunteers in a VOM – service: presentation of a local Belgian training programme

Presented by: Eric Claes and Kris Mullen (Belgium)

Kris Mullens is a bachelor in social work and a master in criminology. For more than 10 years he has experience as a full-time professional mediator. He is the coordinator of the volunteers- project at the Leuven mediation service, BAL (Bemiddelingsdienst Arrondissement Leuven). He also gives training sessions (methodology of mediation) in a post-graduate programme of the KHLeuven.

Erik Claes obtained a PhD in Law and a Masters in Philosophy. He lectures philosophy, professional ethics and social policy at the HUB (Hogeschool Universiteit Brussel). He is co-editor with Tony Peters and René Foqué of book on Punishment, Restorative Justice and the Morality of Law, Intersentia, 2005, 201. He is coordinator of a research project, financed by the HUB, on volunteers and victim-offender mediation. The Project will start off in September 2010.

Since 2005 the Leuven mediation service (Belgium) worked out a training and coaching project/ programme for volunteers. The underlying idea is to engage volunteering citizens in the mediation process in the capacity of experienced and skilled mediators. The project is unique in the Belgian context which is characterized by a strong professionalization of restorative justice practices involving both juvenile and adult offenders.

In this workshop the experiences of this local programme will be taken as a starting point to reflect on and discuss some burning issues related to working with volunteers in a victim-offender mediation service. A professional mediator, two volunteers and a researcher of the Belgian training programme will count their stories against the background of a set of general questions that surpass their local experience.

- 1. What are the grounding values and purposes steering such volunteering programmes? To what extent do such programmes contribute to realising restorative justice values?
- 2. What does the facilitating presence of volunteers mean to the parties in conflict, to the volunteers themselves as well as to the professional mediators? How to understand these experiences of meaningfulness and relate it to the ambitions of the restorative justice movement?
- 3. How to organise the distribution of roles between volunteering and professional mediators in a way that guarantees high standard mediation practices?
- 4. Is there a limit upon engaging volunteering mediators in restorative justice practices? (e.g. not in murder cases of sex crimes)?
- 5. What other roles (than that of a mediator) could be designed for volunteering citizens in order to promote the ideas and values of restorative justice?
- 6. What are the strengths, weaknesses, opportunities and threats of the existing volunteering programmes?

The general aim of the workshop is to facilitate exchange of ideas, information and practices between existing volunteering programmes throughout Europe in order to further promote a well-considered implementation of volunteerism in restorative justice practices.

3.2 VOM for juvenile and adult offenders in Flanders: the same thing?

Presented by: Lieve Bradt and Bart Sanders (Belgium)

Lieve Bradt is postdoctoral researcher at the department of Social Welfare Studies at Ghent University (Belgium). Her doctoral research concerned a comparison between victim-offender mediation for young and adult offenders in Flanders from a social work perspective.

Bart Sanders is a mediator in the service for juvenile offenders in Bruges for about ten years (Belgium).

1. INTRODUCTION

As Lemonne argues looking at and comparing the own restorative practices with other countries enables us to reflect and to develop a critical view on our local practice and to question our approaches. In this workshop, however, we start from the idea that it is not only interesting to look and compare across borders but to look within one country to different mediation practices. In this workshop we will report on a comparison between the juvenile and adult mediation practice in Flanders (the Dutch-speaking part of Belgium). This comparison will be based on my PhD research that I finished last year on the one hand and reflections from practice on the other hand.

My PhD research was inspired by the observation that even though nowhere in the restorative justice literature it is argued that there should be a distinction between restorative justice practices for juvenile and adult offenders, there seems to be a distinction made between juvenile and adult mediation in practice, both nationally and internationally. Internationally (e.g. the UK), we can remark that restorative justice has typically been introduced as a measure for juvenile offenders, often not breaking through subsequently to use with adult offenders. In Flanders, we can remark that mediation practices for juvenile and adult offenders have been developed quite separately from each other and remain so. Also Miers has observed – based on a review of international mediation practices – that there is a very marked difference in restorative practices' extent and development for juvenile and adult offenders. Nevertheless, restorative justice theory and research takes no account of this distinction between juvenile and adult offenders. I was surprised at this gap given that in most Western countries juvenile offenders are approached differently from adult offenders, either by means of a juvenile justice system or by a youth protection system. Therefore, it seemed interesting to explore the juvenile and adult mediation practice.

2. CONCEPTUAL COMPARISON

My comparison of juvenile and adult mediation in Flanders comprised of two levels: a conceptual and an empirical comparison. The conceptual comparison was guided by the following question: 'Is the concept of victim-offender mediation being understood in the same way with regard to juvenile and adult offenders?' To be able to answer this question, I needed to look at the history of both practices.

2.1 Differences in history

2.1.1 Juvenile mediation

On the basis of a historical analysis of the introduction of the mediation practice for juvenile and adult offenders in Flanders I researched on which grounds victim-offender mediation has been introduced. This historical analysis of the juvenile and adult mediation practice shows that concepts central to restorative justice, such as 'responsibility' and 'restoration' are interpreted differently in both practices.

Let's first have a look at juvenile mediation. The juvenile mediation project is developed in Flanders at the end of the 1980s by the NGO Oikoten. Based on their experiences with working with so called 'end of the line' juveniles (cf. their walking trips to Santiago the Compostella with serious juvenile offenders), this organisation was assigned the task by the then Minister of Family and Welfare to develop a somewhat similar project for first offenders to prevent them from going the same path. Initially starting from the idea of community service, this NGO developed a project that we nowadays refer to as victim-offender mediation.

This project was not inspired by the theory of restorative justice, but was inspired by emancipatory pedagogy in which it is recognised that young people have competence to act instead of deciding for them what is in their best interest. An important observation is thus that initially juvenile mediation started from a critical pedagogical approach (as it recognised young people's competence to act, which was a reaction to the underlying assumption of the youth protection model that denied young people's competence to act), while at the same time the focus on first offenders made it compatible with the dominant logic of prevention within the youth protection system. Throughout the 1990s this mediation project is further developed within a societal context in which young people are no longer considered to be victims of society, but as risks to society. Moreover, the youth protection model is increasingly criticised and there is a growing demand to reform the youth protection model into a youth sanction model. In our opinion this debate has caused a shift in the meaning of the concept of 'responsabilisation' within the juvenile mediation practice. Whereas in the initial mediation project responsabilisation referred to repairing young people's competence to act, responsabilisation is increasingly interpreted as holding juvenile offenders accountable for the damage they have caused. In doing so, juvenile mediation is increasingly reduced to a method to increase juvenile offenders' sense of responsibility and to encourage juvenile offenders to behave as is socially accepted. Or put differently, through juvenile mediation a societal problem – i.e. youth delinquency – is increasingly translated into an individual problem of a lack of responsibility of the young offenders (and increasingly of their parents).

2.1.2 Adult mediation

With regard to adult mediation we can remark that this mediation project was developed in 1993 by researchers from the Catholic University of Leuven and was clearly inspired by the theoretical framework of restorative justice. Two characteristics seem to distinguish the adult mediation project from the juvenile mediation project. First, the adult mediation project is clearly inspired by victimological research. Whereas the juvenile mediation project is characterised by an offender-oriented approach, the adult mediation project pays much attention to the communication process between victim and offender. This communication process must enable victims and offenders to

explain, interpret and question what has happened and to express feelings, emotions and expectations concerning the consequences of the crime. Or as Foqué put it: it is a 'search for the possibility – literally and figuratively – to put thinks in place once again. It is about repositioning in relation to ones self and to others. In other words it is about restoring people's ownership of the conflict (as Christie has written in his famous article). This assumption was in line with the criticism of the alienating character of the criminal justice system. Second, the adult mediation project chose to mediate only in serious crimes, i.e. crimes for which the prosecutor had already decided to proceed. This implies that attention is not only paid to the communication process between victim and offender but also between the parties and the judge, and by extension between all rationalities involved in the criminal justice system. By doing so, they wanted to prevent mediation being limited to what Umbreit has called 'a window dressing effect'.

In the new law of 2005 the criterion of seriousness of the crime is abandoned, as article 2 of this law states that all persons with a direct interest can make an appeal to mediation.

2.2 Differences in "mediation laws"

It's obvious that these differences in history of both practices lead to differences in the legal context of both practices. We explain the main differences between both laws.

2.2.1. The mediation law of 2005 for adults

VOM for adults has its own mediation law (the law of 2005): mediation is possible in each phase of the penal procedure (on the level of the police, on the level of the prosecutor, on the level of the judge and even after sentencing (the execution phase). So, mediation is an offer/a proposal in general.

More important: each person who has a direct interest in a judicial procedure can ask for mediation.

The goal of mediation is to start or to facilitate the communication between the parties who are in conflict and to help them to come to an agreement about the conditions which can lead to restoration and pacification.

2.2.2. The repaired law of 2006 for juveniles

VOM for juveniles is placed in the law of youth protection of 1965. This law is repaired in 2006: the main philosophy remains the same (youth protection), new is the restorative offer (mediation and conferencing at the level of the youth judge).

The prosecutor can propose mediation in all judicial files in which there is a victim and damage. The result of the mediation process has an influence on the decision of the prosecutor. When there is an agreement in mediation, there is much chance that the prosecutor dismisses the case.

On the other hand, the prosecutor has to propose mediation when he claims the judge for juveniles at the same time. When he does not propose mediation, he has to motivate his decision. So, in the repaired law, mediation is the first reaction on juvenile crime by the prosecutor. Afterwards, the judge can take several measures: social skill training, community service, youth detention centre, etc.

Important is the way the legislator looks at mediation. The circular letters of the repaired law says: in mediation the juvenile offender takes responsibility and repairs the damage towards the victim.

Conclusion: the legal context of VOM for adults is a more neutral context than VOM for juveniles: there is a law on itself, the definition of mediation is more neutral (to start and facilitate communication) and the offer of mediation is in general (for everyone who has a direct interest).

The legal context of VOM for juveniles is less neutral: the goal of VOM is more oriented to the offender (learning by taking responsibility) and VOM can be used in function of the penal system instead of in function of the parties (it is the prosecutor who proposes VOM).

2.3. Differences in organisation

The differences in the history and the differences in the legal context lead also to differences at the organisational level of both practices.

2.3.1 Central employer (adult mediation)

The mediators for adults have one central employer (Suggnomè) and one policy. In each judicial district there's a mediation office. These offices exist on themselves and are mostly settled in a more neutral environment. Moreover, in each judicial district, there's a steering group about mediation. These steering groups are responsible to create a local policy about mediation.

2.3.2 Services for juvenile offenders (juvenile mediation)

The mediators for juveniles are working in services which organise four working forms on youth crime: learning projects, community service, victim-offender mediation and conferencing. The number of employees in the services is based on how many juvenile offenders are referred to the services. The number of victims is not calculated.

Each service has to organise the four working forms and is free to make its own policy: in most services you have separated teams (a mediation team and a measure team). In other services mediators also organise learning projects or community services.

VOM for juveniles is placed in an offender oriented environment.

3. EMPIRICAL COMPARISON

These differences in conceptualisation and organisation of juvenile and adult mediation raise the question whether or not these differences result in different practices for juvenile and adult offenders. This question was central to my empirical comparison which comprised of two parts: (i) a quantitative analysis of mediation processes for juvenile and adult offenders and (ii) focus groups juvenile adult mediators working in and mediation With regard to the file analysis I chose to analyse all mediation processes of juvenile and adult mediation which were closed between 1 January 2007 and 31 March 2007 in 11 out of the 14 Flemish judicial districts (three districts needed to be excluded from my research as adult mediation was not offered yet at that time). The samples for the analysis were 703 mediation processes for juvenile offenders and 669 mediation processes for adult offenders. The data were analysed and

compared as regards to (i) the number of mediations and participants, (ii) the characteristics of the mediations and (iii) the course of the mediations.

With regard to the focus groups I organised two focus groups: one with 10 mediators working in juvenile mediation and one with 6 mediators working in adult mediation. The aim of the focus groups was to discuss my conceptual and empirical findings with the mediators. At the same time the focus groups allowed me also to gain more insight into how mediators themselves understand and construct their practices.

The analysis revealed that the conceptual differences seem to be reflected in the practice of victimoffender mediation both with regard to what is referred to mediation and to how mediation processes work out.

The file analysis revealed that there are differences between juvenile and adult mediation both with regard to the kind of offences that are referred to or reach the juvenile and adult mediation services and to the settlement of these mediation processes. Concerning the settlement of mediation processes the analysis shows that within juvenile mediation more potential mediation processes result in real mediation processes than in the context of adult mediation (46.9% versus 25.1%). Potential mediation process refers to each victim-offender relation in which mediation is offered. If we have one offence involving 1 offender and 3 victims, of whom 2 victims are willing to mediate, then we have 3 potential mediation processes and 2 real mediation processes. Moreover, with regard to juvenile mediation 91.2% of the real mediations were completed of which 85% resulted in a written agreement between the victims and offenders. In adult mediation these figures are much lower, respectively 51.2% and 67.4% and more parties dropped out during the process.

Within the focus groups with the mediators for juvenile and adult mediation gave some possible explanations for these differences: the kind of offence (the kind of offences dealt with by the juvenile mediation services seems to result more easily into agreements), the involvement of the parents in juvenile mediation (whom often 'help' the mediation process to succeed, either by supporting or forcing their child), the involvement of the insurance company, and the fact that victims – especially adult victims – are more willing to mediate with juvenile offenders than with adult offenders. According to the mediators, this can be even extreme in the sense that victims who are confronted with two offenders in mediation, one juvenile offender of 17 years and 8 months old and one of 18 years, 3 months old, indicate that they want to mediate with the 'juvenile' offender but not with the adult offender. In the restorative justice literature it is sometimes criticised that victims are used as pedagogical instruments for the offenders. This example shows, however, that victims themselves can exactly take up that role. Notwithstanding these explanations, the differences in figures mentioned raise the question whether or not victims and offenders are more 'expected' or 'pushed/convinced' to mediate and to reach an agreement within the context of juvenile mediation than within adult mediation.

As regards the type of offences, the analysis at the level of mediation files showed that with regard to juvenile mediation most of the files were property offences (52.9%), whereas in adult mediation almost half of the files (46.8%) were personal offences. When looking at the victims the analysis showed that more corporate victims were involved in juvenile cases than in adult cases. Again these percentages raise the question whether or not a different kind of offences is referred to or

considered 'appropriate' for both practices. The data do not allow us to answer this question as both groups cannot be compared to each other, as the data on mediation are not linked to the total inflow of cases in the youth protection and criminal justice system. Throughout the focus groups the mediators for juvenile mediation expressed an orientation of mediation towards working at the consequences of the crime and towards finding ways for offenders to take responsibility for these consequences more than the mediators for adult offenders. Trying to reach an agreement between the victim and the offender seems to be part of this orientation.

4. CONCLUSION

So, are we talking about the same thing when we speak about VOM for juveniles and adults? The differences between the mediation practices show that mediation can result in different practices for different groups, even within one country. When looking at the literature, restorative justice is often represented as 'a challenge to accepted norms' with regard to our responses to crime. Our comparison shows, however, that even though both juvenile and adult mediation in Flanders started as critical practices, challenging the then existing approaches to crime, it seems that the debate on mediation remains categorical and sectoral. Our findings therefore raise the question whether victim-offender mediation challenges or reinforces the dominant approaches to crime. The way the offence is 'given back' to the victims and offenders in juvenile mediation seems to continue to start from the assumption that juvenile offenders need to be taught how to take responsibility.

The question is if these differences are problematic or not and if juvenile and adult mediation should be the same. According to us, they should – despite some methodical differences. In our view, these differences reveal thus that we have to continue to be critical about the place of mediation in the penal system and the youth protection system. We have to seek for the same mediation goal for juvenile and adult mediation: mainly to start and facilitate communication.

Workshop notes

The next questions were addressed in the discussion following the presentation:

- Are there differences between the groups as presented by Bart?
 - The offences committed by juvenile offenders are mostly less severe, so it is often easier to reach an agreement between victim and offender. Juveniles are mostly accused of theft. Adult mediation cases usually concern more serious crimes.
 - Parents play an important role in juvenile mediation, so juveniles are more motivated –
 or sometimes more coerced by their parents to participate in mediation processes
 - Insurance companies play an important role in juvenile mediation
 - Victims are more willing to mediate with juveniles

Differences between the ways mediation takes place do not necessarily mean that the quality of mediation is of a lower standard. It is important to have one goal, start the process in the same way but focus on the needs of the victims: it is all about facilitating communication.

We have to stay critical towards the penal system and the youth protection system.

- Is the mediation process with juveniles mostly victim or offender oriented?
 - Juvenile mediation is more offender-oriented, due to the 2006 law.
 - There may be differences but the mediator should always stay neutral.
- Is there a difference between the descriptive and normative part of the study of Lieve?
 - I did not have a normative point of view, in the sense that it was not my intention to conclude: this mediation process is better than the other. I wanted to reveal the differences and to raise the question: do we want those differences?
- Do the mediators get a different training programme?
 - Adult mediation is organized by one national organization, which also offers training for their mediators. Juvenile mediation is organized by several social services for juvenile offenders, so the training is somehow divers. The focus of the training is always the same: introducing the method and principles to the mediators.
 - There is a difference in the way mediation is offered, due to the differences between the Acts. The process however is the same.

Workshop Four – Reports from EFRJ projects Chair: Bas Van Stokkem

4.1 RJ and crime prevention: a theoretical, empirical and policy perspective

Presented by: Anniek Gielen (Belgium), Isabella Mastropasqua and Vanja Stenius (Italy)7

Anniek Gielen is a project officer at the European Forum for Restorative Justice and the Leuven Institute of Criminology. She has been working on the project "Restorative Justice and Crime Prevention", the results of which will be presented in the workshop. She obtained a bachelor in Orthopedagogy (specialized educator (2006)), an Euregional Certificate Social Work (2006) and a master in Criminology (2008).

Isabella Mastropasqua is the Senior Executive at the Study and Research Board of the Department for Juvenile Justice and Director of the European Studies Centre of Nisida. She is a member of the National Council of Social Workers and chair of the Study, Research and Innovation Committee. She has worked extensively in the field of juvenile justice and taught at the Social Service University of Messina and Palermo and the Law Faculty of the University of Genoa. She currently teaches at the University of Rome "Romatre".

Vanja Stenius is a Senior Researcher at the Psychoanalytic Institute for Social Research in Rome. Her research experience has focused on areas including: juvenile justice, immigration, the use of imprisonment, mental health and substance abuse issues in the criminal justice system, and women

and violence. She has an MA and PhD in criminal justice from the Rutgers University School of Criminal Justice and a BA in psychology and economics from Stanford University.

Workshop notes

The presenters of this workshop presented the results of the project "Restorative justice and crime prevention" that just finished. The project ran within the European Forum for Restorative Justice. The following is a reflection of the discussion following the presentation.

First there was some discussion about restorative justice in cases of serious crimes. The presenters pointed out that some studies show that better with serious crimes, while other studies prove exactly the opposite. This is one example showing the complexity of the issue 'restorative justice and crime prevention' and showing that it is almost impossible to make general statements on the issue. From the Portuguese experience it was added that there was heavy discussion in Portugal when the law on mediation was created, in that the most serious crimes were excluded from mediation. The rationale behind this was that Portuguese people do not want to meet their offender, especially not if the crime was violent. This was confirmed by a Belgian mediator who indeed said that 80 percent of the mediation cases in Flanders are cases of indirect mediation. Another member of the public added that mediation in serious cases can go well as long as the participants are well prepared. Someone added that in Japan, reoffending rates after restorative justice in general are around 37 %, whereas in serious cases the rate is only 22 %.

Second, there was a question on factors that could explain the link between restorative justice and crime prevention. More specifically, there was a discussion on whether the good result of a mediation process on criminal behaviour was triggered by the mediation process itself or by other turning points. This is again an incredibly complex question. For example, a member of the public added that there is a selection bias simply because of the fact that offenders who participate in mediation may already have decided to quit crime. Another member of the public qualified this statement, saying that it could also be that some offenders may want to stop but don't do so for some reason. Maybe in these cases, one intervention (e.g. a restorative intervention) might indeed trigger the good effect.

Third, someone expressed concern about community involvement in restorative justice, thinking it might be negative to involve community members. The presenters responded that there is not much empirical evidence on this topic, except a report by Shermand and Strang who reported that volunteer involvement in restorative justice may have negative consequences when the volunteer is prejudiced. The selection of volunteers, then, must be done very carefully.

Finally, someone asked the question whether decentralised restorative programmes (no state involvement) are more successful than centralised (state-run) restorative programmes. The presenters responded that they cannot answer this question; in fact it is one of the crucial questions facing restorative justice. It is a fact that in most countries, a mix of these systems is present.

4.2 Building Social Support for RJ: where to go from here? Presented by: Brunilda Pali (Belgium)

Brunilda Pali is a PhD researcher in the Leuven Institute of Criminology, K.U.Leuven, working on ethics and restorative justice. She worked recently in the European Forum for Restorative Justice on building social support for restorative justice, by investigating ways to work with the media, civil society and citizens in the area of restorative justice. Brunilda has studied Psychology in the University of Bosphorus in Istanbul, Gender Studies in the Central European University in Budapest and Cultural Studies in Bilgi University in Istanbul. Her main research interests are feminism, restorative justice, psychoanalysis, social justice, and critical theory.



The rationale behind the project



- Lack of public awareness about, and lack of active participation in RJ is an issue which puzzles many RJ practitioners, activists and scholars.
- Starting from these concerns, the EFRJ and several other partners involved in the field, elaborated several ideas on how to think about this issue in a constructive way and identified three fields of cooperation which would improve public awareness and participation in relation
- To concretise the ideas, the EFRJ implemented a twoyears project co-financed by the European Commission called "Building social support for restorative justice".

The inquiry of the project



- The project has tried to answer three main questions:
- 1) how can **cooperation with the media** be set up to inform and educate the public about restorative justice?;
- 2) how can cooperation be developed with civil society organisations to create broad support for restorative justice?;
- 3) how can we increase the **involvement of citizens** in local restorative justice programmes?

The methodology of the project



 Throughout the project, the three questions were analysed against a theoretical background, good practices and promising examples were identified through meetings with experts, an international seminar, and several study visits in European countries and in the end three documents (a scientific report, a toolkit, and a manual) were prepared. These documents can be found at the EFRJ website: www.euforumrj.org

Outputs of the project



- Scientific Report
- Media Toolkit
- Manual of Cooperation with Civil Society and Citizens in RJ

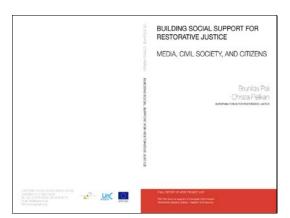


Although the style and content of the toolkit, the manual and the scientific report are different, the documents are continuously cross linked to each other, therefore the three documents must be viewed as parts of a whole.

Nevertheless, each is a self-standing part.

The practical manual and the toolkit are rich with examples and strategies collected in Europe and beyond, and offer many practical recommendations on how to move forward in this area.

The report, on the other hand, is mainly theoretical (but not only), and its main objective is to open up further spaces for debate and thinking along these lines, and to engage more systematically with the questions of public information about, education on and participation in restorative justice.



Report



- Introduction
- 1 Support for restorative justice: theoretical explorations
- 2 Support for restorative justice: empirical findings
- 3 Restorative justice, the public and the political
- 4 Media and restorative justice: approaches of communication
 5 Civil society and restorative justice: channels of cooperation
- 6 Citizens and restorative justice: levels of participation
- Conclusion

1. Theoretical explorations



- Before tackling the three main questions more concretely, we thought it necessary to ground our answers in theoretical and empirical findings. Therefore, in part one we outlined several sociological background theories of relevance for developing social support.
- While doing this, we have asked which features of current societies and which societal developments are of relevance for building social support for restorative justice.
- These societal structures and developments were investigated taking into perspective, what we have identified as the core elements of restorative justice: the reparative element, the participatory or democratic element, and the 'life-world' element.

2. Empirical findings



- After explicating several pieces of theory on the core elements of restorative justice relevant for building social support, we focused in the second part mainly on available empirical findings pertinent to these elements, which further accentuate the theoretical background.
- The findings presented were mainly from German and English speaking countries.
- Empirical evidence showed that although knowledge on restorative justice is poor, the attitudes about it are quite positive, especially with pertaining to the core elements of restorative justice.

3. Restorative justice, the public and the political



- In light of the empirical data we also asked ourselves whether it suffices to build social support for RJ without considering the impact of politics and politicians.
- Pointseans.

 In our third part we started our consideration on the relation of RJ, the public and politics, while reckoning with the difficulties of a complex relationship, firstly through an analysis of the chances of a rational evidence-based (criminal) policy, and secondly through an analysis on the public opinion on crime and punishment and the role of politics.
- We argued that it is important to be aware that there is on the one hand a need for politics and politicians to consider and to attend to public opinion and on the other hand we have to realise that public opinion is to a large degree shaped by political conditions and by the rhetoric of the politicians.
- We have in this part drawn attention to the necessity to create sociopolitical structures that make room for social support to enfold. This implies
 forging alliances and work in the arena of politics becoming part of
 conscious political effort, built on and use the means of deliberation and
 dialogue.

4. Media and RJ: Approaches of communication



- After an extensive theoretical and empirical grounding of the concept of social support for restorative justice, we started our analysis of the concrete questions put forward at the beginning of this study; namely how to work with the media, civil society, and citizens in restorative justice.
- The fourth part discussed in theoretical terms the cooperation with the media, and is complementary to the media toolkit produced during the project.
- We reflected on a possible future cooperation between media professionals and RJ professionals, and argued among other things that RJ organisations must become more media literate, and the media organisations must recognize that commercial interests can go hand in hand with social accountability.
- We concluded that the restorative justice field has much to gain from moving beyond its traditional communication strategies and initiatives and especially in recognizing communication as a full partner, rather than as additional to the RJ process. RJ has great communicative potential but yet not communicative power.

SWOT analysis of RJ Communication STRENCTIS We have an incredibly rich human potential involved in RJ. We deal with crime, a topic highly interesting to the media and the public. We have access to a large network of experts on crime and justice, which the media appreciate We have access to a large network of experts on crime and justice, which the media appreciate We have access to many testimonies on crime cases which the media and public are interested in. OPPORTUNITIES RIC and be reduced to a soundbite and therefore stripped of its complexities We have a channe for communicating our paractices and our messages through the media to develop a language which will help up to communicate with the public We can use the media to develop a language which will help up to communicate with the public advertising We have a channe for communicating our paractices and our messages We have a channe to achieve systemic changes through the media to develop a language which will help up to communicate with the public advertising We have a channe to put forward a replacement discourse especially at at time when Western societies are obsessed with issues of security

5. Civil society and RJ: Channels of cooperation



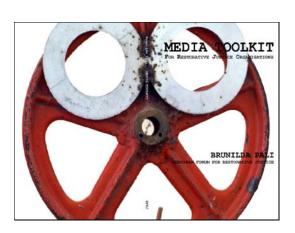
- We considered several ways in which RJ has collaborated and can collaborate with civil society.
- We first outlined several ways in which RJ, defined broadly as an approach
 that deals with conflict, harm or misbehaviour and encompasses all sorts of
 restorative practices, has been incorporated in different contexts of civil
 society, this too defined very broadly as everything falling between the
 individual and the state. In this part we focused on cooperation or initiative
 done with the schools and police.
- society, this too derined very proaduy as everything failing between the individual and the state. In this part we focused on cooperation or initiatives done with the schools and police.

 Secondly we dealt with the ways in which RJ, defined narrowly as an approach that deals with crime and only once this has happened, can collaborate with civil society organisations, identified according to a structural-operational definition.
- We made an effort to identify within several broad categories different organisations which are of interest for R.J. The part dealt with possible ways to cooperate with some of them rather than presenting a full panorama.

6. Citizens and RJ: Levels of participation



- In the last part we addressed the question: "How can we increase
 the involvement of citizens in the local RJ programmes?" In order to
 answer this question we focused mainly on the participatory
 element of restorative justice, as pertaining to five different areas:
- a) active participation of those concerned and those affected (and the 'community of care') by the conflict in the restorative process;
- b) participation of citizens as volunteer mediators/facilitators in the restorative process;
- c) self-referrals from citizens who bring their conflicts to the mediation services:
- d) voluntary participation of lay citizens and experts in organisational structures of RJ organisations (like steering meeting groups, boards etc);
- e) voluntary promotion of RJ coming mainly from ex-victims of crime and ex-offenders.



MEDIA TOOLKIT



- Tool one Strategic communication planning
- Tool two Understanding the media
- Tool three Building media relationships
- Tool four Developing ethical guidelines
- Tool five Press release and media events
- · Tool six- Giving interviews
- Tool seven- Media public campaigns
- Tool eight- Exploring new media
- Tool nine- Communication for social change
- Tool ten- Taking design seriously

TOOLS	DESCRIPTION
ONE Strategic communication planning	Assess the communication infrastructure (and create a communication team and good graphic presentation) Define the objectives and identify the audiences Frame the issue, craft your message, and select the right communication channels
TWO Understanding the media	Media are generally divided into print, electronic and new media Media rely on sources that provide newsworthy materials Keep track of media related work
THREE Building media relationships	Develop media contacts (by using local sources, professional societies of Journalism, showing attention to the media, making informal meetings and personal calls, being assessable and resourceful, and having Journalists on the Board) Keep regular and updated media lists
FOUR Developing ethical guidelines	Discuss beforehand in you are willing to share information and cases with the media Develop agreements with the media based on ethical guidelines Assess requests carefully on a case by case basis
FIVE Press release and media events	Assess whether it is appropriate to send a press release Format it well and make it newsworthy Make your events media friendly by having interesting people, images, in interesting places Hold a press conference only if really needed

TOOLS	DESCRIPTION
SIX	During all types of interviews be confident and prepared
Giving	Assess before whether you would like to participate in the interview
interviews	Make generally three important points during the whole interview
	Use word images, simple language and avoid jargon
SEVEN	Assess and identify media priorities
Media	Understand public opinion and media coverage on your issue
public	Start planning the campaign by identifying the objectives
campaign	Identify audiences, choose the media, frame the issue, develop the messages, and identify the
	spokespersons
EIGHT	Be attentive and creative to use the new media opportunities
Exploring	Consider having short online videos in the web and check picture sharing opportunities
the new	Consider putting yourself and your organisation in the social network sites
media	Create and maintain a blog
	Consider developing a social edutainment videogame for children
NINE	Explore the field of education-entertainment and be ambitious about using communication for social
Communica	change
tion for	Explore the soap opera opportunities to include education messages on your issue
social	Explore the practice of video-letters as a good opportunity for RJ
change	Explore theatre as a communication channel for RJ
	Explore the field of arts and possible cooperation with artists
TEN	Design posters carefully thinking about the impact, illustration and information, using attractive
Taking	concepts and images
design	Design a newsletter to be visually attractive and to have a planned and uniform graphic presentation
seriously	Design a website keeping in mind the onscreen rules of reading and engaging with text, keep them
	simple and visually attractive and update them regularly

Discussion



(or my very concrete questions to you)

Communication (media)

Imagine we want to design a cycle of RJ posters as part of a media campaign. How can we attract victims and offenders? What could be our messages be? What could our images be?

Cooperation (civil society organisations)

Are the organisations identified as relevant for cooperation relevant for your contexts (countries)? Can you think of others?

• Participation (citizens)

How applicable are the participation levels we have explicated in our report in your contexts (countries)? Can you think of others?

• Possible future project ideas?

Where do you think we should go from here (this project)? Any ideas for concrete future projects?

The end. Thank you©

Workshop notes

Brunilda Pali reported on the second of the most recently finished projects of the European Forum for Restorative Justice, the project on "Building social support for restorative justice". The project looked for ways to build social support for restorative justice cooperating with the media, civil society, and citizens. The discussion following the presentation focused mainly on cooperation with the media.

One participant in the workshop, living in New Zealand, remarked that reading New Zealand's newspapers you would not believe that New Zealand is in fact a "restorative justice country". Noone, the participant said, is interested in positive stories, people only want to hear negative ones, only negative stories trigger readers' attention. Ms Pali responded that all countries are different, but that she is not pessimistic about engaging with the media: she found some positive examples of cooperation with the media too. Also, she said, we should not limit our focus to mainstream media, the new media involves the internet, involves blogs etc. These open up new possibilities. Another participant shared his thought that people are becoming tired of sensation; he thinks the right time has indeed come for media campaigns on restorative justice.

Next someone added that there is a huge difference between what the media offers and what the public demands. He finds that whenever he talks about restorative justice to people they are interested but when he talks about it to journalists, he experiences that they are not. Ms Pali responded that of course, the media have very different objectives than those people promoting restorative justice, but that these days a lot of journalists are however interested in ethical issues. A Belgian mediator added that he doesn't have the impression that journalists are not interested either, or are only interested in negative stories.

Finally, someone referred to a Portuguese 2008 campaign using animated figures, which received very good feedback; people felt they could identify with the figures (it is found on You Tube via e.g. http://www.youtube.com/watch?v=-AjWqP5aT6gandfeature=related; http://www.youtube.com/watch?v=c143Pr5vj Yandfeature=related). A radio campaign featuring a famous humorist had also worked very well.

Workshop Five – RJ approaches to cultural and political conflicts Chair: Eric Wiersma

5.1 Multicultural challenges for RJ: Mediators' experiences from Norway and Finland **Presented by:** Berit Albrecht (Norway)

Berit Albrecht is a PhD student at the University of Tromsø, Norway and mediator at the Norwegian Mediation Service (Konfliktrådet). She has been working as a research assistant on a research project about cross-cultural mediation and published an article with the same title at Journal of Scandinavian Studies in Criminology and Crime Prevention.



Workshop notes by Aaron Vanarwegen

- Isn't there a danger for generalization regarding the assumptions made by the researchers concerning cross-cultural mediation?
 - The upset is to give awareness to mediators about to complexity of these types of mediation. A mediator should be aware of the cultural differences in the setting of a scenario, like a confrontation for example. Probably different questions should be asked about guilt, shame, responsibility...
- The research focuses on data or input by mediators, what about the participants themselves?
 - Indeed, if we had the financial resources we could additionally conduct a self-report survey among participants of multicultural VOM's about their experiences or needs. Maybe an idea for a follow-up research?
- Language and the expression of emotions are very important during the mediation process. Especially when there are people with a different cultural or ethnic background, the role of the mediator becomes even more important. He/she has to create the opportunity that both parties can understand one another (reframing / interpreters /).

- Can the position of a young female mediator in a criminal case between two older Arabs be problematic?
 - Depending on the case and the participants this could be a problem. We can only advice
 if possible to adapt the mediator on the case (age / gender!)
- Importance of the training of mediators: make them sensitive for the different backgrounds of participants in the VOM. Mostly the training for mediators is quite limited (e.g. in Finland 40 hours, UK between 24 and 40 hours). In most cases, the training gives an introduction into the cultural differences.
- Minorities as mediators: some VOM-services train people with a different ethnic background to be a professional mediator and employee in their team. Experience gives a positive outcome. Although a relative danger exists for positive discrimination or sociological roleconflicts.

5.2 Iran and the West: Restorative practices as a supplement to diplomatic efforts? **Presented by:** Adepeju O. Solarin (USA)

Adepeju O. Solarin's research encompasses restorative justice and international relations especially in areas of conflict resolution and human rights. She is a member of the International Association for Restorative Justice and Dialogue. She is currently involved in efforts to establish a culturally-centric justice network for Blacks.

Relations between Western nations—mainly the U.S. and Europe—and Iran have been deteriorating for over 30 years. Tensions run high and each side continues a narrative of demonization, which has hinted at military undertakings. However, advocates of non-violence question if all avenues have been explored.

I assert that there lies a path towards reconciliation by drawing insights from the restorative practice of peacemaking circles—an ancient practice malleable to most cultures. Recognizing that restorative justice cannot be directly applied to state-to-state conflicts, the argument of how best to approach a diplomatic reform on this issue is explored. Examination of illustrative evidence on peacemaking circles is done to establish the suitability of this approach to the conflict. Finally, a model on how to address de-escalation of conflict is proffered.

A peacemaking circle is another restorative approach used to address harms and conflicts that may arise between two or more conflicting sides. Its distinguishing characteristic is that its participants all sit in a circle and communicate using a talking piece. This talking piece is a predetermined object of communication passed around for the duration of the circle. It is strongly recommended that only the person with the talking piece is afforded speech and full attention.

The crux of this presentation argues that there might be potential for rapprochement. The argument lies in moving away from *models* of negotiation and restorative justice and moving towards the *approach* to usher in rapprochement. The synergy present in RJ practices, especially peacemaking circles, allows participants to "create the space that allows [the real issues] to come to the surface" (Pranis 2010). Diplomacy is a philosophy that advocates dialogue over violence. Peacemaking circles is a philosophical tactic that could strengthen diplomacy.

The question remains, why could a circle contribute to rapprochement? This presentation briefly discusses an imaginary circle that could serve the purpose of a myth-buster, something William Beeman (2008) and John Limbert (2009) have described in their study of the conflict. They suggest that the discourse of demonization—present in Iran-West relations—is an overwhelming impediment to rapprochement. In addition, the grassroots reality among citizens supports this view (Nafisi 2003; Slavin 2007). Many Iranians, even those who live in Iran, want better relations and believe the demonizing rhetoric only worsens matters. Citizen diplomacy efforts,² Gary Sick's Gulf/2000 blog, the National Iranian-American Council, and comedians like Maz Jobrani are evidence of those who seek better relations.

Lawrence Sherman and Heather Strang's 2007 report argues that restorative justice (RJ) "works" (p. 8). This argument and several others, gives hope regarding the potential of RJ in international diplomacy. The ideology and practices found in peacemaking circles offer the most congruent framework, which can easily be adapted to any meeting between the two countries. It offers a space of mutual understanding and respect—values both countries claim they need for better relations.

Best practices of restorative justice offers an approach that may reduce the hostilities. What John Braithwaite calls restorative diplomacy could be the missing dimension in rapprochement efforts with Iran (Braithwaite 2002). Several have also asked for transformative diplomacy (Tirman 2009), networks have formed and are being sustained among average citizens between the divide. In addition, former leaders, including President Carter have called for talks, not bombs. Western countries need to explore another diplomatic tactic besides sanctions—they also needs to be patient with diplomatic efforts. The tepid history of dialogue—for example between U.S. and Iran—will require more than a year of public calls for new relations. It will need earnest brokering, which circle practices can provide.

Many may criticize this presentation for not discussing issues of nuclear capabilities and human rights violations. It was a deliberate decision. The central arguments of the essay posit peacemaking circles as a supplement to Western diplomatic efforts with Iran. This approach seeks rapprochement—a sustained one—as the end goal. The West and Iran have undertaken many attempts to renew relations, but have failed. Past rhetoric of leaders and glimpses of negotiation proceedings suggest that communication breakdowns arise when critical issues of nuclear matters and human rights violations are introduced. Since a principal approach of peacemaking circles is to connect in a good way through personal narratives, it seems strategically sound to defer nuclear and human rights

³ This argument is nuanced, but the growing body of evidence supports the notion that restorative justice works, somewhat, especially when it is implemented innovatively, with care for each situation.

² Some of these high-profile efforts include *Rick Steves' Iran: Yesterday and Today* (2009), *BAM 6.6: Humanity Has No Borders*, and several dialogue projects at American Ivy League universities.

discussions until sustainable rapport is established. The option of supplementing peacemaking circle practices to our diplomatic arsenal can increase the likelihood of successful talks—which could usher in opportunities to discuss these all too important issues.

Workshop notes by Aaron Vanarwegen

- Can restorative justice 'circle practices' transform the conflict to a de -escalation?
 - A peacemaking circle won't replace all diplomatic efforts, but can add a symbolic and ritual function to the ongoing diplomacy. There's a need to humanise both sides, by creating confidence and pointing out common interests.
 - ➤ The advantage of this tactic is that both sides are viewed, not as opposites, but as equals.
- Why do they want to do this? Why should these two nations participate in a circle type talk?
 - Referring to Howard ZEHR and the motivation of individuals to participate in RJ (Respect, Relation and Responsibility), this also counts on the macro level (i.e. nations or states)
- Are politicians (with little or no background of RJ) willing to pick up this alternative conflict regulating idea?
 - Circles can be seen as structured / organised forms of debates; a good start would be to introduce them in local politics. Knowledge of the methodical approach should become more common to resolve issues (cf. towards a "restorative society"). And this to encounter a high level of victimisation on both sides by traditional face to face negotiations.

Workshop Six – RJ in school and residential childcare Chair: Martin Wright

6.1 Ten years for School Mediation in Finland – What we have learned!

Presented by: Maija Gellin and Harri Väisänen (Finland)

Maija Gellin is Project Manager of the Peer Mediation project in Finland. She has been the main method developer and one of the training planners for 10 years. She has also done regularly the surveys of the mediation in schools and now she is preparing her master thesis in school mediation. Maija Gellin is working also as a voluntary mediator in the Victim Offender Mediation Office of Espoo city. Maija Gellin is a member of the board of Finnish Forum for Mediation and she is actively taking part in the international co-operation on the field of mediation at schools.

Harri Vaïsänen works as a Trainer and Contact Manager in School Mediation project of Finnish Forum for Mediation. He is a senior trainer and developer, with experience of various school mediation trainings, both on basic and intensive levels: trained staff and pupils in almost 100 schools in Finland. He has also experience of mediating teacher-pupils cases and various conflicts at schools.

6.2 From RJ to restorative approaches and practices. How practitioners and trainers in the field of education and residential care have evolved their practice in the last 15 years and where it may be going

Presented by: Belinda Hopkins (UK)

Dr. Belinda Hopkins - Director of Transforming Conflict, National Centre for Restorative Approaches in Youth Settings. She has been a practitioner, trainer, course developer, consultant and writer in this field for 15 years. She is board member of the UK's Restorative Justice Consortium and Chair of European Forum's Education Group. Her recent publications are: Just Schools (2004); Peer Mediation and Mentoring Training Manual (2006); Just Care (2009). Her doctoral research focused on implementing restorative approaches in schools.

6.3 Restorative practices in Melbourne Catholic School Communities

Presented by: John Connors and Anthony Levett (Australia)

John Connors - Principal of St. Anne's Primary School, Kew East. St. Anne's has a student population of 200. John recently completed his Masters in Student Wellbeing from the University of Melbourne. John is a highly respected educator who received the "John Laing Professional Development Award "2009 for services to principal professional learning.

Anthony Levett – Principal of St. Dominic's Primary School, Camberwell East. St. Dominic's has a student population of 300. This is Anthony's 30th year in Catholic Education in Australia and his 13th year in principal ship in the Archdiocese of Melbourne. St. Dominic's was the first school in the Archdiocese of Melbourne to receive accreditation in the Restorative Practices in Catholic School Communities Project.

Workshop notes by Anamaria Szabo

The workshop was attended by a variety of specialists (mediators, educators, trainers, academics, representatives of non-governmental organizations, etc.), fact which enriched the discussions on the presentations. The order of the presentations was established at the beginning of the workshop and commonly agreed between presenters.

The presentation by the Australian team (Connors and Levett) aroused discussions on the process of change from 'punitive schools' to 'restorative schools'. The main problems encountered within the Australian action research project were the so called 'settled teachers', who's ways of understanding discipline were based on punishment. The same issue was discussed after the presentation made by the Finish team (Gellin and Väisänen) – shifting teachers' attitudes and the school culture is a slow process. These concerns channelled the discussions towards the question raised by Belinda Hopkins: 'How do we start the change – by training the pupils or by training the staff?' The positions of the

workshop participants were diverse. On the one hand, pupils can be seen as experts in finding solutions to a conflict. When you start the changing process from the pupils, the success depends on factors such as: selection of peer-mediators, their training, support from the staff, etc. On the other hand, adults can be seen as models, so the changing process can start also with staff training. But, restorative practices need to be adapted to the day-to-day level. Thus, the staff training needs to be focused on developing the day-to-day skills.

The main conclusion of the workshop was that changing the culture of the school can start either from the pupils, or from the staff. The important thing is that it is an ongoing process, which needs ongoing evaluation.

Workshop Seven Chair: Alberto Olalde

7.1 Los Servicios de Mediación Penal de Euskadi. Estudio de caso

Presented by: Gerardo Villar, Idoia Igartua and Carlos Romera (Spain)

Plenary Two: Conferencing in the world: state of affairs

Presented by Joanna Shapland (UK) and Estelle Zinsstag (Belgium)

Chair: Ivo Aertsen

Joanna Shapland is Professor of Criminal Justice and Head of the School of Law at the University of Sheffield, UK. She has researched widely in victimology, criminal justice and restorative justice and is the Executive Editor of the International Review of Victimology. Most recently, she has published the edited volume, Justice, Community and Civil Society (2008, Willan), which looks at how countries have reached out to their publics in terms of restorative justice, court reform, etc., as well as the national evaluation of three restorative justice schemes for adult offenders (Ministry of Justice/Home Office 2003; 2004; 2006; 2007).

Estelle Zinsstag holds degrees from the universities of Montpellier (France), Edinburgh (UK) and most recently a PhD in law from Queen's University Belfast (UK), which was on sexual violence against women in armed conflicts and transitional justice. She is currently a project officer for the European Forum for Restorative Justice to lead a 2 year research project on "Conferencing: a Way Forward for Restorative Justice in Europe".

Conferencing in relation to criminal offences: evaluation results internationally

6th Biennial Conference of the European Forum for Restorative Justice, Bilbao, June 2010

Joanna Shapland



Restorative justice has been described as an 'umbrella term'

- · not an inchoate mess, not 'everything goes
 - because values and standards are important
 - and there is accountability to participants, to referrers and to human rights
- but a number of different practices, which have grown up at different times and to meld with particular cultural and legal traditions
- · each has tended to draw from particular theoretical traditions
- · there is variation in how closely each relates to criminal justice:
 - mainstreamed within criminal justice
 - referred out and the outcomes come back
 - the people and the case diverted
 - no interaction at any point

There has tended to be little comparison of which tradition has which effects or works 'well' where. Such comparison will be contentious.



The paper will:

- · look at what is called 'conferencing' and 'mediation'
- · and try to consider what may be different and what we know about

Looking at:

- attendance and participation
- stages of the process
 role of the facilitator
- aims of the events
- · types of outcomes

and referring to some published evaluation results



Attendance and participation



- Who comes? Or, rather, who is invited? (By the facilitator? By the parties? there is selection)
- Mediation, typically, is the facilitator/mediator, the offender and the victim for direct mediation (the same parties are involved in shuttle
- Conferencing involves in addition supporters for the victim and offender
- Some conferencing, community panels etc. involve representatives of the local community as well.



(all offences with personal victims; 840 restorative justice events; observed 285 conferences, interviews with 180 offenders and 259 victims experiencing restorative justice):

- Justice Research Consortium (JRC):

 - conferencing with random assignment pre-sentence in London Crown Courts for adults, led by police facilitators
 - pre-sentence for adults, final warnings for youths, some adult caution cases in Northumbria, led by police facilitators community sentences and prison pre-release in Thames Valley (all adults), led by probation officer, prison officer or community mediation facilitators
- - victim-offender mediation throughout S Yorkshire (matched control groups)
 - community sentences and prison for adults
- · CONNECT:
 - victim-offender indirect and direct mediation and conferencing
 - pre-sentence, or during sentence, for adults
 - mostly in two magistrates' court areas in London



Attendance and participation - what happened?

- Actually, the number of participants in JRC conferencing was typically
 - average in the circle: 6.3, with a range from 3 to 15
 - they tended to be family, work colleagues, close friends, key workers the 'community of care'
 - However, diversionary adult conferences about neighbourhood/work/ social problems could be much larger (up to 25 with 2 facilitators)
- When offered the choice, REMEDI and CONNECT Vs and Os tended to opt for indirect (shuttle) mediation, not a direct meeting
 - But JRC agreement rates (direct meeting or nothing) were very simila
- Youth justice family conferencing work in E&W had similar small meetings (Crawford and Newburn: 15% of panels had no O supporter, 68% one (normally mother) very few victims attended.
- Statutory youth conferencing in Northern Ireland were the same: Campbell et al: an appropriate adult is required (normally mother), second O supporter in 61%, third in 17%. Victims present at 69% of conferences.





Scripts? Topics? Stages?

One of the most difficult things seems to be to find out what actually happens in restorative justice events.

- JRC took from Transformative Justice Australia:
 - 3 stages: What happened? (started by 0, but questions and discussion); what were the effects? (started by V, but everyone); how could things be made better? (future oriented discussion ending in outcome agreement) intended to be very little verbal input from facilitator (nonverbal communication, prompts)
- REMEDI and CONNECT varied according to what the V and O brought up

 typically what happened, what effects did it have?

 - A future-oriented stage only occurred if V or O brought it
 - Mediators took a more active role in questioning and topics

How do participants work out what to talk about? How much is facilitator preparation?



Who actually spoke?

In our evaluation, observers counted the number of times participants spoke and estimated the total time for each.

- Average JRC conference time 68mins

 O took up 27%; V 21%; main O supporter 12%; main V supporter 13%, facilitator 16%
- REMEDI and CONNECT direct mediations were shorter

 - though both V and O were involved 'a lot'
 mediators spoke for a greater proportion of the time
- Other schemes? some evidence that more participants = less facilitator speech but very little data exist

So people did get to participate, we think, but there are differences as to what is covered and how dominant the facilitator is.





What are the aims?

Many people can have expectations and aims:

- the participants (after the preparation, before the event) the scheme itself
- the funders
- the facilitators
- referrers (including criminal justice decision makers)
- stakeholders and wider society



Why do participants agree to come?

Importance pre-rj score		JRC		REMEDI		
	Offenders	Victims	Offenders	Victims		
You wanted to express your feelings and speak directly to the other person	3.44	2.58	3.48	3.23		
You wanted to help the other person	2.98	2.75	3.32	3.12		
You were asked to attend/take part	2.69	2.29	3.16	2.97		
You were told to attend/take part	1.10	1.25	2.50	1.43		
You felt a duty to attend/take part	2.74	2.35	3.15	2.64		
You wanted to have a say in how the problem was resolved	3.33	2.86	3.16	2.96		
You wanted to repay the harm (Os) or be repaid for the harm						
you had experienced (Vs) You would like some questions	3.24	2.00	3.61	2.49		
about the offence answered	-	-	2.78	3.22		
Taking part may affect what happens as a result of the case		-	2.77	2.83	=	
1 = not at all important 4 = very importa					60	

So, participants' expectations - reasons for participating -

- are multiple
- focus on communication e.g. 'You wanted to express your feelings and speak directly with the other person'; 'You would like some questions about the offence answered' (REMEDI)
- but this is not just communication about the past (the offence) and the present (the current effects); it also includes problem solving for the future: 'ask questions and sort it out so that it doesn't happen again'
- this is linked to altruistic, other-directed reasons: wanting to help the other person and prevent re-offending (Vs); wanting to answer questions and repay harm (Os).

A principal components analysis, for both pre- and post-rj interviews, suggested for JRC and REMEDI a general factor of communication (for Vs and Os)



Scheme aims

Of the three schemes we evaluated:

prevent reoffending meet victim needs JRC enable the victim to ask questions and receive information JRC CONNECT REMEDI restoration JRC REMEDI

for the offence CONNECT REMEDI help Os to reintegrate into the community

leave V and O with greater satisfaction about criminal justice CONNECT



Theoretical models

Considering as an example, merely that of reducing reoffending - this is often not directly addressed in key theoretical streams in restorative justice

- Theories stressing restoration, reconciliation or healing (e.g. Zehr) or problem solving (e.g. Christie, Shearing) do not really address redifending. One might argue that there should be an effect on reducing the likely reoccurrence of that particular problem, but not necessarily reoffending in general
- Procedural justice (Tyler) would argue that if treated fairly (plus fair decision makers etc.) offenders would have increased legitimacy for justice mechanisms. This should pull them further into conformity.
- Reintegrative shaming (Braithwaite) would suggest that if offenders are both shamed and then reintegrated, they would also be pulled further into conformity and be less likely to reoffend. This would predict reductions in reoffending but the difficulty is whether there is reintegration into a meaningful community in Western restorative listing.

Is another possibility that restorative justice brings together key elements to cement decisions to desist (commit fewer offences)? (Robinson and Shapland 2008)

Recent desistance work has stressed the agency of the desisting offender (offenders first decide to desist or at least change their lives - though that may take a long time and be a very unsteady process)

An offender agreeing to take part in restorative justice

- has voluntarily agreed to take responsibility, meet the victim, discuss the offence, (probably) apologise
- is probably thinking of changing away from offending desisting different from being made to take part in rehabilitation programmes
- rj provides a stage on which to say this
- with the support of those preser
- and think of how to lead a new life in the community
- marshalling criminal justice resources to an individualised rehabilitation plan





Outcomes

What kind of outcome should restorative justice processes have?

- An outcome agreement (signed by all?)?
- No revictimisation by that offender?
- Problem solved?
- Restoration for victims? To what?
- Healing or closure for the participants?
- Reparation/financial compensation for victims?
- Agreed ways to prevent future trouble? Lowered reconvictions for the offender?
- Greater satisfaction with justice mechanisms?
- · All of these???



So

- Internationally, and within the UK, schemes vary:
- in their aims, their theoretical underpinnings, their processes, their outcomes
- Is the key distinction conferencing v. mediation?
 - This essentially says the difference is the participants
 - Restorative justice is about the participants and what they create
 - But scheme traditions and facilitator/mediator preparation are also highly likely to be influential
- . Do we know enough about what matters and what happens?
- · A radical proposal
 - that each scheme should video a role play by scheme staff and bring it to the next conference? So that we can view what all of us are doing and what we mean by 'conferencing' or 'mediation'?

 So that we can stant to tie outcomes and results to what we do and what may
 - be most beneficial to whom.



Our fourth report (is reoffending reduced?) is at:

http://www.justice.gov.uk/docs/restorative-justice-report_06-08.pdf

Our third report (victim and offender views) is at:

http://www.justice.gov.uk/papers/pdfs/Restorative_Justice_Report.pdf

The second report (including expectations pre-rj) is at:

http://www.homeoffice.gov.uk/rds/pdfs06/r274.pdf (summary)

http://www.shef.ac.uk/law/research/ccr/occasional and click on Downloads: 'Restorative Justice in Practice' (full report)



Day 2: Friday 18 June

Plenary Three: Performance of a case of partnership violence

Presented by Austrian VOM-team

Narrator: Christa Pelikan

Christa Pelikan is a researcher at the Institute for the Sociology of Law and Criminology in Vienna. She has been working in the field of criminal law, especially victim-offender mediation and in the field of family law. She has been active in various committees of the Council of Europe. She is a founding member of the European Forum for Restorative Justice.

In the plenary a domestic violence case will be performed. Christa Pelikan will act as a 'narrator' giving the background of the story and then four people from the Austrian VOM team will play certain sequences out of a certain case.

Workshop Session Three

Workshop One: Practices and Methods Chair: Clara Casado Coronas

1.1 Doing RJ in Albania and Italy

Team coordinators: Rasim Gjoka (Albania) and Ilaria de Vanna (Italy)

Rasim Gjoka is one of the founders of the Albanian Foundation for "Conflict Resolution and Reconciliation of Disputes", established in December 1995, and at the same time he is the executive director of this Foundation. He has completed several qualification courses in the field of conflict management, mediation, restorative justice in Austria, USA, Norway, Denmark, and has participated and contributed in several international conferences and meetings in conflict management, application of the mediation alternative, peace education and tolerance, and restorative justice. He is author and co-author of several sociological studies, evaluations, magazine articles, surveys, and training manuals (mainly in the area of conflict management, restorative justice and mediation, reconciliation, education for peace, etc). Currently he is also Chair of the Southeast Europe Mediation Forum.

Ilaria de Vanna is a psychologist, a mediator in the Mediation Office in Bari since 1996, a mediation trainer. Ilaria is Member of the Committee of MediaRes, the first Italian magazine on mediation. She also cooperates with schools for several school mediation projects.

Workshop notes by Aaron Vanarwegen

Two videos were shown of VOM in Albania and Italy which allowed a comparative discussion:

- Is it common that the mediator takes notes during the joint-session(s)?
 - ➤ <u>Italy</u>: No, usually the mediator focuses on the ongoing meeting between victim and offender.
 - Albania: It depends on the mediator or setting.
- Background of mediators?
 - Lawyer, social worker, anthropologist, psychologist....
 - In general = social education, although in some countries services do experiment with volunteers as mediators (e.g. Alba in Belgium)
- Comments were made by the unusual setting of the Italian VOM-video. Victim and offender
 are placed next to each other (instead of face-to-face), and opposite of them 2 mediators.
 Victim and offender don't speak directly towards one another, but there is a greater role for
 the two mediators to reframe feelings and messages to the protagonists of the meeting.
- What if there is an escalation during a joint session?
 - > Depending on the technique of the mediator: a split-up, break, end of session ...
 - Mostly the session will be broken/interrupted and both sides/parties seperate (time-out or cool-down). In a separate negotiation the mediator and the people involved will decide if they feel the need to continue. A second try for example a few weeks later is also possible.
- In Italy it's quite <u>uncommon</u> that there is mediation in cases of sexual abuse with a minor offender. Other measurers will be taken by the state prosecutor and/or juvenile judge. In other countries there is no restriction and mediation can be seen as an extra chance / opportunity to restore or exchange messages/feelings/questions. This follows the assumption that in these types of cases the victim and offender often do have a certain relationship (neighbourhood, school, family, peer group).
- Are parents present during the mediation (in general, not especially during joint sessions)?
 - Yes, they are responsible for the acts committed by their children.
 - They often help to achieve a common solution or to go in communication (to connect).
 - It can be seen as part of their responsibility in the education.
- Are follow-up sessions organised (following on a joint session) aftercare?
 - > It depends on the case or the motivation by the participants

- Sometimes the mediator will take the role of aftercare and will do the follow-up (especially in cases where there is an agreement). Participants can already have created 'a relationship of confidence' with the mediator in their case.
- There are also cases in which more specialized aftercare is needed (e.g. traumas)
- In Albania the VOM programme for juveniles operates in the seven main districts of the country. Mediation in family disputes is more widespread (20 districts).

Workshop Two - Practices and Methods

2.1 Doing RJ in Austria and Scotland

Team coordinators: Christa Pelikan (Austria) and Shelagh Farquharson (UK)

Christa Pelikan is a researcher at the Institute for the Sociology of Law and Criminology in Vienna. She has been working in the field of criminal law, especially victim-offender mediation and in the field of family law. She has been active in various committees of the Council of Europe. She is a founding member of the European Forum for Restorative Justice.

Shelagh Farquharson joined Sacro in 2003, following nine years with the Scottish Prison Service. Since joining Sacro, Shelagh has worked in a range of Sacro services and developed her practice across the Community Justice Continuum. Shelagh initially trained as a mediator before joining Sacro's Adult Restorative Service as a Practitioner in December 2006.

Good morning, my name is Shelagh Farquharson and these are my colleagues Craig Millard and Joe Wilson. We all currently work for Sacro's Adult Restorative Justice Service within Scotland.

SACRO is a non-governmental organisation based in Scotland; we currently have three adult Restorative Justice Services based in Aberdeen, Edinburgh and Motherwell for which we are funded through our local government criminal justice departments.

It is our intention today to present to you a "real case" playing out parts from the initial meetings and the actual Restorative Justice meeting as well as providing a narrative of the work that was required to bring the case from the initial meeting to the final agreement meeting stage. It is our hope that our presentation today will allow you to compare our working practises in Scotland to those of our Austrian colleagues.

The following case was referred by the Procurator Fiscal (PF) in Edinburgh whom you may know as the prosecutor. The case involved two neighbours who lived in a tenement block of flats. The parties have known each other for many years and had been very good friends when their families were growing up. However, over time things have deteriorated and resulted in one of the parties being charged with assault.

Once we accepted the case from the PF the Persons Harmed were sent a letter from the PF saying someone from SACRO will be in touch. The letter included a Service leaflet. This was followed by an appointment letter.

During our role-play Craig will play the part of the practitioner with Joe playing the role of Persons Responsible, her husband and also Person Harmed. I will step in and play the Person Harmed at the Restorative Justice meeting

With no more ado I would like to hand you over to Craig and Joe. Thank you.

<u>Practitioner</u>: Hi, thanks for having me here, [other brief chit chat aimed at engaging with PH?] Hello, as discussed on the phone our service provides you with the opportunity to resolve this matter without it having to go to court; voluntary, confidentiality etc. Are you able to tell me what happened on the Night of the incident?

Mrs Bunting: I was in bed when I heard a bang at my door, so I got up and answered it. My upstairs neighbour was walking up the stairs and I asked him what he was doing. He replied "what is your problem?" I challenged him about knocking at my door and he made his way back to my door shouting he had done nothing of that sort. We continued to argue, and as we did his wife came running down the stairs and pushed me to the ground. She fell on top of me and continued to hit me as we fell into the hallway of my apartment. My husband had to pull her off me. I was deeply shocked by this assault and called the police. I was unable to go to sleep again that evening and an ambulance had to be called because I was suffering chest pains. This was a panic attack. Although I understand what you are offering here I am really angry and confused about what has happened to me and I feel they should be punished accordingly. I am not sure that they will be able to recognise the hurt they have caused me as they continue to look at me in a bad way and don't speak.

<u>Practitioner:</u> Yes Mrs Bunting, it sounds like this has been a terrible experience for you and I can understand the anger for the Simpsons. It is understandable why you may wish to have them punished as it sounds like this has been a terrible experience for you. You say you have been a bit confused, can you tell me a bit more about this?

Mrs Bunting: You know I just don't know what to do... Sometimes I feel angry and sometimes I feel sad that this can happen with someone you have known for so long. I mean we used to be friends... I just cannot get over it.

<u>Practitioner</u>: I hope you don't mind me saying, but helping people to get over the effects of an offence against them is a real strength of our process. It gives you the chance to ask questions which are maybe going through your head and usually get answers to.

Mrs Bunting: I am really not sure. I really just want this all to come to an end. I'm also not sure as I will still have to live in the same building as the Simpsons.

<u>Practitioner</u>: Ah yes, if I can just ask, how do you think things will be if they are prosecuted and found guilty? Do you feel this will help you with the closure you need from this?

Mrs Bunting: I am really not sure. I just feel I want them to understand how this made me feel and if I allow this Restorative process they will think I have not taken it seriously. Perhaps they will think I have backed down in fear.

<u>Practitioner</u>: I would like to assure you that the process actually helps people to understand the hurt caused in a way the court sometimes cannot. It is about them recognising how their actions have hurt you.

Mrs Bunting: Oh, I'm really unsure now, perhaps if I can think about it a bit longer.

<u>Practitioner</u>: Absolutely, just let me know when you would like to talk further. Bear in mind that at first we could meet with the Simpsons and see if they are willing to take responsibility. If we are not happy with their stance on the matter then we would request the PF to proceed with the prosecution. We would only proceed if they are saying the right things.

Mrs Bunting: Oh yes, I understand. Please call me on Monday and I will talk with family and think further.

Monday 26th of Feb

The practitioner calls Mrs Bunting:

<u>Practitioner</u>: Hi Mrs Bunting, how are you and how was your weekend?

Mrs Bunting: It was good thanks, how was yours?

<u>Practitioner</u>: Good, I managed to get a few jobs done around the house so all good thanks. Mrs Bunting, have you been able to give further thought to our discussion on Friday?

Mrs Bunting: Yes, I am a little concerned but let's give it a try. I feel this is the best way forward.

<u>Practitioner</u>: That's good Mrs Bunting. We will send a letter out to your neighbours asking them to give us a call. This can take up to 10 days, but we will get back to you as soon as we hear from them.

As Person Harmed has indicated a willingness to participate, we now contact the Person Responsible. This is done the same way the Person Harmed was contacted, with a letter and a Service leaflet being sent from the PF followed by an appointment letter from SACRO. In this situation however, the Person Responsible was invited into the office. This was done to ascertain the commitment from PR as well as assisting with Health and Safety.

<u>Practitioner:</u> Hi, thanks for making it today to hear about our service. As we discussed on the phone, this service offers the opportunity to resolve offences without the criminal justice system. It gives the Person Responsible the chance to take responsibility for their actions and see if there is some way of making amends. We receive our referrals from the Procurator Fiscal who has indentified this case as one that may be best dealt outside the court.[Voluntary, confidentiality] Can you tell me what happened?

Mr and Mrs Simpson: I was on my way back from the pub where I had a few beers and when I walked past Mrs Bunting's door, she came out shouting at me that I had knocked on her door. I had not knocked on her door, so I told her not to be so stupid. I walked back to her as she was shouting, which resulted in an argument. I do realise now that it was a big mistake walking back, I should have just kept on walking up to my apartment. My wife heard the argument and ran downstairs to see what was happening. Somehow she fell over Mrs Bunting and they both landed

on the floor of Mrs Bunting's hallway. There was a bit of a skirmish before Mr Bunting and I calmed things down. I actually don't feel there was a whole lot to it, but Mrs Bunting was fairly aggressive. Over the years she has also been cheeky and not quite the innocent victim she pretends to be.

<u>Practitioner</u>: However Mr Simpson, Mrs Bunting feels this matter was very serious and so does the law. She was indeed hurt quite badly that evening.

Mr and Mrs Simpson: Yes, yes. We do realise we should have never acted the way we did and agree that it is now our role to make up for that. So what happens now?

<u>Practitioner</u>: Hopefully we will arrange a face-to-face meeting with all concerned were we can make your feelings heard and perhaps you may be asked to take part in a short reparative task.

During the next 3 weeks there was a period of shuttle dialogue to discuss the task and the letter of apology also requested by Mrs Bunting. Mrs Bunting took some time to decide exactly what she wanted and by the time Mr and Mrs Simpson were informed of Mrs Bunting's requests they felt she had been attempting to drag things out to upset them. They also felt that Mrs Bunting's request to pay £200 as a charitable donation was too much, due to family commitments. It was explained again to them that Mrs Bunting had been affected quite badly by this incident and it was her anxiety and uncertainty over how to move forward which had held matters up. However, they appeared to accept this but with no real degree of confidence. They also requested that we would ask that the donation could be lowered to £100, as they would struggle to afford the full £200.

After several long chats with Mrs Bunting, she was ok with the £100 figure but made it clear to us that the apology must be sincere and not just empty words.

It was evident that the last 10 years of not talking to each other had encouraged distrust in each other.

Despite the fact that there are still some ill feelings and agitated thoughts from Mr and Mrs Simpsons, the facilitators felt that the preparation had come as far as it could. They believed that with a reminder about our expectations at the meeting and a reminder that we were here to try and move matters forward in a positive manner, it was safe to let the meeting go ahead.

Separate short meetings prior to the meeting were held with both parties. The Persons Responsible appeared to be rather defensive and they where again reminded that this was now the chance to move forward positively and put an end to their waiting and worry. They were encouraged to keep any defensive challenges and justifications to a minimum and remember this was about resolving matters

The meeting

Facilitator welcomes, scene setting and house rules are explained.

Facilitator: Can you please tell us what happened, Mr Simpson?

<u>Mr Simpson</u>: I had been at the Pub down the road for a few beers and on my return from the Pub I must have bumped into Mrs Bunting's door. She came out and asked me why I had knocked on her door. As I wasn't aware I had done so I became agitated and went back down to challenge her. I know I should not have gone back to speak to her, because the rest of the trouble led from this.

Mrs Simpson: I heard shouting in the stair and ran down to see what was happening. Mrs Bunting was pointing her finger at my husband and I had a rush of blood. I ran over to her and pushed her to the ground and grabbed her hair. It was really stupid of me.

Facilitator: Mrs Bunting would you like to tell us how you feel about what was said here?

Mrs Bunting: Well, the main thing for me was that I only answered the door because I thought I heard a knock. I was then attacked in the doorway of my own home which was very disturbing. Afterwards I could not stop thinking about what you did to me. Do you know I was rushed to the hospital in an ambulance later that night? They said I had a panic attack but at that time, I thought I was having a heart attack.

Mr and Mrs Simpson: We never knew that it had such an effect on you, we are really sorry. This should never have happened and you have our assurance nothing like this will ever happen again, and we realise how stupid we were. Here is the cheque for charity you asked for and the letter of apology too.

Mrs Bunting: Thank you, but maybe you should keep some of the money for the family I know how things are with three kids. I am so glad this is over though.

Mrs Simpson: No no, that was the agreement.

<u>Facilitator</u>: As was said in our preparation we can look at the future now. Can I ask you what your intentions are and how things will be when you bump into each other again?

Mrs Bunting: I would be happy if we could say hello, as it feels awkward not saying anything. I mean, we used to say hello before we stopped talking and I don't even remember what that was all about anyway.

Mr and Mrs Simpson: Ah, well neither do we. I think it had to do with another neighbour. It was all a bit silly actually. Yes, we would be glad to say hello.

- Following the meeting the case came to a successful conclusion however, at times we didn't think this would happen:
 - o Person Harmed moved from Not Willing To Participate to Willing To Participate
 - Person Responsible initially said she was Willing To Participate then became hesitant because she believed Person Harmed was taking advantage of her and because of the anxiety of the pending meeting.

The practitioner involved in this case felt the preparation for the case was not ideal as there were clear tensions and different views at all stages of the process however, the belief in people's capacity to find a positive way forward while believing in the process won.

Workshop Three - Conferencing Chair: Joanna Shapland

3.1 Alperton College: a restorative vision becomes reality

Presented by: Shahed Chowdhury & Michael Kearns (UK)

Shahed Chowdhurry is both an academic and practitioner in the field of restorative justice. He has written his PhD Thesis in RJ and facilitated numerous Welfare FGCs and Restorative Justice Conferences in the UK. Shahed is the Principle of Alperton College (London), which runs on the principles of restorative justice.

Michael Kearns is Dean of studies at Alperton College and a former London police officer who developed restorative approaches in youth justice and education while working with young offenders. He is an experienced restorative practice facilitator in the contexts of education, youth justice and social care and lectures at university/college level.

Workshop notes

Shahed Chowdhury and Michael Kearns talked about their shared passion to exchange ideas on restorative justice; and how this passion lay at the foundation of the Alperton College. Their partnership made it possible to share restorative practices in London. They studied the application of conferencing (e.g. fully restorative according to McCold) and mediation in the context of criminal justice, social justice and education (e.g. schools); and so, they were able to work towards a better way of transforming conflicts. As the college is at the foundation stage it has presented a unique opportunity to use restorative practice in daily interaction and relationship building between student and teacher to create realistic expectations that this will transfer to future workplaces in law, local government, social care and policing. The strategies used to educate and train the college are underpinned by ten principles aligned with restorative practice (e.g. Socratic approach).

Discussion points:

- It is a major step forward. You both did some good work, but we have the possibility to improve this project. The restorative justice approach must become all inclusive.
 <u>RESPONSE</u>: There is not just one focus. It is, according to us, important to focus on the needs of the victims. We apply victim-offender mediation, family group conferencing, circles, etc. according to the particular needs of the victims. It concerns a restorative conversation, different for each wish. Hereby, the way we practice is important (starting with the restorative conversation and working further to the particular needs). We are open to any sort of services related to restorative practices.
- What is the financial commitment to this? What is the business model for the college?
 <u>RESPONSE</u>: It is a private business whereby the actual coordinators are well paid by the authority.
- In Serbia, restorative justice is considered as a concept and victim-offender mediation, circles, etc. are considered as techniques. In the country we have a lot of problems related to the football field. Can you give a real example from the football field?

<u>RESPONSE</u>: During a football game, a 15 year old (drunk) boy got involved in a fight. When he was arrested he struggled and a police officer fell on the ground. A face-to-face meeting between this young person and the police officer took place.

3.2 Resolving conflicts in the medical sector: a new step forward in VOM and conferencing Presented by: Grazia Mannozzi (Italy)

Grazia Mannozi is Full Professor at University of Insubria, Como (Italy). She teaches "Criminal law" and "Restorative justice and victim-offender mediation". She was Visiting Professor at Lapland University, Rovaniemi (Finland) and Schlesinger Fellow at the Hastings College of the Law, University of California - San Francisco (U.S.A.) and has worked as honorary judge at the Milan Court for the Enforcement of Sentences. She published several books and papers on mediation, sanction system and corruption.

Workshop notes

Grazia Mannozzi, of the University of Insubria (Italy), focussed on the possibility of introducing mediation, conferencing and restitution or compensation programmes in dealing with conflicts in the medical field. Within the scope of the visibility of the restorative justice approach in the medical field, she referred to the article 'The problem of defensive medicine' (1978)*', and also identified three different situational contexts: (1) medical malpractice, (2) high risk therapies or surgical intervention decision-making, and (3) life and death decision-making. According to Grazia Mannozi, the use of restorative services is only possible in good organised regions. Not in regions with a lot of organised crime where the care system is affected by it.

When the care-giver (e.g. doctor) becomes the enemy, there will be disagreement, disbelief and no trust anymore. Victim-offender mediation or conferencing, whereby dialogue is promoted between care-giver and patient, therefore might help within certain cases. It can trigger a reduction of case load for the criminal court. Malpractices are often referred to one person ('that doctor gave the wrong medication'). Victim-offender mediation or conferencing can reveal other mechanisms of a certain malpractice (e.g. the problem of the system).

*Defensive medicine (the use of diagnostic and end-treatment measures explicitly for the purposes of averting malpractice suits) is frequently cited as one of the least desirable effects of the current rise in medical litigation. It is claimed that defensive medicine is responsible for the rising cost of health care and the exposure of patients to unnecessary procedures (http://eric.ed.gov/).

Discussion points:

- It is innovative and necessary to look at the medical field. How will restorative justice go to address the fears and concerns of the patients?
 <u>RESPONSE</u>: The restorative intervention is build up step by step, to assure the well being of the person(s)/patient(s) involved. At first the case is evaluated and after that the parties are contacted. Sometimes patients are not capable to be involved. In that case a legal consent is asked for. In case the patient does not want to take part in the process, the doctor still has the possibility to take part in a victim impact panel.
- Who decides whether the eventual outcome is acceptable?

<u>RESPONSE</u>: All the outcomes are relevant. There are no fixed outcomes. In the end it are the involved parties that have to sign the agreement. For example, the outcome can be a simple apology.

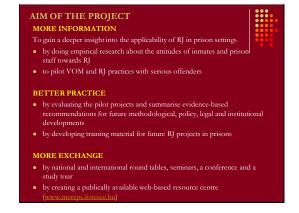
- In the case of a medical malpractice, is it not so that money compensation is very tempting for the patient(s)/victim(s)?
 - <u>RESPONSE</u>: Yes, that is true, but at the other hand, the road to go to justice is very long. And therefore, an alternative way to handle the case can be tempting to.
- Maybe doctors should just learn to say that they are sorry? <u>RESPONSE</u>: Doctors can be afraid of the equalizing movement. Often power imbalance is a characteristic of the conflicts. Mediators are well aware of this problem. Another issue concerns the fact that doctors are held back by the contracts of the hospitals. Within this scope, the involvement of the hospitals is very interesting. It is also difficult for the management of the hospitals to take into account all the different ways to resolve problems.

Workshop Four – Mediation and RJ in prison settings Chair: Borbala Fellegi

4.1 Applying mediation and RJ in prison settings: overview of the MEREPS project Presented by: Borbala Fellegi (Hungary)

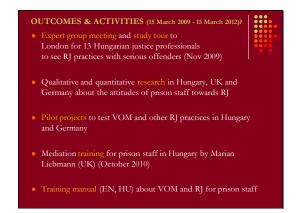
Borbala Fellegi (PhD, MA, MPhil) is a researcher in criminology and social policy, founder and executive director of the Foresee Research Group. Previously she coordinated an AGIS project on behalf of the European Forum for Restorative Justice. She has been working as consultant for the Council of Europe, the UNODC, the National Crime Prevention Board and the Office of Justice in Hungary. She regularly gives lectures and trainings on restorative justice at various universities. On behalf of the Foresee Research Group she is in charge of Hungarian and EU programmes researching the potential application of mediation in community conflicts and in the prison settings. Her publications and activities are available in detail on www.fellegi.hu and on www.foresee.hu.

















4.2 The Background and the first results of an empirical research in 2 prisons Presented by: Szandra Windt (Hungary)

Dr. Szandra Windt, has studied sociology at the Pázmány Péter University, and has got a PhD thesis in Criminology. She is a researcher at the National Institute of Criminology since 2002. She is a sociologist of settlement. She is dealing with situational crime prevention, postponement of the accusation and the possibilities of mediation.

In the frame of the MEREPS project (which is founded by the EU) the National Institute of Criminology has a great opportunity to research the attitudes of juveniles, adult inmates, correctional staff, policy makers, legislators and other key stakeholders towards RJ. Main motivations, concerns and needs will be explored through the interview-based research in order to tailor future policy developments to the specific needs and attitudes of the key stake holders.

The research will be conducted in two different types of prisons: in a jail for adults and in another one for juveniles. It means that we have some problems with the questionnaire and the whole preparation of our survey: how to select the inmates (mostly those who committed serious crimes), how to ask them about their victims, offences and feelings in connections with them. In the frame of the quantitative research we will fill 200 questionnaires with the inmates and beside this we will make about 50 in-depth interviews with *inmates* (on how they solve their conflicts, and on the attitudes towards the RJ) as well. We will ask *jailers*, *psychologists*, *teachers* (about 50 staff members) who work in the researched prisons: about their feelings in connection with the RJ, how they solve the problems in the jails (problems among the inmates, conflicts with them etc.).

While both the quantitative and qualitative research will not be finished before June we will present some pre-results and our experiences with a survey in connection with the attitudes of RJ in prison.

4.3 The possibility of RJ in prison settings (The first issues of the MEREPS project in 2 Hungarian prisons)

Presented by: Andrea Tünde Barabás (Hungary)

Dr. Andrea Tünde Barabás studied law at Eötvös Lorand University Budapest. She received a Scholarship for Hungarian Academy of Sciences in 1989-92. In 1992-93 she followed postgraduate studies at the University of Fribourg, Switzerland. Her Ph.D. thesis was a comparative study on alternatives to sanctions and on mediation. Since 1998 she is Head of Division of the National Institute of Criminology.

In Hungarian criminal law it is not the aim of the penal system to foster reconciliation between parties and nor is it suitable for it to do so. Mediation as part of the penal process became available in 2007. There are, however, legal limits to the use of mediation, e.g. it can only be used in crimes punishable by imprisonment of up to five years, in other words it 59 cannot be used in the case of serious crimes. The last stage at which victim-offender conflict-resolution can be carried out is the court of first instance; later, including during the execution of sentence, it cannot be applied. Victims of serious crimes and imprisoned offenders do rarely have the possibility to participate in any restorative programme and gain from its benefits. Nevertheless, its importance is unquestionable, since serious crimes do have the most significant impact on victims and offenders. Moreover, as several research showed, the positive effect of RJ can be the most visible in cases of more serious crimes.

In 2009 Hungarian criminologists and their international partners have obtained support from the European Union Criminal Justice Programme for empirical research in the field of the mediation and RJ in prison settings (MEREPS Project) in international cooperation. The National Institute of Criminology (OKRI) in Hungary is the professional leader of the project. This year OKRI is carrying out quantitative and qualitative empirical research concerning the attitudes of inmates and prison staff towards restorative justice. The presentation deals with the first results of this survey.

4.4 A Belgian mediation story

Presented by: Els Goossens (Belgium)

Els Goossens studied social work in Leuven. For 4 years she worked with youth who live in an institution because they 've committed crimes or because of their problems at home. Since January 2001 Els Goossens works as a victim—offender mediator for adults in Dendermonde for Suggnomè (Forum for Restorative Justice and Mediation Belgium).

I would like to tell you the story of Peter and An, during the story you will get some information about the Belgian methodology. People who want more information, more details of the Belgian mediation system, can read the documentation you will receive at the end of my presentation or ask me some questions later.

In June 2006, I was giving an info session in a prison. Peter is one of the participants. After the session, Peter tells me that he's very interested in a mediation session with his former mother-in-law. But there seems to be a problem: Peter's lawyer doesn't want him to participate in a mediation session. He's afraid that everything Peter says to the victim would be used against him in the upcoming trial.

Ten years ago, it was not exceptional that a lawyer had problems with the concept of mediation between victims and offenders. In Belgium, some lawyers always gave negative advice when it came to the possibility of starting a process of mediation. They believed that it would affect their case in a negative way. They projected that fear to their clients, who mostly follow the advice of their lawyers. Except for Peter, he wants the mediation in spite of his lawyer's negative advice. He wants to talk to me in private about his case. So I promise Peter that I will come back to take a better look at his case and the possibilities the process of mediation could have... Ten years ago it wasn't easy to go to prison to see a client. For every person that you wanted to see, you needed to get permission from the principal. You can question the confidence of mediation in prison. Now, we have a badge and we can go to prison regularly to see clients. But there are still rules such as: you can't see prisoners before nine in the morning, not during the daily walk, not during the 'search', not when they are counting the prisoners, not while they are eating, not while the lawyer wants to talk to his client, not during his work in prison and so on.

A few days later I'm back in prison to talk to Peter. He tells me his story. In 2005 he killed his ex-wife, also the mother of his two young children. He doesn't know how or why he did it; he only knows that he committed this crime. During his time in prison, he often thinks of An, his ex-mother-in-law and mother of the victim. He really would like to talk to her. Peter informed his lawyer about the mediation, and his lawyer told him to look for another lawyer.

Before I contact the victim I first check with the investigation judge if the mediation would not interfere with the investigation. He tells me that the investigation is closed so it's no problem to contact An.

Before I can do that, I first need an address. I contact the public prosecutor and ask him if I can read the criminal file. Normally we don't read the criminal file. We work with the stories the people give us. We also don't need all the information one can find in a criminal file, we only need addresses. I

didn't get the permission I needed immediately. I had to contact 5 people and wait for 2 months. But in the end, I received the address of An.

So now we can send a letter to An with all the information about mediation. Three days later An calls me and we make an appointment. When I go visit An, Nathalie from the victim service joins the conversation to support An. An tells me that she's interested in a mediation, but she has second thoughts about it. Her husband, her other children, her friends, her mother, etc., everybody close to her advised her not to go through with it: you don't go to prison to talk to the murderer of you daughter. That is just something you don't do!! But An wants to see Peter before trial. She wants to see him and talk to him, so she can see for herself whether he's sincere or not. She tells me that on the evening of the murder, Peter had dinner with her daughter Sylvie and their two children. Afterwards he drove Sylvie home and as she entered her apartment Peter followed her, grabbed her from behind, took a knife and stabbed her. Then he had his hand covering her mouth until she was dead. He wrapped her in plastic and placed her in his trunk. In the meantime, their two children were sitting in the back seat of the car. He drove home, put the children in bed and threw Sylvie in his garden.

Despite what happened, An does not have feelings of hate or revenge. She's just very angry. But she believes that her grandchildren, who lost their mother, have a right to know their father. She tells me that she would like to ask Peter what Sylvie's last words were. She wants to know why he murdered her daughter.

A week later I'm going back to see Peter in prison. He's telling me that he has written a letter to An. His new lawyer wanted to read him first, so he can't give him to me at the moment. He's telling me that he was very depressed after he divorced Sylvie; he took 10 pills a day and was seeing a psychologist. He couldn't deal with the divorce, he felt really down. And then it happened. While in prison, he's trying to see deep within his soul. He feels like a monster. The fact that An wants to talk to him despite what happened, makes him feel a little bit human again. He doesn't remember much about the murder, only flashes. He doesn't understand how he was able to do such a thing. He says that people have a brake, a brake that prevents them from doing terrible things. Like an 'emergency-brake'... But that brake wasn't there. His emergency brake didn't work. And that scares him.

Peter wants to meet An and apologize in every way that he can and thank her for taking such good care of his children.

A week later I'm going back to An and tell her Peters version of the facts. She doesn't really believe the emergency brake story. She understands the concept. But he took the knife and plastic with him before they went to dinner. Why would he do that? He planned it all in his head. Maybe the emergency brake story is just a story he tells himself to ease his mind. An doubts his sincerity, she thinks Peter is deluding himself with this 'emergency brake' story. She thinks it's a way of surviving. At the trial he will have to give answers. At the mediation meeting she hopes to see whether he's lying or not.

An tells me that she has some more questions for Peter: What was he going to do with her dead body? Did he really think to get away with this? Was Sylvie taking drugs? What does he do all day in prison?

When I see Peter two weeks later, he tells me that his case will go on trial within 5 months.

For serious crimes in Belgium we have a tribunal with citizens as a jury. Such a trial takes a whole week. The whole written investigation will be done again orally. All the witnesses, family members of victim and offender, the investigation judge, police officers have to come to court to tell the jury what they know. Then the jury has to decide whether the accused is guilty or not. When they have decided that the accused is guilty, they have to decide about the punishment. This decision must be taken in consultation with professional judges. Such cases are closely monitored by the press. You can follow the whole case in the newspapers.

This oral procedure and the press are very big risks for mediation in such cases. Since 2005, we have a law that says that all the information from the mediation has to stay confidential and that mediators cannot be called as a witness. And lawyers have to be quiet about the mediation at the moment of the trial. But when a lawyer mentions something about the mediation, the only thing the judge can do is ask the jury to pretend they didn't hear it... But of course they already heard it. They heard it and the press heard it to. There's a big risk that you get a big title as 'grandmother visits the murderer of her daughter' in the newspaper the next day. So in such cases we have to prepare all parties for these risks.

One possibility to avoid abuse of the mediation is to edit a written agreement. This is a paper where all parties can write down there point of view and their arrangements. But there is also the possibility to write down 'the victim and the offender had a mediation meeting in prison at that certain date and they both want to keep the content of this meeting confidential'. The mediator can ask to add this agreement to the court file. If everything goes well, the judge can read out loud this agreement at the moment of the trial. This way we can restrict the risk of abuse. Such an agreement is only possible when both parties agree. They both have to sign this agreement.

Peter answers all of An's questions. He also understands that An doesn't believe the emergency brake story. He himself doesn't even understand what he did. This is the most difficult aspect for him. He tells me that he doesn't remember if and when he put the knife and the plastic into his car trunk. He supposes that he's displacing things in his mind. He tells me that he would like to talk to a psychologist about this but in prison there's nobody to talk to about such things. The psychiatrist in prison only prescribes pills, to keep everybody quiet. Because of An's questions, Peter starts to think again about how everything must have happened that evening and about his acts. He tells me that honesty is very important to him, not only during the trial but also during the mediation.

Peter gives me a letter he wrote to An. His lawyer also read the letter and advised him to delete some things. I ask Peter if I can read the letter first, before I give him to An.

When offenders ask us to deliver a letter to the victim, we always insist on reading it ourselves first. We do this because we want to make sure that the content of the letter is acceptable and is corresponding with the content of the mediation. We also need to know what the letter says so we can help the victim understand the content of the letter.

In his letter Peter expresses his regret for what he has done. He also expresses his gratitude to An, he is very thankful that she takes such good care of his children.

We agree that the next time I visit Peter, his helper of the offender support will also be there so we can prepare the meeting with An.

One week later I'm going to An and her helper from the victim service to prepare the mediation session. She tells me that she talked to her lawyer and he doesn't have an immediate problem with the mediation. We also discuss what An is going to say to the children about her meeting with their father.

Peter's parents visit him every week and once a month they take their grandchildren with them. Peter's children are 3 and 6 year old. In Belgian prisons offenders also have the possibility to see their children in a special 'children visit'. Once a month the offender support service organises a supervised moment where children can go and see their father. These visits are held in a room where there are toys so they can play with their children in a warmer room and not in a big, cold room where other prisoners are around.

An decides to tell her grandchildren that she's planning to see their father. She also informs the children's teachers at school.

When I tell her that Peter wrote her a letter, she immediately wants to read it. An wonders if his apology is sincere. Is he sorry because he got caught? Is he sorry because he's in prison? Or is he really sorry that he murdered her daughter in cold blood? And is he sorry he took his children's mother from them? Or is it all an act?

- Now I have to tell you a little bit more about the preparation of a mediation meeting. It always runs the same for both victim and offender. We talk about several aspects of the meeting.
- Prisons are not organised for victim-offender meetings! It's always a search for a good location. In this case the principal offers us a room where all their internal meetings take place. When I go to the prison and take a look, it appears to be a rather large room with a large table in the middle. It looks good. Then I go to talk to the principal and we make some practical arrangements such as who will accompany the victim when she arrives at the prison; will he inform his guarders that a victim will come to prison; can he be sure that the victim doesn't have to wait in line with visitors for other prisoners; will there be coffee at the moment of the meeting; who will accompany the victim after the meeting; can he make sure that we don't have to wait too long for Peter? Because of other movements in prison for example.

In my conversation with An it is very important to tell her what she is going to experience when she enters the prison: the heavy doors with many keys, the metal detector, more doors and keys, the guarders, the other visitors, etc. I also describe the meeting room to An and Peter.

- Then we give **the structure** of a mediation session: the mediator starts with an introduction. Then the victim can tell what she wants to tell, while the offender has to be quiet. When the victim is ready with her story, the offender can tell his story while the victim has to be quiet. Then both parties can talk to each other, ask questions, give answers, etc. In this phase of

the session the mediator does not intervene. Except when people are unable to talk to each other in respect.

- Who will be **in the room first**? Does the victim already want to sit at the table when the offender enters the room? Or does she prefer entering after him?
- Who is going **to sit where** at the table? We first ask the victim: does she want to sit in front of the offender? With her face to the door? Where does she want to place the mediator? And her helper?
- What does the victim want the offender **to do when he enters** the room? Can he shake her hand? Is he going straight to his chair?
- Who's going to start talking first?
- What is **your intention** with the mediation session? And what if you don't achieve that intention?
- What are you planning to say? Do we make a list in advance?
- What do you **expect of the mediator** during the mediation meeting?
- What's **the worst thing** that can happen during the mediation meeting? In that case what are we planning to do?
- When you want a **break,** will you be able to tell this to the mediator or do we have to agree about some kind of sign?
- What are you going to do when the mediation meeting is **over?** Do you want to leave first? Are you going to shake his hand?
- Who is going to take care of **the after-care**? Mediator or helper or ...?
- Did you inform your lawyer? Did he give you advice about 'things not to talk about'?
- What are you going to tell to your **husband**, **children**, **family**, **friends**, ...

We go back to our story. An wants me to wait for her at the entrance of the prison. She wants to be in the room, before Peter enters. She wants to sit in front of him, and she wants Nathalie to sit beside her. She wants me to sit in between her and Peter. She will shake Peter's hand when he enters the room. She wants him to be comfortable, so that he will feel at ease to answer all her questions. She has no problem with making eye contact, if it becomes too difficult for her she will look down.

During the conversation An hopes to find out whether Peter is being honest or not. She doesn't want the meeting to get an apology from Peter; she wants the meeting to get answers!

An will speak first. She wants to ask Peter a lot of questions and also tell him that he made his children the children of a murderer. She wants to tell him how the murder on her daughter affected her life. And not only her life but also the life of his children, family and friends.

An feels that the worst thing that could happen during the meeting is that Peter would start lying. If he lies, An won't hesitate to confront him with that. But even if she feels that he is lying, she wouldn't consider ending the conversation because she believes that he cannot lie about everything!

If things get to difficult for An she will signal that to me by saying 'just a minute'. That way we can take a break when necessary.

At the end of the meeting she will shake Peter's hand and he can leave the room first. Afterwards she'll go get a coffee with Nathalie, so they can talk about how the meeting went. An has only one expectation: to hear the truth!

After I prepared the meeting with An, I do the same thing with Peter. Peter also thinks it's a good idea that An will arrive first, and that I sit in between them. Peter doesn't know if he'll be able to look into An's eyes, he feels ashamed. When I tell him that An wants to shake his hand at the beginning and ending of the conversation he starts to cry. He's very grateful for this gesture.

It's not a problem for him that An will start the conversation. He also made a list with things he wants to say to her:

- He wants to thank An for the meeting and for taking good care of his children;
- He wants to tell her that he can't stop thinking about what has happened that day;
- He wants to ask An why she is talking to her daughters murderer;
- He wants to tell her that he realises that the daily care for the children is very difficult and hard for her;
- Ha wants to thank An for letting the children visit his parents;
- He wants to tell her that he will accept his punishment;
- He wants to tell her that his feelings of guilt are overpowering everything. When he laughs, he feels guilty;
- He wants to tell that her that while he's in prison he's doing everything he can to help other people;
- He wants to tell An that he's not running away from things. That he also wants to know what happened that day. He is searching for help in prison, but nobody can help him with this; and
- He wants to know if An can accept that one day, he will be leaving prison?

The worst thing that could happen for Peter during the meeting is that the pressure will be too hard for him, and that he will lose it. He's afraid that An will insult him or scream at him. He would understand her emotions but he wouldn't be able to listen to it. He's afraid that the situation could explode, and he never wants to lose himself again in a blur of emotions and aggression. He tells me he will look down if it gets too difficult for him, and that way I will know he needs a break. Peter hopes that after the meeting An will be able to see the situation in grey, rather than in black and white. He hopes that everyone will feel better after the meeting. After the meeting Peter's helper will stay for a while so they can talk about the meeting.

I tell him that An is planning on telling the kids that she's going to see him in prison to have a talk with him. Peter starts crying again and says 'What a woman'. But he has to admit that the meeting feels like a pre-trial for him.

And then the day of the meeting has come. When An and Nathalie arrive at the prison, it's very clear that both of them are nervous. Even though we prepared the meeting in detail, An is overwhelmed. We walk in together, through the metal detector, a few secured doors ... All the guards are very friendly.

The principal took every precaution necessary for An's visit. All the members of the staff are well informed. One guard guides us from the entrance, to the meeting room. We are a bit early so we had to wait 15 minutes. As An and Nathalie sit down I give everyone a cup of coffee. After 10 minutes the guard tells us that Peter is in the next room, and that he is ready to come in whenever we are. I ask An if she's ready, and she is. I go to the next room to see how Peter is doing. He's also very nervous, but he's ready to see An.

When Peter enters the room An stands up and reaches her hand to Peter. Peter shakes her hand and finds his seat. You can feel the tension in the room. Peter doesn't make eye contact with An.

I start the meeting with a little introduction. As I start speaking, I can see that An and Peter are carefully starting to make eye contact. I talk about the steps everybody took in this mediation and I thank them for being brave enough to be here today to meet each other. Then I ask An if she's ready to tell her story. She takes her list out of her bag and starts with the first thing on her list. During the conversation there are some moments of silence and emotion, but both parties are very respectful towards each other.

After an hour and a half we decide to end the meeting. I thank everybody for coming and ask Peter if he's ready to leave. I tell him that I will visit him in a few days to see how he's doing. Peter stands up, shakes An's hand and he leaves the room. In the hallway An tells me that she feels relieved, and that she's very happy she went through with the meeting. We say goodbye and I promise to call her within a few days to see how she's doing.

A few days later I go to Peter in prison. He tells that after the meeting he had a long talk with his helper. He felt relieved, and it felt good to talk about the children. Peter was shocked to see how much An had aged. He felt very guilty for causing her so much hurt. He hoped that the meeting would bring back some memories about the day of the murder, but it didn't. Still he's very grateful to have seen An. If in the future An has any other questions, he will always try to answer them but right now he needs some time. When I ask him if he wants to let the court know that there has been a mediation he says that the court should know that there has been a meeting, but that they don't need to know what they said during the meeting.

When I talk to An again, she tells me that she didn't hear anything new during the conversation. Everything he said, she already knew. But she doesn't regret seeing him. Now she's no longer afraid to face him. She thought that Peter looked good; he used to be much skinnier.

She's disappointed that Peter didn't answer all of her questions. She can't believe that he doesn't remember a thing. Everybody always tells here that Peter manipulates the people around him, maybe they are right? But An is satisfied that she had the mediation meeting. It felt good for her to hear that Peter was so grateful to her, for taking such good care of his children. It gave her a feeling of affirmation and acceptance. That was very important for her.

She doesn't want to see Peter again before the trial, she also needs some time. She plans on reading the criminal file again. After the trial she would like to see him again. She also wants the court to know that there has been a meeting, but they don't need to know what has been said between them, that is private.

We make up a written agreement and the mediation process came to an end. It lasted for one year.

Three months later Peter has to appear in front of a judge and jury. The judge mentions the mediation and reads out loud the written agreement. After 5 days in court, Peter is found guilty of murder and gets a punishment of 25 years in prison.

Two months after the trial I receive a phone call from An to ask me whether it is possible to talk to me again. We make an appointment. During our meeting she tells me that the trial was ok and that she already knew everything that came up during the trial. She tells me that after the trial she walked up to Peter and asked him to get stronger in prison, to do something with his punishment.

She says that she wants to talk to Peter again. Not about the trial, not about the murder but about other things like:

- I heard that there are some problems with his parents? Is this true?
- The children didn't visit Peter the last time. Why?
- From whom is Peter getting information?
- Is there anybody helping him now with his treatment? Is he already doing something with his punishment?
- How can we make arrangements about the children?

An tells me she wants a conversation about how things are going at the moment, not about the past. She wants a mediation meeting again as soon as possible to talk about the future. She wants to be able to make arrangements with Peter himself, not with his parents

When I go to prison to talk to Peter, he's happy to see me. He's telling me about his punishment, the day he could possibly be free with conditions (December 2012). He tells me that when An came towards him after the trial he immediately forgot his 25 years. 'At that moment, An gave me power to stand up and go for it. Those words were a beautiful present she gave me.'

He tells me that there were some problems at his parents' home. But everything is ok now. Next week they will come and visit him with the children. Peter also feels that it would be easier to make arrangements about the children with An, instead of with his parents. His parents are very afraid of doing something wrong or ask something wrong at An. Peter says that it's fantastic that An lets him being a father again! Peter agrees to talk to An again to talk things through.

So, Peter and An meet again! Together they make some practical arrangements for the children. They agree that the children can see Peter on special days like Christmas or their birthdays. If Peter wants to see the children, he can write a letter to An and ask her if it suits them to come for a visit. If An has any questions at all, she can always write him. Peter will even put An on his list of visitors. If there is ever an emergency, she can go and see Peter when necessary.

During this second mediation meeting they both tell me that it is very nice to be able to arrange some things by themselves without the intervention of all kind of services. They are planning to continue this way of communication by letter.

We end the mediation. A few months later An calls me to tell that she already received a letter from Peter with several dates for children activities in prison. She also went to another prison to talk to

offenders about her experiences as a victim. She tells me she needs to do these things so the dead of Sylvie hasn't been in vain.

Time for questions and discussion...

Workshop notes by Radoslava Karabasheva

The workshop organised by Borbala Fellegi, Szandra Windt and Andrea Tünde Barabás (Hungary) and Els Goossens (Belgium) aimed to familiarise us with the mediation and restorative justice experiences in prison in relation to their EU-funded project "Mediation and Restorative Justice in Prison Settings" (MEREPS – www.mereps.foresee.hu). Difficult questions, precisions and suggestions for the project were directed by the participants.

The first three presenters exposed their project based in two prisons in Hungary (one for juveniles and one for adults). Their first impressions about the data just collected were shared with us and was followed by a dynamic discussion. The discussion was opened by Professor Ivo Aertsen encouraging the initiated project. Nevertheless, he was critical to the formulation of the outcomes pointed up in terms of restoration and forgiveness. He questioned, if this formulation was not just too ambitious, adding that other objectives might be more relevant to the work with such target group. Objectives as "understanding" may be more important for the victim, and even for the offender, and of course, more realistic than forgiveness and restoration which are difficult to achieve in post sentencing situations. Evidently, the research is in its first stage, as Andrea Tünde Barabás said and these first impressions of the data are to be analysed more thoroughly in the following months.

Another suggestion was to study the post-sentencing in two viewpoints: on one hand, the conflicts concerning the matter of the sentencing; on the other hand, the internal conflicts in the prison, independent from the initial crime. To explore the possible conflicts, their causes and to see what restorative choices of solutions are feasible. Such questions were present in the survey even if they seem highly problematic, especially regarding the juvenile prison. It was observed that the juveniles in the prison had an important difficulty in resolving their own problems, leading them to aggression they could not control. Consequently, the problem can be seen in 3 parts: offender versus victim, inmate versus inmate and inmate versus prison staff. The concern is that prison staff refuses to discuss with the minors regarding the fact that their position can be altered by such confrontation and they are afraid of losing their power. The young offenders are also unwilling to talk about the conflicts with their mates. To clarify the situation, it is necessary to add that there is no special penal law for minors, but a general penal law, with special provisions for minors (from 14 to 18 and possible till 21 under special conditions). The youth prison included in the project was for serious crimes and recidivists.

Professor Aertsen revealed that the involvement in the prison structure should be rethought in the project. Instead of conforming to the existing structure, the Belgian experience to create their own context can be taken, which means a lot of preparatory work to resolve the conflicts in the prison is to be done. One way to do this is by working with the prison officers, by rising prisoners' awareness about the consequences for the victim. This hint was actually already taken into consideration and

awareness trainings in the prison are planned. Mediations and family group conferences have already taken place on ad hoc bases, and the next step is to meet the governor in order to elaborate the future agenda: awareness rising and cultural trainings, dissemination of the results, etc. After that the possibility to go out of the prison structure and to change the prison context will be explored. The flexibility in terms of expected results was an important characteristic of the project and the acceptance by the European Commission was crucial.

Another suggestion related to juveniles, is to try to mediate with the victim's family, when the victim refuses the mediation, like FGC that have already taken place in the UK.

In the second part of the workshop, the Belgian mediation story performed by Els Goossens in a marvellous way also raised questions. Two clarifications were asked. First, to what extend one special case is to be generalized? The answer is difficult, because of the specificity of every case. Els named it the perfect case, "as if it just went out of the book". Obviously, the cases are different and consequently not always comparable. In the present example, "Madeline" (the mother of the victim) was the one to convince the mediator (Els) to organise it and she accepted. A risky task when murder has occurred. Although in such cases, between partners where relations and partnerships existed before the crime, sharing is really important for the victim and the offender. They need to talk to each other; they need to understand what has happened. Finally, some more practical things need to be resolved and the participation of the offender is essential. These are some of the possible conclusions. This case is special also because of the fact that the mother of the victim is taking care of the children of the murderer and she needs to know, for instance, what the children are doing when they visit their father in prison.

One difficulty to consider the example in other realities was pointed out by a representative of the UK where keeping all the people involved in the case for the whole duration of the mediation seems to be hardly possible. As Els experienced, the flexibility of the mediator is crucial. She, herself had to move with Peter (the murderer) when he was moved to another prison. It is out of question to change the mediator just because the department has changed, or because the prisoner is moved to another prison.

The workshop atmosphere was stimulating and the participants' questions very pertinent. Unfortunately, the time was too short and I found the PowerPoint presentation was going fast and a little hard to follow. It might have been better to keep two presentations and the Belgian story. Obviously, it is always difficult to find the just number of presentations and slides and to estimate how to give more information and go deeper into it at the same time. However, I very much enjoyed the workshop, and congratulate the initiatives.

Workshop Five – The promise and challenge of RJ for victims Chair: Eleonore Lind

5.1 The promise and challenge of RJ for victims

Presented by: Howard Zehr (USA)

Widely known as "the grandfather of restorative justice," Howard Zehr began as a practitioner and theorist in restorative justice in the late 1970s at the foundational stage of the field. Zehr continues in

this third decade to deepen the principles of restorative justice and grow its practice worldwide. He has led hundreds of events in some 25 countries and 35 states, including trainings and consultations on restorative justice, victim-offender conferencing, judicial reform, and other criminal justice matters. His impact has been especially significant in the United States, Brazil, Japan, Jamaica, Northern Ireland, Britain, the Ukraine, and New Zealand, a country that has restructured its juvenile justice system into a family-focused, restorative approach, causing a dramatic drop in youth crime. A prolific writer and editor, speaker, educator, and photojournalist, Zehr actively mentors other leaders in the field. More than 1,000 people have taken Zehr-taught courses and intensive workshops in restorative justice, many of whom lead their own restorative justice-focused organizations, such as the Council for Restorative Justice at Georgia State University, the Youth Justice Initiative in Iowa, and Mediation Northern Ireland (a major contributor to peace in Northern Ireland). Zehr was an early advocate of making the needs of victims central to the practice of restorative justice. A core theme in his work is respect for the dignity of all peoples.

Workshop notes by Anamaria Szabo

The workshop was attended by a high number of people. The presentation was organised in an interactive format, which enabled participants to have small group discussions during short presentation brakes.

The discussion focused on the ways victims are involved in RJ programs or practices. Ideally, programmes and practices which are labelled as restorative have to start from the victims' needs, while terminology and work methods have to be adapted to the victims' experiences. In reality, restorative justice programmes and practices are still offender oriented and practitioners are not sufficiently trained in the real problems of the victims. It can be said that, at the moment, there are cases in which the RJ movement is 'using victims to promote its agenda', to use Zehr's expression. The tension between the two orientations – towards the offender or the victim – is present in many countries. As a recommendation, Zehr suggested a series of signposts which could be helpful in finding whether our programmes and practices are truly restorative or not: Are victims and their advocates represented in boards? Is the desire to help victims genuine, or motivated by a desire to help offenders or the system? Are victims' judicial needs truly addressed? Are victims given the information, opportunity and resources to define their needs? Are services provided to victims, regardless of whether an offender is identified or cooperative?

As a general conclusion, the workshop provided participants with the opportunity to rethink and reevaluate what restorative justice programmes and practices in their own country are truly about.

Workshop Six Chair: Xabier Etxebarria

6.1 La colaboración de Jueces, Fiscales y Secretarios Judiciales en el Desarrollo de la mediación Presented by: Cristina de Vicente (Juez), Natividad Esquiu (Fiscal) and Alicia Olazabal Barrios (Secretaria Judicial) (Spain)

Workshop Seven Chair: Roberto Moreno

7.1 Mediación penal y Penitenciaria, Experiencias de diálogo en el sistima penal español

Presented by: Carlos Pyñeiroa (Asociación ¿Hablamos?, Zaragova) and Francisca Lozano (Coordinator of Mediation Service at prison of Madrid III, Valdemoro) (Spain)

Workshop Session Four

Workshop One – Practices and Methods

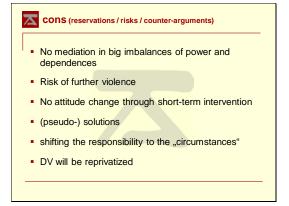
1.1 Doing RJ in Finland and Germany – A case of domestic violence

Team coordinators: Mia Slögs (Finland) and Frauke Petzold (Germany)

Pia Slögs is Head of the Mediation Office in western Uusimaa and the secretary of the Advisory board on conciliation in criminal cases.

Frauke Petzold is a mediator, trainer, conflict consultant and supervisor in different social and economical areas. She is co-founder of the Waage Hannover e.V. (www.waage-institut.de), a non-profit organisation for victim offender mediation for adult offenders and their victims, together with her colleague, Dr. Lutz Netzig. Together they also founded the Waage-Institut GbR — Institut for Conflict consulting, mediation, training and research, in which they provide training in conflict consulting and mediation for different areas. Frauke is author of many publications. From 2002-2008 Frauke has been a board member of the European Forum for Restorative Justice.





History of Domestic Violence in Germany:

- 10 years ago domestic violence was regarded as a private affair in Germany
 - Stereotypes: "problem of a fringe group", "antisocial people'
- police said: "vermin hits each other, vermin get along with each other!"
- Justice did not approve a public interest
- Men saw beating their wife as their right
- · Women could only escape into women's refuges

social change in progress:

- Network of counseling, strengthening, intervention
- Domestic violence as a central and proscribed
- Protection against Violence Act (1.1.2002)
- "who beats has to go!" (restraining order etc.)
- intensive training for police officers
- special departments at the judiciary

🔀 social change in progress:

- public campaigns, exhibitions, TV-Spots etc.
- Pro-active offer of counseling
- Statistics: increase of DV cases → assumption: more women are ready to report a crime
- however this is only the beginning of the development
- · Good offer in big cities, not in rural areas



Some facts on Domestic Violence:

- Every 4th woman declares, that she at least once - has been physically affected by her partner
- Every third of those women suffered from this violence 10 to 40 times
- 7 % of these women were (to some extent additionally) victims of sexual assault through their partner
- almost 70% of women affected by violence reported on injuries
- every 4th woman between 17 and 20 years old experiences violence in her relationship in order to be constrained to sexual activities



Some facts on Domestic Violence:

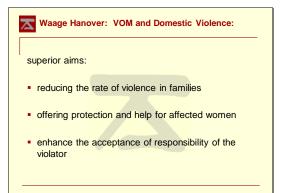
- every 6th woman experiences violence through her partner during pregnancy
- 90% of victims of violence in civil partnerships are
- almost half of the accused are influenced by alcohol and/or drugs
- every 10th of the accused is armed
- domestic violence contains physical, psychical, financial and sexual violence
- often children are affected directly or indirectly

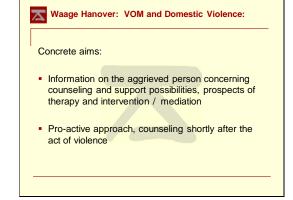
холу: Against violence in civil partnership. A booklet to an exhibition



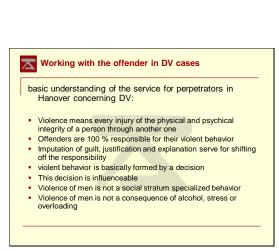
Waage Hanover: VOM and Domestic Violence:

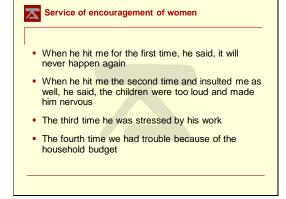
- InterventionProgramme of Hanover against Violence of Men in Families (HAIP)
- administration: department of equal opportunities for women in the capital city of Hanover
- collaboration since 1997
- Protection against Violence Act: "Who beats has to go!"

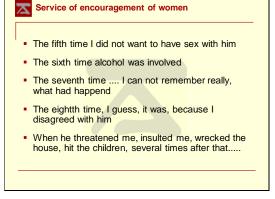


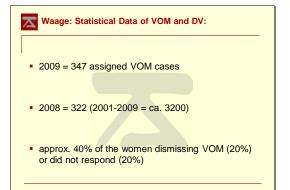


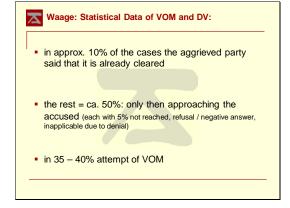


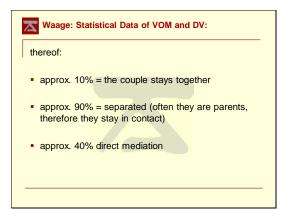


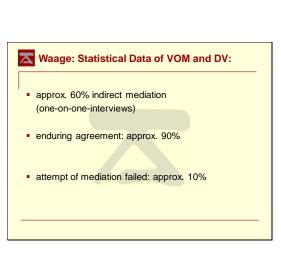


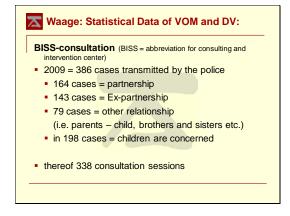


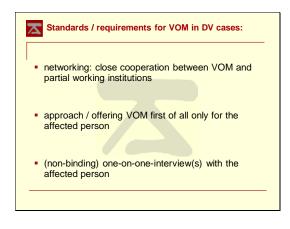














- approaching the perpetrator, only if the woman intends it
- one-on-one-interview with the perpetrator

Standards / requirements for VOM in DV cases:

- mixed gender Co-Mediation at all times
- one-on-one-interviews seperately at all times
- Often indirect mediation
- "mixed double" in direct mediation processes
- follow-up sessions sustainability of the agreement

"Violence is never private!" Exhibition of Waage on violence in civil partnership and families

- Domestic violence is a widely spreaded problem
- DV appears not only in antisocial families, it is a phenomenon of our society
- Often children are affected
- The experiences are imprinted as a pattern
- The children probably commit themselves to relationships which are affected by violence
- Violence is inheritable

Case studies Waage

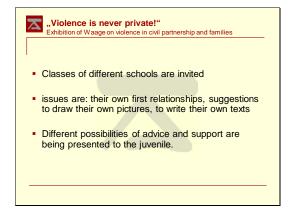
- Turkish couple
- He speaks German well, she does not
- Personal injury, report through the neighbor
- She did not give a statement at the police
- He is ruefully, ready to take advice and attend a social training for violators
- In one-on-one interviews she reports of massive violence lasting over several years, blocking up, fear, hectoring
- No mediation
- Partial counseling / encouragement of the woman
- Forwarding to a competent female attorney
- Subpoena for a statement at court
- Offender in custody

Case studies Waage

- Separated couple with one child
- threats, insults, harassing phone calls
- man wants contact to the child
- objects still in the house of the other party
- one-on-one-interviews
- contact ban
- Focus on needs and interests
- Written agreement
- Disposal of objects through staff of Waage
- Accompanied child contacts at the local social service
- Follow up sessions
- After 6 month mediation (separation, child education, mutual responsibility)

"Violence is never private!" Exhibition of Waage on violence in civil partnership and families

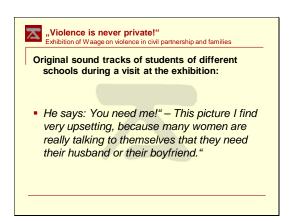
- The exhibition should adress particularly juvenile
- Partner of cooperation: State Office of Criminal Investigation, district court, City of Hannover, HAIP
- The exhibition shows posters and photographs made by students of the college of higher education Hanover and Hildesheim
- The exhibition is shown at public places (city hall, district court, schools, community centres...)

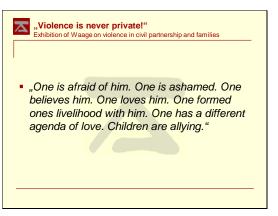


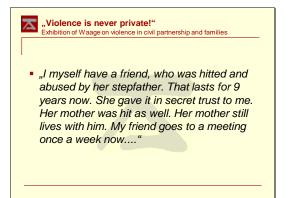


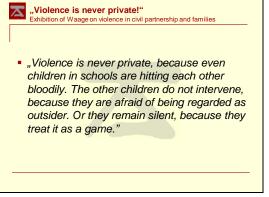


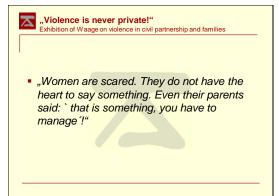


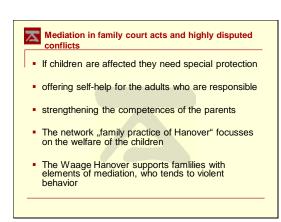


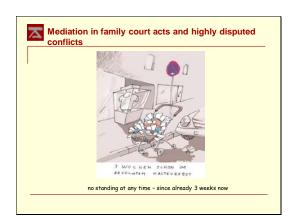






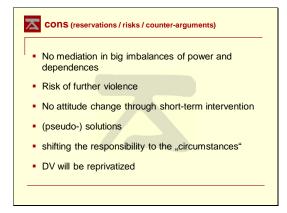


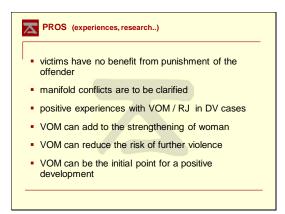


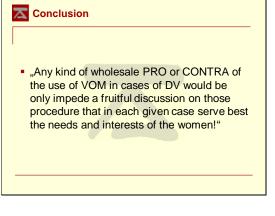














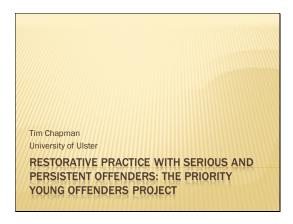


Workshop Two – Conferencing Chair: Rob Van Pagée

2.1 Professionalism and conferencing

Presented by: Tim Chapman (UK)

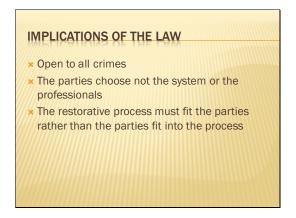
Tim Chapman is a lecturer on the Masters in Restorative Practices at the University of Ulster. He has been involved in the practice and training of restorative justice and mediation for the past ten years. Prior to that, he worked in the Probation Service in Northern Ireland for 25 years. He has published widely in the fields of the supervision of offenders and youth justice including Time to Grow (2000 Russell House). With Hugh Campbell he wrote the Practice Manual for restorative youth conferences for the Youth Justice Agency in Northern Ireland. He has also developed restorative approaches within schools and children's homes.

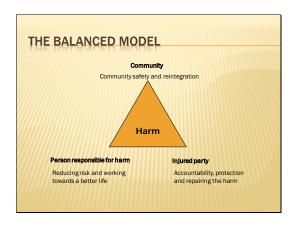




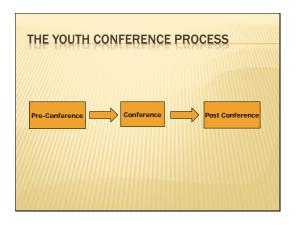


The Justice [N.1] Act 2002 – to Implementa restorative approach The public prosecution or the court must refer all cases of children who have been found guilty of an offence unless there is a mandatory life sentence. The offence must be 'serious' enough to be referred by the court A conference referral is only with consent and after admission of guilt Four weeks to complete the process Two objectives: to satisfy the victims' needs and to reduce the risk of further harm The outcome of a conference is a statutory plan which is monitored





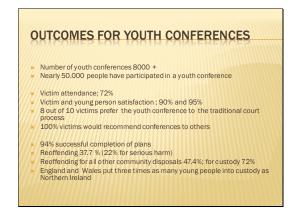


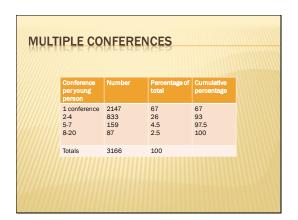


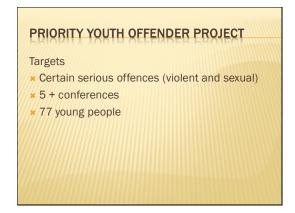
THE CONFERENCE PROCESS * Meet and prepare the person responsible for harm and supporters * Meet and prepare the person who has been harmed and supporters * Meet and prepare the appropriate community

Conference
 Introductions, ground rules, facts
 Story of doing the harm and questions
 Story of being harmed
 Dialogue and response to the harm
 Address the risk of further harm
 Agreement
 Ratified by court or PPS
 Follow-up support and accountability

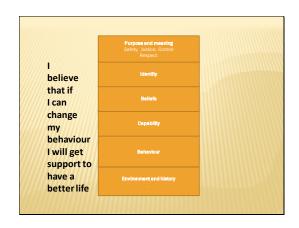






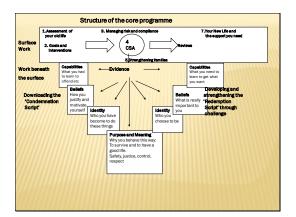














* Primary support increases Family, friends, mentors, school, community, church, sport, recreation etc. Secondary support decreases Youth Justice Agency, probation officer, social worker, specialist programmes and services





Typical time table				
Day	Time of Meet	Supporter	Relationship	Activity
Monday	16.00 - 17.30	Joe	PYOP worker	Your New Life programme
Tuesday	19.45-21-30	Alison	Mum	Quality time
Wednesday	16.00-17.00	Sue	Drug counsellor	Counselling on substance misuse
Thursday	19.30-21-30	Johnny	Youth Club	Activities
Friday	18.30-22-00	Jimmy	Brother	Cinema
Saturday	11.00-14.00	Paddy	Community contact	Volunteering at the elderly residents cl
Saturday	15.00-17-00	Paul	Mentor	Swimming
Saturday	22.00	Alison & Ray	Mum & Uncle	Checking in
Sunday	12.00-2-00	Paul	Mentor	Informal meeting
Monday - Friday	9.00-16-00	Fred	Teacher	Available at school when needed
Monthly	17.00-18.00	The Circle		Review



2.2 Training police for RJ

Presented by: Michaela Wengert (Australia)

Michaela Wengert has worked in the adult and juvenile criminal justice systems for over eighteen years, after many years working with offenders in community settings. For the past twelve years she has been regional manager of a legislated scheme based on restorative justice principles. She is committed to incorporating emergent research into practice, often through the development and delivery of training to practitioners and stakeholders. In 1999, Michaela developed the three day training package which subsequently became the Specialist Youth Officer course and the Cautioning workshop.

The Young Offenders Act 1997 (NSW), which came into effect in April 1998, provides a legislated basis for the processing of young offenders outside the formal criminal justice system. It provides a framework for delivery of police cautions and establishes Youth Justice Conferencing (YJC) as a 'community-based negotiated response to offender by young people'.

Referrals to YJC are made either by the police or by the courts. In the case of police referrals, the decision is subject to review by the Conference Administrator who may either accept the referral or return it to the police for either a police caution or to commence criminal proceedings.

Under the *Young Offenders Act, on*ly police appointed as a Specialist Youth Officer by the Commissioner of Police can make determinations to refer to YJC or commence proceedings.

This workshop outlines the training provided to SYOs for appointment to the role, and demonstrates some of the experiential learning activities incorporated into the training. The training is co-delivered by a Juvenile Justice Conference Administrator and a Police Youth Liaison Officer, demonstrating the collaborative partnership between juvenile justice and NSW police in administration of the *Young Offenders Act*.

The SYO Course is a dynamic and interactive training program, based on principles of adult learning and competency-based assessment. It supposes that a commitment to restorative justice cannot be taught or imposed, but will often be engendered in an informed and reflective participant through a combination of knowledge, experience and attitude.

Workshop Three – Cooperation with legal practitioners Chair: Stein Fr¢ysang

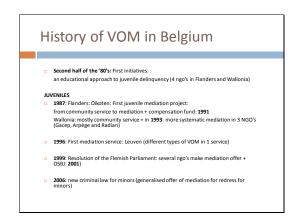
3.1 Steering groups – a way of local policy making on RJ? Steering groups – a way of involving legal practitioners?

Presented by: Natalie Van Paesschen and Pieter Verbeeck (Belgium)

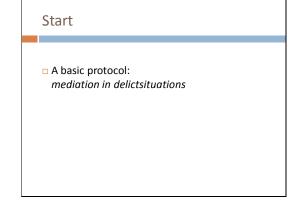
Pieter Verbeeck is a staff member of Suggnomè (mediation service (adults) and forum for RJ and mediation).

Natalie Van Paesschen is the Coordinator/Mediator (minors) in the mediation service of Leuven BAL (vzw Alba)





ADUITS 1993: Mediation for redress started as an action research – University Leuven 1994: Law on penal mediation 1996: Mediation service Leuven (minors, adults, police stage) 1997: Mediation for redress as a national pilot project (Justice)+ 1998: implementation in other districts 1998: Suggnomè – Forum for restorative justice and mediation 2000: Project: Mediation in prisons (Flemish Community)



Goal To realise a more on reparation oriented penal lawapplication in the judicial jurisdiction. Operational goal: To take concrete initiatives to bring victim and offender, involved in an offence, to pacification and reparation to place a concrete, scientific and competent offer of mediation at disposal of the people of the judicial jurisdiction.

TASK To consult and evaluate the concrete initiatives; To guide the mediationprojects in their local context; To advise the different mediationprojects on how to deal with specific problems; To spread information on the different mediationprojects in the local region.

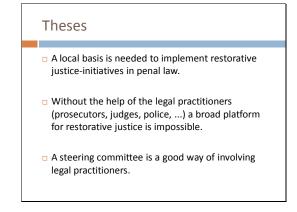
Restorative Justice initiatives on the interface of different rationalities

The need of a dialogue between the different rationalities aiming to reach a necessary balance

Regional steering committee

Partners Are broadly involved in the penal law-application by their role in the investigation and prosecution policy, or by their role in the social assistance of offenders and victims and their environment. They all aim for a more on reparation oriented penal law-application. Members of the steering group Leuven (Belgium): the public prosecutor, the bar association of layers, the house of justice, Centre of welfare, Alba vzw, Suggnomè vzw, local police of Leuven, the university of Leuven, the city of Leuven, prison of Leuven, the court

Subjects of discussion The existing restorative justice-initiatives; The design of new restorative justice-initiatives; Reflection on the way the professional task of the different partners is modelled in proportion to the restorative justice orientation of the criminal justice policy and in particular to the restorative justice initiatives in the region; The relation to policy making initiatives on a supralocal level. (fe: the implementation of the law on mediation in the own region)



Theses • How to motivate all these different rationalities to support the restorative justice initiatives?

3.2 Cooperation between legal practitioners through the implementation of a European project Presented by: Pilar Lasheras (Spain) & Véronique Dandonneau (France)

Pilar Lasheras is a Lawyer and she teaches law courses in the faculty of Law at the University of La Rioja (Spain). She is also a professor organizing a Restorative Justice on-line post-graduate course in this University which was the first in Spain to propose one on-line Restorative Justice Post-graduate initiated for Spanish speaking.

Véronique Dandonneau - Legal expert, she's managing European projects in Citoyens et Justice, (Federation unifying the associations doing mediation in penal matters in France). She used to be mediator in penal matters in victim's support association for several years. She is also member of the Citoyens et Justice Federation team trainers.

Pilar Lasheras and Véronique Dandonneau met during the AGIS Project (experts of the core group "Going South") and they are continuing to work together in order to put into practice this VOM project at the post sentence stage, which will be presented in the workshop.

Workshop notes by Radoslava Karabasheva

The fourth session workshop emphasised on the cooperation with legal practitioners through the established practices in Belgium and a four-parties project financed by the European Commission.

In the discussion, participants shared their difficulty to attract prisons' directors and prison staff more generally to cooperate in restorative justice projects, while it was not the case in Belgium. The Belgian steering group could, for historical reason as they said, easily attract representatives from the prisons' directions.

One concern was about the possibility to divert a case out of the judicial system. Generally speaking, in Belgium penal mediation may well be applied out of the judicial system. Nevertheless, the Belgian umbrella organisation Suggnomè has practices only in pre- and post- conviction cases, thus they do not really divert the cases out of the judicial system. Nonetheless, organisations working with young offenders were arraigning conferencing in schools. These organisations were often called to resolve conflicts without any involvement of the police. These practices were developed in full accordance with legal practitioners in Belgium. Actually, while discussing the topic in the steering group, it appeared that the prosecutors and judges prefer avoiding the involvement of the public authorities, in order to avoid increasing the duration of the process. People would often prefer mediation, but do not want to be faced with the police. In those cases mediation is possible, but as it is supposed to be free of charge, volunteers should mediate.

The second presentation concerned the cooperation between legal practitioners beyond the frontiers through the European project proposed by the French organisation *Citoyens et Justice*. The mediator was the central topic in the following discussion: Who are they? Should they be trained? Should they be professional? Should they be paid, or be volunteers?

In the two countries (Spain and France), there were no voluntary mediators. Martin Wright turned back to the theory. He mentioned Nils Christie whose work on restorative justice was involving three actors in the process: the victim, the offender and the society. The society could be represented by associations, voluntary mediators' services, etc. But could it be represented by paid, trained mediator? In this perspective, he asked whether the mediators, by becoming professionals, were not steeling the conflict from the parties again, just like the judicial system has done. Obviously, the question was difficult to answer in general and especially in the limited disposable time, even though it was worth being considered.

Some of the participants considered that it was not easy to find voluntary mediators. It is also hard to keep voluntary mediators when there are also professional mediators. It may also be unjust that some mediators are paid while others are not. In Belgium, for instance, voluntary mediation exists in case of juvenile offenders, but not as much with adults. Many of the participants agreed that professionalising VOM might be a risk. However, they also agreed that mediators should be trained. The French situation in the nineties, where mediators without any specific training were mediating was mentioned as an example that turned out to be a real disaster. On the other hand, another participant presented the Brazilian experience, where mediators were often people that did not pass the final exam to become judges or lawyers. They were highly professional and also recreating a

judicial process during mediation sessions. Finally, they were earning money for each agreement they achieved, which created additional external effects.

Even the idea of "professional" turned out to be problematic. Since for some it was linked to employed or non-voluntary, for the Spanish representatives it was more about capacities – "knowing well how to work".

Workshop Four – Mediation and RJ in prison settings Chair: Borbala Fellegi

4.1 "The more serious the offence, the more powerful the effect?": An evaluation of VOM in a prison setting

Presented by: Steve Tong and Jo O'Mahoney (UK)

Dr Steve Tong is a Principal Lecturer at Canterbury Christ Church University (UK). Dr Tong's research interests include restorative justice, policing and police training, performance measurement and qualitative research methods. He is currently Project Leader of a multidisciplinary team evaluating the use of Victim-Offender Mediation for adult prisoners.

Email: steve.tong@canterbury.ac.uk.

Dr Jo O' Mahoney is Programme Director and Senior Lecturer at Canterbury Christ Church University (UK). Dr O' Mahoney's research interests include restorative justice, young people and crime and criminal justice policy and practice. She is currently working on the Prisons project with Dr Tong and involved in the Departmental Mediation Clinic.

Email: jo.omahoney@canterbury.ac.uk.

The project is funded by the European Commission

Three victims are introduced:

- Michael, 9 years old, father was murdered. Now 18 and deals with unresolved issues.
- Keith, a lorry driver, killed two you inhabitants while driving a car drunken
- Clare, a doctor, who got raped on her way home by a man with a history of sexual violence. After two years this man was finally caught.

Reasons of the Sheppy cluster of prisons in Kent to participate:

- promote healing victims;
- promote the re-entering of offenders; and
- wanting to reduce pre-offending.

Three groups worked together in the project: mediators, offender supervisor and the probation service managers. Referrals came from an independent charity service.

During the process the management got reluctant. It took a long time to get the project on track.

The driving force for victims was the need for questions to be answered.

One of the main issues: the release of the offender and the return to the community. Victims worried about meeting the offenders.

The sample is rather small: 6 mediation processes, need to set up a long term research. Application for funding has been approved.

We have to remind the government that imprisonment does not solve the problem. After the release the offenders as well as the victims often face another trauma.

Most cases where initiated by the victims, there was only one case that was initiated by the offender. No victim support organisation was involved, only a mediation service.

You should always be aware of the possibility of re-victimising a victim.

All participants were very positive about the process. Was this due to the selection of the cases? No, it may look like a success story but the whole project was very carefully organised. Some interviews indeed could not take place and in the future you may face more difficult cases.

A lot of the offenders feel guilty. By providing the opportunity of RJ they can ask for forgiveness which prevents some offenders of going into decline.

Financing the project was of course a problem. A lot of colleagues of Jo put in their own time. After having done 5 cases they asked for funding and got a small amount of money. Mediators applied for different funding courses, also public probation services contributed in money.

The research has not been ended. And it would be helpful to start another research, to get more findings and to give more detailed conclusions.

4.2 Forgiveness and hope after prison. Family group decision making/Family group conferencing in prison settings

Presented by: Vidia Negrea (Hungary)

Vidia Negrea is a clinical psychologist with experience in juvenile delinquency and restorative practices. After spending a year learning about restorative practices while working at CSF (PA.,USA), she founded CSF of Hungary pioneering restorative practices in fields related to troubled youths. She is a trainer and consultant for the International Institute for Restorative Practices (IIRP) in Europe and teaches restorative courses in higher education in Hungary.

Workshop notes

Mrs. Vidia Negrea is one of the first practitioners within the field of RJ in Hungary. She has graduated in Psychology and worked with juveniles in prisons. In the USA she came in contact with RJ and the process of Family group decision making, a powerful mechanism for empowerment.

Her previous projects dealt with children from multiple troubled families. At home, a lot of serious harm had been done to these children. In fact they are victims, although they were labelled as bad children. But victimisation is still not taken seriously in Hungary.

The aim of her current project: supervision of probation. The aim was clear, finding a balance was however difficult.

Why Family Group counselling / Family Group Decision making?

The challenge was to let the families, with a low social background, decide what was good for them after their child returned home. They need to find out what they need to to make the current negative situation a positive one.

The key lies in the preparation: it takes at least 6 months to prepare the return home. During the preparation period we learned that communication should be based on restorative values and that it is sometimes more difficult to work with professionals then with the families.

First FGDM meeting:

- info sharing;
- the family decides itself what they think would be best; and
- a professional can ask questions and can agree with the solution.

Community representatives were also involved. In one case in Hungary the church was involved: in church the community felt secure enough to encounter the murder offender for the first time. This was when the management of the prison agreed with the meeting of the offender with the community before he would be released.

The family decides on the following questions: Who is going to give the offender an income after his release? How can he find a job? Where will he be housed? What is he going to do in his free time? All these issues are to prevent the offender to once again getting into trouble. So the probation officer sets up a plan together with the family. The preparatory meetings always take place at the homes of the families. A lot of the families are Gypsies, whom are used to having no privacy so this caused no problems.

To be able to communicate with children or families with limited verbal skills, Vidia used paintings or pictures to explain difficult matters. Non-verbal communication is very important too: you should not be afraid of other cultures. Then they will trust you.

The project was financially supported by the Hungarian Ministry of Justice. Facilitators could be partly paid out of this funding. In the future they hope that FGDM will become a part of their regular jobs.

The overall conclusion of the project:

- Some groups and communities are hard to be reached. This research offers techniques on how to get in touch with these communities;

- It is sometimes hard to get "cases" (for a study or in real life). Once again, this research shows how to contact possible RJ cases.

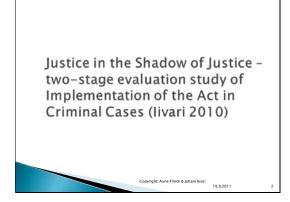
The overall feeling of the workshop: it showed in a very practical way how it is possible to also support difficult groups and how to support juveniles when they return back home into their community. This workshop was very helpful for those who encounter these groups in their daily work.

Workshop Five – Evaluating RJ programmes Chair: Stana Ridiona

5.1 Mediation on domestic violence in a critical point in Finland Presented by: Aune Flinck (Finland)

Mrs. Aune Flinck is a PhD and development manager in the National Institute of Health and Welfare, Finland. Her special topics of expertise are intimate partner violence, child abuse and mediation in domestic violence. In 2002–2004 she conducted an evaluation research in a project called Mediation in Domestic Violence (Flinck & Iivari 2004). She has also acted as a trainer in nationwide training programme (2008–2010) of layperson domestic violence mediators. Previously she has worked e.g. as a senior lecturer and researcher at the University of Tampere, Department of Nursing Science.





The background of the study

- Mediation of criminal cases started in Finland 1983 at some localities
- The Act on Mediation in Criminal and Certain Cicil Cases came into force in 2006 to safequard government funding and to create conditions for long-term evaluation and development and to make procedures followed in mediation more uniform and to give proper attention to the legal protection of the parties in mediation process
- Mediation covers the entire country
- The salient point of the study is to evaluate application and implementation of the law and to make necessary amendments
 - Copyright: Aune Flinck & Juhani livari

- There has been a far-reaching discussion (e.g. in Legal Affairs Committee)
- whether DV-cases should be mediated at all whether lay mediators are fit to mediate such serious crimes and whether offenders might avoid the legal consequences within mediation
- The Law Committee took DV-mediation with a grain, but it could involve an respectable mean if the offender sincerely admits his/her wrongdoing and regrets
- It is seen a greater risk than usually to pressure the victim to give one's approval to mediation
- approval to mediation.

 There are no general prohibition against DV cases from being referred to mediation, but there are extensive spesific restrictions on when this can be done. According the Act domestic violence should not be referred:
 - If the violence is recurring
- If the parties have already been through mediation dealing with DV If offenders attitude to the offence or the relationship otherwise indicates that the offender regard violence as an accetable way of dealing with the problems within the relationship
- DV mediation is allowed only in cases referred by the police or prosecutor

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The aim of the study

- 1) To explore the authorities' experiences of the enforcement of the Act on Mediation
- 2) To explore which cases are suitable to mediate
- 3) To explore the experiences of clients who had been involved in DV-mediation
- 4) To explore the significance of mediation as a part of decision-making in the criminal law
- 5) To explore what is the importance of mediation in police and prosecutor decision-making, what is the effect of agreement, its content?
- 6) To explore what kind of training needs the officials have?

The methods

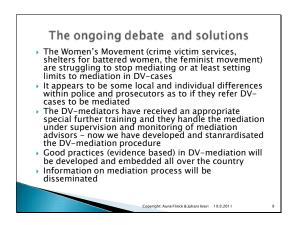
- > PART I: semistructured interwievs, the experiences of authorities, (police (9), prosecutors (8), persons in charge of mediation services (6+2) "what has changed after the law came into force?"
- What kind of cases are suitable to mediate?
- What are the experiences and critical points of domestic violence in mediation
- PART II: survey data collected purposely for this study by a questionary sent to injured parties of criminal acts, suspected offenders, their family and support persons (N=952)

The results

- The clients involved in mediation of DV had most positive experiences of the objectivity, confidentiality and voluntary nature of mediation
- They felt positive about how their case had been understood correctly and they were given an opportunity to influence the outcome of the mediation
- The complainants had often a more positive experience of mediation than crime suspects
- On the other hand the clients of DV-mediation experienced that the mediation had not furthered the treatment of mental harm caused to them nor had it helped in understanding the adverse party or made life after mediation easier (20–36 % of clients involved DV-mediation)
- Those who had not reached an agreement expressed deep disappointment over the mediation

The main conclusions

- > The police and prosecuting officals: referral to mediation in cases of DV should be expanded to allow heads of mediation offices and municipal social workers more discretion to decide which cases are referred to mediation
- DV-mediation involves great challenges
- DV-mediation requires careful preparation to be able to confront the parties

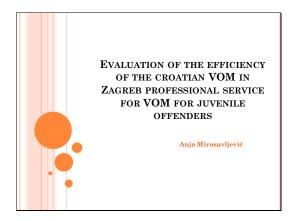


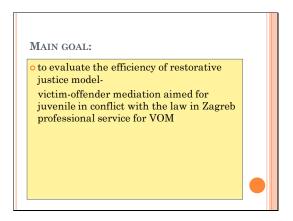
Prosessual diagnosis to evaluate if the case is suitable to madiate Separate meetings to both parties to evaluate voluntariness, power imbalance, taking responsibility, attitude to violence, expectations and demands of compensations for damage The victims do not always want to report of an offence to the police The victims' experiences of court proceedings are not always positive A low pain treshold–service Equal dialogue encourages the parties to speak frankly and gives the feeling of justice Handling painful feelings support empowerment of parties – no need to retaliate or postmortem

The parties will be referred to connected services All the cases are referred to prosecutor

5.2 Evaluation of the efficiency of VOM in Zagreb professional service for VOM Presented by: Anja Mirosavljevic (Croatia)

Anja Mirosavljevic has finished Faculty of Education and Rehabilitation Sciences at University of Zagreb. In 2005 she graduated with the topic "Adequacy of treatment differentiation in Rijeka based on Youth Level of Service/Case Management Inventory". After 4 years of work in practice (in centre for social care and elementary school), in June 2009 she started working as research assistant on Faculty of Education and Rehabilitation Sciences in Zagreb- social pedagogy department, Dept. of Diagnostic and treatment of youth at risk.





SPECIFIC GOALS: • Check the principles and criterions for applying VOM • Check the characteristics of the VOM process • Check the recidivism rate

DEVELOPMENT OF VOM IN CROATIA (KOLLER-TRBOVIC & OTHERS, 2003): Project "Alternative Interventions for Juvenile Offenders – Out-of-court Settlement" developed by the Ministry of Health and Social Welfare, State Attorney Office and Faculty of Education and Rehabilitation Sciences of Zagreb University started in 2000 (education and supervision) 24 professionals being educated and certified by Austrian mediators and educators from "Neustart Graz" – Johann Schmidt and

Brigitte Power-Stary

o three victims-offenders mediation services: Zagreb, Osijek and Split
⇒ services in collaboration with local prosecutors' office and local centres for social work
o he centre of social welfare shall watch over the fulfilment of obligations. The
o fulfilment of obligations referred to in Paragraph 2, Items 2, 7 and 9 above shall be monitored by
o the centre of social welfare, under the

ARTICLE 64:

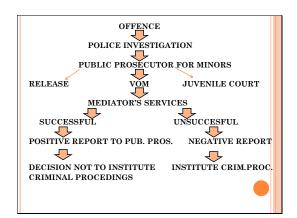
The public prosecutor may make his decision not to institute criminal proceedings conditional on the minor's readiness to fulfill one of the four special obligations:

To repair or make compensation for the damage done by the offence, according to his or her abilities.

To get involved in the work of humanitarian organizations, or in the activities of having relevance for the community or for the environment.

To undergo, with prior consent of his or her legal representative, a professional medical treatment for drug addiction or other addictions.

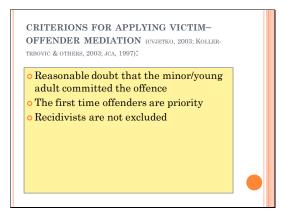
To get involved in individual or group work in youth counseling services.

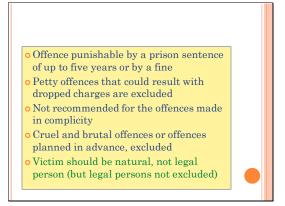


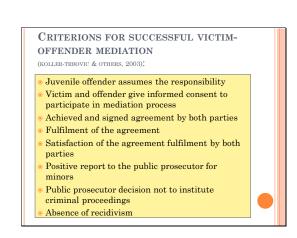
Hypothesis are based on theoretical framework (Zizak, 2003; Cvjetko, 2003,) and earlier evaluation research (Schmidt, 2003; Kovacic, 2008)

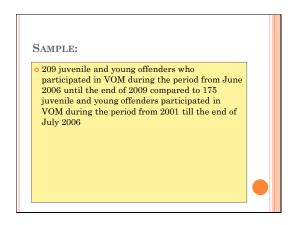
Hypothesis: o It is expected that the decision for applying VOM is based on its principles and in accordance with legal criterions for applying VOM o It is expected that the efficiency rate of the VOM is around 80% (which is in accordance with Austrian model) o It is expected that the recidivism rate of VOM participants is around 10% (which is in accordance with prior

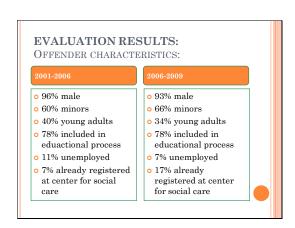
evaluation results)

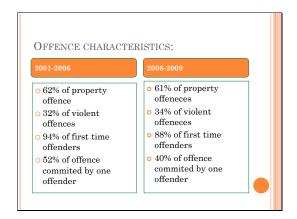


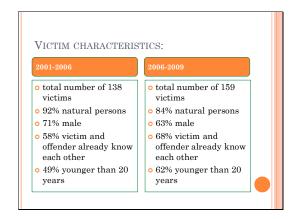


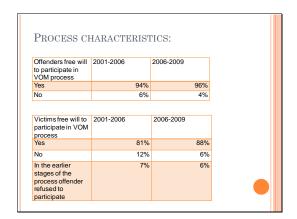


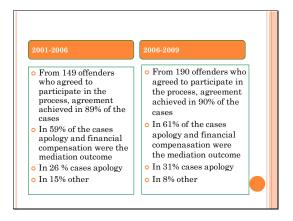


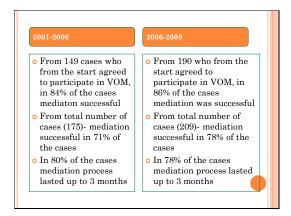


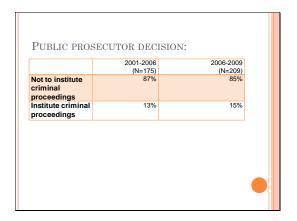


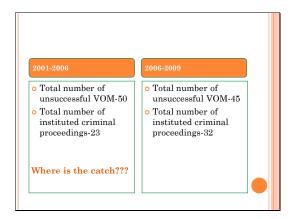












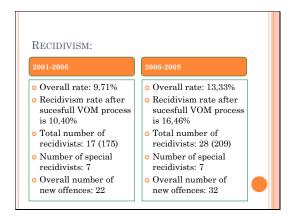
Offender wanted to participate in VOM,but the victim didn't
Agreement not achieved or fulfiled because of non- cooperative victim
Victim wanted criminal proceeding for the offender
Victim not interested in mediation outcome (apology and financial compensation...)
Public prosecutor may take into account good intentions, efforts and the offenders willigness to participate.

IN THAT CASES PUBLIC PROSECUTOR MAY MAKE DECISIONS ACCORIDING TO THE ARTICLE 64 OR 63 (JCA, 1997):

• Atricle 64:
Publice prosecutor may make his decision not to institute criminal proceedings conditional on the minor's willingness to fulfill one of the 4 special obligations (humanitarian work)

• Article 63:

The public prosecutor may decide not to request that the criminal proceedings be instituted, although there is a reasonable doubt that the minor concerned committed that offence, if he or she considers that it would not be purposeful to conduct the proceedings against the minor, having in mind the nature of the criminal offence and the circumstances in which the offence was committed, as well as earlier life of the minor and his personal characteristics.



VERIFICATION OF HYPOTHESIS:

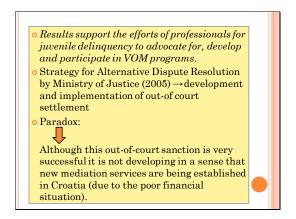
• All of the 3 hypothesis partially accepted.
• The results show efficacy of VOM considering all the mentioned criteria but some of the criterions are spreading out in a way more complicated cases are included in VOM
Increased number of:

• Offenders already registered in center for social care;

• Recidivists included in VOM;

• Legal persons as victims;

• Offences made in complicity.





Workshop Six – RJ and domestic violence Chair: Lieve Bradt

6.1 What is it about domestic violence?

Presented by: Guro Angell Gimse and Eirik Lereim (Norway)

Guro Angell Gimse (Project manager) has worked in various police departments in Norway. She has been practising policing on the streets, as an investigator and as a coordinator of domestic violence for Sor-Trondelag police district. The last two years she has managed the project Family- violence, reconciliation and prevention from the mediation office in Trondheim.

Eirik Lereim (District prosecutor) has been working as a Police Prosecutor in Trondheim, specialised in cases regarding violence and sexual crime before he was appointed a district prosecutor. He has been working as a judge in a district court and as a lawyer. Lereim has a special responsibility for the District Prosecutors relation to the project Family- violence, reconciliation and prevention.

My name is Guro Angell Gimse. I am managing a project called domestic violence, reconciliation and prevention. The project is a part of the Norwegian Government's plan against domestic violence.

I have 15 years of experience from working as a police officer, and in the past few years I have been a superintendent with responsibility for domestic violence in a police district in the middle of Norway.

Together with the national project I am also in charge of family conferencing in Trondheim. I am not going to talk about that part of my job today, but this is also a great way of addressing a family's responsibility for children being a part of the children's welfare office.

We are going to talk about the national project in Norway called domestic violence, reconciliation and prevention versus the legal system in Norway.

So, how did I, a devoted police officer for 15 years end up where I am now, deeply involved in the process of restorative justice? As a superintendent I was contacted by the leader of the mediation office in Trondheim, Iren S¢rfjordmo, in the fall of 2007. She wanted to start a project where Restorative Justice was to be tried out between couples where violence was an issue. I was

convinced that this could be of great benefit for the families and the legal system and started out as a member of a project group consisting of various agencies (women's shelter, children's welfare, district prosecutor, etc.). We were to plan a pilot project.

And here I am as a leader of this project. In all of my 15 years working for the police, I have been in contact with families where violence was an issue. I have felt the responsibility being put on the shoulders of the police service. And seen the gap between the expectations and what the police are able to achieve on behalf of these families. At the same time the legal system in Norway has changed to the better for the victims of domestic crimes. But there is still a long way to go.

PowerPoint cases being closed \rightarrow The diagram shows us what happened to 750 reported cases of domestic violence in my police district. 75% of them were closed. This means that there was no reaction to the reported crime.

Could you imagine the size of the percentage which led to a judgement in court? \rightarrow 1%

Siktelse = charge. 25 % was charged and received a fine.

Why is this so? Could the police and prosecutors do a better job?

Yes, I think so, and in Norway their job is getting better. But these cases are difficult cases because of the way domestic violence is as a phenomenon. It is important to understand the mechanisms of a violent relationship.

This is called the wheel of violence and is a model suitable to understand the dynamics of violent relationships.

The wheel describes three phases:

- 1. Building of power structure
- 2. Violence erupts
- 3. Honeymoon days (The face of repair)

In the first phase we find the bulk of the mental burden. It's exhausting being here waiting for the violence to erupt. In some cases the victim may trigger this, for example by submitting a critical remark.

In this phase he may isolate her, scream at her and the children and submit threats. He might be moody, criticise her. When the violence erupts in phase 2, it might be a relief to the children and the wife. Finally they don't have to walk on needles again and they can perhaps expect a moment or two of peace. This is when she or the children contact the police, doctor or friends. And they talk. They tell the police about their life in fear and violence.

But after minutes, hours or days phase 3 is there, the honeymoon. He begs for forgiveness, buys her flowers. Tells her this will never happen again. She believes him and after all they have children together. She might be financial dependent. She goes to the police to withdraw her statement, and she may trivialise what happened and even deny it. It was just a misunderstanding. Then the police suddenly do not have a case because doubt about what happened has come.

The police should focus a lot more on the violence eruption phase for the recording of statements and other evidence if they want a judgment/punishment in court.

Talking of punishment: is it problem-free to punish a perpetrator who has exercised violence against his/her family? I talked to a man a month or two ago who had been bit by his wife. He had biting marks on his hip and strangulation marks on his neck. He said to me: I was ready to pay her fine!

A fine or a sentence to jail affects the family. The family might feel guilty for the father being sent to jail and fines will affect the family economy.

Do these families want punishment? What do they want? Do you have an idea?

Surveys show that they want PEACE.

So to our project! We have tried out around 80 domestic violence cases over the last 2-2 and a half years. We have developed a model consisting of phases:

- Preparatory meetings;
- Dialogue meetings;
- Agreement meetings;
- Follow up meetings.

I will explain the different phases by describing a typical domestic violence case being handled by the project. In April last year, a family father from a war-affected country was arrested by the police after appearing threatening to his former wife. The four children were witnesses of the incident. And the two oldest children managed to prevent the father from actions against the mother by holding him back. But it was a terrible fight that led to the shattering of a TV. It was the oldest son who alerted the police. And the children were terrified. The police reported the incident and notified child welfare. When they searched the police journal they saw that this was not the first time that police had been contacted. The mother and oldest son said that they would be willing to be questioned about the incident, but they were not willing to witness in court against their spouse and father. To testify against the father would destroy the family honour. The fact that the son had called the police was problematic enough. The family should resolve their own problems.

The police had no case. No witnesses, no case. No one is obliged to testify in court against a family member. The explanations of the witnesses are often the most important evidence prosecutors have in the court. No evidence means no trial. The prosecutor in the case thought it was too bad that the case should be closed, but she had heard of the project and RJ, and decided to send the case to us, as an alternative to punishment.

So I got the case on my desk, and grabbed the phone to call a steady female mediator with a background as a teacher. Together with a male mediator they prepared themselves for the dialogue. At first, they met both parties separately where the expectations for the dialogue process were clarified. The mother talked about the threats of violence and of the father's alcohol abuses both before and after she moved from him. The children were not safe. She did not want him to be punished. All she wanted was peace. In the separate meeting with the father he told us (I was there as an observer) about his problem in adapting to the culture. He told about memories from the war and about him being unemployed. He was educated and had a good position in his home country,

now he was nothing. Alcohol helped him to relax and get to sleep at night. He looked terrible and was upset.

It was considered wise to conduct a meeting between the mother and the father. In June this year the two met, with both mediators and me as an observer. The mother told how she felt about the violent episodes. She said that both she and the children were afraid that he would get drunk and come to see them. They were living with an unpredictable situation that was hard to bear. The kids were fond of him, but at the same time afraid of him. The father asked for forgiveness and the meeting resulted in an agreement:

- The father would seek a doctor to treat his alcohol problem;
- He promised not to visit the family when he was drunk;
- In addition, he told his wife how he wanted to help her out with the children. (That plan was approved by the child welfare).

He understood that he had caused damage. And he was sincerely sorry.

Children's welfare did have an assessment in the family. The mediator (facilitator) went to child welfare with the written agreement between the parties. In the middle of August we had a meeting to follow-up the agreement. Child welfare was present as a representative for the children. The agreement was reviewed. The mother could tell that her summer had been very quiet. The father had followed the agreement, but the mother was still afraid that this peace would not last. The mediator (facilitator) asked the delegate from child welfare whether he could describe how it is for a child, to witness violence, and how it is for children to live with parents with an alcohol problem. It appeared as if this information made an impression on the father.

The father still had problems with himself. He had not been to the doctor yet, because the doctor was on holiday.

The next follow-up meeting was in October 2008. The father had by then been to the doctor who had given him medicines for depressions. He told the facilitator/mediators that he felt at peace inside, even though the relationship with his wife was over.

It was touching to be part of this process, and it has given me a belief in the dialogue. I think that we can prevent new episodes by giving the parties a safe place to come to an agreement, which secures a predictable relationship.

For the victim, we hope he/she

- gets an opportunity to tell the perpetrator in a safe way what impact the violence has done to him/her;
- might get an explanation about why this happened;
- has the possibility to reconcile to what has happened;
- might stop fear of how to act when the victim bumps into the perpetrator by coincidence; and
- gets an opportunity to make an agreement with the perpetrator about how to relate in the future.

For the perpetrator we hope he/she

- might be aware of the damage he has caused by listening to the victims story;
- has the opportunity to apologise for what has happened;
- has the opportunity to assure the victim that this will not happen again;
- might more easily reconcile with the fact that the relationship is over; and
- might come to an agreement with the victim about how to relate in the future.

Are we on the right track? After the session victims say: "Now someone believes me." "I now feel strong enough to leave him." And "Finally someone else gets to see the way he treats me."

The project is now being evaluated by researchers.

6.2 RJ in domestic violence cases – Experiences in the Netherlands and points to share Presented by: Katinka Lünnemann and Annemieke Wolthuis (the Netherlands)

Annemieke Wolthuis is a researcher at the Open University of the Netherlands, where she works on a PhD on restorative justice for youngsters from an international and comparative law perspective. She is also a member of the editorial board of the Dutch/Flemish journal on Restorative justice and affiliated with the Verwey-Jonker Institute in Utrecht.

Katinka Lünnemann is a senior researcher at the Verwey-Jonker Institute in Utrecht. She conducted mostly qualitative research in this field on regulation of domestic violence by criminal law and issues of domestic violence in civil law. Recently she started research on restorative justice.





Restorative justice

- o No clear definition 'umbrella'
- VOM & conferencing
- o Central notions:
 - restoration of harm
 - responsibility
 - participation: human interaction
 - Doing justice towards offender, victim and society

Restorative Justice & Domestic Violence I

- o Incident versus continuing process
- Apology and reparation versus safety
- o Agreement versus monitoring
- Diversion versus need of legal protection because informal netwerk did not bring resolution
- o Equality versus power imbalances

Restorative Justice & Domestic Violence II

- Controversial
- Differences (criminal) law of European countries:
 - some have possibilities to do victimoffender mediation in case of DV Belgium, Finland, Austria, ...
 - others forbid VOM in case of DV. The same counts for stalking: Turkey, Spain, Portugal, ...

The Netherlands

- o RJ rather slow start, grass roots
- SiB: Victim offender conversations (herstelgesprek): offer to the victim and also to offenders, but outside the Criminal Justice system
 No effect on possible CJ outcomes
- Few projects with RJ in DV-cases
 Good practices/points of concern

Local projects: Probation Amsterdam

- Start to use mediation at domestic violence groups
- Idea: to improve the contact between victim and the offender (partners/expartners)
- Mainly domestic violence cases
- o Registration 2009: 68% of 25 cases DV
- o Special:

Time consuming
Beyond goals RJ
After care

Conferencing domestic violence

- o Eigen kracht: 'use your own power'
- o Evaluation (Van Beek 2009):
- 23 cases in 2 years (2007 2009), mostly partner violence
- Conferencing needs a social network
- o violence not central
- Monitoring is lacking

Belgium

- o Since 2005 RJ in the law
- o Every one with a direct interest can call for mediation
- o also victims & offenders of domestic violence (intra-familiaal geweld)
- o Practice: minority of cases
- o Some evaluation & discussion

Belgium 2

- Positive aspects in certain cases Create possibilities to talk about the violence Bridge micro level family & larger criminal frame
- Points of concern

Take care of the bounderies of the care system and what can be done by mediation

 Needs stressed by mediators Giving the bridge position a structural place in the chain (ketenaanpak)

Conclusions

Under which conditions is RJ in DV cases possible?

- When partners are willing to (really) communicate
- No big power imbalances, not in cases of intimate terrorism
- Positive role of the community
- Safety before, during and after restorative processes
- RJ must be responsive to different needs

Future

- o Need for more research on good practices and struggles
- o Ideas Joint Research
- o EU Criminal Justice Call 2010
- Overview of rules & regulations practice what works problems & concerns

Discussion

- o When and how is RJ in DV cases suitable?
- What are the needs of victims & offenders?
- o Invitation to share local experiences
- o Thank you

Literature/sources

- brief Suggrome, Intrafamiliaal geweld on bemiddeling, rr. 2 2009

 Suggrome, Intrafamiliaal geweld on bemiddeling, rr. 2 2009

 Sustain, Buddeling, Coulastie von der glots en toekonsticenters, Utrecht, Verwey-Lotent, Sustain, Verwey-Lotent, Coulastie von der glots en toekonsticenters, Utrecht, Verwey-Lotent, Crit con Interafacett, firt on Interafacett, Interafacett,

- Pallani, C. (2000) Victim-Offrence Mediation in Domestic Violence Cases A Research Report. United United Sections of Control Contro

Positive aspects

Empowerment & change

- o Evaluation research Austria Partner violence (Pelikan) Conclusions 2009:
 - empowerment of women because resourcefulness increases
 - sometimes men do change
 - the right choices can be made

2010 CALL FOR ACTION GRANTS JLS/2010/JPEN/AG UNDER THE PROGRAMME "CRIMINAL JUSTICE

- The priorities for 2010 in the area of criminal Justice are:
- Judicial training
- Supporting, or improving the implementation of adopted EU Instruments with a view to networking and exchanging best practice among practitioners, including on procedural rights and restorative justice
- · Supporting victims of crime
- Transnational: at least 2 EU countries
- Deadline: 15 September 2010, at 16:00 http://ec.europa.eu/justice_home/funding/jpen/doc/ag_call_2010_en.pdf

Workshop notes

The positive role of the community in domestic violence was commented in this workshop. In conferencing, the community may play both a positive and a negative role. The latter happens when it plays a stereotype role. The importance of the community of care was highlighted.

A second participant pointed out something of the Dutch presentation: the existence of different types of domestic violence. This means that the intervention will vary according to the type of case.

At this point it was clarified by one of the Norwegian speakers that there are two levels of mediation: the level of the couple and the level of the offender with the state. He argued that they do not really give back to the offender the two levels of the conflict; the State keeps its role of control as a way to ensure that the offence will not happen again.

Then the question was raised whether there are different kinds of violence, and how the mediator can diagnose which type of violence he is facing. One of the speakers answered that it is crucial that the mediator has the whole picture, all the antecedents about the case. A tool for this can be the investigation carried out by the police. The police should contact different services involved in the case. It is however the question whether there are enough means for doing this.

Afterwards, some discussion about the reality in the different countries followed, especially with regard to the suitability of mediation in certain cases. The case of Austria and Rumania was commented. In the case of Austria, the role of the police in the investigation and the possibilities of the court to continue the case without the woman's consent were discussed. Mediation is one of the options for the court. In the case of Rumania, mediation is diversion. After mediation, the case is not prosecuted anymore. But how and who does decide that the mediation was a success?

One of the speakers commented that the voluntary basis of the mediation process as well as the follow up of the reached agreement is crucial. When the agreement is not fulfilled, the case has to go back to the court. Any type of victimisation during the process also has to be prevented.

The applicability of conferences, namely to what extent can conferencing be used for domestic violence, was discussed. It was commented that conferencing is more applicable in the family context, because of the loyalties involved. It is important to find different types of solutions for different types of cases and needs. There is no single solution for domestic violence.

With regard to the offenders, it was commented by one of the speakers that they may have difficulties with taking responsibility.

Workshop Seven Chair: Ramon Alzate

7.1 Mediadores y Abagados: cómo trabajar juntos

Presented by: Olatz Sagarduy, Cristina Merino and Nerea Laucirica (Spain)

Plenary Four: Panel on cooperation with legal practitioners

By: Ana Carrascosa, Eirik Lereim, Virginia Domingo de la Fuente, Guro Angell Gimse, Rob Perriëns and

Federico Reggio Chair: Siri Kemény

Eirik Lereim is a District prosecutor. Before he was appointed a district prosecutor, Lereim has been working as a Police Prosecutor in Trondheim, specialised in cases regarding violence and sexual crime. He has been working as a judge in a district court and as a lawyer. Lereim has a special responsibility for the District Prosecutors relation to the project Family- violence, reconciliation and prevention.

Virginia Domingo de la Fuente has made several researches about Victim-offender Mediation and Restorative Justice. She is the coordinator of the victim-offender mediation service in Burgos since 2006. She works in collaboration with the Prosecution's office to spread the concept, benefits and possibilities of Restorative Justice. She has worked as a substitute judge in Burgos.

Guro Angell Gimse is a Project manager - She has worked in various police departments in Norway. She has been practising policing on the streets, as an investigator and as a coordinator of domestic violence for Sor-Trondelag police district. The last two years she has managed the project Family-violence, reconciliation and prevention from the mediation office in Trondheim.

Federico Reggio has a PhD in Philosophy of Law, currently working under a research contract at Padua University's Department of History and Philosophy of Law. He has been studying, writing and lecturing on Restorative Justice Issues for a few years. In his just published book (Giustizia Dialogica. Luci e Ombre della Restorative Justice) he philosophically explored RJ's conceptual framework and theoretical grounds. Member of the European Forum, he is co-founder, in Verona, of an association for victims' assistance (ASAV).

Ana María Carrascosa is member of the judicial career since 1989, holding her job basically in family and criminal courts in Valladolid, the town where she lives and work. When she was chairing the Family Court she set up the first Family meeting point in Spain with the private association Aprome and now is carrying out a project of Criminal Mediation in her Court.

Robert Perriëns has studied law and criminology at the University of Louvain. He started his professional career in 1983 as a lawyer at the bar of Antwerp. In 1994 he was nominated as judge in the District Court of Antwerp, where his main occupation has been criminal law and jurisdiction concerning the execution of custodial sentences, such as conditional release of long-term sentenced prisoners.

The panel discussion will be dedicated to two topics:

- 1. How do you perceive the role of the (police) prosecutor or judge in connection with RJ? There are two possibilities:
 - a. She/he is the main instigator and discretion rests with her/him as to the course the RJ procedure takes, or:
 - b. She/he is only at the fringes or even outside the RJ procedure opening the path to this alternative procedure, enabling it, but not having a real part in it.

Or still another one?

2. In which way have you structured your cooperation, the division of responsibilities and of decision-making, your ways of communication?

Workshop Session Five

Workshop One – Conferencing Chair: Frauke Petzold

1.1 Families at risk

Presented by: Rob Van Pagée (the Netherlands)

Rob Van Pagée is director of the Eigen Kracht Centrale in the Netherlands. This nationwide organization strives to optimize the control of citizens over their own lives and stimulates organisations and governments to achieve this. The Centrale is active in the field of individual care, restorative practices, the well-being in neighbourhoods and education. He was one of the founders of the European Network for FGC and instrumental in the introduction of FGC to a number of European countries.

1.2 The strength of Annemarie and her people

Presented by: Rob Van Pagée (the Netherlands)



'Families at risk' The strength of Annemarie and her circle

Eigen Kracht-conference

Rob van Pagée, NL EU Forum RJ Bilbao 2010



- ...to work on a society where the focus is: inclusion, participation and mutual selfreliance of citizens
- ... in which citizens stay in control over their own lives...
- ...to promote this inclusive society by agencies, organizations, and governments.



- Conference factory
- Change factory



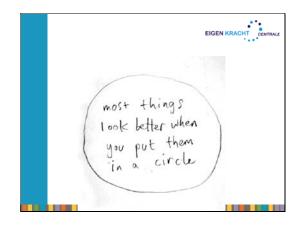
Interventions

 The professional authority charged with responding to problems, antisocial or criminal behavior and its impact is making many times interventions into citizens life without consulting citizens (and their network) first'.

Quality of professional decision making

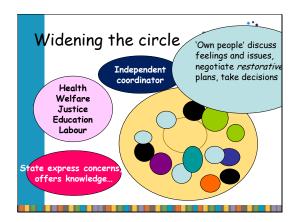
- Little relation to problem
- Little relation to effectively
- Decision making depends on decision maker
- Not much connection with vision of citizen

Netherlands Youth Institute, 2010, drs. C. Bartelink)



Conferencing = EIGEN KRACHT

- Constitution
 - Legislation....
 - International treaty's...
- Rights obligations responsibility
- Citizens part of family/friends networks..
- No one is alone...
- Civil society



Widening the circle



- Who belongs to you?
- Who do you trust?
- Who can support you?
- Who else should be there?
- What information do you need?
- Your (restorative) plan works the best for you, for sure if you're people contribute

Conferencing as citizens approach...



- Problems
 - DV, CPS, In/out jail, Evictions, Elderly, Health
- Conflicts,
 - School, Workplace
- · Crime,
 - Wrongdoing to serious offences
- All of that but in large groups...
 - Community conferencing

EIGEN KRACHT CENTRALI

 Human beings are happier, more cooperative 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

· Ted Wachtel 2004

And when welfare is involved?

- Your still a citizen
- You have a right for your own plan
- Your own people stay
- People who were considered earlier to be the cause of a problem now initiate the solution, the plan.

And when Justice is involved?

- Your still a citizen
- Voluntary process
- Taking responsibility
- No negotiations upfront
- All affected invited!!!
- Negotiate restorative agreement
- Before, during or after court proceedings
- · Court can take plan in consideration



And in large groups?

- Citizens are like no other, capable in their own situation:
- · together with other stakeholders..
- · discuss what is going on..
- · express feelings and thoughts..
- · aimed at making a plan together..

Large groups 2

- · An independent coordinator
- · Time and resources for preparations
- · An open question for the conference
- · All stakeholders may participate
- · Make the circle wider
- · Everyone a voice

EIGEN KRACHT CENTRA

Independent coördinator

- Leading and participating in the process puts the professional in charge, in dual
- Whether or not they use that power, it threatens confidence in the decision making process
- Participation weakens the power of the professional

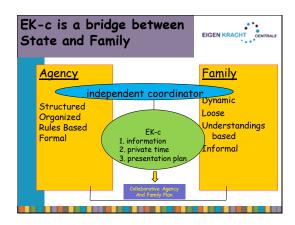


- ·Conferencing is a process rather then a service
- Processes before services



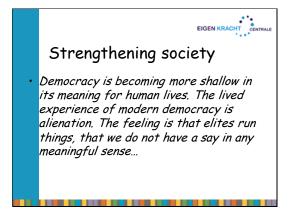






Citizenship Conferencing is a citizenship model, a multi-faceted means for citizens to recognise and shoulder responsibility for the public matter.







Workshop notes

In this workshop Rob van Pagée introduced his experiences with family group conferencing, which in Dutch is called "Eigen Kracht conferenties" (Own strength conference), which refers to the essence of this method: using the own strength and resources of people to make a plan in order to solve their problems. It can also be described as an activating decision making process, where people themselves can take the lead instead of professionals. The growth of these conferences throughout the Netherlands has a relation with a lack of quality – from the citizens' perspective – of the professional decision making (little relation to the problem and the effectiveness of the proposed solution, the lack of connection with the citizen, since the professional is leading the process of defining the problem and the solution). Rob defines this method as a citizenship model: a multi faceted means for citizens to recognize and take responsibility for the public matter, also in reference to the work of John Braithwaite who argued that conferences offer a crucial vehicle of empowerment where spaces are created for active responsibility in civil society to displace predominantly (Braithwaite, 2002). Crucial in the Dutch approach of Own Strength Conferences is that the citizen – with his problem – is considered to be an expert – with his or her social network – to be able to solve his or her problem.

In the short discussion that followed somebody asked how the facilitator deals with people, in the network, who do not want to participate. In response Rob argued that in those cases the facilitator uses the circle to make the circle wider: that is to say that practice so far shows that it is always possible to find people in the network who want to contribute to an Own Strength Conference.

Last but not least, a Dutch documentary was shown, entitled 'the strength of Annemarie and her people' that has been broadcasted in January 2010 on the Dutch television. This documentary followed a so called multi problem family where Annemarie was the mother for a year, and shows the process of initiating an Own Strength Conference. This process includes the starting point, where there is no improvement concerning the family problems despite the interferences of several professionals, the preparation for the conference and the conference itself, and the results afterwards. The documentary showed in a very sincere way the strength of this family to get to terms with their own problems, with the help of their family network. An example can be found in something the son said: 'I feel supported by my uncle, who encourages me to take responsibility for my problems'.

The documentary made an impression on the participants of the workshop, but did not lead to any discussion points.

Workshop Two - RJ and domestic violence

2.1 'The never-ending 'struggle: RJ and domestic violence – new evidence and new (old) positions Presented by: Christa Pelikan (Austria)

Christa Pelikan is a researcher at the Institute for the Sociology of Law and Criminology in Vienna. She has been working in the field of criminal law, especially victim-offender mediation and in the field of family law. She has been active in various committees of the Council of Europe. She is a founding member of the European Forum for Restorative Justice.

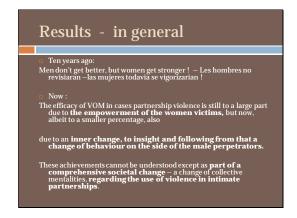


The critique-three different aspects 1. The general or normative aspect: Domestic violence cases ask for a strong public statement about the unacceptability of violating somebody's physical integrity, also and especially in the private (domestic) sphere - which is not provided by way of VOM 2. The aspect of the inner structure of the mediation procedure: i.e. its being apt to exacerbate power imbalances 3. the third aspect of the critique relates to the quality of VOM as a short time intervention that disclaims to be held accountable for any further incidents and developments.

The practice of VOM in cases of partnership violence Diversionary model: state prosecutors as gate-keepers Victim and offender contacted (written invitation + information folder, phone calls) by mediators/social workers in order to establish their willingness to participate in VOM Single/individual talks: woman victim and female social worker, male perpetrator and male social worker Talk of the four' (mixed double) — mirroring of stories — searching 'recognition and empowerment' — provisional agreement Observation period — second (third) session — agreement, including smart money or other mode of compensation Report to the state prosecutor and decision regarding discontinuation (or indictment)

The legal (criminal) policy background I The principle of legality any criminal act, as defined by the Criminal Code that comes to the notice of the police has to be passed on to the state prosecutor. It has a seeing the imminence and the seriousness of the threat wielded by the aggressor, decides—independently of the explicit and expressed wishes and demands of the woman (the person endangered)—whether the aggressor (Gefährder) has to leave the premises—immediately, on the spot! Information goes to the 'Centres for the Protection from Violence' Both legal provisions resulting in: A wide range of cases, including cases of less severe violence are brought to the attention of the state prosecutors—and might go to VOM

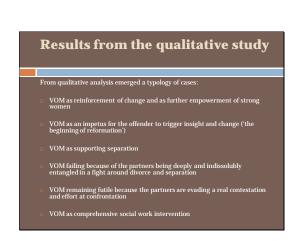
Design (methods of research) Quantitative study: a questionnaire sent out by post to every woman that has been a victim of partnership violence dealt with by way of VOM in the course of the year 2006. The time that has elapsed since the ATA has taken place was therefore between 1 ½ and 2 years. With the return quote a little more than 20%, there were finally 162 questionnaires to be processed. Qualitative study: 33 VOM sessions observed + 21 interviews conducted



© The quality of the VOM-process: Women are listened to, they find understanding and support; only between 14% und 22% answered negatively, i.e. indicating that they found little or no understanding. What happened to the perpetrators in the VOM process (as perceived by women) 1/ The behaviour of the (ex)partner, his having committed an offence, has been taken serious by the mediators/social workers in the vast majority (81%) of all cases 2/ 57% of the women said that their (ex)partner had understood in which way and to what extent he had hurt the woman—including emotional harm and suffering (in 38% this happened rather not, and in 5% not at all!) 3/ Finally, according to the women, remorse was seen and felt in only 40% of the men.

What happens afterwards (1) 40 percent of the respondents were separated from their partners and had no further contact at all; 28% had separated but did have contact — mostly for reasons of parenthood. 32% were still living together. (BUT: 58% of partners were already separated or in the process of separation at the time VOM took place (32% and 26% respectively) VOM had contributed to bringing about separation in almost 50% of those cases, at least to some degree: (65% of these women said that they felt more self-assured and stronger as a result of the ATA-process and thus empowered to follow through with the separation, for 55% the process had contributed to convince them that separation was the best thing for them to do.)

What happens afterwards (2) Of those having still having contact or living together, two thirds lived free of violence in their relation with the (Ex)Partner, little less than one third had experienced further incidences of violence – 15% repeatedly. Or: (of all women responding) 83 % experienced no further violence, 8% had suffered repeated incidences. Of those that had experienced NO further violence from their (ex-)partner, 80% contended that VOM had contributed to this effect – in 40% of those cases even to a substantial degree. This contribution was brought about by way of direct or indirect empowerment: (ha contribuido a fortalecerlas) 40% stated that their partner had changed as a result of going through the ATA



Concerning the largest group of **further empowerment of women**:

The women were very sure about their rightful claim to a partnership free of violence and especially the young women regarded the interventions and reactions of the agencies of the CJS as a matter of course The instruments of the barring order and the eviction order are highly accepted.

The most visible change since 1999 has occurred regarding *the effect VOM on male perpetrators:*

from an interview:

"Listening to his story (in the course of the talk of the four) I learned and realised things I had not known... I had the feeling that my husband only then - in the course of his single talk - realised that he cannot contend any longer that what had happened in reality was not as stated in the files and that it was not he himself and only he himself responsible - that's what I heard. I am sure that this was a topic in this talk, because afterwards and later at home as well, the whole story as told from his side had become different. I guess that's what had happened! Of course, I was not present, but I know my husband pretty well - his tendency not to use the T-form but talking about 'one' that does things or perceives them as such. I guess that the social worker he was with had told him: 'no: it is not 'one' it is you' - something like that....."

Another important result:

☐ The *strength of networking* between agencies that are active in the field became visible: the police executing the Protection from Domestic Violence Act, the Centres for Protection from Violence, the Youth Welfare Agencies, the Men's Help Desk.

Summarising and repeating:

- The efficacy of VOM in cases partnership violence is still to a large part due to the empowerment of the women victims, but now, albeit to a smaller percentage, also
- due to an **inner change, to insight and following from that a change of behaviour on the side of the male perpetrators.**
- These achievements cannot be understood except as **part of a comprehensive societal change** a change of collective mentalities, **regarding the use of violence in intimate partnerships**.

Workshop notes

Since the presentation started announcing the existence of a recommendation from the United Nations ("handbook on legislation regarding violence against women") mentioning the risk and danger of using mediation in cases of domestic violence, the discussion started focused on such recommendation.

The first intervention was coming from a participant from Denmark. She commented that she cannot agree with the recommendation. However, it has to be recognised that mediation in cases of domestic violence has limits. In the case of Denmark, the recommendation would not be so negative, especially since there are no prepared mediators to assume this job. She pointed out the risks of doing bad mediation (without preparation) in domestic violence cases.

The suitability of mediation in cases of honour crime was commented. While a participant argued that mediation in these cases is impossible because it is attached to sexual and patriarchal

components, another participant from the Netherlands commented that conferencing can be used for honour crimes, as they actually do. To work on power imbalance, the family may play a role.

Someone coming from the Balkans commented how difficult it is to protect women through the implementation of a law when people who implement the law have different beliefs. For this reason, mediation cannot be an isolated practice.

The discussion was ended by the speaker. She concluded that there has been a favourable change in terms of cultural beliefs.

Workshop Three – RJ in the community and wider society Chair: Keith Simpson

3.1 Who takes ownership of a RJ programme? The c4RJ Partnership experience in Massachusetts **Presented by:** Ken Webster (USA)

Ken Webster has over 10 years of experience as an independent provider of consultancy and training in restorative processes. He and his co-trainers provide high quality training throughout the UK to Youth Offending Teams, Secure Training Centres, police services, educationalists and others developing restorative processes. He has also trained in Boston and Concord, both in Massachusetts, and San Antonio, Texas, USA.

Workshop notes

'Communities for Restorative Justice' (C4RJ) is a community-police partnership that offers restorative justice to those affected by crime. Our 'circle' process recognises that crime is a violation of people and relationships, not just a violation of law. We receive police referrals and seek to include those affected by crime in the decision-making: victims, offenders, loved ones, supporters, community members, and law enforcement officials. C4RJ took its first case in 2000 and has offered restorative justice in hundreds of cases in the Metro Northwest region of Boston. The organisation is driven by scores of trained volunteers, is guided by a 13-member board, and employs an executive director and support staff.

Ken Webster and Len Wetherbee presented the mission of the C4RJ partnership, which is to provide regional communities with a complement to the traditional judicial system wherein:

- Victims of crime are given the opportunity to address the person(s) who have harmed them, to ask questions in a safe environment, and to share ideas on ways that the harm can be repaired;
- Offenders better understand the impact of their actions, are held accountable, and encouraged to make amends to those they have harmed; and
- The community offers support for the process, strengthening community connections, and engaging in matters of concern to its members.
 (www.c4rj.com)

Discussion point:

 You build a model where people/citizens carry the day in order to promote the restorative movement. Clearly the community is very much involved.

<u>RESPONSE</u>: It is important to work together in the community. Experience shows that people want this kind of programme. The community is represented, not because they are forced, but because they want to show up, they want to cooperate. We don't want a better criminal justice but something better than criminal justice!

3.2 From RJ to restorative action: towards a new social order

Presented by: Martin Wright (UK)

Martin Wright has been director of the Howard League for Penal Reform, policy officer for Victim Support, vice-chair of the Restorative Justice Consortium and a board member of the European Forum for Restorative Justice. Publications include Making good: prisons, punishment and beyond (1982), and Restoring respect for justice (1999).

Workshop notes

At the moment restorative justice is quite broad. The concept is not limited anymore to a reaction to criminal wrongdoing, but has grown to a concept of restorative practices, which also operates in a preventive way. As Martin Wright claims, there is even hope to see the development of restorative communities, where people will routinely have the opportunity to agree together. The essence of it is a different way of relating to each other, especially in a situation where traditionally one party exercises power over the other (e.g. schools, work places). Restorative practices have the potential to build social capital and strengthen relationships and communities.

Over the years, many attempts are made to define restorative justice, which is seen as a process that focuses on the needs of those most involved in a problem. Martin Wright points out to the restorative justice values, and for that he invited the public (during his presentation) to take part in an exercise.

The exercise:

Everyone needed to take a sheet of paper and think of themselves in different roles (connected with a crime or more global). Then the participants were asked to link certain values to their chosen role. As a following step, they needed to think about the values of a 'good mediator'. This comparison between different roles in a community/society and the related values formed the basis for a public discussion.

The results of the exercise:

Some participants handed in their sheets of the exercise. The results are presented in the following tables.

I think I am a good HEAD TEACHER	I think I am a good MEDIATOR because I
because I value	value
Respect for authority	Mutual respect
Fairness	Fairness
Discipline	Emotional intelligence
Safety	Empathy
Order	Inclusion
Courtesy	Non-judgemental
Communication	Communication
Authority	Respect
Respect	
Empathy	For me they are the same for a mediator.
Listening	There is a legal ground of democracy for
Equality	the schools. However, they use the values more to punish instead of to restore.
Individuality	

1 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
I think I am a good JUDGE because I	I think I am a good MEDIATOR because I
value	value
Listening to evidence	Ignoring my own preconceptions/Being
	not judgemental
Studying the law	People in conflict to be satisfied with the
	mediation
Basing my decision on evidence only	Listening to all sides
Impartiality	Impartiality
Fairness	Fairness
Concerned about the effects on others	Neutrality
Practical common sense	
Fairness/impartiality	Fairness/impartiality/problem solving
	attitude
Attantion for dataile	Attention for narrows
Attention for details	Attention for persons

Workshop Four – RJ in Russia Chair: Felicitas Hardy

4.1 Experience of restorative justice in Russia

Presented by: Rustem Maksudov (Russia)

Rustem Maksudov initiated in 1997, together with colleagues from the public organisation the Centre for Judicial and Legal Reform, the idea and technology advancement of restorative justice in Russia. Rustem is now president of the Centre for Judicial and Legal Reform and the chairman of the All-Russia Association for restorative mediation. He studies experience restorative justice and juvenile justice in Great Britain, Canada, France, New Zealand, Poland and the Czech Republic. He's also a trainer in the field of preparation in leading programmes regarding the reconciliation of conflicting parties with the help of restorative mediation. Rustem is also the leading developer of a model of restorative juvenile justice in Russia.

Restorative mediation

Our Centre started promoting restorative justice ideas and practices in Russia 14 years ago. The restorative approach, then pioneered by a small group of five people, is now carried out in 12 towns and regions of Russia (Moscow, Perm region, Tyumen, Urai, Volgograd, Volzhsky, Novosibirsk, Kazan, Samara, Petrozavodsk, Cherepovec, Lipeck). The use of school reconciliation service practices is growing.

Today, we have communities of experts who use the restorative approach when they work with conflicts and offences by juveniles, as well as with children and families in crisis. We started new projects, related to the use of the restorative approach to solve labour disputes and conflicts of divorcing couples.

17 March 2009, the Centre for Judicial and Legal Reform organised a joined meeting with regional team members involved in implementing restorative justice programmes at the Federal Institute for Education Development (Moscow). This resulted in the creation of the Russian Association for Restorative Mediation and approval of its Statutes. In 2009-2010 the Centre for Judicial and Legal Reform contributed to the creation of the Russian Association branches as well as of independent associations in Tyumen, Volgograd, Novosibirsk and Perm.

The Russian Association has adopted the standards of restorative mediation, recommended for use on the territory of Russia when creating reconciliation services and conducting mediations within education, sport, youth policy and social security systems. These standards formed the basis for creating a new model of mediation, the restorative mediation, grounded on the restorative justice principles, and they are offered for distribution in the world community.

These standards have been developed as a guideline and information source for mediators, chiefs and experts of reconciliation services and administrative bodies of different agencies, as well as for other specialists and organisations, interested in promoting restorative mediation in Russia.

These mediation standards should contribute to creating new ideas and different forms of organising and conducting mediation, keeping all the principles of restorative mediation and the regional environment in mind.

Restorative mediation is based on the concept of restorative justice, which is carried out in different forms and practices throughout the world.

Restorative mediation is a process where the mediator creates conditions to restore the ability of people to understand each other and to come to terms on mutually acceptable ways to solve the problem, and, if necessary, on making reparations regarding the damage, associated with the conflict or criminal situation.

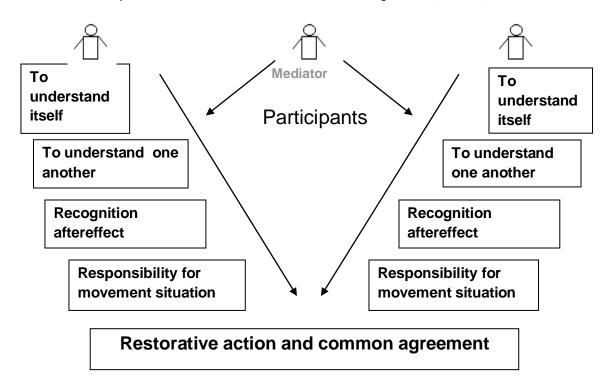
During restorative mediation it is important that the parties have the opportunity to get rid of negative experiences and develop new resources for finding a common solution for the problematic situation. Restorative mediation includes individual preliminary meetings of the mediator and each party, and a joint meeting of the parties where the mediator also takes part.

The main aim of restorative mediation is to provide the opportunity of a dialogue between the parties, which enables them to get to know and understand each other better. The dialogue promotes for changes in the relations: from confrontation, prejudice, suspicion and aggression to positive relations. The mediator should help the parties to express and hear out the opinions, views, feelings, which creates an environment of mutual understanding.

Restorative actions (apology, forgiveness, sincere desire to redress the wrong) are an important result of restorative mediation, and such actions could help to redress the consequences of the criminal situation.

An agreement or reconciliation agreement, which is presented to the referring body, is another important result of the mediation. The reconciliation agreement (the agreement) may be taken into account by this body while deciding on further actions regarding the parties to the situation.

Restorative mediation should be oriented at the communication process. It is targeted, first of all, at improving understanding, mastering ability to hold dialogue and solve situation. The agreement is a consequence of such a process.



Workshop notes

This presentation was interactive. The presenter requested the audience to discuss mediation in their respective arenas of practice. According to Maksudov "the core of restorative justice is to restore the ability to understand." Maksudov may have been trying to apply this concept when he asked attendees to discuss in groups but it appeared an awkward tactic given the time limits of the workshop. However, it did provide a more engaged dialogue among attendees.

4.2 The work of restorative mediation in the legal system of Russia Presented by: Luidmila Karnozova (Russia)

Lyudmila Karnozova is a member of Board of the Centre for Judicial and Legal Reform, a leading scientific employee of the Institute of the state and the right of the Russian Academy of Sciences. She is also a member of the All-Russia association restorative mediation and a candidate of psychological sciences.

Workshop notes

Question raised on the data of the Russian RJ programmes. Berit Albrecht asked about the discrepancy between the numbers. It was later discovered that this was a "lost-in-translation" error. This was a situation where discussion did help facilitate understanding. The session was a bit chaotic. An air of too many cooks in the kitchen, discussion was difficult as the presenters were only versed in Russian and their appointed interpreter was tasked with the challenge of communicating several ideas to non-speakers.

4.3 The work of school reconciliation services on the educational system of Russia **Presented by:** Anton Konovalov (Russia)

Anton Konovalov is the Head of the School Service of Reconciliation "Interregional social center" of the Judicial and Legal Reform. He's a Researcher in the Laboratory of juvenile technologies and a lecturer on restorative justice Moscow City Psychological-Pedagogical University. He's also a Chairman of the Association of mediators and facilitators of reconciliation services in Moscow.

Workshop notes

The general discussion largely involved Berit Albrecht and the three presenters (via the interpreter). These included:

- Are there special prisons for juveniles?
 - RESPONSE: Yes there are.
- Berit asked if her perception that Russia has strong focus on punishment, where mediators were expected to come up with solutions is accurate.
 - <u>RESPONSE</u>: Rustem explained that there are different systems—those interested in punishment and those who are not, same as in every country. The Russian RJ community, just like any, is still working against the tide to help mediators and lawyers embrace conflict as RJ espouses.
- Berit also asked if the RJ application in Russia is similar to the way EFRJ participants are applying RJ in their respective countries.
 - <u>RESPONSE</u>: The Team (all three Russian presenters) responded that the practice may be a little bit different, but the procedure is "approximately the same."
- Berit also asked what kind of restitution is offered by offenders. RESPONSE: The Team offered that results could be different.

Other notes:

Chair, Felicitas Hardy, was absent. This development contributed to the late start of the presentations, which was also facing technical difficulties.

Conclusion

This session was an exercise in restorative listening for all participants—presenters and audience. The challenge posed by language barriers initially made it difficult to discuss and exchange ideas effectively. There appeared to be an initial nervousness and tension by presenters—as expected with public presentations and foreign language communication. However, by the end of the session, most people were more relaxed and information, although still somewhat confusing, flowed more easily.

Workshop Five

5.1 Límites y realidades de la mediación dentro del proceso penal. El encaje jurídico penal de la mediación en el sistima penal español. Propuestas de posibles modificaciones legales

Presented by: Eduardo Santos and Lourdes Etxebarria (Spain)

Day 3: Saterday 19 June

Plenary Five

Chair: Aarne Kinnunen

5.1 Research findings on VOM in the Basque country: Some results from external evaluations of the penal mediation services

Presented by: Gema Varona (Spain)

Gema Varona is a researcher and reader in Criminology and Victimology at the Basque Institute of Criminology (Spain). Doctor of Law, graduate in Criminology and holder of a Masters Degree in Sociology of Law, she is the author of books on human rights, immigration, legal cultures and juries, terrorism and restorative justice.

EXTERNAL EVALUATIONS OF THE MEDIATION PUBLIC SERVICES FOR ADULTS IN THE BASQUE COUNTRY

Context and objective of external evaluations

 Budget and financed by the organisations running the public services of mediation as part of their requirements of functioning in their contract with the Basque Government (Justice Department).

.2008: 3,000 € per service. .2009: 2,000 or 3,000 € per service.

 Objective of external evaluations: to contribute to mutual learning by providing scientific data on effectiveness and social efficiency of services following international standards on restorative justice.

Subjects and periods of time of external evaluations

- 2008: Public Mediation Service in Barakaldo (Bizkaia): 25 phone interviews with victims and/or offenders participating in mediation sessions in the last semester of 2007; internal report analysis; questionnaires via e-mail/phone to policy makers, judges, prosecutors and lawyers; discussion group with mediators.
- mediators.

 2009: Public Mediation Services (PMS) in Barakaldo, Bilbao (Bizkaia), Vitoria-Gasteiz (Álava) and Donostia-San Sebastián (Gipuzkoa): 598 phone interviews with victims and/or offenders (and their relatives) participating in mediation sessions since October 1st, 2008 to September 30th, 2009: 20 recontact phone interviews with persons participating in 2007 external evaluation in Barakaldo; observation of facilities and mediation sessions; internal PMS reports analysis; 60 on line questionnaires with policy makers, judges, prosecutors, lawyers, mediators and staff of social services supporting victims and offenders; focus group with 4 coordinating mediators; and compared case analysis through mediation and judicial documents.

Methodology

- Interest in reality of restorative justice defined by diversity (different stakeholders at different levels –micro, meso, macro-), dynamism (longitudinal perspective) and complexity (contrasting particular views for the same mediated case and general views on restorative justice).
- 2008-9 evaluation: All victim/offender questionnaires were designed to contain mainly qualitative data, most analysed statistically through SPSS software (see some results in following pages).

Table 3 Gender distribution, globally and in every PMS				
		Gender	Total	
SMP		Men	Women	iotai
	# of interviewees	101	52	153
Barakaldo	Percentage in this PMS	66%	34%	100%
Bilbao	# of interviewees	164	71	235
	Percentage in this PMS	69,8%	30,2%	100%
Donostia-San	# of interviewees	77	46	123
Sebastián	percentage in this PMS	62,6%	37,4%	100%
Vitoria-Gasteiz	# of interviewees	45	42	87
	Percentage in this PMS	51,7%	48,3%	100%
TOTAL	# of interviewees	387	211	598
TOTAL	Percentage	64,7%	35,3%	100%

Main offence		Men	Women	Total
		52	28	80
Injuries	%	65,0%	35,0%	100%
Threats/coercion/		27	29	56
insults	%	48,2%	51,8%	100%
Family duties non-		18	24	42
fulfilment/non- payment of alimony/abandon ment	%	42,9%	57,1%	100%
Th. 6 /		20	6	26
Theft/robbery	%	76,9%	23,1%	100%
TOTAL	% (from total)	57,4%	42,6%	100%

Main offence		Men	Women	Total
		69	16	85
njuries	%	81,2%	18,8%	100%
		34	23	57
hreats/coercion/insults	%	59,6%	40,4%	100%
amily duties non-		18	22	40
fulfilment/non-payment of alimony/abandonment	%	45%	55%	100%
		19	2	21
neft/robbery	%	90,5%	9,5%	100%
OTAL	% (from total)	69%	31%	100%

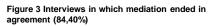
		Relationship				
Offence		Family (partner or ex partner)	Neighbour hood	Non existing	Total	
Injuries	Number of interviewe es	17	61	55	133	
	%	15,7%	45,9%	50,9%	38,1%	
Thursday (6	67	20	93	
Threats/coercion/insults	%	5,6%	50,4%	18,5%	26,6%	
Family duties non-		85			85	
fulfilment/non-payment of alimony/abandonment	%	78,7%			24,4%	
Theft/robbery			5	33	38	
Thert/robbery	%		3,8%	30,6%	10,9%	
TOTAL		108	133	108	349	
TOTAL	%	100%	100%	100%	100%	

Table	16	Mediation	styles
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Number of interviewees	Percentage
353	59%
245	41%
598	100%
	interviewees 353 245

Tab	le 98	Kind	of	mediation	and	will to	participate	
ana	in in	media	atic	n				

Mediatio	on	Yes, I would participate again in mediation	No, I wouldn't	I don't know	It would depend on the case	Total
Direct	Number of interviewees	286	10	16	39	351
Direct	% of direct mediation	81,5%	2,8%	4,6%	11,1%	100%
		157	13	27	47	244
Indirect	% of indirect mediation	64,3%	5,3%	11,1%	19,3%	100%
TOTAL		443	23	43	86	595
IOIAL	% of total	74,5%	3,9%	7,2%	14,5%	100%



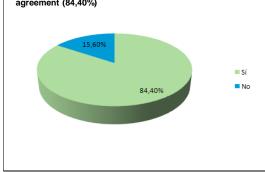


Table 90 Mediation and agreement

Mediation st	yles	With agreement	Without agreement	Total
Direct	Number of interviewees	309	44	353
	%	87,5%	12,5%	100%
Indirect		196	49	245
	%	80%	20%	100%
TOTAL		505	93	598
	%	84,4%	15,6%	100%

Table 18 Motivation to participate in media

	Number of interviewees	Percentage
More beneficial than a trial (it saves time, money, troubles)	245	41
To find a (participatory and effective) solution	137	22,9
To listen and be listened	36	6
It was indicated to me (by the judge, the prosecutor, my lawyer, mediators and/or others –including that the other part accepted mediation-)	97	16,2
Because it was not a serious case	9	1,5

So the other part wouldn't receive an excessive punishment; to help him/her; or give him/her another opportunity	28	4,7
To avoid or lower the penalty and/or civil liability	15	2,5
To be better repaired	6	1
To try something new	11	1,8
Other reasons to participate in mediation	4	0,7
Unknown	10	1,7
Total	598	100

Table 20 Most positive aspect in mediation			
	Number of interviewees	Percentage	
Face to face encounter	36	6%	
The possibility to explain circumstances and be listened	60	10%	
To find an (effective and/or participatory) solution or agreement	75	12,5%	
To avoid trial and saving time, money and troubles	93	15,6%	
Mediators' action	171	28,6%	

To avoid or to lower the penalty and/or civil liability	11	1,8%
The possibility to repair	5	,8%
To give an opportunity to the offender	8	1,3%
Economic and/or moral reparation obtained through mediation	12	2%
Other reasons	7	1,2%
Unknown	120	20,1%
Total	598	100%

	Number of interviewees	Percentage
Selection of adequate cases for mediation	11	1,8%
Face to face encounter	18	3,0%
The other part (or his/her lawyer's) attitude towards mediation	21	3,5%
Mediators' role	40	6,7%

The period of time required for mediation (too many sessions, losing work time, travelling).	32	5,4%
The trial	19	3,2%
Scarce information on the follow up of the agreement	5	0,8%
Unfulfilment of the agreement/lack of juridical effects of the agreement and/or reoffending	20	3,3%
Non consideration by the judge or the prosecutor of the agreement as it was expected/uncertainty on this issue	16	2,7%

An imposed or agreed reparation or sanction considered too soft	14	2,3%
Limits in the coordination with other services to treat the problems inherent to the case	13	2,2%
Other	52	8,7%
Unknown	337	56,4%
Total	598	100,0%

	Number of interviewees	Percentage
Yes	275	62,1%
No	6	1,4%
Unknown	37	8,4%
It depends on the case	125	28,2%
Total	443*	100%

^{*} Only when the interviewee indicated that he/she would be willing to participate in a future mediation

	Number of interviewees	Percentage
Yes	214	35,8%
No	23	3,9%
I didn't say anything	360	60,3%
Total	597*	100,0%

the mediation session?	Number of interviewees	Percentage
Yes	136	22,7%
No	119	19,9%
I don't know	25	4,2%
In this case, it was not necessary	318	53,2%
Total	598	100,0%

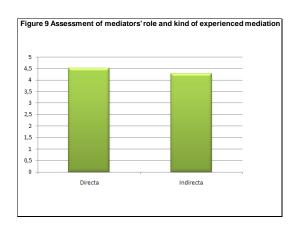
	Number of interviewees	Percentage
Those problems were attended	184	42,01%
Those problems weren't attended	47	10,73%
Those problems didn't exist	207	47,26%
Total	438*	100%
*Lack of answers		

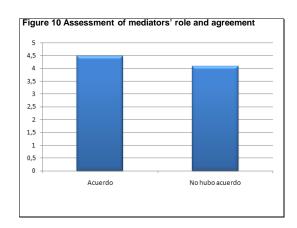
Table 31 Do you think that mediation prevents offences?		
	Number of interviewees	Percentage
Yes	390	65,4%
No	75	12,6%
Unknown	133	22,0%
Total	598	100%
Total	398	100%

Table 80 Main offence and prevention of future offences/conflicts				
Main offence	he	Do you think mediation helps in preventing offences/conflicts?		Total
	Yes	No	Unknown	
Injuries	71,3%	10,8 %	17,9%	100%
Threats/coercion/insul ts	60,3%	13,7 %	26,0%	100%
Family duties non- fulfilment/non- payment of alimony/abandonment	48,2%	27,1 %	24,7%	100%
Theft/robbery	66,0%	4,3%	29,8%	100%
TOTAL	64,2%	13,6 %	22,2%	100%

Table 81 Media	tion style and	pre	ventior	1	of conflicts	
Do you	think mediatior offences/con			îu:	ture	Total
	Yes		No		Unknown	
DIRECT	69,6%		10,8%	6	19,6%	100%
INDIRECT	59,4%		15,2%	ó	25,4%	100%
TOTAL	65,4%		12,6%	6	22%	100%

	Number of interviewees	Percentage
Very good	337	56,6%
Good	200	33,6%
Normal	33	5,5%
So-so	19	3,2%
Bad	6	1,0%
Total	595*	100%





	Number of interviewees	Percentage
Yes	376	74,5%
No	54	10,7%
Unknown	75	14,9%
Total	505*	100%

	Number of interviewees	Percentage
Yes	405	67,7%
No	67	11,2%
Unknown	126	21,1%
Total	598	100%

	Number of interviewees	Percentage
Yes	281	79,6%
No	38	10,8%
Unknown	34	9,6%
Total	353	100%

	Number of interviewees	Percentage
Yes	97	27,5%
No	252	71,4%
Unknown	4	1,1%
Total	353	100%

		Did the encounter worry you?		- Total
Rol in media	tion	Yes No		Iotai
Victim	%	42,3%	57,7%	100%
Offender	%	28,9%	71,1%	100%
Victim and offender	%	35,5%	64,5%	100%
TOTAL	% de rol	35,8%	64,2%	100%

	Number of interviewees	Percentage
Yes	278	46,5%
No	153	25,6%
Unknown	167	27,9%
Cintilo		

	ms and double rol, in ca would you have continu	
	Number of interviewees	Percentage
Yes	283	78,8%
No	22	6,1%
Unknown	54	15%
Total	359	100%

Table 61 Only for victims and double rol, has your view on the offender changed?

	Number of interviewees	Percentage
Yes	124	34,5%
No	137	38,2%
Unknown	98	27,3%
Total	359*	100%

Table 63 Only for victims and double rol: after mediation, do you have a better opinion on the administration of justice?

	Number of interviewees	Percentage
Yes	287	79,9%
No	34	9,5%
Unknown	38	10,6%
Total	359	100%

	Number of interviewees	Percentage
Yes	217	74,3%
No	29	9,9%
Unknown	46	15,8%
		100%

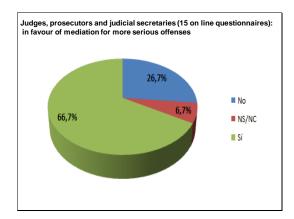
	Number of interviewees	Percentage
Yes	169	57,9%
No	47	16,1%
Unknown	76	26%
Гotal	292*	100%

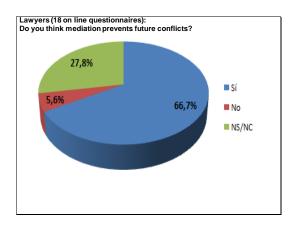
	Number of	Percentage
	interviewees	
Yes	44	12,6%
No	160	46%
Unknown	144	41,4%
Total	348	100%

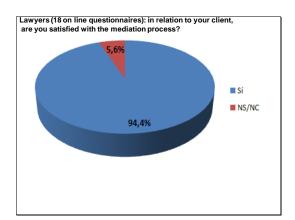
Without mediation		Did mediation help you to understand the victim?				
possibility, you have recognised harm?		Yes	No	Unknown	I don't consider I caused any harm	Total
Yes	%	63,6%	11,4%	4,5%	20,5%	100,0 %
No	%	13,1%	24,4%	16,3%	46,3%	100,0 %
Unknown	%	52,8%	6,3%	36,8%	4,2%	100,0 %
TOTAL	%	35,9%	15,2%	23,3%	25,6%	100,0 %

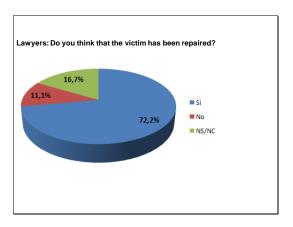
Table 71 Only offenders ar understand the victim?	nd double rol, has mediation	helped you to
	Number of interviewees	Percentage
Yes	125	35,9%
No	53	15,2%
Unknown	81	23,3%
I don't consider I caused any harm	89	25,6%
Total	348	100%

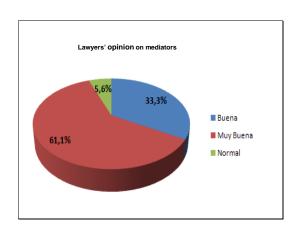
	Number of interviewees	Percentage
Yes	62	91,2%
Unkown	6	8,8%
TOTAL	68	100%











5.2 The historical difference between restorative and vindicatory justice in the European past and elsewhere

Presented by: Ignasi Terradas (Spain)

Ignasi Terradas is a PhD in Sociology (University of Manchester) and a Professor of Social Anthropology at the University of Barcelona, degree in Psychology (University of Barcelona). He's conducted research in Historical and Legal Anthropology and is an invited professor at L'École des Hautes Études en Sciences Sociales (Paris) and El Colegio de Michoacán (Mexico). He's also the author of "Justicia Vindicatoria", "Requiem Toda", "Mal natural, mal social", "Eliza Kendall", among other books and articles.

1) Vindicatory justice, restorative justice and the individualist bias

I think that the main limit for the social effectiveness of restorative justice in our present day society comes from the individualistic appraisal of damages and responsibility. Individualism is well rooted in the legal culture of contract, and in the consequent market system. The extension of individualism in law is not just a matter of the "Law and Economics" doctrine; there are other aspects of individualism with powerful influence on law⁴.

The individual variety of psychological and moral reactions is dramatically present in restorative justice. Ashworth⁵ reminds us "Some victims will be forgiving, others will be vindictive; some will be interested in new forms of sentence, others will not, etc." The ethnographic and historical examples of vindicatory justice⁶ offer a contrast with the individualist context of restorative justice. In societies where we find the working of vindicatory justice, there are entire groups of people aligned under a mandatory law of solidarity. Usually, a whole group of kinship recognizes itself as such thanks to this solidarity⁷. Besides, the individual alone, being the offended or the offender, cannot ask for the inception of a legal process.

Since social solidarities are not normative facts in our society, the individualistic imperative affects permanently the aims of restorative justice. We feel compelled towards individualistic achievements, even with the best of the intentions. When Morris tells us that the meaning of restoring has to do

⁴ Thus, there are not only the already known values of individual salvation in some religions -more correlated with capitalism à *la Weber*-, but there are also the individual forms of consciousness for all religious phenomena (virtue and sin, prayer and meditation). In psychology –a field closely related to restorative processes- the individual, much more than the group, is the depository of feelings, representations, symptoms and even symbols. Whereas in other societies symbols and representations, as well as feelings (grief for instance) can only be aroused by being in the midst of a social group. Thus, for instance, we know ethnographically that in traditional societies people do need always other people to weep for their dead and to grant pardon to their offenders. In addition, in our society individualism and its values are crucial in producing moral and aesthetic pleasure. It is not possible here to develop this topic further. All I want to underline is that individualism, coupled with neoliberalism, is accountable for the limits and failures of any initiative that demands social solidarity.

⁵ Ashworth, A. (2002) "Responsibilities, rights and restorative justice", <u>British Journal of Criminology</u>, N.42, p. 586

⁶ Cf. Terradas, I. (2008) Justicia vindicatoria. Madrid: CSIC.

⁷ Cf. for instance the systematic study of the *diya* among the Berti by Ladislav Holy (1974, <u>Neighbours and Kinsmen</u>, New York: St. Martin's Press)

mainly with "the victim's security, self-respect, dignity and sense of control", we face the individual values of psychological and moral self-help. Although regarding the offender, we can be more aware of the relevance of the social structuring of individual exclusion. It is not just a matter of exclusion for stigmatized people; the point is the lack of groups of social solidarity placing persons with rights and obligations, even unwillingly. This is the main social difference between the societies ruled by the compound of civil and penal law and those ruled by vindicatory law.

In order to know better the difference between vindicatory and restorative justice let us consider what happens with money payments after a procedure for composition ¹⁰. In the vindicatory process when the offender party pays to the offended party, the money distributes increasingly in smaller portions as it reaches the more distant kin of the victim. The right to receive compositional money is what establishes who belongs to a lineage, clan or kindred in the clearest way. Compositional money repairs, only in part, the direct damages and the people damaged. Usually, half of the total amount serves this purpose. However, the other half goes as a gift to the rest of the members of the group. It serves to strengthen the solidarity of the whole group: the victims will be more "restored" by the help of the people, who in receiving the money declare themselves solidarity with the affected individuals. This hope of help will be more important than the money itself. It looks as the historical reason for such a distribution. Think about that: we do not have in our society an institution, which does not only pay an indemnity to the victims but to the people that have obligations of solidarity with them, enforcing such obligations with a gift.

The reverse obtains for the offender party: since all the members of the solidarity group have to contribute, the group puts pressure on the offenders to refrain from offending. When each member of the wide group gives a part of the total amount for payment (even if a small amount) there appears a public acknowledgment of the shared responsibility. They show to the offender the trouble that he has created to the whole group and they declare publicly all of themselves responsible towards the offended party. This means that groups compose the society, and that adjustments are between groups, whereas in our societies the hegemonic legal representation is between individuals and the state. In addition, it is important to note that in vindicatory cultures, money is a resource for solidarity and it is not an exclusive means addressed towards the reparation of the individual victim.

Also, it is a principle for vindicatory justice to deal with the *de facto* unequal forces from the very beginning of a process. This seems to be a goal also for restorative justice, but it is very difficult to attain, given the *de facto* individual inequalities ruling in our society. In vindicatory justice, we find material equality to face responsibility in the procedures between lineages (this is why lineages can

⁸ Morris, A. (2002) "Critiquing the critics. A Brief response to Critics of Restorative justice", <u>British Journal of</u> Criminology, 42, p.604

⁹ Thus: "A process, no matter how inclusionary, and an outcome, no matter how reparative, is not likely to magically undo the years of social marginalization and exclusion experienced by so many offenders... or remove the need for victims to receive long-term support or counselling" (Morris op. cit. p. 605). In our society, the ideal outcome does not replace the individualistic bias: to the contrary, the problem with the offender is how to obtain an individual empowerment to replace what people appreciate as an individual failure of effort and adjustment to society. Moreover, the victim's needs demand a "community care" through individual professionals. Interpersonal interactions replace blocs of solidarity in good faith processes, which recognize the weakness of the individual alone. They try to empower this loneliness in front of the risks and dangers of not just the offence but of the whole society.

¹⁰ Cf. Holy, L., Op. Cit.

adopt more members precisely when a composition has to be paid and allies when it is going to be paid). When hierarchy and material inequality are permanent features of a society, then, there is an acknowledged scale of "compositional tariffs", like in the medieval codes. These codes oscillate between the social value accorded to the offended and the material solvency accorded to the offender.

Morris takes into account the power imbalances between offenders and victims¹¹ and asserts the way for their correction: "Within a restorative justice framework, power imbalances can be addressed by ensuring procedural fairness, by supporting the less powerful, and by challenging the more powerful... Facilitators of restorative justice processes have a responsibility to create an environment that ensures that both victims and offenders can freely participate...". However, the perfection of these powers on behalf of the facilitators brings them near the figure of the powerful judge that can impose justice above the struggle between lawyers of unequal might (as recognized by Morris in the criminal process). I mean that to the extent that the power of the third is attributed to the facilitator, in order to be able to compensate the power imbalance of the parties, we are declaring the de facto characteristic power of a judge. We must not forget that restorative justice would be unnecessary if the judicial process could have been reformed giving issue to these expectations, among others, regarding fairness (equity) and a contextual understanding of the persons. Restorative justice is not "against" the judiciary, but against the inability of the judiciary to face a restorative reform. On the other hand, it is normal that the restorative process is still in need of some sort of judicial authority in itself (not just as a sequence within a broader judicial process). This poses a serious limit for restorative justice. Dialectically, it can only be counterweighted by the failure of the criminal procedure in attaining the same goals of restorative justice. But this means only a mutual encounter of grievances. It attests a failure in both procedures.

Retributive, restorative and vindicatory processes need the judiciary third. There is, let us say, something paradoxical about it: sometimes it is necessary in order to face the *de facto* inequality – the Durkheimian "inequality of the external conditions (to the contracts) for struggle" ¹²- that conditions the *de iure* equality. At the same time, it is necessary to predicate justice between two equally powerful rivals that can easily negotiate their interests above justice.

Nowadays the *de facto* inequality takes subtle as well as rude forms. There is a lot of symbolic violence, hegemony, double bind or mystification¹³. People feel obliged to behave accepting deeply rooted injustices, or to represent roles that cannot perform decently or adequately. It means also a loss of capacities or resources that one is forced to conceal in deference to the good will of others.

¹¹ Op. Cit., p. 608.

¹² Cf. <u>Justicia vindicatoria</u>, op. cit. I, 4-6.

Gramsci, Foucault, Bourdieu, Bateson, Laing have referred with different nuances to this phenomenon which is an asymmetry of social power with deeply buried foundations (Cf. Gramsci, A. (1971) Sotto la mole. Torino: Einaudi. Ferrata, G. Ed., 2000 pagine di Gramsci. Milano. Foucault, M. (1980) Dits et écrits, 1954-1988. Paris: Gallimard. Gledhill, J. (1994) Power and its disguises, London: Pluto. Collier, A. (1977) R.D. Laing: The philosophy and politics of psychotherapy, Hassocks: Harvester). Christa Pelikan (Op. cit. p.7) draws attention towards the "hidden and disguised" forms of repression and inequality. She points to the awareness of these "subtle forms of repression and domination" that usually are overlooked by state jurisdictions. Pelikan adverts us –following Foucault's conceptualization- of how through self- responsibility and self-governance people internalize strong individualist biases, such as those of "the rules of market and of competition" (Id. P. 8). The restorative process can be more aware of these phenomena but it depends on the sensitive critical perspective of the agents handling the process.

Thus, fair and benevolent attitudes can produce suffering in others when they are displayed under hegemonic perversions.

To what extent is restorative justice aware of the hegemonic and hidden violence, if a criticism of social foundations is not present in the restorative process? Let us think on the historical criminal processes regarding the "state of necessity". Verdicts of judges, like those of the famous Magnaud¹⁴ had to criticize the state of the society in order to legitimate the sentence.

2) Are there clear antecedents for restorative justice?

Christa Pelikan conceives the process of restorative justice aiming primarily at "a positive, constructive arrangement that aims at repairing ("making good") the harm and suffering incurred as a consequence of the conflict (insofar it is defined as a wrongdoing)"¹⁵. To this, she adds that the core element of the restorative process is "the active participation of those involved in a conflict"¹⁶. Well, these two axiomatic statements clearly define that the restorative process is not just a conflict regulation¹⁷ without a clear pursuit of justice. Until this point, we have a definition, which stands near the vindicatory or compositional justice we find in history and ethnography. Pelikan stands even closer to the doctrine for composition in vindicatory justice when she declares "I contend that this compensation (for the restoration of the damages and sufferings inflicted on the aggrieved party) is closer to the "real thing" that is protected by the rightful claim (the right to obtain compensation) than the punishment meted out to the offender"¹⁸. This is the core of composition or compensation in vindicatory justice: the offence creates primarily the right to be satisfied and, for the other party, the obligation to fulfil this satisfaction. Also, a judicial authority can grant punishments in combination with compositions. Nevertheless, there are crimes, which one cannot expiate nor compose¹⁹.

In vindicatory justice the act of wrongdoing creates the process together with a mandatory reparation for what is acknowledged as harm and suffering. The offender's party can defend the offence and the inquiries are lead by the offended party from the very beginning. But all must be conducted under a judicial authority. The offences are typified according to the estimation of harms and damages, not according to the offence itself and its deserved punishment, as in modern penal codes. This is why most medieval codes appear as "compositional tariffs". Corporal punishments were applied mainly to recidivist offenders and to inexpiable crimes²⁰.

Thus, the effort of restorative justice to rescue the priority for reparation has to be aware of the fact that when this priority was established in law and society, it was made so by the prominent

¹⁴ Cf. Hesse, Ph.-J. (2002) "Un droit fondamental vieux de 3.000 ans : l'état de nécessité », <u>Droits</u> fondamentaux, nº2.

¹⁵ (2010) "The place of restorative justice in society: making sense of developments in time and space" in press. ¹⁶ Also she stresses the relevance of recognition (psychological and anthropological) for the restorative process. That is a mutual recognition and a subsequent empowerment of the participants. Thus, peace is to be understood in the context of counteracting the exclusion or the domination over the other (Op. cit. p. 17)

¹⁷ Justice can seem excluded from the restorative process when the emphasis lies only upon "empowerment, dialogue, negotiation and agreement". Pelikan argues the contrary.

¹⁸ Pelikan, Ch., Op. cit. p.9.

¹⁹ For further developments on this complex issue, see Terradas, I. (2008) <u>Justicia Vindicatoria</u>, Op. cit.

²⁰ I have to refer once more to Justicia Vindicatoria, Op. cit.

legislation and by the rule of courts. Composition was the prominent instituted procedure -together with the social solidarities acting in courts- and it was not an exception or an informal dealing²¹. It has to be made clear from the beginning that we are talking about a type of justice different from the penal-retributive, but not "less just"²². It comes precisely as an answer to failures from criminal justice in achieving an idea and a social reality of justice. It appears in the history of law as a new effort of realism against strict positivism. Moreover, it takes especially into account the factors left by the penal procedure; as Christa Pelikan puts it: "The law does not deal with the specific qualities and especially the social status of the persons involved"²³. This is also the strong point of vindicatory justice, although it often takes into account the status of the persons to preserve immunities or to strengthen the domination and servitude among them²⁴.

In several writings, the theory of restorative justice refers to historical antecedents as a guarantee of its validity²⁵, given the wide scope of societies in which reconciliation, reparation, composition, etc. seem to occur, instead of criminal judicial procedures. However, these historical antecedents belong to other social structures and they have important and different characteristics, which some scholars have already recognized. Primitive or traditional societies, Ancient and Medieval, all have a juridical and social order quite distinct from ours. These societies have differences between them, but essentially their juridical order belongs to the vindicatory type which begun to be theorized in Legal or Juridical Anthropology by Antonio Pigliaru and Raymond Verdier²⁶.

We confront statements that need a reformulation because they can easily distort the present day meaning of restorative justice. This happens when we read for instance "Restorative justice values, processes and practices have been around for a long time" with references to "traditions of the Celts, Maori, Samoans and other indigenous peoples as well as placing its roots in various religious communities... the traditions of ancient Arab, Greek and Roman civilizations"²⁷. This can disguise some criticisms addressed to the supposed failures of restorative justice, especially those criticisms that do not take into account the relevance of the specific social correlate. My argument is that precisely the limits for the success of restorative justice depend largely from a correlated society endowed or not with group solidarities. This goes together with a major reliance on the process led

We must be careful in not attributing "informality" to very well defined procedures of vindicatory justice. Informal arrangements through mediators, *boni homines*, circumstantial arbitrators or advocates have happened in different societies and periods. But, in addition, we have the formal institutions of vindicatory justice which are clearly distinct from these informal ways. The fact that, for instance we find ceremonies of reconciliation in vindicatory justice which we do not have is not a reason to treat them as "informal". Many of these ceremonies, if carefully studied, appear as judicial procedures under a judicial authority, and with the concept and attitude of administering justice (Cf. Terradas, I. (2008) <u>Justicia vindicatoria</u>, Madrid: CSIC. Esp. Ch.IX)

²² Thus, I think we must not consider the restorative process as an alternative to the pursuit of justice and truth, but possibly a keen way of pursuing justice because it takes into account the entire social context. In doing so, the restorative process can approach justice with more fairness, with an informed equity.

²³ Pelikan, Ch., Op cit. p.6. Pelikan draws on Luhmann's exposition of the self-referred and self-contained range of positive law to stress that restorative justice seeks to create a "space for arguments *ad hoc et ad hominem*".

²⁴ In our society, the context of taken for granted social inequality is the *de facto* situation stressed by

Durkheim regarding the contract.

25 Although without giving detailed references. Sometimes it is referred as a "re-emergence" without stating the provious contact. (Cf. Marris, A. (2002) "Critiquing the critics. A Brief response to Critics of Pectagolius."

the previous context (Cf. Morris, A. (2002) "Critiquing the critics. A Brief response to Critics of Restorative justice", <u>British Journal of Criminology</u>. 42)

²⁶ Cf. Terradas, I., <u>Justicia vindicatoria</u>, Op. Cit.

²⁷ Cf. note 8 in Morris, A., Op. Cit. p. 598.

under a judicial authority, which characterizes the societies we know through ethnographies and historical accounts. Thus, if restorative justice is limited, it is limited not so much by failures in the procedure but by a society lacking a correspondence with the values of restorative justice. Is it possible to have conviction and reparation without mandatory group solidarities? Shortly: Our modern individualistic society accounts for the limits and failures of restorative justice. Then we are unjust in accounting the failures of restorative justice to the procedure itself.

Nowadays, restorative justice is perhaps much more realistic in its goals than criminal justice. It can be said so because the core of realism is the meaningful linkage to society. It is the difficulty that our society has in appreciating and incorporating in its social structure the values of restorative justice that sets limits to its efficiency.

On the other hand, there is an associated question. There is the belief that the ethnographic and historical record gives data on resolution of conflicts without judgments. To the contrary, as I tried to show²⁸, if we look contextually and comparatively to these data, we discover that the so-called private law and the supposedly non-judicial ways of conflict resolution are the exception. If there is composition or reparation, reconciliation or peace agreement, they appear always under the power of a judicial authority.

Nevertheless, our hegemonic social order leads us to imagine that if agreements were reached easily in the past it was due to the freedom of parties and the retreat of state-like authorities. Here we can think about the paradox of criticizing the paternalism of the state, and specifically that of judges, and allowing for a private paternalism in the restorative process. Since the facilitator can easily have to counteract with a helpful hand (like the public judge) the powerlessness of one or the two parties in the process. This can appear as a paternalist attitude.

The facilitator and all the people involved in restorative processes should have to know historically and sociologically that the restorative process comes to reform the civil/criminal procedures and to refigure the function of the third in pursuing justice. It is a reform that does not preclude the judicial process or the judicial authority²⁹. Actually, how many judges – especially in juvenile courts- are not nowadays trying to transform, as far as they can, their procedures into restorative processes?

Besides, there is a big difference between the performance of reconciliation as a social and ritual process on one hand and as a value and feeling expressed individually in a restorative conference on the other hand The rituals of reconciliation³⁰ imply a socially acknowledged reconciliation if performed according to the action of the ritual. This means that the performance of the reconciliation falls under a social and religious obligation (just like in oaths and ordeals). The denaturalization of reconciliation is thus equivalent to the perjury and the sacrilege. It entails an exclusion from the community and another ritual for the possible reincorporation.

²⁸ Terradas, I. (2008) <u>Justicia Vindicatoria</u>, Madrid: CSIC.

²⁹ This is apart from the concession that "restorative justice cannot deal with absolutely all criminal cases" and that "the relationship between the formal system and any restorative justice processes must be carefully crafted so as to avoid inequities" (Ashworth, A. (2002) "Responsibilities, rights and restorative justice" <u>British</u> Journal of Criminology, N., 42, p. 592)

³⁰ Terradas, I. Justicia Vindicatoria, Op.cit., ch.IX

The rituals of reconciliation change the status of the person as much as the rituals of initiation. This change is public and the whole community acknowledges the fact. Thus, for instance, a Christian ritual of reconciliation entailed, like the administration of ordeals and the taking of oaths, the value and liturgy of a sacrament. In the context of vindicatory justice, reconciliation means a change in the social status of the parties. They will be known from then onwards -facing the whole community- as reconciled.

Thus, we have two interconnected facts that stress the realistic effect of the procedure and its authority over society. We have to bear in mind that in other societies vindicatory or compositional justice – the presumed antecedent of restorative justice – was not practiced as a default for criminal law, but that it was the eminent form of justice. It had variants, but our strict criminal procedure was not precisely one of them. Thus, we cannot forget that when this supposed antecedent of restorative justice achieved some social and juridical success, there was a leading judicial authority, which was correlated with groups of solidarity that are ignored in our individualistic society.

The lack of connectedness of restorative justice with the distinctive groups of solidarity account for the failures we cannot attribute to the restorative process in itself. We can clearly state in favour of restorative justice that it is a reform which:

- 1st) the civil and penal courts had been incapable to achieve,
- 2nd) provides the victims of offences with a more direct and informed knowledge of the offenders' behaviour, thereby obtaining a much more realistic prediction over the future,
- 3rd) it introduces moral³¹ and psychological factors which can diminish fears and humiliations in both victims and offenders; thereby bringing more confidence and security in people as capable persons. But this is seriously limited by the real social correlates.
- 4th) there can appear a sense of satisfaction by the participation and the contribution to the outcome. The participants can obtain more confidence in a justice they understand and have been creating in cooperation³². But we have to remember that they are empowered by individual professionals and voluntary people, not by the automatic alignment with large groups of solidarity.

Due to the constraints already mentioned the application of restorative justice, in contrast with vindicatory justice, results in more positivism or self-reference than what one can expect from its realistic approach³³. The individualist bias restricts the realistic impact and the necessary social authority for its achievement. Thus, expressions like. "(restorative justice) seeks to restore the victim's security, self-respect, dignity and, most importantly, sense of control"³⁴ are addressed to the psychological and moral integrity and security of the individual. If we could compare with its equivalent for vindicatory justice, it would be: "vindicatory justice seeks to acknowledge the capacity

³¹ Braithwaite is keen in showing the all-pervading aspect of morality in the restorative process (Braithwaite, J. (2002) « Setting standards for restorative justice », <u>British Journal of Criminology</u>, 42)

³² Cf. Morris Op. cit. p. 611-612

³³ This explains also, why restorative justice generates many procedural manuals instead of jurisprudence based only on case-context knowledge. It is difficult to get rid off positivism and its own proliferation of procedures.

³⁴ Morris, A. (2002) "Critiquing the critics. A Brief response to Critics of Restorative justice", <u>British Journal of Criminology</u>, 42, p.598.

of the victim for a defence obtained through the incorporation into a group of solidarity; also seeks the right – joint to this incorporated group - for the due satisfaction regarding the offence, in terms of legal vengeance³⁵, composition or reconciliation. The judicial authority shall protect the right and capacity of any party to defend, which is the point of honour in a trial. But legal security will depend also on the strength of the solidarity group". Here we have also the theme of a psychological and moral integrity and security, but it appears simultaneously with the incorporation of the individual to a group of solidarity.

There is a theoretical³⁶ paradox regarding the restorative process. If it means a good reform of the criminal process accounting for a major social participation, and posterior acceptation by all parties and people involved (including judges), why is it that it does not acquire the authority of a jurisprudential record? Why does it appear as an inferior category in the scale of jurisprudence, if its achievement is wiser than that of a usual trial? Significantly: Why the cases dealt by restorative justice do not enter into a jurisprudential dialogue with those of the criminal procedure?

The fact is that jurisprudence does not incorporate the cases of restorative justice together with the criminal-penal cases. It would be interesting to see when and why this initiative could arise. Its accomplishment will enrich the legal culture of any country in an unprecedented form. But the open questions still are: Do the procedures of restorative justice have enough value to be rendered precious by penal realist jurisprudence? Will restorative justice anticipate not so much a complementary development but a radical change in the criminal judicial procedure itself?

3) Restorative justice or social revolution?

Louis Assier-Andrieu³⁷ has remarked – focusing on the American experience – the easy way in which alternative procedures in general have turned against their initial intentions. He points that in their unawareness of the influence of market ideology they succumb in the traps of social injustice in trying to resolve interpersonal conflicts. As we have seen, the theory of restorative justice has increasingly acquired more consciousness of this fact. Still there is no clear acknowledgment about the limits settled by individualism coupled with neoliberalism. If the restorative process plans to bring justice with fairness for persons, cases and circumstances, the choice is between the acceptance of a limited outcome (given the hegemonic social order) and a pretended utopian revolution.

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³⁵ The treatment of the idea and the sentiment of vengeance by vindicatory justice is complex and I cannot deal here with its complexity (Cf. Terradas, I. <u>Justicia Vindicatoria</u>, Op. cit.) I only point here to two considerations: 1st) In vindicatory codes the vengeance is acknowledged as a human sentiment which has to be treated adequately, it is not simply repressed or exceptionally allowed, as in our penal codes and processes (Vindicta publica, American exceptionalism and the like). 2nd) In the vindicatory process, if composition is not applicable according to the judicial authority, then this authority concedes to the offended party the right to punish the culprit. Thus, the offended party acts as the executioner of a judicial order, and sometimes the given judicial order is not addressed to punish the culprit but someone else instead (several customary considerations regarding law and morality intervene here). Only from the outside, this complex procedure can appear as simple "private vengeance".

³⁶ From a practical point of view, it is not a paradox: the lack of a sentence as such gives to the restorative process a logic that defies the structuring of the report to match the ordinary requirements for jurisprudence.

³⁷ Assier-Andrieu, L. (1996) <u>Le droit dans les sociétés humaines</u>, Paris : Nathan. See esp. Chap. VI "Le règlement des conflits".

The problem clearly appears when restorative justice is theorised in terms of ideals of justice, peace and pardon. We must be aware of the serious limits imposed by a society in which the widespread law and ethics of contracts has achieved an individualist bias for all matters regarding accountability and solvency. This happens in the society dominated by neoliberalism³⁸ or exorbitant capitalism. In this context, the values of restorative justice appear utopian as much as those of retributive-penal justice can appear nostalgic. "New" desert doctrines desperately conceal the immunities of the successful fait accompli which as much as the "efficient breach of contract" teaches about how to be a good citizen together with strong exceptions³⁹. On the other hand, the pretence to reconcile neoliberalism with the context for justice and fairness seems to oscillate between lip service to philosophical reasoning and the confusion between freedom and the prevailing interests. It is for that reason that it is unrealistic to demand of the restorative process to act as if these limits could be easy to surpass.

If we take literally most of the standards for restorative justice listed by John Braithwaite⁴⁰ we should be involved in a social revolution of a magnitude comparable to that of the French revolution. First, regarding what he terms the "constraining standards", if we would be able to impose nondomination equilibrium for the parties with an effective empowerment of fundamental rights, it would mean the demise of private law and its substitution by an exhaustive social law. It would mean the demise of any market institution capable of representing economic inequality as lawful equality... Regarding what he terms the "maximizing standards": they appeal to social and cultural revolutions unprecedented in the history of humanity. For some items, it would afford a miracle, although Braithwaite tells us confidently "we are not constrained to accomplish always the standards on the maximizing standards list". But if they are just ideals without real implementation, why to refer them? If we do not open a door to demagogy, we must admit that precisely these "maximizing standards" constitute the repertoire of the limits which restorative justice encounters in the social order of our contemporary society. The list given by Braithwaite point at the values damaged by individualism coupled with neoliberalism⁴¹.

Besides, Braithwaite lists the "emergent standards" from the restorative process itself, which are personal and interpersonal. Their nature is almost exclusively moral: remorse over injustice, apology, censure of the act, forgiveness of the person and mercy. Braithwaite is right in considering most of them gifts. In a society ruled by contracts without personal ties, it would be a mistake to settle gifts of pardon as a formal act. Braithwaite adds also a psychological and a moral sense to this fact: "People take time to discover the emotional resources to give up such emotional gifts" 42. We cannot

³⁸ For an ethnographic appraisal of neoliberalism cf. Greenhouse, C. (Ed.) (2010) Ethnographies of neoliberalism. Philadelphia: University of Pennsylvania Press

³⁹ For the leading American doctrine about these issues: Ignatieff, M. (Ed.) (2005) American Exceptionalism and <u>Human Rights</u>. Princeton U.P. ⁴⁰ Op. cit., p. 569.

These are: the restoration of human dignity; the restoration of safety/injury/ health; the restoration of communities; the restoration of the environment; emotional restoration; restoration of freedom; restoration of compassion or caring; the prevention of future injustices; and, last but not least, the provision of social support to develop human capabilities to the full. Only torts' law or civil responsibility can assume some of the "maximizing standards", like the restoration of property loss and the restoration of a sense of duty as citizens (Braithwaite Op. Cit. ps. 569-570)

⁴² Braithwaite, Op. cit., p.571

talk properly of gift and generalized reciprocity due to the lack of straight social solidarities. Remorse and pardon as social workings and social facts do properly belong to societies with vindicatory law.

It is very difficult to achieve only as an individual the empowerment for pardon. We have to keep in mind as Jacques Derrida and Louise du Toit⁴³ averted that the power to pardon must derive from a moral superiority that a victim as such cannot attain. The capacity to perform an act of pardon morally superior to the offence depends primarily on social conditions. Nowadays, in our society, we are almost unable to verify the social dimension of pardon. We are placed into an individualistic psychological morality that stresses personal psychological strength or personal moral endurance as inner capacities or responses to be learned. Of course, it is true that several phenomena related to remorse, pardon or expiation are experienced subjectively, but the language that gives value, meaning and confidence to this attitudes is social.

In many societies, remorse, expiation and pardon appear in the individual consciousness through the practice of rituals, learned prayers, known symbols and instituted processes. Thus, what develops into one's own consciousness or intuition has already acquired a shared social meaning, which devolves into society.

An individual that can really grant pardon as such has to be empowered by strong social solidarity. A person has to enjoy a moral and political authority over the adversary to grant pardon. He or she has to be able to perform the act of pardon without any suffering for the received wrong. It is for these reasons that the paradigmatic individual to grant pardon is a king. A person, whose uncontested moral and political authority can easily avoid the suffering produced by the offence. This is why Minow – quoted by Braithwaite⁴⁴- talks about the "ennobling capacity" of the person endowed with the power to forgive.

Now lets turn to the argument of "desert theory" when the victim grants an unjust pardon ⁴⁵. This goes against the due justice in the restorative process. The victim can grant pardon to an offender beyond the expectations of the criminal law. In addition, there can result uneven agreements between different restorative processes according to the wills and whims of the victims. Thus, again, it is the individualistic bias that produces the scandal. However, when a corporate group, as in vindicatory justice, grants pardon, the unevenness in justice can be a political advantage. If the offended party enjoys a sound power in society, the "deserved punishment" for the offender can be displaced by the political interest of the offended (without suffering injustice) ⁴⁶. I mean that in this case pardon stands as the gift of a strong group of people, not as the surrender of a peaceful person.

4) What kind of community are we talking about?

The actual use of the concept of community in legal and sociological literature can be very misleading. In the context of restorative justice what is understood commonly by community is the

⁴⁵ Cf. Ashworth Op. cit. ps. 587-88 et passim.

⁴³ Cf. Du Toit, L. « Feminism and the Ethics of Reconciliation » in www.eurozine.com/articles/2007-03-16-dutoit-en.html

⁴⁴ Op. Cit. p.571

⁴⁶ It is not the same to grant pardon between kingdoms, clans or communities than between individuals. The social magnitude of the subjective feeling stands for its objective value, to put it in Hegelian terms.

action of some of the members of a family, or of a representative of a church, a police station, a town hall, a philanthropic or non governmental organization, etc. At the same time in countries like the United States community stands for class, gender, religious, professional or racial loose groupings⁴⁷, and these are not, properly speaking, communities but social and cultural identifications (or imaginary communities) which do not predicate over materially effective obligations of solidarity as we can find in traditional communities.

Besides, there are two problems fused in the same concept. One is the confusion between a procedure and a jurisdiction regarding "community"; and the other is the attribution of a type of procedure when the jurisdiction of a community is considered autonomous. Thus, historically, a community (which means paradigmatically a village) has had an independent or quite independent jurisdiction over a given population; the procedure established in pursuing justice has been marked by strong egalitarian principles or subject to the abuse of local patronage or chiefdom. But "community" means only a sphere of jurisdiction and it does not mean any procedure as such. "Community justice" is a misleading term: it takes a possible jurisdiction for a procedure.

Thus, we find in history and ethnography that the vindicatory processes (authorized vindication, ordeals, verdicts by oath or combat, etc.) can happen either at the "community" level or at the "state" level. Thus, we cannot assume that there is a "community or popular justice" necessarily egalitarian or "repressive, retributive, hierarchical and patriarchal" These are irrelevant features concerning the jurisdictional field and they have to do with the process, its cleanness or vitiation, and this can happen at any level of jurisdiction.

What is at stake when "community" is mentioned in legal literature is the idea that the representatives of ethnic or geographical communities can be prone to traditional-despotic forms for running justice and that a "narrow" definition of "community" must be taken into account for the purposes of restorative justice ⁴⁹. This critical issue can mean several things:

- 1) The competition between traditional ethnic or community authorities with the professionals of mediation and restorative justice;
- 2) That foreign professionals ignore the history that explains the vitiation of the procedure in the "traditional community". This leads to the confusion of the vitiation with the normal procedure itself;
- 3) The paradoxical idea that the professionals understand better the ethics of restorative justice than the local authorities, which had known much about the procedures of restorative justice (although they were in fact the proper procedures of vindicatory justice).

Braithwaite⁵⁰ stresses that situation when he states, "telling an Aboriginal elder that a centuries-old restorative practice does not comply with the accreditation standards is a profound worry. We must avert accreditation that crushes indigenous empowerment". The tragedy springs from the fact that many indigenous people cannot rely neither in their past vindicatory procedures nor in the present

 $^{\rm 49}$ Cf. Morris Op. cit. p. 609 for a rather ambiguous statement about this question.

⁴⁷ Cf. in Ashworth, A. (2002) "Responsibilities, rights and restorative justice" <u>British Journal of Criminology</u>, N.42, ps.582-583.

⁴⁸ Cf. Morris Op. cit. p. 609.

⁵⁰ Braithwaite, J. (2002) « Setting standards for restorative justice » <u>British Journal of Criminology</u>, N. 42. p. 565

civil/penal courts. The former are mutilated to such an extent that they can only bring caricatures in the form of pure payback or retaliation, or timid mediation. The main reason for that is that they lack their traditional society with at least two jurisdictional powers⁵¹ (according to vindicatory procedures) in order to obtain legal security for their grievances or offences. And it is well known how much they are estranged from ordinary civil and penal procedures. Thus, they are faced with a devastated legacy and an alienated provision.

What is a community in terms of Anthropology and History? It is a local, non-anonymous, moral, social and legal person, which can put demands against private persons and public institutions⁵². The communities can address and ask for judicial processes to parliaments, crowns and high magistracies. In the context of vindicatory justice, the action of a community integrates several families, neighbourhoods and economic units of production and cooperation, and all together constitute a legal subject endowed with responsibility for vindicating offences and being liable for them. Thus, we are talking about corporate legal undertakings that can mobilize hundreds or thousands of people. These are communities, and it is misleading to apply the word community to an encounter between individuals alienated from networks of kinship endowed with corporate responsibility, to neighbourhoods alienated from communal labour and their economic redistributions, and to anonymous public and market relations accounting for most of their needs and exchanges. In other words to talk about communities in our societies is to pretend a common share of responsibility which is unreal, and to evoke a solidarity which is not instituted but left to personal willingness.

Workshop Session Six

Workshop One – Conferencing Chair: Kelvin Doherty

1.1 Mediation & Conferencing: Towards a participatory and reparative model of justice? Legal resistances and philosophical considerations

Presented by: Federico Reggio (Italy)

Federico Reggio has a PhD in Philosophy of Law, currently working under a research contract at Padua University's Department of History and Philosophy of Law. He has been studying, writing and lecturing on Restorative Justice issues for a few years. In his just published book (Giustizia Dialogica. Luci e Ombre della Restorative Justice) he philosophically explored RJ's conceptual framework and theoretical grounds. Member of the European Forum, he is co-founder, in Verona, of an association for victims "assistance (ASAV).

⁵² Historically, the judicial conflicts of communities with their lords, the church or the military authorities are well known.

⁵¹ Primitive or traditional societies have at least two jurisdictions to present or to appeal previous verdicts. See Pospisil, L. (1967) "Legal levels and multiplicity of legal systems in human societies" <u>The journal of Conflict Resolution</u>. Vol. 11. N.1.

Much of the contemporary 'resistances' to RJ can be explained as a heritage of the modern idea of law and justice, (So it is a philosophical-cultural problem, and not only a legal one). The contemporary, post-modern vision is inadequate for sustaining the restorative proposal. Other types of philosophical frames have to be investigated in order to strengthen and sustain Restorative Justice's conceptual pillars.

The most frequent objections expressed by jurists and legal practitioners 1. The restorative approach does not assure the 'certainty' of punishments. 2. RJ makes the difference between civil law and public law uncertain. 3. The reparative goal is frequently seen as an 'easy way out' that sacrifices, or even denies the importance of deterrence and social control.

Let us 'read through the lines' and find what these objections implicitly assume 1. The idea of 'certainty' recalls a geometrical idea of 'order' and a 'mathematic' idea of equality. 2. A certain area of rights and roles belongs to 'public' law which is expression of the state, and, most of all, the state's monopole. 3. The tendency of considering 'reparation' as an optional goal of the reaction to crime depends on the fact that criminal law is intended to deal with issues of social control rather than with interpersonal harms.



We can in facts underline 3 main frictions between the restorative and the modern understanding:

1. Attention to relational textures vs. individualism.

2. Complex, experience-based, context-sensitive idea of legal order vs. standardized, rationalistic, abstract idea of it.

1. A 'horizontal', 'relational' idea of legal regulation vs. a hierarchy of norms, organized within the pyramid of the state's articulations.

Federico Reggio Bibas Conference, 17-19 June 5

Post-modernity refuses some premises of the modern understanding

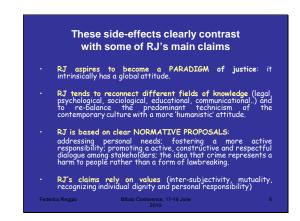
Various studies underlined the structural limits of human knowledge, rather than the potentials.

The post-modern understanding developed also a more prudent attitude towards systematic transformations of reality (risk management).

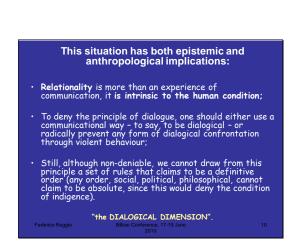
Contemporary sociological/political studies abandoned the abstract, geometrical idea of order typical of modernity and discovered the category of 'complexity'.

The individualistic anthropological paradigm has been widely criticised, fostering the re-discovery of a more relational anthropology.

Post-modernity brought several side-effects "Il dreams can become nightmares, better not to dream at all". • 'Allergy' to the idea of enduring, non-renounce-able concepts (complexity sometimes turns into an excuse). • Situational attitude turns into lack of projectual thinking: short-term solutions are preferred to wide and extended projects (lack of global envisioning, so technical and specific norms are preferred to global reforms). • Lack of systematic thinking (refusal of global attitude, in favour of specialised, technical knowledge). • Highly relativistic attitude (only apparently difference from individualism; it is usually bound to a generic claim to 'tolerance of differences that might become 'indifference' to qualitative ethical considerations). Fedenco Reggo Bibao Corlemence, 17-19 June 2010



This situation has both epistemic and anthropological implications: 'indigence of truth' is a *sheer* situation among human beings; there are no arguments for defining by principle someone else as irrelevant; no self-absolutization; no treating other human beings as objects or means; unjustified, unreasonable 'putting to silence' of someone else represents an act of violence; "the DIALOGICAL DIMENSION".



Under this light, many of RJ's premises and proposals assume a consistent and global characterization:

- RJ shows that the reaction of crime can never be an 'imitation of violence' nor as a mere 'application of a norm'.

- Determining the correct reaction to crime never responds to pre-determined measures.

- The participation of victim, offender and other stakeholders is important in order to restore a situation of dialogue and mutuality and, moreover, to enable a dialogical confrontation about what ought to be done.

1.2 Conferencing and VOM as tools on a way to a restorative society? Presented by: Otmar Hagemann (Germany)

Otmar Hagemann is professor of sociology and social pedagogy at Kiel University of Applied Sciences. As a proponent of restorative justice he carries out research, publishes and lectures about this topic. Together with others he has invented the first German conferencing project in criminal matters in Elmshorn where he is also involved as a practitioner (facilitator).

My proposed presentation will use an assessment of the status of restorative justice in Schleswig-Holstein - the most northern province of Germany - as a starting point for a brief description of the first German conferencing project in criminal matters (Hagemann, 2009) and some more theoretical considerations about the development of RJ in that region.

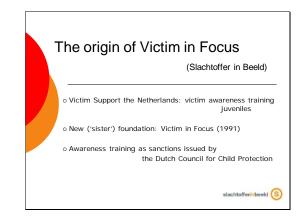
Using a recent effort to fill out a questionnaire by Carmen Borg which provides a perfect structure to assess a given reality and make comparisons with law in books I would like to share reflections on gaps, problems and our terminology related both to everyday life and the criminal justice system. However, using the classification of McCold / Wachtel (2000) Borg's approach is limited to the fully restorative forms of conferencing and circles and the mostly restorative form of VOM. I wonder whether the inclusion of only partly restorative programmes may help us to identify additional actors in related fields with whom we might co-operate to promote RJ in general as a new paradigm. I would like to bridge the gap to mediation in civil law and social work with "problematic" families or communities. This aims at establishing a link to a broader discourse which Jonathan Bolton (2007) from Victoria University in New Zealand tries to cover by the term of a "restorative society".

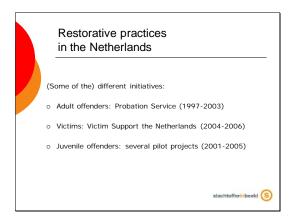
Workshop Two – RJ and victims Chair: Michael Kilchling

2.1 Victim-offender meetings in the Netherlands: Practices initiated from a victim orientation Presented by: Sven Zebel (the Netherlands)

Sven Zebel (PhD in psychology) conducted postdoctoral research at the University of Amsterdam (2004-2009), examining how victims and offenders experience hurtful and criminal behaviour. From 2008 onwards, Sven has been working as a part-time policy researcher at Victim in Focus, and as of June 2009, he combines this work with a part-time policy research position at the Dutch victim support agency.

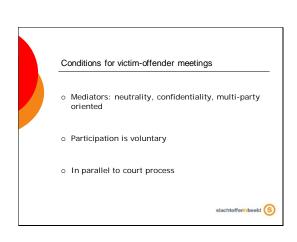


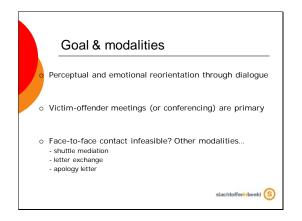


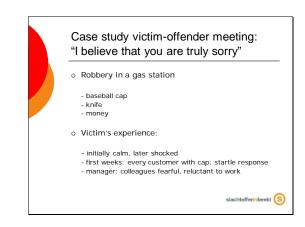


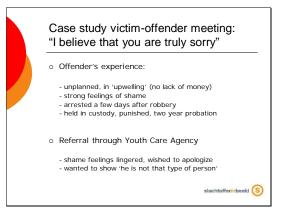


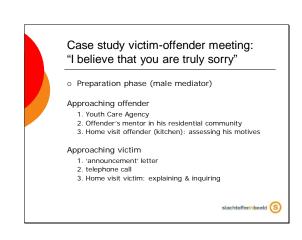


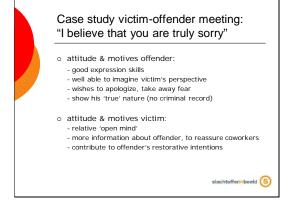


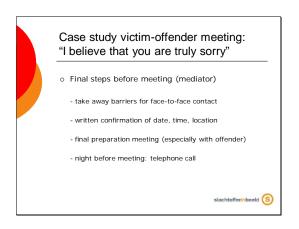


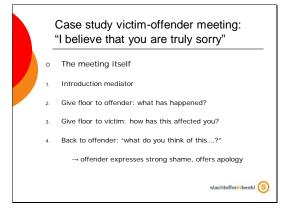






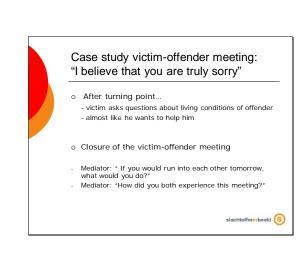


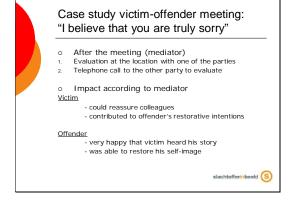


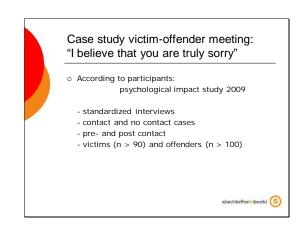




Case study victim-offender meeting: "I believe that you are truly sorry" o A turning point during the meeting: → offender has tried to explain how it happened in an outburst, expresses his shame and apologizes... Offender: "Do you believe me?" Victim: "I believe that you are truly sorry..." → Offender stands up, leans forward, and puts out his hand → Victim stands up as well, and takes his hand



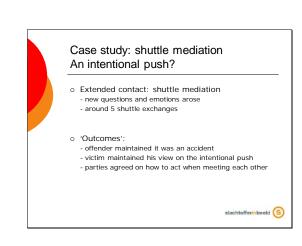


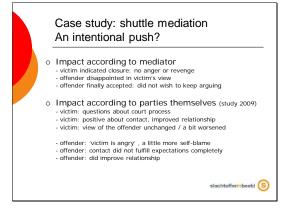


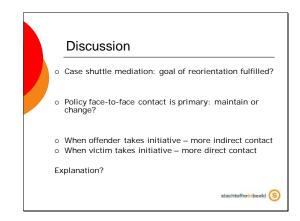
Case study victim-offender meeting: "I believe that you are truly sorry" o Impact according to victim: - little effect on own coping - more willing to forgive offender - 'adjusted' image offender o Impact according to offender: - proper understanding victim's experience - shame feelings reduced - meeting helped to cope better



Case study: shuttle mediation An intentional push? O Preparation phase (female mediator) Offender took initiative Ovictim: keep distance, no meeting: no added value Otto letter ok First contact: letter exchange Otto letter offender: questions, apology, 'innocent fight' Otto letter victim: answers, apology accepted, but... → great difficulties with phrase 'innocent fight'

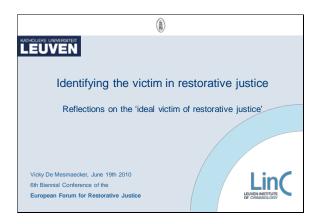


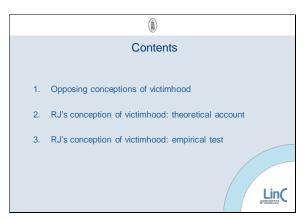


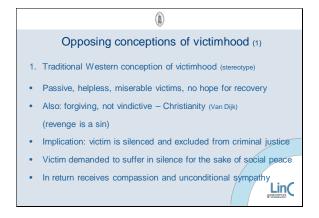


2.2 Identifying the victim in RJ: reflections on 'the ideal victim of RJ' Presented by: Vicky De Mesmaecker (Belgium)

Vicky De Mesmaecker is a PhD-researcher at the Leuven Institute of Criminology (LINC) at the Catholic University of Leuven, Belgium. She works on a study titled "Sentencing and judicial decision making from a restorative justice perspective: the perception of justice in court trials", investigating the relationship between restorative justice and procedural justice.









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Opposing conceptions of victimhood (3)

Society rejects emancipated victims (Van Dijk)

- Condition for receiving empathy: assigning oneself to social role of passivity and mandatory forgiveness
- Active victims foresake right to compassion, instead receive antipathy
 - Because they disturb the peace
 - Because they are now perceived as / redefined as accomplices or offenders (not innocent -> no compassion)

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Opposing conceptions of victimhood (4)

RJ mixes the two conceptions of victimhood

- On the one hand conceives of victims as free of anger and willing to forgive (clear Christian ethos)
- On the other hand builds exactly on image of emancipated victims ready to "master their own faith" (Boutellier)
- Evolution in RJ: second element increasingly important





Opposing conceptions of victimhood (5)

Early RJ (Van Dijk, Pavlich)

- Victims invited to participate on the presumption that they would arrive in a spirit of reconciliation (cfr. victims in the service of offenders)
- Impact of Christian ethos of forgiveness: to keep control of emotions, not to be revengeful, be ready to forgive
- · Values of restoration, healing, reintegration: clear theological roots
- Little understanding of actual victims' needs (e.g. need for revenge)





Opposing conceptions of victimhood (6)

RJ today

- Has incorporated victims as key players and victim activity as essential element
- In response to fierce opposition to RJ by victim movement in early RJ days: RJ perceived as overly offender-oriented, abusing victims
- > RJ today thus left with mixed conception of victimhood
 - Incorporation of Christian moral of forgiveness (implying passivity)
 - Incorporation of victim activity
 - RJ mixes these two in the concept 'ideal victim of RJ'





Contents

- 1. Opposing conceptions of victimhood
- 2. RJ's conception of victimhood: theoretical account
- 3. RJ's conception of victimhood: empirical test





RJ & victimhood: theoretical account (1)

RJ and victims

- Often mentioned in one and the same breath
- Victimologists quick to discover RJ

However, relationship victims - RJ is not self-evident: 3 criticisms:

- RJ is essentially offender-oriented
- RJ wrongly assumes it is always beneficial to victims
- RJ does not properly define the concept 'victim'



RJ & victimhood: theoretical account (2)

(1) RJ is essentially offender-oriented

- Roots RJ in offender services, not victim services
- · Contribution to victim rehabilitation merely side-effect
- Victims in the service of offender rehabilitation (Ashworth: "victim prostitution")
- RJ reproduces the deficiences of the criminal justice system



RJ & victimhood: theoretical account (3)

(2) RJ is not by definition beneficial to victims

- RJ no less immune to failing than other approaches to crime (Roche): "as cruel and vengeful as any"
- RJ could have harmful effect on victims (e.g. "victim contests")
- Realistic expectations e.g. not overestimate effect of one restorative intervention on recovery process, victims need more
- RJ guilty of "butterfly collecting" (Crawford), leaving cases where something went wrong unmentioned

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RJ & victimhood: theoretical account (4)

(3) RJ does not properly define the concept 'victim'

- = Problematic, because victims are key players in RJ
- RJ does not define who victims are and how they come to be classified as such
- RJ agrees with conventional definitions of what is a 'victim'
 - Focuses almost exclusively on victims that can be included under the conventional banner of 'victim' (i.e. victims of offences traditionally dealt with by courts)'
 - Endorses stereotypes of victims (e.g. ideal victim Christie) /
 - Perceives of victims as one homogenised mass (insufficient differentiation)



RJ & victimhood: theoretical account (5)

Conclusion

Victim's position in RJ is not clear because RJ as a movement has reflected little on its understanding of the concept of victim

This is problematic because restorative programmes are based on a number of assumptions about victims. Van Dijk (2006) and Pemberton *et al.* (2007) in this respect wrote about 'the ideal victim of restorative justice'

- Willing to forgive offender and to accept apologies
- Not concerned with punishment, compensation suffices
- Not frightened about meeting offender
- Sufficiently empowered to participate in case





Contents

- 1. Opposing conceptions of victimhood
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RJ & victimhood: empirical test (1)

The ideal victim of restorative justice

- Willing to forgive offender and to accept apologies
- Not concerned with punishment, compensation suffices
- Not frightened about meeting offender
- Sufficiently empowered to participate in case

'Ideal victim of RJ' representative for all victims?

 Findings from Belgian study on victims' and offenders' experience with criminal justice and VOM







$RJ \ \& \ victimhood: \ empirical \ test \ \ \ \ \ (2)$ The Belgian study

- PhD on relationship between RJ and procedural justice: does procedural justice theory provide good normative basis for RJ?
- Interviews with victims and offenders who experience CJS, some of whom also experience mediation
- Today's results based on these interviews
- Focus on three aspects of 'ideal victim of RJ'
 - "Victims do not ask for punishment of offender, merely for compensation"
 - "Victims are sufficiently empowered to participate in the CJ proceedition" (+ "victims are not afraid to meet the offender")



RJ & victimhood: empirical test (3)

(1) Victims' views on punishment

- Committing a crime is morally wrong, but sometimes victims understand why offender did it (e.g. victim precipitation, financial problems).
- Minority of victims reported crime to police in order to see offender punished; majority just wants the offender to be stopped.
- Some victims would have compassion with offender should he be punished or feel guilty. Also, some are afraid for retaliation.
- Still, the majority feels that the offender can not just 'get away's
 with it, a reaction to the offence is necessary.



RJ & victimhood: empirical test (4)

(1) Victims' views on punishment: which reaction?

- Victims rarely express a preference for a legal sentence.

 (imprisonment community service or fine)
 - Vast majority of victims not keen on traditional punishment?
 - Or just because lack of knowledge to decide on sentencing?
- Instead, in general they think the most appropriate 'punishment' for their offender is therapy/treatment or compensation.
- Compensation is important to all, but not sufficient for many.

 Linc



RJ & victimhood: empirical test (5)

(1) Victims' views on punishment: acceptance of sentence

- Victims are generally quite willing to accept the court's verdict and decision on sentencing (lack of knowledge, judge knows).
- But thought they have no strong preference as to sentencing, they do strongly reject the use of prison sentences! (not useful).





RJ & victimhood: empirical test (6)

(1) Victims' views on punishment: conclusion

- "Ideal victim of RJ is not concerned with punishment, compensation suffices".
- It is true that victims are not concerned with punishment in the legal sense, they prefer that the offender receives treatment.
- However mere compensation for many is not sufficient, they value an additional reaction in order that offenders realise that what they did is not socially acceptable.
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RJ & victimhood: empirical test (7)

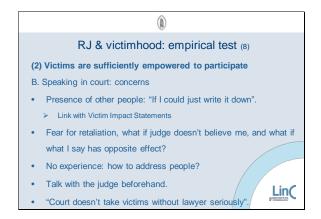
(2) Victims are sufficiently empowered to participate

A. Attending court

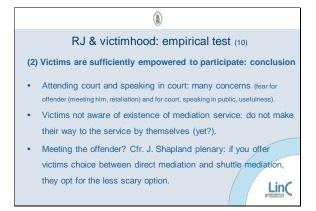
- Approx. half of the victims will not attend the court meeting.
 - No time, no use
 - Afraid of meeting the offender

B. Speaking in court: concerns

- Only if their words are actually taken into account. cfr. research PJ
- Not useful because time is too short for story-telling (lawyer knows what to say).









Workshop notes

First, the discussion focused on Sven Zebel's presentation about victim offender meetings. It was made clear that this programme is being run by the National Foundation Victim in Focus in close cooperation with Victim Support Netherlands in order to preserve the victim-centred approach. While Victim in Focus coordinates the programme and conducts the process and the meetings, the referral of a case is made by other agencies such as Victim Support Netherlands, especially when the referral comes from the side of the victim.

The term of *reorientation* was mentioned as one of the desired outcomes of the victim offender meetings. Asked to expand a bit on that, the presenter explained that *reorientation* refers to a change of perception of a difficult issue in a way that will ideally help us to cope better with it. This is possible when we receive more information about the problem and we can eventually gain a bigger picture about it. In the context of restorative justice *reorientation* would be the change that victim and offender would experience in how they perceive each other and what happened as a result of the new information that has come up along the communication process. Through questions, answers

and storytelling the meeting should allow both participants to understand better the reasons beyond the behaviour of the offender, the circumstances surrounding the incident and the impact of the crime for the victim, turning the event of the crime in something less distressing. Victim offender meetings therefore aim to help those affected and specially the victim, to integrate the negative experience in their lives so that they can move on.

Bearing in mind that *reorientation* is one of the main aims of victim offender meetings, the presenter raised the question of how this outcome actually relates to the different forms that such encounters can take (face-to-face, shuttle mediation or correspondence). And more importantly, it should not be overlooked that according to some studies participating in a restorative justice process may help the victim to cope better with the crime but in some cases it may not. Thus is *reorientation* a realistic goal to set for victim offender meetings?

This drew the attention to another core issue addressed by Vicky De Mesmaecker in the second presentation concerning the concept of the victim from which restorative justice departs. Restorative justice programmes tend to be based on a victim image that presupposes that victims are willing to accept apologies and forgive the offender, are not concerned with punishment but with compensation, are not frightened about meeting the offender and are empowered to face the crime and its consequences through an RJ process. This led the presenter to pose the question of whether this ideal image mirrored by restorative justice is representative for all victims. What is then the approach to these victims which do not meet the alleged restorative justice victim stereotype? Should this be seen as a limitation of restorative justice?

It was noted however that while there is research revealing that some victims prefer a legal process to a restorative justice one and are only interested in obtaining compensation, there is also considerable evidence showing that there are other victims who actually want to meet the offender. They might be looking for answers which only the offender can give or they might be worried about the future relationship with the offender and want to set some ground rules in a safe space. It was highlighted that in fact there are restorative justice programmes which emerged partly in response to the demand of victims who had been through many different services which could not cover these needs.

Deepening on the limitations of labelling victims, concerns were raised about certain stereotypes depicting victims as mostly revengeful and punitive. It was observed that there is research showing that a considerable number of victims prefer punishment to a meeting with the offender. Adding to that, Vicky De Mesmaecker pointed out that noticeably some studies indicate that when victims are asked more precisely which kind of punishment they are thinking about, they would mostly mention treatment, community work or similar measures and only a smaller proportion would choose prison. For the moment her own field work interviewing victims in Belgium is having very similar findings: many victims prefer alternative sanctions to seeing the offender in jail. In light of this it would be wrong to argue that victims are vindictive or punitive just because they decline to meet the offender and prefer to go to court.

Still a further point concerning the misconceptions about victims touched upon the approach of victim support services. It was suggested that whereas originally these services might have departed from the traditional image of the victim as a passive and weak individual, this has progressively changed and the resilience model has nowadays become a stronger trend.

Then the discussion turned on the reasons for offenders to take part in a meeting with the victim. It was wondered whether they could be motivated by the possibility of obtaining a more favourable sentence. Sven Zebel clarified that the legal framework in the Netherlands does not foresee an explicit legal benefit for these offenders who have taken part in a meeting with the victim. These run in parallel to the criminal proceedings and although a small report is sent to the judge when the meeting ends, this does not officially affect the sentencing of the offender. This was a deliberate choice to avoid any pressure on the victim or the offender and an eventual misuse of these meetings. Interestingly, according to the case studies mentioned by the presenter, one of the common reasons offenders report for participating was the interest of restoring their image in the eyes of the victim.

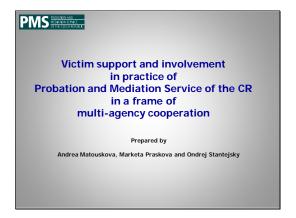
Workshop Three – Cooperation with legal practitioners Chair: Beata Czarnecka Dzialuk

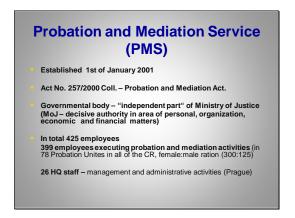
3.1 Victim Support and involvement on practice of Czech Probation and Mediation Service in a frame of multi-agency cooperation

Presented by: Ondrej Stantejsky and Marketa Knillova Praskova (Czech Republic)

Marketa Knillova Praskova graduated in Cultural Anthropology from Charles University in Prague. Currently she works for the Probation and mediation service in the Czech Republic and is the head of the PMS unit in Nachod. She works especially with adult offenders and is also specialized on victim - offender mediation.

Ondrej Stantejsky graduated in Law from West Bohemian University in Pilsen. After a gap year in Ireland he is currently working at Probation and Mediation Service HQ dealing with a legal and international agenda. He feels that three years in his position are both challenging and highly rewarding.





Principles of the PMS

Integration of offender

Participation of victim

Protection of the society

Probation and Mediation

Both Probation and Mediation activities ("under one roof")

At all stages of criminal procedures

Vision of applying RJ principles as often and as broadly as possible



Overview of Activities

Victim Offender Mediation - VOM

Probation

- Community Service Order
- Probation and parole supervision
- Juveniles Justice
- Home Detention Curfew (House Arrest)
- Prohibition of entry to sports, cultural and other social events

Other RJ activities

Specialization Further Training/Education

Experts on:

Mediation Community service order Parole supervision Home Detention Probation supervision Juveniles

System of further specialized education
Project in cooperation with Correctional Services of Norway

Working with victims with regards to situation in the CR

- There are still few organisations in the CR that work with victims of crimes
- From this perspective, contribution of PMS is important and to some extent unique in the Czech environment
- Nevertheless, PMS gradually tries to involve many other institutions, especially the legal practitioners.

Focusing on harm reparation

In our case work we try to apply the principles of RJ

It means:

to have contact with victim and offender to focuse on the victim's needs and harms to lead offenders in taking their responsibility for criminal behaviour

Cooperation with legal practitioners and other organizations

Judges
State prosecutors
Police
Prison service
NGOs
Legal department of MoJ

Assumed results of cooperation:

RJ Instruments/Programs can be strengthened/developed:

- VoM
- FGC
- Probation/Community Panels
- Parole Boards + RJ Programs in Prisons
- Programs/Projects for Victims (examples in the next part of the presentation)



Examples of cooperation in frame of projects orientaited on victims

Specialized complex advisory service for victims

Committee for the Conditional Release



victims

PMS MEDIATION AND MEDIATION SERVICE

Project in cooperation

PMS CR

Association of the citizen advice bureau in cooperation

The Association of the citizen advice bureau is NGO in the CR, assotiate all citizen advice bureaus

Financing

by the state budged

co-financed by

the European social fund

Advisory service

- started in September 2006 till May 2010 in different towns in the CR
- service is provided by citizen advice bureaus and the centres of the PMS
- in future project in most regions

Aim of the project

- to empower and improve offer of service for crime and domestic violence victims
- comeback of victims to common life easier
- prevent secondary victimization during criminal proceedings
- crime victims and their surroundings are still not informed on time and in sensitive way about criminal proceedings, about their rights and possibilities what they have, nor about to whom they can apply for advice

Main activities of the project

Training of advisors

Providing the specialized advisory services to crime and domestic violence victims

Production and distribution of handouts about problems and possible solutions + organizing workshops for workers

Information of public about problems of crime and domestic violence victims

Cooperation with legal practitioners

- necessary to cooperate with the police, state prosecutors and judges
- they get into a contact with the victims
- they obtain the information handouts, futher education how to deal with victims in sensitive way
- the way how to introduce the project to the public



Activities

- From November 2006 till February 2006: 383 victims in three contact centres
- Meeting with the worker, consultations on the phone, emails, letters
- Most common questions: information about criminal proceedings, rights and possibilities, how to file a complain, compensation of the damage or reparation for injury, problems with divorce, etc.
- Provide the information, psychosocial encouragement, contact with other specialists

The counselling for victims is provided

free of charge

confidentially independently respectfully





HISTORY

- CCR is inspired by practice of parole board (Canada, UK, Croatia)
- project was approved by Minister of justice in 2008
- CCR has operated from 2009 in 3 judicial regions

THE OBJECTIVES

- to develop and test innovative ways to work with offenders and victims of crimes by applying multifaceted approach
- to develop and test the usability of a standardized output document prepared by the CCR for individual cases, that could serve as background material for the court /state attorney when conferring on the possibility to release a prisoner on parole

TARGETED GROUP

- offenders convicted for a more serious crime, in particular violent offences or offences causing physical or mental harm to the victim (both intentional and negligent offences can be included) and their families
- victims, surviving dependents and their families



STATUS OF CCR

- advisory body of the prison governor
- 5 members appointed by prison governor from the Probation and Mediation Service, prison service and community
- independent in making recommendation for the judge

ACTIVITIES OF CCR

- collecting and evaluating information on offender's and on victim's current situation (inc. risk/need assessment, impact of the crime to the victim, offender's life conditions after releasing)
- providing parole hearing
- issuing recommendation for the judge

BASIC RULES

- Offender/victim has to agree to be included into the project
- CCR cooperates with other organizations and services
- CCR operates in close cooperation with the victim assistant

OUTPUTS

- Training program and supervision for the members of CCP (24 trained persons) and for the victim assistants
- standards of method and process of working with offenders and victims
- practical experiences

WHAT IS DONE?

- 15 cases until now
- 10 parole hearings are finished (including one victim 's participation personally)
- 9 recommendations for the judges are written
- 6 judgments on conditional release are done (positive and also negative)

THE PAROLE HEARING PROCEDURE

- Introduction of the case
- Offender's self-introducing (10 minutes)
- Hearing of the victim/victim assistant
- Hearing of the tutor
- Hearing of other invited persons
- Hearing of the offender (90 minutes)
- Offender's closing remarks (5 minutes)
- The CCR deliberations
- The CCR presents its final recommendation







Workshop notes

The Czech Probation and Mediation Service (PMS) was established at the 1st of January 2001 and has provided, since then, both probation and mediation activities at all stages of the criminal procedures. They have three main principles: (1) integration of the offender, (2) participation of the victim, and (3) protection of the society. As still few organisations in the Czech Republic work with victims of crime, the contribution of PMS is considered important and quite unique. After a short introduction of the history, mainly the developments and the future perspectives of the Czech Probation and Mediation field were presented.

The presenters also gave some examples on how victims are involved in the process. PMS works with victims in pre-trail and post-trail stages. Victims are given a chance to talk about the impact of crime on their lives, the opportunity to meet the offender face-to-face or even to partially influence the punishment the offender gets.

Then, the presenters introduced the new projects targeting the victims. The first project focussed on the complex advisory service for victims. The project's main activities are training advisors, providing specialised advisory services to crime and domestic violence victims, production and distribution of handouts about problems and possible solutions, organising workshops, and providing information to the public about problems of crime and domestic violence victims. The second project focussed on establishing an institution of parole that works with the needs of victims in cases where the offender is to be released. This project's main activities are collecting and evaluating information on the offenders' and victims' current situation (i.e. risk/need assessment, impact of the crime to the victim, the offenders' life conditions after release), providing parole hearing, and issuing recommendations for the judge.

The next points were addressed in the discussion:

- Conditional release is a way of applying restorative justice after the release of an offender. Both the victim and the offender will be contacted in order to restore the situation (restore the consequences of crime). How do you protect the data used for this process?
 <u>RESPONSE</u>: It is allowed to study files and to use the content for this restorative process. Of course it concerns very sensitive data, but it is not a problem to collect and analyse this data for this purpose. It is not to be used for other purposes, and it asks for hard work to protect the shared data.
- The procedure of conditional release describes that the victim can bring an assistant (e.g. a friend) to support him/her during the process. What about the offender? Does he have the same right?
 - <u>RESPONSE</u>: The offender can also bring a support person on two conditions: (1) the prison has to give permission for the chosen person to enter and join the process, and (2) the support person cannot be another inmate.
- How do victim organisations react on the fact that PMS works with victims as well as offenders?
 - <u>RESPONSE</u>: Organisations that work with victims might feel a bit danger (e.g. because they think that we take their clients), which makes cooperating not easy. Marketa Knillova

Praskova has experienced no problems so far, but they are well aware that victim organisations sometimes have other values than restorative justice.

3.2 Towards a real implementation of RJ and VOM in Spain: from a practical perspective and especially in adults

Presented by: Virginia Domingo de la Fuente (Spain)

Virginia Domingo de la Fuente has made several researches about Victim offender mediation and Restorative Justice. She is the coordinator of the victim offender mediation service in Burgos since 2006. She works in collaboration with the Prosecution's office to spread the concept, benefits and possibilities of Restorative Justice. She has worked as a substitute judge in Burgos.

• Problems in the development and implementation of victim offender mediation in Spain The first problem that arises in our country is that there is no specific regulation on the subject; however this is supplemented by using certain articles of the penal code that talk about repairing the damage.

Another problem is that our adult criminal system is based on the principle of mandatory prosecution and not on the principle of opportunity; this generates resistance in certain legal professionals considering that this is somehow an illegal act.

• Arguments to promote and enhance cooperation between legal operators.

The first argument is the victim; the Restorative Justice seeks to give the role to the victim, above all things.

The second argument is to strengthen and promote further collaboration of judges, prosecutors and other legal operators is the recognition and accountability of the offenders for the crime committed. Another argument but not the main one is that Restorative Justice and victim offender mediation make a quicker justice reducing waiting times and getting sometimes the causes filed will lead to a decongestion of justice.

Conclusion

The legislator is afraid of regulating victim offender mediation, believing that this will generate widespread discontent in society. However, if we present simple arguments on the benefits of Restorative Justice Programs, citizens will not oppose this system and legal operators should cooperate more actively and must realize that restorative justice is indirectly rooted in our Constitution, legislation and doctrine.

Workshop notes

Virginia Domingo de la Fuente highlighted the problems in the development and implementation of victim offender mediation in Spain. Further she gave some interesting arguments to promote and enhance cooperation between legal operators. A first argument is the victim; the Restorative Justice seeks to give the role to the victim, above all things. A second argument to strengthen and promote further collaboration of judges, prosecutors and other legal operators is the recognition and accountability of the offenders for the crime committed. The final, main, argument is concerns the

fact that RJ and victim offender mediation are a faster way of 'doing justice', because it reduces waiting times, for example.

To conclude the presentation, she speaks about the legislator being afraid of regulating victim offender mediation, believing that this will generate widespread discontent in society. However, she states that if we present simple arguments of the benefits of RJ programmes, citizens will not oppose this system and legal operators should cooperate more actively and they realize that restorative justice is indirectly rooted in the constitution, legislation and doctrine.

Comments on the presentation:

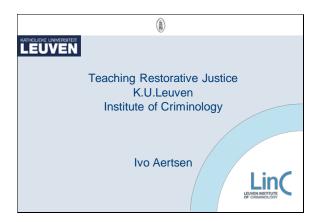
- You mentioned two main problems in the development and implementation of victim offender mediation in Spain. The lack of specific regulation and the problem that the adult criminal system is based on the principle of mandatory prosecution and not on the principle of opportunity are also recognised problems in Poland. There are clearly some similarities between Spain and Poland.
- The raised issues provide a good basis for discussion in the future.

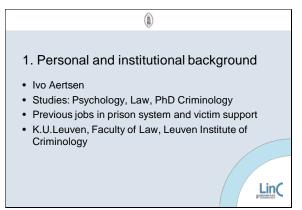
Workshop Four – Teaching RJ Chair: Annemieke Wolthuis

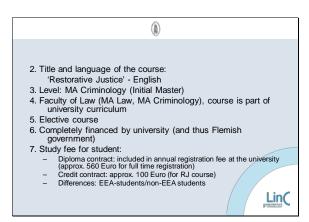
4.1 Teaching RJ: An exchange of programmes at universities and in higher education
Presented by: Ivo Aertsen (Belgium), Ida Hydle (Norway) and contributions from other presenters

Ivo Aertsen is a professor at the Catholic University of Leuven. He holds degrees of psychology and of law from the same university. His main fields of research and teaching are Victimology, Penology and Restorative Justice. Dr. Aertsen has been chair of the European Forum for Restorative Justice from 2000-2004, and has coordinated COST Action A21 on Restorative Justice research in Europe from 2002-2006.

Ida HYDLE is a senior researcher at Norwegian Social Research – NOVA, and adjunct professor at the University of Tromsø, Department of Sociology, Social Policy and Community Planning. She holds degrees of medicine and social anthropology from the University of Oslo. Her current fields of research and teaching are Restorative Justice, Youth studies, Peace studies. Dr. Hydle chaired one of the research groups in the COST Action A21.







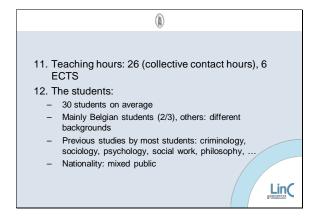
8. Admission requirements (for MA Criminology)

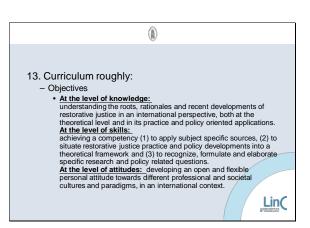
Previous studies:
Bachelor in Criminology
Bachelor or Master Degree in Human Sciences, after Preparatory Programme (E-course possible)

Or applying for a credit contract

Offered annually, first semester

Physical presence resuired, no distance learning







- The history of RJ, Indigenous Justice and Informal Justice
- Restorative Justice and the Law: theoretical foundations, legal frameworks and safeguards
- 5. Restorative Justice and the role of the community
- RJ practice: case studies
 Restorative Justice practice standards, qualifications and training
- Restorative Justice implementation models and the question of institutionalisation
- 9. Restorative Justice theory and facts: evaluative research
- 10.Restorative Justice theory and facts: evaluative research
- 11. Specific fields of application: RJ in educational settings,
 Restorative Policing, RJ in Corrections, RJ and family violence, RJ
 and large-scale violent conflicts, RJ and terrorism Lin(



- Teaching method: active study seminar format
 - 13 contact moments, active involvement
 - Guest speaker(s), video materials, (visit)
 - Literature, topical/current matters, integration & reflection, preparation classes
 - 2 or 3 students present the article and introduce the discussion
 - Final paper including presentation and discussion





- Reference texts: a compliation of approx. 20-25 published texts, no handbook, also supranational
- The course does not include practical training





- 14. Clear link between contents of course and research going on in Leuven; link with work and projects of the European Forum; students not involved in research projects
- 15. Evaluation of students:
 - Participation in class: 6/20
 - Paper: 14/20 (12-15 pages, scientific quality)
 - Quality of written paper: 12
 - · Oral presentation: 2





- 16. Valorisation of students: diploma of Master Criminology, or credit certificate
- 17. Teachers involved: most classes by my self, one or two guest speakers, involvement researchers LINC
- 18. Making available information on this and other RJ courses in a coordinated way: yes
- 19. Regular contact between teachers: yes
- 20. Further documentation: programme and literature 2009-2010.



Workshop notes by Anamaria Szabo

The workshop was attended mostly by academics. It provided a framework for comparison among different teaching and training programmes on restorative justice provided by universities across Europe. A template was provided prior to the workshop, so that the information presented by the participants was comparable.

Teaching and training programmes were presented (directly at the workshop and in electronic format prior to the workshop) from different countries: Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Denmark, Germany, Ireland, Italy, Macedonia, Norway, Romania, Switzerland and the United Kingdom. The programmes are provided by a wide spectrum of departments (criminology, peace studies, social work and law) and at different levels (undergraduate and postgraduate; courses, modules and full master programmes).

The main discussion focused on the development of an electronic framework, provided by the European Forum, so that academics could exchange knowledge. Information on restorative justice courses and programmes across Europe can be send to Ida Hydle (Norway).

As a general conclusion of the workshop, participants agreed to start looking for financial opportunities to develop student and teacher exchange programmes.

Workshop Five – Expanding RJ: Invading the CJS Chair: Koen Nys

5.1 Hull: Heading for a Restorative City

Presented by: Mark Finnis and Estelle Macdonals (UK)

Estelle Macdonald is a very successful inner city Headteacher who transformed her current school from special measures (failing school) to outstanding in under two years. Her school has a national reputation for the quality of its provision, particularly the impact of Restorative Practices. Estelle played a leading role in establishing Hull City's Restorative Community Plan and is now working to support organizational change in schools and other organizations. She is the head of Hull Centre for Restorative Practices and is chair of the management group of Sutton Place – a restorative alternative to custody programme for young offenders.

Mark Finnis is an experienced Restorative Practices trainer and practitioner. He was an original member of the Sefton Centre for Restorative Practices, where he gained extensive experience in training, development and implementation of restorative practices across the authority. Mark then worked as Assistant Director for the International Institute of Restorative Practice, UK, where he led training and development at both local and national levels. In 2008 Mark joined the Hull Centre for Restorative Practices, acting as a consultant and lead trainer for the City.





Hull: The **family friendly** city where no child is left behind







- □ Lowest marriage rate in 150 years
- □ % of no-earner households doubled
- □ Most couples cohabit before marriage
- □ Highest teenage pregnancy rate in Western Europe
- $\hfill \Box$ Lone parenthood trebled in 20 years
- □ 4/10 babies born outside marriage
- 6-fold increase in divorce since 1960
 3million ++ children living in poverty
- □ Estimated cost of family breakdown £10 billion +



Hull Centre

Family Risk Factors

- □ Poor parental supervision
- □ Harsh/erratic discipline
- □ Parental conflict
- □ Separation from a biological parent
- □ Anti-social parent
- □ Low income
- □ Poor housing
- □ Poor diet



Hull Centre

Risks for Young People

- □ Leaving school with no qualifications
- □ Involvement in crime
- □ Alcohol & drugs
- □ Poor mental/physical health
- □ Homelessness
- □ Pregnancy/fatherhood



Hull Centre For Restorative Practice Protective Factors Social bonding Clear standards of positive/healthy behaviour Involvement in family, school & community Positive/healthy role models Clear, high expectations Social & thinking skills Recognition & praise

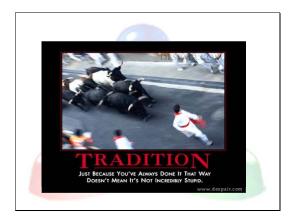








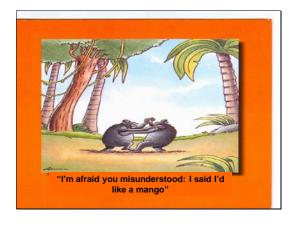








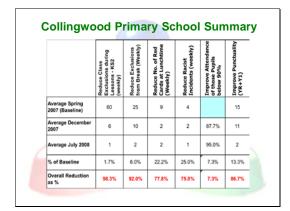


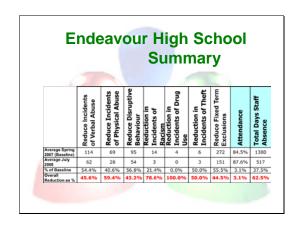


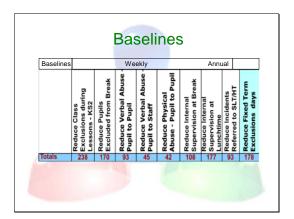
What would happen if.....?

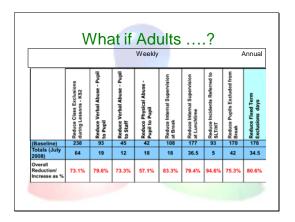
Adults working with children, young people and families

- Committed to adopting behaviours that promoted consistency in building and management of all relationships
- Articulated explicitly the basis of their personal practice and that
 of their organisation
- Challenged and supported each using their explicit practice as a point of reference
- Employed agreed protocols that strengthened relationships and sought to repair harm when relationships broke down









What will happen if...? Services in phase one and two to identify children, young people and families who are most in need/vulnerable Agree a multi service Restorative approach with agreed protocols,

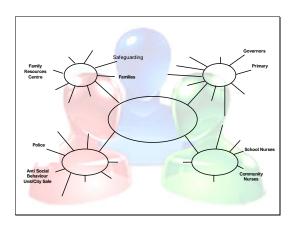
responsibilities and accountabilities

Measure the impact using an inter-agency restorative approach

intensively w	ith in a resto	amilies worked with rative framework led ugh education	
Key Issues	Pupils	Outcomes	
Attendance	4/18	Average 47% now 92%	
Violence at school	9/18	8 pupils no incidents recorded	
Violence at home	7/18	100% reduction	
Class disruption	10/18	90% reduction	
Family engagement	12 (total)	11 families now fully engaged	







Making the Difference..... Acting small Meetings with all organisations in Riverside Discussions around issues key priorities R P training to meet the needs of the organisations to develop explicit practice framework Follow up consultancy to challenge and support leaders Monitoring of agreed key targets

Training Introduction to Restorative Practices Effective Use of Circles Facilitator Skills Training Trainer of Trainers Training for young people,by young people

Important to the Adults? Training Evaluations Phase 2 98% rated the training Excellent or very good and of significant benefit



Securing Success Networks - Rituals for relationship and community building to happen. Headteachers Service Leaders - Multi Service Group Trainers Lead Professionals Looked after, practice forums Police management group Community practice forums - Police, ASB.Wardens, community workers.... Membership: Key movers and shakers High quality training programme matched to need and consultancy to support implementation Agree relevant outcomes to provide feedback on progress

Lessons learned 1

- Surround yourself with like minded people Invest in the best
- Develop leadership at all levels
- Be relentless and don't give up in order to embed culture change
- Accept some people will not get it and don't try and take them with you initially as will drain resources
- Be inclusive engage individuals at all levels within organisations

Lessons learned 2

□Implementation model that cultivates collaboration

□Training is not enough! Consultancy and implementation is essential to embed practice □Tell all the stories, not just the positive ones □Key people need to model working restoratively

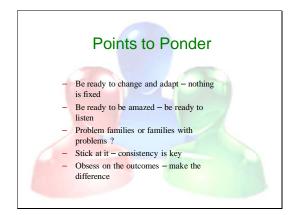
Developing relationships are key to success

Where next?

- Involve children & families in service design
- Use models of decision making that include children/families more
- Engage the wider community further
- Identify leaders
- Reallocate resources
- Continue to evaluate the changes
- Appoint strategic lead

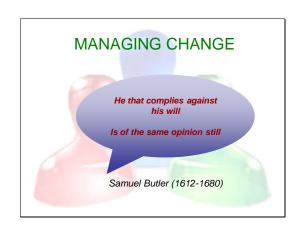
Points to Ponder

- Work hard to create the right conditions permissions and language
- Bend it shape it but let it grow
- Be open to challenge be ready to be wrong to support and praise
- Be ready to learn don't ignore existing excellence be ready to teach/show/model be ready to be taught
- Collect the stories use the evidence













Workshop notes

- When you say they are trained, what kind of training do you mean?
 <u>RESPONSE</u>: This is a large-scale dream with incremental needs and goals, there is a philosophy that staff, community, or interested individuals must be given a basic 2-day informational training. The style was brought on by a reality that most (or some) people may not need to run restorative conferences—but will need basic information on how to approach things restoratively, especially those in educational settings. It builds on the larger goal of building a restorative city.
- Nys: Is this an exclusive focus on children?
 <u>RESPONSE</u>: No, but Hull does provide services for children and their families, so in some ways there are interactions with adults. The plan and hope is to inculcate restorative attitudes.
- Bruno C. commented that it should be explicitly stated that the local government does support these efforts. For example, the Mayor (of Hull) is opening their October conference.
 In addition, there is an important individual, "Nigel" (a director) who gives permission to social workers to work restoratively as some consequences may come of social work professionals giving responsibility to the families, parents—it may be problematic.
- Lady commented: in Oslo, they had offered similar training to parents as well and it did prove beneficial for families, where the end-goal is working towards a safer home environment.
- 'Peju asked: how did you get the local government to sign on?
 <u>RESPONSE</u>: (Finnis along with Vidia N.) It is due, in large part, to Estelle Macdonald's work in RJ. She transformed the schools, and "Nigel" took notice of how she worked with her students. Nigel thought these RJ practices could be put to wider use.
- Nys: you have schools that do not want to do RJ?
 <u>RESPONSE</u>: Yes, there are 108 schools and there is a bit less than 50 schools that are opt to have RJ practices and getting trained.
- Vidia N. commented: Hull is a very open city after going through so much hardship. The social culture was "well, we tried everything so...". The attitude of trying all options until something worked seemed present in the city of Hull. With Hull, it is about a way of working together. They widened the RJ approach used in primary schools to secondary schools—which has proved rather successful. "Over a period of time RJ practices can be a way of helping a society." HCRP is promoting the idea of RJ as a proven conflict-management approach. However Finnis, personally, does not agree with their RJ approach as another management tool, which he mentioned was a criticism of the HCRP's methods.

Conclusion

The workshop was engaging, with practical and innovative ways of "doing RJ in Europe". The concrete data provided and the centre's admirable success engineered lively feedback which may have inspired workshop attendees on specific ways to put RJ to wider use.

"Vision without action is hallucination". A quote used by Finnis is arguably the definitional characteristic of the Hull Centre for Restorative Practices (HCRP) as its goal is to design a restorative city. The vision of having a restorative city has, expectedly, engendered a need for action by the Centre and the Hull community.

Workshop Six – RJ in Peru and Sweden Chair: Blerina Nika

6.1 The Restorative Juvenile Justice Project in Peru

Presented by: Olga Eliana Escudero Piñeiro (Peru)

Olga Eliana Escudero Piñeiro is a lawyer, from the Faculty of Law and Political Science - Universidad Nacional Mayor de San Marcos. She has a Master in Law with Mention in Constitutional law - Catholic Pontific University of Per. She also has a specialisation in Criminal and Procedural Penal Law, and also 4 years of experience in execution of social projects with attention to vulnerable population and in risk. Olga is member of Immediate Attention Team of the Restorative Juvenile Justice Project from 2008.

In 2003, Terre des Hommes started an investigation about the juvenile justice system in Peru. The results showed the system had a lot of deficiencies such as arbitrary detention and mistreatment, excessive imprisonment, inadequate attention paid to the victim and excessive lawsuits among other things, all of those practices pertaining to the retributionist paternalistic model.

Although Peru's legal frame related to adolescent offenders is ample and solid within adequate parameters regarding for the rights of children, legal operators such as judges, district attorney and defence lawyer have different practices that not respond to restorative juvenile model of justice. The project initiated in 2005, started gradually and jointly with a lot of public institutions such as the Judiciary, the Attorney General's office, the Ministry of the Interior, The Ministry of Justice, among others. It started in 2 localities with a lot of violence and economical problems like El Agustino in Lima and Jose Leonardo Ortiz in Chiclayo, in the northern of coast of Peru.

The purpose of the project is to validate a restorative juvenile justice model in which victims needs and adolescent in conflict with the criminal law needs are important, seeking for mechanism from compensating the victim and restore social peace through a mediation process, among with promoting the handling of cases out of the Family Court and alternative measures of imprisonment are applied like community service or the diversion.

After five years, now in 2010, we have attended more than one thousand adolescents; the rate of violence and backslider offenses has diminished tremendously in both places. About six hundred victims have been attended, derivate and listened; also there have been about four mediation processes this year so far, and between 2005 and 2009, there were 17 mediation processes completed.

*From the article: RESTORATIVE JUVENILE JUSTICE PROJECT IN PERU: AN ACCOUNT OF AN INNOVATIVE EXPERIENCE by Jean Schmitz

6.2 How restorative is the VOM in Sweden?

Presented by: Linda Marklund (Sweden)

Linda MARKLUND is a PhD student at the faculty of law at Uppsala University and a teacher in law and mediation at Luleå University of Technology. She's a board member of the Nordic Forum for mediation and conflict management as well as the local branch of the victim offender support group.

How restorative is VOM in Sweden?

Jur.lic Linda Marklund

Background

- Peer mediation program 2004-2009
- Licentiate thesis "Peer mediation in theory and practice" 2007 (Uppsala university)
- Regional coordinator VOM in Norrbottens county 2006-2009
- Teacher at LTU in mediation and law

The thesis aim

The primarily aim of the thesis is to analyse the areas that seems problematic when mediation and the retributive penal law system has to collaborate concerning young offenders.

What is the legal framework surrounding the RJ process?

- Were does mediation stand in correlation to the legal process?
- Who can be parties?
- Does procedural safeguard comply to mediation?
- How does mediations principles of neutrality and objectivity stand in relation to the law?

The mediation process?

- How does the mediation process work?
- How does the pre meetings and the mediations itself effect the penal process?
- In an comparison were does Sweden stand and how restorative is our process?

The mediators roll?

- Who is the mediator?
- What are the mediators rights and obligations?
- What are the rules of conduct for the mediator?
- What are the mediators roll in association to the agreements?

The parties roll?

- What are the parties rights and obligations before, during and after the mediation?
- What are the parties rights and obligations in association whit the agreements?

VOM in Sweden history

Christies article from the 1970 "Conflict as property" facilitative, peaceably, freely, confidently and restoratively.

The Government has commissioned the National Council for Crime Prevention 2003 until 2008 to develop the mediation service.

The National Council's task involved distributing financial support to municipalities to initiate or to develop existing mediation projects, to provide training for mediators and to assume responsibility for improvements in the methods and quality of mediation.

VOM nowadays

Mediation is at present supposedly conducted all over Sweden's municipalities.

Organizationally the Mediation service lies beneath the social services. But they are a self sufficient

The mediation work involve different collaborative partners, such as the police, prosecutors, the social services, other local authorities, schools and victim support agencies.

Cases are primarily forwarded to mediation services by the police or the social services.

Statistics from 2007

The offences; shoplifting, assault, vandalism, theft, threatening behaviour, robberies and muggings. 2/3 are boys, and 1/3 girls.

The majority of offender are between the age 14-17. The crime victims have been aged between 6 and 88 years

74 % of the mediations have been seen through to completion.

40 % of the mediations, have been concluded with some form of an agreement.

The majority of these contracts relate to future behaviour, but contracts specifying financial compensation or work are also common.

VOM in Sweden - legal ground

- The Mediation Act (2002:445) has been in existence since 2002.
- 1 January 2008 municipalities are responsible for ensuring that victim-offender mediation is available when a crime has been committed by someone under the age of 21. (Social Services Act, Chapter 5, Paragraph 1c, 2006:901)
- The Mediation Act is designed as framework legislation and is applicable if victim-offender mediation is organized at central government or municipal level.

VOM in Sweden - legal ground

- Mediation definition?
- For what age?
- For which crimes?
- When during the legal process?
- The purpose of mediation?
- What are the results?

VOM in Sweden - legal ground

- Prerequisites for mediation?
- Voluntary?
- Admitted?
- Time limits?
- Prosecutor?
- Judge?

Mediation method

- Not regulated in law
- Transformative or facilitative
- Base in RJ
- NO national training or accreditation

Unilateral RJ

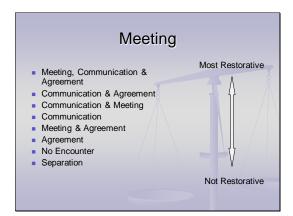
- Society decides / create advantages
- Proportional to the crime / related to the need for either party
- All ages
- Selected crime / selected sanctions
- Don't facilitate communication
- · In the retributive system
- · Repair of the individual party

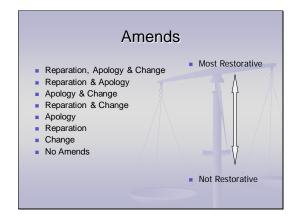
Authoritarian RJ

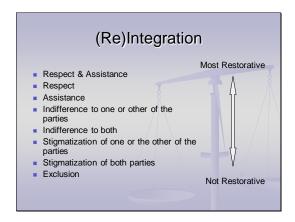
- Authorities decide (Justice/courts decides)
- Proportionality to the crime
- Young offenders
- Petty crimes
- Offender compelled
- Pressure for victim, speed is important
- Add-on the retributive justice system
- Punitive community service
- Narrow definition of repair

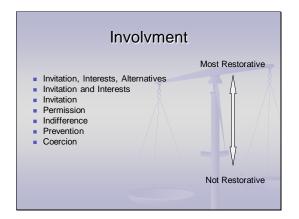












MEETING	AMENDS	(RE) INTEGRATION	INVOLVMENT
Meeting, Communication & Agreement	Reparation, Apology & Change	Respect & Assistance	Invitation, Interests & Alternatives
Communication & Agreement	Reparation & Apology	Respect	Invitation & Interests
Communication & Meeting	Apology & Change	Assistance	Invitation
Communication	Reparation & Change	Indifference to one or other of the parties	Permission
Meeting & Agreement	Apology	Indifference to both	Disinterest
Agreement	Reparation	Stigmatization of one or the other of the parties	Prevention
No Encounter	Change	Stigmatization of both	Coercion
Separation	No Amends	Exclusion	

MEETING	AMENDS	(RE) INTEGRATION	INVOLVMENT
Meeting, Communication & Agreement	Reparation, Apology & Change	Respect & Assistance	Invitation, Interests & Alternatives
Communication & Agreement	Reparation & Apology	Respect	Invitation & Interests
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Agreement	Reparation	Stigmatization of one or the other of the parties	Prevention
No Encounter	Change	Stigmatization of both	Coercion
Separation	No Amends	Exclusion	

How restorative....

- The Swedish restorative approach means that the legal system has discretion to decide that a case is not appropriate for mediation.
- This does not prevent the parties themselves to make the decision.
- The parties (including community) can bypass the legal system itself and request mediation.

How restorative....

- The outcome of the mediation is related to the individuals needs and abilities.
- While the matter may proceed to and through the traditional justice system the penalty may be adjusted in proportion to the mediation outcome.
- The mandatory element of the mediation exists in relation to the municipality obligations - to offer young offenders mediation.
- There is no mandatory legislation in relation to the parties.

How restorative....

- There is no law which prevent the mediation from occurring at all ages, and in all offences. If the mediator deems it suitable for mediation.
- Mediation is in appearance voluntary for either party, however, this may be questioned.
- The normal mediation process is to first invite the offender to participate, in order to prevent further violations against the victim.

How restorative....

- However, there is no hindrance that the victims on their on request mediation, which can happen at any time before, during or after the traditional process.
- If the offender or victim want to the legal process to take into account the outcome of mediation, the mediation must be done urgently.
- It is definitely important to all parties that they have time to make a well informed decision.

How restorative....

- The Swedish restorative process is integrated with the retributive process, it can be both an alternative and a substitute.
- How restorative process relates to community service – and if community service is considered to be punitive or repairing - can be a bit unclear. One hour of mediation information.
- It is up to the parties to decide what and how the reparation should look like.

How restorative....

- The mediators only have an obligation to ensure that unfair agreements are not agreed on.
- The definition of the restorative justice can be considered to be very wide.
- The restorative process has however been given a rather narrow definition, since only victim offender mediation is officially accepted.

End results?

So just how restorative the Swedish process really is, depends

Workshop Seven – RJ as perceived by the parties Chair: Marian Liebmann

7.1 How is the position of the victim perceived on one hand in RJ and criminal proceedings on the other?: the example of Bosnia and Herzegovina

Presented by: Hajrija Sijercic-Colic (Bosnia and Herzegovina)

Mrs. Hajrija Sijercic-Colic, LL. D., is the Full Professor at the course study Criminal Procedure Law at the Law Faculty of the University of Sarajevo. She is the author of numerous scientific and research papers falling within the area of criminal procedure law, international law on human rights, international criminal law, juvenile criminal law and penology. One of the more important papers: Dictionary of Criminology and Criminal Justice = Worterbuch der Kriminologie und Strafrechtsleher (2001); Commentary on Criminal Procedure Codes in Bosnia and Herzegovina (2005); Criminal Procedure Law, vol. I and II (2005. and 2008); Safeguarding human rights in Europe: The rights of suspects and defendants in criminal proceedings in South East Europe (2007). She was the participant of scientific conferences in the country and abroad. She is also participating in legal projects as drafter of laws or expert consultant in Bosnia and Herzegovina.

"How is the position of the victim perceived: in restorative justice on the one hand and criminal proceedings on the other? Example of Bosnia and Herzegovina"

Protection of the rights of the victim and the offender is at the heart of criminal proceedings and restorative justice, as is the protection of the society. This paper will analyse the position of the victim perceived: in restorative justice on the one hand and criminal proceedings on the other in Bosnia and Herzegovina. I will present recent developments in law and practice in criminal justice system and restorative justice in Bosnia and Herzegovina, demonstrating the national and international documents about the position of the victim and the offender. Bosnia and Herzegovina has reformed its criminal proceedings and has ratified the set of Council of Europe documents about criminal proceedings and restorative justice, and has adopted it as legally binding and, consequently, included in its national jurisdiction a set of acts, rules and regulations which apply to the victim and the offender. The main question is: how does it function in practice in Bosnia and Herzegovina?

I Introduction

Experience in the application of restorative justice in Bosnia and Herzegovina is not noteworthy. In fact, it is better to say, they are very weak. During the last two decades this country has not favoured the introduction and development of restorative justice practices. The circumstances of Bosnia and Herzegovina in recent decades have been affecting the area of criminal legislation. Specifically, the reform of criminal justice and criminal law, particularly those in 2003, dealt with the effective combating of crime, a fair process and the protection of fundamental human rights of the suspect and the accused in criminal proceedings. The development of the modern concept of restorative justice in Bosnia and Herzegovina is only in the inception phase. Namely, elements of restorative justice have been incorporated in our juvenile justice through amendments to the criminal legislation in 1998. This is a positive step in the reform of the criminal justice system of Bosnia and Herzegovina and its harmonisation with the relevant international standards.

So, what can be seen is that elements of restorative justice have been incorporated in juvenile justice. Therefore, this form of social reaction has not found its place in the adult criminal justice for the perpetrators of criminal acts. This situation has remained until today, although presently in Bosnia and Herzegovina there are efforts to introduce the concept of restorative justice for adult offenders. Looking at the wider social, economic and political context, these trends are closely related to the strengthening of repressive responses to crime. Efforts to change the position of victims that have been made in recent decades throughout the world have not had an impact in this country.

Restorative justice links a significant part of its solutions with changing the position of the victim. After all, the victim was one of the pillars of restorative justice. Taking this into account, the discussion below will analyse the solutions that bring elements of restorative justice in our juvenile judicial system. Changes in the criminal law in relation to juvenile perpetrators of criminal acts bring some concrete elements of restorative justice in the national criminal justice system. These efforts to change the position of victims can only partly mitigate the negative consequences and make up for limitations that the criminal law has on its own.

Alternative measures as a response to juvenile delinquency

Namely, in accordance with international standards, the criminal legislation of Bosnia and Herzegovina provides for correctional recommendations as an alternative way of dealing with juvenile perpetrators of minor offenses.

Prescribing correctional recommendations as alternative measures that are applied to juvenile perpetrators of minor crimes outside criminal proceedings, the juvenile courts in Bosnia and Herzegovina have joined the modern criminal and political efforts in preferential responding to the criminal behaviour of young people in out-of-court forms of intervention. The correctional recommendations are, therefore, an alternative to criminal prosecution and criminal procedure and are applied outside the formal criminal proceedings. The model redirects a perpetrator of minor criminal offences towards forms of non-judicial solving of the conflict. They tend to consider the victims' interests, favour to keep juvenile delinquents in their family and wider community, and protect and serve the interests of society.

Today, the criminal legislation in Bosnia and Herzegovina provides for the imposition of correctional recommendations for criminal acts for which a fine or imprisonment of up to three years is prescribed. Correctional recommendations can be applied to those juveniles who are willing to cooperate and to accept this form of social reaction to their delinquent behaviour. The condition for the application of correctional recommendations is the juvenile's confession to committing the offense and his willingness for reconciliation with the injured party. When selecting a particular correctional recommendation the interests of the juvenile and the injured party must be taken into account.

The great number and a variety of correctional recommendations call for their introduction as a necessary step that follows: personal apology to the injured party; compensation of damage to the injured party; regular school attendance; working for a humanitarian organisation or local community; accepting a job suitable to the juvenile's skills and qualifications; placement in another family, home or institution; treatment in an appropriate health institution (e.g. quitting the habit of alcohol drinking or drugs abusing); attending instructive, educational, psychological and other forms of counselling.

The Criminal Procedure Code provides that correctional recommendations are imposed according to a set scheme by the competent prosecutor (personal apology to the injured party; compensation of damage to the injured party; regular school attendance and attending instructive, educational, psychological and other forms of counselling) and the judge for juveniles (working for a humanitarian organisation or local community; accepting a job suitable to the juvenile's skills and qualifications; placement in another family, home or institution; treatment in an appropriate health institution). The selection and application of correctional recommendations is done in collaboration with the juvenile's parents or guardians and institutions of social welfare. In selecting a particular correctional recommendation the overall interests of the juvenile and the injured party have to be taken into consideration and a special attention will be paid not to jeopardise the juvenile's regular schooling or work. It is characteristic for all correctional recommendations that they may be cancelled or they may replace one another. When a correctional recommendation is cancelled it means that the purpose for which it was imposed has been achieved or no positive results have been achieved (e.g.

over the juvenile's failure to take part), which may be the grounds under certain statutory conditions for the institution of criminal proceedings. One correctional recommendation will be replaced by another when its purpose has not been achieved.

In these considerations it is very important to point out that in the selection and application of a particular correctional recommendation rights and freedoms of a juvenile might be violated. So it is not allowed that a correctional recommendation in manifestation be stricter than its legal framework. Accordingly, regardless of the clear-cut line between correctional recommendations as alternative measures and correctional measures as specific criminal sanctions for juvenile offenders, ⁵³ enhancement of the rights and freedoms protection of juvenile delinquents should always be insisted upon.

The purpose of correctional recommendations and results of their implementation in the practice

Alternative measures as a response to juvenile delinquency in Bosnia and Herzegovina have a common, "umbrella" goal, which can be described like this: avoidance of the institution of criminal proceedings against juveniles having committed less serious crimes; diversion of juvenile offender from the regular criminal proceedings in order to avoid negative effects on his personality and development; juveniles assessing the consequences of his crimes and taking responsibility for what he did; influencing a juvenile not to commit a new criminal offence, respecting the juvenile's interests, avoidance of stigmatisation, respecting the victim's interests and reducing the caseload of the juvenile justice system.

These objectives shall be achieved in the following way:

- a) Giving opportunities to a juvenile offender and the injured party to settle their own case through dialogue that should lead to mutual understanding;
- b) Giving opportunities to a juvenile offender to correct the error or by returning the items obtained through an offence to the injured party or the settle the damage in the amount of the value actually obtained by an offence or to give satisfaction to the injured party or to fulfil a certain obligation in favour of the victim, to the benefit of the another person or the local community;
- c) Active participation of the community in assisting the reintegration of the juvenile offender and the victim and the prevention of juvenile delinquency; and
- d) The procedures of mediation, monitoring and reporting are carried out professionally by a competent guardianship authority.

Unfortunately, the reality is that correctional recommendations as an alternative measure to address juvenile delinquency have not yet taken root in practice! Different researches that have been carried out since 1998, when the correctional recommendations were introduced in the legislation, show the

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⁵³ According to the criminal legislation of Bosnia and Herzegovina, correctional measures as specifis sanctions imposed on a juvenile after finishing the criminal proceedings are: disciplinary measures (judicial admonishen and confinement to a disciplinary centre for juveniles; measures of intensified supervision (by the parents, adoptive parents or guardians, in a foster home, or by a competent social welfare body); institutional measures (confinement to an educational institution, to a corrective training home/an educational-reformatory home or some other rehabilitation institution).

same picture: correctional recommendations are rarely imposed! Interviewed juvenile prosecutors and judges point out that there are two reasons for this: the lawmakers did not prescribe detailed procedures for the implementation of correctional recommendations as an alternative way to solve juvenile delinquency on the one hand, and in practice, serious criminal offences for which it is not possible to impose correctional recommendations, are more frequent on the other hand.

However, the general situation regarding juvenile delinquency, the number of reported crimes by juveniles and the number of criminal sanctions imposed show that a more intensive implementation of alternative measures is necessary. Documents on juvenile delinquency in Bosnia and Herzegovina therefore promote and encourage the application of correctional recommendations in practice⁵⁴. As a member state of the United Nations, Bosnia and Herzegovina transposed the Convention on the Rights of a Child in the legal system. As a party to this international instrument, Bosnia and Herzegovina took over the obligation to apply measures required by the Convention, and to regularly report to the Committee on the Rights of a Child and other treaty bodies. The Committee on the Rights of a Child assessed harmonisation of our juvenile justice system with the Convention on the Rights of a Child. The Committee gave some recommendations to Bosnia and Herzegovina in order to improve the regulations on alternative measures in the extra-judicial treatment of juvenile delinquents.

In the context of what was mentioned earlier, I would like to stress the following: the newest researches reveal that potential recidivism of juveniles is higher if they start committing crimes at a younger age. There is however also the trend that the children who come into conflict with the law are getting younger and younger. Statistics covering entire Bosnia and Herzegovina show that most crimes committed by juveniles are committed between 14 and 17 years old and the trend of an increase of juvenile delinquency is noticed. This is a great danger! And I must repeat: the general juvenile delinquency situation, the number of reported crimes committed by juveniles and the number of criminal sanctions imposed show that a more intensive application of alternative measures is needed! For ex. in recent years: every second a charge against a juvenile was dismissed. With regard to the statistics, some authors conclude that the high increase in dismissed charges against juveniles was caused by a higher tolerance of the circumstances under which the juveniles committed criminal offences. They point out that this is not socially acceptable neither does this have deterrent effect on the juveniles. They conclude that adequate application of correctional recommendations as alternative measures in practice will reduce the number of dismissed charges or slow down the upward trend in the coming period.

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⁵⁴ Promotion of correctional recommendations as specific measures of restorative justice is in particular espoused in the Juvenile Justice Strategy in Bosnia and Herzegovina (2006-2010) and the revised July 2008 Action Plan for the children of Bosnia and Herzegovina.

Juvenile that start criminal activities at young age (i.e. before turning 14; and in Bosnia and Herzegovina criminal legislation traditionally is not applied against children who have not turned 14 years of age at the time of commission of a crime).

⁵⁶ Vranj, V.: Alternativne mjere – primarni odgovor na maloljetnički kriminalitet u Bosni i Hercegovini (Alternative Measure – Primary Respšonse to Juvenile Crime in Bosnia and Herzegovina). Godišnjak Pravnog faklulteta u Sarajevu (The Law Faculty of the University of Sarajevo Yearbook), LI-2008, 731-734 pp.

II Adult offenders and restorative justice

Previous amendments to the Criminal Codes in relation to juvenile perpetrators of criminal acts have included some elements of restorative justice. Unfortunately, so far amendments to the Criminal Codes in relation to adult perpetrators of criminal acts have not included any elements of restorative justice in the domestic criminal justice system.

Let's discuss the issues one by one.

1) Adult offenders and "diversion" of criminal proceedings.

Unfortunately, in Bosnia and Herzegovina there is no possibility of suspended prosecution. Therefore, there is no possibility of solving any disputed relationship between the perpetrator and the victim by removing the damage caused to their relationship, of giving the victims an active role in criminal proceedings and of redirecting the traditional attention from the offender to the victim. According to the Criminal Procedure Codes, the Prosecutor may not suspend the prosecution of an adult offender or give up his criminal prosecution by referring the case to a process of mediation. Thus this option is not provided, not even for minor crimes as is the situation in many countries today. The data on "diversion" of criminal proceedings shows in particular that its application proves to be a purposeful measure and a good mechanism for the selection of cases that can be eliminated from court proceedings at the beginning of proceedings and thus achieve greater processing efficiency and a relief of the judicial authorities from minor criminal offences. We should add that in this way restitution for victims is provided, the reintegration of the offender is promoted and relations between him and the victim is corrected, restitution for the community is provided and the benefits for the victim does not have to affect the offender's rights but increase the scope of his duties due to his conduct.

2) Adult offenders and probation with protective supervision.

Although Bosnia and Herzegovina has adopted a number of international conventions, declarations, protocols and guidelines, yet we cannot talk about legal arrangements that enable the application of generally accepted principles of restorative justice in cases where the perpetrator is an adult. This is confirmed in provisions of Criminal Codes that provide for a particular criminal sanction - a suspended sentence with protective supervision (or probation). In fact, although Bosnia and Herzegovina has this sanction in the system, our law does not define duties to be included in protective supervision, which are important for the restitution of the relationship between the victim and the offender (e.g. removal or mitigation of damage caused by the offence, reconciliation with victims of criminal offence). In Bosnia and Herzegovina, when it comes to the suspended sentence with protective supervision, the convicted is obliged to dispose of salary and other incomes or assets with due care and in accordance with the marital and family obligations. Similar obligations are provided for in other legal systems (for example, family support, care and upbringing of children).

III Damage claim and mediation

In light of restorative justice and the position of victims in criminal proceedings in Bosnia and Herzegovina, I want to say something else. In criminal proceedings the injured party is entitled to property claim and to seek compensation for damage caused by a criminal offence. In Bosnia and

Herzegovina either the criminal court (if decision-making does not delay criminal proceedings) or the court in civil proceedings decides on the application. The latter is most common in our jurisprudence, while civil court proceedings are lengthy. For reasons of protection of victims and more efficient compensation of damage caused, the procedural legislation introduces the possibility of conducting mediation. These special proceedings are intended to eliminate or mitigate the damage caused by an offence in a simpler and faster way through a mediator. Unfortunately, researches in practice find very, very modest results in the application of this form of mediation.

IV Conclusion, "Obstacles", and the curiosity from the past

Conclusion

We can say that restorative justice is a return to traditional fashions of dealing with conflict and crime that have been present in different cultures throughout human history. Restorative justice aspires to develop a different model for responding to crime, which would present an alternative to punishment and rehabilitation models. Many books, articles and practical experience describe various methods to achieve this. There is no doubt that the State is obliged to provide victims of crime with assistance to remove the consequences of victimisation. But, for most measures to this end, the criminal proceedings alone are not sufficient and are not appropriate. Therefore, the State must provide mechanisms - primarily by employing non-repressive services - to help victims of crime. These are starting points on which Bosnia and Herzegovina will have to build some new concepts and mechanisms for providing assistance to victims of crime. It will have to provide victims with a more active role within the restorative justice model.

"Obstacles"

"Obstacles" to previous development: the practice should be prepared for the introduction and implementation of new solutions in a very concrete and practical way. Because the engagement of at least one practitioner may have a much greater effect than advocating by more theorists; it is important that practice is satisfied with usefulness of novelties, but also to show that they are practical ways and methods that enable implementation of the innovations. The next obstacle is the financing of new measures. It is also necessary to introduce experiments in judicial practice, especially in the novelties relating to measures to divert from criminal proceedings; this is of great importance. According to the literature, all that is not in contradiction with the principle of legality as this is performed in the jurisdiction of one or two courts or prosecutor's offices for a time, and here we are talking about the measures that are less repressive measures. It is also not inconsistent with the requirements of the principle of equality of citizens before the law because it is a measure that is pronounced in a limited space and limited time⁵⁷.

⁵⁷ Šelih, A.: Alternativne sankcije i mere u krivičnopravnom sistemu Slovenije (Alternative Sanctions and Measures in the Criminal Justice System of Slovenia). Temida. No. 1. 2006. pp. 41.

The curiosity

Alternative ways of solving crimes and use of restorative justice are not a total novelty in our criminal law. Although today the criminal law of Bosnia and Herzegovina provides only for the situation of dismissal of prosecution by the Prosecutor applying the principles of opportunity and just when it comes to juvenile perpetrators of criminal acts, as an alternative to the criminal proceedings, we must emphasize that it is not always so.

In fact, settling disputes in extra-judicial proceedings was introduced in the territory of former Yugoslavia as far as in the 1950s. The extra-judicial dispute resolutions were performed by the Reconciliation Panel, which consisted of three mediators who were honorary members performing the function without charge, the proceedings before the Panel were oral, easy and free of charge. The proceedings could be held only if both parties were present because the dispute was solved in a conversation of all people present. The Council did not adopt any decision, but settled the dispute by agreement which would result in a commitment of a party. At first, this procedure did not include criminal cases. In fact, in early 1970, the possibility of solving criminal cases before Reconciliation Panel when the criminal offences were prosecuted in a private action (i.e. minor criminal offences) was introduced. The then Criminal Procedure Code of SFR Yugoslavia (1976) provided for reconciliation on proposal of the victim and the judge. These proceedings were not common in practice, and those that occurred did not lead to significant results in terms of reconciliation of the offender and the victim. Notwithstanding the poor results achieved then, this example is a curiosity in the sense that we do not have today in Bosnia and Herzegovina what we had when restorative justice was discussed much less than now!

7.2 Juvenile penal mediation: what do the parties think? Presented by: Nuria Mora

Nuria Mora will present the study in representation of the group. She has a lot of experience in mediation and penal mediation and is the programme 's moderator since 2009.

Juvenile penal mediation: what do the parties think?

European Forum for Restorative Justice Bilbao, June 2010

Objective

 To know what the victim and the offender feel and think when they had passed through a process of penal mediation

Dimensions

- 1. Judicial Data
- Victim and offender's social and demographic
- 3. Previous knowledge about mediation4. Reasons to participate in the program
- Emotions or feelings aroused during the mediation process
- Image of the mediator
- Attribution of responsibility for the offence
- Satisfaction and appraisals of mediation and justice

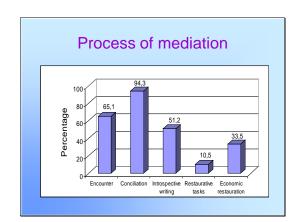
Methodology

- Quantitative methodology
- Interview by questionnaire, through the elaborations of a closed survey.
- All mediation programs finished between January 1st and April 30rd were selected.
- 114 minors and 95 victims.

Social and demographic Data

- Participate 209 persons (114 minors / 95 victims)
- +80% Spanish boys/girls

VICTIMS	TIMS OFFENDERS	
37 minors	14 – 18 years old	
58 adults		
56 men	84 boys	
39 women	30 girls	



Encounter between the parts

- 65,1%
- One encounter 83,8%
- Conciliation 99,3%*
- Introspective writing 32,4%
- Restorative tasks 12.5%
- Economic restoration

NO

- 34,9%
- Conciliation 84,9%*
- Introspective writing
- Restorative tasks 6,8%
- Economic restoration 41,1%

Who did they brief?			
	% Victims (n=32)	% Minors (n=48)	% Total (n=80)
Police	2,5	7,5	10
Public Prosecutor's Office	8,8	10	18,8
Technical advising teams	17,5	22,5	40
Lawyers	7,5	32,5	40
Friends	11,3	15	26,3
School	10	21,3	31,3

Evaluation of the received information

- The given information in the initial interview is assessed mostly as useful and sufficient
- 95,2 % they consider that the process of mediation has been developed in accordance with the given initial information

Characteristics of mediator performance

- Parties characterize the mediator's performance as respectful, kind and also understanding and comforting
- Impartiality gets a rating lower than the previous aspects



The attribution of responsibility for the offence Victims Minors Minors Themselves Parents Friends Friends The victim School.

Motivations for participating in the mediation Offenders Victims Solving the conflict Avoidance of family suffering Talk about what happened Solving the conflict Avoid judgement Avoid judgement To be repaired personally Talk about what happened To repair the victim

Satisfaction

- The satisfaction with the agreements is related to the satisfaction with the process and with the recommendation of mediation to other relatives and acquaintances.
- Offenders and victims considered mediation more valuable than a court proceeding.
- Offenders, in a higher degree than victims, would choose mediation again if they needed it, and they would recommend it more than victims.

Offenders

- A lot or quite a lot participate in the program to avoid family suffering, and to avoid court proceedings
- At the beginning of mediation, they feel a lot of worry and fear and little calmness
- · At the end there is little concern, lack of fear and a lot of
- They find the mediator comforting, respectful, close and understanding.
- They are very satisfied with the agreements, the attitude of the other party and the process.
- The mediation has allowed them to understand the other party quite a lot and to resolve the problem.
- With a similar situation they would very often choose mediation. Their opinion is that the process of justice has

Victims

- Mediation has allowed them less than to the offenders to resolve a problem and to understand the situation of the other part.
 They place the responsibility for crimes on parents, friends, school and the justice system more than to the offenders.
 They would advise mediation to relatives and acquaintances to a high degree.
- They have achieved their expectations less than the offenders.
- The judicial intervention seemed less useful to them than to the offenders and less effective in preventing new offences. At the beginning of mediation they feel quite a bit or a lot of calmiess and indifference and very little fear and worry.

Hypotheses 1

- The mediation is little know and little diffusion is made?
- Does the mediation influence on the feelings of the parts especially bringing calmness?
- Do the offenders not consider the problem closed at the end of mediation?

Hypotheses 2

- · Is it necessary to appraise the influence of the group of pairs in the offence and in the attribution of responsibility?
- Is it necessary to work more the suffering of the family with respect to the offence and its consequences?

"Juvenile penal mediation: what do the parties think?"

The practical community of juvenile penal mediation 2008-09, under the "Compartim" programme framework of the Knowledge Management of the Justice Department and in the CEJFE of the Generalitat de Catalunya, has carried out a research. A sample of 209 participants of the mediation and reparation programme (victims and offenders) has been surveyed about how they felt about the experience and about justice.

The following dimensions have been explored:

- a) Judicial Data: Information about characteristics of the criminal offence as well as the type of mediation programme that was carried out.
- b) Socio demographic Data on the offender and the victim: Information about address, nationality, age and gender are reviewed.

- c) Information or knowledge about mediation and evaluation of given information. This serves to establish if there is previous knowledge about the programme and their opinion of explanations given by the mediator.
- d) Reasons to participate in the programme. It contains a series of variables in which some motivations to participate in the programme are evaluated.
- e) Emotions or feelings aroused when participating in the programme. These are emotions and feelings at the beginning and at the end of the process.
- f) Image of the mediator. Variable regarding the relationship between the mediator and the implicated parties are evaluated.
- g) Attribution of the criminal act. To find out about the responsibility of the offender or the victim
- h) Satisfaction and Appraisals. This is about how the mediation process went, the agreements obtained and justice in general.

The methodology has been quantitative, by telephonically survey.

The population sample consisted of victims and offenders who participated in a mediation process that finished the first trimester of 2008. The polled sample was 95 victims and 114 offenders. Statistical analyses were descriptive, comparative and of characterisation. These analyses were carried out to the whole polled sample and afterwards separately to the offenders and the victims. In addition, a multivariate analysis was done according to the following variables:

- Victim or offender;
- Do the victim and the offender know each other (and to which degree);
- Type of mediation process; and
- Qualification of the criminal fact.

Results have provided us models of reflection and analyses for our daily task helping us to improve service performance.

Results

From the mentioned dimensions, we have obtained these results:

> In reference to the characteristics that the polled offenders have in common

The majority of the polled offenders who have participated in mediation have the following characteristics: they are minors with only this arrest, accused of criminal acts against persons or property, with the acts characterised as an offence; they live in urban areas and the offences are usually committed in places where there is a higher concentration of population (ex. popular parties, discotheques, shopping centres...). Generally they are Spanish boys, even though girls also have a high participation in mediation processes.

In reference to characteristics of the victims

The victims are generally adults, men (56) and women (39). They are between 20 and 45 years old. They reside in urban zones and are Spanish.

> In reference to the characteristics of the mediation process

The parties that share a direct mediation (encounter) have a high degree of acquaintance and geographical proximity (family members, neighbours...). In general, one encounter is made. The result can be conciliation and the injured party asking for compensation, the completion of restorative tasks or introspective writing.

In reference to the characteristics of the information in the mediation process

A low degree of previous knowledge about the mediation process is observed. Previous knowledge comes generally from penal field professionals (Police, Public Prosecutor's Office, Lawyers and Technicians).

In reference to the received information

The information in the initial interview about justice and the mediation process is priced useful and sufficient.

In reference to the characteristics of the mediator's performance

Parties characterise the mediator as respectful, kind and also understanding and comforting. Information given about the programme is considered mainly useful and suitable.

There are other data that can be interpreted in this dimension: relapse is not related to information received initially; the type of offence does not determine participation in a mediation programme. With respect to satisfaction, mediation is good for the parties and they would recommend it to their relatives.

> In reference to emotions or feelings

The feelings in this dimension are: worry, calmness, surprise, satisfaction, rage, fear and indifference. The polled participants were able to evaluate them on a 5-point scale: very little (1), little (2), medium (3), a lot (4), and quite a lot (5). From this moment we will relate positive (calmness, surprise and satisfaction) and negative (worry, rage, fear, indifference) feelings.

The juvenile offenders demonstrated mainly negative feelings at the beginning of mediation, showing especially more worries than the victims. The victims on the other hand are generally calm at the beginning. At the end of the process, both the offenders and the victims show an increase in positive feelings and a decrease in negative feelings. However if we make a comparison at the end of the process between offenders' and victims' feelings, the minors present more worry and the victims more indifference.

> In reference to the attribution of the criminal act

The total population of study focuses on the assignment of responsibility, first of all to the minor, and later, to his or her friends.

Victims consider other people also responsible, in this order: parents, the justice system, friends and school. If we consider the age of the victims, we observe that adult victims especially assign

responsibility to parents and friends. Minor victims consider themselves to have a large degree of responsibility.

Concerning the offender's gender, boys consider themselves more responsible than girls. Girls attribute responsibility more to other groups.

> In reference to motivation and satisfaction

The expectations and main motivations of offenders and victims to participate in mediation are solving the conflict and avoiding family suffering. The females participate more to avoid family suffering than the men do. In our investigation, avoidance of family suffering was the only motivation that was not attained.

The satisfaction with the agreements is related to the satisfaction with the process and with the recommendation of mediation to other relatives and acquaintances.

The offenders and the victims considered mediation more valid than a court proceeding. For offenders, mediation has allowed them to resolve the conflict and to understand the other party's situation. They also consider mediation more educational and useful.

Offenders, in a higher degree than victims, would choose mediation again if they needed it, and they would recommend it more than victims.

4. General conclusions and more relevant results that we've obtained

The statistical data shows the following characteristics of the offenders involved in a mediation process:

- A lot or quite a lot participate in the programme to avoid family suffering, and to avoid court proceedings;
- At the beginning of the mediation session, they feel a lot of worry and fear and only a little bit of calmness;
- And at the end, they feel a medium level of worry, little fear and quite a lot of satisfaction;
- They find the mediator medium comforting, respectful and understanding, and a little distant. They considerer the explanations less impartial and more excessive than the victims do;
- They are very satisfied with the agreements, the attitude of the other party and the process;
- The mediation has allowed them to understand the other party and to resolve the problem;
- With a similar situation, very often they would choose mediation again. Their opinion is that the process of justice has been very educational.

The statistical data shows the following characteristics of the victims who participate in a mediation process:

- They considerer that the mediation has allowed them less to resolve a problem and to understand the situation of the other party than the offenders;
- They place the responsibility for the crimes on parents, friends, school and the justice system more than offenders do;
- They would advise mediation to relatives and acquaintances to a high degree. They have achieved their expectations less than the offenders;

- The judicial intervention seemed less useful to them than to the offenders and less effective in preventing new offences;
- At the beginning of the mediation, they feel quite a bit or a lot of calmness and indifference and very little fear and worry.

We made some hypotheses to understand these results better. In reference to the information about the process, a high percentage of offenders and victims had not heard about mediation before. Those that had indeed heard about it had been informed by professionals within the penal field. This makes us wonder whether mediation has enough support or dissemination.

When we consider the results about emotions manifested at the beginning and at the end of the session, we can deduce that mediation indeed influences the participants' emotions. It has increased the calmness and the satisfaction and it has reduced fear, worry and rage.

We find that the offender's experience of the judicial process is different from the victim's. The consequences will be different for minors, and because of that they feel more fear and worry than victims. Victims also feel calmer and more indifferent. At the end of the process the differences in the emotions of the victims and the offenders are not so clear anymore. However, even though all of them have reduced their worries and indifference, the offenders continue to feel more worried while the victims feel more indifferent than the offenders. We need to state that offenders are still waiting for legal resolution unlike the victims, who consider the process closed.

The offender's attribution of responsibility focuses priority on the minor and on his or her friends.

We must remember that during adolescence, friends influence behaviour in a great way.

On the other hand, victims consider the parents, friends and school more responsible than offenders do. If we differentiate among adult and minor victims, we find that the adult victims make the parents and the friends more responsible, while the minor victims make themselves and the police more responsible. Related to this result we consider whether there is a previous acquaintance between the victim and the offender when the victim is also a minor. Sometimes we find adolescent conflicts in which victims consider that they have some responsibility in the origin of the conflict.

Another outstanding/relevant result is that female victims make the parents, the justice system and the school more responsible than male victims do. In this sense, we could evaluate the different attributions that the females and the males make in relation to responsibility.

The main motivations for participation in a mediation process are the resolution of the conflict and to avoid family suffering. The expectation of the avoidance of family suffering has however not been accomplished in reality. So, we evaluate the need to work with the family suffering provoked by the facts and its consequences.

Both parties concluded that mediation is a better alternative than judicial proceedings.

So, we can consider that the mediation process is good for every party. But we can also obtain some information to improve our daily work. For example, we can do some reflections about the work with

the families or if we could do specifically intervention depending on the king of facts. This research has allowed us to discuss our practice, and we hope we can continue this way.

Thank you for your attention.

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Plenary Six: The 10 year journey of the European Forum: looking back and walking into the future Presented by: Ivo Aertsen (Belgium)

Chair: Niall Kearney

Ivo Aertsen is a professor at the Catholic University of Leuven. His main fields of research and teaching are Victimology, Penology and Restorative Justice. Ivo Aertsen has been chair of the European Forum for Restorative Justice from 2000-2004, and has coordinated COST Action A21 on Restorative Justice research in Europe from 2002-2006.

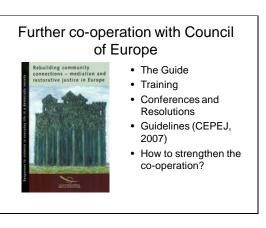
The 10 year journey of the European Forum: looking back and walking into the future

Ivo Aertsen K.U.Leuven Institute of Criminology

The beginning ...

- · Out of the blue?
- Observations
- First contacts
- Council of Europe: Expert Committee on mediation in penal matters





Towards the creation of a Forum

- · Grotius project
 - Jan 1999 March 2000
 - Objectives:
 - · "creation of a forum.
 - for the exchange of information, knowledge and experience and for consultation and discussion,
 - · concerning victim-offender mediation
 - in the framework of a restorative approach of criminal justice"
 - Leuven secretariat 2 staff members (Katrien Lauwaert and Jolien Willemsens)
 - Co-ordinating group: 8 European countries

European Forum for Victim-Offender Mediation and Restorative Justice

Report of the first meeting of the co-ordinating group 21/1 - 24/1/1999, Leuven

Participants: Ms Christa Pelikan (Austria), Mr Leo Van Garsse (Belgium), Mr Juhani livari (Finland), Mr Daniel Julion (France), Mr Gerd Delattre (Germany), Ms Siri Kemény (Norway), Ms Marzena Kruk (Poland), Mr Martin Wright (UK), Mr Ivo Aertsen (Belgium), Ms Jolien Willemsens (Belgium), Mr Tony Peters (Belgium), Ms Katrien Lauwaert (Belgium).

- 1st Conference (Leuven, 27-29 October, 1999)
- "After a rather slow start in the 1980s, victim-offender mediation is now developing fast in countries all over Europe."



- Technical seminar, Leuven, 22-23 June, 2000
- Launching event: 8-9 December, 2000 1st General Meeting



The Constitution

- Art. 4. The general aim of the Forum is to help establish and develop victim-offender mediation and other restorative justice practices throughout Europe.
- Art. 5. To further the general aim, the Forum will pursue the following objectives:
 - Promote international exchange of information and mutual help;
 - Promote the development of effective restorative justice policies, services and legislation;
 - Explore and develop the theoretical basis of restorative justice;
 - Stimulate research;
 - Assist the development of principles, ethics, training and good practice

- Art. 6. The Forum will undertake all reasonable actions to further the general aim and the objectives of the Forum, for example,
 - Promote dialogue between practitioners, policymakers and researchers.
 - Support public education aimed at increasing awareness about issues for victims, offenders and the community.
 - issues for victims, offenders and the community;

 To make representation to and/or liaise with European and international institutions or organisations, including the Council of Europe, the European Union and relevant non-governmental organisations;
 - Raise, hold and administer funds and disburse such funds in furtherance of its work.

- Art. 8. The Forum actively seeks to provide opportunities for expressing contradictory points of view by everyone who is working for a humane system of justice for the benefit of victim, offender and the community.
- Art. 9. The Forum will stay independent in action and thinking.
- Art. 10. The activities of the Forum will be based on an attitude of openness and respect, and on the willingness to learn from all members.

Structure

- · Membership and General Meeting
- Board (+ Executive Committee)
- Committees
 - Information committee

 - Communication committeePractice and training committee
 - Resarch committee
 - Editorial board newsletter
 - Selection committee
 - Committee on restorative approaches in schools
- Secretariat

Secretariat and project staff

- Jolien Willemsens
- Katrien Lauwaert
- Zuzana Slezakova
- Jana Arsovska
- Borbala Fellegi
- Clara Casado Coronas
- Leni Sannen
- · Ines Staiger
- · Anniek Gielen
- Bruna Pali
- Carmen Borg
- Estelle Zinsstag
- Karolien Mariën
- Jeanine Dams

Ongoing activities

- Clearing house for information
 - Services to members
 - Website and newsflashes
 - Newsletter
 - Books and reports
 - Documentation centre
- · Providing support and expertise at national level
- · Providing support and expertise at international level

Bi-annual conferences

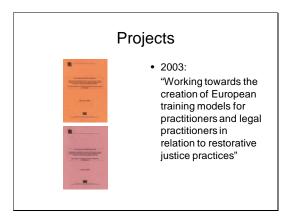
- Leuven, 1999
- Oostende, 2002
- Budapest, 2004
- · Barcelona, 2006
- Verona, 2008
- Bilbao, 2010

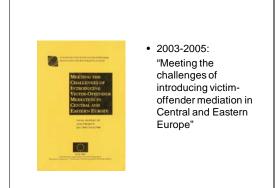
Summer schools

- Pilsen, 2005
- Riga, 2007
- Barcelona, 2009

Questions

- · Do we reach our target groups?
 - RJ practitioners/services
 - Legal professionals
 - Civil servants
 - Researchers
- Active participation of the membership?





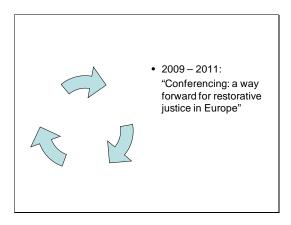




 2007 – 2008:
 "Developing standards for assistance to victims of terrorism"



 2007 – 2010:
 "Building social support for restorative justice in Europe"



- As partner:
 - 2008 2010: "Restorative justice and crime prevention"
 - 2009 2012: "Mediation and restorative justice in prison settings"
 - 2008 2010: "Restorative Justice vs. Juvenile Delinquency:The Baltic States in European Dimension"
- New project: "Victims and restorative justice"

Meaning and impact

- Not visible
- In particular countries
- · International institutions

Challenges for restorative justice in Europe and for the Forum

- Practices: diversification and flexibility
- Implementation: national policy and structure
- Focus on criminal justice system focus on civil society
- The position of the victim and victim services
- Qualitative research