

## THE DEVELOPMENT OF RESTORATIVE JUSTICE IN SOUTHERN EUROPE

### GENERAL REMARKS

First of all we have to mention that we have placed some of the presentations from members of the AGIS project group with one of the thematic sessions, e.g. Galma Jahic and Seda Kalem on *'Comparing quantitative and qualitative research'*. On the other hand, some presentations dealing with research issues have remained in this section: we have placed them at the head of this group: The one from Frederico Marques and Rosa Saavedra on victims' participation, and two Spanish contributions dealing with evaluation protocols (Mariona Jimenez Garcia Mercé Llenas Herbera) and with knowledge management (Pilar Fuertes)

Apart from these, the workshops assembled under this headline are mainly dealing with policy matters - from a national or an international perspective as with Elisabetta Ciuffo and Isabella Mastropasqua talking about 'International cooperation and its impact on RJ-policies in Italy'; Pompeu Casanovas and Jaume Martin presenting their preparation of the Catalan 'White Book on Mediation and Conflict Resolution'; Xabier Etxebarria and Alberto Olalde talking about 'Cooperation between Policy-makers and practitioners in Basque country'. The difficult conditions still faced in Greece and also in Italy are discussed in the presentations from Sophia Giovanoglu, Panagiota Papadoupoulou and Anna Sironi ('Knots of an Italian inattention').

In addition, some very specific, highly interesting themes are addressed, e.g. by Mark Montebello on 'Implementing VOM in a multi-ethnic context', or by Grazia Manozzi on 'Parallel mediations' in Italy.

Plenary session: *The development of restorative justice in Southern Europe*

Presented by Clara Casado Coronas (Spain)

Chair: Ivo Aertsen

The 3<sup>rd</sup> AGIS project awarded to the European Forum 'Restorative justice: an agenda for Europe' has the objectives, on the one hand, of realising effective support to the development of restorative justice (RJ) in Southern Europe (SE) ('Going South') and, on the other hand of researching the potential role of the European Union in the further development of RJ ('EU policies'). The project started in June 2006 and the conference in Verona will lead to the final stage of the project.

This presentation will focus on the 'Going South' part of the project in which experts from Turkey, Spain, Portugal, Malta, Italy, Greece, France and Belgium have been involved.

Restorative justice has followed very different implementation processes in each of these countries. In some of them a law provides formal recognition to victim-offender mediation, in others, although without a legal base, the practical experience acquired over the years gives credibility and know-how in the field of restorative justice. Nevertheless, these countries found important room for improvement in common areas and a high potential for exchange.

Over the different stages of the project, the experts have been working on the establishment of networks and building cooperation in order to exchange experiences, learning and developing mutual support in the field of restorative justice.

Simultaneously the experts have also studied the possibilities currently available for RJ in the legal, the institutional and the social context of these countries. The needs that should be met in order to consolidate and expand the implementation of restorative justice in these countries have also been identified. This presentation will outline some of the main issues and opportunities discussed.

But how to go about all this in practice? Which are the priorities and pitfalls for policy development in Italy, Portugal or Turkey? Are these very different from the ones in Malta, Spain or Greece? And the ones in France and Belgium? And most importantly, which are the tools and strategies that can work better in each context?

Very practical aspects have also been addressed during the project. This presentation will provide an overview of the main targets of policy development that these countries have identified in order to further the development of restorative justice as well as some examples of the tools and strategies that these countries plan to carry out in order to accomplish their objectives in the coming years.

Through the exchange of experiences and lessons learned, very clear and effective steps forward have been made in the development of restorative justice practices in each of these countries. Inevitably at the same time, fundamental questions have arisen. Hence while attempting to draw the conclusions, the points that are still open will also be shared for further discussion.

*Clara Casado Coronas is the project officer of the AGIS project 'Restorative justice: an agenda for Europe', concerned with the 'Going South' part of the project.*

## THE DEVELOPMENT OF RESTORATIVE JUSTICE IN SOUTHERN EUROPE

AGIS project  
'Restorative justice: an agenda for Europe'



AGIS 2006  
With financial support from the AGIS Programme  
European Commission - Directorate-General Justice, Freedom and Security

## AGIS PROJECT 'Restorative justice: an agenda for Europe' GENERAL AIMS

- Realising effective support for the development of RJ in Southern Europe
  - 'GOING SOUTH' project
- Researching the potential role of the European Union in the further development of RJ
  - 'EU POLICIES' research

June 2006 – May 2008

## CONTENTS

- 1) 'Going South' project
- 2) A first approach to the background of Southern European countries
  - Legal culture
  - Policy making and implementation
  - Civic involvement
- 3) Priorities for policy development
  - Main targets
  - Concrete examples of strategies and actions
- 4) Conclusions and open questions

## 'GOING SOUTH' COUNTRIES INVOLVED

Turkey  
Spain  
Portugal  
Malta  
Italy  
Greece  
France  
Belgium



**'GOING SOUTH'  
SPECIFIC OBJECTIVES**

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- 1) Analyse the possibilities for consolidating and expanding the implementation of RJ in Southern European countries taking into account their specific political, social, cultural and historical background
  - 2) Prepare strategies for policy development
    - Identify priorities
    - Develop tools and action plans
  - 3) Promote networking, cooperation and exchange at the national and international level
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**'GOING SOUTH'  
THE PROJECT STEP BY STEP**

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- Expert meeting – Bordeaux, January 2007
  - Seminar – Lisbon, May 2007
  - Expert meeting – Trier (Germany), December 2007
  - Final conference – Verona, April 2008
- 

**'GOING SOUTH'  
THE PROJECT STEP BY STEP**

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- 1st Expert meeting – Bordeaux, January 2007
    - State of affairs of restorative justice in each country
      - Diverse implementation processes
    - Challenging and supportive factors
      - Needs
- 

**'GOING SOUTH'  
THE PROJECT STEP BY STEP**

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- Seminar – Lisbon, May 2007
    - Develop a better understanding of the needs
    - Broaden the exchange of experiences and useful tools
      - Similar needs to other European countries
-

## 'GOING SOUTH' THE PROJECT STEP BY STEP

### ■ 2nd Expert meeting – Trier (Germany), December 2007

- News
- Exchange of good practices
- Design concrete strategies to consolidate and expand RJ in the coming years

## 'GOING SOUTH' THE PROJECT STEP BY STEP

- Expert meeting – Bordeaux, January 2007
- Seminar – Lisbon, May 2007
- Expert meeting – Trier (Germany), December 2007
- **Final conference – Verona, April 2008**
  - Present main findings
  - Plan future cooperation

## THE BACKGROUND OF SOUTHERN EUROPEAN COUNTRIES

- A first approach to some of the relevant features
  - Legal culture
  - Policy-making and implementation
  - Civic involvement
- Which are the opportunities for RJ?
- Which conditions need to be created?
- Which are the pitfalls?

## LEGAL CONTEXT 1. FORMALISTIC LEGAL TRADITION

- Judicial decision-making processes
  - Based on a strict adherence to written norms
  - Following rigid standard procedures
- Principle of mandatory prosecution
- Little attention to victims' needs

(Brienen and Hoegen, 2000; Volger, 2005; Pakes, 2004)

- Victim-offender mediation projects implemented without explicit legal base

## LEGAL CONTEXT 2. TOWARDS MORE FLEXIBILITY IN THE CRIMINAL PROCEDURE

- Legal measures inspired by cost-effectiveness principles
  - Accelerate the criminal procedure
  - Promote settlement out of court
- Improvement of the position of the victim in criminal proceedings
- How come?
  - Urgent need to tackle the problem of the courts' backlog
  - Interest in improving public confidence in the justice system
  - Policy transfer
  - Interest in complying with supranational standards

(Albrecht, 2001; Pakes, 2004; European Sourcebook of Crime and Criminal Justice Statistics, 2006)

- RJ can receive more attention by policy makers
- Which purposes should RJ serve?

## POLICY-MAKING

- 'Criminal policy analysis' – room for improvement
  - Scarce preparatory research
  - Not much attention to the evaluation of outputs
- Low impact of the university on policy-making
  - Lack of public funding for 'applied research in social sciences'
  - Recent history of authoritarian regimes

(Lambropoulou, 2006; De Maillard, 2005; Medina-Ariza, 2006; Barberet, 2005; Cardoso Rosas, 2003; Selmini, 2005)

- The engagement of the university is increasing in the field of RJ

## IMPLEMENTATION AND POLICY PRACTICES

- Scarce guidance
  - Disparity in the standards for training, referral protocols...
- Implementation structure
  - Multi-agency partnerships, agreements of collaboration
  - Short-term
- More **autonomy** of RJ schemes in relation to the criminal justice system
- Unclearly in the definition of responsibilities
  - Uncertainty and instability
- A public body should be accountable for the basic coordination and follow-up functions
- Which organisational model?

## SOCIAL CONTEXT IN SOUTHERN EUROPE

- Which social support does RJ find in Southern European countries?
  - Degree of civic involvement
  - Citizens' attitudes towards crime and justice

## CIVIC INVOLVEMENT

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- Civil society organisations in the implementation of RJ:
    - which is or should be their role in Southern Europe?
  - The relation between the citizens and the state is shaped by a complex combination of different factors
  - Commonalities and noticeable differences in the culture of participation
    - between Southern European countries
    - within different regions of the same country
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## HOW TO GO ABOUT ALL THIS IN PRACTICE?

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- **Targets for policy development**
    - Legal base
    - Effective and complete implementation
    - Raise public awareness
    - Ensure quality of practice and cohesion between RJ practitioners
  - **Strategies and action plans**
    - Useful and effective
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## EXPLICIT LEGAL BASE - ENGAGE POLICY MAKERS

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- Consultation processes with key actors
  - Build knowledge and research on
    - national legal framework and international standards
    - existing developments in related fields
  - Action-research pilot projects
  - International cooperation: projects involving public national partners as well as private and international agencies
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## IMPLEMENTATION: EFFECTIVE AND COMPLETE

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- **Establish common guidelines**
    - Referral protocols
    - Basic aspects of the mediation process
    - Codes of practice and standards for training of mediators
    - Bylaws and regulations
  - **Create a public body responsible for planning and following-up the implementation process**
  - **Build collaboration relationships with all the actors involved in the implementation of the RJ schemes**
    - Training and information
    - Permanent structures - steering committees or working groups
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## RAISE PUBLIC AWARENESS

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- **Develop informative materials**
    - Accurate design of the content and the format: accessible for people from different backgrounds
    - Plan a dissemination strategy
  - **Research on public opinion**
    - Which are the expectations of the public towards justice?
    - What do people know about RJ?
  - **Promote mediation in other fields**
    - Neighbourhood disputes
    - Family law
    - Commercial matters
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## STRENGTHEN RESTORATIVE JUSTICE

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- **Ensure quality of practice**
    - Training
      - Developing training curricula for mediators
      - Continuous education
    - Evaluation schemes
      - In collaboration with external agencies or partners
      - In a permanent and systematic way
    - Streamline case supervision methods
    - Deontology
  - **Build cohesion and promote networking between practitioners**
    - Create instruments for 'peer learning' and support 'knowledge-sharing'
    - Umbrella organisation
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## CONCLUSIONS AND OPEN QUESTIONS

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- **New and wider opportunities for RJ in Southern European countries**
  - **The projects and practices already implemented show how the difficulties can be positively addressed**
  - **Reflecting on fundamental questions**
    - Engaging policy makers
      - Which RJ approach? Which goals?
    - Which type of organisational model do we want to strive for in Southern Europe?
      - How should the citizenry be involved?
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**Thank you!**

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*Victims and mediation - Victims' participation in restorative justice practices*

Presented by: Federico Marques and Rosa Saavedra (Portugal)

Chair: Rob Mackay



Although Restorative Justice and Victim Support are natural allies, during many years these two fields have lived separated lives. However, recently, Restorative Justice has earned a greater attention and a more positive vision by those whose mission is to provide support to victims of crime. This shift resulted from the evidence that several restorative practices present high rates of victims' participation and satisfaction, therefore meeting at least some of the victims' needs. Links between the two fields have become more and more frequent, but concerns still remain, also because some researches show less enthusiastic figures about victims' involvement in restorative practices.

Nowadays, the way victim support sees Restorative Justice, namely mediation, may generically be summarised by the following idea, contained in the European Forum for Victim Services Statement on the Position of the Victim within the Process of Mediation: mediation is a practice which may entail potential positive outcomes for victims of crime in recovering or minimising the effects of victimisation if certain variables are adequately taken into account.

Some of these topics were addressed in a small research developed under the Project "Victims & Mediation", promoted by the Portuguese Association of Victim Support and co-financed by the European Commission under the AGIS Programme. The aim of this research was to collect information about the procedures followed by different mediation services concerning victims' participation and to find examples of good practices that can be widely adopted. In this workshop, the preliminary findings of this research will be presented and discussed.

*Rosa Saavedra is a psychologist, researcher at the Minho University, mediator, APAV's technical advisor to the Board.*


*Frederico Moyano Marques is a lawyer, mediator, APAV's technical advisor to the Board and member of APAV's Restorative Justice Unit.*


## Victims and Mediation:

Victims' participation in Restorative Justice practices

Frederico Moyano Marques  
Rosa Saavedra







## Victims and Mediation Project

**Aims**

- to promote the exchange of information and a reflection about the adopted practices and procedures concerning the participation of victims in RJ
- to emphasize the need of further action research in order to find out what works

**Activities**

- study visits and workshops
- final conference (Lisboa, 14th and 15th of July 2008)
- small data collection and analysis
- publication


## Restorative Justice: benefits for victims



<b>the process:</b>	<b>the outcomes:</b>
<ul style="list-style-type: none"> <li>fairness of treatment</li> <li>quality of the facilitation</li> <li>opportunity to participate in the decision-making process</li> </ul>	<ul style="list-style-type: none"> <li>to obtain answers to their questions</li> <li>to receive and value apologies from the offender</li> <li>to break down stereotypes about the offender</li> <li>to feel less frightened of revictimization and angry towards the offender</li> <li>to reduce anxiety levels</li> <li>to experience a sense of closure</li> <li>to recover feelings of self-confidence and trust in others</li> <li>to receive compensation</li> <li>to reduce PTSS</li> </ul>





## Recognition of the benefits RJ can bring to victims



- the inclusion in international regulations of mediation as a victims' right
- Victim Support Europe - Statement on the Position of the Victim within the Process of Mediation
- implementation of RJ schemes by victim support services

**Benefit vs harm - risk of secondary victimization**

**less positive findings:**



- low levels of participation
- high percentage of victims (especially women) feeling uneasy in the course of confrontation
- significant minority of victims feeling
  - ✓ not to have sufficient influence on the outcome
  - ✓ were treated disrespectfully
  - ✓ the outcome was inadequate
- simply not informed about the outcome
- feeling worse after attending because, for ex., of the lack of offender's remorse

**Benefit vs harm - risk of secondary victimization**

**causes – problems of desing and implementation:**



- lack of funding
- difficulties of promoting a shift in the intervention of staff who have been working with offenders
- involuntary involvement of offenders
- poor invitation practices
- indirect mediation not offered as an option
- insufficient time devoted to the preparation of victims
- poor information practices regarding the outcome

**VSE Statement**

**variables to be considered:**



- the timing of the offer of mediation and the moment at which it occurs in the process
- the importance of taking into account any prior relationship between the victim and the offender (selection of suitable cases and adequate preparation of the parties)
- the personal characteristics of the victim (previous experiences of crime, other factors affecting their personal well being, availability of support and close relationships)

**VSE Statement**

**suggested practices:**



- free and informed consent:
  - ✓ the offer of mediation should only be made by a person who has been fully trained to recognize the variable impact of the offer in each victim of crime
  - ✓ victims should always be given full information about where they can obtain independent support and advice
  - ✓ victims should be given a minimum of 3 weeks to make this decision

## VSE Statement

**suggested practices:**



- support and representation:
  - ✓ victims should be entitled to assistance from a supporter of their choice, before, during and after the process
  - ✓ victims may benefit from legal advice prior to the decision to mediate, and possibly after the process, but a high degree of legal representation may not be conducive to good communication between the parties

## VSE Statement

**suggested practices:**



- training:
  - ✓ mediators should receive initial as well as in-service training – needs of victims of crime
  - ✓ training on victim awareness provided by independent experts who have experience of working with victims of crime
  - ✓ specialist training should be provided for mediators who are expected to work with cases involving intimate personal relationships

## VSE Statement



**suggested practices:**

- option between direct and indirect mediation
- more than one preparation meeting should be offered
- information about the accomplishment of the agreement by the offender
- monitoring should be designed to provide information on which cases are most likely to be beneficial to both parties and circumstances in which special provisions for preparation or support should be made
- the contribution of victim services should be promoted



## □ Characteristics of the participants

- 25 RJ services from 15 different countries: Finland, Iceland, Germany, Belgium, Spain, Portugal, Italy, Greece, Hungary, USA, Netherland, Switzerland, Scotland, Sweden and Denmark
- Services that develop their work:
  - exclusively with adult offenders (n=9);
  - exclusively with juvenile offenders (n=12);
  - with both adult and juvenile offenders (n=5);



**Characteristics of the participants**

- Different number of cases per year:
- Dissimilar experience levels;
- Different types of crimes

**Main topics:**

- The mediator and the requirements to play this role
- The process - first contact with the victim and preparation to the mediation
- Training on victims' issues
- Cooperation with victim support services






**Requirements to be a mediator**

<b>Training</b>	<b>21</b>
Committed with an organisation or service	7
Professional experience	5
Personal skills	5
Adequate degree	5
Knowledge of the law	3
No previous convictions	1
Live in the local area	1
Minimum age	1
Computer literate	1
Oral and written skills	1
Knowledge of victim issues	1

12 ≠ criteria


Training was the most consistent criteria


**First contact with the victim**

- Who does it?
- How is it done?
- What is said?

Prevent secondary victimization



**VICTIMS & MEDIATION**




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Apoio à Víctima / Victim Support  
Unidade de Justiça Restaurativa / Restorative Justice Unit


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**First contact with the victim**

Mediator	12
Police officer	4
Judge or prosecutor	7
Victim support officer	1
Prosecutor or others	1



**VICTIMS & MEDIATION**




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Letter	15
Phone call	7
Personal contact	5
Home visit	1
Brochure	7
No answer	2

**Possibility to observe victims' reactions**

**Additional information**



**VICTIMS & MEDIATION**




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**What is said**

Presentation of the service + purpose of the work	4
Principles	9
Mediator role	5
Dealing with needs and expectations of the victim	2
Judicial system consequences	6
Possibility to bring additional persons	1
Willingness of the offender	1
Dealing with victims' perceptions about the incident	1
Mediation aims	4
Communication (be listened + get answers)	5
Reparation	5
Process description	1
Advantages (easier payment)	5
Rights and duties	2
Possibility to opt between direct or indirect mediation	1



**VICTIMS & MEDIATION**



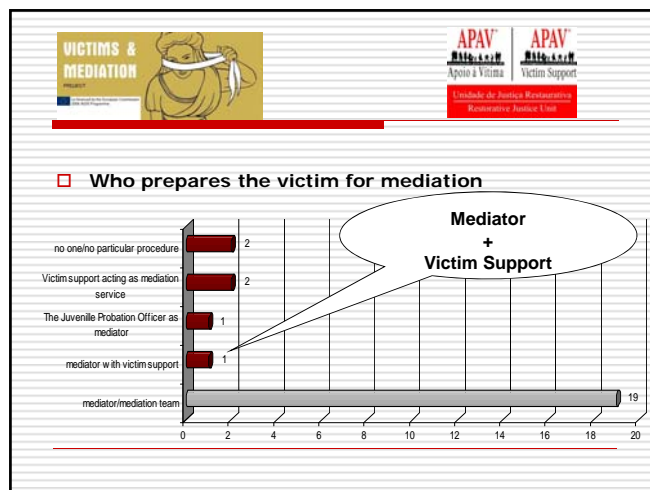
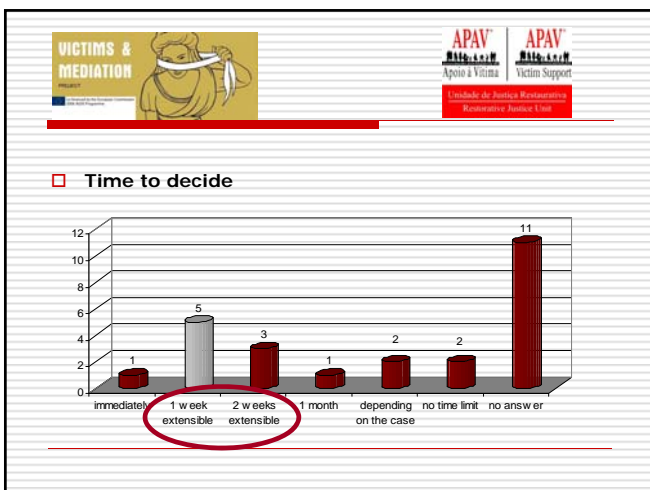
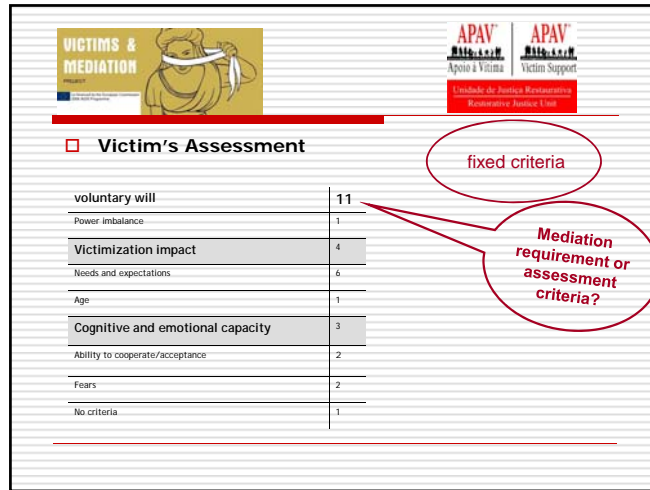
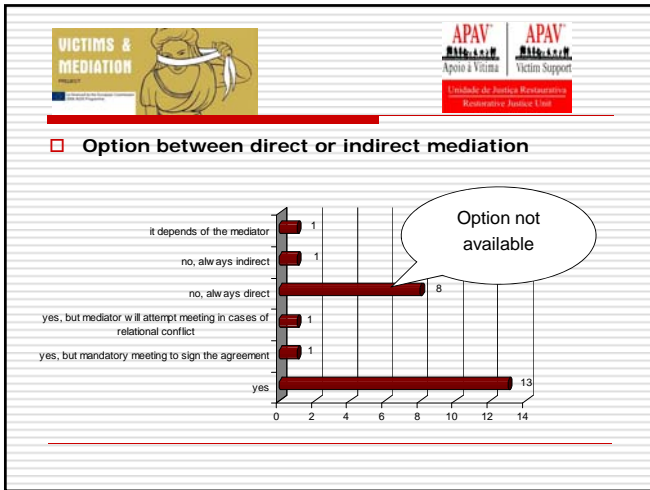
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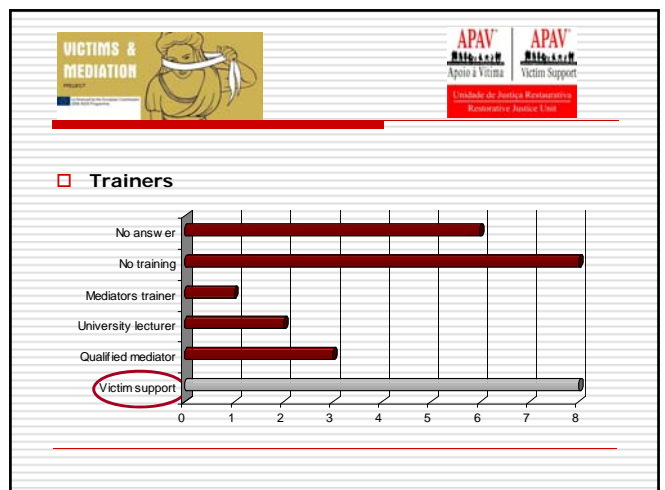
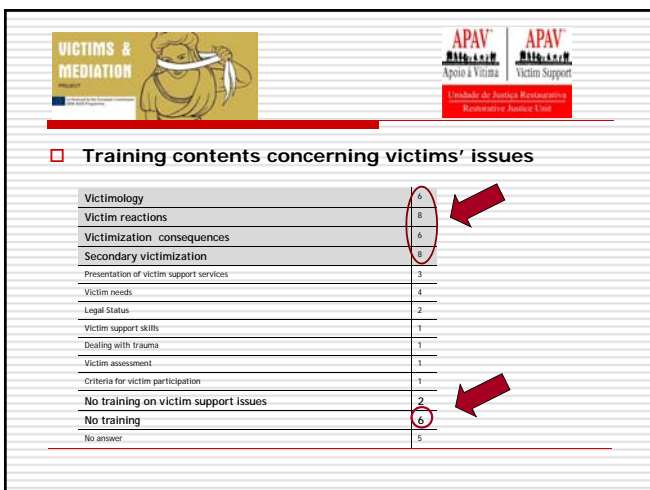
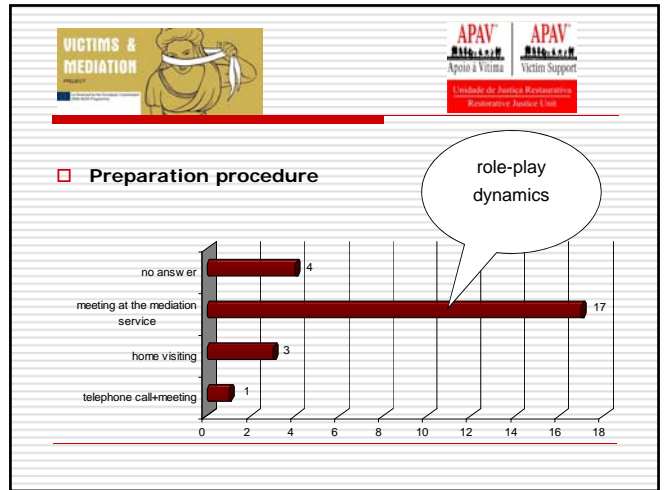
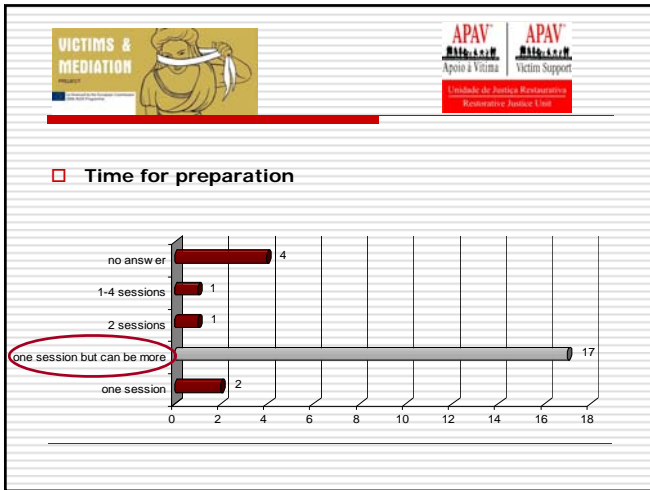
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**Information or reference to other advice or victim support services**


yes	10
Yes, about legal advice	1
No	7
No, unless necessary	1
Others do it	4
No answer	2

**Information package**



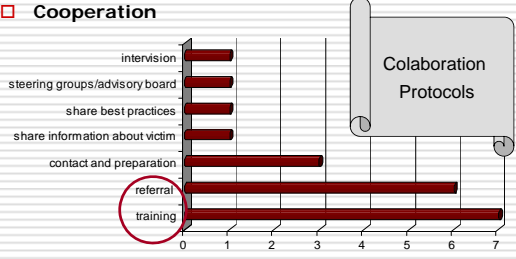








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**Cooperation**



Activity	Frequency (0-7)
intervention	1
steering groups/advisory board	1
share best practices	1
share information about victim	1
contact and preparation	3
referral	6
training	7







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**Clues for debate**

- Is it (already) possible to standardize some procedures and practices related to the participation of victims in RJ schemes? If yes, to what extent?
  
- Is RJ using a narrow, stereotyped and “ideal” concept of victim - *a vulnerable, respectable and blameless individual who has suffered at the hands of an anonymous and comparatively powerful individual?* If yes, can RJ broaden the concept and deal with specific types of victimization, like “non-stranger” victims, “representative” victims, “culpable” victims or corporate victims for example, and adopt specific standard procedures?





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**Clues for debate**

- In what ways shall RJ services and Victim Support services cooperate?
  
- Are all the less positive findings mentioned above due to design and implementation problems, or some of them result from inevitable limits, that cannot be solved by improvements in training and practice - *limits on offenders' interest in repairing the harm and limits on victims' capacity to see offenders in a positive light (Daly)?*





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**Workshop notes by Martin McNeese**

Restorative Justice has proven beneficial for victims on a national and transnational basis because:

- a) Mediation can provide answers to victims questions.
- b) It can give a avenue for an apology from the offender to the victim and/or the victims family which can be of value to the victim(s) and their families.
- c) RJ can break down stereotypes.
- d) Following mediation the victim can feel less frightened of being re-victimized.

On the other hand, research has also pointed to some negative aspects concerning victim involvement.

Suggested practices:

- Provide support and representation.
- Give a minimum of three weeks for parties to decide if they want to participate.

Ensure professional training for mediators.

- Extend an option for direct and indirect mediation.

It is of utmost importance to prevent a second victimization during a VOM.

You should role-play the dynamics of a VOM with the victim to ensure that the victim is emotionally and mentally prepared for the mediation session.

***Knowledge management in the justice department of Catalonia's public administration***

Presented by: Pilar Fuertes (Spain)

Chair: Ian McDonough (U.K.)

In our knowledge and information society, the more developed organizations attach importance to continuous progress, efficiency in the use of resources and individual and corporate learning. We also learn in the course of cooperating with colleagues in the same situation. Through this interaction, people and organizations turn knowledge from individual to corporate, and in that way, we build the knowledge basis of the organization. Therefore, our the model develops learning and cooperation habits, which will be crucial for organizational change.

The Sharing Program is an idea of Justice Department, through the Center for Legal Studies and Specialist Training, in order to create fields of co-operational work. Improvement comes from new ideas, good practice and common thinking about issues that are continuously discussed. The Sharing Program is intended for every worker at the Justice Department. It is structured through the different professional groups wishing to work on toward the improvement of their daily work.

Every professional group (practice community) has to pick an issue to be improved. Cooperational work is done through meetings in which small groups of motivated and committed people submit new perspectives and solutions. These meetings are complemented with on-line work encouraging communication. A coordinator (e-moderator) is available for help as well as external experts for guidance through the process. When this shared worked is over, a good practice meeting for the whole group is held to improve the job done.

Working groups wishing to work on-line and use what has been previously elaborated in the meetings may use the platform e-Catalonia. Co-operational work tools are available to discuss working experiences, debate on specific questions, and create shared documents (wiki), publish pictures of the activity, and organize an agenda. A digital file is made available to publish all contents and documents generated by every community. At the present, the project involves, by a blended methodology, 20 practice community and 1.200 employees in motion.

*Pilar Fuertes is a psychologist. Since 2001 she has worked as a victim-offender mediator within Juvenile Justice.*

*During this year, she has started one of these projects, in an "enthusiastic" group to study victims' profiles and their role in the course of victim-offender mediation.*

**Workshop notes by Seda Kalem**

Pilar Fuertes stated that the interest in Knowledge Management (KM) Theory stems from its new implementation in the public administration of Catalonia, specifically in the Justice Department, through the Centre for Legal Studies and Specialist Training, with the name of "Let's share programme" and from the change of paradigm that considers knowledge (K) by interaction. Pilar Fuertes stated that KM seeks to understand the way in which knowledge is identified, acquired, organised, created, used, represented, shared, stored and distributed among all the workers within an organization. The idea of considering people and knowledge as the key to revitalizing organizations is considered to be the basic idea in KM. Also the idea that we learn when we share in cooperation with colleagues constitutes another basic feature of KM.

Pilar Fuertes also explained that choosing the title "Let's share programme" is not coincidental and that it is because we don't use the word "share" nearly as much as we should. The idea is

that the existing knowledge resides exclusively in the minds of professionals who have created it on the basis of their own daily procedures, and who are not used to sharing it with the rest of the team. For this programme, what is called a practice community made up of a group of enthusiastic people "who are up for doing the job" is created. The chosen strategy is to select an issue which could offer positive results quickly enough to offer positive feedback. The group identifies the person who coordinates the project (e-moderator) and distributes the knowledge generated, by chair debates, both in real and virtual environments. The participation of an external expert introduces and consolidates discussion methods for creating and capturing knowledge. In the workshops on best practices, scheduled at the end of each stage, the entire professional team share all available new knowledge.

Pilar Fuertes then elaborated some of the features of the relation between KM and mediation. She stated that as mediators, we use KM because we want to return responsibility, to empower, the various parties. Another similarity is the voluntary nature of it. In this programme, employees wonder and try to search their own solutions so they learn to look for what they want to improve in their daily work. They are responsible for their learning, they create it and, because of this, they are able to assimilate. It is not mediation, but there is a mediator philosophy. During this process, the e-moderator negotiates between the interests of the Practice Community, the administration and the employees' supervisor trying to find their common interests.

Pilar Fuertes listed the benefits of the project as such:

- to extract high-quality knowledge that comes from individual practice,
- to facilitate collaborative work to do a better job or to find solutions for daily work problems,
- and to improve the quality of this process so that the rest of the team can take advantage of it.

On the other hand, the main difficulties for KM are stated our lack of information technologies (I.T.) culture, the habit of working alone, fear of third party opinion, and lack of time in daily work, stressful enough in itself. In many cases, there is resistance on the part of direct supervisors to facilitating time to study an activity without clear results.

At the end of her presentation, Pilar raised the following questions:

- Is it possible to overcome these difficulties?
- Are these real difficulties or just challenges?
- Is this way of learning really better than others or, as many times happen, does the project begin but never finish?

## Discussion

In response to a question raised about the concrete application of KM in case of mediators (if mediators are actually involved in the KM project), Pilar Fuertes explained that the system is very new (it began in mediation last year) and that they are now at the stage of trying to find out what they really want to know. Pilar Fuertes stated that they did not know if victims were satisfied with their service so they did a survey. When the mediation procedure was finished, they did a phone interview with victims about their level of satisfaction. The results of this survey are used for inside evaluations; they are not for publication. Upon a question regarding the availability of the service for people outside Catalonia, Pilar stated that it is not possible at the moment and that all the available tools are at the moment only for the community.

*Developing evaluation protocols for the Mediation-Reparation programme in Catalonia (Spain)*

Presented by: Mariona Jimenez Garcia and Mercé Llenas Herbera (Spain)

Chair: Simon Green (UK)

Since 1998, The Justice Department of Autonomous Government of Catalonia has developed the Mediation-Reparation Programme in the adults' jurisdiction.

During this time the number of applications to start up a mediation process has increased from 10 requirements in 1998 to 793 requirements in 2007. That means that judges and lawyers have been increasingly considering the use of mediation in criminal matters and its benefits.

The programme is primarily shaped by the restorative justice principles which in essence argue that the offending behaviour cannot simply be considered in its legal dimension as a violation of the law and as such, 'an offence against the State'. The people involved in what happened and affected by the acts must be recognised a central role in the process. Any intervention aiming to deal with an alleged criminal act and its aftermath should allow the possibility for the people involved to take an active role and should foresee the necessary support and assistance for these people to be able to effectively realise such proactive participation.

Free and informed 'participation' becomes therefore a critical element of the process which is primarily aimed to provide room for quality communication between the parties. 'Participation' and 'communication' are seen as the pillars of the process where empowerment, recognition and responsibility take place as well as reparation and eventually an agreement. In short, the programme is process-driven and seeks to achieve a restorative outcome.

An agreement can include any content the parties agree to as far as it is within the margins of the law, it will therefore be 'made-to-measure' to the needs and possibilities of the parties involved.

As mentioned earlier, there is not an explicit legal base for restorative justice practices with adults in Spain. As will be described below, different legal entry doors which can be used to recognise a positive legal effect to the outcome of a mediation process, have been identified in each stage of the criminal procedure (pre-trial, trial and execution of the sentence). As a consequence there is a priori no legal prohibition for the Mediation-Reparation Programme to deal with any criminal offence. There is only one a priori restriction by law which concerns the offences qualified as 'gender violence'. In these cases the mediation process can only be started with an explicit authorisation by the judicial authority dealing with the case.

The Mediation-Reparation Programme is a public service, free of charge, voluntary and confidential. It holds a complementary position vis-à-vis the criminal justice system.

Other characteristics of the programme are:

- Defence counsels can be involved
- It holds a neutral approach recognising to both, victim and offender, an equal role in the process which aims to promote the offender engagement for the reparation of the damage.
- To this end, to assist the offender in taking responsibility by listening to the victim and adopting a proactive attitude towards the reparation of the harm is also important.

### *Protocols*

Collaboration protocols among the programme and the judicial authorities of certain courts were drafted last year with the support of the Department of Justice from Autonomous Government of Catalonia. They have been implemented in December 2007.

The applicability and outcomes of these protocols is going to be evaluated this June 2008.

The introduction of these protocols was made on an individual basis contacting the judges and prosecutors that had showed an interest or are referring cases to mediation.

In March 13<sup>th</sup> a workshop was organised in the 'Centre d'Estudis Jurídics i Formació especialitzada' as a means to introduce the programme to the judges in a more formal setting. A DVD showing a mediation process simulation was used to show, how the mediators actually work in practice. This proved to be a highly useful tool to educate and inform judges and prosecutors about what actually happens during a mediation process.

#### *Procedural moment and judicial repercussions:*

##### 1. Prosecution level ( before a trial or a court hearing)

This stage of the process is shaped by the constitutional principle of presumption of innocence thus the following are the requirements to be met:

The offender ought to know the consequences of his or her crime.

The offender has to know the mediation's legal benefits.

The participation is voluntary.

The judge can use it as:

Generic mitigating circumstance: Art. 21.5, Penal Code.

Specific mitigating circumstance: Art. 340, Penal Code.

Presently, different courts give a different legal recognition to the outcome of a mediation process ranging from the simple dismissal, waiving prosecution or a judicial decision declaring the innocence of the accused.

##### 2. Court Level (either the pre-trial or sentencing stages)

At this stage of the criminal process which includes the steps preliminary to the hearing and the hearing of the trial itself, a positive outcome of a mediation process can serve as one of the requirements established by law to

- Suspend the execution of the prison sentence: Art. 83.1.5, penal Code.
- Replace a prison sentence by a less severe sentence (fine, community work..): Art. 88, Penal Code.

The collaboration of the head of the Public Prosecution office of the judicial district with the programme is necessary since. The appreciation of a mediation agreement as a requirement to grant one of the legal benefits mentioned above must count on the prosecutor's consent.

##### 3. Execution of the sentence:

At this stage, the mediation process can be used to:

- Improve the conditions in which the sentenced person is serving the prison sentence. This often includes wider possibilities for one day or weekend parole or a less severe regime in the prison. Art. 72.5, Penitentiary Organic general Law.
- Anticipate probation. Art. 90, Penal Code.

- As an argument to request pardon.

Bearing in mind that Spain there is still not an explicit legal base for restorative justice practices in the field of adults. The establishment of protocols among the judicial authorities and the Mediation-Reparation Programme aims to provide a background to the existing practice but also to serve as a basis for the potential drafting of a bill introducing restorative justice in the Spanish criminal law.

#### *Phases of the mediation process*

##### 1. Request.

A mediation process can be applied for by:

- Judge/ Court.
- Parties: victim or offender.
- Legal counselors: Lawyers.
- Others services: Professionals of Penitentiary Centre, Victim Assistance Service, etc.

##### 2. Intake and registrations

The mediation request arrives at the service. The administrative assistant has to record the application form according to the administrative law requirements and a file is opened. The mediator can only start his/her work once this is done.

##### 3. Contacts with the parties.

The team contacts with the parties involved in the crime/conflict, namely the offender/s, victims, family, lawyers and other professionals who may have been involved. A first individual interview is organised.

##### 4. Interviews.

First of all, the mediator has an individual interview with the parties. Generally, the professional begin with the offender/s and then with the victim/s in order to study the viability of the case.

The individual's interviews objectives are the followings:

- Gain a comprehensive picture of the crime and/or conflict, the 'history', the consequences as well as the actual parties involved.
- Define the most appropriate way to repair and to be repaired.
- Assess the suitability of an indirect or a direct process, namely whether a face-to-face meeting can be organised for the sake of the best management of the case. This includes first and foremost to explore their readiness to participate as well as whether the meeting may have positive effects.

##### 5. Assessment of the viability of the process.

Restorative Justice suggests three basic before victim-offender mediation can be use:

- The offender must accept or not deny responsibility for the crime.
- Both the victim and the offender must be willing to participate.
- Both the victim and the offender must consider if it's safe to be involved in the process.

Our model adopts these requirements and incorporates moreover the following requirements:

Crime victim	Offender
<ul style="list-style-type: none"> <li>- Free and informed consent.</li> <li>- Cognitive and behavioural capacity to understand the process.</li> <li>- Active participation: readiness to search for a positive outcome to the conflict.</li> <li>- Be willing and prepared to 'be restored' by means of a specific action by the offender (payment, work...) apologies...</li> </ul>	<ul style="list-style-type: none"> <li>- Free and informed consent.</li> <li>- Cognitive and behavioural capacity to understand the process.</li> <li>- Active participation: readiness and active involvement in the search for a positive outcome of the conflict.</li> <li>- Acknowledge his/her responsibility for what happened.</li> <li>- Ability to understand the impact of his/her behaviour in the victim.</li> <li>- Willingness to apologise and make amends.</li> </ul>

Once the parts have agreed to take part in the process, we report on to the corresponding court that a mediation process has started.

#### 6. Mediation: face-to-face or indirect.

When the direct contact between the victim and offender is possible, it is not uncommon for one or both of them to be accompanied by a lawyer or supporter although they will not necessarily be physically present during the mediation sessions in order to secure privacy and the ensuring that the victim has the central role in the discussions.

The decision to opt for an indirect mediation process is primarily based on the following reasons:

- Victims or offenders are not willing to meet.
- According to the information provided by the parties directly involved as well as by other professionals that may have been contacted by the mediator, a direct encounter cannot contribute to a positive management of the conflict-crime and/or can even cause further damage to the victim or the offender.
- Difficulties about time or space (lack of availability of one of the parties or place of residence is in a different autonomous community or country).

#### *Typology of agreements:*

- Moral or relational content: apologies, commitments for the future relationship, acknowledgment of the offender behaviour, explanation of the motives for the offending behaviour, recognition of the harm caused and understanding of the consequences ensuing from it on the victim.
- Economic content: economic compensation for the damages caused, restitution of the 'object' or equivalent.
- Activity: commitment to perform an activity in favour of the victim.

#### 7. Finalisation.

The process is completed when:

- The parties have reached to an agreement which entails a satisfactory closure for all of them.

- The harm caused has been repaired.
  - One of the parties is not willing to continue.
  - The mediator assesses that the mediation process is not being favourable and cannot provide a constructive approach to the aftermath of the given crime/conflict. This decision is based on different reasons amongst which the difficulty to build a positive communication between the parties or the detection of a potential damage.
  - When the mediator thinks the process is blocked and there's no positive communication.
8. Report on to the judicial authority.

The mediator writes a brief report to the judge or prosecutor to inform about the outcome of the mediation process and sketch which have been the actions carried out along the mediation process (individual interviews, meeting among the parties, meetings with other professionals or agencies previously in contact with the parties). Nevertheless, the content of the sessions is not revealed. When an agreement has not been reached, the reasons for that are not provided.

*Mariona Jiménez García, university degree of Sociology of the Universitat Autònoma de Barcelona and European master of intermediterranea mediation of the Universitat Autònoma de Barcelona, Universitat Ca'Foscari de Venecia and the Universitat Paul Valery de Montpellier. She has worked in the city council of Tàrrega in the department of equality policies. Since 2006 she is working in the Penal Mediation Programme of the Department of Justice.*

*Mercè Llenas Herbera, university degree of contemporanea history of the University of Barcelona, masters of management of conflicts: mediation, of the Fundació Bosch Gimpera Universitat de Barcelona. She has worked as a community mediator in the city council of Granollers and the local advice of the city La Selva, both in Barcelona. Since 2006 she is working in the Penal Mediation Programme of the Justice Department.*

#### Discussion (Notes by Daniela Bolivar)

Two main topics were discussed in this workshop. The first one was the relationship between researchers and practitioners and the second one was the outcome evaluation in restorative justice. With regard to the first issue, one of the questions discussed was whether a researcher can be a better 'mirror' than other mediators, in the sense of being useful to reflect on the day-to-day practice. One of the speakers replied it is positive to count on different kinds of 'mirrors' but a researcher can be especially relevant when the mediator can not count on others colleagues - frequent situation in pilot projects. The introduction of a researcher seems to be fundamental as a way to help the mediator in his/her task of being aware of his/her own bias. Other important elements to achieve this task successfully are the possibility of working with a co-mediator and having constant supervision.

In relation to the second issue, one of the questions was how can a good practice be defined. In other words, how can a program be evaluated - base on which criteria - and how can statistics help to build social policies. In the case of the Catalanian program, one of their objectives has been the involvement of judges in the program. For these mediators, what judges think about the program has become an important criterion. According to the discussion, there are two kinds of outcomes which can be evaluated: quantitative and qualitative outcomes. For example, it is possible to evaluate a program according to the number of agreements reached. However, agreement is not equivalent to success, because parties can improve their relationship during mediation even when they did not reach an agreement. Therefore, to determinate the degree of successfulness of a program seems to be a qualitative question. Finally, the scenario is more complicated when the organization is looking for a specific kind of result and the researcher is not completely independent.

***Cooperation between policymakers and practitioners in providing VOM in Basque country- the experience of the first 50 cases***

**Presented by:** Xabier Etxebarria and Alberto Olalde (Spain)

**Chair:** Eleonore Lind (Sweden)

In July 2007, a victim-offender mediation service was opened in the Palace of Justice (Law Courts) in Barakaldo, a medium sized city near Bilbao. Some months later, in October, another service was opened in the city of Vitoria-Gasteiz (capital of the Basque Country). The Victim Offender Mediation Services are a governmental initiative taken by the Direction of Penal Enforcement of the Department of Justice of the Basque Government. GEUZ, the Conflict Transformation University Centre, is the organization in charge of the daily operation of the service in Barakaldo.

It is a free service for the local population, located in the Palace of Justice. On the same floor there are other complementary and assistance services developed by the Basque Government in the field of Justice like the service for assistance to victims, the service for assistance to offenders, and the service for social reinsertion for convicts.

The cases are transferred to the service after the decision of judicial agents (judges principally) and as a voluntary process for victims and offenders. The whole process is under the control of judges, prosecutors and lawyers, guaranteeing the rights of the parties and the public interest.

For the Department of Justice of the Basque Government an important objective has been to promote a better and humanized justice, and to facilitate communication, negotiation and dialogue. The need to create this service is in accordance with the Framework Decision of the European Union of 15<sup>th</sup> of March 2001 with respect to the position of victims in criminal proceedings.

Objectives of this workshop:

- Be informed on the main principles of the judiciary protocol of the Department of Justice of Basque Government to develop an agreement that make possible the mediation for judges, judiciary clerks, prosecutors, lawyers and mediators.
- Understand the main principles, objectives and tasks of the VOM service in Barakaldo and Vitoria-Gasteiz.
- Be informed on some important outcomes of the first 50 cases.

*Xabier Etxebarria Zarrabeitia is Director of Penal Enforcement, Department of Justice, Basque Government. He is also a Former Lecturer in Criminal Law.*

*Alberto Olalde Altarejos is a social worker and criminologist, University of Basque country. He is a European Master in Mediation, Institut Universitaire "Kurt Bösch" of Sion, Switzerland. He received a "Jean Pinatel" Award to the best research in criminological matters of the Basque Institute of Criminology in 1999. He is a founding member of the European Forum. Nowadays, he is a consultant and trainer in GEUZ –University Centre for Conflict Transformation– and mediator in penal matters at the Justice Palace of Barakaldo.*

**Workshop notes by Daniela Bolivar**

The speakers presented the mediation program in the Basque Country, which is a governmental initiative taken by the Direction of Penal Enforcement of the Department of Justice. There are two organizations in charge of the execution of the mediation program, GEUZ (Conflict Transformation University Center) and IRSE (Institute for Social Reintegration in Basque Country).

Regarding the political framework, the Basque country does not have any specific legislation on restorative justice. However, the Basque government has the will to promote restorative

practices. In fact, it became a member of the European Forum on Restorative Justice and it is especially aware of the importance of integrating research and practice.

Mediation is offered in two cities of the Basque country, Barakaldo and Vitoria. It is a free service and its political aims are both to promote better and humanize justice, and to facilitate communication, negotiation and dialogue between the victim and the offender in order to resolve their conflict. This service was created in accordance with the framework decision of the EU.

So far, the mediation service in Barakaldo has received 67 cases and Vitoria, 47. These cases are referred mainly by judges. After a case is referred, mediators contact the parties by a letter and then by telephone. In 66% of cases referred, the process of mediation has been initiated. Among them, 49% have participated in a direct encounter. The other 51% decided to continue an indirect dialogue. With regard to the outcomes, 78% of the cases reached an agreement. The types of agreement reached were formal apologies (100%), therapeutic treatment (38%), financial compensation (34%), community services (10%) and writing reflection (10%) which implies a report on what was discussed during the meeting such as experiences and feelings.

In relation to the cases referred, 56% were crimes and 44% misdemeanours. In addition to that, speakers pointed out the importance of including external research in their practice. In their experience, a research made by Gema Varona provided an important input. Using qualitative methodology, this research evaluated satisfaction of victims and offenders, and included interviews with victims, offenders, policymakers, judges, prosecutors and mediators. Among its results, the study showed both a positive evaluation of participants regarding to the process of mediation and the fact that a positive coordination with judicial agents may ensure better outcomes.

*Discussion (two presentations: Etxebarria/Olalde and Ketil Leth-Olsen (Norway): Conferencing with young offenders in Norway: cooperation between policymakers and practitioners)*

The discussion of this workshop was focused on different aspects of the mediation and conferencing practice. One question was related to the idea of how a restorative justice practice can be developed in the absence of specific legislation. In the case of Spain, the mediation program has been relied on the norm '*reparation of the victim's harm*'. This norm has been used by judges when referring cases.

In relation to community services as a possible outcome, it was mentioned that this can be a possible agreement in mediation. This means that in a certain number of cases (10%), the victim has wished and accepted that the reparation action were oriented to the community instead of him/her self.

In the case of Norway, the offender may participate in psychological or addiction treatments. In these cases, a follow-up of 6-12 months follows the conference, always in collaboration with other services.

In addition there was further discussion whether and to what extent community service may be a way to repair victim's harm. One of the assistants was not sure this type of outcome would be really reparatory. Mediators pointed out that victim's voluntary participation is fundamental and, therefore, the outcome is always the result of a dialogue process.

Another important issue was related to the idea of participation of specific professions, such as social workers and lawyers. According to the Norwegian experience, social workers have an important role in the follow-up. As concerns lawyers, they do not participate in the process of conferencing.

The workshop closed discussing how the approach to the victims' needs should be managed. On this issue, two ideas were mentioned: firstly, victims must not be pushed to participate. The mediator has to play the role of being an informant. The preparative work is also fundamental in

orienting the victim. Secondly, it seems to be important to respect victim's timing which tends to be longer the more serious is the crime.

***International cooperation and its impact on RJ policies in Italy***

**Presented by:** Elisabetta Ciuffo and Isabella Mastropasqua (Italy)

**Chair:** Sonia Sousa Pereira (Portugal)

The workshop suggests some observations about the duties of penal mediation and its use within the penal juvenile context. It will show moreover the experience of the International Seminars of comparison among normative practices implemented in different countries, organized in Italy during the year 2007 by the Department for Juvenile Justice. The Seminars hosted: Michèle Guillaume-Hofnung (Institute of mediation, Paris), Siri Kemény (National Mediation Service of Oslo), Mark Umbreit (Centre for Restorative Justice and Peacemaking, Minnesota) and Roberto Gimeno Vidal (professional mediators within the "Program for supporting juvenile delinquency prevention", Catalonia).

Some differences between the Italian model and others' are taken in account: for example the absence of a specific law on penal mediation in Italy and the point of view on the matter proposed by Michèle Guillaume-Hofnung. She noted that the absence of a law on mediation can be a strength, making it possible to learn from the experiences of others and take advantage of this knowledge. In this sense she points to evidence from countries like France where the development of legislation was intended to take into account the need for mediation as expressed by the community.

Another point could be the four days basic training provided in Norway (according to Siri Kemény) in comparison with the long specialization requested in Italy (pro and cons of both the perspectives); and another important point to be considered could be the different role of the victim- namely his/her more or less active participation within different cultures.

*Elisabetta Ciuffo, psychologist from the Study, Research and International Activities Board of JJD, has been involved in a number of research projects concerning juveniles at risk, both at national and international level. She has been monitoring ongoing activities on VOM within the Italian Juvenile Justice System.*

*Isabella Mastropasqua is Senior Executive at the Study, Research and International Activities Board of the Department for Juvenile Justice. She wrote several papers on youngsters deviancy and disease. She held university teaching at the Universities of Messina, Palermo and Genoa. She is currently teaching at the University of Rome "Roma Tre".*

**Discussion (Notes by Isabella Pirolo)**

The discussion first focused on the necessary number of mediators in the proceedings. It was underlined that the Italian tradition of having always two professionals is considered an example of co-mediation. In Spain, only in particular cases a co-mediation procedure takes place. There is one main problem: are two mediators really able to guarantee neutrality or will it be better to have just one in order to make the victim feel more comfortable? And in doing so, is it possible to guarantee neutrality? One participant mentioned that in Norway more importance is put on establishing trust in the mediator than in asserting his or her neutrality. In Italy the mediators work always in pairs, at first they listen to the story of the victim and then they listen to the one of the offender. In the course of the training mediators are taught how to be neutral. There are some EU guidelines, but the emphasis is on personal skills. It was further discussed what could be learned during the training and which personal characteristics are required, such as capacity of empathy and listening to people. Is it possible at all to 'train' personal abilities? One of the

participant underlined that we all have abilities and disabilities and the most important thing is to understand in which kind of circumstances a person could develop his/her skills. Another central issue related to the question whether professional mediators are necessary or not. In Portugal, mediators are professional, the training included also knowledge of criminal procedures. In Canada, nowadays there are only professional mediators because untrained people are not recognised and it is considered fundamental that mediators know exactly what they are doing. Still it is not easy to decide which way is indeed the best.

*The Catalan White Book on Mediation and Conflict Resolution: State of the Art (involving Policy Makers)*

Presented by: Pompeu Casanovas and Jaume Martín

Chair: Marta Ferrer (Spain)

This workshop focused on “how Restorative Justice finds its way into contemporary societies” (Aertsen, 2006). Recently, the Catalan Government has made a statute on Family Mediation. The main idea is drafting a general statute on mediation and conflict resolution, with the participation of all the actors involved in the field. To implement it, the Department of Justice prepared a White Book on Mediation and Conflict Resolution, which covers all areas and types of conflicts in Catalonia (Spain) - commerce, community, administration, ecology, education,... and restorative justice. This Project will be carried out by specialized research teams from different Universities and the Department of Justice.

The presenters have discussed the general project of the White Book, focusing especially on the issue of Restorative Justice.

*Pompeu Casanovas is Professor of Philosophy of Law at the Autonomous University of Barcelona (UAB, Faculty of Law); Director of Advanced Research (ACQU), Consultant of Artificial Intelligence and Law at the Universitat Oberta de Catalunya (UOC); and Director of the UAB Institute of Law and Technology (<http://idt.uab.cat>). He is the General Editor of the Research Series /La Razón// Aurea/ (Editorial Comares, Spain).*

*Jaume Martin is a social educator and has a social sciences diploma at the Institut Catòlic d'Estudis Socials de Barcelona, (ICESB). Since 1982, he works at the Department of Justice of Catalonia developing successively the functions of educator on community sanctions, of adviser and expert, responsible for international relationships of the Secretary of Penitentiary Services, Rehabilitation and Juvenile Justice. He has been a member of the boards of the European Conference of Probation from 2001/2007 and is, since October 2002, a member of the European Forum for Restorative Justice. He is also a co-ordinator or member of working groups in studies, inquiries and researches about: the psychosocial consultancy to the judiciary, victim-offender mediation, the execution of sanctions and measures in the community, the inquiry into youth and citizen security, into juvenile cultures and the violence.*

# The Project of White Catalan Book on Mediation and Conflict Resolution (2008-2009)

Jaume Martín Barberan  
Departament de Justícia Generalitat de Catalunya  
Pompeu Casanovas  
<http://idt.uab.cat>  
Building Restorative Justice in Europe  
Verona, April 18th 2008

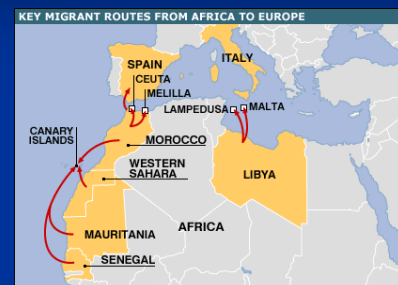
## Summary

- Mediation for a complex society (relational justice)
- The Catalan White Book on Mediation and Conflict Resolution
- From a culture of social change to a culture of control
- From informal control to formal control

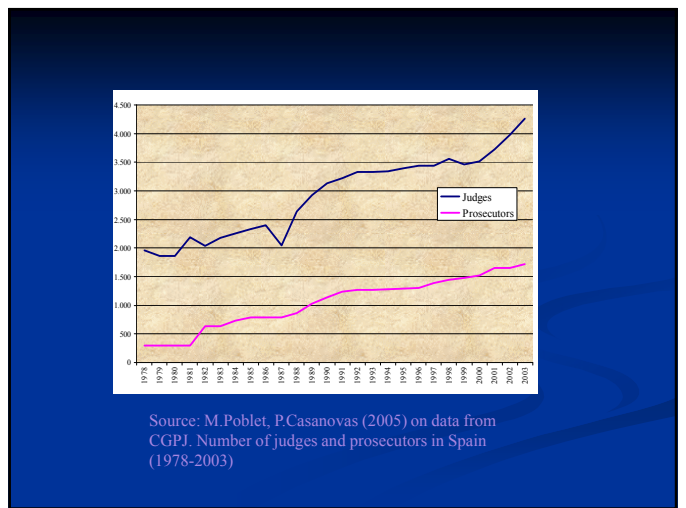
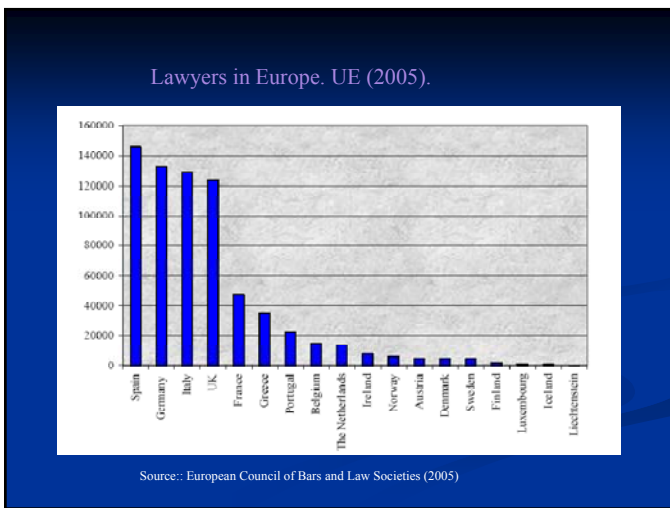
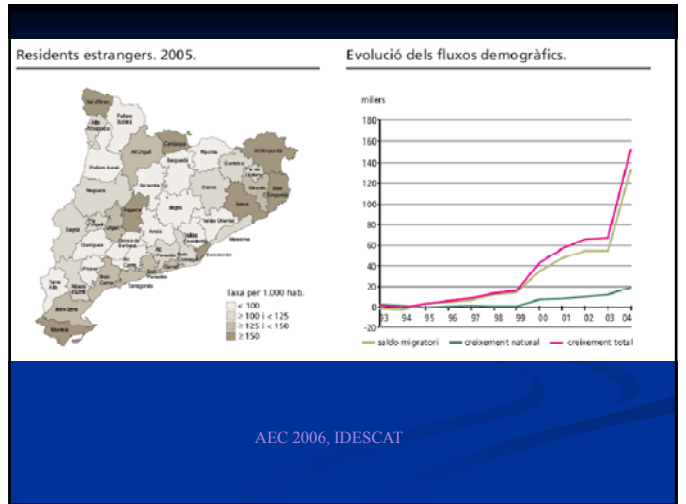
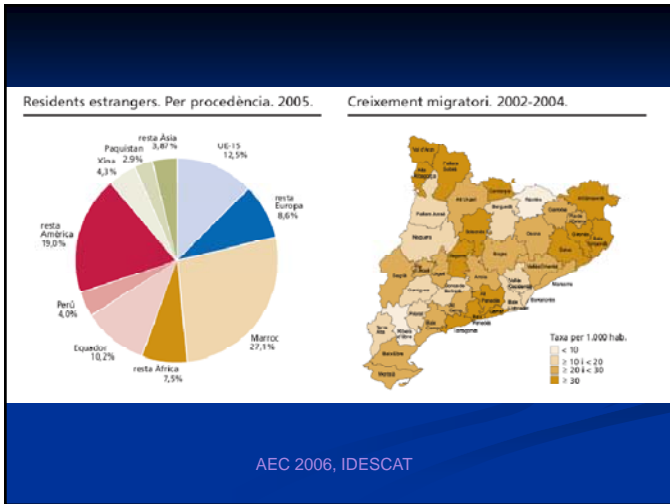
## Some social features (complexity at all levels)

- Demography (immigration flows) and
- Heavy caseloads (Courts, judges, lawyers...) in a
- Hyper-real society (hyper-real justice)

## Migrant routes



[http://newsimg.bbc.co.uk/media/images/42029000/gif\\_42029904\\_africa\\_migrants2\\_map416.gif](http://newsimg.bbc.co.uk/media/images/42029000/gif_42029904_africa_migrants2_map416.gif)  
BBC News, 3<sup>o</sup> nov. 2006



Hyper-real society: camps and victims as aesthetic objects (marketing)



A model wears a creation from the David Delfin Spring/Summer 2008 collection during the Cibeles Madrid International Fashion Week, Madrid. Photo: Bernat Armangue/AP.  
[http://news.bbc.co.uk/1/shared/spl/hi/pop\\_ups/07/in\\_pictures\\_enl\\_119\\_0207007/html/1.stm](http://news.bbc.co.uk/1/shared/spl/hi/pop_ups/07/in_pictures_enl_119_0207007/html/1.stm)

## Assumptions

- Complexity at the demographic, cultural, procedural and symbolic level
- Hierarchical but horizontal relations also among citizens and institutions (public administration, state...)
- Relational justice intertwined with punitive and adjudicative justice (judicial and legal systems)
- Middle-out political and legal strategy for RJ implementation

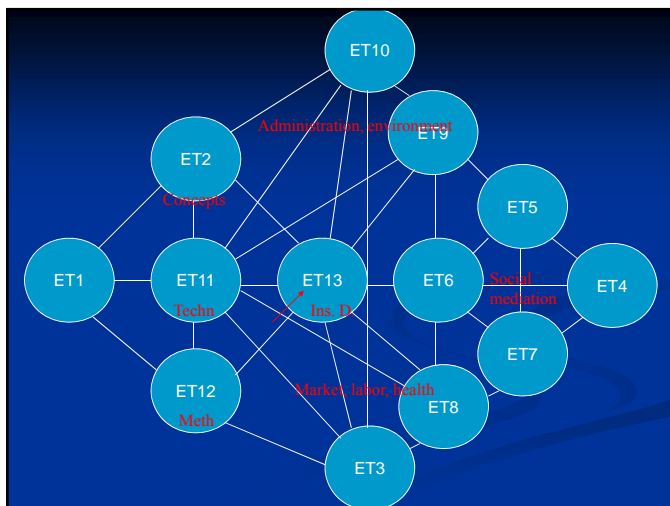
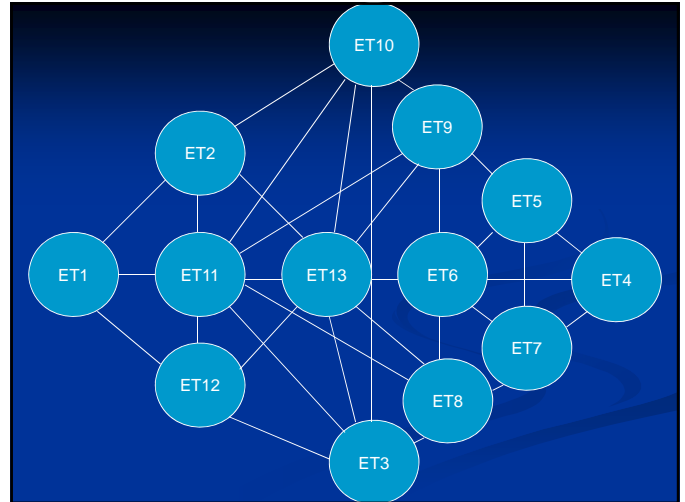
## Ends of the CWB on Mediation

- Knowledge: state of the art, reliable map of the situation in the country, social problems, diagnosis
- Institutional design: legal drafting —*Llei General de Mediació de Catalunya* (Catalan General Statute of Mediation)
- Content: Mediation as professional practice — conditions, profile, fields, practices, links with the judicial system...
- [Budget: 600.000 €]

## Objectives WB

- Analitzar i avaluar el funcionament i mètodes dels mitjans de resolució de conflictes diferents del sistema judicial tradicional (*Alternative Dispute Resolution, ADR*)
- Avaluar el grau d'implantació d'aquests mitjans a Catalunya
- Descriure i avaluar els processos de coordinació dels sistemes de resolució de conflictes amb els tribunals de justícia (àmbits, resultats, etc.)
- Calcular el cost econòmic i els beneficis socials dels ADR
- Identificar quin són els problemes socials específics i els sectors més sensibles a la implantació de la mediació (sector educatiu, hospitalari, problemes culturals derivats de la immigració massiva i la creació de barris conflictius, etc.)
- Elaborar el coneixement i les regles de bones pràctiques necessàries per tal que els agents socials puguin posar en pràctica mecanismes d'ADR.
- Elaborar una sèrie d'indicadors estadístics generals fiables sobre les pràctiques, funcionament i resultats de la mediació a Catalunya (tant pública com privada) per tal d'efectuar-ne la monitorització i seguiment posteriors
- Establir quina part dels procediments d'ADR poden ser desenvolupats online (*Online Dispute Resolution, ODR*), atès que l'ús d'Internet i de la Web 2.0 es imparabile (sobretot entre els més joves) i hi ha sectors —como ara el del comerç electrònic— per als quals l'ODR és imprescindible.
- Cost: 600.000 €

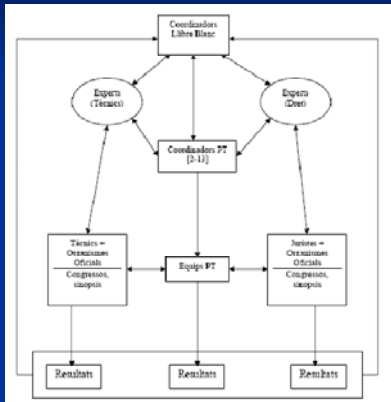
Research Fields	Work Packages (WP)
Direction and Management	WP1
Mediation (concepts, theory, practice, location, comparative studies)	WP2
Commercial, Industrial and labor mediation	WP3
Community Mediation (cities, towns, neighborhoods...)	WP4
Family mediation	WP5
Restorative Justice: juvenile and adult mediation	WP6
School and Education	WP7
Mediation at hospitals and care units	WP8
Environment	WP9
Citizens and Public Administration	WP10
Mediation and technology (ODR)	WP11
Methodology (content, procedures, monitoring, evaluation)	WP12
Law and Institutional Design	WP13



## Taking advantage from existing knowledge and experiences

- Scientific expert knowledge (social scientists, criminologists... but computer scientists, doctors, psychiatrists, teachers as well)
- Technical and professional expert knowledge (mediators, technicians, officers... within the Administration, the market, civil society)
- Citizens (users): individuals, associations, institutions, collectivities...

## CWB WP coordination and participation



## Estudis

- Explotació de dades existents en cada àmbit específic
- Etnografia institucional (treball de camp i coneixement directe sobre el terreny per elaborar dades quantitatives/qualitatives)
- Elaboració de dades i d'indicadors estadístics que puguin ser aprofitats pel seguiment dels estudis i per l'elaboració d'altres estudis posteriors.
- Estudi de casos, experiències concretes, procediments i coneixement pràctic dels professionals públics i privats que operen en el terreny de la mediació
- Estudis dels protocols d'actuació, pràctiques i regulacions (socials i jurídiques) existents
- Estudis sobre la tecnologia aplicable a la resolució de conflictes que pogués resultar útil per a una posterior implementació i utilització pels ciutadans a Catalunya (en cada àmbit)
- Estudis metodològics específics sobre l'àmbit de la mediació

## Deliverables I

- E.1.1. Projecte del Llibre Blanc: elaboració inicial del pressupost i redacció final de les fites i previsions de cada equip participant [mes 1]
- E.1.2. Avaluació de la despesa efectuada i de les fites aconseguides [mes 9]
- E.1.3. Avaluació de la despesa efectuada i de les fites aconseguides [final de projecte]
- E.1.4. Introducció i Capítol de Conclusions del Llibre Blanc [mes 12], amb especificació del grau d'acompliment dels resultats previstos
- E.1.5. Introducció i Capítol de Conclusions del Llibre Blanc [mes 12], amb especificació del grau d'acompliment dels resultats previstos
- E. 2.1. Estat de l'art. Estudi comparatiu de dades, conceptes i estructures de la mediació, per àmbits geopolítics i jurídics [mes 6]
- E.2.2. Anàlisi dels conceptes socials, polítics i jurídics per a la institucionalització de la mediació a Catalunya [mes 9]
- E. 2.3. Capítol 1 del Llibre Blanc (esborrany) [mes 9]
- E. 2.4. Capítol 1 del Llibre Blanc (definitiu), i contribució a les recomanacions finals [mes 12]
- E. 3.1. Estudi de la implantació de la mediació en les empreses i entre les empreses, i la funció de les Cambres de Comerç catalanes [mes 6]
- E. 3.2. Estudi sobre les tasques de mediació efectuades pels despatxos d'advocats, i la funció dels Col·legis d'Advocats de Catalunya [mes 9]
- E. 3.3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 3.4. Capítol 2 del Llibre Blanc (definitiu), i contribució a les recomanacions finals.
- E. 4.1. Estat de l'art. Estudi sobre la mediació comunitària a Catalunya (identificació de serveis, procediments i dades disponibles sobre avaluació de resultats) [mes 6]
- E. 4.2. Estudi de procediments pràctics i prospectiva de la mediació comunitària en funció de la tipologia de conflictivitat social [mes 9]
- E. 4.3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 4.4. Capítol 3 del Llibre Blanc (definitiu), i contribució a les recomanacions finals [mes 12]
- E. 5.1. Estat de l'art. Estudi sobre l'estat de la mediació familiar a Catalunya (casos resolts, àmbits d'aplicació, divorci, incardinació amb els Tribunals de Justícia) [mes 6]
- E. 5.2. Estudi de procediments, pràctics i prospectiva de la mediació familiar: funció dels agents involucrats (tribunals, advocats, serveis, treballadors socials...) [mes 9]

## Deliverables II

- E. 6.1. Estat de l'art. Estudi sobre la mediació penal Catalunya (identificació de serveis per adults, serveis d'atenció a la víctima, procediments i dades disponibles sobre avaluació de resultats), distingint entre prevenció i mediació, a l'interior i exterior dels centres penitenciaris. Estat de la qüestió de la justícia juvenil, amb identificació d'equips i actuacions en l'àmbit local, comarcal i provincial [mes 6]
- E. 6.2. Estudi de procediments pràctics i prospectiva de la mediació juvenil i penal per adults [mes 9]
- E. 6.3. Capítol 1 del Llibre Blanc (esborrany) [mes 9]
- E. 6.4. Capítol 5 del Llibre Blanc (definitiu), i contribució a les Recomanacions Finals [mes 12]
- E. 7.1. Estat de l'art. Estudi sobre la mediació escolar a Catalunya (identificació de professionals, serveis, procediments i dades disponibles sobre avaluació de resultats), amb especial atenció a l'impacte dels fluxos migratoris [mes 6]
- E. 7.2. Estudi de procediments pràctics i prospectiva de la mediació escolar, oferint en la mesura del possible un mapa de la mediació escolar a Catalunya, amb especial atenció als aspectes culturals [mes 9]
- E. 7.3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 7.4. Capítol 6 del Llibre Blanc (definitiu), amb les contribucions a les Recomanacions Finals [mes 12]
- E. 8.1. Estat de l'art. Estudi sobre la mediació en l'àmbit sanitari i hospitalari a Catalunya (identificació de serveis, procediments, tipologies, dinàmiques, protocols, i dades disponibles sobre avaluació de resultats) [mes 6]
- E. 8.2. Estudi de procediments, casos freqüents, i perspectives de futur de la mediació hospitalària [mes 9]
- E. 8.3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 8.4. Capítol 7 del Llibre Blanc (definitiu), i contribució a les Recomanacions Finals [mes 12]
- E. 9.1. Estat de l'art. Estudi sobre la mediació de conflictes ambientals a Catalunya (identificació de serveis, procediments i dades disponibles sobre avaluació de resultats) [mes 6]
- E. 9.2. Estudi de procediments, pràctics, protocols i perspectives de la mediació mediambiental [mes 9]
- E. 9.3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 9.4. Capítol 8 del Llibre Blanc (definitiu), i recomanacions finals [mes 12]

## Deliverables III

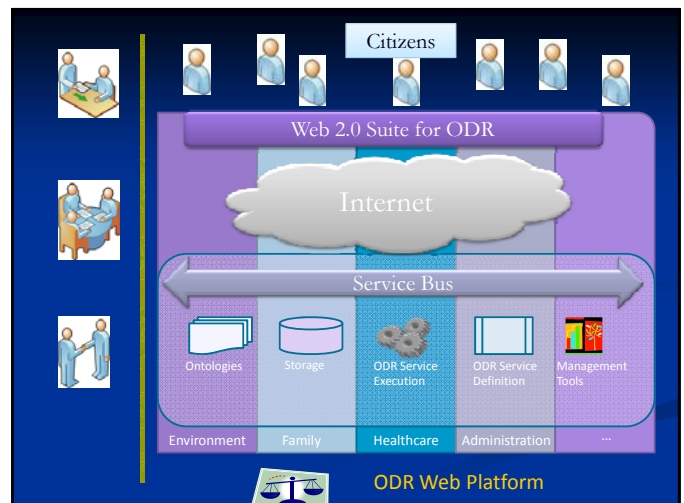
- E. 10.1. Estudi sobre la mediació entre ciutadans i administracions a Catalunya (identificació de serveis, procediments i dades disponibles sobre avaluació de resultats) [mes 6]
- E. 10.2. Estudi de procediments pràctiques i prospectiva de la mediació ciutadà-administració, amb especificació de possibles solucions tecnològiques per facilitar l'accés del ciutadà a la resolució de conflictes [mes 9]
- E. 10.3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 10.4. Capítol 9 del Llibre Blanc (definitiu), i contribució a les Recomanacions Finals [mes 12]
- E. 11.1. Estat de l'art. Informe tècnic sobre mediació, ODR i tecnologia [mes 6]
- E. 11.2. Estudi que inclogui la prospectiva sobre quin tipus d'aplicacions tecnològiques, i amb quina estructura i interfície, podrien ser aplicats per cada sector [mes 9]
- E. 11. 3. Capítol del Llibre Blanc (esborrany) [mes 9]
- E. 11. 4. Capítol 10 del Llibre Blanc (definitiu), i contribució a les Recomanacions Finals [mes 12]
- E. 12.1. Estat de l'art. Standards per a l'elaboració d'indicadors per a l'avaluació de la mediació en els àmbits mercantil, familiar, penal, comunitari, sanitari, escolar, juvenil, mediambiental, administratiu i tecnològic [mes 6]
- E. 12.2. Elaboració d'indicadors per a l'avaluació de la mediació en els àmbits mercantil, familiar, penal, comunitari, sanitari, escolar, juvenil, mediambiental, administratiu i tecnològic, amb especificació d'una guia de protocols de bones pràctiques i procediments aplicables [mes 9]
- E. 12.3. Capítol 11 del Llibre Blanc (esborrany) [mes 9]
- E. 12.4. Capítol 11 del Llibre Blanc (definitiu), amb contribució a les Recomanacions Finals [mes 12]
- E.13. Capítol 12 del Llibre Blanc. Síntesi de Conclusions i Recomanacions Finals

## Expected Results

- Map of social, economic and cultural conflicts in Catalonia
- State of the art of mediation and ADR in all the defined fields (numbers, procedures, needs, practices...)
- Prospective of the evolution of conflicts and mediation
- Guidelines for legal drafting (definition and institutionalization)

## Catalan White Book

- 12 Chapters with the following structure:
- (1) state of the art and definition of the field
- (2) results from surveys, interviews, field and case studies
- (3) detected problems: scenarios and prototypical cases
- (4) elaboration of general and particular indicators for the statistical follow-up (temporal series) and comparison
- (5) Diagnosis and recommended guidelines



## Summary

- Why the White Book is possible?
- Which benefits may bring the White Book Project to the Victim-Offender mediation?
- Previous researches
- ¿Something new?

D. Garland, The Culture of Control, 2001  
indexes of change:

- a) the fall of the rehabilitation ideal;
- b) the re-emergence of the punitive sanctions and the expressive justice;
- c) the changes in the emotional tone of the criminal policy;
- d) the return of the victim;
- e) the concerns about the protection of the public;

(...)

- f) the politization and the new punitive populism;
- g) the re-invention of the prison;
- h) the transformation of the criminological thought;
- i) the expansive infrastructure of the prevention of the offence and the law and order perspective;
- j) the civil society and the commercialization of the control of the offence;
- k) the new styles of management and the practices of work;
- and l) the existence of a sense of crisis that is perpetuated.

## Why the White Book is possible?

- ▶ There is an important growth of ADR practices in different fields that could be co-opted (regulated– institutionalized)
- ▶ It is assumed that these practices have a cultural dimension and announce some transformations in the social habits and in the mechanisms that regulate social interactions
- ▶ There are some persons interested in ADR who are holding strategic places at the institutions and who can influence the decision making processes

## Conclusion

Although the decision making processes of the public powers are usually due to "*Coyunturas*" (circumstantial factors operating in a due moment), sometimes these "*coyunturas*" may become windows of opportunities

Victim-Offender mediation within the White Book project ¿which benefits?

- ▶ Increasing transparency, normalization and recognition of VOM practices
- ▶ Improving the knowledge of citizens about restorative justice principles and practices VOM may contribute to break negative stereotypes (deterministic visions) about delinquency and social control  
(other visions and responses to crime are possible)
- ▶ The effect of "normalization" will be produced as well due to the fact that victim offender mediation will be (in some aspects) evaluated with the same indicators than other practices of ADR

Some comments on the previous researches

**Their nature**

¿When and why?

¿By whom?

Previous researches (Juveniles)

- ▶ Martín J. & Funes, J. "Victim offender mediation in the Juvenile Justice system: experiences of conciliation, reparation and works in the benefit of the community", CEJFE, Barcelona 1992
- ▶ Albà & others, "The programs of mediation: what they think and how the implied parts, live it", UAB, Barcelona, 1993,
- ▶ Martín J. "The Program of Mediation in Catalonia: evaluation study of the program during the year 1992", DGJJ, Barcelona 1994
- ▶ Del Campo, J. Martín, J. Vilà, R. & Vinuesa, R. "Mediation with young immigrants in the juvenile justice system", CEJFE, 2005

## Previous researches (Adults)

- ▶ Dapena, J & Martín, J. "Evaluation of the pilot experience of mediation and reparation in the ordinary penal jurisdiction 1998-1999", CEJFE, 2006
- ▶ Vall, A. & Villanueva, N. The Program of mediation in the ordinary penal jurisdiction: a study about three years and half of experience, CEJFE, 2003
- ▶ Soria, M. A. Guillamat, A. & Armadans, I." Adults penal mediation and recidivism: degree of satisfaction of the victims and the offenders", CEJFE, 2006

## ¿something new?

- ▶ Juveniles and adults altogether
- ▶ Context, processes and results will be object of comparisons across the different periods (focus groups debates, comparing with previous researches..)
- ▶ More means and efforts will be devoted to know what victims and offenders think about VOM (in depth interviews with a significant sample)
- ▶ More efforts to analyze the existing conflicts behind the offence
- ▶ Study of how VOM has influenced or not the final decision of the judges

- Thank you very much!
- Questions? Comments?

**Workshop notes by Marta Ferrer:**

The presenters contextualized the project *Catalan white book on mediation and conflict resolution* in Catalonia and provided information on the background and socio-political circumstances leading to the start of this research. They pointed out some relevant aspects in the penal context, possibly shared by other western countries, which can be considered as not favourable for RJ. Some of the positive aspects that in this case may have been conducive to the undertaking of this research can be certain political circumstances as well as the existence of experiences of mediation in other fields different to the criminal context such as mediation in the present multicultural context in Catalonia and Spain as well as the presence of key people in key places (political, technical), etc.

They also explained the main aims of the project in general (school, community, family mediation) and specifically in the case of VOM.

Everybody agreed also on the fact that the field of penal mediation is the most difficult "to sell" to politicians and also to the public. And that it is even more difficult in the present society of control and security.

Another last reflection was that things are changing very quickly in our society: there is a new context of power, communication and information, lack of continuity in almost everything, etc. and we need to face this new situation with a new perspective: things are not what they used to be.

***Policy decisions in Greece: Introducing mediation as a court order***

**Presented by:** Panagiota Papadopoulou (Greece)

**Chair:** Marta Ferrer (Spain)

In November 2003, there was a shift within the Greek youth justice system towards a more justice-based approach. Act 3189/2003 was established, promoting a) diversion and deinstitutionalisation (see for example the regulation concerning the prosecutor's power to divert the case from court (art.45A Code of Penal Procedure) or the elaboration of non-custodial measures applied to minors by a juvenile court (arts 122 para.1 and 123 para.1 Penal Code)) and b) respect for due process safeguards (see the regulations regarding the abolition of indeterminate sentences (new arts 54 and 127 para.2 Penal Code), the extended right of the minor to lodge an appeal (new art.489 para.1 d Code of Penal Procedure), the increase of both the minimum and the maximum ages over which the juvenile court has jurisdiction (new art.121 Penal Code), and the focus on the gravity of the offence for the determination of the precise treatment of the young offender (art.127 Penal Code)).

Act 3289/2003 is claimed to enrich, in a spirit of continuity, the philosophy of the previous provisions (pedagogical character) of the Greek Penal Code concerning minors in the light of new ideas developed in this field.<sup>1</sup> However, it is clear that under the new regulations, the Greek juvenile justice system departs from an overall welfarist approach and endorses a more justice-oriented perspective.

Victim offender mediation (VOM) was established within this framework. Its integration within the criminal justice system is indicative of the tendency to recognise the minor's rights as well as his/her responsibilities. The Recommendatory Report of the Bill of Act 3189/2003 states for victim offender mediation:

*'victim offender mediation through the intervention of the Probation Service for Juveniles is introduced 'on the model of many foreign policies' as an attempt to bring the offender closer to the victim and to make him/her assume responsibility for his/her action(s)'*

### ***Mediation***

#### ***Pre-trial phase***

When the minor commits a petty offence or a misdemeanour, the prosecutor may refrain from prosecution if he/she believes that such prosecution is not necessary to prevent the minor from committing further offences. Diversion from court may be accompanied by the imposition of one or more educative (or therapeutic) measures, including mediation. Art.45A Code of Penal Procedure, therefore, offers the choice of implementing victim offender mediation through extra-court settlements. In the case that the imposed measure is not successful, the matter is returned to the prosecutor, and charges are pressed.

#### ***Court order***

Mediation as a court order (art.122 para.1 e Penal Code) takes place through the intervention of juvenile probation officers and aims at the minor offering an apology to the victim or repairing the damage caused by his/her act. The measure is imposed after the examination, during the

<sup>1</sup> Spinellis, C.D. & Tsitsoura, A. (date unspecified). *Juvenile Justice in Greece*, available at: [http://www.esc-eurocrim.org/files/juvenile\\_justice\\_in\\_greece.doc](http://www.esc-eurocrim.org/files/juvenile_justice_in_greece.doc), pp.6-7.

hearing of the case, of the genuine intention of the minor to make amends, and always after the consent of the victim.

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

Greece chose to introduce VOM following an integrationist strategy. The new scheme focuses on the role of state officials (rather than the role of the individual or the community) and promotes offender treatment and re-socialisation. The intention is to help the offender accept responsibility and repair the harm done to the victim through state-sponsored intervention.

So it's not a scheme that focuses on what the offender wants, or what the victim wants, or what the community can do and how to restore social justice for what has happened. Rather, it is the role of state officials that is empowered (the role of the prosecutor in the case of mediation through pre-trial diversion, and the role of the juvenile judge in the case of mediation being imposed as an educative order).

#### *Mediation as a court order: advantages*

##### *Protection for due process safeguards, especially presumption of innocence*

The decision (including the reparative requirement) is being made by the juvenile judge, after careful examination of the facts of the case and after deciding that the minor has committed the offence. Legal procedural safeguards are being followed, in contrast to arguments about diversionary and community schemes not respecting offenders' legal rights (in the case for example of panels that do not follow a principled approach, or when they are restricted by their lack of legal knowledge).<sup>2</sup>

##### *VOM can be applied to ex officio prosecuted offences*

There are cases where the prosecutor is mandated to proceed with pressing charges. In these cases, the will of the victim to settle and (therefore) revoke the complaint would not be enough for the termination or the conclusion of prosecution. The existence of VOM as a court order, therefore, leaves room for imposing VOM where diversion from prosecution is not possible.

##### *Some victims may not wish for extra-court settlements*

One cannot ignore the fact that there might be victims that wish to follow a formal procedure as regards their case. The new practice recognises the victim's right to receive an apology and/or reparation within the framework of the penal process.

##### *Intervention entirely embedded in the bodies of the criminal justice system - no need to seek for external funding or referrals*

It is claimed that one of the biggest pitfalls of community-based programmes is the difficulty they almost invariably experience in recruiting and retaining sufficient numbers of referrals to remain viable.<sup>3</sup> In the case where RJ exists completely outside state criminal justice as a parallel system, it will potentially be in competition with the formal system,<sup>4</sup> a fact that will inevitably limit its scope and function. Operating within the formal system, VOM avoids this risk (at least theoretically).

<sup>2</sup> See, for example, Ashworth, A. (2002). Responsibilities, Rights and Restorative Justice, 42(3) *Brit.J.Criminol.*, pp.578-595, p.581.

<sup>3</sup> Dignan, J. (2002). Restorative Justice and the Law: The Case for an Integrated Systemic Approach, in Walgrave, L. (ed.) *Restorative Justice and the Law*. Cullompton: Willan Publishing, pp.168-190, p.179.

<sup>4</sup> Shapland, J. (2003). Restorative Justice and Criminal Justice: Just Responses to Crime? In von Hirsch A., Roberts, J., Bottoms, A.E., Roach, K. & Schiff, M. (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Oxford: Hart Publishing, pp.195-217, p.203.

### *Mediation as a court order: drawbacks*

#### *The contact with the formal system is not avoided*

Restoration takes place within the legal framework. The process still labels and stigmatises the offender and the victim, and the decision is included in the criminal record.

#### *Coerciveness of the process*

Mediation as a court order is viewed as particularly contradictory, especially since the success of the measure is said to depend on the offender's consent and his/her conscious assumption of responsibility.<sup>5</sup> Reparation is seen as a form of punishment (still case law suggests that consent is always sought). The coerciveness of this practice is considered as a central paradox of Act 3189/2003. Instead, it is suggested that the case should be referred by the judge to the probation service for juveniles or to a social service where the outcome of mediation could affect the decision of the court (as it is done in most European states), or victim offender mediation could even take place before the case reached the court, within the framework of an extrajudicial settlement (a practice much exercised in the Scandinavian countries).<sup>6</sup>

However, when RJ programmes operate as a part of the conventional system, a certain degree of coercion cannot be avoided. Restorative justice must confront, acknowledge and negotiate the reality of coercive power which structures and frames criminal justice and state power therein.<sup>7</sup> In any case, 'voluntariness is not a value on its own, but a tool only, to enhance the quality of possible restoration.'<sup>8</sup> Imposed restoration is nevertheless RJ.<sup>9</sup>

#### *Settlement-driven practice*

The process is not valued because of its intention to restore the relationship between the offender and the victim. The focus is mainly on providing compensation to victims, and the conflict itself is in many cases not resolved.<sup>10</sup> It is suggested that the probation officer (mediator) tends to be seen as the money collector and the practice as a financial transaction.<sup>11</sup>

#### *Offender-driven practice*

When integrated, in most cases, mediation has an offender focus.<sup>12</sup> VOM in Greece was introduced within the context of a wider effort to properly re-socialise the offender. The measure seeks to treat the young law-breaker in a more special way, by encouraging the contact between the offender and the victim or the community as a means of preventing the marginalisation of the minor and the continuation of his/her offending behaviour.

#### *Legal, social and cultural tradition*

Besides the pressures on a European level for introducing and implementing mediation schemes within the context of criminal justice systems,<sup>13</sup> the form of introduction was influenced by

<sup>5</sup> Personal communication with Greek juvenile probation officers.

<sup>6</sup> *Ibid.*

<sup>7</sup> Walgrave cited in Crawford, A. (2000). Salient Themes towards a Victim Perspective and the Limitations of Restorative Justice: Some Concluding Comments, in Crawford, A. & Goodey, J. (eds) *Integrating a Victim Perspective within Criminal Justice*. Dartmouth: Ashgate, pp.285-310, p.299.

<sup>8</sup> Walgrave, L. (2003). Imposing Restoration Instead of Inflicting Pain: Reflections on the Judicial Reaction to Crime, in von Hirsch *et al.* (eds), *op. cit.*, pp. 61-78, p.62.

<sup>9</sup> Crawford, A. & Newburn, T. (2003). *Youth Offending and Restorative Justice; Implementing Reform in Youth Justice*. Cullompton: Willan Publishing, p.47.

<sup>10</sup> Personal communication with Greek juvenile probation officers.

<sup>11</sup> *Ibid.*

<sup>12</sup> See, for example, the schemes described in Miers, D. & Willemsens, J. (2004). *Mapping Restorative Justice; Developments in 25 European Countries*. Leuven: European Forum for Victim-Offender Mediation and Restorative Justice v.z.w.

<sup>13</sup> See, for example, the European Council Framework Decision of 15 March 2001 on *the standing of victims in criminal proceedings* (2001/220/JHA, Official Journal L 82 of 22.03.2001), or the Committee of Ministers Recommendation No R (99) 19 on *mediation in penal matters*.

Greece's legal, social and cultural tradition. There are specific reasons explaining Greece's choice of establishing mediation as a court order.

*Civil law tradition: emphasis on the code*

Greece's use of a strongly civil law methodology constitutes the juvenile justice system as a rather inflexible one. The adherence to the principle of legality<sup>14</sup> and the centrality of the Penal Code (in contrast to the centrality of the parties) do not facilitate the implementation of flexible, informal practices. The primacy of codified law binds the judiciary and limits the opportunities for the exercise of innovations.<sup>15</sup> New initiatives can only be implemented if they can find footing in the Criminal Code.

Cases have to fit the regulation, a fact which leaves limited room for the implementation of more personalised forms of conflict resolution. Mediation, as a form of 'relational' and individualised justice is in direct antithesis to the Greek legal system; it involves the resolution of the case by the parties themselves. To this point, mediation was introduced as a sentence in its own right, rather than as a court referral.

*Correctional focus: the formal criminal justice system can help the offender*

In Greece, as in many other countries, criminality is largely treated as a behavioural problem. The intention is to control the social factors of the individual's environment and 'adjust' him/her to society.<sup>16</sup> 'Welfarism' (state) assistance is seen in this case as critical for the reduction of crime.

There is a focus on the role and involvement of state officials (empowerment of prosecutor and judge). In general, RJ in Greece is seen as a tool to correct the offender under the aegis of the formal system.

*Weak community structure: low civic participation. Limited room for community-based schemes*

The underdevelopment and the poorly organised nature of civil society in Greece<sup>17</sup> do not facilitate the implementation of community-based schemes. Such schemes need strong community structure, encouraging community involvement and participation and, unfortunately, this is not the case with Greece. Informal civic activities have indeed started to emerge within the field of social services,<sup>18</sup> a fact, however, that by no means indicates that civil society is strong in Greece. On the other hand, there is lack of financial resources<sup>19</sup> that could support the operation of community-based centres or agencies. There is, therefore, no ground to sustain the implementation of programmes requiring community mobilisation and involvement (yet).

The state and the family are still the institutions implementing social policy in Greece.<sup>20</sup> And informal control pressures are being exercised by the close environment of the minor (that is his/her family and neighbourhood).

<sup>14</sup> Before the establishment of Act 3189/2003, the public prosecutor had no power to refrain from prosecution in the case of *ex officio* matters (except for drug-related offences involving drug addicts).

<sup>15</sup> For a similar legal mentality see France, in Crawford, A. (2000). *Justice de Proximité – The Growth of 'Houses of Justice' and Victim/Offender Mediation in France: A Very Unfrench Legal Response?* 9(1) *Social & Legal Studies*, pp.29-53, p.47.

<sup>16</sup> See Muncie, J. (1999). *Youth and Crime: A Critical Introduction*. London: SAGE, p.112.

<sup>17</sup> Sotiropoulos, D.A. & Karamagioli, E. (2006). *Greek Civil Society: The Long Road to Maturity (2005)*. CIVICUS Civil Society Index Report for Greece: Executive Summary, available at: [http://www.civicus.org/new/media/CSI\\_Greece\\_Executive\\_Summary.pdf](http://www.civicus.org/new/media/CSI_Greece_Executive_Summary.pdf), p.2.

<sup>18</sup> *Ibid.*, pp.2-3.

<sup>19</sup> Personal communication with Greek NGOs and academics.

<sup>20</sup> Tsinganou, I. (2000). The Institution of Family as a Crime Control Mechanism within the Greek Criminal Law, in Kourakis, N.E. (ed.) *Crime Prevention Policy II*. Athens: Ant.N. Sakkoulas, pp.211-232.

*No broad public demand for victim satisfaction, leading to top-down strategies*

There is no broad public demand for a more holistic approach towards victim satisfaction and no major pressures (in the form of social movements) are exercised on the government in order to establish initiatives for the protection and support of victims. There are no victim support schemes in Greece, and only certain non-governmental organisations may offer services (i.e. counselling or physical and psychological treatment) to victims in need.<sup>21</sup> Victims' backing comes mainly from the family.

Whatever the form of the introduction, restorative justice is lagging in Greece. There is no political support for implementing restorative schemes. There exist no guidelines, there is lack of training and lack of social awareness, all resulting in the very limited use of such measures.

*Panagiota Papadopoulou is a lawyer, currently finishing her DPhil at the Sussex Law School, University of Sussex. Her doctoral research focuses on the introduction and development of restorative justice for young offenders in Greece. Other research interests include women offenders, drug-related issues and criminal justice policy in general.*

**Discussion** (on Casanaovas/Martin and Panagiota Papadopoulou) (notes by Marta Ferrer)

Both presentations led the audience to think about which contexts and which factors are better to improve the use of restorative justice. The main questions were: Is the formalisation of the process a good way? Or is it better that practice begins first?

Greece began its experience in the first way (formalising) and Catalonia in the second one (practice).

Everybody agrees that, in any case, one very important thing is political support and also the "social dimension" (context, culture). The idea of key people in key places is also important and is viewed as a crucial aspect.

Another point of agreement was that in case that political support is not clear, the best way for beginning is practice (down-top experiences) because then you have something real to show and to evaluate.

To achieve political support it's important to know what is important for politicians: reduce numbers in courts, be in line with EU and, what more?

It was also regarded as a very good strategy to establish mediation in all fields (family, community, etc.) because that contributes to a change of the culture of dealing with conflicts and of solving problems (more quickly, cheaper and more satisfactory).

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<sup>21</sup> See Spinellis, D. & Spinellis, C.D. (1999). *Criminal Justice systems in Europe and North America: Greece*. Helsinki: HEUNI, p.35.

***Implementing legislative choices in Greece: the case of domestic violence***

**Presented by: Sophia Giovanoglou (Greece)**

**Chair: Angelica Katsadima**

This paper deals with the latest developments in the Greek Criminal Law related to criminalization of intimate violent acts and in particular with the introduction of victim-offender mediation, a restorative practice, in such cases.

Under the criminal law 3500/2006 with the title "Countering intimate violence and other provisions", approved in January 2007, the so-called "criminal mediation" was introduced as a measure which can be imposed by the Prosecutor under certain conditions in cases of intimate violence misdemeanours.

This paper is a critical account of the provisions incorporated in articles 11-14 of the aforementioned Greek Criminal Law, with a particular focus on the allocation of mediation process to the prosecutor, instead of a person specialized in mediation (mediator). It discusses the arguments expressed in favour of or against this provision by policymakers, non-governmental organizations, practitioners, researchers etc. and concludes with the problems which will probably arise throughout the application of the law.

*Sophia Giovanoglou was born in Serres - Greece in 1965. She also worked on a PhD: "Institutional Problems of Ex-offenders' Social Re-integration" (Aristotle 2002). She is a post-doctorate researcher at the Department of Criminal law and Criminology at the Aristotle University. She wrote four papers and two conference presentations related to restorative justice in juvenile criminal cases.*

**Workshop notes by Martin McNeese**

Greek penal law introduced mediation that is now is available for misdemeanours in domestic violence. Counselling and therapeutic programmes is what the law envisions as further assistance to mediation in domestic violence cases.

Sophia Giovanoglou pointed out that when you compare traditional punitive legal means with RJ solutions, you should ask yourself if the prosecutor is a competent agent to act as a mediator since he is supposed to be the guardian of the law. The prosecutor traditionally is a "crime hunter" and not a mediator or nor a reconciler of differences or disputes. The "*principal of legality*" or the "*rule of law*" means that governmental authority is legally exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedures. This clashes with "mediating conflicts" because "mediation" involves a certain degree of consensual flexibility by the offender and the offended and the mediator of the conflict. You cannot pre-establish and publicly disclose everything in a mediation process also due to the parties' right to privacy. The contrast between the "rule of men" and the "rule of law" is found in Plato's and Aristotle's writings. Some people may object to RJ viewing as abandoning the "rule of law" for the "rule of men (or women)". Entrusting a prosecutor to act as a mediator while still being a "crime hunter" and "crime punisher" clearly brings up a conflict of roles but Greek law appears to place this burden on the prosecutor in those situations where mediation is legally permitted.

EU Recommendation Number R(99) 19 provided for mediation in penal matters (IV. 9, V.1 19-21, V.2, 22-24, V.3 25-30). This document is so important to the promotion of RJ in Europe and especially in the Going South program of the European Forum for Restorative Justice that Sophia

Giovanoglou recommended that everyone becomes familiar with it and makes policymakers aware of it.

**'Knots of an Italian inattention' (conceptual obstacles)**

**Presented by:** Anna Sironi and Maurizio Vico (Italy)

**Chair:** Marko Bosnjak (Slovenia)

In Italy there are no institutional initiatives concerning victims (with the exception of some particular situations), and the experiences in community mediation are experimental, and not really formalised. Only recently in Italy some steps concerning victims are developing and new debates are getting deeper. The victim as a social subject expressing needs has almost always been kept in the shade: the right of recouping, but not of help is recognized for victims.

Today the focus is on those victims' needs that cannot be answered by the juridical area by itself, but only in tight connection with the social resources.

The project *Persone OFFese*, in Turin is based on the idea held by a multi professional team to sustain people in their elaboration of trauma and mourning. The aim is to sustain the reparative personal and communitarian skills. The project is articulated into several aspects; a) a window for victims that offers information, reception, listening and accompanying; b) enzyme on a territory to offer formative opportunities and sensitization about the question of victims; c) network of formal and informal presences on the territory able to answer some victims' needs; d) centre of documentation.

Some critical views: There is still a problematic 'knot' in the Italian situation: strategies of damage reduction raise an ideological problem. Resources in this area, and in particular the area or security, refer to a failure of the preventive and repressive system. Objections rise. Do this kind of actions reducing damages for victim and the community not give injustice for granted? Does it not hide the ineffectiveness of the system that should guarantee legality? Does it not pass anger towards crime over in silence?

*Anna Sironi (psychologist) & Maurizio Vico (philosophical studies) work in Turin, Italy, in an ONG Association Gruppo Abele Onlus, in a multiprofessional team leading activities concerning victim support (project Persone OFFese), conflict management, urban regeneration, school mediation, community mediation and training courses.*

**Workshop notes by Frauke Petzold**

In Italy the situation with regard to victims' issues can be sketched as follows:

- no institutional initiatives concerning victims
- no national law about victim support
- experiences in community mediation are only experimental without a national framework
- several associations

Reasons for delay:

- victims perception → people are too repressive
- if you are a victim, you can ask for money, but not for help

Project:

- 10 years of community mediation
- 2 years experimental project (victim support, conflict mediation, network building)
- Turin 2008: Associazione Gruppo Abele  
→ information

- network
- centre of documentation

Important: Giving space for expressing words of pain!!

Open questions:

- continuity: how to guarantee funds?
- Cultural issues
- Victims are not going to the police, they have no confidence that the police will do anything about their victimisation.
- Different kinds of strategies at different times

Discussion:

- somehow it is better to inform the victim, that he / she can be contacted / called instead of saying: "you can go there. And get some help..."
- a lot of people have been trained and they cannot work on cases, because of the lack of structure and funding
- main problem is the funding of the mediation centres
- injuries can be mediated, as long as there is no violence in combination to the official law. So it is very hard to understand the legal system reactions.

*Implementing VOM in a Multi-Ethnic context. Overcoming cultural barriers through RJ. A Southern European perspective*

Presented by: Mark Montebello (Malta)

Chair: Marta Ferrer (Spain)

It is often assumed that the values inherent in VOM are understood by everyone, irrespective of culture, race and ethnicity. This may not be the case. People originating from cultures other than the European ones may have values that, if not in direct conflict with European values as adhered to in VOM, can be at least understood differently. These may include the values of individuality, privacy, problem-solving, conflict management, justice, dispute resolution, victimisation, and agreement. This workshop has explored some of the main problems that such different views and values may come into conflict within VOM, and how they may be sorted out. The workshop explored also the idea of co-mediation.

*Mark Montebello is trained in philosophy and criminal justice. He is currently A/Director of Victim Support Malta, which he co-funded in Malta. He is the Maltese representative on the EU-funded project "Going South: Meeting the Challenges of introducing victim-offender mediation in Southern Europe.*

# Implementing VOM in a multi-ethnic context

Overcoming cultural barriers through Restorative Justice

A Southern European perspective

Dr Mark Montebello  
Victim Support Malta

One of the most important models used during victim support training is the "Contact Model"

This model insists on values such as ...

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Basically the model encourages service providers to listen, ... to engage themselves in **'Active listening'**

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**'Active listening'**

Active listening is said to be arguably the most important part of working with victims. It is said that unless one has really listened what is happening for the victim, one can not be able to help them effectively.

It is said that it is only through active listening that one can help the victims tell their story in terms of their experience, feelings and behaviours.

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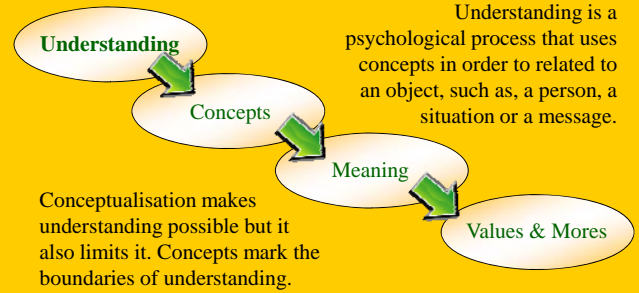
**There are a number of techniques for active listening**

Such as:

- Not being distracted
- Remaining focused
- Using body language
- Empathising
- Making eye contact
- Using encouraging responses (nodding, 'mmm', etc.)
- Watching for unspoken signals about feelings
- Paraphrasing
- Not interrupting
- Not talking too much



**These are all well and good ...  
... but they do not necessarily imply *understanding*  
They may even create *misunderstanding***

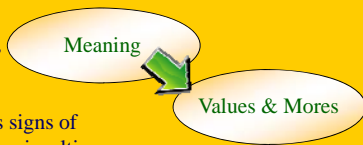


Meaning makes sense – or is expressed or understood correctly – in a cultural context.

Some body language, eye contact, nodding, making a 'mmm' sound, not interrupting or talking too little, etc., may have different – perhaps even contrary – meanings for different people ...

... especially if coming from diverse ethnic, cultural, religious, political and/or racial backgrounds

To begin with, if used incorrectly or inappropriately, bodily and non-verbal gestures may give rise to misunderstanding, be taken as signs of rudeness, or be considered even insulting.



For instance:

**All of these may seem utterly incomprehensible to some**

- While winking is considered as a sign of friendship in some cultural contexts, it may be extremely rude in others.
- For some Latin Americans using the tongue to express some feelings may be considered obscene.
- Some Chinese may express a negative feeling (including negation) by tipping the head backward and audibly sucking air in through the teeth.
- Some Asians may consider touching another person (e.g. patting the back or stroking the hand), or even a display of affection, as inappropriate and discourteous.
- For some Japanese it may be considered insulting to direct towards another person extended fingers with the thumb folded into the palm.
- For some Koreans using the arm and hand up to beckon someone may be slighting (beckoning is done with the palm faced downward and the fingers moved in a scratching motion).
- Some Albanians may express negation by nodding, and affirmation by swinging the head left and right.

*etc. ...*

This does not relate only to gestures of greeting, touching, beckoning or other non-verbal gestures.

It may also relate to some ingrained ideological, socio-cultural and socio-political mores, biases, prejudices and notational assumptions.

For instance: **Again, these may not be altogether comprehensible to some**

- Some people who have politically disruptive backgrounds may implicitly distrust people in authority
- Some white Asians may be implicitly diffident of blacks
- Some Sub-Saharanans, when taken alone at a meeting, may implicitly feel vulnerable and consider it to be intimidating
- Some Arab women may find it inappropriate to be in a room where only men are present
- Some Mediterraneans may feel uncomfortable with formal proceedings
- Some Europeans may not trust corporate representatives
- Some Americans may feel uneasy dealing with Muslims

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*etc. ...*

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The main point is that concepts originating from different and diverse ethnic, cultural, religious, political and/or racial matrixes may be incompatible with one another.

What is being said here of victim support in general equally applies, if not more, to victim-offender mediation ...

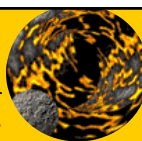
... in which getting the right message through is fundamental to the inter-exchange of experiences, feelings and behaviours.

**Failure in this respect may make empathy impossible or, at least, very difficult; thus blocking the mediation process**

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**Empathy** This is the ability to experience another person's world as if it were one's own; to perceive *accurately* the feelings of another person and the ability to communicate this understanding to them.

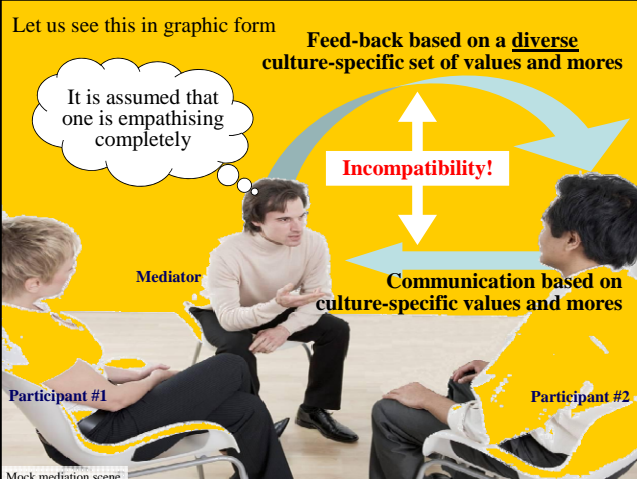


**Empathising may be extremely difficult to do fruitfully, if not outright impossible, if a cluster of ideological, socio-cultural and socio-political mores, biases, prejudices, and notational assumptions block active listening and effective understanding.**

It must be remembered that empathy is one of the three core conditions of helping (together with respect and genuineness), and thus cannot be dismissed or overlooked.

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How can this inaptness be solved?

- Perhaps by training mediators to be perfectly proficient in all ideological, socio-cultural and socio-political mores, biases, prejudices and notational assumptions.
- Or else by persuading participants to abandon their mores, biases, prejudices and assumptions.
- Or even by creating a new set of mores, biases, prejudices and assumptions as a common basis for communication.

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**Unreasonable and unfeasible**

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**Unreasonable and unfeasible**

**What can be done effectively is introducing the concept of co-mediation.**

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**Victim-Offender Co-Mediation**

**This is basically a negotiation process in which two (or more) mediators work as a team**

- The mediation team can stand in for diverse participants (e.g., male/female, Hispanic/Asian, Caucasian/Arabic, older/younger, Catholic/Buddhist, native/immigrant, etc.)
- Co-mediators can “translate” ideological, socio-cultural and socio-political mores, biases, prejudices and notational assumptions to the rest of the team
- Participants can enhance their sense of trust by knowing that at least one of the mediators is akin to them
- The process is enriched by the combined skills of the co-mediators, since they complement and sustain each other
- They can also “check” each other’s biases or limitations

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**Victim-Offender Co-Mediation**

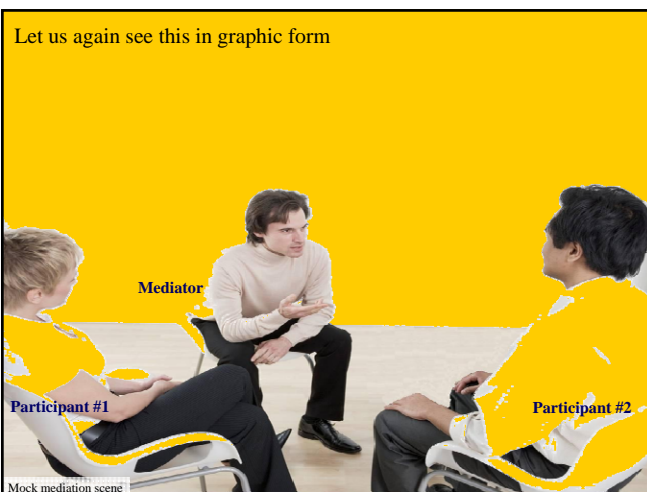
**With regard to the co-mediators themselves**

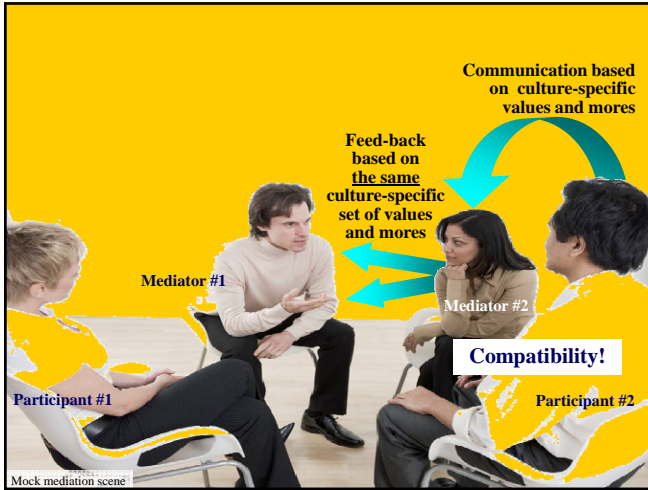
- Co-mediation can ease the burden of difficult cases and the pressure of ideologically, socio-culturally and socio-political diverse participants
- Co-mediators can apply their distinct tasks and skills to problem-solving (e.g., practical-minded/theoretical-minded) – Also called “Peer Mediation” or “Co-Equal Mediation”
- The participants are less likely to “monopolize” a mediator
- Co-mediators can learn skills and techniques from each other’s experience and the handling of issues, participants and situations – Also called “Lead/Assistant Mediation” or “Lead/Student Mediation”
- Co-mediators can plan and debrief together
- One co-mediator can conduct the mediation and the other act as arbitrator – Also called “Med/Arb Mediation”

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Let us again see this in graphic form





**Risks involved in co-mediation**

- **Disorganisation** – Lack of required coordination between co-mediators
- **Sponsorship** – Co-mediators abandon their required neutrality and “champion” the cause of “their” participant
- **Mismatch** – Co-mediators do not “click” with each other and thus imbue the process with pointless tension
- **Disparity** – The co-mediator that is supposed to be on the same wavelength of a particular participant does not “click” with that participant
- **Triangulation** – The participants affectively attach themselves to one of the co-mediators and, consequently, remain detached from the other participant
- **Protraction** – More necessary debriefing may be needed, resulting in excessively time- and cost-consumption

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**These risks can be proficiently avoided**

- ✘ **Disorganisation** – Having the co-mediators plan and design together their VOM sessions and the whole process
- ✘ **Sponsorship** – Co-mediators stick to their professional neutrality and clearly share it with the participants
- ✘ **Mismatch** – Co-mediators put their clients (participants) first and settle “off set” whatever disagreements they may have amongst themselves
- ✘ **Disparity** – Co-mediators should have prior sessions with their respective participants and allow enough time to get acquainted well
- ✘ **Triangulation** – Treat both participants equally and encourage them to direct their attention to each other, not to the co-mediators themselves
- ✘ **Protraction** – Plan thoroughly ahead and make debriefing short but effectively and immediately after each session

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“ Co-mediation is not necessary for all cases, but is a helpful tool that should be considered for multi-party and emotionally charged cases ...

Co-mediation often provides efficient, fast-paced mediation that results in greater satisfaction with the mediation process and with the end result. ”

Joe Epstein and Susan Epstein, "Co-Mediation",  
*The Colorado Lawyer*, June 2006, Vol. 35, No. 6/21

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*Thank you for your attention*

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**Implementing VOM in  
a multi-ethnic context**

Overcoming cultural barriers through Restorative Justice

**A Southern European perspective**

Dr Mark Montebello  
Victim Support Malta  
[www.victimsupportmalta.org](http://www.victimsupportmalta.org)

### Workshop notes by Isabella Pirolo

The presentation focused on the problem of the under-representation of some groups in multiethnic communities during mediation proceedings. In the mediation procedure one of the most important models that can be used is the contact model. It insists on values such as listening, identifying needs and reactions. The model encourages service providers to practice active listening; this is said to be the most important art in working with victims. It is said that it is only through listening that one can succeed in helping the victims. There is a large number of techniques of active listening: body language, remaining focused, maintaining eye contact, nodding, not interrupting and so on. The point is that these techniques are really useful but sometimes they do not imply understanding, in fact they could even create misunderstandings. Some body languages may have different or counterproductive meanings in different cultures. If inappropriate verbal gestures or body language are used they can be considered insulting or rude.

In mediation it is fundamental to make the participants express their feelings and being comfortable, if this is not possible then the mediation fails and the process of reconciliation and understanding is blocked. This is especially relevant when in the procedure two people from two different cultures are involved; the solution to prevent misunderstandings could be co-mediation. In co-mediation, mediators should work as a team and they should be able to create a link between the parties involved by being able to explain to the counterpart the needs and reactions of the other. There are also some risks in co-mediation, for example there could be a lack of coordination or of neutrality. These risks, however, can be avoided through a good organisation of the meeting and by making sure that both participants are treated equally.

### Discussion

The participants addressed several questions and concerns to the presenter:

1) How is it possible to find mediators from many different ethnic groups? Would this not be too expensive?

This is a problem still discussed, especially in regard to the financial issue. In Malta there is a big community of North African people so their goal is to focus on the biggest community within the territory.

2) In Canada there are a lot of people from different ethnic groups. The ethnic groups are really small, so the problem is that they often know the mediator himself or on the contrary the offender or the victim feels uncomfortable to have a person from another group listening to them. A solution could be to involve a mediator that is not from one or the other community, so that he/she can play as a third party.

3) There is another concern as a lot of times the parties do not believe that the confidentiality will be respected.

4) It is observed that actually it is not impossible to understand another culture. The most important point should be the legitimacy of the mediator, once both parties trust the mediator, he/she can reach some results.

To conclude, Mark Montebello underlined that we do not have to be perfectionists, of course co-mediation can work in some cases while in others it does not, but this is likely to happen also in mediation in general.

*"Parallel mediations": why organised crime tends to 'mediate' conflict and to reject institutional victim-offender mediation*

Presented by: Grazia Manozzi (Italy)

Chair: Marta Ferrer (Spain)

Mediation as a way of managing conflicts has been initially tested in Italy in the context of the juvenile justice system and then it was introduced to the legal system under the law which conferred penal jurisdiction on Justices of the Peace (January 2001) as a means of resolving extra-judicial conflict originating or manifesting itself through less serious criminal activity.

An overview of the procedure in these cases shows how mediation, albeit with some exceptions, is operative prevalently in northern Italy, where there is a functioning network of offices, mediators and professional educators.

There may be three possible explanations.

I. First: *characteristics of the conflict (crime, offenders and victims)*.

Southern Italy appears to be characterised by a "crisis of legality" due prevalently to the massive presence of organised crime. The crimes committed are generally serious; such crimes are highly asymmetric: the level of violence to which the victims are subjected is such that they are generally silenced or inhibited by fears of reprisals and are reluctant to report the crimes to the police.

(II) Second: *the criminal context of reference*.

Criminals typically operate in the Mafia subculture, within which rules and procedures are antagonistic to the legal system: this may have a strongly inhibiting impact on participation in mediation.

(III) Third: *the strong presence of a Mafia-like culture* and of a pre-existing mediatory role played historically by Mafia leaders running parallel to the "official" system of "mediation".

#### *Mafia power and mediation*

Authoritative studies of criminal sociology have structured Mafia power into three categories<sup>22</sup>:

*Protection*: the Mafia members protect vested interests in the society he belongs to. Over time, protection became a "business", guaranteeing a constant source of income for the Mafia as it moved into extortion.

*Repression*: common or conventional crime is tolerated by Mafia leaders only within strictly defined limits.

*Mediation*: "The third function of mafia power was by far the most important. The traditional mafioso spent much of his everyday life in the task of mediating in conflicts within the local society, and mediating that society's relations with the outside world."<sup>23</sup> This type of mediation of both *horizontal* conflicts between individuals and groups and *vertical* conflicts between authorities and individuals is intrinsic to mafia power, in the sense that it *grounds* and *consolidates* it, characterising all of its internal processes: from the "anomic" stage when it is founded by the struggle for personal affirmation to the so-called "legal" stage which is when the mafioso seeks to approach men and institutions representing the state.

<sup>22</sup> See: Arlacchi, Pino *Mafia Business; The Mafia Ethic and the Spirit of Capitalism*, Verso, Cambridge, 1986.

<sup>23</sup> Arlacchi, p. 31.

In what follows, a case of a mafia leader intervention to mediate a conflict between two families, requested by police.

"Two families had been slaughtering one another for ten years, with one vengeance-killing answered by the next. Four people had already died on one side and four on the other, and each time the marshal had been driven into a fury, because when he looked for a culprit he found twenty - and then the judge had to acquit them, because twenty people can't get their hands round one dagger at the same moment.

One day he said to Don Ferdi, "You sort it out." Next Sunday the two families met up, eighty people in all, in an outdoor clearing...they brought along roast lambs, dried figs,...fruit, wine,...They made speeches full of the most sincere cordiality. Then came the kiss of reconciliation: the men kissed one another, and so did the women. During the next few months marriages began to take place between the young people of both families."<sup>24</sup>

#### *Analogies and differences between mafia mediation and penal mediation.*

The description given by Arlacchi of mafia power as a form of mediation of conflicts in the early 1980s is of particular interest. Hence, it is opportune at this juncture to give a brief, simplified overview, of the analogies and the differences between the traditional model of mediation, as an expression of the mafia power, and its parallel, official form as it is elaborated by the advocates of *restorative justice* in law and in culture.

#### *The Analogies*

At first sight, institutional mediation appears to exhibit the following, significant analogies with the "autochthonous" forms of mediation, as an emanation of mafia power:

- (a) management of conflict by the community leader;
- (b) mediation involving the extended family: under this point of view, the form of mediation conducted by «Mafiosi» is similar to so-called family group conferencing;
- (c) community management of restoration and social control of "follow up";
- (d) social pacification function of mediation/restoration.

#### *The differences*

Differences between mafia style mediation and penal mediation are much more numerous and deeper than the similarities.

- (a) mafia style mediation has an overriding compulsory aspect;
- (b) the mafia mediator does not have a neutral role in the dispute;
- (c) conduction of mediation reinforces the power of the mafia in the community;
- (d) mafia mediation pays little heed to the function of reciprocal recognition by the parties;
- (e) mafia mediation is strongly oriented towards the outcome desired by the mediator;
- (f) limited opportunity to access judicial redress in the case of the failure of mediation.

#### *Conclusions*

Social contexts characterised by mafia subcultures rooted in ancestral socio-cultural structures. Penal mediation thus competes with a pre-existing mediatory model: *mediation* as a specific and fundamental prerogative of the "man of honour". Consequently, penal mediation risks being misunderstood because it seeks to establish dialogue by recognising the offender who admits

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24 Familiari, P., *La vera storia del brigante Matino Zappa*, Vibo Valentia, 1971, p.25, cited in Arlacchi, p. 35.

their guilt and by restoring any damage inflicted on the victim. Such a reaction could compromise the functioning of penal mediation by the unwillingness of the parties to consent to it.

Added to these difficulties in "acclimatising" mediation, is a lack of inputs, that is: very few crimes are amenable to mediation. The reasons can be briefly summarised as follows:

(a) Mafia type crimes can theoretically be mediated only when committed by minors, because the penal law pertaining to minors places no limits on mediation. Yet, these same crimes cannot be mediated for criminological reasons such as: the prevailing sub-cultural influences on the offenders, the fact that victims are generally intimidated and the strong "asymmetry" characterising the conflict between the parties.

(b) Most common offences falling under the penal jurisdiction of the Justice of the Peace, if associated with mafia type organised crime, cannot be mediated for the criminological and victimological reasons given above.

c) Some conflicts theoretically subject to penal law are traditionally mediated directly by criminal organisations which have an interest in avoiding internal splits caused by competition over issues of honour or family power. This reduces the propensity to report crimes, a fundamental issue given that the competence of the Justice of the Peace is restricted only to those crimes where legal action is voluntary.

It is difficult to give methodological indications except in the most general terms.

Mediation is subject to the same implementation difficulties as the re-educational-treatment approach for the perpetrators of mafia crimes. However, if it is adapted to the "effective reality" of its context, it could offer advantages that should not be underestimated in the middle to long term.

(I) Given that mediation has difficulties in establishing itself for lack of inputs, it could be moved forward within the time frame needed for the investigation, trial and execution of the punishment.

(II) The link between mediation and the judiciary should be strengthened in mafia affected contexts for example, by according the role of mediator to the judge him/herself. This could help the citizenry understand that penal mediation represents a conciliatory solution to controversies founded in penal law and that it is adopted not as a *traditional* measure, but instead as a *penal precept* and a *victim-oriented* measure.

(III) For the same reasons of visibility and consolidation of the operational and conceptual independence of penal mediation, victim-offender mediation should be given precedence over mediation between extended families. Otherwise, widening mediation by bringing in the wider community might run the risk of increasing the influence of the *mafia subculture*.

Finally, one should be aware that, despite the inevitable operative difficulties, which are particularly acute in areas with high levels of mafia activities, mediation can work in synergy with the law to pursue the overall objectives of the whole legal system, which is to reduce conflict and maintain social harmony.

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