



# Newsletter of the European Forum for Victim-Offender Mediation and Restorative Justice

## Editorial

With this third issue, the newsletter of the European Forum for Victim-Offender Mediation and Restorative Justice takes more definitive shape. From now on, the newsletter will appear three times a year and will consist of eight pages of information which is relevant in an international context. An editorial board, with representatives from all quarters of Europe, ensures the regular publication. But, a newsletter only makes sense when it draws on the contributions of many. For the Forum, the newsletter is one of its instruments to act as a platform for communication and participation for all who wish to support - in a critical way - restorative justice developments.

Providing opportunities for expressing different points of view is, indeed, a general principle of functioning within the Forum. Another, related principle determined by the constitution is openness and willingness to learn from each other. This implies, for example, that we should not defend just one 'best model' of restorative justice, be it victim-offender mediation, family group conferencing or another method. These models are, let us hope, in a permanent and interactive process of evolution, from which still other approaches will emerge. An important condition for such a dynamic development is the availability of reliable information and sound knowledge about well established and new practices, legislation, policy, research findings and theoretical frameworks.

The option for a continuous discussion and reflection on restorative justice practices does not prevent the Forum from having clear objectives and views. The aims and objectives of the organisation have been discussed at length on several occasions during the last two years. Finally they were approved by the 44 founding members at the launching meeting and the first General Meeting of the Forum on December 8 and 9, 2000 in Leuven. A report of this launching event can be found in this newsletter. From the philosophy of the organisation, reflected by its constitution and the accompanying memorandum, flows the intention to help establish and develop victim-offender mediation and other restorative justice practices effectively throughout Europe. Offering support to national, regional or even local projects and persons - which are often operating in an isolated and undervalued position vis-à-vis mainstream criminal justice developments - must be one of the priorities within the Forum. Policy oriented action, mainly at a supra-national level, is another important task, as will become clear on one of the following pages.

Above all, there is, and there should be at all times, a strong concern and commitment within the Forum to explore and to define an alternative vision on crime and criminal justice. In the heart of the new - but in fact very old - approach lies the active and authentic participation of victim, offender and other involved parties, looking for concrete possibilities to repair as far as possible the harm caused by an offence. This emancipatory and democratic concept of dealing with crime should not be given up for the interest of a criminal justice policy functioning in a traditional and punitive fashion. Independence in action and thinking is of the utmost importance in this field.

A real challenge for the activities of the Forum will be to establish a well-balanced attention to its four target groups: mediators and mediation services, policy makers, researchers and criminal justice practitioners. It is this last group - prosecutors, judges and lawyers - which we were not able to reach sufficiently until now. If we don't succeed in involving this sector more actively, also at the international level, restorative justice programmes will remain confronted with relatively minor numbers of referrals. Without the full integration of legal professionals, restorative justice will stay at the outskirts of the system and will have no real chance to influence the dominant paradigm.

In order to realise its objectives, the Forum needs a minimum of structure and logistics. An efficient working secretariat is vital. For this year this is made possible by the financial support from the governments of Belgium, Finland and the Netherlands. Negotiations are underway with other governments. This system of co-financing corresponds with the idea of a shared responsibility and offers, at the same time, a certain autonomy. But until now it provides only limited resources. Therefore, the supporting partnership must be extended urgently and on a more permanent basis.

The Forum will operate on the basis of an effective management and transparent decision making procedures. The Board plays a central role in the daily matters. Board members are in permanent contact with the secretariat and they meet two times a year. But, the General Meeting is given large competencies and will determine, at its annual meeting, the general policy.

The core intention of the Forum is not the unilateral delivery of services. As referred to above, it will rather offer a channel for participation, mutual support and contact.

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Therefore, the creation of five committees during the first General Meeting has been an essential step. A lot of ideas for common action and exchange are already living in these working groups. If you feel interested in being involved, don't hesitate to contact the responsible person.

The newsletter contains recurrent sections, such as the Readers' corner and the Bulletin board. But also new developments in particular countries or regions will be presented, and room will be made for specific themes and for news at the international level. With your suggestions and proposals, the concept of the newsletter will grow steadily. If you have a communication to make on an event or on an interesting report or a publication, if you wish to highlight a new project or an idea, or when you are looking for partners to

exchange experiences or to set up a common project, please use this newsletter by getting in touch with one of the members of the Editorial Board.

The Forum will finally be what we all make of it. I would like to encourage you to take initiative across borders. We all know international contacts can be extremely rewarding and stimulating. Take the opportunity, even in your busy schedule, to enter in contact with colleagues from abroad. Go and visit other programmes, read about evaluations and ask for information. That's what the European Forum for Victim-Offender Mediation and Restorative Justice wants to assist.

Ivo Aertsen  
Chair

## Three and a half years of restorative justice in Russia

### *The creation of the Centre for Legal and Judicial Reform in Moscow*

In 1996, a Centre for Legal and Judicial Reform (CLJR) was established in Moscow as an independent non-governmental organisation. The founding members were not jurists by education, but had worked in close contact with lawyers and were quite experienced with the Russian criminal justice system and its reform. Some of us had been active in human rights work and issues of the crisis of punishment, and we were eager to launch a non-governmental sector in the field of judicial reform. Others were involved in the reform of the judicial system of the Russian Federation and participated in the activities of the Judicial Reform and Legal Proceedings Section at the State and Legal Department under the Russian Federation President. When this section was dismissed in 1996, we decided to establish an independent, non-governmental organisation - the Centre for Legal and Judicial Reform. Rustem Maksudov, Mikhail Fliamer, Anna Grasenkov and Ludmila Karnozova started the activities of the Centre. In 1998 Anton Konovalov joined the team as a mediator. We are all members of a non-governmental organisation and this is not merely accidental. We have come to the conclusion that the restorative justice programme mediators should be recruited from independent public organisations or municipal social centres, not from state law enforcement bodies, for example, militia. This is the only way to save restorative justice programmes from the influence of departmental interests and political order.

In 1997, this Moscow group started implementing restorative justice ideas in Russia. We worked on creating the right conditions for launching the first victim-offender reconciliation programme and we defined the Centre's priorities. We wanted to be an organisation introducing a new practice in Russia, a centre implementing and promoting humanitarian (restorative rather than retributive) responses to crime and stimulating approaches taking into account offenders, victims and their social environment.

Since the ideology of fighting crime is very popular in Russian law enforcement bodies we decided to start our work with criminal cases of juvenile rather than adult offenders. And this pattern is still prevailing in our practice today. Our first victim-offender reconciliation programme was set up in the Tagansky

district of Moscow, at the Tagansky district Department of Internal Affairs. The first reconciliation meetings were revealing to us. We experienced that people still have the wish to find a way out from a criminal situation themselves. Moreover, most victims decided to participate in reconciliation meetings because they wanted to change offenders' behaviour and to prevent them from ending up in a correctional facility. Expression of emotions, an informal dialogue, receiving answers to their questions contributed much to the change in attitude of the participants towards each other, towards themselves and towards the situation as a whole. The local prosecutor's office did not support our activity and the programme was suspended up to June 1999, when the Prosecutor General started to support our initiative. Investigators in the Tagansky district referred 7 cases to us. Later we received more cases from the Cherjomushkinsky district court in Moscow. In the meantime we corrected and co-ordinated legal algorithms demonstrating how victim-offender meetings could be incorporated in the course of criminal proceedings and demonstrating what the legal outcomes of reconciliation and restitution could be.

The Moscow group of the CLJR has been greatly influenced by the ideas contained in 'Conflicts as Property' and 'Limits to Pain' by Nils Christie and in 'Changing Lenses' by Howard Zehr. Also contacts with colleagues abroad have been very helpful. Our Polish colleagues - Janina Valuk and Beata Czarnecka-Dzialuk - provided serious methodological help in our work. Articles written by Marty Price from the USA were very helpful to us. And thanks to the support of different foundations and centres in Russia and abroad we were able to get training in Eastern Europe (the Czech Republic, Poland and Ukraine), in Finland and the USA. Our English colleague, Marian Liebmann, provided training for the Centre's activists. We keep in touch with colleagues in Belgium, New Zealand, Sweden, the USA and the UK. The Mennonite Central Committee contributes much to our work as well as Friends House of Quakers in Moscow and Penal Reform International.

In order to make restorative justice ideas and issues accessible to Russian professionals, the Centre tries to publish restorative justice materials in Russian. We translated Howard Zehr's 'Changing Lenses' and 'Crime, Shame and Reintegration' by John Braithwaite is currently being translated. We also published two annual issues of the Centre's research on juvenile justice.

### *CLJR activity in the criminal justice context*

From late 1998 to 2001, CLJR applied restorative justice practices on 71 cases. Most of them were completed. In 43 cases there was a positive result. 12 of them were criminal cases. The remaining were referred by the Juvenile Offenders Commission, the Militia Department for Juvenile Offenders and by schools. The most common criminal cases referred to the programme were robberies and thefts. Since in most cases the youngsters committed the offences in small groups of two or three people, they were accused of committing serious offences. In these cases the outcome of a reconciliation can, from the legal point of view, serve as an extenuating circumstance. The possibility of closing a criminal case after reconciliation is according to the legislation only possible for minor offences. And those kinds of cases are almost not present in the practice of Russia's law enforcement bodies.

Apart from the restorative justice practice, we also defined the problems one encounters when trying to set up reconciliation programmes and when trying to determine its legal outcomes; problems resulting from the necessity to remain within the limits of the current legislation and activity of law enforcement bodies and courts. On this basis we worked out three variants of introducing reconciliation processes in criminal proceedings. The first variant is used at the stage of preliminary investigation, when investigators dealing with juvenile offenders refer cases to the CLJR for reconciliation. The programme results (a reconciliation agreement and documents proving its completion) are included in the case file during investigation or at court hearings. According to the second variant a victim-offender reconciliation process is integrated at the stage of court hearings. In this case we contact the juvenile judge. In the third variant a partnership with the prosecutor's office is necessary and the reconciliation process becomes part of the official proceedings after a prosecutor receives the accusation. In all these variants a case can be referred to the programme regardless of the severity of the crime if the accused juvenile pleads guilty at least to some extent and if there is a victim. We do not work with offenders involved in organised crime, serial murders, rapes and cases in which the accused is under arrest. Recently we have dealt with cases of damaging corporate property (shop thefts and thefts of non-ferrous metals).

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### **Groups in 8 cities try to promote restorative justice ideas**

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In 2000 a training course in restorative justice was developed and tested at the CLJR and we began to present our know-how of developing and launching programmes to various Russian towns. We managed to establish groups in 8 cities, to help them understand the restorative justice concept and to acquire the necessary skills. These non-governmental groups have been formed in Tumen, Irkutsk, Dzerzhinsk, Veliky Novgorod, Arzamas, Urai, Perm and Novorosijsk. They try not only to implement restorative justice programmes, but also to promote restorative justice ideas. In Tumen, for example, a co-ordinating board including various organisations interested in implementing restorative justice practice was established. And since December 2000, four by the CLJR certified mediators have conducted 12 mediations.

Through our work we have realised that overcoming a retribu-

tive nature of criminal justice requires careful and long work. In particular, it is necessary not only to teach mediation skills but to pass on an ideology and technology of partnership between communities and law enforcement bodies and this will make criminal justice more restorative. A very important direction here is introducing the restorative justice concept to various professional groups, including lawyers. This is the most difficult thing to realise for the groups of psychologists, teachers, social workers, lawyers and human rights activists we formed in various Russian cities. The most important direction of our activity in this respect is a constructive co-operation with the Prosecutor General of the Russian Federation. We are developing contacts with the Russian Ministry of Internal Affairs, the Supreme Court, politicians and international organisations. Here is the field of the Centre's future projects.

### *CLJR activity outside the criminal justice context*

We have to note that the majority of restorative justice practices set up by the CLJR are outside the criminal procedure. Most cases are referred from Juvenile Offenders Commissions and schools.

The Juvenile Offenders Commissions are responsible for the prevention of crime and child negligence and they consider administrative offences of children under 18 as well as of those parents who fail in their parental duties. These commissions often face complicated social problems - family conflicts and crises, juvenile crime - but they have no efficient instruments to react besides threats, fines, deprivation of parental rights and sending a child to a boarding school. In 2000 we started to work with the Commission of the Akademichesky district in Moscow to introduce restorative justice practice in their work. Our experience with that Commission allowed us to develop new methods, which are now used outside Moscow - in Tumen, Arzamas, Veliky Novgorod, Dzerzhinsk, Urai and in the Juvenile Offenders Commission of the Hanty-Mansijsk autonomous county.

Our experience has learned that many criminal and conflict situations take place in schools. Due to the nature of their activity, law enforcement bodies do not carry out humanitarian tasks (social, rehabilitative or correctional), so the majority of schools tend not to report to the police. But if these situations are left without attention, unresolved conflicts and violence can have more serious consequences in the future. So the Centre started to conduct restorative justice programmes in schools. Most of the cases are referred to the Centre from schools in the Tagansky district of Moscow. Restorative justice programmes in schools were conducted in situations close to criminal conduct (fights, thefts, violence). In these cases offenders restored the damage themselves and made their apologies. Also conflicts inside classes and between classes have been handled. As a result conflicting parties reconciled, reached mutual understanding and the escalation of the conflict was stopped. Finally we also had situations when conflicts between children led to conflicts between parents. Here parents reconciled at the parents meeting. It is our experience that the results are often not limited to conflict resolving, but have long-term effects. We saw programme participants restore relationships, change their behaviour and their attitude towards life.

**Mikhail Fliamer and Rustem Maksudov**

Centre for Legal and Judicial Reform, Moscow

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## Readers' corner

*Criminal Victimization in Seventeen Industrialised Countries: Key findings from the 2000 International Crime Victims Survey*, by Van Kesteren, J., Mayhew, P. and Nieuwebeerta, P. (2001). This report presents an overview of the key findings of the 2000 International Crime Victims Survey. It provides information about: victimisation rates for 11 types of crime in 17 countries, changes in these rates over the last decades, victimisation risks, reporting to the police, fear of crime, victims' satisfaction with police response to their crime report, and attitudes towards punishment. The report can be downloaded at <http://www.wodc.nl>.

*An ordinary murder*, by Lesley Moreland. This book is an account of how a mother coped with her daughter's murder, including fighting the system to get permission to meet the offender. Available from Aurum Press, e-mail: [caroline.mosedale@aurumpress.co.uk](mailto:caroline.mosedale@aurumpress.co.uk), fax +44 1715 802 469.

*Restorative Justice. Philosophy to practice*, edited by Heather Strang and John Braithwaite (2000). With contributions from known scholars in this field, this book analyses the gap between philosophy and practice and the need for practice to be more informed by philosophy. Many of the questions raised in this book - such as the relationship between restorative and retributive justice and the values and processes which should guide restorative practices - are the subject of intense debates. Available from Ashgate, e-mail: [info@ashgate.com](mailto:info@ashgate.com), fax +44 1252 317 446.

*Schuld en Schaamte. Een pedagogisch perspectief op het jeugdstrafrecht*, by I. Weijers (2000). This book is the result of four years of research on the pedagogical foundations of criminal law for juveniles in the Netherlands. It shows how the appeal to the moral consciousness of the youngster is crucial in a pedagogical perspective. The author focuses especially on the role of guilt and shaming in reactions to juvenile delinquency. Available from Bohn Stafleu Van Loghum, e-mail: [klantenservice@bsl.nl](mailto:klantenservice@bsl.nl), fax: +31 30 63 83 999.

*Interim report of Restorative Mediation*, by Van Barlingen, M., Slump, G.J. and Tulner, H. (July 2000). English summary of

the interim evaluation of the Restorative Mediation Project for more serious crimes in The Hague. The report describes what restorative mediation is and which bottlenecks (and which solutions) the project managers found along the way. It also discusses the opinions of clients in relation to the project set-up and in relation to its value and significance. This report can be downloaded from <http://www.victimology.nl>. *English summary of the midway evaluation of victim-offender mediation in Denmark* (2000). The main aim of this mid-way evaluation report is to bring the experiment, that has been running since 1998 in 3 police districts, further, by pointing out different problems that have presented themselves thus far. The focus in this report lies on the participants' assessment and the motivation and barriers for further practice. An electronic copy of this report can be requested from the secretariat of the European Forum.

In November 2000 the Swedish Commission on Mediation issued a *report concerning mediation for juvenile offenders*. It gathers an impressive amount of information, e.g. the description of the current possibilities for mediation in Sweden, the evaluation of a major experiment in which 32 mediation projects were monitored during one year, information on the use of mediation in other countries and the description of a Swedish experiment with family group conferences in 10 municipalities. Based on this information, the commission makes recommendations. An English summary of the Commission's report and the evaluation of the 32 mediation projects is available at: [http://www.bra.se/dynamaster/publication/pdf\\_archive/00032817188.pdf](http://www.bra.se/dynamaster/publication/pdf_archive/00032817188.pdf) (commission's report, pages 57-61) and [http://justitie.Regeringen.se/propositionermm/sou/pdf/sou2000\\_105a.pdf](http://justitie.Regeringen.se/propositionermm/sou/pdf/sou2000_105a.pdf) (evaluation, pages 19-29).

Special issue on restorative justice of the *Canadian Journal of Criminology: Changing Punishment and Restorative Justice*, volume 42, Number 3, 2000.

Special issue of the *Contemporary Justice Review: A Symposium on Restorative Justice*, Vol. 3, Issue 4, 2000.

## Bulletin board

June 9, 2001, Dublin (Ireland), 'Restorative Justice: Challenges and Benefits for Irish Society', organised by the Irish Victim/Offender Mediation Service. For information contact: [vom@eircom.net](mailto:vom@eircom.net), fax +353 1 451 5052.

September 16-19, 2001, Leuven (Belgium), Fifth International Conference of the International Network for Research on Restorative Justice for Juveniles 'Positioning Restorative Justice'. For more information e-mail [andrea.ons@law.kuleuven.ac.be](mailto:andrea.ons@law.kuleuven.ac.be), fax +32 16 32 54 63.

## Newsflash

On February 16, 2001, a law introducing mediation in criminal matters was voted in the Swiss Canton of Geneva. This law, which entered into force on April 5, will soon be published in the official journal: [www.ge.ch/legislation](http://www.ge.ch/legislation).

On January 16, 2001 a Dutch Forum for Restorative Justice was launched. The initiators of the Forum also started with a new journal. More information can be found on the website

October 22-26, 2001, Portland (USA), 18<sup>th</sup> Annual VOMA International Training Institute and Conference 'Innovative Practices in Restorative Justice and Victim, Offender and Community Processes'. For more information e-mail [voma@voma.org](mailto:voma@voma.org), fax +1 904 424 6129.

January 18-20, 2002, Copenhagen (Denmark), 'Second International Conference of the Nordic Forum for Mediation', organised by the Nordic Forum for Mediation. For more information e-mail [hb@bhc.dk](mailto:hb@bhc.dk), tel. +45 744 23 605.

of the organisation: [www.herstelrecht.nl](http://www.herstelrecht.nl).

The Restorative Justice Consortium (UK) now has a website ([www.restorative-justice.org.uk](http://www.restorative-justice.org.uk)). Here you can access not only the RJC's Manifesto and its Standards document, but you can also read the RJC's newsletter. Moreover, the website contains useful information on upcoming events and interesting links to other restorative justice websites.

# Report of the launching meeting of the Forum

On 8 and 9 December 2000, some 50 people from 15 different countries gathered in Leuven, Belgium, to participate in the launching meeting of the European Forum.

The first part of this meeting consisted of the article-wise discussion of the draft constitution.

The next point on the agenda was the discussion of the draft memorandum with the constitution, which was prepared by Christa Pelikan and Martin Wright. The text of this memorandum was accepted after some small changes were made.

As soon as the changes to the constitution were made, the procedure for signing it was explained. Only those people who intended to become a full member of the Forum could sign the constitution and become a founding member. In the end, 12 representatives from organisations and 32 individuals signed the constitution, after which the European Forum was formally established.

After the adoption of the constitution, the first General Meeting was held. The first point on the agenda was the election of the Board. The following people were elected: Ivo Aertsen (Belgium) as Chair, Andrei Pascu (Romania) as Vice-chair, Robert Mackay (UK) as Secretary, Tony Peters (Belgium) as Treasurer, Christa Pelikan (Austria), Martin Wright (UK), Juhani Iivari (Finland), Torunn Bolstad (Norway) and Jesús Trujillo (Spain).

In a next step, there was a discussion on the finances of the Forum and the membership fees. After the approval of the budget for the year 2001, the discussion centred on the creation of committees. Since the Forum wants to invite its members to actively participate in the activities of the Forum, the functioning of these committees is very important. The creation of committees was based on the priorities that were set for the Forum by the General Meeting for the next years. Thus, five committees were established:

Practice and training, chaired by Leo Van Garsse (e-mail: leov.suggnome@wol.be).

Information, chaired by Wouter De Cuyper (e-mail: wdecuyper@hotmail.com).

Research, chaired by Inge Vanfraechem (e-mail: inge.vanfraechem@law.kuleuven.ac.be).

Communication, chaired by Jolien Willemsens (e-mail: jolien.willemsens@law.kuleuven.ac.be). The committee has a newsletter sub-committee, chaired by Katrien Lauwaert (katrien.lauwaert@straftr.unimaas.nl).

Finances, chaired by Joep Hanrath (e-mail: j.j.hanrath@students.fss.uu.nl).

The launching meeting has without doubt been a big success. This is not only because of the big turn-up for this meeting, but even more because of the enthusiasm of the participants and their willingness to take up active roles in the Forum.

## Membership of the Forum

According to art. 13 of the constitution, the following are eligible to be members of the Forum: individuals, governmental or other statutory organisations and non-governmental organisations, that support the general aim of the Forum, which is to help establish and develop victim-offender mediation and other restorative justice practices throughout Europe. Applicant members have to decide whether they want to become a full member (with voting rights) or an associate member (without voting rights).

Membership application forms and more information about the Forum can be requested from the secretariat. Also, do not hesitate to contact the secretariat if you have suggestions for the working of the Forum.

Jolien Willemsens

# The EU framework decision on the standing of victims in criminal procedure

Following an initiative of the Portuguese Republic during its presidency of the European Union (EU), the Council of the EU adopted, on the 15<sup>th</sup> of March 2001, a Framework Decision on the standing of victims in criminal proceedings. Although the theme of victims' rights and protection of victims is not a new subject on the European agenda, the adoption of the framework decision must be considered as an important step ahead for the victims' rights movement in Europe.

The significance of the document lies in the first place in the legal instrument that was chosen: a framework decision is a legally binding instrument for the Member States. It obliges them to adapt their national laws so as to afford victims of crime a minimum level of protection, irrespective of the Member State in which they are present. Second, the significance of this document lies in its broad field of application: the dispositions do not only cover the criminal proceedings as such; some explicitly cover measures to assist and to protect victims before or after the criminal proceedings.

The document covers a wide range of themes, some of which are expressions of general principles and some of which are dealt with in detail. Some examples of themes are: the right to receive information, communication safeguards, the right to protection and to compensation, mediation in criminal cases, specialist services and victim support organisations, and training for personnel involved in proceedings or otherwise in contact with victims.

Concerning mediation in criminal cases, article 10 states:

1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure;
2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

Article 17, which specifies the implementation of some of the dispositions, states that the Member States shall bring into force the laws, regulations and administrative procedures necessary to comply with article 10 before 22 March 2006.

At first sight, article 10 may give the impression to be very vague and general. But one must not forget that the mediation practices in the Member States are very diverse or even non-existent. So, for many Member States the framework decision has important consequences for national regulations and practices. And this is the big merit of the framework decision, namely the obligation for Member States to harmonise their national laws. From the victim's point of view, one can not deny that this is a big step forward to come to a European area of freedom, security and justice.

Vicky De Souter

The full text of the framework decision can be viewed at: [europa.eu.int/eur-lex/en/lif/dat/2001/en\\_301F0220.html](http://europa.eu.int/eur-lex/en/lif/dat/2001/en_301F0220.html).

# New prospects for mediation in Catalonia<sup>1</sup>, Spain

The Spanish penal system has in recent years seen the introduction of compensation, support schemes and support services for victims, and a shift in penological thinking towards rehabilitative models. The first mediation programme in Spain was developed in the year 1990 in Catalonia by Martin and Dapena. This was an offender-focussed programme designed for young offenders and supervised by the *Generalitat*. During its experimental period (1990-1997), the programme evolved towards a neutral position between victim and offender. The adult pilot project which commenced in Catalonia in 1999 (and dealt with around 150 mediations in its first year) assumed a position of neutrality between victim and offender from the outset.

Since the start of the first pilot project in 1990, new legislation has considerably enhanced the possibilities for mediation for both juvenile and adult offenders.

## *Restorative justice and adult offenders*

For adult offenders, the new Penal Code of 1996 introduces a number of restorative justice sentencing alternatives. For the first time the courts are now permitted to suspend sentences of imprisonment of adult offenders.<sup>2</sup> The usual maximum period of suspension is two years, during which the offender may be required to complete training, treatment, or other activities. Where reparation has been made before the trial takes place, the court may, when sentencing the offender, reduce the penalty.

Policies designed to advance mediation and alternative sanctions in the community for adult offenders have so far only been developed on a very small scale. In 1999 a pilot programme of victim-offender mediation was introduced in Catalonia.

## *Restorative justice and juvenile offenders*

Restorative justice provision in the case of juvenile offenders has, since 1992, been authorised by the *Ley Reguladora de las competencias y el procedimiento de los Juzgados de Menores* (Law 4/92 regulating jurisdiction and trial in the Juvenile Courts). This was amended by the *Reguladora de la responsabilidad penal de los menores* (Law 5/2000 regulating the penal responsibility of juveniles), which came into force on the 13<sup>th</sup> of January 2001.

Law 4/92 as amended created two restorative justice possibilities. The first is diversionary in effect. If the offender has made reparation or is ready to do so, article 2 regulation 6(a) provides that the prosecutor may propose a stay of prosecution. Second, by article 3, the court may postpone sentence pending a mediated settlement in which the offender agrees to make reparation. This procedure follows a two-stage process. The first is an evaluative meeting with both parties, with a view to proposing to the court a reparative or conciliatory programme for the offender to complete. Assuming acceptance, the programme is implemented under the mediator's supervision. Upon completion (or otherwise) the mediator reports to the judge, who decides what further action to take by way of sentence. Even where the victim does not wish to participate, the court may take into account the offender's willingness to do so, and may order indirect reparation. The primary focus of the mediation is on the offender.

These possibilities formerly applied to offenders aged 12 to 16, but law 5/2000 has raised both the lower and upper limits to 14 and 18, and in some cases the upper limit is 21. Violent crimes are excluded from the programme.

In a separate development, Catalonia supported the introduction in 1990 of a more comprehensive diversionary scheme for juvenile offenders. This pilot project was successfully concluded in 1992, as a result of which law 4/92 for juveniles included mediation for the first time in Spain. The Catalanian mediation programme was the subject of a number of evaluations between 1992 and 1997, and now operates under a specific mediation regulation in law 5/2000 for juveniles.

The penal law for juveniles formalises mediation as an integral part of the judicial processing of young offenders. In addition, courts may, with the offender's consent, impose a community service order (*Prestaciones en beneficio de la comunidad*) as an independent sentence.

## *Implementation*

The funding agency for mediation for young offenders in Catalonia is its Department of Justice. Responsibility for the mediation programme itself varies between the provinces. In Barcelona, which handles 75% of the caseload, it falls to a team of 12 social workers. In the other provinces it is managed by the equivalent of juvenile probation officers. Elsewhere in Spain there is a mix of public and private agencies carrying out restorative justice programmes. In some Autonomic Communities teams of social workers work with the juvenile courts that implement the programme; in others, as in Catalonia, the Community employs its own specialised teams. Yet others contract the work out to private associations.

In Catalonia (population: 6 million) approximately 3,000 young offenders are brought before the Juvenile Courts each year. Of these, 50% are dealt with under the Department of Justice's mediation programme. About 10% of all juvenile offenders are dealt with by ways of a community service order, which may be reparative in nature.

The purpose behind the Department's initiative is to ask the young offender to take responsibility and for the resolution of conflicts using mediation between the young offender and the victim and/or the community. Ultimately the objective is to repair the damage and get the participation of all implicated parties in the decision-making process.

## *Referral numbers, outcomes and evaluation*

The following points are taken from a study by Dapena and Martin (1998) of the experimental programme with young offenders that they managed in Catalonia between 1990-1997.<sup>3</sup>

The majority (78%) of offenders were male, most of whom (82%) were enrolled at school. Public bodies or their employees (schools, the police, public services such as public transport) and private bodies and commerce (shops, supermarkets, factories) comprised 50% of the victims. The majority (63%) were offences against property; a further 30% involved violence against the person. A substantial majority (87%) of victims agreed to participate in the mediation programme. In the case of the pilot project for adults, 24% of offenders declined to participate. A further 10% of cases did not proceed because the victim declined.

On the basis of the above-mentioned study, the following points can be made concerning referral outcomes:

30% of cases concerned very minor offences; knowing that the young offender was prepared to accept responsibility, the mediators sought extra-judicial disposals.

In 12% of cases there had been reparation or the victim and offender had been reconciled prior to the commencement of judicial proceedings; in these cases the law permits discontinuance.

20% of cases were resolved by indirect mediation (apology or indirect reparation).

27% of cases entailed a full process of mediation with participation over a series of meetings; the outcomes were reparation and conciliation between victim and offender.

In 11% of cases the mediation failed to produce a positive outcome.

On the basis of their evaluation of the Catalonian experience, Dapena and Martin (1998) conclude:

Mediation produces 'win-win' outcomes: citizens perceive justice as being more directly concerned with their interests, young offenders recognise the harm they have done, and victims feel that their voice has been heard and their interests attended to.

Victims and offenders both agree that mediation improves the justice system in that they enjoy the real possibility of participating in its decisions.

The justice system benefits by virtue of an increased awareness of the affective and material harm that victims suffer.

Mediation permits an important distinction to be drawn between the seriousness of the offence as judicially defined and the seriousness of the conflict as defined by those most

closely affected by it.

Victims feel less victimised; offenders feel more responsible

## Inspiring the future

From the 28<sup>th</sup> till the 31<sup>st</sup> of March 2001, an international conference entitled 'Restorative and Community Justice: Inspiring the Future' took place in Winchester, England.

Restorative justice (RJ) should be the new standard of what's normal, with the other system available as a back-up. This was Howard Zehr's optimistic message to the 500+ conference delegates. Speakers included the Princess Royal and the Lord Chief Justice, international authorities on RJ, victims, and advocates of RJ in schools, and there was a wide range of workshops. Among the points made were:

Encouraging research findings and statistics, showing that youth offending in Wellington, New Zealand, had been reduced by two thirds by family group conferences enhanced by links to the community (Judge David Carruthers). After conferences in the RISE (Re-Integrative Shaming Experiment) in Canberra, Australia, twice as many offenders said they began to understand the feelings of those affected by the offence, compared with those who went to court, half as many victims feared repetition, and a third as many wanted revenge on the offender (Heather Strang). In Austria, 70% of cases used direct mediation, but it is highly professionalised, with no community involvement (Christa Pelikan).

John Braithwaite spoke of RJ's place in society, as simply a more decent way of living; but to reduce crime requires social reform too. It is about healing, not hurting, he said; but he acknowledged that some victims feel hurt after a conference, and warned that quality assurance tends to be abysmal.

Sir Charles Pollard, a prime mover of the conference believed that RJ might provide the 'click' that makes offenders think 'I can't go on like this'; a negotiated solution has a better rate of compliance than an imposed one, but a raft of supportive measures are needed.

The primary purpose of the Youth Justice Board, said Lord Warner, its chairman, was 'preventing offending by young

people', and he spelt out its objectives - which did not include victim-offender mediation.

Margaret Thorsborne, from Queensland, Australia, described the successful introduction of RJ in schools, with over 90% compliance. But it had not spread as fast as hoped, and with the audience she explored some obstacles. In another interactive session, Belinda Hopkins, from Reading, showed how raising self-esteem increases valuing of others, including staff, and can reduce bullying.

Dame Helen Reeves, chief executive of Victim Support, admitted that her enthusiasm for RJ was not 100%; many victims stand to gain a great deal, but she warned about poor practice (RJ advocates would agree). Her 'health check' for a RJ service included compiling information about victims who say 'No' to RJ, and awareness of victims' other needs. Lesley Moreland, whose book had just appeared, described her struggle to get permission to meet the young man who killed her daughter. There were powerful films about the South African Truth and Reconciliation Commission, a meeting of a mother and her son's killer, and another from Texas where the killer was on death row - facilitated by Mark Umbreit, but raising misgivings that the process might seem to legitimise the death penalty.

On the final day, Lord Woolf, the Lord Chief Justice, said that, for youngsters in a young offenders institution, sitting on their beds all day was a soft option; he deprecated custody and said that RJ made them face their responsibility. Judge Bria Huculak, from Saskatchewan, Canada, then organised a sentencing circle; the role play included some two dozen relatives, friends and people from the local community, with the microphone doubling as the 'talking stick' which confers the right to speak.

**Martin Wright**

Some of the papers presented at this conference will be put on the conference website: [www.law.soton.ac.uk/bsln](http://www.law.soton.ac.uk/bsln)

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## UN draft resolution on restorative justice programmes in criminal matters

A draft resolution on 'basic principles on the use of restorative justice programmes in criminal matters' is making its way through the United Nations procedure (for more information see volume 1, issue 1 of this newsletter). The draft resolution was initially prepared by an alliance of NGOs. Several founding members of the European Forum were asked to comment on preparatory documents. They are convinced that a UN resolution would be a powerful tool for the development of restorative justice practices. Non-governmental organisations continue to play an important role in the preparation of this resolution, by contributing to the discussion about the content and by stimulating a positive attitude of national governments towards this initiative.

Sponsored by the government of Canada, the draft resolution - as developed by the alliance of NGOs - was approved in the United Nations Crime Commission in April 2000. 40 countries co-sponsored the initiative. In July 2000, the Economic and Social Council (ECOSOC) issued resolution 2000/14 in order to further the procedure of adoption of the resolution. In December 2000, the Secretary-General of the United Nations invited the governments, intergovernmental and non-governmental organisations to provide their views and observations with respect to the desirability and utility of developing this restorative justice resolution. He also requested comments on the content of the draft elements of Basic Principles attached to the resolution. At least 30 countries had to react before March 1, 2001 for the process of developing the resolution to continue.

The European Forum joined the networking efforts of Prison Fellowship International to convince as many countries as possible to react to the writing of the Secretary-General. We contacted individual persons in 27 European countries asking them to stimulate their Ministries of Justice and/or Ministries of Foreign Affairs to send in their views on the draft resolution. We wholeheartedly thank those who responded to our appeal.

By the 1<sup>st</sup> of March the 30-country threshold was not reached. However, the UN extended the deadline, and on March 29, 31 governments had officially responded to the UN Secretary-General's appeal. The countries we know that responded are: Argentina, Australia, Belgium, Bolivia, Brunei, Bulgaria, Canada, Chile, Colombia, Costa Rica, the Czech Republic, Denmark, Fiji, Germany, Italy, Japan, Lithuania, Malaysia, Malta, New Zealand, Norway, Pakistan, Peru, the Philippines, Qatar, Saudi Arabia, South Africa, Sierra Leone, Sweden, Turkey, Zambia and Zimbabwe.

Now the secretariat of the UN will review the responses and send out a report to the member states. On the basis of this report a committee of experts, which should convene around October 2001 in Canada, will be drafting a document, which will then be considered by the governments of the world during the eleventh session of the Commission on Crime Prevention and Criminal Justice in Vienna in 2002.

**Katrien Lauwaert**

For more information on the UN action visit:  
<http://www.restorativejustice.org>

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