



Newsletter of the European Forum for Restorative Justice

Editorial

As the new coordinator of the Editorial Board I am very pleased to present you a double issue of the Newsletter of the European Forum for Restorative Justice. You will have noticed the changed name! You can read more about this in Martin Wright's report of the General Meeting.

Restorative justice (RJ) has been developing and has become a significant issue in the agenda of not only European, but also world organisations. However, this development would not be possible without international and regional cooperation. Mutual collaboration and knowledge exchange have become a driving force in spreading RJ ideas throughout the world. Cooperation is the main topic in this issue and you will learn about numerous meetings on RJ held in different countries, as well as international projects.

After explaining the key reasons why the European Forum initiated the AGIS project on RJ in Central and Eastern Europe, Borbala Fellegi outlines some of its main findings. Later, Vira Zemlyanska deals with sentencing and justice traditions in Central and Eastern Europe. In addition, you can

read about the latest developments in RJ practices in Portugal, a new Belgian law on mediation, the 2005 summer school, a new COST working group and the 11th UN Crime Congress.

Next year Barcelona will host the Fourth Conference of the European Forum. Don't forget to put the date in your agenda and to book a hotel quickly - it's the summer season!

In the Readers' Corner we are happy to present you new editions published in different languages.

I would like to invite anyone who is interested in helping with the Newsletter to contact me. The Editorial Board could always use some 'fresh blood', including some English native speakers who can contribute to checking the language. All creative and energetic people - you are welcome!

On behalf of the Editorial Board I would like to welcome newcomers and wish all members and friends of the European Forum a happy Christmas and New Year, and prosperity and success to all of you!

Vira Zemlyanska
Coordinator of the Editorial Board

Summary of the Central and Eastern European AGIS project

As it was reported in previous issues of the Newsletter (Vol. 5, Issues 2 and 3), between December 2003 and December 2005 the European Forum coordinated an AGIS project focusing on 'Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe' with the financial support of the European Commission. The project involved experts from Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Germany, Greece, Hungary, Moldova, Norway, Poland, Romania, Russia, Serbia and Montenegro, Slovenia, Turkey, Ukraine and the UK.

In the following paragraphs I, firstly, intend to summarise the main motivations behind starting this project. Secondly, I will give an outline of the Final Report of the project, including the main issues discussed. Then some of the conclusions and points for further discussion will be presented. Finally, some of the important elements of the working process will be discussed.

Reasons for focusing on Central and Eastern Europe (CEE)

After the fall of the Soviet Union, CEE countries had to face particularly rapid and radical political, social and economic changes. This transformation from a

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*The European Forum wishes
you Merry Christmas and
Happy New Year!!!*

monolithic to a pluralistic model of society affected the institutions of the political and legal system, the economy, the cultural and intellectual life, international relations and of course the everyday life of citizens. The (still ongoing) transitional period from socialist to democratic systems brings along some issues which make it worthwhile to study the possibilities of implementing RJ. Two main elements for this can be seen: firstly, the *requirement to guarantee compatibility of domestic law with international agreements*; and, secondly, the *societal challenges* these societies have had to face during the transition.

Concerning the *societal changes* we should first mention that virtually all countries in CEE had to deal with a dramatic increase in the number of crimes (Albrecht, 1999: 448), associated with a significant decrease in the efficiency of law enforcement (Walmsley, 1996: 16). Some of the reasons for this sudden and steep increase in the number of crimes were: the relative deprivation, the state of anomy of the society, the increase of social inequality, the anomalies of social standards, social tensions and conflicts. In short, these factors made it extremely difficult for citizens to adapt to the new conditions of the democratic system (Lévy, 2000).

However, the legal and institutional reform of these countries did not only have to give adequate responses to these societal difficulties. It also had to meet the requirements of a democratic regime by shifting from the “once authoritarian and instrumental view on criminal law towards an understanding of criminal law characterised by the concept of justice” (Albrecht, 1999: 460). Within this complex reform, legal reforms also had to consider how to implement the ‘new’ standards that were outlined by international agreements. So, these countries had to create new forms of extra-judicial control, community-based sanctions, alternative procedures, and diversionary measures, as well as provide effective victim support, provide possibilities for the social reintegration of offenders, and outline complex crime prevention strategies.

It is clear that, both in finding adequate social and legal responses to the suddenly increased crime rates and in searching for the ways in which international standards can be implemented in the justice systems of CEE countries, it is very relevant to consider the possibilities for introducing RJ. While several studies have explored and analysed the procedural elements of different restorative practices, the policy-related issues raised by them and their influences on communities both on micro and macro level, there has

been little emphasis on how its implementation can be effectively achieved in post-socialist countries where the above mentioned international tendencies still have to compete with the traditions of strongly centralised legal systems and with the continuing monopoly of the state in relation to responding to crime.

All these aspects were considered when the European Forum introduced an AGIS project (JAI/2003/AGIS/088) in December 2003.

The AGIS project intended to help the exchange between the East and the West of Europe, which was beneficial for both parties since not only CEE countries could use the experience of the West to try to find solutions to the specific problems they are encountering in the implementation of victim-offender mediation. Also Western European countries could learn from the options taken in the Central and Eastern regions of Europe. The stimulation of this exchange and accompanying networking activities also intended to be beneficial for the European Union since the project aimed at defining more detailed policy recommendations by the end of the project which could be considered in further policy development work on RJ at the level of the European Union.

The main activities of this AGIS project were the preparation, organisation and follow-up of two expert meetings and two seminars. Each of the events provided two to three days for the participants to discuss the issues raised in the project.

By the end of the project, a final publication has been edited. It intends to give a detailed and up-to-date theoretical, conceptual and practical overview on the project’s main issues. In the following section I will give a brief overview of this publication. Its structure and highlighted issues might give a deeper insight into the ways in which the complex questions and objectives of the project were dealt with.

Overview of the final report

The publication firstly discusses the relevance of RJ in the European countries’ current criminal policies, followed by an overview of the special importance of the CEE region in this issue. After this introduction, the state of affairs of RJ in eleven CEE countries can be found. The country reports discuss the legal base, the scope, the implementation, the evaluation and the future tendencies of RJ in each country. These detailed descriptions already illustrate well the common elements as well as the significant differences amongst the countries involved.

The third chapter discusses the main challenges in relation to the process of implementation. It firstly outlines the general tendencies in the CEE region,

focusing on three main dimensions: the criminological, the sociological and the institutional factors.

As to the criminological dimension, issues such as the radical changes in crime, the high level of punitive attitudes and the hegemony of the state in the justice system, are detailed. The sociological concerns mainly relate to the lack of 'sense of community' and its consequences on the societal level. As another impact of the transition, it is pointed out that the increased anomaly in social values could directly lead to the weakening of moral and legal principles in these societies. The lack of shared value-systems, thus, easily lead to the dramatic increase of crime. Finally, the common elements of the so-called institutional difficulties are sketched, including the lack of NGOs' credibility, services, information, experts and so on.

The second section of this chapter intends to give a deeper insight into four so-called 'hot issues'. It details how 1) legislation, 2) fundraising, 3) the awareness of the general public and professionals, and 4) training and other organisational issues are dealt with in the process of implementing RJ. At the end of this chapter some recommendations formulated by the participants in relation to these four topics are presented.

The fourth chapter moves towards the supportive factors in this region. Amongst the general tendencies, changes 1) in the legitimacy power of the justice systems, 2) in the underlying principles of sentencing systems, as well as 3) in the role of communities are emphasised in particular. The second part of the chapter intends to present some concrete examples by describing best practices from 16 countries. Besides these encouraging projects of the present, concrete action plans for the future are also formulated by the experts involved.

As a bridge between the already existing supportive factors and further needs in the process of implementation, the different forms and functions of international exchange activities are described in the fifth chapter.

Finally, a summary of the main needs, voiced by the CEE experts, for their further activities in the implementation of RJ in their countries is presented. Concerning the realisation of successful implementation and improvement of RJ, nine areas can be distinguished under which the main needs connected to implementation can be grouped. The needs highlighted the most relate to the issues of: legislation, institutional building, pilot projects, exchange-networking, resources (financial, informational and human), standards and guidelines, training, research, and finally the public promotion of RJ. It is important

to stress that all of the listed activities are essential on both national and international level.

Some concluding remarks and points for discussion

While searching for the way in which RJ can be effectively implemented in CEE countries with the involvement of Western experts, one can immediately recognise the enormous *differences* between European countries. These differences result mainly from the different political, economical, historical and cultural background of societies. These factors inevitably influence the structure of the criminal justice system, as well as the ways in which people respond to conflicts at any level of the society. Therefore, the potential of RJ is highly different in each context.

However, some *common elements* can be recognised amongst countries having similar and interconnected political histories. Accordingly, it can be pointed out that within the CEE region three groups can be distinguished: firstly, countries from the Central part of Europe (Poland, Czech Republic, Hungary); secondly, states that used to belong to the ex-Soviet Union (Russia, Ukraine, Estonia, Moldova); and finally, the so-called 'Balkan' countries, including the South-Eastern and the ex-Yugoslavian states, such as Romania, Bulgaria, Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro and Albania, show some similar elements mainly in the general attitudes of the public towards the judiciary system (concerning its legitimacy, credibility, hegemony, etc. in the societies as well as the trust of citizens in them).¹

Furthermore, the impact of the communist regime on all these countries' past and the process of democratic transition both resulted in a kind of 'common Eastern sense' that was recognisable amongst the participants involved.

However, while searching for commonalities, yet a more provocative conclusion can be drawn. Concerning the main challenges and supportive factors, we can summarise that there are no significant differences even between East and West, especially not regarding the main problems and needs. Although the 'levels' of these difficulties are usually considerably different (the lack of financial resources might mean other figures in, for example, Germany compared to Romania), the 'content' remains very similar in both Eastern and Western countries. Namely, fundraising, or the dominant position of the state in the criminal justice system, as examples, are crucial issues in both Eastern and Western Europe.

Also, related to the main *needs*, one can conclude that

the mentioned factors *are required at the same time* in order to stimulate the effective implementation and further development of RJ. In other words, it would not be wise to establish a hierarchy amongst the needs and try to define which of those might have higher priority. They mostly occur parallel to each other and their common fulfilment is necessary for achieving success in the reform processes. Support is mostly required in three areas, namely in lobbying (political pressure), in resources (financial, human, and instrumental), and in know-how (all issues related to methodology). Support is welcome both from national and international organisations by actors representing various sectors, such as the system of criminal justice, social welfare, public administration, universities, etc.

Thus, if there are so many similarities between East and West, one can raise the question *how such an international exchange process can contribute* to further developments? Representatives of the CEE countries seemed to be extremely committed and competent in their activities. Thanks to their intensive work and fast developments, some of the country reports of the first chapter are already out of date by the time this overview is finalised. However, the involvement of Western experts has a huge potential in keeping the long-term and broader aspects of the implementation in mind. Via the rapid reforms, the underlying objectives and principles can be easily forgotten. Therefore, the experiences, suggestions, and even mistakes of Western experts can contribute to keep the focus of the reform activities of Eastern colleagues on the original goals.

As one participant concluded, the end of the project meant at the same time a start for several new activities. It opened the door to a wide range of future programmes and partnerships. We can assume the same about the theoretical or practical findings of the project: while numerous issues have become much clearer by gaining a detailed picture of the implementation process in several countries representing different regions of Europe, the project - at the same time - has opened a number of *new questions*.

There are still diverse views on whether RJ should be seen as a form of *crime prevention* or as an *alternative* to punishment, or whether it is an entirely different concept. On the basis of several comments it can be assumed that, particularly in CEE countries, the main issue is how to implement alternative measures *in general* in the conventional justice system.

The ease with which alternative measures can be

implemented indicates how flexible a justice system is, and to what extent it provides space for more community-based interventions. In short, the scale of alternative measures in a criminal justice system also reflects on how 'democratic' a given society can be considered to be. Due to the special history of the Eastern regions, it can be assumed that judicial systems in most of these countries are still stricter and more rigid than in other parts of Europe where societies have had the chance to improve their democratic systems during centuries and not only during ten-fifteen years. Therefore, the primary challenge for the East currently might be to integrate *any* alternative to punishment. One might say that in a criminal justice system alternatives to punishment can exist without including RJ, but RJ cannot evolve in any judicial-societal atmosphere that is not supporting and promoting other measures in addition to retribution.

Furthermore, the question should also be raised whether RJ can be considered as a *completely different view of justice* (a 'paradigm-shift' in the justice system), or whether we can talk about *only integrating some 'restorative elements'* in the current, basically retributive, justice systems. This issue is significant when we discuss whether RJ should be integrated only as a whole 'package', or alternatively, grass-root initiatives should rather aim to implement it step by step through their smaller projects and measures.

Furthermore, another argument could also be considered stressing that legal systems of CEE countries are in a transitional phase anyway. Therefore, the *implementation* of RJ in these '*already moving*' systems might be easier compared to its integration in the justice systems of Western European countries. The latter judicial models can be considered *more 'stabilised'* (evolved during centuries), in which reforms can only be made in a more gradual way, unlike in the Central, and especially in the Eastern, part of Europe.

Moreover, it can be concluded that post-communist societies have experienced *rapid institutional and legal changes* in the last few years. These reforms were the result of two main factors: firstly, the democratic transition, and secondly, their opportunity to become members of the European community. These two factors equally contributed to some significant systemic changes. However, these institutional and political processes have *not* necessarily provided enough time for a *change in mentality* as well. The lack of this mentality change is mostly perceived in the general public's attitudes as well as in the actors of the governmental sector and the different criminal justice agencies of these countries. The difficulties resulting

from this issue should not be underestimated.

And last but not least, it can be supposed that the main difficulties in the concerned countries refer to the *lack of legitimacy of informal, community-based responses to criminal offences*. Although this is a general challenge in most countries, its effects can be more visible in Eastern than in Western societies. As a consequence, the legitimising and credibility-increasing role of formal frameworks, especially legislation, cannot be underestimated while discussing effective implementation. In other words, laws are one of the most significant instruments for effective implementation, since they are crucial in providing reasons, justifications, clear positions, protocols, institutions, and credibility in the society from a top-down direction as well. Therefore it can be concluded that promoters of RJ in the East *need* legislation in the field of RJ, maybe even more than their Western colleagues do.

However, at this stage, these issues are open questions rather than clear conclusions. Therefore there is a great need not only for further international exchange and partnerships, but also for a more detailed analysis of the previously mentioned issues.

Some remarks about the meetings

An important element in the project was the enthusiasm, competence and commitment of the participating experts. Besides all the concrete information summarised in the reports, the meetings provided a particularly good working environment in which effective and well-structured team work could be realised in a highly supportive and encouraging context.

It was clear that the experts - who often came from very difficult backgrounds concerning the social, economic and political situation of their countries - obtained significant support in their work by belonging to the core team of the project.

Meetings also resulted in several external recognitions from national policy makers as well as from representatives of international organisations, such as the European Commission, the Council of Europe and the United Nations. These types of feedback and evaluation also contributed to further developments in these countries and encouraged the advocates of RJ to continue their activities, regardless of the many challenges they need to face in their daily work.

The most efficient and successful way of working in focus-groups was to precisely structure each session (including strict time limits) and meanwhile provide as much time as possible for interactive, small group exercises in order to actively involve the participants.

It was important to recognise that participants appreciate such activities and can innovatively and effectively work within the agreed framework.

Future directions

Due to the lack of further funding the current project is not continued in this format. However, from the very beginning participants were encouraged to establish partnerships and prepare further cooperation. As a result, a tri-lateral project was designed between the German, Austrian and Moldovan experts. A bi-lateral partnership is planned between the Austrian and Hungarian participating organisations.

Also, previously started partnerships have been further developed as is the case between Polish, Ukrainian and Moldovan experts, and between Norway and Albania.

The European Forum also intends to apply for future AGIS projects using a similar programme-design in order to stimulate the implementation process of RJ in other European countries as well.

Post script

Finally, I would like to express my gratitude to all the experts involved in the project for their fantastic and stimulating attitude during the whole project. The success of this project was based on their competence and commitment. At the same time, the meetings were unique occasions for creating friendships and giving personal support to each other for our current and future activities. It is clear that this AGIS project found some of the best possible partners in Europe both regarding their expertise and their personal attitudes. As a coordinator, it was an extraordinary trip for me, not only scientifically and geographically, but also emotionally. Thank you for your support.

Borbala Fellegi, AGIS project researcher

This article could discuss the project's main topics only very briefly. If you are interested in the detailed overview of these issues and the recommendations of the project, please visit the website of the European Forum where the full text of the final report will be available (<http://www.euforumrj.org/projects.htm>) or contact the Secretariat.

ALBRECHT, H.-J. (1999), 'Countries in Transition: Effects of Political, Social and Economic Change on Crime and Criminal Justice - Sanctions and Their Implementation', *European Journal of Crime, Criminal Law and Criminal Justice*, 7 (4), p. 448-479.

LÉVAY, M. (2000), 'Social Changes and Rising Crime Rates: The Case of Central and Eastern Europe', *European Journal of Crime, Criminal Law and Criminal Justice*, 8 (1), p. 35-50.

WALMSLEY, R. (1996), *Prison Systems in Central and Eastern European Countries. Progress, Problems and the International Standards*, Helsinki, HEUNI Publication Series No. 29, p. 15-16.

1 This is just one way of categorisation. Concerning some countries, particularly Romania and Slovenia, it is highly controversial whether they really belong to the "Balkans" since there are often disagreements between their 'official' classification and their self-identification.

Justice and sentencing traditions in Central and Eastern Europe

Despite the extensive and constant development of alternative sanctions, measures and procedures such as community service, conditional caution, probation supervision and restorative justice programmes in Western countries, they are not widespread in Central and Eastern Europe (CEE) where they have been introduced only since the fall of the 'Iron Curtain'. In some CEE countries (for example Czech Republic, Slovakia) the first mediation and probation initiatives appeared in the middle of the 90s, but in others they were undertaken only after 2000. Development of alternative sanctions is closely connected with legal and cultural traditions of the country, where those can be either a supportive factor in its implementation, or a challenge. In this article I will analyse the difference between criminal justice and sentencing traditions in Western and Eastern countries, and try to explain challenges meeting the current legal reforms in CEE.

Post-socialist justice

If we say CEE, we mean all European post-socialist countries. CEE is rather a political division than a geographical one. Any country belonging to CEE is either a former Soviet Union republic or a USSR satellite. All these countries have been separated from the West during the Cold War and all of them have had similar legal systems.

There are a number of common features in their criminal justice systems, such as the criminal policy, the system of sanctions, as well as the public opinion on crime and punishment.¹ The recent research of the International Centre for Prison Studies shows that in Russia, Belarus, Ukraine, Moldova, and to a certain degree also in Romania, Bulgaria, Czech Republic, Slovakia, Hungary and Poland, a highly punitive criminal sanction system exists, using detention as a main tool of punishment and long term imprisonment resulting in a high number of detained people. Accordingly, there are overcrowded prisons, increased recidivism, difficulties of reintegrating offenders into the communities, and there is low community participation in the processes of offenders' resocialiation.²

The median rate of detention in the 15 countries of the European Union before its extension on 1 May 2004 was 97 detainees per 100,000 inhabitants on 1 January 2004³. As we see, the number of detainees in post-socialist countries is significantly higher than in Western ones.

In order to reveal the causes of this situation, it is important to consider criminal sanctions before the 90s. Under socialism the penal system was unable to

set itself completely free from the legacy of the sadly notorious Stalinist GULAG.

Country	Prison population total (Nr in penal institutions incl. pre-trial detainees)	Prison population rate (per 100,000 of national population)
Belarus	52,500	532
Bulgaria	11,060	143
Czech Republic	18,830	184
Hungary	16,700	165
Moldova	10,729	297
Poland	79,087	209
Russian Fed.	763,054	532
Romania	39,015	180
Slovakia	8,891	165
Ukraine	198,386	416

Table1. Central and Eastern European Prison Population List (prepared by Roy Walmsley, International Centre for Prison Studies, February 2005)

The word "GULAG" comes from the Russian abbreviation for "General Department for Work Camps", a structure created in the Soviet Union for administrating those camps where the convicted persons were serving their punishment. Initially the so-called 'political' criminals were sent to these camps who had different ways of thinking and who were opposing the dictatorship. They were usually sentenced to long-term imprisonment. Since their number was very high, these camps had to be built not as usual prisons with individual cells, but as barracks, where the prisoners were not only living but also working. Afterwards these camps (also called "colonies") have been used for imprisoning other types of offenders as well who were punished for different kinds of offences⁴.

While Western European democracies underwent a process of liberalisation in their criminal justice and penal policies after World War II, which included abolition of the death penalty and the development of alternatives to imprisonment, the criminal justice systems of socialist countries did not experience the same type or degree of liberalisation. Contrary to the Western world, prison in the Soviet Union was seen as the norm. A peculiarity of the Soviet regime was that prisoners' work was regarded as central to the advancement of the Soviet economy⁵. Yuriy Kalinin, deputy Minister of Justice of the Russian Federation, suggests that the Soviet system was founded first and foremost on the concept of deriving profit from the labour of convicted prisoners and ensuring compensation for the evil which had been perpetrated by the prisoners. He points out further that when the socialist system collapsed, many of the ideological and economic conditions which had provided the

basis for the old penal system disappeared and as a result the foundations of the penal system began to collapse as well⁶.

After the collapse of the USSR, CEE societies experienced the greatest impact of the transition period from socialism to capitalism, accompanied by painful reforms in economic, political and social fields, which resulted in major changes in the nature and extent of crime. Crime rates throughout the region exploded and showed overall upward trends which continued throughout the next decade. Some of the biggest increases were seen in property offences. The median rate for domestic burglary in 2000 was 72 percent higher than the rate in 1990, while that for motor vehicle theft in 2000 was 236 percent higher than in 1990⁷. The impact of the surge in crime on citizen attitudes has been significant. Post-socialist publics have demonstrated high levels of fear of crime and feelings of insecurity. At the same time, they generally continue to perceive the police as corrupt or as serving the interests of the state or private interests rather than those of the community⁸. The International Crime Victims Surveys (ICVS) indicated that of all the major regions of the world, citizens in the countries in transition of CEE feel least safe, with 46 percent saying they feel safe in the street, while 53 percent feel a bit unsafe or very unsafe⁹. In 1995, for example, 40 percent of respondents in the Czech Republic felt insecure on the streets near home after dark, while 35 percent of Poles felt insecure¹⁰.

Due to the increased crime and fear of crime in society, rates of imprisonment have steeply increased in recent years in the majority of CEE countries and have led the trend towards a more punitive criminal justice policy and increasing numbers of prisoners¹¹. This is obviously due to strong public and political support for a tough response to crime but also to the underdevelopment of a powerful community sanctions and measures sector, i.e. the partial or total absence of the infrastructure necessary to implement non-custodial sanctions and measures properly¹². However, it is not the only reason for the punitive character of criminal justice in this region. Other key factors include the traditional inquisitorial character of Soviet and post-Soviet criminal procedures and the slow and inefficient pace of court and investigative procedures. There are two characteristics of the Soviet inquisitorial justice system. Firstly, the court plays the role of prosecutor, insofar as it is obliged to carry out its own independent investigations into cases in order to complete any elements omitted in the work of the criminal investigation agencies or in other preliminary investigations. As a result, ordinary courts acquit only

1-1,7 percent of defendants. The second dominant characteristic of the system is that the defendant is not treated as a human being endowed with specific legal rights, but as the object of a more or less impartial investigation. It has been alleged that, as a result of frequently used torture during investigation, the prison population continues to rise because of convictions based on defendants' self-incrimination, in particular in former Soviet Union republics¹³.

It should be noted that there are considerable discrepancies between the Western European and the CEE prosecutor's role in the justice system. In Western Europe a relatively high degree of prosecutorial discretion is recognised as a prerequisite for the efficient administration of justice and is perceived as a perfectly normal element of the criminal justice process. However, for many law-makers in CEE countries, such discretion did not seem acceptable. They would rather go for a strict application of the principle of mandatory prosecution¹⁴.

Current reforms

Since the CEE countries have signed international agreements and joined the Council of Europe, the situation with regard to criminal justice has started to change for the better. First of all, these countries have announced legal reforms aiming at making criminal justice more democratic and transparent. Secondly, programmes have been initiated in order to introduce alternatives to imprisonment and to pre-trial detention, as well as to implement probation and mediation.

However, the introduction of justice reforms has met a number of challenges in CEE. Firstly, there is a fundamental mistrust of police and the judiciary amongst the population, lack of confidence in the impartiality of judges and mistrust of the independence of the judiciary from the executive power. The lack of respect in society is a phenomenon dating back to the Soviet era when the party dominated all jurisprudence and courts were an appendage of the local party committee. As a result of this phenomenon, the classical understanding of applying to a court for justice is ruined; a person would mainly go to court as a last possibility to gain redress. Besides, the courts and the law enforcement bodies have since the Soviet times traditionally been on one side of the barricade, fighting crime and ignoring the protection of the interests of justice, and the rights of a human being¹⁵. Secondly, there is a lack of infrastructure for the implementation of alternative sanctions and measures. Some Ukrainian judges - in private conversation - mentioned that they prefer to impose suspended imprisonment instead of community service (alternative punishment introduced in Ukraine

in 2001), because they do not know who will supervise the execution of community service and how they will do it.

However, despite the temporary difficulties in meeting the justice reforms, the implementation of alternative sanctions, measures and procedures have been gradually developed in CEE, partly due to the enlargement of the European Union and legal reforms aiming at European integration and the building of democratic society.

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- 1 Hanganu, S. (2004), *Ideologies in sentencing in Central and Eastern European countries*, Presentation at the 1st AGIS seminar, Budapest, October 16-18, 2004.
- 2 Ibid.
- 3 Ibid.
- 4 Ibid.
- 5 Available at: http://www.newhumanist.org.uk/volume120issue2_more.php?id=1375_0_35_0_C.
- 6 Kalinin, Y. (2002), *The Russian Penal System: Past, Present and Future*, Lecture delivered at King's College, University of London, November 2002.

- 7 Aebi, M. (2004), 'Crime Trends in Europe from 1990 to 2000, Crime and Control in an Integrating Europe', in Aromaa, K. and Nevala, S. (eds.), *Plenary presentation held at the Third Annual Conference of the European Society of Criminology*, Helsinki, European Institute for Crime Prevention and Control, p. 43.
- 8 Krajewski, K. (2004), Crime and Criminal Justice in Poland, *European Journal of Criminology*, 1 (3), p. 398.
- 9 Zvekic, U. (1998), *Criminal Victimization in Countries in Transition*, Rome, UNICRI, p. 82.
- 10 Los, M. (2002), 'Post-communist fear of crime and the commercialisation of security', *Theoretical Criminology*, 6 (2), p. 166-168.
- 11 Saar, J. (2004), 'Crime, Crime Control and Criminology in Post-Communist Estonia', *European Journal of Criminology*, 1 (4), p. 521-522.
- 12 Rau, W. (1999), 'Countries in Transition: Effects of Political, Social and Economical Change on Crime and Criminal Justice', *European Journal of Crime, Criminal Law and Criminal Justice*, 7 (4), p. 360.
- 13 Available at http://www.penalreform.org/english/frset_map_en.htm.
- 14 Rau, W., l.c., p. 358.
- 15 Pushkar, P. (2003), 'The reform of the System of Criminal Justice in Ukraine: The influence of the European Convention of Human Rights', *European Journal of Crime, Criminal Law and Criminal Justice*, 11 (2), p. 209-213.

Calendar

- December 5, 2005, Berks (UK), Second annual conference on Restorative Approaches to Educational and Looked after Settings, "A Whole School Approach - implementing and sustaining restorative approaches in schools". For more information: www.transformingconflict.org.
- February 28, 2006, Liverpool (UK), Annual Conference of Mediation UK "Difference and Diversity". For more information: www.mediationuk.org.uk.
- March 7-9, 2006, Belfast (Northern Ireland), "International Conference on Restorative Conferencing - Shifting the power to young people, families, victims and neighbourhoods". For more information: www.youthconferenceserviceni.gov.uk.
- March 16, 2006, Edinburgh (UK), "Positive Conflict Resolution - Mediation and Community Development in Scotland". For more information: www.sacro.org.uk.
- March 29-31, 2006, Sarajevo (Bosnia and Herzegovina), "Peace-Based Development", seminar organised by the International Education for Peace Institute (EFP-International) and Education for Peace Balkans (EFP-Balkans). For more information: www.efpinternational.org or e-mail: academc@efpinternational.org.
- March 30-April 1, 2006, Barcelona (Spain), International Penitentiary Congress. For more information e-mail penitenciari@meetingcongress.com.
- May 3-5, 2006, Mainz (Germany), 11th German National VOM Conference "Enhancing the Dialogue - Promoting Peace Under the Law". For more information: www.toa-servicebuero.de.
- June 4-10, 2006, Fresno, California (USA), "Victims and Diversity: Partnership and Synergism", 12th International Symposium of the World Society of Victimology. For more information: wsvsymp2006@csufresno.edu.
- **June 15-17, 2006, Barcelona (Spain), Fourth conference of the European Forum for Restorative Justice, "Restorative justice and beyond: an agenda for Europe". The provisional programme and all registration documents can be found on our website www.euforumrj.org.**
- August 20-25, 2006, Orlando, Florida (USA), 12th International Victimology Symposium organised by the World Society of Victimology. For more information see www.world-society-victimology.de.

New Belgian law on mediation

According to the Belgian law of 22 June 2005, a mediation process can be started on the request of persons who have a direct interest in a criminal procedure, and this is possible during the whole criminal procedure. Also mediation after trial, during execution of the sentence, is not excluded.

The explanatory memorandum of the new Belgian law refers to the attention given to this matter at a European level, as for example in Recommendation R(99)19 of the Council of Europe. The explanatory memorandum refers specifically to the Framework Decision of the Council of the European Union of 15 March 2001 on the standing of victims in criminal proceedings, which states in article 10 that “each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure”, and that “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 states that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this article 10, before 22 March 2006.

The Belgian law is based on the above mentioned European guidelines and the experimental practice of victim-offender mediation in Belgium since 1993, which has developed and established itself over the years in nearly the whole country (in both Flanders and Wallonia). The driving force behind this evolution was the work of the non-governmental organisations “Suggnomè” (for Flanders) and “Médiate” (for Wallonia). Both these non-profit organisations are mainly financed by the Federal Department of Justice. “Suggnomè” is also partly funded by the Department of Welfare of the Flemish Government.

Definitions of mediation in the Belgian law

Mediation is a process that allows people involved in a conflict, if they agree voluntarily, to participate actively and in full confidentiality in solving difficulties that arise from a criminal offence, with the help of a neutral third person and based on a certain method-

ology. The goal of mediation is to facilitate communication and to help parties to come to an agreement by themselves concerning conciliation and restoration.

Policy lines in the Belgian law of 22 June 2005

The documents and statements that are made in the course of the mediation process are confidential, with the exception of those matters in which the parties agree to notify the judicial authorities. The judge has to mention, when giving judgement, if he or she has been informed of certain elements with the agreement of the parties, and has taken them into account (notice the resemblance with article 10 of the Framework Decision).

Confidential documents and statements made in the course of the mediation that are communicated to the judicial authorities without the consent of both parties, or on which one party bases its argumentation, will be kept out of the judicial debates.

Mediators cannot make public any facts they became aware of during the mediation process. They cannot be called as witnesses in any criminal, civil, administrative or any other procedure concerning the facts that they became aware of during the course of the mediation process.

The Public Prosecution Service and the judges see to it that all persons involved in a criminal procedure are informed of the possibility to take part in mediation.

Deontological Commission and recognition of the mediation services

Mediators are embedded in mediation services that will be recognised by the Minister of Justice. A Deontological Commission will be created to watch over a uniform conduct for all recognised mediation services.

David Eyckmans, vzw Suggnomè
More info: info@suggnome.be

The full text (in French and Dutch) of this new law can be found at: www.suggnome.be/pdf/wetbemiddeling220605.pdf.

Readers' Corner

- *Victim-Offender Mediation with Youth Offenders in Europe. A comparison and overview of 15 countries*, by Anna Mestitz and Simona Ghetti (eds.) (2005). This book documents the state of affairs on victim-offender mediation with young offenders in 15 European countries. It provides an up-to-date review of current theory and practice and presents a critical discussion of problems and

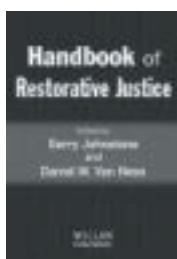
benefits which may help guide future policy decisions and applications. Available from Springer, www.springer.com.

- *Understanding victims and restorative justice*, by James Dignan (2005). After discussing victimology and the welfare approach to victim-focused policy making and compensation, Dignan looks at attempts to give more attention to victims in the

conventional criminal justice system. He considers restorative justice and its limits from the standpoint of different types of victim, reviewing empirical evidence and the broader picture: some questions cannot be resolved on the basis of research, but call for normative and political balancing of competing interests. Available from Open University Press, www.openup.co.uk.

- *Justice restaurative: principes et promesses*, by Robert Cario (2005). This is possibly the first textbook on restorative justice in French. It outlines classical penal and rehabilitative models, and the justification of punishment, and presents the general theory of restorative justice and specific manifestations, especially victim-offender mediation, family group conferencing and healing or sentencing circles. Among other advantages, it takes account of emotions, unlike the conventional system. Available from l'Harmattan, www.editions-harmattan.fr.
- *The little book of conflict transformation*, by John Paul Lederach (2003). The author worked in peace building for twenty years before becoming an academic. In 74 pages he analyses the idea of transforming conflicts rather than aiming to resolve them. The aim is to create constructive processes for change, recognising the importance of relationships, structures and cultures. We should not only map the conflict, but be aware of our own capacities. Available from Good Books, www.goodbks.com.
- *Alternatives to prison: options for an insecure society*, edited by Anthony Bottoms and Sue Rex (2004). Sixteen chapters review research on many kinds of non-custodial sanctions, the editors are also politically aware, and include research on public opinion. The chapter on restorative justice treats it as a type of sanction rather than a distinct philosophy, but several authors find advantages of reparation. Available from Willan Publishing, www.willanpublishing.co.uk.
- *Returning to the teachings: exploring aboriginal justice*, by Rupert Ross (1996). Not a new book, but relevant to those interested in the development of sentencing and healing circles in Canada, with special reference to the response to the uncovering of widespread sexual abuse at Hollow Water, Manitoba. One Cree elder is quoted as asking whether the Western legal system is a *justice* system. Available from Penguin books, www.penguin.com.
- *Vade-mecum herstelrecht en gevangenis - Vade-mecum justice reparatrice en prison*, by Tinneke Van Camp et al. (2004). This report was ordered by the Belgian Ministry of Justice. It wants to be a practical guide for people interested in introducing restorative justice values in the prison system and is based on the Belgian experience (in 1998 an experimental project was started on introducing restorative justice in prisons. Since 2000 there is one restorative justice advisor in each Belgian prison). Available in French and Dutch from Academia Press, www.academiapress.be.
- *Victims of Crime and Community Justice*, by Brian Williams (2005). In chapter one of this book, the author describes how victim issues have come on the political agenda, and the positive but also negative implications of this on victims (and offenders). Chapters two and three describe community justice and restorative justice and their implications for victims. The risk of 'using' the victim for the 'benefit' of the offender receives an important place. Chapter four discusses some other measures that can benefit victims, like Victim Impact Statements. Drawing on case studies, chapter five presents some good practices of ways in which the position of the victim can be ameliorated within the criminal justice system. In the last chapter, the author stresses the importance of a balanced approach to improving the victims' position. He also outlines implications for future research and for future policy and practice. Available from Jessica Kingsley Publishers, www.jkp.com.
- *Mediación penal. De la práctica a la teoría*, by Ulf Christian Eiras Nordenstahl (2005). Is it possible to mediate in penal cases? Is it possible to let victim and offender meet? If yes, what are the limits? These and other questions are dealt with in this book. Based on 6 years of experience with mediation in Argentina, the author proposes a mediation model. Available from Cathédra Jurídica, www.cathedrajuridica.com.ar.
- *Transforming International Criminal Justice. Retributive and restorative justice in the trial process*, by Mark Findlay and Ralph Henham (2005). This book sets out an agenda to transform international criminal trials and the delivery of international criminal justice to victim communities through collaboration of currently competing paradigms. It reflects a transformation of thinking about the comparative analysis of the trial process, and seeks to advance the boundaries of international criminal justice through wider access and inclusivity in an environment of rights protection. Collaborative justice is advanced as providing the future context of international criminal trials. The book's radical dimension is its argument for the harmonisation of restorative and retributive justice within the international criminal trial. Available from Willan Publishing, www.willanpublishing.co.uk.

Restorative Justice titles from Willan Publishing



Handbook of Restorative Justice

Edited by **Gerry Johnstone** (University of Hull) and **Dan W. Van Ness** (Prison Fellowship International, Washington DC)

This book provides a comprehensive and authoritative account and analysis of restorative justice, one of the most rapidly growing phenomena in the field of criminology and justice studies. In the last decade it has become a central topic in debates about the future of criminal justice. Hundreds of restorative justice schemes are being developed around the world, and they are attracting more and more attention from criminal justice academics, professionals and policy-makers.

May 2006 752pp (246 x 171mm)

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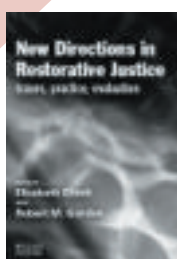
Institutionalising Restorative Justice

Edited by **Ivo Aertsen, Tom Daems** and **Luc Robert** (Katholieke Universiteit Leuven)

This new book aims to build bridges between those concerned with the practical institutionalisation of restorative justice on the one hand, and those engaged in more theoretical aspects of penal development and analysis on the other. It offers conceptual tools and a theoretical framework to help make sense of these developments, reflecting expertise drawn from analysis of developments in Europe, North America and Australasia.

December 2005 336pp (234 x 156mm)

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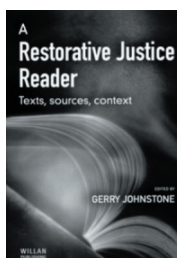
New Directions in Restorative Justice: issues, practice, evaluation

Edited by **Elizabeth Elliott** and **Robert Gordon** (Centre for Restorative Justice, Simon Fraser University)

This book addresses a number of key themes and developments in restorative justice. It is concerned with several new areas of practice within restorative justice, with sections on restorative justice and youth, aboriginal justice and restorative justice, victimization and restorative justice, and evaluating restorative justice. Contributors to the book are drawn from leading experts in the field from the UK, US, Europe, Canada, Australia and New Zealand.

July 2005 336pp (234 x 156mm)

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A Restorative Justice Reader: texts, sources, context

Edited by **Gerry Johnstone** (University of Hull)

This book brings together a selection of extracts from the most important and influential contributions to the restorative justice literature and its emergent philosophy, accompanying these with an informative commentary providing context and explanation where necessary. The book includes work by both well known proponents of restorative justice, work by some of the key critics of the restorative justice movement, along with work from a number of writers not directly involved in either advocacy or critique of restorative justice, but whose work is crucial to an understanding of it.

May 2003 528pp (246 x 171mm)

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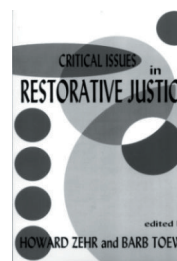
Juvenile Justice Reform and Restorative Justice: building theory and policy from practice

Gordon Bazemore and **Mara Schiff** (Florida Atlantic University)

This book, based on a large-scale research project funded by the National Institute of Justice and the Robert Wood Johnson Foundation, provides an overview of the restorative justice conferencing programs currently in operation in the United States, paying particular attention to the qualitative dimension of this, based on interviews, focus groups and ethnographic observation. It provides an unrivalled view of restorative justice conferencing in practice, and what the people involved felt and thought about it.

November 2004 400pp (234 x 156mm)

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Critical Issues in Restorative Justice

Edited by **Howard Zehr** (Eastern Mennonite University) and **Barb Toews** (Pennsylvania Prison Society)

This book addresses the critical issues that face restorative justice. These were identified following a series of meetings between practitioners, policy makers and academics in the UK, South Africa, New Zealand, the US and Canada, and are addressed directly in this book by an international group of writers. These include practitioners as well as academics, both from within and outside the field of restorative justice. The book aims to lay the groundwork for an ongoing, open ended dialogue.

June 2004 412pp (220 x 152mm)

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Report of the 2005 General Meeting

The European Forum for Restorative Justice has a new name. The General Meeting in Sofia, on 1 October 2005, accepted a proposal to leave out 'victim-offender mediation', because it made the name very long, and since the Forum was constituted in 2000, 'restorative justice' has become a more widely familiar concept. Some other technical changes to the constitution were also adopted, to take account of recent changes in Belgian law. However, as the required quorum of members was not present (or voting by proxy), a second meeting had to be called in order to approve the changes, and this was done at a follow-up meeting in Maastricht on 26 October.

The new strategy, recommended by the Board, was approved: funding will be sought to appoint a Director, with at least two half-time posts for an executive officer and an information officer, and two projects to provide a documentation centre and an information board. The meeting thanked Jana Arsovska and Borbala Fellegi for doing the work of the secretariat during Jolien Willemsens's maternity leave; Jolien was welcomed back in mid-March.

The Forum will appoint national promotion officers in every European country to encourage membership and publicize the Forum's work. Some 25 national promotion officers have been appointed in 2005.

The Forum was glad to welcome 32 new members, including our first members from Turkey. There were 6 resignations, and the membership of 29 members had to be terminated because of unpaid subscriptions.

The meeting included three presentations. Mr Christoph Sajonz from the Directorate-General Justice and Home Affairs of the European Commission, spoke of 'How the European Union is making restorative justice happen'. He provided valuable information about new AGIS funding to be announced in October, for

projects involving at least three member states (or two member states and one applicant state) on the protection of victims' interests and mediation in criminal matters. He discussed what should be regulated at EU level, and whether it would be useful, or premature, at this stage of restorative justice's development, to oblige Member States to set up national programmes. He mentioned operating grants for bodies like the Forum, of which up to 70 per cent could come from the Commission. He also gave advice about promoting the proposal for restorative justice contact points in member countries.

Antony Pemberton of the European Forum for Victim Services spoke about the role of the victim in the restorative justice process. There are 19 victim support organisations in 18 countries, offering support to 2 million victims a year (1.3 million of these in the UK). The European Forum for Victim Services promotes services for victims, fair compensation, and the involvement of victims in the criminal justice process. It does *not* campaign for severe punishment for offenders. Its latest policy statement is on the position of the victim in mediation, taking the victim's needs as the starting point. It warns of the risk that victims might feel coerced into the mediation process, especially if their refusal could have negative consequences for the offender. Victim support has an important role before, during and after the mediation process.

Vera van der Does presented her first findings on the implementation of Article 10 (dealing with mediation) of the EU Framework Decision on the standing of victims in criminal proceedings of 15 March 2001.

The full reports of the two 2005 General Meetings (Sofia and Maastricht) can be found on the website of the Forum: <http://www.euforumrj.org/meetings.htm>.

Martin Wright, Secretary of the European Forum

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The 11th UN Congress on Crime Prevention and Criminal Justice

The eleventh United Nations Congress on Crime Prevention and Criminal Justice took place from the 18th to the 25th of April 2005 in Bangkok, Thailand. Its core theme was 'synergies and responses: strategic alliances in crime prevention and criminal justice', offering a frame for the adoption of the UN Declaration with the same title, referred to as the Bangkok Declaration. Agenda items were transnational organised crime, terrorism, corruption, economic and financial crime, standard-setting in crime prevention and criminal justice, international law enforcement cooperation, and criminal justice reform, including restorative justice (RJ) (see <http://www.11uncongress.org/programme/programme.htm>).

RJ was a prominent issue at a number of ancillary meetings (for instance on restorative justice in UN peace building, in prison, in emerging countries, in established countries and in criminal courts). Moreover, it was explicitly included in the workshop panel on criminal justice reform. Regional preparatory meetings for the eleventh UN Congress suggested that this workshop should identify challenges and best practices in criminal justice reform and pay attention to the impact of criminal justice (reform) on vulnerable groups, including victims of crime. Considerations grounding this suggestion are the need for criminal justice to undergo changes in response to the crisis of public confidence in the justice system, the perception that the criminal justice system is failing vulnerable groups (such as indigenous population, certain racial, ethnic and religious minorities, children and victims), the rise of victim advocacy and limited capacity of existing systems and lack of human and financial resources. Some of the relevant issues identified by the UN in this matter, are the maximum access to justice, the emphasis on crime victims and on the use of restorative processes and principles where appropriate with and consistent with international guidelines and standards.¹ With the workshop on criminal justice reform the UN Commission on Crime Prevention and

Criminal Justice wanted to 'familiarize participants with the directions that restorative justice has taken internationally, including the emergence of international principles to guide policy and the practice emerging in the field'². The main objectives were to provide information on successful criminal justice reform, the encouragement of intergovernmental research projects into evidence-based approaches for the development of RJ practices, and sharing information and providing of technical assistance for least developed countries to support their criminal justice reform, including the development of RJ practices. Panel members and delegates of member states were invited to provide evaluative research data in order for the audience to get a view on main factors as well as obstacles for success and how these can be taken into account when implementing RJ applications.³

Also, an article on RJ is included in the Bangkok declaration on strategic alliances in crime prevention and criminal justice, as adopted by the eleventh Congress on Crime Prevention and Criminal Justice. This article recognises the importance of the development of RJ policies, procedures and programmes that include alternatives to prosecution, to promote the interests of victims and the rehabilitation of offenders, thereby avoiding adverse effects of imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of RJ approaches into criminal justice systems, as appropriate.

Tinneke van Camp, Belgium

- 1 United Nations, 11th United Nations Congress on Crime Prevention and Criminal Justice, Workshop 2: Enhancing Criminal Justice Reform, including Restorative Justice, Background paper, A/CONF.203/10, p. 4-6 and 19.
- 2 General Assembly United Nations, *Discussion Guide 11th United Nations Congress on Crime Prevention and Criminal Justice*, February 11th 2003, A/CONF.203/PM.1, p. 48.
- 3 General Assembly United Nations, *Discussion Guide 11th United Nations Congress on Crime Prevention and Criminal Justice*, February 11th 2003, A/CONF.203/PM.1, p. 48-49.

Short news

- The Finnish government has accepted to finance nationwide mediation in Finland. The preparation of nationwide mediation started this autumn and the law will come into force on March 1, 2006. The yearly budget is 6.3 million euros. Another 250.000 euros is invested in the preparatory work.
- The report of the Budapest conference of the European Forum is available on its website: www.euforumrj.org/conferences.Budapest.htm.
- Martin Wright's book 'Restoring Respect for Justice' has been translated into Polish: *Przywracając szacunek sprawiedliwoci*, Warsaw: *Polskie Stowarzyszenie Edukacji Prawnej*, 2005, ISBN 83-88407-32-5, www.psep.pl, psep@psep.pl.

Restorative justice in Portugal

Mediation for young offenders

The Portuguese legal system contemplates mediation within the Educational Guardianship Law (EGL) (*Lei Tutelar Educativa* - Law 166/99 of 14 September 1999), which resulted from the substantial re-orientation of the law that governs juveniles from a protective approach to one focused on responsibility, educational welfare and reparation. The EGL is applicable to young persons between 12 and 16 years old who commit acts defined by law as crimes. Within the EGL, mediation is intended to be offender-focused. It has been developed within a specific type of intervention - the guardianship intervention - whose purpose is, in the words of the EGL, to "...educate the minor in the field of law and not to impose retribution for committed crimes...".

The use of mediation within the guardianship process depends upon a determination by judicial authorities. In the evidentiary phase (which aims to determine whether the alleged acts occurred and were committed by the young person, and whether it is necessary to apply a guardianship measure), when the need to apply a guardianship measure has been determined, the public prosecutor may decide to suspend the process in cases when the offence is punishable by law with a jail sentence of up to five years. The public prosecutor may base his decision on the young person's presentation of a plan of behaviour that persuades the prosecutor that he/she will seek to avoid committing any further crimes. In developing and implementing the plan, the young person, his/her parents, or the legal representatives or legal guardians may seek the assistance of mediation services. The plan may require the young person to do one or more restorative actions. If during the preliminary hearing no agreement could be reached on the guardianship measure to be applied (and it is not considered necessary to impose an institutional measure) between the young offender, the public prosecutor and the victim, the judge may, in the jurisdictional phase (whose purpose is to confirm the facts, to assess the need to apply a guardianship measure and, in that case, to determine which measure should be applied and make the appropriate order), refer the case to a mediation service in order to reach an agreement.

A number of these measures directly focus on restoration: reparation to the victim (presenting apologies, financial compensation, undertaking any activities related to the inflicted damage which may benefit the victim); disbursement (paying instalments to benefit not-for-profit organisations, whether public

or private entities); completion of tasks benefiting the community (undertaking activities for not-for-profit organisations, whether public or private entities).

Even though the judicial authorities are the gatekeepers to mediation, the body responsible for its implementation is the Institute for Social Reinsertion (*Instituto de Reinserção Social*). This is a public body (responsible to the Ministry of Justice) that acts in an auxiliary capacity in the administration of justice. Its aims are to rehabilitate young offenders and to support the jurisdiction on minors. It recognised not only the potential of the use of mediation within the boundaries of the EGL, but also that mediation is the means of solving conflicts resulting from illegal acts being committed which better embodies the Principle of Minimal Intervention, and in the absence of other public or private entities in the field of mediation it decided to implement the Mediation Implementation Programme within the EGL. This programme envisages setting up and improving the arrangements executing decisions by the judicial authorities requiring a mediation process.

The mediators are staff members of the Institute for Social Reinsertion, with licentiate degrees in the field of social sciences and have undergone a basic training programme. They cooperate with trainers of the Justice Department of the Autonomous Government of Catalonia (responsible for the implementation of mediation in the region of Catalonia, as well as for its further development in a legislative context, which inspired the Portuguese one), as well as with the Portuguese Association for Victim Support (APAV) in order to achieve a more victim-sensitive approach.

In 2002, the programme covered 183 cases, equivalent to 5% of the activities undertaken by the Institute for Social Reinsertion under the educational guardianship jurisdiction. In the first half of 2003, 125 cases were registered, which already represents an increase compared to the previous year. In 2002, the Institute's intervention, envisaging drafting and/or executing a conduct plan, took place mainly during the inquiry stage - 80% at the inquiry stage, 17% within the mediation intervention in the initial stage of the inquiry and 3% of cases in which the intervention took place during the jurisdictional stage. During its first year of intervention, the Institute worked with young offenders who had the following profile: male, 16 years old, 4th grade of education, student, no systematised extra-curricular activities, integrated in the family of origin, poor social-economic background and first-time offenders. The vast majority of these cases could

be described as having an 'identifiable victim'. The 'individual victims' were predominantly students aged between 10 and 22 years old, whilst the 'collective victims' were mainly commercial or educational establishments, as well as city or town municipalities. The most common offences were larceny, injury to the person, robbery and driving without a licence. The majority of young offenders who participated in mediation had an initial cooperative attitude; only 28% of victims agreed to do so. Hence, and even though in the vast majority of cases positive outcomes were achieved, most of these were not cases in which an agreement between the young offender and the victims was reached. In a broader sense, positive outcomes represent cases in which the young offender took part in the drafting and/or execution of a plan of behaviour, as well as to the activities contemplated within it - the outcomes were positive, but not restorative.

In 2004 this programme was evaluated. This evaluation highlighted the need for coherence in the formal and informal alternatives presented to minors within the EGL. Accordingly, the programme's concepts and name were reconsidered and changed. An internal procedure manual was drafted, including, among other issues, the criteria applicable in accessing the programme, the basic principles of the mediation process, the role played by the mediator and the main guidelines for its implementation, all of which are in accordance with the Council of Europe Recommendation R(99) 19 of 1999. The Mediation and Restoration Programme, as it was re-named, mainly envisages a justice based on dialogue and taking responsibility, with the use of mediation whenever possible.

In the inquiry stage, presided over by the public prosecutor, the Mediation and Restoration Programme allows for the following possibilities: victim-offender mediation (VOM) envisaging reconciliation and/or restoration, whenever the public prosecutor so determines and refers the case to the mediation services. The agreement reached is then submitted to that judicial authority, which, in case of approval, will promote its execution and the subsequent closure of the proceedings. This judicial authority provides support in drafting the plan of behaviour, and whenever the legal requirements are met, when there is an individual victim and when the minor fulfils the criteria for eligibility, the programme prioritises the use of mediation. The commitments are then translated into a plan of behaviour. This is submitted to the court, which may suspend the proceedings on this basis.

In both cases, the access to mediation depends upon the compliance by both offender and victim with the basic requirements. This is assessed in individual interviews,

in which the following issues are ascertained. Regarding the young offender - recognition of his/her responsibility and/or participation in the illegal acts and thus in the resulting damage; capacity and willingness to reconcile and to participate in reaching a solution to repair the damage caused; willingness to participate in the mediation process, with a view to resolving the existing conflict and to fulfil the commitments undertaken. Regarding the victim - assessment of the damages and degree of victimisation; willingness to accept reparation; willingness to participate in the mediation process.

In accordance with Recommendation R(99)19 of the Council of Europe, the assessment of both parties also considers differences in age, maturity and intellectual capacity, as crucial factors in the full understanding of the process.

In the judicial phase, the intervention of mediation services envisages achieving a consensus regarding the non-institutional educational guardianship measures to be applied or the conditions under which these should be undertaken. The use of mediation at this phase has not been very significant.

In 2004, the Mediation and Reparation Programme dealt with 192 cases and from January till September 2005 171 cases were processed.

VOM with adult offenders

Regarding adults, neither the Penal Code nor the Criminal Procedure Code considers any mediation mechanism: even though the Penal Code and the Criminal Code contemplate several measures addressing obligations with a restorative character, their application is not preceded by a negotiation strategy between parties, led by mediators before the application of classical sanctions/penalties. Nevertheless, several 'entry doors' to mediation can be considered:

- *Discontinuance where sentencing is not necessary:* in crimes punishable with prison sentences of up to 6 months or with a fine of up to 120 days, the public prosecutor, with the agreement of the judge, may decide that the proceedings are to be discontinued if all the requirements are met: if the illegality of the act and the offender's guilt are reduced, if the damage has been repaired and if there are no arguments against dispensing the sentence.
- *Temporary suspension of proceedings:* in cases of committed acts which constitute crimes punishable with a jail sentence of up to 5 years or other non-custodial sanctions, the judge may temporarily suspend the proceedings, depending upon the agreement of both the prosecutor and the defendant, lack of prior criminal record of the defendant, low

level of culpability and if it is foreseen that the compliance with certain injunctions or conduct rules (such as compensation or moral satisfaction of the victim, disbursements to the state or to charitable organisations), will be sufficient to answer the concrete demands for prevention. In this case, mediation could play a significant role: instead of the judge defining and proposing the injunctions and rules of conduct to be imposed on the offender, why not involve the victim and the offender actively in the decision process, granting them the possibility, in conjunction with a mediator, of building a solution, deemed by both to be more suitable in that specific case, even though then subject to judicial approval?

- *Summary proceeding*: in the case of crimes punishable with a sentence of up to 3 years or with a fine and when the prosecutor considers that a non-custodial punishment or safety measures are sufficient, he may propose a sanction and request the court to impose it. If both the court and the defendant accept the sanction, the judge will make an order which is equivalent to a sentence. In these cases, mediation could have a relevant contribution in determining the applicable sentence: instead of deciding alone which sanction to propose to the court, the prosecutor could give both the offender and the victim the chance to discuss which would be an adequate solution for the case at hand, with the assistance of a third and impartial party.
- *Suspension of prison sentences*: the court may suspend prison sentences of up to 3 years if, taking into account the personality of the offender, his/her life conditions, his/her conduct before and after committing the crime and the circumstances in which the crime was committed, it considers that a reprimand combined with the threat of imprisonment may achieve the goal of the punishment (simple suspension). Suspension could be dependent upon the completion of certain duties or the observance of specific rules of conduct. Also in these cases, mediation could have a role to play, namely in determining the conditions for the suspension of sentence.

The first, and until now the only, VOM project in Portugal - the Restorative Justice and Mediation Project - has been developed by the Criminology School of the Law Faculty of Oporto University, within an agreement protocol signed between the Porto District Attorney Services and this faculty, dated 16 July 2004. This project is not only a mediation service, but rather a scientific research in the legal and criminology domains, comprising two main aspects:

a theoretical context and an empirical methodology. Within the 'opportunity principle' (discretionary prosecution) of the criminal proceedings, this Criminology School has developed its intervention in the terms of two procedural methods: temporary suspension of the proceedings and discontinuation in cases where sentencing is dispensed with. The activity is undertaken under the public prosecutor's power to direct the inquiry, particularly as regards the possibility of asking for expert opinions, in which the outcome of the mediation process is to be included.

Even though the research data is not systematised yet, some issues can already be mentioned. Intervention was requested in 15 cases (bodily harm, slander, threat, defamation and damage) between December 2005 and July 2006; of these, 8 were referred back to the public prosecutor because the offenders did not appear (2 cases), there was no possibility to mediate (4), or no agreement was reached (2). In 7 cases an agreement proposal was made.

In recent years, APAV has been looking into these issues: besides a restorative justice unit already in place, the implementation of a pilot-project on VOM is expected to start in 2006.

Perspectives

The reluctance to adopt mediation mechanisms in Portugal can be better understood in the light of the influence of the legality principle (mandatory prosecution) in the Portuguese legal and judicial cultures, particularly as the public prosecutors and judges are traditionally bound to the law and to criminal proceedings in a non-negotiable way. On the other hand, one can expect strong resistance by judicial actors to the introduction of mediation, sometimes due to pure lack of knowledge, but in most cases due to fear of loss of power by magistrates and loss of clients by lawyers. These resistances were made clear when the small-complaints courts were set up.

Nevertheless, little by little, the restorative justice ideals are gaining relevance in Portugal, mainly due to the influence of outside winds: the participation of foreign experts in conferences and seminars in Portugal, as well as the presence of Portuguese people in organisations and similar events has contributed to the dissemination of restorative justice. On the other hand, Portuguese authorities have begun to experience some pressure to increase the implementation of VOM, due to the enforcement of international instruments, and a new law on VOM is expected in the beginning of 2006.

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Josefina Castro - Criminology School of the Law Faculty of
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COST A21: New WG on RJ, violent conflicts and mass victimisation

In recent history, large scale violence and mass victimisation have been the reality for many people living in troublesome and insecure regions as the Balkans, the Middle East, South Africa, Central Africa, etc. In major conflicts of the past 60 years, including in Algeria, Korea, Vietnam, Congo and Sudan, between 400,000 and two million people have been killed. In 1992 alone, when the Yugoslav wars of secession began, there were 51 state-based conflicts around the world. Some statistics have shown that the figured had dropped to 29 in 2003. The arms trade supposedly declined by a third from 1990 to 2003, and the number of refugees fell by 45 per cent between 1992 and 2003. It has been estimated that in 1950 each conflict killed 38,000 people on average, but by 2002 this number had dropped to 600. These numbers have led many people to believe that wars and conflicts in the world are rapidly declining. However, in 2003, with the war in Iraq and the conflict in the Darfur region of Sudan, we have again an increase in deaths. Around 27,000 Iraqis and Americans have died in Iraq alone as a result of continued insurgency, although the conventional war ended in 2003.¹

Although according to some scientists the number of conflicts is declining, the risk of new wars breaking out or old ones resuming is very real without constructive ways of dealing with (post)conflict situations. Politicians and policy makers tend to forget the innocent people that have been trapped in-between these violent and inhumane conflicts. The problem is that these people might have difficulties proceeding with their lives after a substantial harm has been done to them or the people around them. In these hyper dynamic times in which every country is desperately trying to find its place in the 'global village', these 'ordinary' people remain the forgotten victims of 'wrong' political agendas and injustices. Such ignorant behaviour might be extremely harmful in the long run since it can be the potential cause for additional conflicts.

If one just takes the situation in the Balkans, he might assume that it is a 'success story' and the conflicts in this region are finally over. During the Kosovo conflict thousands of Kosovo Albanians have been killed in the course of ethnic cleansing by the Serb forces, and tens of thousands were subjected to torture and rape. As a result of these large-scale human rights abuses, more than 800,000 Kosovars fled as refugees, and around 500,000 were displaced within Kosovo.² Today the situation has supposedly changed thanks to the precision guided missiles and bombs that have led the United States and its allies to 'quick victories' in Kosovo.

However, how fragile the 'peace' is in parts of the Balkan region today is demonstrated by the continu-

ous eruption of violence (particularly in Kosovo from March 2004) and the helpless responses of the international community. Nowadays in Kosovo the Serbs continue to be a target of revengeful attacks by ethnic Albanians, including killings, beatings and forced evictions. It is sad to observe that almost a century after the First World War and a decade after the Dayton agreement (1995), "we run real risk of an explosion of Kosovo, an implosion of Serbia and new fractures in the foundations of Bosnia and Macedonia".³ Despite the large scale of assistance effort in the Balkans and many other parts of the world, the international community has very often failed to offer convincing perspectives to the societies from these regions. Additional efforts on a local level and a shift in 'Brussels' thinking are urgently required in order to solve outstanding issues. Until then at least in the case of the Balkans "the future of Kosovo will be undecided, the future of Macedonia uncertain, and the future of Serbia unclear".⁴

As a result of this need and necessity to search for constructive ways of dealing with conflicts in much complex societies, a new Working Group within the COST A21 was established in August 2005. The main objective of the COST A21 is to enhance and to deepen knowledge on theoretical and practical aspects of restorative justice in Europe.⁵ The intention of this Working Group 4 is to provide a better view on whether and how restorative justice can help in bringing more valuable solutions aiming to support people living in various (post)conflict areas. The Working Group will mainly look at a number of conflicts occurring in different regions through the lenses of the UN principles on restorative justice, and it will try to evaluate the relevance and the use of these principles in the different contexts. The Working Group met for the first time in Maastricht (The Netherlands) in October 2005 in order to discuss the agenda for 2005/2006. The next meeting of this group will be in Tel Aviv (Israel) in March 2006 linked to a workshop organised by the Bar Ilan University and that will take place on 5 March.

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- 1 *Human Security Report*, Canadian Human Security Centre.
- 2 Human Rights Watch Report, *Kosovo: Protection and Peace building; the Protection of Refugees, Returnees, Internally Displaced Persons and Minorities* (August 1999); Third international commission on the Balkans, *The Balkans in Europe Future* (April 2005).
- 3 Third international commission on the Balkans, *The Balkans in Europe Future* (April 2005), p. 8.
- 4 Third international commission on the Balkans, *The Balkans in Europe Future* (April 2005), p. 8.
- 5 For more information about COST A21, please visit www.euforumrj.org/projects.COST.htm

Summer school 2005 for victim-offender mediators

In 2003 the European Forum obtained non-recurrent funding from the AGIS programme of the European Commission to work on two topics: the training of mediation practitioners on the one hand, and the training of legal practitioners in restorative justice on the other hand. In the project, two very concrete instruments were developed: recommendations on the training of mediators and a training course on restorative justice for prosecutors and judges.

During the seminar in which the recommendations on the training of mediators were drawn up, it became clear that these recommendations needed more discussion. The outcome was that this discussion could be combined with another area in which action was needed: the training of trainers. The conclusion at the seminar was that a summer school could provide a valuable opportunity to focus on training issues from across Europe focusing specifically on supporting and sharing good practice. A working group was formed at the European Forum conference in Budapest in October 2004 to elaborate the idea of a summer school.

The objective of the summer school is threefold:

- to provide a supportive environment for trainers and mediators to share their experiences of training modules and methodical skills in mediation
- to explore and adopt the recommendations on training programmes put forward in the AGIS project
- to motivate trainers and mediators to have more international exchange.

This working group was very effective because it succeeded in organising the first edition of this Summer school. This year from 29 June until 3 July the first Summer school took place in the attractive historical city of Pilsen in the Czech Republic.

Twenty-six mediators/trainers from 9 countries - from Iceland to Portugal -, with different kinds of experience, came together for 5 very interesting days.

The first day we were welcomed and introduced to each other. Immediately an original introduction

method set the tone for the following days. The next day we worked together on the European recommendations. This day was organised by Suggnomè (umbrella organisation of victim-offender mediation in the Flemish part of Belgium) and their aim was to build further on those recommendations. They didn't want to develop fixed standards but to come up with nuances. For each recommendation they tried to open up discussion.

On the third day we visited the mediation service in Pilsen. The Czech Probation and Mediation Service also informed us about how their selection and training of mediators works. Afterwards we decided that a visit to a local mediation service is obligatory for each Summer school. The fourth day was organised by Sacro (Safeguarding Communities Reducing Offending, Scotland) and focused on the introduction and exchange of training methods. They also organised an exhibition of training materials. On the last day we evaluated the concept of the Summer school.

This all happened in a very relaxed atmosphere. The Summer school also included a visit of the famous brewery where the Pilsner beer is made, a walk in the city and lots of time for amenities. It was indeed a combination of summer and school!

But even more important and interesting were the discussions we held together about mediation, restorative justice, training programmes, the skills of the mediator, experiences with severe cases and several other topics including jewellery, belly dancing and superman. Those animated conversations took place during the sessions, but also during pauses, lunch and dinner and even after dinner until late in the evening.

But all good things have to come to an end and on the last day we all went home, with an enriched experience, attendant luggage and last but not least new friends.

Kristel Buntinx, mediator in the stage of execution of punishment, Suggnomè, Belgium

Report on restorative justice conference in Albania

The two-day national conference "Victim-Offender Mediation, Restorative Justice" was organised in Tirana on 27-28 April 2005 by the Albanian Foundation "Conflict Resolution and Reconciliation of Disputes" (AFCR), in cooperation with the Albanian Ministry of Justice, the Norwegian Ministry of Foreign Affairs, the Norwegian Mediation Service, the Council of Europe, the Royal Norwegian Embassy in Tirana, the German Foundation for International Legal Cooperation, the Foundation "Open Society for Albania - So-

ros" and the School of Magistrates.

International and local experts contributed to this conference amongst whom were Prof. Nils Christie, Prof. Ismet Elezi, Gerd Delattre, Karen Kristin Paus, Gordon Petterson, Prof. Assoc. Dr. Mariana Semini, etc. They contributed with their presentations on the future of mediation, especially its application in the resolution of penal cases through the models of RJ.

Emphasis was put on the importance of mediation as a conflict resolution approach. First a short briefing on

the achievements of the AFCR was made.

An important issue that was addressed in this conference was the need to apply mediation even in penal cases. Furthermore, the complete abolishment of punishment and the criminal code was discussed. Prof. Christie presented his arguments for why punishment cannot be completely abolished.

The tradition and practice of applying mediation in penal cases in Albania was also discussed. The participants were introduced to the legal framework of mediation in Albania and to the possibilities of applying victim-offender mediation by the Mediation Centres of AFCR that lead to the settling of conflicts outside of the justice system.

The conference was a means of exchanging experiences with regard to the application of mediation and its legal framework, as the speakers presented how mediation is applied in their countries (such as Norway, Italy, the USA, Germany and Slovenia).

Emphasis was put on the need to avoid imprisonment and to replace it with alternative sentences. The right of victims of minor criminal offences to decide whether or not to start criminal proceedings creates the necessary space for mediation and reconciliation. These aim at avoiding court judgement and punishment. But, even in cases where this aim is not achieved, mediation should be continued during the court process in order to achieve reconciliation and to avoid the imprisonment of the offender, thus taking other measures called alternative approaches to punishment.

The main findings of the research project "Mediation in Conflict Resolution", carried out at national level by AFCR, were presented. The project focused on evaluating the conflicting situation in Albania and the people's opinion regarding the best approaches to conflict resolution. The participants were also introduced to the results of a pilot project on court mediation, the policies of RJ and the role of voluntary mediators in

Norway.

Comments were made by the representative of the Council of Europe concerning the recommendation adopted by the Council of Europe on mediation in penal matters. There was also a group discussion on criminal cases. One of the most important issues discussed was: should the offender in a murder case be allowed to go to mediation, or should he necessarily be punished? There was a lively debate on this issue.

In the last session conclusions were drawn and recommendations were made regarding the future of the application of the mediation alternative in Albania.

Conclusions

1. Mediation, as a conflict resolution alternative, is made available in Albania, and it is applied in civil, family, criminal and commercial disputes.
2. The application of mediation in conflict and dispute resolution is based on the contemporary model, being influenced by the Norwegian and European model. An important aspect of mediation is respect for the positive values of the Albanian traditions.
3. Mediation is based on a legal infrastructure in accordance with the European standards. Application of mediation in conflict cases is regulated by a special law, dated June 2003, and it is also based on the legal amendments to the civil and criminal codes.

Recommendations

1. Follow-up mediation programmes on conflict resolution in the community as a contribution to the democratisation of the human communication, and at the same time as assistance to the justice system, reducing the case load.
2. A successful mediation process needs the fulfilment of two parallel requirements: a high degree of professionalism of mediators and respecting voluntarism.

Rasim Gjoka, Albanian Foundation for Conflict Resolution and Reconciliation of Disputes

Structuring the Landscape of Restorative Justice Theory

This was the title of a one day workshop which brought together some 48 people from 17 countries in Maastricht on 26 October 2005 to discuss the core themes of the work done so far by Working Group 3 of COST Action A21 on Theoretical Research.

The workshop was divided into three sessions: 1) Society and RJ, 2) RJ and the Law, and 3) The inner dynamics (micro-theories) of RJ.

In the first session Christa Pelikan (Institute for the Sociology of Law and Criminology, Vienna) presented a template analysing, through history, modes of conflict regulation in European societies. The hierarchical societal way of conflict regulation led to the mod-

ern state and to the emergence of the system of law. The system of law may be understood as a specific subsystem guided by the ideas of the enlightenment: individual freedom and equality of citizens. One of the side effects of this was to push local (community) modes of conflict regulation to the margins of society. Various critiques of this system of law have been formulated. The critique of Foucault describes processes whereby discipline is increasingly internalised by the individual citizens and whereby normative regulation is replaced by normalised 'self-directed' behaviour. This leads to the concept of 'new governance' where power is outsourced and vested in various smaller

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societal aggregates again. The presenter introduced Clifford Shearing's concept of nodal governance who described the dynamics of a dispersal of concentrated state governance and the formation of a variety of nodes of governance - a 'retour du feudalism'. She finished her presentation by pointing out that the participatory element is of major relevance for the theory and practice of RJ.

Prof. Jan Froestad (University of Bergen, Norway) commented on Christa Pelikan's presentation. He drew on the 'Zwelethemba' model in South Africa and the theoretical concept that is relevant for practical efforts in dealing with conflicts and in promoting active participation of people in societies ridden with conflict and poverty. He also stressed the concept of risk and the risk society. The tendency is that governance systems tend to govern things by anticipating problems and designing ways of avoiding risks, as a way of 'colonising the future'. The focus is on utility and instrumentality and it is oriented towards managing risks as a way to reduce loss and increase profit.

In session two Marko Bošnjak (University of Ljubljana, Slovenia) presented a template comparing criminal justice and RJ. He shed some light on the substantial differences between the continental and the common law systems. Within the legal framework, the underlying historical event triggers a question whether a crime has been committed. The search for the answer to that question is organised according to strict substantive and procedural rules. Both types of rules may differ from one legal system to another. The restorative analysis serves several explicit and implicit functions. These may differ partly or even in an important way from the functions of the criminal law. Also the

question whether RJ theory needs formalisation and conceptualisation of the elements of the substantive analysis similar to the legal one was raised. A meta-ethical theoretical framework would be required to decide on the acceptability of tools to achieve the aims of RJ processes.

Arthur Hartmann (Hochschule für öffentliche Verwaltung in Bremen, Germany) commented on this presentation by focusing on Marko Bošnjak's description and explanation of the (ideal-type) legal analysis that comes with German Strafrechtsdogmatik. By referring to the history of the famous 'Mignonett' case, he emphasised the pragmatic aspects of this highly and - at first sight - hermetic and 'ivory-tower' approach. He arrived at some observations concerning the exchange and the communication flowing between public opinion and the process of legal decision making and of law-making. According to Hartmann, the orientation function thus achieved by 'the law' seems to lack an equivalent in RJ.

In the third session, Pompeu Casanovas (Institute of Law and Technology, Autonomous University of Barcelona, Spain) presented various pieces of his own research that relate to the internal dynamics of RJ. He included insights from cultural sociology, socio-linguistics and from his work on the 'semantic web'.

Finally, the closing session 'Summarising - The pluralist nature of RJ theories' focused on the main 'controversies' in RJ theory.

Working Group 3 of COST Action A21 is working on a publication that will include papers presented during this workshop.

Sónia Sousa Pereira, with the support of Christa Pelikan

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