

European Forum **for** Restorative Justice

Editorial

The articles in this issue illustrate people at different stages in introducing restorative justice. Bulgaria is at the advocacy stage but not yet committed to it; the Basques have committed to embedding restorative justice in the criminal justice system with the aim of improving both victims' and offenders' experiences of criminal justice processes while in Italy it is happening with almost no formal commitment.

Anna Mestitz reminds us that some of the most energetic advocates of restorative justice have not been professionals with a social sciences background but people like the police and magistrates who have seen the effectiveness of restorative justice and adopted it for pragmatic reasons. She also highlights the conflict between restorative justice as a personal response to a personal situation and the need academics and policy makers may have for measurable data on

restorative justice.

Many years ago when I commented to my manager that a lot of people from the local community were benefiting incidentally from the project I was managing, he immediately asked me to note these occasions. But that would have ruined the spontaneity of my staff's responses and probably made them less inclined to respond positively. Perhaps one day restorative justice will be so much part of the way that people behave towards each other that no one talks about it; but in the meantime we need to beware of being prescriptive about when, where and who can employ it and recognise that different people may at different times take very different routes to offering mediation or restorative justice.

Robert Shaw

Member of the Editorial Board

The AGIS project 'Going South' A short report

The AGIS project 'Restorative justice: an agenda for Europe' has already completed most of its stages. As mentioned in the previous newsletters, this is the 3rd AGIS project awarded to the European Forum and it has the objectives, on the one hand, of realising effective support for the development of restorative justice (RJ) in Southern Europe ('Going South') and, on the other hand, of researching what could be the potential role of the European Union in the further development of RJ ('EU policies'). The project started in June 2006 and results were presented at the 5th Conference of the European Forum that took place in Verona on 17-19 April 2008.

In what follows, the focus will be on the 'Going South' part of the project which includes experts from Turkey, Spain, Portugal, Malta, Italy, Greece, France and Belgium.¹

Why Going South?

When looking at these countries, the first thing that comes to the fore is the uniqueness of the implementation processes that RJ is following and

the different organisational models developed. Although initially RJ has mainly taken the form of victim-offender mediation (VOM) in all these countries, the diversity becomes evident by only looking at its origins. In some cases VOM has appeared as a result of a bottom-up process leading to the setting up of the first pilot projects by the mid 80s in Belgium and France, or in the early 90s in Spain and Italy. In Portugal the impulse towards RJ among non-statutory agencies and other stakeholders has converged with a favourable political will. In Greece and Turkey, following rather a top-down movement instead, VOM has been introduced more recently in the criminal justice system by means of the enactment of a law. In Malta, finally, an NGO is leading the awareness raising initiatives to launch a first pilot project.²

In most of these countries, the primary reason for the introduction of VOM has been to provide a more humane and constructive response to crime. The aim of improving quality of life in neighbourhoods and civic participation or inter-

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AGIS 2006

With financial support from the
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est in expanding the use of mediation as a method for the extra-judicial settlement of family or labour disputes have been other favourable motives. The institutional will to comply with supranational legislation has been a decisive factor for implementing VOM in some of these countries as well.

As many people have found, the introduction of RJ practices is not free of considerable challenges in any country. The conclusions of the former AGIS project run by the European Forum, 'Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe' (2003-2005), have already observed that the difficulties and needs in the implementation of RJ relate to similar topics in all regions of Europe. It is rather the level of incidence of some of the factors that differs.³ However, certain common traits of the legal culture, the instability of funding or the lack of determined institutional support seem to have a distinctive impact on hindering a wider diffusion of the RJ initiatives existing in the Southern European countries.

In order to face these difficulties and to foster the introduction of RJ, every country has been developing remarkably diverse schemes and instruments. Indeed, RJ or VOM developments in the Southern European region (and in general) are highly dynamic. Not surprisingly, only in the time-span of this project, new VOM schemes have been set up, research projects have been undertaken or new laws have been passed in these countries. Therefore there was a high potential for intensifying networking and communication among neighbouring countries and beyond.

The former AGIS project created an extremely positive precedent in providing effective support for the implementation of RJ in Central and Eastern Europe. This encouraged the introduction of a similar project with countries in the Southern part of Europe with the goal of exploring better the challenges encountered and sharing the experiences of the different implementation processes followed. In a comparable way also for the Southern European countries targeted actions and policies have been developed. At the same time, the project serves as a platform for the experts to develop networking and exchanges between VOM services, RJ advocates, academics, policy makers and professionals working in agencies related to the criminal justice system.

The strategies elaborated by the experts of the participating countries will be described in the final report together with good practices, detailed information on the state of affairs of RJ in each country and an analysis of difficulties and supportive factors for RJ. Only a brief account of some parts of the core issues discussed by the experts is provided here.

Legal culture and legal base

One of the first issues addressed in the meetings concerned the Southern European countries' legal culture. It was stressed that certain traits that can be typically found in the legal systems of these countries are particularly unfavourable to the

introduction of RJ practices, namely, the high formalism drawing from the inquisitorial model of justice, the prevalence of the principle of legality (with the clear exception of Belgium and France) and the positivist tradition. It is noted that currently the differences between the common law and the civil law systems tend to become narrower.⁴ Indeed, adversarial elements can be found in the criminal procedure of several of the countries concerned.⁵ The principle of legality prevails as the general rule, but a few exceptions to discontinue prosecution are provided for.⁶ Although a different set of factors intervene in the field of juveniles, the increase in flexibility in judicial proceedings with respect to minors has become even more apparent and in some cases a public interest test has been adopted.

Despite this tendency to converge and the new possibilities it offers to RJ, it was expressed that the underlying legal tradition is still strongly shaping the structure and working principles of the Southern European legal systems. This was why the cooperation of judges and prosecutors was not in evidence when VOM schemes were set up without a legal base.

Furthermore, it was acknowledged that RJ raises particular red flags to legal practitioners, regardless of the legal culture. Very recently, in the Lisbon seminar, a Belgian judge addressed several aspects related to procedural safeguards or to the accountability of the agencies running the VOM services that are equally recognisable by judges and prosecutors in countries following other legal traditions.⁷

The establishment of a legal base for RJ has been a turning point in several jurisdictions, increasing the legitimacy of RJ and alleviating some of the legal practitioners' concerns. However, the experiences described by each of these countries made it clear that the existence of a legal framework alone does not necessarily guarantee an even and generalised use of RJ practices in the whole of a country.

On the one hand, attention should be paid to the degree of specificity with which the law is formulated so that effective application is ensured.⁸ To this end, further regulations and guidelines can become crucial in clarifying how the law needs to be applied and providing for the practical arrangements.

Envisaging access to RJ schemes as a legal 'right' could serve as a starting point for expanding the use of RJ to all types of crimes and at all stages of the process.⁹

On the other hand, in order to improve the collaboration and understanding of legal professionals, additional measures of a not strictly legislative nature are needed, including training, information and other permanent structures.

Effective implementation

The experts stressed that the design of the implementation process of a RJ policy can be as important as a 'well formulated' legal base. A coordinated policy plan should provide for sufficient and stable funding and devise monitoring systems and informative campaigns from the outset.



The lack of clarity about how the different responsibilities arising from implementation policies are allocated across the different partner agencies and the public bodies tends to undermine the development of effective services.

As highlighted in the Lisbon seminar, the evaluation of the RJ programmes was regarded as essential for both increasing the credibility of the RJ practices and strengthening the reliability and the quality of practice.

However, in order to identify which are the aspects to be evaluated, it is essential that from the outset consideration is given to the goals that a VOM scheme should achieve and the particular RJ approach that will guide the practice (i.e. process or agreement driven). As discussed during the meetings, these choices are critical especially in countries where the particularly lengthy procedures and the courts' overload are a high concern for policy makers.

The experts presented several research and evaluation projects undertaken in their countries. Nevertheless, the meagre resources available to the VOM projects have diminished the possibility for establishing evaluation instruments on a permanent basis both internally and externally. In addition, the university departments related to the field of RJ in some of these countries do not have abundant funding. Aside from financial support, several actions were devised in order to attract more interest from the university sector.

RJ practitioners and the role of citizenry

While focusing on the different measures to support quality of practice and build cohesion within the RJ collective, a fundamental discussion arose about the importance of the role of citizens in furthering RJ and their participation as lay mediators.

The experts emphasised that the significance of 'civic participation' and the degree of social mobilisation are linked to a wide range of complex cultural, historical and economical aspects in each country.

Indeed, one particular view maintains that the type of family structure has traditionally played a relevant role in defining the level of civic involvement. A different perspective has suggested that the 'religious variable' (referring only to the Protestant and Catholic ethic) has had a strong influence in establishing a certain relationship between the state and the citizens.¹⁰ Certain commonalities as well as very significant differences among Southern European countries are noticeable in this respect.

On a different note, it is pointed out that the distinctive type of social policies in Greece, Italy, Portugal and Spain led to significant difficulties before the 90s in tackling poverty and in establishing solid social assistance schemes. The role of the extended family, a specific industrialisation process and the 'low implementation effectiveness' of 'the administrative systems of this area' have only been part of the common factors that gave shape to the 'Southern European welfare state'

model.¹¹ More information would be needed in order to assess whether a comparable situation can be found in Malta. Seemingly, Turkey exhibits part of these features together with some traits of the liberal welfare model.¹² In addition, immigration in some of these countries has only become a salient topic during approximately the last two decades.¹³ The proper adjustment to this increase in heterogeneity, as in other countries, demands appropriate opportunities to improve communication between citizens.

The experts stressed that these and other historical and sociological aspects would need specific research in each country. The organisational model of RJ and its position in relation to the criminal justice system and to the citizenry could be modelled according to these findings, thus helping to streamline the strategies to gain more social support.

From here onwards

Although the project has not yet been completed, the group noted that the exchange of information has notably increased the visibility of the numerous RJ initiatives that are in place in the neighbouring countries as well as within their own countries. This has widened networking and collaboration at all levels and new stakeholders have been reached. Joint events have taken place and future cooperation is being planned.

As one of the experts expressed it, the exchange of experiences from different countries, while helping to address common difficulties, allows people also to gain a better understanding of the specificities of their own countries.

At this point, it seems clear that new and wider opportunities for RJ are constantly appearing in Southern European countries.

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1. Some of the countries included in the former AGIS project are also geographically located in Southern Europe. The current AGIS project 'Going South' includes countries of the South of Europe which were not involved in the previous AGIS project as well as countries from other regions of Europe, with the goal of including more background information and broadening the perspectives. Cyprus could not be included in the project.

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4. Pizzorusso, A. (1998), *Sistemi Giuridici Comparati*, Milano, Giuffrè Editore, 377ff.

5. Brienen, M.E.I. and Hoegen, E.H. (2000), *Victims of Crime in 22 European Criminal Justice Systems*, Nijmegen, Wolf Legal Productions, 389-427, 505-544, 605-640, 759-800, 839-880, 955-994.

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7. Creyf, K. (2007), *Concerns of legal practitioners*, workshop presented at the seminar 'Restorative justice in Europe: needs and possibilities', Lisbon, unpublished.

8. Miers, D. (2007), *Which type of legal instruments*, workshop presented at the seminar 'Restorative justice in Europe: needs and possibilities', Lisbon,

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10. Todd, E. and Weber, M. as cited in Faget, J. (2000), 'Mediation, criminal justice and community involvement. A European perspective', in European Forum for Victim-Offender Mediation and Restorative Justice (ed.), *Victim-offender mediation in Europe. Making restorative justice work*, Leuven, Leuven University Press, 42.

11. Ferrera, M. (2005), 'Welfare states and social safety nets in Southern Europe: an introduction', in Ferrera, M. (ed.), *Welfare State Reform in Southern Europe. Fighting poverty and social exclusion in Italy, Spain, Portugal and Greece*, Abingdon, Routledge, 1-32.

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ences, Department of Sociology.

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VOM services, a hopeful reality for the Basque country

In July 2007, a victim-offender mediation (VOM) service opened in the Palace of Justice (Law Courts) in Barakaldo, a medium sized city near Bilbao. After several years of waiting and arguing for the need for these services in the Basque Country following the foundation of the European Forum for Restorative Justice in 2000, we can finally say: "A new service is now operating!"

The Victim Offender mediation Service of Barakaldo is a governmental initiative taken by the Direction of Penal Enforcement of the Department of Justice of the Basque Government. GEUZ, the Conflict Transformation University Centre, is the organisation in charge of the daily operation of the service. One of the mediators in the service is a founding member of the European Forum. This public service is integrated by a multidisciplinary team of three mediators of GEUZ: a lawyer, a psychologist and a social worker, who have studied criminology and have experience with mediation and conflict resolution.

It is a free service for the local population, located in the Palace of Justice, and on the same floor as other complementary support services developed by the Basque Government in the field of justice: the victim support service, the service for assistance to offenders, and the service for the social reintegration of ex-prisoners. Cases are transferred to the service after the decision of a lawyer (judges principally) and as a voluntary process for victims and offenders.

The aims of the VOM service are:

- to offer a mediation process in the different phases of the penal process (instruction, judgement and execution).
- to give an opportunity to the person who has suffered a crime (not only misdemeanours, but also serious crimes) and to the accused person, to participate in a voluntary and confidential process inside the criminal justice system.
- to give to the parties the opportunity to participate actively in the process in order to solve the conflict with

the participation of the mediator with the approval of the judge and the prosecutor.

- to make victims and offenders central to the transformation of the conflict.
- to enrich the process by solving the conflict through a communication process between the different parties involved in the crime, which is a better system than the formal process, that does not admit subjective considerations.
- to give a chance to the offender to accept responsibility for the harm done to the victim and offer to make reparation for the harm done.
- to offer a wider understanding of the judicial process for both parties.
- to reduce the workload of the courts.

The whole process is under the control of judges, prosecutors and lawyers, guaranteeing the rights of the parties and the public interest. For the Department of Justice of the Basque Government important objectives have been to promote a better and more humanised justice system and to facilitate communication, negotiation and dialogue. This service has been created in accordance with the EU Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

This important decision taken by the Basque Government is not only for the city of Barakaldo, but has also been taken in the city of Vitoria-Gasteiz, where a new service with the same characteristics was opened in October 2007.

Last December, the Director of Penal Enforcement, Department of Justice of the Basque Government, became a member of the European Forum in order to promote restorative justice in the Basque Country.

VOM service of Barakaldo
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Readers' Corner

- *Images of restorative justice theory*, by Robert Mackay, Marko Bosnjak, Johan Deklerck, Christa Pelikan, Bas van Stokkom and Martin Wright (eds.) (2008). This is the product of serious work and discussions over four years in an international and multidisciplinary group funded by the COST Action A21 'Restorative justice developments in Europe'. It provides its readers with contributions by experienced academics and researchers that deepen the understanding of restorative justice from the broad perspective of macro-theories down to a focus on micro dynamics in restorative justice procedures. Purchasable from the publisher at: www.polizeiwissenschaft.de.
- *Making Good. Prisons, Punishment and Beyond*, by Martin Wright (2008), with a foreword by Vivien Stern. The author starts by demonstrating that neither the conservative idea of deterrence through punishment nor the liberal idea of rehabilitation has worked in practice. In their place he proposes the basis for a radical but carefully worked out practical philosophy which would place the emphasis on the offender making amends to the victim, and society for the damage caused. For more information: www.watersidepress.co.uk.
- *Restoring Respect for Justice*, by Martin Wright (2008) with a foreword by Howard Zehr. This book challenges many 'sacred cows' of crime and punishment by focusing on the effect on the people who suffer directly, the victims. A key theme is that if society as a whole does not encourage respect then it ought to be no surprise if offenders have scant regard for the property, physical integrity or rights of others. A bad system can itself serve to weaken rather than improve safety and security. For more information: www.watersidepress.co.uk.
- *Restoring Justice after Large-scale Violent Conflicts*, by Ivo Aertsen, Jana Arsovska, Marta Valiñas, Kris Vanspauwen and Holger-C. Rohne (eds.) (2008). This book provides a comparative analysis of the potential of restorative justice approaches to dealing with mass victimisation in the context of large-scale violent conflicts - focusing on case studies from Kosovo, Israel-Palestine and Congo, incorporating contributions from leading authorities in these areas. For more information: www.willanpublishing.com.
- *Restorative Justice Self-Interest and Responsible Citizenship*, by Lode Walgrave (June 2008). This book represents the culmination of the author's vision of restorative justice. It incorporates a number of key elements, including a clearly outcome based definition of a more sophisticated concept of the relationship between restorative justice and the law, and acceptance of the need for legal regulation. It also gives consideration of the implications of the expansion of restorative justice for the discipline of criminology. For more information: www.willanpublishing.com.
- *Using Restorative Justice Techniques in the Catholic Church. An Introduction*, by Stanslaus Muyebe (2007). This book provides basic tools that bishops, religious superiors, clerics, the religious and the laity in the Catholic Church can use when assessing risks and benefits of using restorative justice techniques in handling cases of misconduct in their dioceses and religious congregations. For more information: www.newvoices.co.za.
- *Changing Paradigms. Punishment and Restorative Discipline*, by Paul Redekop (2007). After several decades working in the field of restorative justice, the author concludes that punishment is a major obstacle to healthy societies, families, and schools. Punishment can be so damaging, cruel, and barbaric, especially to children, that it should be replaced with restorative discipline, and societies should move towards a punishment-free justice system. Available from Herald Press: www.mph.org/hp/books/changingparadigms.htm.
- *Restorative Justice - Politics, Policies and Prospects*, by E. van der Spuy, S. Parmentier and A. Dissel (eds.) (2008). This book contains a selection of papers presented at an international conference entitled 'The politics of restorative justice in South Africa and beyond', held near Cape Town in 2006. The conference aimed to foster debate on and about restorative justice, its methodological assumptions, its policy permutations, and the kinds of strategic interventions and practices adopted in its name. Available from Juta Law: www.jutalaw.co.za.

AGIS project for the development of RJ in Southern Europe: some points on Italy

A recent article in the Newsletter of the European Forum, 'Going South - The first outcomes of work in progress' grouped Italy among the Southern European nations - together with Greece, Malta, Spain, Portugal and Turkey - where "the actual implementation" of restorative justice (RJ) "is characterized by instability and a limited reach in comparison with Western and Northern European countries" (Casado, 2007: 2). I will try to explain why the inclusion of Italy in this group is highly questionable on the basis of the comparative research I have conducted in the last decade.

My first point is that Italy is some significant steps ahead in comparison with the above mentioned Southern nations. Victim-offender mediation (VOM) with young offenders (Ghetti and Mestitz, 2007) was analytically examined in a Grotius research project (Mestitz, Pelikan and Vanfraechem, 2004; Mestitz, 2005a) which provided an overview of the state of the art in 15 EU nations: Austria, Belgium, England and Wales, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain/Catalonia and Sweden (Mestitz and Ghetti, 2005a). Among the Southern nations cited above only Italy and Spain/Catalonia were included because when the Grotius project started in 2002 there was no practical experience in the field in Greece, Malta, Portugal or the rest of Spain. Furthermore, it seems that since then there has been little practical experience in these countries. Turkey was not taken into account in our project as it was - and still is - both geographically out of Europe and politically out of the European Union. The results of our project showed that VOM was a more or less marginal practice in the majority of countries or was still being applied in the form of pilot projects. Only in a minority of countries or regions of Federal states was the application of VOM worthy of note, i.e. in Spain/Catalonia, Luxembourg, Norway, Austria, France and Belgium/Flanders. These countries are those where the first VOM experiments took place, long before the procedure appeared in other European nations. In this frame Italy was one of the slowest nations to apply VOM, but certainly not the slowest one, nor did its situation appear very different from that described in other Northern nations such as Ireland, the Netherlands, Hungary and the French speaking part of Belgium (Mestitz and Ghetti, 2005b).

In fact, RJ measures in Italian juvenile courts have been documented since the mid 1990s (Mestitz and Colamussi, 2000) and VOM with youth offenders was being carried out notwithstanding the lack of a specific law (Mestitz, 2004). Instead, in 2000 a new law allowed Italian justices of peace (lay judges) to use VOM with adult offenders¹, but rarely do they send the cases to mediation centres as they prefer to mediate

by themselves (chiefly because they are paid on the basis of cases decided). Paradoxically, VOM flourished spontaneously in the juvenile justice area without norms, but not in adult jurisdiction where the norms do exist. Whereas there were a dozen groups practising VOM in the juvenile justice system in 2004 (Mestitz and Ghetti, 2005b), today about twenty groups operate nationally: ten are mediation centres funded by local government bodies (municipality, province and/or region) and ten are groups of mediators who operate inside the court social services. In short, it seems to me that Italy is undoubtedly in an advanced position in comparison with Greece, Malta, Portugal, Spain (with the exception of Catalonia) and Turkey.

My second point is that the lack of norms cannot be considered as an indicator of a 'gap' for Italy or any other country. It is true that in Italy so far no legislation on VOM with youth offenders has been passed by any government, regardless of its political position. The reason was not the lack of political will but the power of the lobby of magistrates (i.e. both judges and public prosecutors as in France) who preferred this state of affairs and were able to influence the legislative process strongly, as they usually do. A debate currently exists between those who advocate the introduction of specific norms providing for VOM - mainly the academics - and those who do not consider new laws necessary - mainly juvenile magistrates (Mestitz, 2005b). It must be stressed that in the 15 countries examined VOM had been introduced almost everywhere in the absence of specific laws and through pilot projects as in Italy. Specific norms were proposed and enforced long after the first pilot experiments with VOM had taken place (and in many nations no regulations have yet been introduced). I have calculated a mean interval of 7 years from the first pilot experiments to the implementation of a new law, and Northern nations have been particularly slow in this process: in Sweden norms were introduced 15 years after the first experiment, in Norway 10 years later (Mestitz, 2005a). In Europe only Portugal (a Southern nation) reversed the process, implementing a new law before any experimentation of any kind and for years there was no practical experience. This seems to show that the presence/absence of a specific law is irrelevant almost everywhere to applying VOM.

In Italy the lack of norms did not prevent the use of VOM or other RJ strategies. In fact in the juvenile jurisdiction it stimulated the juvenile magistrates' creativity to use and adapt existing articles of law and different procedures. In other words, the lack of norms cannot be considered an indicator of a 'gap'.

Without specific norms in Italy both juvenile public prosecutors and judges refer the cases to mediation. Namely, cases are reported to the prosecution (by citizens, the police, welfare agencies, etc.) and action must be taken because case handling is governed by the principle of mandatory criminal action. When a crime is reported to the prosecution office the public prosecutor may take one of three actions:

i) ask the judge to dismiss the case; ii) refer the case to the judge of preliminary investigation in order to continue the normal judicial process; iii) refer the case to the court social service or to a mediation centre.

In turn, the judge may: i) drop the case; ii) make a sentence or suspend it by referring the cases to the court social service or to a mediation centre; iii) send it to the judge of preliminary hearing, who may sentence the case or send it to the trial judge (but this happens very rarely, only in very serious crimes).

A third point is concerned with a common feature which emerged from our Grotius project: the existence in almost all nations of an umbrella agency/organisation acting as the promoter of VOM initiatives, providing guidelines or standards, sometimes coordinating and funding local services and groups, and/or providing for the training of mediators etc. They are often departments of the State governments, such as the Ministries of Justice. In the majority of nations the central agency is considered an essential part of the organisational set-up concerned with the network of services working in the field of VOM. The Italian Department of juvenile justice of the Ministry of Justice (DJJ) - as in 5 other nations - had a significant role in the early development of VOM. Nevertheless, differently from what happened elsewhere, the DJJ never followed a clear public policy proposing new norms on VOM or providing funds for new mediation centres and groups. About one year ago the new head of the DJJ (a magistrate) announced a new bill on mediation but so far it has not appeared. In addition, recently the entire section promoting VOM was removed from the DJJ website². These events seem to confirm that magistrates continue to prefer this state of lack of norms and, furthermore, the current DJJ leaders seem less interested in promoting VOM. In fact the absence of norms permits a large discretion: magistrates who want to apply VOM do so, whereas those who do not like this strategy do not have to apply it. This setup has so far prevented the DJJ from fully becoming the umbrella organisation for RJ measures and VOM, as has happened in other nations.

My fourth and last point relates to the strong influence of ideologies on the slow development of VOM in the Italian juvenile justice system. In recent years the groups of mediators have almost doubled but, surprisingly, data on the application of VOM in the juvenile jurisdiction are almost stable. This can be explained by the fact that public prosecutors and judges are the only gate keepers of VOM and their values and ideolo-

gies, based on their legal formalistic tradition, strongly influence its development. This has been confirmed by research findings. A survey conducted by the research unit of the DJJ examined the characteristics of cases of youth offenders who underwent mediation in 2002 (Mastropasqua and Ciuffo, 2004). I have re-analysed some of the data which shows a high degree of failure (Mestitz, 2007): on average about one third (29.7%) of the total referrals to VOM were not carried out for various reasons (e.g. the case was not suitable to be mediated, the victim and/or offender are not willing or available to meet, an agreement has been reached independently by victim and offender, etc.). Secondly, the data show that the majority of crimes referred to mediation are those against persons (62.3%) and those in which the victim and offender have had a previous personal relationship. But the data also show that VOM was more likely to be successful when the offences were against property (71%), whereas it is less likely to be successful when the offences are against persons (20%). Thus both phenomena - the cases not mediated and the unsuccessful mediation with crimes against persons - show that ideologies to a considerable extent prevail over practical results, and the subgroup of juveniles referred to VOM is evidently the result of the case selection process operated by magistrates on the basis of ideological factors, given that in Italy, as well as in other countries, the great majority of crimes committed by youth offenders are against property. The judicial culture shared by magistrates and personnel working in the Italian justice system is rooted in some ideological factors absent in the common law tradition countries, as well as in the values and culture of Italian society with respect to family and children, such as: the central catholic value of the family at the cornerstone of the society, and the tolerant and paternalistic orientation toward children and adolescents which supports the idea of their lack of responsibility. In particular the core concept of RJ - that an adolescent must be responsible for his/her crimes - seems not yet accepted by law professionals, social service workers as well as Italian citizens. In addition, the role exerted by victims in the penal proceedings, the other core concept of RJ, is very limited in the juvenile jurisdiction where the offenders' 'educational needs' always prevail. These are in my view the main cultural constraints in introducing principles of RJ and VOM in Italy.

Moreover the prevailing formalism leaves any practical aspect of the development of VOM to chance: diffusion through imitation from one actor to another; planning in establishing new mediation groups, recruitment and training of mediators, ethical principles for mediators, funding and supplying resources to VOM groups, suggestions of opinion leaders, of professional press and associations and so on.

In conclusion, the expansion of RJ and VOM in Italy appears strongly affected by cultural and ideological factors. In addition, any change in judicial systems (not only in Italy) is always

very slow. Certainly, more information on RJ to justice personnel and reliable data on RJ and VOM application can be very useful in order to stimulate the expansion of restorative measures, but training initiatives, systematic follow-up and evaluation procedures are lacking. University groups and public research units do not receive authorization from the DJJ to conduct new research projects, as at present the DJJ seems oriented to conduct any data collection inside its own research unit which has recently been strengthened (unfortunately the last VOM data made available are those concerning 2003!). The risk is that the lack of statistics and research can be used instrumentally by those who do not wish to apply RJ measures or VOM. For example, one president of a juvenile court commented that the lack of data supporting the benefits of VOM can clearly be interpreted as meaning that VOM is useless (Ghetti, 2004). Without forgetting the cultural difficulties, it cannot be denied that RJ measures and VOM are a reality in Italy. The process may be slow but it is in progress, differently from the limited practical experience so far in Greece, Malta, Portugal, Turkey and Spain (with the exception of Catalonia). As a result the inclusion of Italy in the group of Southern nations where “the actual implementation” of RJ “is characterized by instability and a limited reach” (Casado, 2007: 2) is, in my view, highly questionable.

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1. DPR (Decreto del Presidente della Repubblica) 274/2000.
2. For many years the DJJ has relied on its web site (minori section in www.giustizia.it) to implement and encourage the experimental application of VOM.

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The Council of Europe Guidelines continued support for restorative justice

At the Third Summit of the Council of Europe (Warsaw, May 2005), the Heads of State and Government undertook to make “full use of the Council of Europe’s standard-setting potential” and “promote implementation and further development of the Organisation’s legal instruments and mechanisms of legal co-operation”. They also decided “to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes”.¹

In the light of this decision, the European Commission for the Efficiency of Justice (CEPEJ) decided to create a Working Group on Mediation. Its task was to enable a better implementation of the four recommendations of the Committee of Ministers concerning mediation: R(98)1 on family mediation, R(99)19 concerning mediation in penal matters, R(2001)9 on alternatives to litigation between administrative authorities and private parties, and R(2002)10 on mediation in civil matters.

The Working Group held its first meeting in March 2006. In a first step, it issued a questionnaire aimed at assessing the im-

pact of Council of Europe instruments in the mediation field and more generally the situation of mediation to 16 Council of Europe member states considered as representing the situation of mediation in Europe. The questionnaire was aimed primarily at the bodies (private or public) in those countries competent in the area of mediation. Based on the responses, draft guidelines for a better implementation of the existing recommendations were prepared. The Working Group also appointed a scientific expert, Mr Julien Lhuillier, to write a report on the current situation of and prospects for penal mediation in Europe. Mr Lhuillier concluded that, although practices still vary greatly across Europe, a certain degree of harmonisation can be achieved, and that common quality standards can and should be adopted.²

The *Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters* (hereafter: the Guidelines) were finally adopted during the 10th plenary meeting of the CEPEJ on 5-6 December 2007.³ They are subdivided into 3 sections.



Availability

The section starts by mentioning that, in order to expand equal availability of mediation services, measures should be taken to set up workable mediation schemes across as wide a geographical area as possible, at all stages of the criminal justice procedure, including the execution of sentences.

Member states are encouraged to recognise and promote existing and new schemes by financial and other forms of support, and to expand their availability by information, training and supervision. Judges, prosecutors and other criminal justice authorities should have proper information about mediation and - where applicable - invite victims and/or offenders to participate. The same goes for lawyers who should additionally have an obligation or recommendation in their codes of conduct to do so.

The quality of mediation should be assured. Hence, member states should continually monitor their schemes and arrange for their external and independent evaluation. Common criteria - both qualitative and quantitative - should be developed in order to allow the quality of mediation schemes to be compared. Special attention is being asked for the needs of victims, on which further research should be performed.

Legal guarantees of confidentiality in mediation should be provided and exceptions to the duty of confidentiality of the mediation should be defined by legislation. The breach of confidentiality should be sanctioned appropriately.

Member states are also encouraged to provide adequate training programmes for mediators and to set up common standards concerning training. Minimum elements of training are summed up. The importance of supervision, mentoring and continuing professional development are stressed. It is suggested to establish common international criteria for accreditation of mediators, institutions who offer mediation services and institutions who train mediators. It is also suggested that a kind of European training centre could be established in order to help countries that encounter problems where the quality of training is concerned.

Special attention should also be paid to the participation and protection of minors in mediation.

Member states should take measures to ensure the uniformity in the concepts, scope and guarantees of the main principles of mediation such as confidentiality within their countries, by legislative measures and/or by developing codes of conduct for mediators. In case a code of conduct is breached, appropriate complaints and disciplinary procedures should be in place. It is also recommended that a special Code of Conduct, along the lines of the European Code of Conduct for Mediators in civil and commercial mediation, be elaborated.

Finally, the Guidelines reaffirm the importance of the *ne bis in idem* principle. Discharges based on mediated agreements should have the same status as judgements or other judicial

decisions, if they are taken by official judicial staff.

Accessibility

Information to victims and offenders should be clear, complete and timely. They should be fully informed of their rights and of the possible consequences of the mediation procedure on the judicial decision making procedure (informed consent). Mediation should never be used if there is a risk that it may disadvantage one of the parties. Due consideration should be given not only to the potential benefits, but also to the potential risks, and in particular for the victim. When victims are particularly vulnerable, they should be made aware of the possibility to conduct mediation without face-to-face contact with the offender.

In order to make mediation accessible, member states should ensure direct financial support to mediation services via legal aid and/or other means. In the exceptional case where offenders have to finance their participation in mediation partly, member states should ensure that this contribution remains proportionate to the income of the offender.

Also, the use of mediation should not be prevented by the risk of expiry of limitation terms, which could be suspended.

Awareness

The section on awareness, finally, details some guidelines on how to improve the knowledge about mediation among the general public, judiciary, prosecutors and other criminal justice authorities, victim support organisations, legal professionals, and victims and offenders. An interesting recommendation with respect to raising awareness among lawyers is the suggestion that member states and Bar associations should take measures to create legal fee structures that do not discourage lawyers from advising clients to use mediation.

Some conclusions

Although the Guidelines undoubtedly touch upon some very important challenges in the implementation of restorative justice, some questions remain.

First, the basis on which the Guidelines were formulated could have been more firm. Only 52 replies were received to the questionnaire with only very little information on penal mediation. Although this limited information was complemented by the work of Mr Lhuillier, and by the comments of member states and relevant organisations on the draft, we would still welcome the suggestion made in the introduction of the Guidelines to base further work on updating the Recommendation on "a fuller evaluation of the impact of restorative justice in member states based on up-to-date comparable data" (point 6 of the introduction).

Second, it is not clear why important elements in the R(99)19 were not further elaborated upon in the Guidelines. Most noticeable the recommendation to safeguard the autonomy of mediation services vis-à-vis the criminal justice system could have used some further elaboration.

Lastly, it is not clear what kind of effect these Guidelines can

and will have on the further development of restorative justice in Europe. It is to be expected that much will depend - as it was the case with the original Recommendation⁴ - on the extent to which these Guidelines will be known and used by key people in the different countries.

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I. See introduction to the *Draft Guidelines for a better implementation of the*

existing Recommendations concerning Penal mediation. All documents concerning the work of the Working Group can be found at http://www.coe.int/t/dgl/legalcooperation/cepej/mediation/default_en.asp.

2. LHUILLIER, J., 'The quality of penal mediation in Europe', unpublished paper for the European Commission for the Efficiency of Justice, Working Group on Mediation, 22 August 2007, CEPEJ-GT-MED(2007)8.

3. The Board of the European Forum for Restorative Justice has commented upon the draft Guidelines.

4. PELIKAN, C., 'The impact of Council of Europe Recommendation No. R (99) 19 on mediation in penal matters', in Council of Europe Publishing (ed.), *Crime policy in Europe*, Strasbourg, Council of Europe Publishing, 2004, 67.

Newsflash

- The European Commission for the Efficiency of Justice (CEPEJ) has finalised its guidelines for a better implementation of the existing recommendation concerning mediation in penal matters. The guidelines can be found here: <https://wcd.coe.int/ViewDoc.jsp?id=1223865&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>
- Australia Talks, from the Australian Broadcasting Company, has produced a show on restorative justice, which presents views from criminologists Lawrence Sherman, Kathleen Daly and Chris Cunneen, and CEO of the Centre for Restorative Justice, South Australia, Leigh Garrett. The show, which explores the benefits of restorative justice, also includes calls from listeners. To listen to the show, please go to: http://www.iirp.org/rd_rjonabc.php.
- The European Forum for Restorative Justice has had its website redesigned with the financial support of the JPEN Programme of the European Commission, Directorate-General Justice, Freedom and Security. Next to the new 'look and feel' of the website, changes have been made in order to show in a clearer way what is new on the website. We warmly invite you to visit the new website and to contribute to its contents by contacting the Secretariat with any new and interesting developments in your country.

Conference on developing standards for assistance to victims of terrorism

Four years ago, on 11 March 2004, a train in the Atocha (Madrid) railway station was bombed. 192 people were killed. In response to this tragic event, the European Day for the Victim of Terrorism was established. On the fourth anniversary of this tragedy, practitioners, academics and representatives of civil society got together in the city of Tilburg (the Netherlands), to discuss a draft of standards for victims of terrorism in the European Union. These standards were prepared in the course of an EU co-funded project, promoted by the European Forum for Restorative Justice, and carried out in cooperation with the International Victimology Institute of Tilburg, the Catholic University of Leuven, the Centre for the Study of Terrorism and Political Violence and Victim Support Netherlands.

On the first day, after listening to the experiences of the governments of Spain, the Netherlands and the USA, the conference moved to workshops in which participants had the opportunity to share reflections and opinions on four topics of the Draft EU Recommendations: (1) the access to and administration of justice, (2) restorative justice, (3) compensation, and (4) continuing psychosocial assistance.

On the second day, several academics and practitioners presented their findings and reflections on the effects of terrorist attacks on ethnic minorities, the negative effects of contra-terrorism reactions and innovative restorative justice experiences in this field. Finally, three people affected by terrorist attacks shared their experiences pointing out the importance of receiving transparent information from the state, the risk of mass media in using victims and the humanising effect of meeting with the offender.

'Can restorative justice play any role in these recommendations?' was one of the questions discussed throughout the conference. The answer was quite clear, in my opinion. First of all, the presentations of both Mrs Donna Hicks, Harvard University, and Uri Yanay, from the Hebrew University of Jerusalem, showed how concrete restorative practices are a possible way to face the effects of terrorist attacks. Mrs Hicks shared the experience of encounters between victims and offenders in the context of IRA attacks, while Prof. Yanay mentioned the experience of the Parents-Circle Family Forum in which families from both sides who have lost one of their members, meet in order to share experiences and



emotions. Secondly, the testimony of the victim who met the former IRA member who killed her father, opened the door to visualise restorative justice not merely as an abstract construct but as a concrete possibility. According to the speakers on this conference, dignity, respect, mutual recognition, humanisation and understanding are the key words in achieving peace and communication.

What I learnt in this conference is that one of the tasks that all of us, practitioners and researchers in the domain of restorative justice, face now is to facilitate processes in which communities may build bridges in order to visualise the human dimension behind 'that unknown other'. At the micro level, this means making it possible for those victims who desire to

meet the responsible for the attack to do so. At the meso level, understanding and communication between families and communities in order to find out commonalities rather than differences should be the focal point. At the macro level, the role of the state should be revised. Moreover, as Mr Mc Allister, director of Mediation Northern Ireland said, careful responses to terrorist attacks as well as building peace instead of creating more violence should be one of the aims of state policy. What I learnt is, therefore, that restorative justice is not only an intervention but also a responsibility.

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Calendar

- 5 May-13 June 2008, Harrisonburg, Virginia (USA), *The 13th annual Summer Peacebuilding Institute*, A program of the Center for Justice and Peacebuilding (CJP) at Eastern Mennonite University. Three 7-day sessions and one 5-day session, each with six intensive courses running concurrently, will be offered for academic credit or as professional training for practitioners at various experience and skill levels. An interactive approach is used in the classroom to draw upon the rich experiences of the participants as well as the instructors. More information: spi@emu.edu.
- 14-15 July 2008, Lisbon (Portugal), *Victims & Mediation Seminar*, organised by the Portuguese Association for Victim Support. For more information please visit www.apav.pt/victimsmidiation.
- 16-20 July 2008, Nagykovacsi (Hungary), *Summer School 2008. The interplay between theory and practice in restorative justice*, Summer school organised by the European Forum for Restorative Justice. For more information please visit www.euforumrj.org.
- 20-25 July 2008, Barcelona (Spain), *15th World Congress of the International Society of Criminology*. One of the three main domains focuses on 'Victims and Restorative Justice'. You can find more information at http://perso.orange.fr/societe.internationale.de_criminologie.
- 17-19 September 2008, Tromsø (Norway), conference at the Centre for Peace Studies at the University of Tromsø in collaboration with the Tampere Peace Research Institute. The theme of the conference is 'Restorative Justice: Exploring methodological and theoretical challenges'. Visit <http://uit.no/cps/> for more information.
- 22-24 October 2008, Toronto, Ontario (Canada), *11th World Conference of the International Institute for Restorative Practices*. For more information and the call for presenters see www.iirp.org/on08.

Victim-offender mediation receives support in Bulgaria

At the end of 2007 restorative justice developments in Bulgaria were significantly accelerated. Two big events - a workshop and a round-table discussion on perspectives on mediation in penal matters - were successfully organised in Sofia by the National Association of Mediators, an umbrella organisation, the Union of the Bulgarian Jurists and the Institute of Conflict Resolution, and sponsored by the Technical Assistance Information Exchange Instrument (TAIEX), DG Enlargement of the European Commission and the 'Institut Français', Sofia. Both events were part of the campaign for the promo-

tion of restorative justice and victim-offender mediation, in compliance with several instruments of the EU, Council of Europe, UN, etc. They attracted more than 80 representatives from the Ministry of Justice, the Ministry of Interior, the judiciary, NGOs, practising mediators, and researchers from Bulgaria and abroad.

A training seminar on legal regulation of victim-offender mediation was organised on 13 December 2007. Leading experts from abroad reviewed legislative provisions for mediation in penal matters in some European and other countries

as well as strategies and approaches to legislative regulation of mediation in penal matters. In his key paper 'Restorative legislation: not too little, not too much, but just right', Dr. Martin Wright from De Montfort University (Leicester, England) gave many interesting examples of legislative regulation of mediation in penal matters in England, Northern Ireland, Germany, Austria, Finland, Norway, Poland, South Africa and New Zealand. Mr. Julien Lhuillier, lecturer in law at the University of Nancy, France, and an expert at the Council of Europe, focused on legal and paralegal measures for the effectiveness of mediation in penal matters. He also presented the Guidelines for the better implementation of the existing recommendation concerning mediation in penal matters, newly adopted by the European Commission for the Efficiency of Justice at the Council of Europe. Mrs Veronique Dandonneau from 'Citoyens et Justice', France, shared the NGO experience in strategies and approaches to legislative regulation of mediation in penal matters.

The round-table discussion was organised on 14 December 2007, with the involvement of Deputy-Minister of Justice Mrs Sabrie Sapundjieva - a proven friend of mediation. She cordially welcomed and encouraged participants to work actively for the establishment of mediation in penal matters in the Bulgarian legal system. A key paper on the ideology and instruments

of restorative justice, with an accent on victim-offender mediation, was presented by Assoc. Prof. Dr. Dobrinka Chankova from the Institute of Conflict Resolution. Mr George Bakalov, attorney at law and practising mediator, from the same Institute, commented on the findings of three surveys on the applicability of mediation in penal matters in Bulgaria. The surveys explored the opinion of law enforcement authorities, victims and offenders and showed a very positive attitude, trust and readiness to apply victim-offender mediation. In the lively discussion that followed, skilfully moderated by Mr Josif Geron, Chair of the Board of the National Association of Mediators, the views of policy makers, researchers, legal practitioners and NGO representatives were expressed. A draft outline for legislative resolution of mediation in penal matters in Bulgaria was presented and deliberated. The outline was approved, with small amendments, and is being sent to the Ministry of Justice and the National Assembly. Both events marked positive developments in the policy, and in professionals' attitudes to mediation in penal matters, and raised optimism for its future in Bulgaria.

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