

# European Forum for Restorative Justice

## Editorial

In this second issue of the newsletter of 2010 Christa Pelikan draws our attention to the unfortunate development of a rather dogmatic approach to mediation in cases of domestic violence on the part of the UN's Division for the Advancement of Women. As we understand that there is no way of rectifying the DAW's recommendations this time, Christa provides an outline of the key arguments which we can use to counter the rather narrow perspective of DAW.

The second article, by Ivo Aertsen, refers to the previous issue of the newsletter on building social support for restorative justice. In his article Prof. Aertsen focuses on restorative justice and the voluntary sector.

Marta Ferrer reports on a very wide ranging first World Congress on Restorative Juvenile Justice,

not only highlighting progress in Latin America but also suggesting some interesting ideas for practitioners in other parts of the world.

In her article Magdalena Grudziecka reinforces Christa Pelikan's arguments with an account of a conference on the subject of 'Mediation as an institution for victims' in Poland last year.

In her article Marta illustrates that, in spite of setbacks in some areas, restorative justice is making steady progress in many parts of the world and that we can often learn as much from the experiences of those who are relatively new to it, and perhaps have not had their vision narrowed by local constraints or prejudices, as we can from those who bring the light of real experience to it.

Robert Shaw

Member of the Editorial Board

## The never ending story: Restorative Justice and Domestic Violence

In January 2010 the European Forum for Restorative Justice (EFRJ) was notified by two Polish researchers, Beata Czarnecka-Dzialuk and Dobrochna Wójcik, of a clause within the 'Handbook for Legislation on violence against women' recommending the total prohibition of mediation in cases of violence against women (more correctly understood as gendered violence). The document was produced by the Division for the Advancement of Women (DAW) in the Department of Economic and Social Affairs and we have meanwhile learned that it is finalised and due to be disseminated.

We have therefore asked the DAW to inform us about any opportunity to resume the debate on this issue. We also want the members of the EFRJ to know about our attempts to counteract such a prohibition and about our reasoning in this matter.

We have contended that, although the EFRJ understands and shares the concerns expressed in this document, namely: lack of judicial scrutiny, the unwarranted assumption of equal bargaining power, or even an equal measure of guilt on the side of the crime victim, and, last but not least, the avoidance or reduction of accountability on the part of the offender, their response calling for a blanket prohibition of mediation in cases of violence against women appears unwarranted.

The line of argument we want to present is as follows:

Firstly: the understanding of mediation as put forward in the Handbook is a very narrow one. Moreover, it is not in line with what we call a RJ approach. If 'mediation' is applied according to the principles of RJ (as for example outlined in the UN Handbook on RJ), it takes – and especially so in the case of 'domestic violence' – a rather

JUNE 2010

Volume 11, issue 2

### Inside this issue:

Social support for RJ by crafting a strategy based on the importance of public opinion	1-3
The never ending story: Restorative Justice & Domestic Violence	3-4
The world moves around restorative juvenile justice	4
Reader's corner	5
Polish conference: Mediation as an institution for victims	6
Newsflash	
Calendar	7
Contribution to the Forum's Newsletter	8



With the financial support of the European Commission Directorate-General Justice, Freedom and Security

different shape. In addition, RJ procedures also include conferencing and this is applied to such cases in various parts of the world. Within a RJ procedure both victim empowerment and offender accountability are being taken care of – and in an effective way.

Secondly: Empirical research on various RJ programmes dealing with violence against women has shown that women are indeed empowered by them and that offenders take on responsibility.

(1) Quite extensive research has been carried out in Austria where ‘Out-of-Court-Offence-Resolution’ (Außergerichtlicher Tatausgleich – ATA) has been used in cases of partnership violence since the 90s.

The first research done in 1999 by Christa Pelikan using a qualitative approach (case-observations and interviews with women and men – repeated after about 6 to 12 months) led to the conclusion that the potential or strength of the mediation process lies in reinforcing processes of empowerment or liberation, which a woman is already beginning to experience.

The study was repeated ten years later, this time by conducting quantitative research, using a questionnaire, as well as qualitative case-observation and interviews.

The questionnaire sent out in 2006 to all women who had experienced ATA in a case of partnership violence where they were a victim (including 18% who had been both victim and offender) had focused on the question whether violence had stopped or continued after VOM took place.

Eighty-three of all responding women experienced no further violence.

Of those that had experienced NO further violence from their (ex-)partner, 80% contended that VOM had contributed to this effect. This contribution was brought about by way of direct or indirect empowerment. Direct empowerment implies the increased capacity to state one’s demands and claims for a life without violence, or the increased capacity to handle conflicts through communication, i.e. by talking and deliberating and by an enhanced capacity to insist on one’s demands and one’s claim to live free of violence. Indirect empowerment is pointing to VOM as an impetus to seek further support and help.

But VOM had also contributed to bringing about separation in almost half of the cases where it took place.

In addition, 40% of those women who remained in a partnership or who still had contact with an ex-partner and who had experienced no further violence stated that their part-

ner had changed as a result of going through VOM.

Christa Pelikan’s conclusion is that women’s empowerment has been reinforced by the Austrian ‘Protection from Domestic Violence Act’ passed in 1999. Its successful implementation has contributed to a change of mentality in society, in which keeping violence out of intimate relationships has become a matter of course, leading to some men changing their attitudes and behaviour. The taking on of responsibility at the individual level is then achieved as a result of the inner dynamics of the ‘mediation’ process.

Of the large array of programmes that apply RJ procedures to ‘domestic violence’ (25) and of evaluation results reported by Marian Liebmann and Lindy Wootton (2008, updated 2010), we select only one more that we consider suitable to illustrate the specific potential of this approach.

(2) In a large victim-offender conferencing (VOC) project, covering three districts near Johannesburg, in South Africa, Amanda Dissel and her colleague Kindisa Ngubeni researched the impact of VOC on female victims of domestic violence. They contacted 21 women who had completed VOM. Most of them felt that mediation had provided a safe space where their personal safety was not threatened, and where they could tell their stories, speak their minds and be heard, often for the first time. The ground rules of mediation and the presence of the mediators helped them feel safe and able to speak on an equal basis to their partners.

The women were interviewed again about one year later, to assess whether there had been any lasting change in the behaviour of the offenders. In all cases the women mentioned positive changes in behaviour and conduct towards them, with no further assaults or verbal abuse. All the women who were still with their partners said that relationships and communication had improved following the VOC. Those who had separated said that the VOC had helped them to negotiate the terms of this. (Dissel and Ngubeni 2003).

The Handbook outlines in its last pages ‘steps to be taken when drafting legislation’ and mentions the need for evidence-based legislation. We are aware that the Handbook is finalised, its various recommendations have undergone discussion.

We believe though that the evidence presented above does not support the call for a prohibition on mediation in cases of domestic violence, but on the contrary shows that mediation has the potential to empower women, and surely no one, least of all the promoters of the advancement and empowerment of women, can want to deprive them of this.



We want to repeat that the considerable risks involved in using such an instrument are to be attended to and weighed carefully in each single case. But one ought to care about each single case and each single woman more than about making uncompromising blanket statements.

Since the document is already finalised we ask our members to take notice of these concerns and these arguments and consider them when drafting legislation on violence against women and designing programmes that attempt to reduce and prevent gender-specific violence in their respective countries. We advise them also to enter into discussion with the relevant actors and agencies working in this field – listening to their concerns and asking them to listen to what you have to tell them.

Christa Pelikan  
Institute for Sociology of Law and Criminology, Austria  
christa.pelikan@irks.at

## RJ & the voluntary sector: Ways to foster social support

How can cooperation be developed with voluntary sector organisations in order to inform and educate the public and to create broad support for restorative justice? There are three main focus areas to be dealt with: the voluntary sector and voluntary sector organisations; linking the voluntary sector to RJ; the settings that can be addressed within the voluntary sector.

### The voluntary sector

There are many notions of 'the voluntary sector'. One such notion is that the voluntary sector is considered as 'the arena of uncoerced collective action around shared interests, purposes and values'. Other notions of it refer to 'the third sector' or 'intermediary institutions' which are distinct from state (government) and market (business). Another definition borrowed from Red Cross can be the one which considers the voluntary sector as 'a diversity of spaces, actors and institutional forms': professional associations, labour unions, religious groups, charities, NGOs, citizen advocacy organisations, pressure and self-help groups, and volunteer organisations. Others highlight the voluntary sector as enriching public participation and adhering to democratic values.

But despite these definitions, the boundaries between state, the voluntary sector, family and market are complex and blurred. An example could be the fact that the state

takes care of funding for many NGOs in Western Europe (social work sector, health, education). Another example could be the public administration system in Nordic countries. Still other examples highlighting this blurriness are the cases of major funding of social profit initiatives by private companies in North America. Furthermore, some sectors in society, such as the media, schools and sports organisations have a very unclear position and represent hybrids of state, market and voluntary sector.

### Linking the voluntary sector to RJ

Linking the voluntary sector to RJ can be done by looking at RJ as part of broader society and needing social support. This social support could be passive, meaning that RJ would only get acceptance in society, or it could be active, which means that RJ would get also participation from citizens. Another point to clarify is whether voluntary participation is a goal or only a means for RJ. RJ could get social support since it starts from personal experiences, the contextualisation of the event and the making use of problem-solving capacities in society. There are furthermore two possible directions that could be followed when also 'justice' is taken into consideration. Seen from their own perspective, by participating in RJ programmes, criminal justice institutions could try to gain more acceptance, credibility and cooperation in society. Seen from the perspective of the community, RJ mobilises informal mechanisms for doing justice and therefore contributes to the concretisation of a co-judging paradigm. Therefore a good question to ask ourselves at this point is whether, by connecting RJ to the voluntary sector, we aim to strengthen state interventions, or to support a new legal culture in society.

### Which settings within the sector can be addressed?

The answer to this question takes us back to the previous argument on the passive or active reliance on voluntary participation. If we are interested, on the one hand, in the passive role of the voluntary sector towards RJ, we should opt for information and/or sensitisation of the public, which would imply preparing the right information and delivering it through appropriate channels, including voluntary sector organisations. Another support means would be the identification – within voluntary sector organisations - and referral of conflict situations to RJ programmes. And finally, the voluntary sector organisations and their leaders could also contribute to public campaigns in favour of RJ (for example, by lending their name).

But on the other hand, if we are interested in active voluntary participation in RJ, there remains much more work to be done. Which social settings should be selected to build

cooperation with and what are the criteria for this selection? We should prioritise social settings where people can be active citizens. Next where there is a high probability of adopting a 'RJ discourse': through talking, thinking, acting. Another indication is where common (RJ) values, principles and skills can be shared or developed. Finally, the preferred places should be settings where independence can be guaranteed, and inequality and discrimination combated. But even if we opt for active support and cooperation between RJ programmes and this type of voluntary participation, there can be various degrees of involvement. One can be direct: learning by doing (for example, autonomous conflict handling within the organisation), and the other can be indirect involvement (for example, by bringing a local mediation service into the organisation).

Another key issue is how these active settings can be selected? At the local level it can be the mediation service with the help of their partner organisations (locally well embedded). At the national level it can be a national RJ organisation (NGO or public) which takes the lead. Other elements of further strategy can be supporting innovations in community life and affiliations (for example, with self-help groups, victim groups, neighbourhood watch, ...), creating links between policy bodies, NGOs and the media in the same field ('bonding' in social-capital terminology) and between organisations across different interests and agendas ('bridging'). Furthermore, attention should be given to reducing the costs and risks of citizen participation, and last but not least to creativity and making space for surprises when people spontaneously take the initiative.

Professor Ivo Aertsen  
Catholic University of Leuven, Faculty of Law, Belgium  
ivo.aertsen@law.kuleuven.be

## The world moves around restorative juvenile justice

From 4 to 7 of November the 1st World Congress on Restorative Juvenile Justice took place in Lima (Peru). More than 1.000 participants from 63 different countries attended, and more than 100 speakers were heard through conferences, workshops, round tables and panels. The EFRJ was represented by one of its board members.

Most of the participants came from Latin American (LA) countries where a lot has to be done to improve the treatment of young offenders and victims. Deprivation of liberty

is still the most used measure in LA, but good experiences with RJ have been multiplying over the last few years with implications for offenders, victims and the community.

During the Congress, important questions were raised. On the one hand, a number of theoretical topics were analyzed, such as the end of the paternalistic model and the return to the retributive model in juvenile justice systems, and the role of RJ in them; the Convention on the Rights of the Child and restorative juvenile justice; possibilities and limits of restorative justice with young offenders; what does Restorative Juvenile Justice mean and what does it not; etc.

On the other hand, many practical experiences were explained and some interesting ideas arose: the importance of considering the cultural context in selecting/adapting practices to one country/territory or another; the need for specialized training for officers of the court and practitioners to implement RJ practices; the importance of preventive restorative practices (in schools, the community) and the concept of a "culture of peace"; the challenge of improving community involvement in restorative practices; the need for different practices to answer different situations, and different profiles of victims and offenders in restorative processes; the imperative need for evaluation; etc.

Finally, I'd like to stress some innovative practices that were presented, linking restorative juvenile justice and new technologies: the use of video, video-conferencing or other technologies to permit contact between victim and offender, or another party to the process (when one of these parties cannot/does not want to be present in the process, but has things to say); or the use of a specific computer programme to evaluate restorative practices using key indicators; the use of computer programmes by officers of the court and practitioners to manage all the restorative process in an effective way (judicial request; contacts with victims, offenders and community; reports; evaluation; etc.).

The programme offered plenty of occasions to learn and share, with nice intervals for cultural activities. A cozy atmosphere and very good organisation allowed everybody to enjoy some time out. The experience will not stop here: a new world congress on restorative juvenile justice is planned for 2011, probably in Rio de Janeiro (Brazil).

Marta Ferrer  
Centre for legalised Studies and Specialised Training, Spain  
mferrerp@gencat.cat

## Readers' Corner

- Restorative Justice for Minors in Greece; The Impact of Act 3189/2003, by Panagiota C. Papadopoulou (2009). This book examines the introduction, quality and implementation of court-based restorative practices for young offenders in Greece. Although RJ is discussed widely in Europe, it is only now that the subject is becoming of growing importance to Greece. The move is dictated by the need to conform to recent EU legislation which promotes the application of mediated forms of dispute resolution and supports the rights of victims of crime within penal proceedings.
- Assisting Victims of Terrorism: Towards a European Standard of Justice, by Letschert Rianne, Pemberton Antony, Staiger Ines (eds.) (2010). This book provides a thorough analysis of the specific needs of victims of terrorism (using both legal and psycho-social studies), compared to victims of other forms of crime. The study combines different disciplines, enabling to combine the different perspectives leading to synergy in the analysis of the legal and psycho-social needs of victims of terrorism. Furthermore the appropriateness of restorative justice practices in the context of terrorism is included and provides challenging new insights. More info: <http://www.springer.com/law/book/978-90-481-3024-5>
- New report "Towards a restorative society", by Martin Wright (2010). The report proposes a method for transferring funding from prisons to community sanctions, and considers how a restorative approach to criminal justice could make a positive and productive difference, with a look at objections and tensions as well as benefits; and, finally, how its principles could be put into practice throughout society, using a restorative theory of social justice. The report can be found at: [www.makejusticework.org.uk](http://www.makejusticework.org.uk)
- Giustizia Dialogica. Luci e Ombre della Restorative Justice (Dialogical Justice. Lights and Shadows of Restorative Justice), by Federico Reggio (2010). The author faces the challenge of studying Restorative Justice through the lens of classical legal philosophy with the aim of matching a critical analysis with some philosophical proposals. In the first part of his study the author offers an introduction to the restorative paradigm by analysing its fundamentals, the main models of its practical applications and its

cultural roots. Secondly, he undertakes a critical analysis of some of the main 'commonplaces' which tend to characterise the principal argumentative schemes adopted by the advocates of RJ, noticing that some commonly adopted notions – such as 'alternativity', 'community' and 'restoration' might be only apparently shared by the different scholars. Some interpretations, more deeply analysed both in their presuppositions and implications, come out to be conflicting or even reciprocally incompatible: for such a reason they tend to outline some 'partings of the way' which require either a choice between alternatives or the admission that Restorative Justice's unity as a conception is only apparent, maybe even a chimera. At this point the author's path shifts to a eminently philosophical style of argumentation: Reggio – PhD in Philosophy of Law, Method and Legal Traditions at Padua University – deepens his reflection on those commonplaces (alternativity, community, restoration), trying to analyse which of them may be sustainable (or preferable to others) and under which (logical-argumentative or ethical) conditions. The final part of *Giustizia Dialogica* shows that Reggio's critical effort is not destructive: as the author explicitly explains, the aim of his final reflections and proposals embodies the trial to outline concepts and argumentations able to place Restorative Justice's innovative strength within a solid (and hopefully clear) philosophical frame.



## Polish Conference: Mediation as an institution for victims?

At the beginning of December (7-8 December 2009) a conference was organised by the Ministry of Justice - Department of Human Rights, the Polish Academy of Science and the Polish Mediation Center (PCM) in Warsaw. The subject of the Conference was "Mediation as an institution for Victims". The conference was co-financed by the European Social Fund.

We had the great pleasure of welcoming many honoured guests - the representatives of scientific and mediation societies from many countries, including Christa Pelikan, Nils Christie, Martin Wright and Rustem Maksudov. The importance of the Conference can be demonstrated by the fact that the reception was given by Krzysztof Kwiatkowski - Minister of Justice and Zbigniew Romaszewski, Senate Speaker and long term President of the Commission on Human Rights in the Senate and also a friend and colleague of Janka Waluk, President of the Team on Implementing Mediation in Poland. The following persons took part in the Conference: Stanisław Chmielewski - The Secretary of State, Igor Działuk - Undersecretary of State, Marzena Kruk - Director of the Department of Human Rights. Some representatives of scientific societies were: Andrzej Murzynowski, Prof. Irena Rzeplińska and Beata Czarnecka-Działuk. The main goal of the Conference was to establish the basis for agreement between the mediators' society and representatives of the justice administration and for procedures which also draw on experience from abroad. The Conference focused on mediation as a disposal and mediation with juvenile offenders; so many speakers were representatives of the Police, the public prosecutor's office and the Courts - these institutions can use mediation as a disposal after conviction - with mediators offering their perspective.

The plenary sessions included speeches by Nils Christie on the idea of restorative justice and by Martin Wright. The benefits of mediation as a method from the point of view of many professionals co-operating with the criminal justice system were presented by a judge, a prosecutor, a policeman, a lawyer and a mediator. The highlights of the Conference were the workshops:

- Mediation as a disposal – Robert Kaszczyszyn (PCM) and Pavel Stern (Czech).
- Mediation in juvenile cases - Beata Czarnecka – Działuk, (PAN) and Rustem Maksudov (Russia).
- Mediation in violence cases - Magdalena Grudziecka

(PCM) and Christa Pelikan (Austria)

- Mediation procedures in cases directed by public prosecutors office and courts - how to co-operate? Iwona Jaśkiewicz-Wyrębska (PCM) and Frank Winter (Germany),
- Mediation as an institution for a victim - Jerzy Książek (PCM) and Julius Dermontas, Prof. (Lithuania)
- What cases should be directed to mediation - Barbara Hoffman and Mariusz Cieślak (PCM) and Laima Zelmene (Latvia)
- What formal conditions should be imposed in mediation as a disposal and in directions to institutions undertaking particular types of mediation (police, public prosecutor office, court) - Jolanta Kaczorek (PCM) and Borbala Fellegi (Hungary)
- Influence of the mediation outcome as a mitigating factor in sentencing - art.53§3. judge Agnieszka Rękas (judge).

There was great interest and also much controversy in the workshop dedicated to mediation in domestic violence cases. In Poland the criminal justice system is very willing to refer such cases to mediation, thinking that the balance of power is guaranteed by the professional mediator and the safe atmosphere of the meetings helps the victim to obtain the satisfaction they expect. PCM, through years of experience has its own procedures and techniques for mediation in domestic violence cases. The main focus of the workshop was that mediation, as an institution for victims, is the right method to repair damage, to give satisfaction to the victim according to her/his needs and expectations and to obtain at the same time a solution that is acceptable to the offender.

The practical results of the Conference are recommendations jointly prepared by representatives of the criminal justice system, mediators and the scientific society and directed to the Minister of Justice, which we hope, given the atmosphere at the Ministry, will result in changes in the statutory regulations which are favourable to the development of mediation in Poland.

Magdalena Grudziecka, Poland  
magdalena.grudziecka@mediator.org.pl



## Newsflash

- This summer, the University of Warwick will be hosting the first edition of the “European Mediation Training Scheme for Practitioners of Justice (EMTPJ),” a two week course supported by the EU Commission and organised by the Association for International Arbitration (AIA). Many mediation centres (in and beyond Europe) have recognised the course and will allow successful participants to obtain accreditation from their centre. In such a way, the EMTPJ course will become a milestone for the introduction of “European Mediators” and the promotion of cross-

border mediation in civil and commercial matters. Participants can easily register by completing the registration form available on <http://www.emtpj.eu>. There is a maximum of 30 participants per course and places will be allocated on a first come first served basis. Please note that AIA members and former and current students at the University of Warwick and HUB benefit from a course fee reduction of 500 EUR.

## Calendar

- 11 to 15 July 2010, Bern (Switzerland), 3rd International Summer Academy: “The Art of Conflict Transformation” organized by the Institute for Conflict Transformation and Peacebuilding: Save the date! Theme: “Political means of non-violent conflict transformation”. For non-binding pre-registration or further questions: [summer@iicp.ch](mailto:summer@iicp.ch). For more information: <http://www.iicp.ch>
- 8 - 11 September 2010, Liège (Belgium). The 10th Annual Conference of the European Society of Criminology “Crime and criminology: from individuals to

organisations” will take place. Abstracts can be submitted online. The deadline for submitting abstracts is 1 June 2010. More information can be found on the website of the conference: (<http://www.eurocrim2010.com>)

- 13-15 October 2010, Hull (UK), the 13th World Conference of The International Institute for Restorative Practices “Restorative Practices Across Disciplines”. The conference will spotlight Hull, the World’s First Restorative City, which is bringing restorative practices training to its 23,000 professionals and volunteers who work with children and young people. For more information, please visit <http://www.iirp.org/hull10/>

## Contributions to the Forum's Newsletter:

Throughout the year the Forum is constantly looking for new contributions to the Forum's Newsletter. The Newsletter appears three times a year and is sent to all the Forum's members. After a while every issue also appears on the website.

Articles can be on different restorative justice-topics, new developments, results of research projects, reports from a conference or seminar, the announcement of new research projects etc.

If you would like to submit an article, please feel free to contact Karolien Mariën at [karolien@euforumrj.org](mailto:karolien@euforumrj.org)

Items for the Newsflash, reader's corner or calendar can also be sent to Karolien Mariën.

Karolien Mariën  
European Forum for Restorative Justice, Belgium  
[karolien@euforumrj.org](mailto:karolien@euforumrj.org)

### Not a member of the European Forum yet?

Please visit our website [www.euforumrj.org](http://www.euforumrj.org). Under the heading 'Membership' you will find all information concerning categories of membership and fees. You can also apply for membership online. The process only takes 5 minutes. You can also contact the Secretariat at [info@euforumrj.org](mailto:info@euforumrj.org) or at the above address.

As a member you will receive:

- three newsletters a year
- regular electronic news with interesting information
- reduced conference fees and special book prices
- and much more ...

#### Editorial board:

Co-ordinator: Vira Zemlyanska (Ukraine),  
E-mail: [v\\_zemlyanska@yahoo.com](mailto:v_zemlyanska@yahoo.com)

Members: Martin Wright (UK), E-mail: [martinw@phoncoop.coop](mailto:martinw@phoncoop.coop);  
Borbala Fellegi (Hungary), E-mail: [borbala@fellegi.hu](mailto:borbala@fellegi.hu);  
Panagiota Papadopoulou (Greece),  
E-mail: [panagiota.papadopoulou@london.probaton.gsi.gov.uk](mailto:panagiota.papadopoulou@london.probaton.gsi.gov.uk)  
Robert Shaw (UK), E-mail: [robert.shaw16@ntlworld.com](mailto:robert.shaw16@ntlworld.com);

#### Responsible editor:

Ivo Aertsen, European Forum for Restorative Justice, Hooverplein 10,  
3000 Leuven, Belgium.

#### Submissions:

The European Forum welcomes the submission of articles and information for publication.

Secretariat of the European Forum  
for Restorative Justice v.z.w.

Hooverplein 10  
3000 Leuven

Phone: +32 16 32 54 29

Fax: + 32 16 32 54 74

E-mail: [info@euforumrj.org](mailto:info@euforumrj.org)

URL: <http://www.euforumrj.org>