

European Forum for Restorative Justice

Editorial: Restorative justice and domestic violence. Contributions to the never-ending debate

In the Newsletter of June 2011, I have written a contribution entitled 'The never ending story: Restorative justice and domestic violence' that had been triggered by the issuing of the Handbook about Legislation on Violence Against Women, an initiative of the Division for the Advancement of Women in the Department of Economic and Social Affairs (UNDOC) of the UN. It contained a clause recommending the issuing of national legislation that 'explicitly prohibits mediation in all cases of violence against women, both before and during legal proceedings'. I have argued that instead of calling for an unconditional prohibition of mediation, it would have been more appropriate and more mindful of the needs of women to spell out the preconditions for dealing with the consequences of violence against women.

One has to be aware that the member states differ in terms of legal system and its institutions, political structures and the different forces at work. We also face different mentalities as these are shaped by the political and social history of a country. Therefore, to establish this type of careful and mindful restorative justice road to dealing with 'private' violence against women needs to take into account this socio-political landscape. Each programme has to find its place within other modes of reaction, in relation to the criminal procedure and to punishment as its outcome, but also to training and therapy programmes for men that have used violence against their partners. To draw up such a programme requires diligence and flexibility; there is not one type of programme that will fit everywhere.

The Bilbao conference was intended to talk in more detail about strategies to promote, expand and defend restorative justice programmes that attend to cases of domestic and/or partnership violence. Time proved too short to go beyond the presentation of new programmes and of new evaluations. The discussion of country-specific strategies - in the face of resistance and in the face of factual malpractice - has yet to start. We hope that this Newsletter will provide the fo-

rum for a first round of such a discussion. We have decided not just to give another account of a success story. Rather we will draw attention to obstacles and difficulties and also to developments that have to be denounced as wrong in order to give a real insight into the challenge we face. We want to take serious the call for careful scrutiny of programmes and for a thorough and open discussion of risks and advantages of the restorative justice approach.

Regarding difficulties we have included a contribution that deals with the situation in a country of the Balkan region: Macedonia, where the perception of gender relations and the role of violence makes any 'intrusion' of the criminal justice system still difficult. Stojanka Mirceva is a fellow at the Faculty of Security in Skopje, belonging to the University St. Kliment Ohridski in Bitola in Macedonia (and also engaged in research projects at the Institute for Sociological, Legal and Political Research at the University Ss. Kiril I Metodij in Skopje). She has conducted research about opinions and perceptions of members of the police in that region. Her conclusion is that time is not yet ripe to implement restorative justice in domestic violence, mainly because the attitudes of the police stand in the way of an effective empowerment of women - as I have described it as happening within the Austrian practice of the Out-of-Court-Offence regulation.

The short comment by Karin Sten Madsen on the situation in Denmark deals with a different type of difficulty regarding the implementation of restorative justice. On the surface it appears to be just the opposite from the Balkans: victim-offender mediation being used rather unscrupulously - without giving much thought to potential risks and detrimental effects for the women. What to do in this case? Where to turn in order to stop such bad practice? How to introduce a restorative practice that really attends to the underlying principles and that turns it into an instrument that serves the empowerment of women? Karin Sten Madsen, a counsellor at

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the Centre for Victims of Sexual Assault at the University Hospital of Copenhagen has been working with rape victims for a long time - and she has talked and written about using 'mediation' in cases of date rape. She can be trusted to know what she is talking about when she raises a highly critical voice.

At the beginning of this issue we have placed the report on the Norwegian pilot project applying a restorative justice process to domestic violence cases. We think that what was started in Trondheim is exciting and adds an important facet to the array of approaches that have been invented, tried out and even already evaluated. This project, resting on a close cooperation between the police and the state prosecutor, is an example of a mode of reaction that appears tailored to the specific features of the criminal justice system of Norway on the one hand, and

the shortcomings of existing answers to the problem of domestic violence on the other hand. Guro Angell Gimse, herself a former police woman, takes her experiences as a police woman as a starting point.

We are convinced that only through a full understanding of the complexity of the situation and the challenge of designing a meaningful reaction to domestic violence we will be able to stand up to the critique and persuade those that voice this critique and these doubts to search for cooperation and a joint effort to assist women everywhere to lead a life free of violence within their relationships.

Christa Pelikan

Researcher at the Institute for Sociology of Law and Criminology, Vienna

Norway: we might be on the right track

Tuesday 20.07.2010 00:50:

The suspect has hit his wife. She has a broken nose and needs medical care. The children are asleep. The situation has calmed down and the police leave the place bringing the suspect to the arrest. A friend of the victim will stay with the children while the wife goes to the doctors. She will come to the police station tomorrow to file a complaint against the husband ...

Tuesday 20.07.2010 12:30:

The wife calls to tell us she's all right. The nose was not broken. She does not want to file a complaint against her husband. She says that the episode was a misunderstanding. Her husband is not to blame. She wants to know when the police will release him.

(Sor-Trondelag police district)

Statements like these are often plotted into the police log system. A lot is expected from the police when called upon to act in domestic violence cases. Victims and their advisers - both public and private - rely on police intervention for help and guidance to deal with the consequences of violence and abuse. The question is whether the traditional law system can achieve the best and most helpful outcome for these families, or whether another approach is to be found outside, yet pertaining to the existing law system.

As a coordinator of domestic violence cases in a Norwegian police district, I have tried to figure out how the police can help families experiencing domestic violence in the best way. The gap between expectations regarding the police intervention and what the police actually contributes in this kind of criminal cases has been obvious. The number of cases

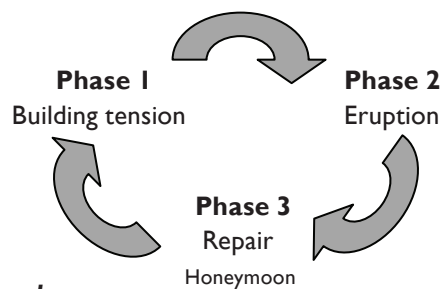
being dropped by the prosecutor are in one survey said to be as high as 75%.

In previous years domestic violence has come into focus in Norwegian society. This has resulted in better rights for the victims of such crimes and more relevant legislation and requirements for legal and medical practitioners handling the people who are affected. However, when the system finally started to pay more attention to the problem of domestic violence, the victim often did not want to contribute. She might not want to come to a hearing by the police. She might even tell the authorities that the situation has been exaggerated and she was the one to provoke the offender. She may even suggest the offender is really a fantastic husband trying to cope with a difficult situation.

The incidence is made into a trifle, especially when there are no other witnesses except the children. The police have an opportunity to place children in a police hearing so that their statement can help the prosecutor in court. But this puts great strain on the child and many children refuse to tell their story. Their loyalty to both parents prevents them from talking. The lack of evidence makes it hard for the prosecutor to bring the case to court. The case is then closed.

She wants peace

Domestic violence cases are difficult cases because of the way domestic violence works as a phenomenon. To describe the mechanism of this violence, I find 'the wheel of domestic violence' (Walker 1979, Smaadahl 2002) interesting and helpful. The wheel describes three phases:



Phase 1

In the first phase we find the real mental burden of domestic violence. This is when the aggression builds up. The situation in the family is strained. The family members feel something is going to happen, but they don't know when or where. The offender might isolate the victim, scream at her and the children, voice threats, be moody and criticize her. It is exhausting being around, waiting for the violence to erupt. Sometimes the victim may trigger the eruption by saying or doing something of which she knows it will provoke the offender. The eruption sometimes brings relief.

Phase 2

Finally they can stop walking on needles. When the violence is over they can expect a moment or two of peace. This is when she or the children contact the police, doctor or friends. And they tell their story of fear and violence, maybe without hesitating.

Phase 3

But after minutes, hours or days, phase 3 is there: the honeymoon. He begs for forgiveness, 'buys her flowers' and tells her this will never happen again. The victim often finds it difficult to leave the offender despite continued and even severe abuse. A variety of objective circumstances and subjective dispositions and feelings account for this. They include: financial dependence; interests of the children; religious/family pressures; fear of being alone; fear of increased violence; loyalty to marriage; denial; internalisation of the abuser's words ("I deserve the abuse"); love; shame; the belief that it will get better.

In phase 3 the victim might go to the police to withdraw the statement, and she might trivialise what happened and even deny it. Because of these mechanisms, the police all of a sudden lose important evidence and find it difficult to pursue the case.

After reviewing many cases I learned an important lesson: the primary need of the victim is to have peace and not to punish the offender. Perhaps a lawsuit followed by a fine or a prison sentence can give the family peace, but what about the unintended consequences of the penalty? A penalty can affect the whole family. A prison sentence can make the financial situation of the family more difficult and the guilt for contributing to a father being put behind bars may be unbearable. Is it possible to find other ways of reacting to

offenders of domestic violence which take the whole family and the real needs of the victim into account?

Restorative justice

I first learnt about restorative justice on an autumn day in 2007. I was on a meeting with The Mediation Service ('Konflikttraadet') in Norway. The head of the mediation office in Trondheim, Iren Sorfjordmo, convinced me at this meeting that dialogue between the parties and collaboration between the parties' private network and between the public network might be a way to handle domestic violence cases. To make a long story short; I left the police force to manage the restorative justice project 'Domestic violence, reconciliation and prevention'. This is a project which was initiated by the Ministry of Justice in Norway.

The use of restorative justice in cases of domestic violence is controversial mainly because of the power imbalance between the parties. Nevertheless, I think that if the victim wants the dialogue and does not feel pressured into it, such a dialogue can be of great help. The purpose is often to find a way for the parties to relate to one another in the months and years to come. Indeed, most parties are forced to have some kind of contact because of common children. Some women have used this arena to end the relationship. Others needed to know the reason for the violence.

The cases

The project has worked on a total of 84 cases since it started in autumn 2007. The cases are very diverse. Some concern comprehensive and repeated violence, other are one-time events. We have dealt with 16 different nationalities and with 14 female offenders.

The cases come to the mediation office in 4 different ways:

- closed cases referred by the prosecutor.
- cases where the prosecutor proposes to the offender to have mediation as an alternative to punishment.
- cases where court 'sentences' the offender to mediation.
- requests from the parties' private (friends, family, neighbours) or public (doctors, childcare, school, etc.) network.

The method

We have developed a model for handling domestic violence cases in our mediation office. The model contains 4 phases, but is flexible.

Preparatory meetings

The different parties involved should always have separate meetings to prepare them for the process and to determine individual wishes regarding the process. Safety assessments can also be an issue. Individual meetings give us the opportunity to consider whether it is feasible to conduct a dialogue when the parties meet in the same room. It is also important to determine who should take part together with the parties in the meetings to come. Perhaps the child, police or health services have a role.

Dialogue meetings

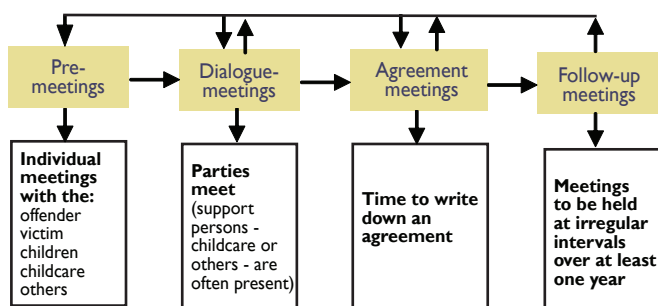
The parties have decided in advance the topics they want to talk about. The victim often wants to tell the offender about the damage he has done. After the conversation the mediators encourage the parties to go home and think about what they want to include in an agreement. This way they will not rush into an agreement and both parties have the possibility to obtain other opinions from their public and private networks.

Agreement meeting

The agreement meeting concerns the writing of a contract. Anti-aggression programmes are often incorporated. When children have been involved, it is possible to bring them into the meeting to inform them of the content of the agreement.

Follow-up meetings

The family is to be followed up over a period of one year. The family decides the frequency of the meetings. But the mediators should at least meet each member of the family individually after one year.



The children

During the meetings the mediators are to emphasise the children's interests. Questions which normally should be addressed are: "Have the kids witnessed the violence?" and "How can the family avoid the children being placed in the cross-fire?". At meetings with children present we consider the need for a support person for the child. Where it is not advisable for the child to participate in the mediation, the support person may represent the child. If there is reason to believe that children suffer from neglect, the mediation service has to alert the child welfare office.

How the process works

In April 2008 a family father from a war-affected country threatened his wife, who a couple of months earlier had moved away from him. The four children witnessed the incident. The two oldest children of 16 and 14 managed to prevent the father from actions against their mother by holding him back. A terrible fight broke out which led to the shattering of a television-set. The children were terrified and called for the police. The police filed a complaint regarding the violence towards the mother. The mother and the oldest son said that they would be willing to be questioned about

the incident by the police, but neither of them would be willing witnesses in court. To testify against their husband/father would destroy the family honour. The fact that the son had called the police was problematic enough. The family preferred to solve their own problems. The police had no witnesses and hence no case. According to Norwegian law, no one is obliged to testify against a family member. But witness statements are often the most important evidence prosecutors have in court. The prosecutor thought it was too bad that the case would be closed. She had heard of the restorative justice project in the mediation office and decided to open up for an alternative to punishment.

When the case found its way to my desk, I immediately phoned two mediators, a male and a female. They first met both parties separately and explanations and expectations about the process were clarified. The mother talked about the threats and the violence, and about the father's alcohol abuse both before and after she had moved away from him. The children felt unsafe. The family felt like they were constantly walking on needles. Despite of the fear she said that punishment was not what she was asking for. All she wanted was peace. In a separate meeting with the father he told the mediators he had problems adapting to the Norwegian culture. He told about memories from the war and about unemployment. He was educated and in his home country he was proud of the work he did. Now he felt he was nobody. Alcohol helped him to relax and go to sleep at night. The father looked worn out and upset.

In June of the same year we brought the parties together. The mother told the father how she felt about the threatening situations. She said she and the kids were afraid he would drink excessively before coming to see them. She described the unpredictable situation, saying the children did love him. However, they were afraid of him at the same time.

The father expressed regret, and the meeting resulted in an agreement where he - among other things - promised to go to the doctors to get treatment for his alcohol problem. He also promised he would not come to visit when he was under the influence of alcohol.

In a follow-up meeting in August the mother told us she had a peaceful time, yet she was afraid that it would not last. In this meeting the child welfare representative, who talked on behalf of the children, discussed the effect of violence and alcohol abuse on children. The next follow-up meeting was in October. The father had by then been given treatment for depressions and had finished a course preparing him for the work force. The mother was thankful for the help she had received and considered the police to be the one providing assistance and support for the family.

It was touching to be a part of this process. Together with other positive experiences, this has made me believe in dialogue. The Ministry of Justice has given NTNU Social Science Research in Trondheim the assignment of evaluating

the project. Preliminary statements from the researchers suggest we might be on the right track. They have stated: “Women find it useful to finally be seen, heard and understood. They say they feel strengthened by mediation and that the physical violence has ceased. The severity and intensity of the harassment has decreased, but is still there, mainly because many have

continued contact because of children they have together.” (quoted from: Adresseavisen. Tuesday 17 August 2010; newspaper article page 2). The report is expected by November 2010.

Guro Angell Gimse
project manager

Calendar

- 11-12 November 2010: “Victims Rights and the EU: the challenges of providing victim support”, conference organised in Belgrade, Serbia. For more information, please visit <http://www.victimsupporteurope.eu/files/uploads/Annual%20Conference%20Belgrade.pdf>
- 2-3 December 2010: the 12th Annual Conference of Citoyens et Justice will be organised in Paris and is entitled “Justice Restaurative: de l’idéal à la réalité?”. More info can be found on www.citoyens-justice.fr.
- 6-24 June 2011: 3rd Annual School of the Canadian School for Peacebuilding in Winnipeg (Canada). The Canadian School of Peacebuilding (CSOP), an institute of Canadian Mennonite University, offers a selection of 5-day courses each June. Courses can be taken for professional or personal development or for academic credit. They offer courses from local, national and international peacebuilders, to serve practitioners, professionals, activists, students, non-governmental organisations and faith-based groups engaged in peacebuilding. More information on this event can be found at www.cmu.ca/scop/
- 11-15 July 2011: Summer School of the European Forum for Restorative Justice, Kent (UK). The theme is “What do practitioners say after they say hello?”. The purpose of this event is to provide a supportive environment for restorative justice trainers and practitioners in which to share their perspectives on critical issues that confront the field of restorative justice practice, to explore and adapt the European Forum recommendations and training programmes and to motivate trainers and mediators to have more international exchange. More information can be found on the website of the Forum.

Macedonia: Prospects for VOM in domestic violence cases

The aim of this contribution is to raise certain issues regarding the prospect for victim-offender mediation (VOM) in domestic violence cases in the Macedonian criminal justice system. The first part is concerned with defining domestic violence as a criminal offence in substantive law as well as with the relevant procedural provisions. Then I will briefly elaborate the legal prerequisites for the use of VOM in Macedonian law and the question of its availability for domestic violence cases. The third part is dedicated to a brief presentation of research results on police officers’ attitudes, perceptions and practice regarding domestic violence cases against women and the influence those attitudes might have on the use of VOM in domestic violence cases.

Domestic violence in Macedonian criminal law

In Macedonia, recognition of domestic violence as a serious criminal offence started with the adoption of the Law amending the Criminal Code in 2004, which is quite late even for the Balkan region. There is no separate crime of domestic violence defined though, as is the case in most of the Criminal Codes of the region, e.g. in Serbia, Croatia, Bosnia and Herzegovina. Instead, in the Macedonian Criminal Code domestic violence is prescribed as an aggravating circumstance of several crimes located in the chapters on ‘Crimes against Sexual Freedom’, ‘Crimes against Life and Physical

Integrity’ and ‘Crimes against Freedoms and Human Rights of Citizens’. This implies *ex officio* prosecution¹ and harsher penalties when the crime is committed in the context of domestic violence. (Depending on the crime, the prescribed penalty is harsher than for the basic type of the crime and ranges from 3 months up to at least 10 years of imprisonment). In addition, certain obstacles to effective prosecution, such as the requirements of an explicit authorisation by the victim for prosecution or a private charge submitted by the victim that lives in an intimate relation with the offender, have been removed. This is the case for two crimes: Statutory Rape and Sexual Assault upon a helpless person. According to the amendments of 2004, the legal provisions now foresee *ex officio* prosecution of these crimes irrespective of the nature of the relationship between offender and victim. Any discrimination of the victim on the grounds of her marital status has been abandoned.

Having in mind that criminalisation of domestic violence in the substantive criminal law is of recent date and considering the efforts of the women human rights defenders to introduce domestic violence as a serious crime in the law, the issue arises of what should be the appropriate criminal justice response. More specifically we have to ask whether the criminal justice reaction provides for effective protec-

tion of victims during the criminal procedure and adequately addresses their needs. In this context, the availability and the potential effect of diversionary measures, most importantly VOM, for crimes committed in the context of domestic violence deserves special attention. How is diversion from judicial proceedings defined within the criminal justice system and how is it perceived in the wider society?

Legal provisions for VOM in Macedonian criminal law
VOM as a diversionary measure from judicial processes is at present available only for juvenile offenders. But since a few years, the Macedonian criminal justice system undergoes thorough reform. At present, the Draft Law on Criminal Procedure is in parliamentary procedure.² The provisions of the Draft Law for the first time introduce mediation in penal cases also for adults. VOM is anticipated as one of four instruments of accelerated proceedings. The draft law provisions³ allow only for court mandated VOM. Another peculiarity of the VOM procedure is that it is available only for criminal offences that are prosecuted upon a private charge. The decision to refer the case to VOM will be made by the individual judge at a session for reconciliation that precedes the main hearing. The judge can ask the parties to give their consent for referring the case to VOM. In the light of the fact that there now is *ex officio* prosecution of crimes committed in the context of domestic violence, these are clearly not eligible for referral to VOM. Therefore, we might conclude that VOM is not available in cases of domestic violence.

In addition, regarding domestic violence we also have to consider the broader social context, i.e. the peculiarities of Macedonian society and especially the perception of gender relations. Macedonian society may be characterised as strongly influenced by traditional gender roles that result in tolerance towards domestic violence. The Shadow Report on the Implementation of CEDAW has stated: "There is a patriarchal matrix in the men-women relations, as a dominant model regarding the division of roles in the family. The role of the mother is dominant in the raising and development of children"⁴. The presence of a traditional dominant model of division of roles in the family was also confirmed by the results from a survey⁵ carried out in 2008 by the author of this contribution.

Results of research on the attitudes of police officers regarding domestic violence

Since the attitudes, the perceptions and practices of police officers are important for the implementation of the protection of victims, given the position of the police force at the gate of the criminal justice system, I have attempted an assessment of these attitudes. In general, one can say that attitudes and perceptions of police officers on men-women relations are in concordance with the actual gender socialisation in Macedonian society. Police officers are part of the social reality and they live and 'practice' socially assigned gender roles in both private and public life. Defining

the men-women roles is specific and variable, but variations depend on circumstances regarding time and place but not on profession. Thus, police officers' attitudes towards men-women relations and domestic violence originate from socially accepted and desirable gender roles in the Macedonian society of today. The research results showed that patriarchal values of family roles dominate among police officers.

Legislative changes aiming at penalising violence against women in the private sphere are reflected in the attitudes of the police officers. Research reveals that police officers have a statistically significant positive attitude towards the recognition of domestic violence as a public issue. They also have a clear positive attitude towards the seriousness of the issue of domestic violence against women. However, this expressed intolerance towards domestic violence is compromised when the 'holiness' of the marriage is at stake. Half of the respondents accept wife hitting as a tolerable behaviour when it is intended to preserve the marriage. In that respect, the gender of the respondents has a statistically significant impact: 59.1% of female officers vs. 36.5% of male officers completely reject wife hitting as an acceptable behaviour. Some influence is also noticeable with regard to religious affiliation. We may draw the conclusion that the positive attitude of police officers towards the recognition of the seriousness of domestic violence against women is on a 'declarative' level. If we accept that attitudes of police officers reflect the attitudes of society, the conclusion is that Macedonian society to a considerable degree is intolerant of domestic violence at a 'declarative' level only. Another striking research finding is related to the discrepancy in the recognition of physical, psychological and sexual types of violence as constituting domestic violence at all. 90% of the respondents recognise types of physical violence as domestic violence, while recognition of psychological violence ranges from 39.5% to 74.5% depending on the type of psychological violence. Such results in turn influence the police response at the spot of the occurrence of violence and, as a consequence, the protection and support of the victim. A disturbing finding is that only 30% of the respondents have attended institutionalised training on police responses to domestic violence.

Seen together with the fact that police officers have no power to issue temporary barring and protective orders, the position of the victim is even less favourable. Civil orders for temporary protection are available for victims though and may be initiated upon a petition of a victim or the Center for Social Work. But in general there is a lack of coordinated social responses to domestic violence. Victim support services are still at the beginning of organising effective support, and there is no systematic free legal aid available for all victims of domestic violence. The economic situation in the country with almost one third of the population being unemployed, has a significant impact on these conditions.



Taken all together, the current situation in the Macedonian society, and especially the insufficient availability of services for victim protection and support, place the female victims in a difficult position. Hence we cannot speak of domestic violence victims who are empowered to make informed decisions on their life. In the course of the criminal law intervention, there are insufficient measures in place that redress the power imbalance between the victim and her offender. In this situation VOM in cases of domestic violence cannot unfold its potential as an adequate response taking care of the needs of the victim, the responsibility of the perpetrator

and the broader interests of the society.

Stojanka Mirceva

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1. Only for the crime of 'bodily injury' the public prosecutor depends upon the authorisation of the victim in order to initiate the prosecution (Article 130, paragraph 2 of the Criminal Code).
2. Draft Law on Criminal Procedure, available at <http://www.sobranie.mk>
3. Chapter XXX, VOM Procedure, Articles 491-496 of the Draft Law on Criminal Procedure.
4. Shadow Report on the Implementation of CEDAW (2005), ESE, pp.13.
5. Mirceva, S., *Research Report on Attitudes, Perceptions, Knowledge and Practice of Police Officers regarding Domestic Violence against Women* (publication

Readers' Corner

- The statistical report "Mediation on Criminal and Civil cases in Finland 2009" (Iivari, J., Säkkinen, S. and Kuoppala, T.) can be consulted on the Forum's website: [http://www.euforumrj.org/readingroom/Mediation in Criminal and Civil Cases 2009 Finland.pdf](http://www.euforumrj.org/readingroom/Mediation%20in%20Criminal%20and%20Civil%20Cases%202009%20Finland.pdf).
- *Towards restoration and peace. The implementation of restorative justice in Hungary*, by Borbala Fellegi, Budapest, Napvilág Publishing House, 2009, available from: http://www.polc.hu/konyv/ut_a_megbekeleshez/101777/ The aim of the book is to map the ways in which the restorative justice paradigm and its different models can be implemented into the Hungarian social policy and criminal justice systems. The study explores the underlying mechanisms of restorative justice, highlighting its influences on the micro, mezzo and macro level. Accordingly, the implications of restorative justice on interpersonal dynamics, the mechanisms of social institutions, and macro-sociological processes are analysed.

Newsflash

- The European Forum hosted a seminar on 'Conferencing' on 14-16 September 2010 in Leuven, Belgium. The seminar gathered about 60 participants (representing almost all continents and regions of the world), among which 20 were invited experts. All were present in order to make, among other things, a very comprehensive state of affairs of conferencing, discuss past and current applications, best and worst practices, compare it with other restorative justice programmes, and examine the possibility of further developing the model. The preliminary results of the project were first presented; the experts each gave a paper. In the last session a reflexion was started on the future of conferencing with a representative of the European Commission offering some concrete ideas of the policies currently run and to come, and other participants offering some insights resulting from the seminar or from their own experience. A more complete report will be available on the website soon.

Denmark:

Lack of attention endangers practice

At the European Forum's conference in Bilbao, in June, I expressed my concerns about how mediation in cases of domestic violence is being carried out in Denmark. I have been asked to elaborate on them in this issue of the Newsletter. Denmark had its first legislation on victim-offender mediation (VOM) in January 2010. A pilot project of 12 years had preceded and a strong political aversion from the governing right wing parties had to be overcome before it was possible to make VOM nationwide and permanent.

The overall responsibility for its implementation lies with the National Police, while the local police are responsible for organising the mediation service. The mediators (60 persons in all) are lay mediators. They are paid a nominal honorarium by the police.

VOM in Denmark is additional to the criminal justice proce-

dure and has, as a starting point, no effect on the criminal procedure. All types of criminal cases (pre- or post-sentence) are eligible for mediation as long as they are found suitable by the referring police coordinator. During the 12-year pilot project, and even now, cases of domestic violence and sexual violence are referred to mediation (in line with any other case) if they meet the criteria for admission of guilt and if the parties participate voluntarily. The question whether such cases are appropriate or should be given special attention has never been raised in Denmark. When you consider how contested this issue has been (and still is in other countries) you might ask how this could go unnoticed in Denmark? Where are the opponents and the proponents who debate so vigorously over this issue?

I will point at a number of possible reasons why this debate

has not taken place in Denmark:

- VOM has had an almost hidden existence and has been given little - if any - political attention. During the 12 year long pilot project less than 200 cases were facilitated. The service is practically unknown.
- Mediation is complementary to the criminal justice system, which is mostly punitive. The question of restorative justice being too lenient or soft on crime is not an issue. All cases - also the ones of domestic violence - will go to court and the offender will be punished. The danger of domestic violence being privatised is not imminent because mediation is not a diversion from court proceedings.
- There is - unfortunately - no longer an outspoken, politically active women's movement in Denmark. There is, so to speak, not a single body of opponents (or proponents) to actively engage in a discussion on the issue of domestic violence and restorative justice. The discussion has simply not surfaced in Denmark.
- Neither is there a restorative justice movement to bring the issue of restorative justice forward. The concept of restorative justice has only caught on with a limited (though devoted) number of individuals. There is no institutional framework in which restorative justice can exist.
- Also the academic interest in restorative justice is limited. Only a few scholars have taken up studies of the theories of restorative justice. Hence there is a huge knowledge gap when it comes to theoretical considerations underpinning the practice of restorative justice, leaving the practice of VOM more or less floating in the air.

So, where does this leave the practice of VOM in cases of domestic violence and why am I concerned? I am in agreement with restorative justice having a potential when it comes to domestic violence if referred cases - because of their complexity - are handled with care and are given special attention. This is already done in many countries. In Denmark however there is, as mentioned earlier, no special procedure for facilitating cases of domestic violence nor is it done by facilitators with any special training or knowledge on domestic violence. Cases of domestic violence are handled by lay mediators in a tradition of facilitation that requires no preparatory meetings. There is no assessment of the parties, the needs of the woman are not clarified and she is not being safeguarded. This facilitation practice may work in other less severe cases but it is in my view deeply problematic when it comes to cases of domestic violence. The danger of doing more harm than good is obvious. On an optimistic note you might say that Denmark has a unique legislation that makes the use of restorative justice practices possible in a broad spectrum of cases - including domestic violence. But one size does not fit all and the responsibility to address the complexity of facilitation of cases of domestic violence is still to be taken on. How, when and by whom I cannot say. Only that it needs to be done.

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