

Editorial

Hello everyone,

Warm greetings from a rather cold, but sunny Sydney! It is this time of year when I really miss Europe, not for the weather in particular (it seems the temperatures are similar here in our winter) but for the general atmosphere that summer brings. Things seem to calm a little, even though much work is undertaken during this time. I hope that you manage to get some time away with friends and family and that you enjoy this lighter time of year.

We are pleased to present our second newsletter for 2015, which considers the application of restorative justice (or victim-offender mediation more specifically) to domestic violence. The focus of this edition and the contributions herein is a result of the policy developments taking place in Poland on this practice and the conference that was held following the EFRJ Annual General Meeting there in May.

We begin with an overview of the conference, kindly provided by Beata Czarnecka-Dzialuk. It seems that there were a substantial amount of interesting papers that not only reflected on local practice but also raised some important opportunities and tensions that the application of restorative justice to domestic violence poses. This has traditionally been an area of heated debate given the sensitivities involved in power dynamics and concerns around protection for victims and it is clear that they are not going to be resolved overnight. It is, however, important if practice is going to go ahead that stringent safeguards are put into place.

This work is being undertaken as part of a wider project on 'Restorative Justice in Domestic Violence Cases' coordinated by Annemieke Wolthuis at the Verwey-Jonker Institute. In our second contribution, Annemieke has provided us with an overview of this research project — an international affair with six European countries involved — and their findings and activities to date. Research such as this is very important in helping us not only to understand international practice, its diversity and research gaps, but also to provide a tangible outcome that will be of use to practitioners, victims and offenders on the ground. I hope you enjoy reading about the project as much as we did and that you will attend their conference that will be taking place in 2016. I think that you will agree that the insights that arise from the project are valuable and I hope that you will engage in further discussions with

Annemieke about how the findings might be useful to projects where you are running them.

Our third contribution is from Christa Pelikan, who as many of you will know has been active in this area for many years. She reflects on the current policy developments in relation to the use of VOM in response to domestic or intimate partner violence that are taking place in Austria as well as the distinctions between research findings on the topic from the past and the present. As an advocate for such practice, it is hardly surprising that Christa calls for its continued use in this area. However, she also draws attention to the positive outcomes that VOM elicits for victims in particular and also for the internal changes that can occur within offenders themselves. Gaining an insight into the personal experiences of stakeholders is important in a debate that is largely purported by those who have not been affected by the incident in question. Research that does that is needed!

In our final substantive contribution, Beata Czarnecka-Dzialuk, gives us an insight into the application of VOM in relation to domestic violence in Poland. We hope that you enjoy reading his article as much as we did. Again, let us know your thoughts or get in touch if you could present something about yourself and your own countries — we would love to hear from you!

Our final feature has been written by Martin Wright who sits on the Editorial Committee for the Newsletter. Martin reflects on Rosenblatt's monograph *The Role of Community in Restorative Justice* which has recently been published by Routledge. I hope that this contribution peaks your interest in this publication and serves to illustrate different ways in which our readers might contribute to the content of the newsletter. I very much appreciate Martin's contribution — please feel free to send us your own!

We would be keen to hear your thoughts on any developments on restorative justice, theory or practice, so please feel free to get in touch with me at Editor@Euforumrj.org. I would also encourage you to email me with any thoughts or responses that you might have to the articles that have been written in this edition as we would like to develop a new feature which highlights your reactions or feedback on other members' work. Furthermore, any ideas that you may

have about the structure or content of the newsletter, any offers to contribute to it in the form of written articles and information about events would be very welcomed.

With very best wishes,

Dr Kerry Clamp

Chair of the Editorial Committee

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Reflections on 'Access to Mediation for Victims of Domestic Violence': An International Conference co-organised by the European Forum for Restorative Justice and the Criminology Department of the Institute of Law Studies, Polish Academy of Sciences, Warsaw, May 22, 2015

The purpose of the conference was to create an opportunity to exchange views, both critical and supportive, on suggestions to restrict access to mediation in domestic violence cases, to present experiences from country-specific practice (especially good practice), as well as special safeguards in respect to mediation in this specific area. Forty-eight people attended on the day from twelve European countries (eighteen people from Austria, Estonia, Germany, Italy, Latvia, Lithuania, the Netherlands, Northern Ireland, Russia, Spain and Portugal and 30 Poles).

There were presentations of experts from Austria, Germany, the Netherlands, Spain and Poland, followed by discussion on their topics. The most notable presentations will be mentioned here so that one can get a sense of discussions that arose on the day. The only exception will be Christa Pelikan, (Institute for the Sociology of Law and Criminology (IRKS), Wien) because she has written about her presentation for this Newsletter.

In the first part of the conference, Annemieke Wolthuis ([Verwey-Jonker Institute](#), Vice-Chair EFRJ) presented an overview of the European project on restorative justice in cases of intimate partner violence (IPV). The findings show that international rules and regulations are not consistent and that national legislation, as well as practice, across the six countries included in the research project differs. After highlighting the key points of critique in terms of applying restorative justice in cases of domestic violence from the feminist movement, and opportunities pointed out by restorative justice advocates, common positions from both perspectives were identified: empowering and restoring victims and preventing re-offending. Main needs such as voluntary participation and safety, assessing controlling behaviour, proper screening, training of mediators in IPV and related problems were also discussed. The need for more guidance was stressed and it was noted that work on developing something in this regard was in progress.

During the second session, developments in medi-

ation in domestic violence cases in Poland were discussed from various points of view. Barbara Pawlak (researcher, mediator and notary), who had examined 125 cases of domestic violence referred to mediation by the Łódź appellate court and interviewed over 400 magistrates, notaries and mediators from that region, presented detailed data on the mediation parties and proceedings. She revealed that mediation was initiated by a judge in over 70% of cases and concluded that the effectiveness of mediation depends on the cause of the conflict and on the real expectations of the parties. When the mediation agreement is not performed there is a risk of secondary victimisation. The character of settlements reached in VOM determines whether there is a real possibility of securing their performance by the offender (wishful settlements and quasi civil settlements) and therefore the accepted changes to the criminal procedure providing the possibility of issuing a writ of enforcement may appear to be insufficient from the victims' perspective. Furthermore, overseeing the mediation agreement in practice is often insufficient and missing — as a rule there is no information about it in the court files; the interviewed practitioners are even not clear who is responsible for doing it.

Tomasz Mielczarek (Public Prosecutor, Częstochowa District) gave a presentation on the legal context of counteracting family violence and its associated statistical data. The problem in the selection of domestic violence cases was pointed out — in two thirds of cases, indictments have not been brought to court (in 2013

out of about 58,000 cases there were only 15,500 indictments); the number of judgements for family abuse was 14,000 with 12,000 offenders being sentenced, 400 being found not guilty and around 1,200 cases being conditionally cancelled. In the district of Częstochowa there have been twenty cases where mediation has been used in the last eight years: sixteen ended with an agreement (80%) which influenced the final decision on applying further sanctions and reduced the tension caused by the offence. Both victims and offenders were delighted with the way of cancelling the proceedings. In the context of such positive results, it is difficult to understand the negligible amount of mediations.

Tomasz Pronobis (Judge in the District Court in Pruszków) pointed out the positive aspects of the position of the victim in mediation stressing the possibility that the case may go back to the court. He appreciated also the chance to influence offenders' accountability. The role of the judge in assessing the circumstances of the case and the parties' interests in taking part (or not) in mediation was underlined. He noted that, even if the mediation fails to end in agreement, this does not mean it ended with a failure. Participation in mediation, speaking about the consequences of the event, mutual listening and finding the source of the conflict, presents an opportunity to calm down the emotions and to suppress conflict which is important not only for sensitive and fragile people, but also to the court.

Magdalena Grudziecka (mediator, vice-chair of the [Polish Mediation Centre](#)), on the basis of nearly twenty years of practice, reflected on the crucial role of mediator — the main risk is a lack of proper training and excessive optimism that mediation is a panacea for every conflict. The Polish Mediators Centre however has an elaborate training program that emphasises special strategies and techniques of assessing and facilitating domestic violence cases. She quoted a report of Anna Woźniak-Bahr,¹ showing satisfaction after taking part in mediation by both parties — victims and offenders — in Kraków Police District, and the research results showing that only twenty percent of domestic violence offenders who had taken part in mediation re-offended and in only six percent was it a further domestic violence offence.

Katarzyna Wolska-Wrona (Office of the Government Plenipotentiary for Equal Treatment) stated that while the Istanbul Convention (Council of Europe, 2011) does not question the advantages that alternative dispute resolution methods have in many cases, it does emphasise the need to use extreme caution in cases of domestic violence, where it is extremely difficult to ensure that the victim enters the proceedings on a level equal to that of the offender. The observation of practice in Poland leans towards the conclusion that the cautious approach adopted in the Convention is highly recommended. Reports from some of the victims who contacted

the Office of the Plenipotentiary for Equal Treatment, as well as NGO's who help the victims of gender based violence and domestic violence, show that the choice to engage in mediation is not always as informed or as voluntary as it should be. Often the victims feel they can't refuse to take part in mediation proceedings where they are proposed by the judges because they are viewed as the highest authority and as such should not be contested. Furthermore, it was argued that insufficient execution mechanisms can lead to loss of accountability on the part of the offenders. As a consequence there are cases where alternative dispute resolutions in domestic violence cases lead to re-victimisation rather than the empowerment of the victims.

Frauke Petzold ([Waage Institute](#), Hannover) spoke about the possibilities and challenges of mediation in domestic violence cases on the basis of experience from the intervention programme 'Hannover against Violence of Men in Families.' The program aims to provide information to the victim about counselling and support possibilities as well as the prospects of therapy and intervention/mediation. However, mediation is not possible if there are imbalances of power, dependencies and a risk of further violence. It was noted that attitudinal change is not achievable through short-term interventions like mediation, but that mediation can be an initial motivator for longer term solutions (i.e. social training for perpetrators, therapy, relationship counselling). Other arguments that supported the use of mediation in such cases were put forward, including: victims often do not benefit when the offender is punished, but offenders can be held to account during VOM; manifold conflicts need to be clarified (i.e. separation, finances, objects, association/visitation with children, social environment) that can more easily be addressed through VOM; VOM can add to the strengthening of the woman and can reduce the risk of further violence. The standards of VOM in domestic violence cases were outlined as: mixed gender co-mediation at all times, one-on-one-interviews separately at all times, often using indirect mediation and follow-up sessions to ensure the sustainability of the agreement.

Patricia Esquinas (University of Granada) spoke about her research on the 'Experience with mediation in domestic violence cases in Spain: legal regulation and opinions from judicial practice and criminal law scholars.' She pointed out the negative effect of a 'zero tolerance' policy for gender violence, which she argued was based upon a paternalistic approach. The victim, once she denounces the attack, loses all control over the judicial process with an immediate restraining order being against her husband or partner which prohibits the two individuals from contacting each other for any reason. This means that any opportunity to manage her private relationship independently is curtailed.

¹Anna Woźniak-Bahr — Mediator nr 50, Polskie Centrum Mediacji, Warszawa 2009

She admitted that there are certain disadvantages or dangers of using mediation; however, she argued that mediation may still be effective in a few cases (first, sporadic and isolated violence and an aggression which is not integrated into a long spiral of violence and if a routine of mutual physical violence exists in the relationship, even if the man is the one who attacks more often and more strongly). The success would happen especially when the victim wishes to re-establish co-existence with the offender. Furthermore, according to this speaker, mediation is a short-term intervention which is generally insufficient in itself to achieve more lasting changes in the relationship, but an excellent starting point to plan and promote such changes. She invited the participants to continue the discussion in pursuit of a more just and humanitarian law — and this happened. Let me pick up just one of voices in the discussion — there is a need to monitor whether victims positions and interests are well protected.

If possible, by similar research that has been presented, but in other European countries — let's think about the 'next edition'!

References

Council of Europe (2011). Convention on preventing and combating violence against women and domestic violence. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008481d>. Istanbul Convention.

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Towards minimum standards on the use of RJ in domestic violence cases: a European project

Can Restorative Justice (RJ) be a solution in cases of domestic violence and if so, under what circumstances? That is the main question of the European project that the Dutch Verwey-Jonker Institute is coordinating.² This project, funded by the European Commission, seeks to fill research gaps, to pull together existing knowledge and to gain a better understanding of the risks and potentialities of using restorative justice in cases of 'intimate partner violence.'

Partners in this project are from Austria, Denmark, Greece, Finland, the Netherlands and the UK (England and Wales). The European Forum for Restorative Justice (EFRJ) is also involved as a partner and responsible for dissemination and a final conference in January 2016. A comparative report on the legal and policy context and practice of restorative justice in general and in cases of domestic violence in particular has been written in 2014 and resulted in a first publication of this European project (Drost et al., 2015). In the second comparative report that is almost finalised we focus on the experiences, expectations and needs of victims and offenders who have been involved in an RJ intervention after violence, often a VOM. One of the final products of the project is to come up with a guide that provides minimum standards for the use of RJ in cases of domestic violence. In this article, I would like to share with you our research and some of the findings of our comparative report.

Definitions

We defined domestic violence as violence used by adult intimate partners who have previously been in a relationship as well as those who are currently still in a relationship with each other, i.e. intimate partner violence (IPV). Restorative justice is focused on the reparation of harm in the aftermath of a crime or conflict by giving parties the opportunity to discuss the matter and look towards joint solutions. The most frequently used restorative justice practice in the context of IPV is victim-offender mediation (VOM), but in some cases conferencing is used. Our main focus is on IPV cases that have been reported to the police and/or have led to criminal procedures and that have been referred to VOM. Civil cases are not part of this project.

International rules and regulations on the use of restorative justice exist, such as the 1999 Council of Europe Recommendation and the UN Basic Principles (Economic and Social Council, 2002) and also rules on

²This project, is called: 'Restorative Justice in Cases of Domestic Violence, Best practice examples between increasing mutual understanding and awareness of specific protection needs.' The project is financed by the European Commission (JUST/2013/JPEN/AG/5487) and coordinated by the Verwey-Jonker Institute. The partner organisations are: Austria: [Institute of Conflict Research \(IKF\)](#) and [Institute for the Sociology of Law and Criminology \(IRKS\)](#), Denmark: [National Organisation of Women's Shelters in Denmark \(LOKK\)](#), Finland: [Department of Criminal Policy of the Ministry of Justice \(MJF\)](#), Greece: [European Public Law Organization \(EPLA\)](#), The Netherlands: [Verwey-Jonker Institute \(VJI\)](#), United Kingdom: [Independent Academic Research Studies \(IARS\)](#).

the protection of victims (of violence), like the EU Victim Directive (European Parliament and Council, 2012) or the Istanbul Convention (Council of Europe, 2011) that entered into force in 2014. If they mention something on the use of mediation in VOM, they are not consistent: some are open, some reluctant and some restrictive towards the use of restorative justice in domestic violence cases. The only explicit prohibition can be found in the United Nations Handbook for Legislation on Violence against Women (2010, 38). This variation in support for restorative justice being applied to domestic violence can also be seen in national legislation; while countries differ, most allow it and Spain is the only country where legislation prohibits the use of restorative justice in domestic violence cases.

A brief overview of critiques and opportunities

The critique that is presented by some comes from feminist and safety arguments. Concerns around safety and power imbalances mean that some people are afraid the use of VOM will do more harm than good for victims. There is also concern that victims will feel pressure to participate, not only by their partner, but also by the VOM procedure which can become counterproductive. Nevertheless, supporters argue that VOM can be seen as an opportunity to change violent relationships. It empowers victims because their voices can be heard. At the same time, the offender can take responsibility and share his/her thoughts. Given that many countries refer cases to VOM, it is important to make risks into opportunities through rigorous preparation thus ensuring that the process is safe for victims.

First results from the Comparative Report

The first comparative report and interview phase show that the use of restorative justice in IPV cases is happening in Europe and in the countries involved in this study. However, there is significant diversity in practice at the local level. There are some common problems and fears as mentioned in the comparative report like the importance of a robust preparation phase, safety as an overall point of concern and the importance of after care. In all six countries legal and social measures are in place to tackle IPV and VOM has taken a role in this area too.

There are distinctions in the relationship of restorative justice to the criminal justice system. In the UK restorative justice is external to the criminal justice system: police or community-based organisations provide restorative justice in domestic violence cases independently or in cooperation with the police, probation etc. Since the Crime and Courts Act of 2013 referral from public prosecutor and judge are possible, but officially the outcome makes no difference to the criminal trial. In the UK the implementation in cases of IPV remains highly contested. In Denmark it is placed within the criminal justice system as a supplement to court procedures, not as a diversionary measure. Here referrals

are solely taking place at the police level. In the other countries it is often embedded in the criminal justice system, but in different ways.

Both Austria and Finland have a well-established status of RJ practice that began in the 1980s and handle thousands of VOM cases each year: one fifth of cases in Austria and one sixth of cases in Finland are categorised as IPV. In Austria, restorative justice was implemented in the Criminal Procedure Code in 2000. Eighty five percent of cases are referred to the mediation services by public prosecutors. Here the general legal provisions for VOM also apply to IPV cases, namely the offence is punishable with a prison sentence of less than 5 years and the crime had no lethal consequences. In Finland only the police and prosecutor have the right to refer a case of IPV to mediation and mediation officers pay special attention to assessing cases.

In the Netherlands, initiatives began in the 1990s and a law amendment was implemented in 2011 that provides for mediation. Pilots with mediation in penal cases are taking place at police, probation and court level, some including IPV cases. In Greece restorative justice is also part of the criminal justice system. Mediation especially for cases of DV was introduced by law in 2006 (and implemented in 2010), although many organisational, operational and financial obstacles have limited practice and the numbers of referrals to Athens and a few other places. The report contains further information on the organisation of RJ in IPV cases and methods used in the different countries, including information on training requirements for mediators, safeguards, what is expected as the outcome of an RJ intervention, supervision of agreements etc.

Interviews and Focus Groups

As a second phase, interviews were undertaken with victims and offenders who took part in mediation in the partner countries. The main question was: 'What do victims and offenders of IPV need in respect of VOM?' To answer this question a number of victims and offenders (ideally eight of each) were interviewed in each partner country and, following this, focus groups were held to get additional information from the practitioners involved. A report of the interview phase will be available online at the EFRJ website in August 2015.

Even though there were small samples, the interviews demonstrated that most interviewed victims and offenders were satisfied that they took part: they felt listened to, understood and taken seriously. Some talked about the violence and other related problems. In general, victims and offenders felt safe during the VOM process. Preparatory meetings were highlighted as an important element of the process to get information about VOM, to talk about the violence and related problems, and to learn about strategies to prevent violence.

However, there were a number of critical issues that were mentioned that included:

- the incident and the violence were not always discussed (some said the conversation was only about the future and about child custody issues);
- an agreement was not always made, or apologies were not perceived to be genuine;
- a follow up after the process was often not implemented and this was perceived as a missed opportunity to get the offender to comply with the agreement; and finally,
- the safety of victims after VOM was not given much attention.

Expert Meetings

Two expert meetings have taken place this year, one in February in Hannover, Germany and one in early June in London. One objective was to generate input into a best practice guide for the use of restorative justice (or VOM) in relation to IPV. Thus, each partner organisation could invite three experts to take part in a seminar which involved interactive sessions to work together on needs and possible actions to share knowledge and improve the use of RJ in domestic violence cases. It turned out to be a fruitful exercise with mediators, policemen and public prosecutors from the involved countries coming together to exchange practice with the researchers and to jointly work on ideas for a common practical guide that can assist practitioners working in the field. The main questions that we sought to address were: What are the relevant restorative justice practices and policies concerning IPV in different countries? What is needed or what would be useful for you in the field when it comes to guidelines? What do victims and offenders need?

The discussions concentrated on issues like safety and voluntariness, screening and risk assessment, legal aspects and different methods in the mediation that can be used (such as the Austrian mirror method that uses the mediators to explain to each other what they have heard from the involved parties, so they are listening to their own story through the voice of the mediator. In this model they use male mediators to talk to the man and female mediators to the woman). In the next

stage, we will try to finalise the guide and start some local pilots to test it. The final conference of this project will be held in Brussels on 25 and 26 January 2016, so please make a note of it and join us in discussing this important issue further!

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References

Council of Europe (1999). *Mediation in penal matters*. Council of Europe. Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters.

Council of Europe (2011). Convention on preventing and combating violence against women and domestic violence. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008481d>. Istanbul Convention.

Drost, L., Haller, B., Hofinger, V., van der Kooij, T., Lünemann, K. and Wolthuis, A. (2015). *Restorative justice in cases of domestic violence: best practice examples between increasing mutual understanding and awareness of specific protection needs*. Utrecht: Verwey-Jonker Instituut. (JUST/2013/JPEN/AG/4587) WS1. Comparative Report.

Economic and Social Council (2002). Basic principles on the use of restorative justice programmes in criminal matters. <http://www.un.org/en/ecosoc/docs/2002/resolution2002-12.pdf>. Resolution 2002/12.

European Parliament and Council (2012). Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. *EUR-Lex*.

United Nations (2010). *Handbook for legislation on violence against women*. New York: United Nations.

We know a lot! A contribution from Austria to the never-ending debate on RJ and Domestic Violence

On many occasions I have been talking about the ‘never-ending debate’ on the application of VOM and restorative justice in cases of domestic violence (or intimate violence, partnership violence). Prompted by the seminar ‘Access to Mediation for Victims of Domestic Violence’

that took place in Poland at the end of May, this article is concerned with considering what is new in terms of the approach to domestic violence cases and if anything has changed within the debate concerning the application of restorative justice and victim offender mediation to such cases.

An unexpected assault on VOM in Austria?

Several weeks ago we learned that the practice of the Austrian *Tatausgleich* (the Austrian version of victim-offender mediation) was in danger of becoming abolished, liquidated. An amendment to the Austrian Penal Code was planned. An important proposed change was the introduction of aggravating circumstances for offences of violence, with a racial or xenophobic background/motivation. Offences in the context of partnerships and relationships of dependency constitute another aggravating circumstance. Regarding the new assessment of domestic violence, the draft follows recommendations of the Istanbul convention (Council of Europe, 2011). In the same proposal referring to penal procedural law, we found a clause that states the prohibition of the application of any kind of diversionary measure wherever these aggravating circumstances apply. If these parts of the amendment came into force it would mean the end of Austria's long-standing, well established and widely acclaimed practice of Victim-Offender Mediation (*Tatausgleich*) in cases of domestic violence. Why did this happen after more than two decades of practising VOM in cases of partnership violence? We still are left to speculating.

The potential threat to the option to deal with domestic violence through a restorative or VOM process spurred many to action. All of the friends and colleagues I asked to place a statement on the website of the Austrian Ministry of Justice to object to these legal amendments did so. When the deadline had expired, we found a notice in the press that mentioned the storm of protest that these provisions had evoked. It has — very probably — been warded off and will not be found in the final new amended law. This is in itself a very encouraging story — a story about the solidarity to be found within the restorative justice 'community.' But we — meaning myself and my colleagues from IRKS ([Institute for the Sociology of Law and Criminology](#), Vienna) and the practitioners of [NEUSTART](#) (the service provider for VOM) — had learned a lesson: the necessity to be more visible and to talk, loudly, about our results.

I used the opportunity at the seminar in Warsaw to talk once more about the more concrete results of my two significant studies on the application of VOM in cases of partnership violence. Annemieke Wolthuis has presented preliminary results of the more recent study on 'RJ in Cases of Intimate Partner Violence' where Austria is also a partner and I am also making use of the EFRJ Newsletter to further share positive experiences with those of you who could not attend. The accounts of each of these studies, their formation and

their outcomes can be told as stories of disappointment and of surprise and revelation, as stories of the unexpected that further opened new insights and led to new understandings (*Erkenntnisse*). Taken together, the studies are bringing to the fore the potential of a restorative justice inspired practice, more specifically, of a participatory procedure based on dialogue as an instrument of enhancing the rights of women to live free of violence within their intimate relationships. I will only briefly try to relate the 'disappointment' and the 'surprise' evolving from the first research and then continue with presenting the main results of the second study.

'Men don't get better, but women get stronger.'

This was probably not the success story of VOM usually announced: not much is going on in the way of re-integrating and of visible effects of individual prevention. Nevertheless I will contend: VOM is apt to fulfil, or to promote, what — according to German sociologist Niklas Luhmann — is the core function of law: the affirmation of the norm. Affirmation of the norm means affirmation of the rightful, i.e. legally supported, claim of the victim (in civil law it is the complainant). In this legal-theoretical understanding, the victim is at the centre. It is about her we are talking; it is her suffering, her fears, her apprehensions, her anger, and her reaction to the acts of the perpetrator that are taken care of by the VOM agencies. Change in the way of long lasting preventive effects does, as we have seen in this research, stem from the resolution of the woman, the victim, to bear no longer, to change the situation, and — in the most dramatic cases — to end the relationship, to leave the partner using violence. The perpetrator either joins her in this effort to find new ways of communication and of living together, or the realisation of the danger of losing wife and family results in a sincere and strong effort to really change his ways.

Sometimes men do get better!

My flippant summary of this first study was to stand the test of new research ten years later (Bachinger and Pelikan, 2015). Once again the results presented a surprise — they were different from what we had expected. They provided not just a confirmation of the empowerment effect, but furthermore, both the quantitative results and the evidence derived from the qualitative analysis pointed to an effect the RJ process had on the male perpetrators. It was still a rather small percentage of whom the women told us by way of the questionnaire that this had happened, but we were able to trace the processes that led up to such an inner change through

observing VOM procedures and through the accounts we heard from the women when talking to them. The most impressive effect occurred when and where in the course of the procedure men were brought to confront themselves with what they had done to their partner. This process is very beautifully described by Frau Krieger:

Listening to his story (in the course of the mediation session using the device of the ‘mirror of stories’) I learned and realised things I had not known ... I had the feeling that my husband only then — in the course of his single talk — realised that he cannot contend any longer that what had happened in reality was not as stated in the files and that it was he and only himself responsible — that’s what I heard. I am sure that this was a topic in this talk, because afterwards and later at home as well, the whole story as told from his side had become different. I guess what had happened! Of course, I was not present, but I know my husband pretty well — his tendency not to use the ‘I-form but talking about ‘one’ that does things or perceives them as such. I guess that the social worker he was with had told him: ‘no: it is not ‘one’ it is ‘you’ — something like that ...

In addition, the comparison with our analysis ten years before brought to light the factors that were responsible for these developments. What had happened in this time-span — as it became manifest in the narratives of the women as well as in the respective items of the questionnaire — is an astounding amount of social change. Both stories of the empowerment of women and stories of an inner change in men occurred within a change of societal expectations, of a new collective mentality. The expectation of keeping violence out of intimate relationships has become a matter of course and has acquired wider acceptance within (Austrian) society. This study is therefore also about social change and about the repercussions of the women’s movement and the effect of legislation, namely the ‘Austrian Protection against Domestic Violence Act’ and its implementation.

In the course of this piece of law-making, a main point of controversy was the role of Victim-Offender-Mediation in, or more precisely its application to, cases of domestic violence. From the very beginning this practice, in existence in Austria since 1992, met the opposition of the women’s movement who raised quite powerful arguments: the potential lack of sufficient norm confirmation, the potential neglect of power imbalances, inextricably present where violence has oc-

curred, and the short-time character of the VOM intervention, that neglected control and after-care. The controversy found its solution by concentrating on alternative, innovative strategies that proved more doable and more effective. The negotiations increasingly went into details concerning the establishment and the funding of the centres for the protection from violence that were to provide counselling and immediate support for women who had called the police in and had attained an eviction and barring order. Their counselling should extend to explaining the advantages and the disadvantages of going ahead with a criminal procedure, as well as the potential and the dangers of VOM. And they insisted — successfully — on making the instigation of the alternative procedure dependent on the consent of the victim.

Against the background of this new legislation the VOM intervention is apt then to influence the next decisive step: these men are induced to move from: ‘Violence must not happen within an intimate relationship’ towards the insight: ‘I have been acting violently. I have physically and emotionally hurt my partner.’ As regards the women, they gain the confirmation of ‘their’ right as the individual experience of a validation of their rightful place in the world and within their relationship. It is acquired through dialogue as a kind of interaction, through ‘*Auseinandersetzung*,’ jointly tackling and disputing the issue at stake proves more persuasive than a mere verbal assertion that you have this right. The restorative justice process has the capacity to deeply convince women of their rights.

Whereas the personal has become political as a consequence of the women’s struggle, this process now brings the political back ‘home’ to become a personal experience that is conveyed in the course of the restorative justice process.

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References

Bachinger, L.M. and Pelikan, C. (2015). Victims’ experiences in victim-offender mediation in Austria: the ‘real story’. In: I. Vanfraechem, D. Bolívar and I. Aertsen (eds.) *Victims and restorative justice*, chap. 4. Abingdon: Routledge.

Council of Europe (2011). Convention on preventing and combating violence against women and domestic violence. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008481d>. Istanbul Convention.

On mediation in domestic violence cases in Poland

Mediation in domestic violence cases used to be a sensitive and controversial topic in our country. In 2010, the EFRJ published an article on the controversies in Poland concerning use of mediation in cases of domestic violence from the conference ‘Mediation as an institution for victims’ in December 2009 (Grudziecka, 2010). It was concluded, that in Poland the criminal justice system is very willing to refer such cases to mediation (around 30 percent of all cases are referred to mediation, (Wójcik, 2010)) because of the belief that trained mediators are able to cope with the imbalance of parties. It was indicated that, for example, in the Polish Center of Mediation that there are special procedures to select and to deal with cases of domestic violence.

The main focus of the workshop was to explore whether or not mediation, as an institution for victims, is the right method to repair damage, to respond to victims’ needs and expectations and to simultaneously obtain solutions that are acceptable to offenders. Several further questions arise:

- what is controversial about applying victim-offender mediation to domestic or intimate partnership violence cases;
- are the controversies theoretical or do they actually happen in practice; and
- what can be found in the research literature about victim-offender mediation being applied to domestic or intimate partner violence that influences practice in our country?

In reflecting on the current position of the application of restorative justice processes as a response to domestic violence, a number of conclusions can be drawn. Several Polish authors and mediators have concluded that there is low-level of re-offending in domestic violence cases and that mediation may be better than criminal proceedings. However, Polish authors underline that mediation in domestic violence cases should be used very carefully, that every case should be individually assessed before final selection, and mediators should be very well trained and skilled (Kruk et al., 2010). There are a number of detailed indications on how to analyse whether mediation should be recommended in particular case (see, for example Kressel, 2005, część 7: modele praktyki).

However, there are also voices warning that there are no guarantees of safety for victims and this position was evident in the first drafts of the Attorney General’s Guidelines on Measures to Control Domestic Violence. In the draft of 2011 it was proposed as a rule not to refer cases of domestic violence to mediation, unless special reasons justified it; but in the final version of the Attorney General Guidelines of 1st April 2014, it states that decisions on referring to mediation cases of domestic violence should be undertaken with

special care. The opinion, that it would be unacceptable to deprive interested parties such possibility, has prevailed.

Nevertheless, discussions continued. There was considerable concern about the concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW), directed to the Government of the Republic of Poland of 7th November 2014 (CEDAW/C/POL/CO/7), namely about its article 25e, urging the State party to ‘end the use of reconciliatory mediation for victims of domestic violence.’ This statement is too categorical, especially in light of the fact that it goes beyond the related provisions in international documents of the United Nations and Council of Europe. The most recent, the Council of Europe *Convention on Preventing and Combating Violence against Women and Domestic Violence* (called the Istanbul or CAHVIO Convention) prohibits only mandatory mediation in cases of domestic violence (Council of Europe, 2011, Art. 48). Mandatory mediation would never be compatible with a fundamental principle of restorative justice which is voluntary participation. Mandatory mediation has certainly not been in place in Poland, neither in cases of domestic violence nor for other types of crime, and nobody has ever argued in favour of such an approach. The intention of the concluding observation the Committee on the Elimination of Discrimination against Women (CEDAW), connected with the use of the term ‘reconciliatory mediation’ remains rather unclear. If the idea of CEDAW is to prohibit mediation in domestic violence cases aimed solely at reconciliation, it would be acceptable. However, Polish law does not provide such kind of mediation anyhow.

The discussion on mediation in domestic violence has resulted in Poland debating whether or not to ratify the Council of Europe’s *Convention on Preventing and Combating Violence against Women and Domestic Violence*. Despite these debates, this finally happened this spring. During the conference on the ‘Access of Victims of Domestic Violence to Mediation’, Katarzyna Wolska-Wrona³ stressed that Article 48 of the Convention states that all state parties to the Conven-

³Chief expert in the Office of the Government Plenipotentiary for Equal Treatment in the Chancellery of the Prime Minister

tion must implement measures prohibiting the mandatory alternative dispute resolution processes or sentencing in relation to all forms of violence covered by the scope of the Convention. It is important to state, that while the Convention does not question the advantages that alternative dispute resolution methods have in many cases, it does emphasise the need to use extreme cautions in cases of domestic violence, where it is extremely difficult to ensure that the victim enters the proceedings on a level equal to that of the offender. The observation of practice in Poland leads us towards the conclusion that the cautious approach adopted in the Convention is highly recommended. As K. Wolska-Wrona has said, reports from many of the victims show that the choice to engage in mediation is not always as informed or as voluntary as it should be. Insufficient execution mechanisms can lead to loss of accountability on the part of the offenders. As such, there are cases where alternative dispute resolutions in domestic violence cases lead to re-victimisation rather than the empowerment of the victims.

The question is how often such situations happen. While there is research which conveys the attitudes of judicial officers, there is not enough research showing victims' opinions on taking part in mediation. Public prosecutors and judges have stressed, that mediation in domestic violence cases requires special caution and might be problematic. However, they also observe positive outcomes for the parties that are not necessarily mediation agreements: securing an initial opportunity to talk through the violence or creating some peace during a holiday time. Other research, such as that of Barbara Pawlak presented during the conference, demonstrates that magistrates reservations resulted from the lack of sufficient guarantees that the mediation agreement will be fulfilled. However, hopefully in the vast majority of cases obligations are fulfilled. The recent amendment to the Criminal Code concern-

ing mediation (article 59a c.c.) that comes into effect on 1st July 2015, only allows for a discontinuance of the proceedings only after reparation has been completed. Hopefully this will help to allay those fears further.

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References

Committee on the Elimination of Discrimination against Women (CEDAW) (2014). Concluding observations on the combined seventh and eighth periodic reports of Poland. http://www.ordoiuris.pl/pliki/dokumenty/CEDAW_C_POL_CO_7-8_18767_E.pdf. CEDAW/C/POL/CO/7-8.

Council of Europe (2011). Convention on preventing and combating violence against women and domestic violence. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008481d>. Istanbul Convention.

Grudziecka, M. (2010). Polish conference: mediation as an institution for victims? *Newsletter of the European Forum for Restorative Justice* 11(2):6.

Kressel, K. (2005). Mediacje. In: M. Deutsch and P.T. Coleman (eds.) *Rozwiązywanie konfliktów: teoria i praktyka*, pp. 519–543. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.

Wójcik, D. (2010). Rola mediacji między pokrzywdzonym a sprawcą przestępstwa. In: A. Marek (ed.) *System prawa karnego Tom. 1: Zagadnienia ogólne*. Warszawa: C H Beck.

Book Reviews

Rosenblatt, Fernanda Fonseca (2015) *The role of community in restorative justice* Abingdon and New York: Routledge 225 pages (ISBN 978-1-138-85895-4 (Hardback); 978-1-315-71762-3 (e-book))

In 1998 and 1999 ‘referral orders’ were introduced in England and Wales: courts have to refer many young offenders to a panel of two trained lay members of the community and one worker from the local youth offending team (YOT). They produce an ‘action plan’ which often includes reparation to the victim or the

community; this is intended to be a form of restorative justice.

Rosenblatt examines their operation on the basis of 127 interviews and 39 panel meetings in 12 of the 158 YOTs. She questions the degree of ‘community’ involvement; also she found little or no participation of victims or of persons whom ‘the panel considers capable of having a good influence on the offender,’ as provided in the legislation. Panels did not work with the young person to design an action plan, but drew up a contract and persuaded him or her to accept it. As the old song says, ‘ev’ry one who talks about heaven ain’t

going there'; this well-argued book confirms that everyone who talks about restorative justice isn't practising it. The Foreword rightly says that other countries could

learn from the English and Welsh experience.

Martin Wright

Victim-offender encounters in France

A six minute video in French with English subtitles produced by [INAVEM](#) is available on [YouTube](#).

Calendar

CEP international conference on Restorative Justice

23–25 September 2015, Czech Republic. Organised by CEP and the Probation and Mediation Service of the Czech Republic who celebrate their fifteenth anniversary in 2015. Further information from [CEP](#).

Pathways towards Just Peace: Reinventing security, justice and democracy in Asia-Pacific

9–11 October 2015, Kathmandu, Nepal. Further details from the [Asia-Pacific Peace Research Association](#) and the International Peace Research Association.

Jihadist radicalisation event 14 October 2015 Organised by the Criminal Justice Platform, Barcelona. Further information is available from [EFRJ](#).

IIRP World Conference *Restorative works: share, teach, engage* 26–28 October, 2015, Bethlehem, Pennsylvania, USA. See the [call for presenters](#).

Restorative Justice Week 15–22 November 2015, the EFRJ is planning a series of activities on Wednesday, 18 November 2015. Information on these will be available nearer the time from [EFRJ](#).

Justice and Security in Intercultural Europe: Exploring Alternatives 16–18 November 2015, Leuven, Belgium. Further details from [ALTERNATIVE: Final conference in Leuven](#).

Conference on positive criminology and positive victimology 12–13 January 2016, Bar-Ilan University, Ramat-Gan, Israel. Further information from [EFRJ](#).

Restorative Justice in Cases of Domestic Violence, Best practice examples between increasing mutual understanding and awareness of specific protection needs 25–26 January 2016, Brussels. Information on this will be available nearer the time from [EFRJ](#).

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With the financial support of the European Commission.

