

## **Introducing Victim-Offender Mediation**

### **in Central and Eastern Europe:**

### **Halftime reflections on the current AGIS project of the European Forum**

#### **Background**

As reported in the last issue of this Newsletter, the European Forum has started an AGIS project focusing on “Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe (CEE)” with the financial support of the European Commission.

This project primarily intends to help the *exchange* and *networking* between professionals working in the field of restorative justice in Eastern and Western countries of Europe in order to provide effective support to the development of VOM and RJ in Central and Eastern Europe.

We intend to study the specific political, economic, cultural and legal background of the targeted societies and to investigate at the conceptual and practical level the opportunities for implementing VOM and R J. We hope that this will be beneficial for all the actors of the project: not only CEE countries can use the experience of the West to try to find solutions to specific problems in implementing VOM and RJ but also Western European countries can learn a lot from the developments of the criminal justice systems experienced in the Central and Eastern European countries. The stimulation of these networking activities is also intended to be beneficial for the European Union since the participants aim to define more detailed *policy recommendations* by the end of the programme which could be considered in relation to further developments of VOM at the level of the European Union.

Within the framework of the AGIS project two smaller (“expert”) meetings and two larger seminars are organised for the participants by the end of 2005, so that they can take part in focused discussions on the main issues that are necessary for further successful implementation.

We have already held one expert meeting and one seminar. In the following, let us give you a brief overview about the main activities and findings of this project so far.

#### **In general**

Both events provided two and a half days for the participants to discuss the preliminary scheduled issues. As one of the main purposes of the projects, emphasis has been placed on involving representatives from as many countries, sectors and professions as possible. Accordingly, 17 participants attended the first expert meeting representing 14 countries and 58 experts from 20 countries took part in the first seminar, from Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Germany Hungary, Latvia, Moldova, Norway Poland, Romania, Russia, Serbia and Montenegro, Slovenia, Ukraine, United Kingdom. Through the participating mediators, researchers and legal professionals the project could involve representatives of NGOs, as well as academic, governmental and international institutions.

As previously indicated, one of the main purposes of the project is not only to help experts from the partner countries to be personally involved in the information exchange about recent developments in restorative justice, but also to stimulate their *networking* opportunities and activities. Accordingly, in its first phase, the project has already supported *existing* partnerships and encouraged *new* contacts, promoted information exchange at *national* and *international* level as well as highlighted the importance of developing both the *inter-* and *intra-*sectoral communication between the governmental, NGO and the academic sector.

#### **Meetings and Findings**

The **First Expert Meeting** was held on 24-26<sup>th</sup> June in Vienna with the help of Dr. Christa Pelikan as local organiser on behalf of the Institute for the Sociology of Law and Criminology. 17 participants attended this meeting from 14 different countries from the Eastern, Southern, Baltic, Central and Western and Scandinavian parts of Europe. The represented countries were the

following: Albania, Austria, Belgium, Bulgaria, Czech Republic, Estonia, Hungary, Moldova, Norway, Poland, Romania, Slovenia, UK and Ukraine.

The meeting started with the participants' presentations about the current situation of restorative justice in their countries. They thus gained a deeper knowledge of the legal, institutional and practical aspects of restorative justice in each other's countries. The structured discussions after the presentations focused on the following issues:

- which factors make the implementation of restorative justice *difficult* in general;
- which of these factors are *typical* for Central and Eastern European countries;
- how could the developments in the CEE countries be *compared* and what are the reasons for the differences;
- what should be the main *focus* and the overall purposes of the current AGIS project;
- what shall be the *concrete steps* to make this project as useful as possible and how to disseminate the results of the project.

According to the participants, the main *difficulties* concerning the implementation of restorative justice in Central and Eastern European countries occur at least in two dimensions: on the *cultural* and on the *institutional/practical* level.

The main *cultural* difficulties include:

- the highly punitive attitude of the public and of the policy-makers towards sentencing;
- the high incarceration rates experienced in the criminal justice systems which can be a consequence of the tradition of 'gulag mentality' of post-communist societies;
- the paternalist attitude of the state by which state organisations monopolise and formalise the majority of the institutional responses to crime
- the passive civil society and the numerous obstacles that make its strengthening difficult;
- lack of trust in NGOs and in the professionals working in these organisations;
- centralised criminal justice system;
- the strong resistance of police, prosecutors and judges;
- the recently dramatically increased number of crimes, and the extent of fear of crime as well as insecurity;
- as a result of the previous points the public's willingness to request tougher punishing policies;
- lack of RJ/VOM pilot projects and experiments, making it difficult for the public to imagine how responses other than tough punishment could be effective;
- lack of a tradition of co-operation, team working, dialogues within and among sectors and professions;
- high level of insecurity among the public because of the low economic position;
- punitive attitude of the media;
- weakened legitimacy of the state and its institutions in the public in relation to dealing with social problems;
- absence of trust in a better future;
- nepotism, corruption, patronising attitudes in the criminal justice system;
- lack of tradition of common interest, the dominance of competitive attitude among organisations and professionals instead of co-operation.

Concerning the *institutional* difficulties, the followings could be highlighted:

- lack of information about RJ;
- lack of translated materials;
- too centralised institutional systems dealing with crime and social problems;
- because quantitative evaluations have the dominant (or almost exclusive) role in proving the efficiency of agencies to the funding bodies and there is a high demand towards the service-

providers to constantly produce statistical data on their activities, there is less emphasis placed on the quality of services;

- the importance of dealing with social exclusion in general as a factor associated with the phenomenon of crime has often not been recognised; need for more co-operation between the different sectors dealing with social exclusion (e.g. education, social welfare system, criminal justice system);
- the ongoing “commercialisation” of the NGO sector; services tend to focus on profit-making and their societal “mission” tends to be a secondary factor in their activities;
- the risk that VOM/RJ services will be monopolised by limited numbers of agencies;
- the lack of evaluation (internal, external), monitoring, professional standards;
- sometimes bad reputation of NGOs (associations, foundations) among the public: they tend to be labelled by the public as organisations mainly focusing on profit-making and as organisations which only “officially” operate as non-profit institutions;
- the governments do not have consistent policy for co-operating with NGOs;
- bottom-up services, which had developed from the grass-roots in Western countries would need to be supported and stimulated top-down in the CEE countries.

Despite all these difficulties, the experts of this meeting were able to highlight several aspects that already do, or might be able to significantly help the implementation process in these countries. Concerning the most important *supportive* factors it was difficult for the participants to distinguish between those points that already exist and those ones which are necessary for the effective institutionalisation but do not exist yet in the countries represented. In other words, some of the expressed supportive factors indicated the *needs* of these countries for more developments in the implementation process, rather than drew a picture about the supportive aspects of the current situation. Nevertheless, the main findings pointed out that *legislation* on VOM/RJ is crucial before taking any other steps at the level of national implementation. However, there have to be pilot projects to show what really works before starting any legal reforms. It is essential for any consistent legislative reforms firstly to examine the current legal and institutional systems of the countries, secondly to conduct pilot projects and finally, based on the results of these small-scale experiments, to integrate new elements into the legislation. Furthermore, the importance of networking as well as the necessary links between research and practice were also emphasised. Concerning the *international dimensions*, the significance - and also the difficulties - of the harmonisation of national institutional systems to the international documents and recommendations were pointed out by several experts. Legal instruments of the European Union and the Council of Europe, such as the Framework Decision, and communications and recommendations are essential to provide standards for practices. Networking can and should be also used to stimulate *exchanges* and partnerships between *experts* operating in both civil and penal mediation, especially in designing and evaluating pilot projects. The introduction of peaceful conflict resolution in general *education* as well as academic teaching on mediation is also important. However, *translated publications* and high quality *trainings* are essential for the effective promotion of restorative justice and victim-offender mediation.

*Generally* it can be concluded, that despite the challenges mentioned above, the countries represented have all managed to

- start pilot projects;
- translate and write publications in their languages;
- integrate the philosophy and the practice of restorative justice into the general and higher education system to some extent;
- start trainings for professionals;
- find possibilities to widen their networks;
- be involved in international projects;

- benefit from belonging to international organisations and start to adapt their recommendations.

Some of these countries could already achieve the inclusion of specific articles on the use of restorative justice and victim-offender mediation in their national legislation.

The **First Seminar** coincided with the *third international conference* of the European Forum for Victim-Offender Mediation and Restorative Justice, “Restorative Justice in Europe: Where are we heading?”, which took place in Budapest, Hungary, from 14 till 16 October 2004. Within the framework of this Seminar, a plenary presentation, three workshops and three smaller focus-group discussions – so called “café conferences” – were organised under the title “Introducing Restorative Justice in Central and Eastern Europe”<sup>1</sup>.

During the Seminar participants intended to elaborate the experiences that already exist in the European countries they represented. Besides the detailed descriptions of the state of affairs in relation to restorative justice in the different regions of Europe, the main purpose of the event was to *bring East and West* together.

The third international conference of the European Forum therefore provided an excellent opportunity for the participants to exchange their experiences and to *comment* on the conclusions of the First Expert meeting, especially in relation to the identification of the main *supportive factors* and the most significant *challenges* that Central and Eastern European countries primarily have to face while implementing restorative justice into their institutional systems.

The *plenary presentation* by Dr. Maria Herczog (Hungary) was an ideal starting point for the Seminar, giving an overview of restorative justice developments in Central and Eastern Europe and focusing on comparative aspects, achievements and challenges. The main argument developed here was that the Central and Eastern regions of Europe have never been homogeneous, because of the history not only of previous centuries but also of the last fifty years. This overview provided a thought-provoking introduction for the Seminar by highlighting the importance of mapping the main differences, challenges and the similarities of the Central and Eastern European countries not only in relation to the future possibilities for the use of restorative justice, but also broadly about the main issues of conflicts and the responses to them in societies in transition.

The *three workshops* were given a preliminary structure and included two or three presentations each, followed by discussions. The overall purpose of the workshops was to provide information about the AGIS project and draw a picture about the situation of restorative justice in several Central and Eastern European countries, highlighting their already existing partnerships with Western European countries, organisations and experts.

Unlike the workshop sessions, the detailed topics of the *café conferences* were not defined beforehand. These meetings intended to stimulate spontaneous discussions among eight to fifteen participants in each session. These small group exchanges were intended to provide an informal atmosphere that is sometimes more beneficial for stimulating discussions and for letting the participants express their personal comments.

As an introduction to the Central and Eastern European context, the first workshop outlined the structure and the main objectives of the current AGIS project, while the second one focused on a typical phenomenon of these countries, namely the “*Gulag mentality*” that may result in a strong punitive attitude of the mainstream sentencing ideologies in post-communist legal systems era. This session summarised several underlying challenges in CEE countries but also detailed the promising processes concerning their implementation of restorative justice.

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<sup>1</sup> This report could not have been written without the reports and notes of the participants of the Seminar. Thank you for the valuable contribution of (in alphabetical order): Dr. Szilvia Gyurkó, Ms. Gergana Marinova, Mr. Sorin Hanganu, Dr. Jasna Hrcic, Mr. Aare Kruuser, Ms. Zuzana Slezakova and Ms. Vira Zemlyanska.

The presentation of the *Czech* justice system and the role of restorative practices in it showed a unique model of restorative justice based on the activity of the probation and mediation service which has become the main provider of restorative-based case-handlings in the modern legal system of the Czech Republic.

The participants received information about the way RJ has been introduced and developed in such a big country as *Russia* and about the representatives' experiences and achievements, as well as the main issues and problems of implementation. This provided a good example how *Russia* and the United Kingdom have been able to cooperate and could exchange and learn from each other's experiences.

*Albania's* presentation showed one more example for successful cooperation between the East and the West in implementing restorative justice since both the Norwegian and the Danish Governments support the Foundation "Conflict Resolution and Reconciliation of Disputes" which runs mediation projects in *Albania*. This country's case also illustrates the way a post-communist country has recently been able to reform its legislative system, so that it is now able to provide a legal base for the use of victim-offender mediation.

Introducing restorative justice for juveniles in *Bosnia and Herzegovina* showed how, after a recent war, a country can try to build restorative justice-based services and how the presence of international institutions - such as the Council of Europe - was beneficial in this process.

*Romania* shared its experience in piloting restorative justice for juveniles in probation agencies. One of the key elements of its success was the effective partnership of the Romanian authorities with the British Government.

The implementation of restorative justice in *Ukraine* illustrated the way an NGO is able to initiate the restorative justice movement in a country. The presentation also detailed the strategy that needs to be designed in order to successfully implement victim-offender mediation into the legal system of the *Ukraine*.

During one of the café-conferences participants attempted to distinguish between the so-called "organic" implementation *processes* and the more artificially adapted *models* of restorative justice. While the former can be considered as a result of long-term cultural, historical and policy developments based on a coherent ideological background, the latter rather bases its initiatives on already existing models and tends to adapt projects as "packages" without putting significant emphasis on local developments. The experts elaborated the possible differences, advantages and disadvantages of these models in more depth in the European context.

Concerning the main *needs* of the CEE countries in relation to the implementation of restorative justice, participants highlighted six main areas, namely the legislative, structural, information, training, research and promotional aspects of restorative justice in which specific needs can be outlined in order to help the process of institutionalisation.

In relation to the role of the *media*, both its beneficial influences and its dangers were discussed. Its potential to largely influence public opinion about the roles and expectations towards the justice system and its function as primary information source about ongoing concepts and projects both underline its significance. Participants had a thorough discussion about the potential dangers of the media and the possible solutions for them.

### **Future Steps**

There will be two more meetings during 2005. For the *Second Expert Meeting* (17-19<sup>th</sup> March in Chisinau, Moldova) our aim is to look into what can concretely be done to give an impetus to the policy development around restorative justice in Central and Eastern Europe. The final meeting of the project, the *Second AGIS Seminar* in late September intends to present the results of the project and to discuss how the conclusions and recommendations of the project can be used in a practical way to the further development of Victim - Offender Mediation in Central and Eastern Europe.

Both the *internal* and the *external communication* will be continuously highlighted as a focus of the project. In other words, besides stimulating the exchange between the project participants, it is

also important that representatives have as many opportunities as possible to inform the professional and general public in their countries about the structure and content of this project. This exchange can not only stimulate the internal communication and cooperation among professionals focusing on similar goals within a country, but also can provide more diverse feedbacks for us from numerous other experts, in order to draw the final conclusions in the most representative way.

In the future stages of the project we also intend to involve new Central and Eastern European countries into this networking process so that as many experts, organisations and societies as possible could benefit from this programme.

*Let us inform you that summaries of the presentations will be soon available on the European Forum's website. If you are interested in the full reports of the meetings - including all the country reports as well - or you would like to have more details about the project, please contact Borbala Fellegi (borcsa@euforumrj.org) at the Secretariat of the European Forum for Victim – Offender Mediation and Restorative Justice.*

**Borbala Fellegi**