



RESTORATIVE JUSTICE: AN AGENDA FOR EUROPE

SUPPORTING THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN THE SOUTH OF EUROPE

**Report prepared by Clara Casado Coronas and
the core group 'Going South'**

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Restorative justice: an agenda for Europe
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Europe

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The views expressed in this report are those of the author, not necessarily
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INTRODUCTION

1. GENERAL FRAMEWORK

Since the 1980s, victim-offender mediation projects have been implemented in several European countries. In 1998, more than 900 programmes existed in Europe.¹ Since then, restorative justice practices have further evolved and victim-offender mediation legislation has already been passed in many countries. Some countries have gone so far as to make a conscious policy decision introducing restorative justice in a more structured way in the organisation of the criminal justice system with the aim to make it more humane and responsive to the needs of victims (Miers and Willemsens, 2004).

That victim-offender mediation can improve the justice system has also been recognised at the European level. As early as 1999, the European Commission made a plea for additional research and experiments in victim-offender mediation in its 'Communication on Crime Victims in the European Union'.² In the Council Framework Decision on the Standing of Victims in Criminal Proceedings, art. 10 states that Member States are to seek to promote mediation for offences which they consider appropriate for these types of measures and to ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account. According to art. 17, each Member State shall bring into force laws, regulations and administrative provisions to comply with said art. 10 before 22 March 2006. Although many countries have taken considerable steps to comply with these supranational standards, there is currently significant variability in the scope and the pace at which restorative justice is taking hold in European countries. In fact, as many people have found, the introduction of restorative justice is not free from significant challenges in any country, not only at the formal level, but also at the level of the implementation and the provision of infrastructures.

Varying levels of implementation can also be found in the Southern European region. While in some countries a law exists providing formal recognition to victim-offender mediation, in others, although an explicit legal base may still not be in place, the practical experience acquired over the years in victim-offender mediation has helped restorative justice to gain credibility. Moreover, these countries have developed remarkably different strategies to foster the implementation of restorative justice and to face the difficulties encountered. Indeed, restorative justice developments in the Southern European region (and in general) are highly dynamic; not surprisingly, only in the time-span of this project, new victim-offender mediation schemes have been set up, research projects have been undertaken and new laws have been passed in these countries. Notwithstanding these diverse developments, at first glance, certain common traits relating to the legal culture and to policy practices seemed to have a particular negative impact on further diffusion of the restorative justice initiatives already in place in Southern European countries. Room for improvement in common areas could be found among these countries, not only with regard to the actual impact of restorative justice in the criminal justice system, but also with regard to the establishment of dynamics of exchange and cooperation at the national and international level. Practitioners, agencies and other restorative justice stakeholders have been working on these issues in relative isolation, on some occasions replicating the efforts of other people in other regions of the same country as well as in neighbouring countries.

¹ 'Europe' is understood in the terms endorsed by the European Forum which includes the member states of the Council of Europe. See <http://www.euforumrj.org>.

² Communication of the Commission to the Council, the Parliament and de Economic and Social Committee on Crime Victims in the European Union – Reflections on Standards and Actions, COM(1999)349 final, of 14 July 1999.

There was a high potential for exploring not only whether there were common challenges among countries, but especially for sharing knowledge and experience in order to design effective strategies for the furtherance of restorative justice. Therefore, intensifying networking and communication at the national level as well as among neighbouring countries and beyond, appeared to be crucial in order to consolidate and expand restorative justice in Southern European countries.

A former AGIS project awarded to the European Forum for Restorative Justice (hereafter European Forum) created an extremely positive precedent in providing effective support for the implementation of restorative justice in Central and Eastern Europe.³ This encouraged the introduction of a similar project format in Southern European countries.

While focusing on providing effective support for the development of restorative justice in particular regions of Europe, the need for further developments at the level of international institutions should not be overlooked. At the European level, it is essential to assess the role of the European Union in the further development of restorative justice.⁴ There is a need for a comparative analysis amongst the 27 Member States; this would determine whether the European Union has to regulate any further the field of restorative justice. Thus, several questions arise: does this domain belong to the European Union's field of competence? If so, what should be regulated, by which instruments and what should the basic principles be?

Against this background and considering both needs — to promote restorative justice in Southern Europe and to further study the role of the EU in the field of restorative justice — under the same European Commission funding programme, a new AGIS project⁵ was awarded to the European Forum, 'Restorative justice: an agenda for Europe' which started in June 2006 and continued until May 2008.

2. OBJECTIVES AND COUNTRIES INVOLVED

The general objective of the project was twofold: to create, on the one hand, effective support for the development of restorative justice in Southern Europe (hereafter 'Going South'), and, on the other hand, to research what the potential role of the EU could be in the further development of restorative justice in the whole of the EU (hereafter 'EU policies').

Although there is a clear relationship between both parts of the project, each component has been following its own specific objectives and has resulted in a separate publication. This report deals with the 'Going South' part of the project while the 'EU policies' research is presented in the publication *Restorative justice: an agenda for Europe. The role of the European Union in the further development of restorative justice* by Jolien Willemsens.

For the 'Going South' part of the project, a core group of experts was formed with representatives from Greece, Italy, Malta, Portugal, Spain, Turkey, Belgium and France.⁶

³ The European Forum ran the first AGIS project from August 2003 until February 2004 'Working towards the creation of European training models for practitioners and legal practitioners in relation to restorative justice practices' (JAI/2003/AGIS/129), which resulted in two very concrete instruments: the report *Exchange of Training Models for Mediation Practitioners* including recommendations on the training for mediators in criminal matters and *The Development of Training Modules for Prosecutors and Judges*. From December 2003 until November 2005 the European Forum ran the second AGIS project focused on 'Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe' (JAI/2003/AGIS/088). More information about the projects awarded to the European Forum and the resulting reports can be found at: www.euforumrj.org

⁴ As also addressed by question no. 15 of the Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union, adopted on 30 April 2004.

⁵ JLS/2006/AGIS/147.

⁶ Some of the countries included in the AGIS project 'Meeting the challenges of introducing restorative justice in Central and Eastern Europe' which are also geographically located in Southern Europe, thus have not been involved in the current project. Cyprus could not be included in neither of the projects.

The involvement of a few countries from non-Southern regions of Europe, such as Belgium and France, served the purpose of including more background information and broadening the perspectives.⁷ According to the project description, the effective support for the development of restorative justice in Southern Europe was to be accomplished through the following specific objectives:

- Studying, at the legal, conceptual and practical level, the possibility of implementing restorative justice in Southern Europe.
- Discussing how the experience in the rest of Europe can inform and support the development of restorative justice in Southern Europe.
- Preparing strategies for promoting the development of an integrated policy concerning restorative justice in Southern Europe.
- Actively working towards creating dynamics for exchange and cooperation (networking) between Southern European countries in this field.
- Discussing what countries in the rest of Europe can learn from the developments in criminal justice in Southern European countries as well as what the participating countries can learn from each other.

3. METHODOLOGY

3.1. INSTRUMENTS

The project consisted in the preparation, organisation and the follow-up of two expert meetings,⁸ one seminar and two international conferences through which the experts discussed and analysed the options currently available for fostering restorative justice in the legal, institutional, political, cultural and social context of these countries. The different format of these activities, namely presentations and discussions within a reduced group as well as workshops and presentations to a wider audience, has provided the opportunity to gain a more comprehensive picture of the significance of the challenges and supporting factors for the implementation of restorative justice and the tools and strategies that would work better in different national and regional realities. On these grounds, tailored policy plans for improved implementation of restorative justice practices in Southern European countries have been designed.

The analysis, insights and conclusions from these encounters between the experts and the exchanges between a large group of people participating in the seminar and the international conferences have been collected in meeting minutes and workshop notes. These have been compiled and summarised in this report.

However, besides contributing to the meetings, other less tangible work has been carried out by the experts during the different stages of the project and between the meetings. They have been acting as bridges between relevant agencies and authorities in their own country to support the dynamics created within the project. The experts have also been disseminating the information ensuing from the meetings and have been constantly stimulating networking among different key actors in their country. These interactions have served as a means to raise awareness and increase the visibility of restorative justice initiatives at the national level as well as among neighbouring countries.⁹

⁷ The details concerning the experts involved in the project can be found in annex 1.

⁸ In reality, the core group 'Going South' met four times, see below.

⁹ The initiatives ranged from announcing the seminar and the international conference to the periodical release of short news items e.g. about specific legal developments, new publications or recently set up restorative justice schemes among others.

A project assistant (Leni Sannen), a project coordinator-researcher (Jolien Willemsens) and a project officer (Clara Casado), have been the staff responsible for gathering and systematising the information produced as well as supporting the practical side of the organisation of the different stages and events planned for the entire AGIS project.

3.2. PHASES OF THE PROJECT

The project started on 1 June 2006 and ended on 31 May 2008. The first activity coincided with the European Forum's international conference, organised in June 2006 in Barcelona (Spain) which was attended by 278 participants from 32 countries. This conference served to explore the state of affairs of restorative justice in Europe.

The first core group meeting, held in Bordeaux (France) on 25-27 January 2007, focused on achieving the following goals:

- Gaining a detailed overview of the state of affairs of restorative justice practices and the underlying context of the respective countries.
- Analysing the main challenges and supporting factors that restorative justice encounters in Southern European countries.
- Identifying the main needs that should be met in order to improve the implementation of restorative justice in Southern Europe.
- Selecting the most relevant issues that required further discussion with other professionals and experts in the first seminar. Among these, certain aspects exploring the role of the EU with regard to restorative justice were also considered essential, thus the connection with the 'EU policies' part of the project was made apparent.

Fourteen participants from seven countries attended this first meeting.

This meeting also served to prepare the dissemination strategy by inviting representatives of the judiciary, prosecutors, policy makers, prison and police staff as well as other professionals working in related agencies to the first seminar.

In the first seminar, which took place in Lisbon (Portugal) on 10-12 May 2007, the preliminary findings of the two central objectives of the project were presented in order to set up the backdrop for the workshop discussions that followed. This seminar allowed participants to:

- Broaden the discussion and exchange experiences with countries from other regions of Europe to learn from each other and gain a more comprehensive picture on the core topics selected.
- Discuss with other professionals working in the criminal justice system, especially from Southern European countries, how the identified challenges could be tackled.
- Further expand on the tools and strategies to meet the needs.

As a result of this seminar and the contacts established by the experts (contacts in the form of key people from the experts' respective countries that had been directly invited to the event), networking and awareness raising were considerably strengthened at the national and regional level. The seminar was attended by 155 people representing 25 countries. On the occasion of the seminar the experts the core group 'Going South' held a second meeting.

The third expert meeting was organised in Trier (Germany) on 29, 30 November and 1 December 2007. Here, the aim was to analyse specific options with regard to the implementation of restorative justice in Southern European countries given their specific political, socio-cultural and legal backgrounds.

As a result, the following objectives were attained:

- Exchanging news and developments related to restorative justice as well as defining an updated list of priorities for policy development in the respective countries.
- Studying the political, social, cultural, legal and historical background of the Southern European countries in order to get a better understanding of the challenges as well as factors conducive to the introduction of restorative justice in Southern European countries.
- Exchanging good practices and strategies that strengthen restorative justice.
- Designing strategies that promote the development of a coordinated policy of restorative justice at the national level.
- Planning future cooperation in Southern Europe and exploring possibilities for funding of future projects.
- Discussing the dissemination strategy concerning the findings of the project and preparing for the project's closing conference.

Fourteen people from eight countries attended this meeting.

The final conference of the project was organised in Verona (Italy) on 17-19 April 2008, where the findings of the project were presented. This conference also allowed participants to further elaborate on background information regarding the theoretical and practical aspects discussed in the policy planning process.

The final conference was attended by 297 participants from 40 countries.

In the framework of the final conference, the experts of the core group 'Going South' met in order to evaluate the extent to which the objectives of the project had been met and to discuss how involvement in the project had helped the development of restorative justice in their respective countries. Furthermore, news was shared concerning the development of restorative justice in each of the countries in order to update the country reports.¹⁰

3.3. TERMS AND CONCEPTS

Although it is true that as the project description states, 'restorative justice' has been the notion and the approach under which this present work has been carried out in the following section of this report it becomes apparent that the specific practices through which restorative justice has been implemented in most of the participating countries, as has been the case in the rest of Europe, has primarily been victim-offender mediation (Peters, 2000).

Indeed, the terms used since the first experiments took place have been most commonly victim-offender mediation, penal mediation or mediation in criminal matters. Although restorative justice as a paradigm is well known by most of the people working in the field, victim-offender mediation is possibly the term that sounds more familiar to legal practitioners and policy makers in Southern European countries, partly due to the existence of mediation in other fields such as family and commercial law, neighbourhood and schools. This should not lead to think, however, that victim-offender mediation is necessarily perceived in the countries concerned as an extension of Alternative Dispute Resolution methods (ADR) in criminal matters. In most of these countries victim-offender mediation has emerged as an overarching approach. In these instances, the purpose of mediation is not confined to introducing a new approach geared to addressing the deficiencies of the criminal justice system, nor is it considered a mere mechanism to settle the restoration of the harm caused by an offence. Indeed several scholars have observed that for certain Latin European countries, mediation stands for a '*principled approach*' or a '*social ideology*' that goes beyond a '*problem solving*'

¹⁰ A more detailed overview of the participants from the different countries is included in annex 3

methodology (Aertsen, 2008, 93) and it actually aims to enhance positive communication among citizens and the peaceful and constructive regulation of conflicts arising in all spheres of life (Deklerck and Depuydt, 2001).^{11 12}

In fact at present, besides victim-offender mediation schemes, other experiences and projects exist in some of the participating countries although not referred to as 'restorative justice' programmes or services. As has been pointed out for other countries, such as France or Norway, the translation of the term 'restorative justice' in certain Southern European languages may give rise to different meanings.¹³

This makes the issue of terminology and concepts one that cannot be overlooked in the field of restorative justice, especially when dealing with the fostering of exchange and mutual help between countries with different cultural and social contexts. The *Guidelines for a better implementation of existing recommendation concerning mediation in penal matters* (hereafter, Guidelines) recently drafted by the European Commission for the Efficiency of Justice (CEPEJ), state in art. 6 that '(...) the concept and the scope of mediation in penal matters has developed, and a broader concept of "restorative justice" has emerged, including "victim-offender mediation"(...)'.¹⁴ Indeed, the Guidelines draw attention to the broadening of the field of application in the Council of Europe Recommendation R (99) and point out that presently, the term 'restorative justice' encompasses different practices including victim-offender mediation (Willemsens, 2008, 57-108).

Earlier, in 2006, the *Handbook on Restorative justice programmes* by the United Nations Office on Drugs and Crime (UNODC), stressed that restorative justice '(...) is an evolving concept that has given rise to different interpretations in different countries, one around which there is not always a perfect consensus. Also, because of the difficulties in precisely translating the concept into different languages, a variety of terminologies are often used. (...)'.¹⁵

Bearing in mind these different perspectives and nuances about restorative justice, the notion of restorative justice underlying this project is based on the United Nations Resolution on 'Basic principles on the use of restorative justice programmes in criminal matters', its preamble states that: '(...) [R]estorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities (...) this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs (...) this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime (...)'.¹⁶

¹¹ According to Deklerck and Depuydt (2001, 235-239), this different approach springs from cultural features distinctive to the Latin countries, namely the central role that 'the culture of the word and the conversation' has traditionally played. These authors argue that in Anglo-Saxon countries, victim-offender mediation is primarily linked to the restorative justice paradigm, which in essence is geared to countervail the deficiencies of the criminal justice system and operates as a means for primary or secondary crime prevention. In this respect, a connection is found between the development in some Southern European countries and the Norwegian experience since one of the distinctive aspects of the developments in these countries resides in the idea of considering that a crime is ultimately a conflict. Since it has been brought to the attention of the criminal justice system, a conflict has acquired particular connotations, such as the categorisation of the parties as victim and offender. See e.g. Kemény, 2000; Christie, 1977.

¹² See Aertsen, 2008, 93 ff.

¹³ See e.g. Kemény, 2000; Peters, 2000; Aertsen *et al.*, 2004; Miers and Willemsens, 2004; Faget, 2006; Aertsen, 2008.

¹⁴ European Commission for the Efficiency of Justice (CEPEJ), *Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters*, CEPEJ(2007)13, 7 December 2007.

¹⁵ See Willemsens, 2008.

¹⁶ ECOSOC Resolution 2002/12 on "Basic principles on the use of restorative justice programmes in criminal matters", adopted on 24 July 2002.

For the sake of this report, the terms restorative justice ‘practices’, ‘schemes’, ‘services’ or ‘projects’ will be used interchangeably to refer to any initiative that is shaped by and aims to fulfil the principles and values of restorative justice implicit in this notion. It should be noted that despite the fact that there are a range of different types of processes that fulfil the restorative justice principles and values, including mediation, conciliation, sentencing circles, peace circles or conferencing, in European countries the most widely applied practice is victim-offender mediation. At the same time, the model of family group conference is currently gaining relevance.

4. OUTLINE OF THE REPORT

The purpose of this report is to provide an overview of the state of affairs of restorative justice in Southern Europe and to present the findings concerning the priorities for policy development identified by the experts together with the strategies and tools geared to expand and consolidate the implementation of restorative justice in each of the concerned countries. Furthermore, it reflects the process and the insights upon which the main outcomes of the project have been built over the two years of work.

The aspects that would require further research as well as the fundamental questions that have been raised are also pointed out in the different sections of this report with the goal of contributing to further discussion among restorative justice stakeholders in Southern European countries and beyond.

Therefore, this examination is not a scientific nor a theoretical study but only a review of the main issues studied by the experts during the meetings and the information they have provided throughout the project. The contents addressed draw on the extensive practical experience, the knowledge and the research activities of the experts who represent different types of organisations and have diverse background disciplines.

The next section (II) of the report provides a detailed overview of the state of affairs of restorative justice in all the countries that have been directly involved in the project. Therefore, Belgium and France are also included, however their contributions, in all sections, will always follow the other Southern European countries. Although these two countries are not strictly Southern European, bringing together their insights and experience in addition to the insights and experience of Greece, Italy, Malta, Portugal, Spain and Turkey provides a better opportunity for reflection, not only concerning the differences among countries and strategies but also regarding the various parallels which exist.¹⁷

Section III addresses the challenges to the implementation of restorative justice in Southern European countries while section IV presents the circumstances that have been supporting factors for restorative justice developments. This latter section also includes a description of a number of good practices which are already implemented in this field in the participating countries as shared by the experts.

Against this background, section V will firstly explore the windows of opportunity for restorative justice in Southern European countries considering as well the potential pitfalls. Secondly, the needs and the priorities for policy development that should be met in order to further restorative justice in the participating countries will be identified. On these grounds, coordinated policy plans tailored to the particular circumstances of each country are described in the last part of this section.

¹⁷ Their order in each section will be as follows: Greece, Italy, Malta, Portugal, Spain, Turkey, Belgium and France.

Following a summary of the contents of this report, section VI will cover the perspectives of the experts concerning the outcomes of this project. This section will also draw the concluding remarks together in view of the main questions that have been raised.

The annexes include a list of the experts involved in this project and an overview of the various participants that have taken part indirectly in this report. The references and an account of the most relevant publications from Southern European countries in the field can also be found in the annexes.

II. STATE OF AFFAIRS OF RESTORATIVE JUSTICE IN SOUTHERN EUROPEAN COUNTRIES

The following section contains the reports of the developments of restorative justice in the eight countries participating in the project.

The parts on France, Italy, Portugal and Spain are going back to the text of the 2004 publication by Miers and Willemsens, *Mapping Restorative Justice. Developments in 25 European countries*, completed and updated by the experts and with additional references. The parts on Belgium, Greece, Malta and Turkey have been prepared by the experts of these countries.

Every chapter follows a similar structure based on the template used in the above-mentioned publication by Miers and Willemsens. This basic template has been adjusted in some instances in order to accommodate the specific nature of restorative justice developments in each country.

The main aspects that have been addressed are the following:

Within the Legal base section, the legal instruments through which restorative justice or victim-offender mediation schemes are regulated are described, differentiating between juvenile norms and adult norms. Subordinate legislation is included wherever it exists. If there is no explicit legislation regulating victim-offender mediation or restorative justice but there are norms allowing for relevant opportunities to implement these practices, these are also mentioned.

The Scope refers to the type of eligible offences, the stage at which restorative justice practices are being used and which bodies or authorities have a gate keeping function. When necessary, there are separate sections for juveniles and for adults. This section provides an initial survey of the relationship between the restorative justice scheme and the judicial system and whether restorative justice is foreseen as a complement to the judicial process or as part of it.

The Implementation section deals with several aspects. Firstly, an overview of the public or private nature as well as the structure and the territorial reach of the agencies implementing restorative justice practices is provided. This also includes the profile and background of the restorative justice practitioners. Secondly, the practice and intervention types, namely the method (e.g. victim-offender mediation, with face-to-face meetings or indirect communication, or merely reparation, compensation, community service or conferencing) as well as the approach (e.g. settlement driven or process driven) can also be found in this section. The section also contains information concerning referral figures and outcomes of the schemes, albeit only for a few countries. In order to gain a more comprehensive picture of the restorative justice implementation process, other interventions with a restorative justice approach or mediation schemes are also studied. The existence of peaceful conflict resolution practices or extra-judicial settlement provisions in other fields such as family or neighbourhood mediation are regarded as a positive element in relation to the introduction of restorative justice.

The Evaluation section includes an assessment of the state of affairs from different perspectives including the background context in which the restorative justice provision has emerged and the extent to which restorative justice practices actually play a role in the criminal justice system. Furthermore, the section addresses relevant future tendencies, crime policy trends or new strategies to be implemented.

In order to provide information on the available materials, a list of the literature published in every country about restorative justice or mediation related topics has also been drawn up by the experts (included in annex 2).

As has already been stated in the introduction, it should be stressed that, during the working period of the project, numerous changes have been registered in the field of restorative justice, including new legislation and programmes in addition to a number of research projects being carried out in these countries. Although the developments that are in force at the moment are the main focus of this section, an overview of the former situation is provided whenever possible in order to illustrate the particular way in which restorative justice has evolved in each country.¹⁸ Indeed, by the time this report is published, some information may be outdated.

1. GREECE¹⁹

1.1. LEGAL BASE

It should be noted that prior to the establishment of restorative measures through legislation and still at present, informal practices of dispute resolution have been taking place in Greece without however, a statutory basis.

First of all, at police level, in cases of offences to be prosecuted after the lodging of a complaint, police officers may attempt to bring together the offender and the victim and reach an extra-judicial settlement in order to avoid sending the case to the prosecutor.

At prosecutorial level, the prosecutor, on the pretext of his/her proactive role, may advise those in conflict to seek a peaceful solution for their differences. It is claimed that 80% of complainant cases which reached the public prosecutor's office in Athens were settled in this manner (Sakkali, 1994).

Finally, in the courtroom, directly before the hearing of the case, the judge may attempt to reconcile the differences between the parties in order for the complaint to be withdrawn. In such cases, if a settlement is reached, prosecution does not proceed.

1.1.1. Juveniles

The introduction of restorative schemes for juveniles was part of a wider shift attempted by Act 3189/2003 Reform of the Penal Legislation for Juveniles and Other Regulations towards a more justice-based youth system. Up until 2003, the Greek juvenile justice system was largely influenced by a long-standing welfarist tradition.²⁰

The main features promoted through this legal reform are diversion, de-institutionalisation, and respect for due process rights. Within this context, it also introduces victim-offender mediation, compensation and community service both through diversion (art. 45A CPP) and as educative orders (art. 122 para. 1 PC).

The new Act amends articles already included in the Greek Penal Code (PC) and the Code of Penal Procedure (CPP).

1.1.2. Adults

Since 1991 it is possible to apply community service orders to adult offenders (art. 82 paras. 7 and 8 PC).²¹

Art. 393 para. 2 PC provides that persons accused of certain very specific actions (e.g. specific types of theft and fraud) may be released if the accused fully compensates his victims prior to the court hearing. This could be accomplished by means of a victim-offender mediation process or another restorative justice practice; however it has yet to be applied.

¹⁸ This report contains information last updated May 2008.

¹⁹ Paper prepared by Panagiota Papadopoulou and Panayis Panagiotopoulos for this project.

²⁰ See Papadopoulou, 2008.

²¹ See Kourakis, 2004.

In October 2006, Act 3500/2006 introduced penal mediation for cases of domestic violence (arts. 11-14). The Act came into full force on 24 January 2007.

1.2. SCOPE

1.2.1. Juveniles

Art. 45A CPP lays down diversion from prosecution, which is regulated as permissive. When the minor commits a petty offence or a misdemeanour, the prosecutor may refrain from pressing charges if s/he believes that prosecution is not necessary to prevent the young rule-breaker from committing further offences. Diversion from prosecution may be accompanied by the application of one or more educative measures. Victim-offender mediation, compensation and community service can all be imposed as means of diversion.

All three initiatives can also be applied as educative measures to all minors (irrespective of their consent)²² from eight to 18 years of age by a juvenile court (art. 122 para. 1 PC). The introduction of restorative justice schemes as alternatives to sentencing may indicate that more emphasis is placed on the outcome than on the process.

The implementation of victim-offender mediation (art. 122 para. 1e PC) takes place through the intervention of juvenile probation officers. Its goal is to encourage the minor to offer an apology to the victim and repair the damage caused by his/her act. During the hearing of the case, the court carefully examines whether the minor is sincere in his/her intention to make amends and seeks the consent of the victim. In most cases, the focus is on compensating the victim. However, this may leave the conflict which led to the committing of the offence partially unresolved.

Initiated by a statement of the judge, the measure of compensation (art. 122 para. 1f PC) consists of payment to the victim or reparation of the damage by other means, and it is usually imposed in combination with other penalties, especially mediation. The goal of community service (art. 122 para. 1g), on the other hand, is to enhance the minor's sense of responsibility and accelerate the process of his/her reintegration into society. These two measures, compensation and community service, also take place through the intervention and monitoring of the juvenile probation service.

As shown above, the application of the measures is not restricted to complainant cases, but may also include offences prosecuted *ex officio*. In general, even within the scope of court orders, the measures tend to target trivial offences, mainly petty theft and assault.

In a case where an imposed measure is not effective (e.g. refusal by a party to reconcile in the case of mediation), it is possible to alter it. The proposition is made by the probation officer and the public prosecutor's office brings the case to court again; the measure is replaced usually with a heavier one.²³

The Recommendatory Report of Act 3189/2003 states that mediation measures are introduced as an attempt to bring the offender closer to the victim and make him or her assume responsibility for his/her act. The measure of compensation is established, the aim being to create a positive impact on the young person.²⁴ On these grounds, it can be said that both compensation and the victim-offender mediation process are rather offender-focused.

²² Although case law suggests that consent is nearly always sought.

²³ Personal communication with a member of the judiciary, 6.7.2005.

²⁴ Recommendatory Report of the Bill of Act 3189/2003.

1.2.2. Adults²⁵

According to art. 11 of Act 3500/2006, in cases of domestic violence, prior to pressing charges, the public prosecutor considers the possibility of penal mediation. Penal mediation is applied mainly to cases concerning offences against life and health, threat and coercion, all within intra-family relations. It is used as part of the criminal process rather than as an alternative.

The measure is applicable to juvenile offenders as well; however, in this case, the procedure is handled by the special public prosecutor for juveniles.

The conditions under which penal mediation is applicable are as follows:

- the crime is not a felony;
- the public prosecutor assesses mediation as an appropriate measure and proposes it but the offender may initiate the procedure as well;
- the victim agrees to the procedure.

What can be deduced from the legal provision is that it is the public prosecutor who runs and directs the procedure. The legal text describes process as follows:

- the offender has to formally promise, following legal procedure laid out in Greek law²⁶ that they will never again commit any intra-family violence, agreeing to stay away from the victim for a fixed period (if the offender formerly lived in the same house as the victim), should the victim make such a proposal;
- the offender has to register with a Public Health Service and follow advisory and therapeutic programmes;
- furthermore, the offender has to fully compensate the victim and restore all damages.

If these provisions are followed, the legal process is suspended for a period of three years. With the completion of this period and if the offender has complied with all the prerequisites of the mediation agreement, the case is fully dropped and may never again be reopened.

If the public prosecutor finds that the offender has not fulfilled the obligations set out in the mediation agreement, they re-open the case and the formal criminal procedure follows without any possibility of further mediation.

It should be highlighted that the mediation procedure does not require the offender to admit any of his alleged actions. It is clearly conceived as a facilitative procedure to help the offender and the victim to come closer and to create an opportunity for communication.

1.3. IMPLEMENTATION

1.3.1. Juveniles

The Juvenile Probation Service carries out the restorative justice work. The Juvenile Probation Service is a Department of the Greek Ministry of Justice (Act 378/1976 decree 49/1979). Its main mission is two fold: to prepare a social inquiry report during the stage of the juvenile's interrogation²⁷ and to exercise and monitor the execution and progress of educative measures.

According to the information provided by the Juvenile Probation Service of Athens, the new restorative justice measures were applied in very few cases during the first year they were introduced (judicial year 2003-2004). Out of 1,288 educative measures imposed upon minors by the juvenile courts of Athens, victim-offender mediation was applied in six cases (0.46%,

²⁵ See Giovanoglou, 2008.

²⁶ The law foresees a penalty if the offender does not follow through with his promise.

²⁷ Concerning the minor's moral and mental situation, past life, family conditions and generally, his/her environment.

four with additional measures), compensation in one case (0.07%, with an added measure) and community service in two cases (0.15%, with supplementary measures). In addition, during the same year, art. 45A CPP (diversion from prosecution) was only applied in 15 cases.²⁸ The figures regarding the judicial year 2005/2006 are more discouraging. Mediation and compensation were not imposed at all. Community service was imposed in one case (0.1%) out of 933 educative measures applied during that year.²⁹

The situation in Thessaloniki seems to be slightly different. The Thessaloniki probation officers stress the fact that community service was supported and exercised as an additional requirement even before the introduction of Act 3189/2003, and that it is still promoted as a measure in its own right.³⁰ They claim that mediation and compensation measures (applied through mediation) were very rarely exercised during the first couple of years after they were established. However, the measures were gradually put into practice and are nowadays applied in a fair number of cases.³¹

The limited number of mediated cases does not allow for general comments on the potential and impact of the specific schemes. However, probation officers appear to be positive.

1.3.2. Adults

The procedure of penal mediation itself is not laid out legally, thus it will be the public prosecutor's job to structure it in the near future. A new regulation is being studied by the Greek magistracy in order to analyse the theoretical and practical impediments that may occur. It is not yet clear whether the prosecutor will act as a mediator or not.

One of the main prerequisites of the process is that the offender voluntarily participates in a therapeutic programme run by a Public Health Service. At present, the lack of such programmes makes it impossible for penal mediation to be applied.³²

1.4. EVALUATION

1.4.1. Context

The introduction of restorative programmes in Greece seems to be part of a wider effort to present a more competent system partly aiming to reduce court caseloads, as well as to improve the position of the victim in the criminal procedure. In this respect it could be agreed that Greece has been largely mobilised by the involvement of the EU in criminal justice matters.

1.4.2. Current evaluation

The introduction of restorative justice in Greece seems to have taken place asystematically. The legal framework has been devised without reference to research-based evidence suggesting how the specific criminogenic factors or local conditions could assist or undermine the measures' implementation. No previous pilot programmes have been conducted (Papadopoulou, 2006).

So far, the schemes have encountered implementation problems as well as unfavourable attitudes and as a result their effective use is at present below its full potential.

To date, with regard to juveniles, the application of restorative justice measures has been considerably limited.

²⁸ Personal communication with the former Director of the Juvenile Probation Service of Athens, 2005.

²⁹ Unpublished data provided by the Juvenile Probation Service of Athens.

³⁰ Personal communication with probation officers from the Thessaloniki Probation Service in 2005 and in 2007.

³¹ Unfortunately, there are no statistical data available by the Probation Service of Thessaloniki concerning the use of the new measures.

³² Personal communication with C. D. Spinellis, 2008.

Furthermore, the court-based restorative justice schemes available for the adjudication of minors have been condemned by some academics and criminal justice practitioners due to their coercive character. It has been pointed out that the imposition *per se* of these measures decreases their potential for genuine and voluntary restoration, thus diminishing their restorative justice value. Even when functioning through diversion, the measures provide only for extra-court, hence extra-judicial settlements are not possible due to the fact that the intervention of a judicial authority cannot be avoided.

At present, there is no information that indicates that Penal Mediation in cases of domestic violence has been exercised.

Legal professionals hold noticeably reluctant attitudes towards victim-offender mediation. This is possibly due to the lack of information about the restorative justice approach in general. In this respect it should be noted that there are no relevant ADR developments in other fields, with neither training nor educational programmes in place for legal practitioners.

At the institutional level, there has not been any significant preparation by the public prosecutor's office or the Ministry of Justice on the provisions related to mediation.

There are no bylaws or circulars explaining the aims and objectives of the restorative justice schemes, thus making it difficult to realise how their relationship with the formal criminal justice system has actually been conceived by policy makers. There is no clarity on what kind of procedure ought to be followed. This uncertainty creates a sense of distrust and resistance among legal practitioners. In this context critical opinions have been voiced concerning the effectiveness of mediation and the constitutional issues that victim-offender mediation may entail in criminal matters.

This lack of guidelines and information has affected the attitudes of the public too. Some victims seem to be more interested in reparation *per se* and do not appreciate neither the more personal or therapeutic potentials of participating in a restorative justice process nor the values of communication and healing of the restorative justice approach in general.³³

The implementation obstacles, on the other hand, relate to issues of funding resources and the organisational arrangements. The scarcity of specialised and trained staff and the absence of financial support both hinder the development of restorative justice in Greece. Nonetheless the new initiatives have the solid support of a fair proportion of criminal justice practitioners and academics who acknowledge the positive value of the implementation of restorative justice schemes, even if these are only court-based and are not a real alternative to the criminal justice process for juveniles.

1.4.3. Future direction

There are indications that restorative justice in Greece can have an impact and that, if obstacles are confronted, the new measures can work successfully. The future of restorative justice in Greece depends largely on the political and financial support directed towards the new measures. The government can demonstrate its willingness to encourage and endorse restorative justice practices by providing adequate financial resources for the effective operation of the new schemes.

A central mechanism needs to be created that will provide information and guidelines as mentioned above, ensuring the most effective use of restorative justice practices and creating a means to evaluate the effectiveness of the new approach within the specific social and cultural context of Greece. By monitoring and evaluating the success of restorative justice, the challenges – both attitudinal and organisational – could be tackled and the use of new restorative justice initiatives could be increased.

³³ Personal communication with a probation officer from the Thessaloniki Probation Service, 2007.

There is also a need to raise the public's awareness of the benefits of mediation. Citizens must be informed about alternative means of dispute resolution in order to adopt gradually a less punitive response to conflict.

2. ITALY³⁴

2.1. LEGAL BASE

In Italy the main areas of application of restorative justice are concerned with two different jurisdictions: the juvenile criminal justice system and within the adults' field, the justice of the peace.

The code of juvenile criminal procedure (DPR 448/1988) or restorative justice was implemented in 1989. Nevertheless other diversionary measures are foreseen for juveniles. The law establishing the possibility for the justices of the peace to apply restorative justice or mediation came into force in 2002 (Legislative Decree No. 274/2000).

2.2. SCOPE

2.2.1. The juvenile criminal justice system

The Italian juvenile jurisdiction is separate from the adult justice system. Cases might be reported to the prosecution offices either by individuals, the police, welfare agencies or other agencies.

The treatment of cases is governed by the principle of mandatory criminal action (equivalent to the principle of legality) which entails that when a crime is reported, prosecution must always follow.

The juvenile Code of Criminal Procedure includes two norms currently used by magistrates to apply victim-offender mediation and restorative justice: art. 28 (probation) and art. 9 (personality assessment).³⁵

According to art. 28 DPR 448/1988, the judge (frequently the judge at the preliminary hearing) may suspend the proceedings and refer the case to the victim-offender mediation centres with the aim of 'conciliation', 'reparation' or 'mediation' if it has been stated in the 'supervision project' devised by the juvenile social workers. It must be noted that the concept of probation differs substantially from its application in other countries. It is not a sentence, but a postponement of the sentencing decision; during the time of suspension, the young person will be placed under 'supervision' meaning that s/he will carry out the activities agreed upon with the social workers for his/her rehabilitation. These activities may involve either educational programmes or voluntary work as well as activities that favour reparation with respect to the victim. If the activities are properly fulfilled, the judge could dismiss the case. In some cases, if agencies delivering the social services for offenders provide victim-offender mediation, this service can be included as a part of this project.

According to art. 9, during the pre-trial stage, either the judge or the prosecutor may refer the case to the victim-offender mediation centre. In these instances the mediation process itself functions as an instrument that helps to assess the personality of the young person.

The decision for a referral to victim-offender mediation lies within the public prosecutor's and judge's discretion. In principle there is no restriction regarding the type of offences that can be referred to mediation. Any type of crime should be amenable if mediation would be beneficial for the offender and the victim agrees to the procedure. In practice however, it has been

³⁴ Based on the chapter by Anna Mestitz, 2004, in Miers and Willemsens, 77-82, used with the permission of the publisher. This text has been adapted and updated with the information provided by Elisabetta Ciuffo and Isabella Mastropasqua.

observed that there are certain elements which play an influential role when the judge or the prosecutor is deciding whether or not to refer the case to mediation. In general, cases that are referred tend to meet the following conditions:

- existence of a relationship between victim and offender;
- the juvenile is a first time offender;
- preferably it is a crime against persons.

The referrals can be made:

- At the pre-trial stage by the judge within the possibilities of art. 9 (assessment of offender's personality). These represent 66% of the total.
- At the trial stage, according to art. 28 (when the offender is placed under supervision or probation). These represent 33 % of the total. The average elapsed time is one year.

Therefore victim-offender mediation can be considered part of the criminal proceedings rather than as an alternative to it.

Social service officers for minors can refer the case to victim-offender mediation centres within the probation period (art. 28). Nevertheless referrals made by youth welfare officers make up 32%. By contrast 59% of referrals are made by the public prosecutor and 6% are made by the judge. On these grounds it can be said that the gate-keeping function rests primarily in the hands of the judicial authorities.

2.2.2. The justice of the peace

The new law relating to criminal proceedings before the justice of the peace came into force in the beginning of 2002. The innovative element of this new legislation is the fact that it allows the justice of the peace to settle the dispute according to the outcome of a negotiated process between the parties.

Justices of the peace deal with minor offences. They have no power to impose custodial sentences or any other form of detention. They can impose fines, community service orders (minimum ten days to a maximum of six months) and a sentence called *permanenza domiciliare*, which requires the offender to stay at home for a specified period (fixed in the order) not exceeding 45 days.

The new law relies upon the idea that it is necessary to emphasise the role of the victim, who has been neglected in ordinary criminal proceedings in the Italian system. Para. 4 and 5 of art. 29 of Law No. 274/2000 authorise the justice of the peace, at the first hearing of the case (*udienza di comparizione*), to order the parties to try to reach a reconciliation of the conflict. In making the order, the judge suspends the hearing for a period not exceeding two months. He may also refer the case to any mediation services existing in the area if that appears to be helpful. This referral is discretionary. The judge does not have to refer the case to the mediation services, but can carry out mediation between the parties on his/her own. If the mediation is successful, the complaint is withdrawn; otherwise the proceedings follow their ordinary course.

Whatever the outcome of mediation may be, statements made by the parties during the mediation sessions may not be used in any decision at any subsequent stage of the proceedings. A record of the mediation event is kept. This records the complainant's withdrawal of the complaint and the offender's recognition.

2.3. IMPLEMENTATION

Concerning the restorative justice interventions regarding adults, according to the information available, only three centres, located in Florence, Milan and Trento, mediate cases referred by the justice of the peace.

The referral numbers currently available refer only to schemes for juveniles.

2.3.1. Agencies: establishment and structure

All the victim-offender mediation services that deal with juvenile offenders are based on collaboration between judicial authorities, juvenile justice services and the social services provided by the third sector. Victim-offender mediation centres are funded by local bodies, such as city councils, and district and regional bodies. All the services have been monitored by the Ministry of Justice Juvenile Justice Department since 2002.

Currently there are three common elements in the organisation and funding of the victim-offender mediation services:

- they are public services, being funded and staffed by the local governments (regions, provinces, municipalities);
- magistrates and lay judges have played an active role in the foundation of these services;
- the collaboration and agreement of the social workers has been an essential condition for the functioning of victim-offender mediation services.

The number of victim-offender mediation centres available in Italy has recently experienced a notable increase and currently there are 17 victim-offender mediation centres fully operative and five are starting up.³⁶

Mediators, who are professionals hired by the agency running the centre, are responsible for carrying out the mediation process. There is no up-to-date data on the involvement of lay mediators although it is known that in a few victim-offender mediation centres volunteers may have occasionally carried out victim-offender mediation processes with juveniles.

In 1999, a National Commission, created for the coordination of the relations between the local agencies and the Regions (*Commissione Nazionale Consultiva e di Coordinamento per i Rapporti con le Regioni, gli Enti Locali ed il Volontariato*), approved a document containing the guidelines for the practice of mediation in criminal matters with juveniles. Together with the basic principles of restorative justice and victim-offender mediation, this document refers to the mediator's role and describes the phases of the mediation process.³⁷

The Juvenile Justice Department has recently issued an updated version of these guidelines, Coordination guidelines concerning penal mediation in the field of juveniles (*Linee di indirizzo e di coordinamento in materia di mediazione penale minorile*).³⁸ Besides the goal of providing a basic common framework for the practice of mediation in the field of juveniles, this initiative

³⁶ This number represents a notable increase in centres compared to the figures reported on during the first expert meeting in Bordeaux in January 2007. At that time there were 11 services fully operative and three starting up. The victim-offender mediation centre of Milan had been suspended.

³⁷ The document was called 'The activity of mediation in the field of criminal justice for juveniles. Guidelines' (*L'attività di mediazione nell'ambito della giustizia penale minorile. Linee di indirizzo*) and it not only aimed to foster mediation for juvenile offenders, but also to provide common standards for the practice of victim-offender mediation with juveniles. Available from: http://www.giustizia.it/minori/area_penale/rnmd102_med_pen.htm#c1

³⁸ Dipartimento per la Giustizia Minorile, Prot. N. 14096 Cl. Dir. Roma 30.04.2008. Available from: <http://www.giustiziaminorile.it>

responds to the willingness of the Juvenile Justice Department to bring about more stability and recognition to the existing experience and schemes already in place in Italy.

Some basic rules that influence the relation between the criminal justice system and the victim-offender mediation services can be identified:

- the main source of referrals comes from the judiciary (either the prosecutor or the judge);
- the victim-offender mediation process is totally informed by the principle of confidentiality;
- mediators can not be summoned before the court as witnesses concerning the case in which they have been working;
- mediators have to submit a brief report to the court on the outcome of the victim-offender mediation process;
- victim-offender mediation centres are located outside Juvenile Justice premises. Nevertheless, the court's support and recognition of the victim-offender mediation centre are fundamental.

On these grounds it is stated that despite victim-offender mediation being part of the criminal proceedings as noted earlier; the external location of the victim-offender mediation services, the type of practice and the principles effectively governing the mediation process allow the victim-offender mediation process to maintain a distinct nature and position outside of it.

2.3.2. Agency practice and intervention

The methodology used is only mediation, as neither circle sentencing nor family group conferences have thus far been promoted in Italy. Currently the majority of victim-offender mediation processes include a direct meeting.

The approach to victim-offender mediation is to a great extent inspired by the theories and the methodology devised in France by Jacqueline Morineau who initially trained the majority of Italian mediators. This approach conceives mediation as a means of pacification and reconstruction of a broken relationship.

Mediation with juveniles is always carried out by two mediators. The majority of mediators report that the objective of victim-offender mediation is to establish communication and to create a relationship between victim and offender (Mestitz, 2002). Additionally, other objectives frequently reported by mediators are: facilitating the sharing of feelings and emotions between victim and offender (36%), making the offender responsible (34%) and providing support to the victim (26%).

Despite the fact that most of the mediators seem to share the same approach regarding the process and the methodology of mediation (process driven rather than settlement oriented), they hold significantly divergent views as to what should be the relationship between restorative justice and the criminal justice system. A recurring point of discussion is whether or not it is appropriate to have a legal basis for victim-offender mediation and restorative justice.

Despite the fact that the approach appears to be neutral, some experts express the concern that in practice the equal consideration of both the offender's and victim's needs does not always take place.

2.3.3. Referral numbers and outcomes

2.3.3.1. Quantity of referrals and outcome

The following data have been collected as a result of the monitoring conducted by the Juvenile Justice Department. This started in 2002 and has been based on two different survey sheets, namely one concerning the particular mediation service and the other focused on the victim-offender mediation cases carried out. The resulting quantitative data about the victim-offender mediation cases are represented in the following table.^{39 40}

Year	Cases referred to mediation	Mediation processes actually carried out	Positive outcome	Negative outcome	Other
2002	321	133 (41%)	114 (86%)	17	2
2003	412	189 (46%)	167 (88%)	22	0
2004	425	214 (50%)	173 (81%)	41	0
2005	426	153 (36%)	135 (88%)	18	0
2006	203	146 (72%)	99 (68%)	45	2
2007	265	101 (38%)	89 (88%)	10	2

2.3.3.2. Type of agreement

The content of the agreement can include, among other elements, the payment of financial compensation to the victim, the carrying out of activities that favour the victim as well as apologies. The data corresponding to the type of agreements reached in 2005 are provided in the following table.

Direct reparation	
Financial compensation	21
Activities	12
Activities and financial compensation	12
Symbolic redress	23
Indirect reparation	
Social activities linked to damage type	5
No information available	3
Total	76

³⁹ Source: Dipartimento per la Giustizia Minorile, Ministero della Giustizia, 2008.

⁴⁰ It should be noted that the data of 2002 and 2003 concern the mediation centres of Bari, Milan, Bolzano, Cagliari, Catanzaro, Palermo, Naples, Sassari, Torino, Trento and Venice. From 2004 onwards, the figures of the mediation centre of Milan have not been included because it was suspended. The compilation of data from 2006 and 2007 is still in process, thus the figures of the mediation centres of Bari, Naples, Palermo and Torino are missing for 2006 and the figures of Bari, Naples, Palermo and Venice are missing for 2007. It is foreseen that monitoring will be automated shortly. Such a systematic data collection system will permit comparative quantitative information on the casework handled by the different services. Until then, although the data gathered do not allow a comparative analysis among mediation services, the figures show the relatively low number of cases referred to mediation by the judicial authorities (Mastropasqua, 2008).

2.3.4. Other interventions

Along with victim-offender mediation, some centres provide mediation services for conflicts in other fields such as family, neighbourhood disputes or school mediation programmes.

A number of community mediation centres have been put in place in certain Italian towns, such as Modena, in some small villages in the Emilia Romagna region (San Lazzaro di Savena, Zola Pedrosa, Casalecchio di Reno, Sasso Marconi, and Crespellano) or in the Quartiere Reno neighbourhood in Bologna.⁴¹

Family mediation is also developed in Italy but it is mainly conducted in the private field by liberal professionals on request. A number of training programmes have been developed in this field.

2.4. EVALUATION

2.4.1. Context

The introduction of restorative justice as a part of probation before the commencement of formal proceedings in 1995 demonstrates the attention paid to alternative and diversionary procedures in the Italian juvenile justice context (Mestitz and Colamussi, 2000).

Victim-offender mediation centres arose spontaneously in the second half of the 1990s; most of them as a result of a shared concern between social workers and certain juvenile justice magistrates, in the search for a proper response to youth crime. It was in fact a small group of juvenile magistrates from Turin — inspired by the French introduction of *médiation pénale* in 1993 — who promoted victim-offender mediation in Italy inspired by the need to provide a more educative instrument to tackle youth crime.

Not only do juvenile lay judges and social workers participate in the creation of mediation groups, they also represent the majority of mediators. Until 1993, victim-offender mediation lacked both structure and organisation; nowadays these aspects have improved substantially although there still is room for improvement.

On the other hand, as in other countries which have a civil law tradition, in Italy little attention is given to the victims' interests and needs. This is a factor that might have contributed to the emphasis placed on the offender's interest when carrying out victim-offender mediation in the juvenile offender field.

2.4.2. Current evaluation

In 2000 the results of research on juvenile probation, conducted in a juvenile social service centre located in the south of the country, showed that restorative practices were applied in the majority of probation cases (Mestitz and Colamussi, 2000). In 2001 a national evaluation research project was undertaken, with the purpose of comparing different Italian victim-offender mediation services. This project, which was conducted by Anna Mestitz and her collaborators at the Research Institute on Judicial Systems of the Italian National Research Council (IRSIG-CNR), aimed to collect information from three groups: mediators, magistrates (both judges and public prosecutors) and social workers.

The findings from this research showed that the role of victim-offender mediation in altering the Italian juvenile justice landscape was quantitatively marginal.

At present, the majority of Italian regions (23) are served by victim-offender mediation schemes. Although territorial coverage is widening, the availability of centres is still restricted. This has posed a limit to the number of referrals in the territories where there are no mediation centres, thus explaining the low referral numbers listed above. Therefore it is not unreasonable to argue that victim-offender mediation is not yet being used to its full potential

⁴¹ Source: *Associazione Equilibrio* <http://www.ass-equilibrio.it/index.htm>

and currently there still is a considerably high percentage of the juvenile population who cannot access it.

This situation has mainly been attributable to the fact that victim-offender mediation has not been mainstream. In this context, the public bodies that usually fund the victim-offender mediation centres have not been inclined to provide more resources. This limited funding is the principal factor behind the decreased stability and capacity of these centres, to such an extent that some of them have had to reduce their staff or even stop their activity.

On a different note, public opinion in Italy is not favourable to this approach; it might be due to their lack of knowledge of what restorative justice entails.

2.4.3. Future direction

Despite the situation described above, presently, there are positive circumstances favouring the implementation of restorative justice. The Ministry of Justice has recently shown more interest in international restorative justice developments although no apparent steps have as of yet been taken in order to improve implementation in the field of adults. Furthermore, the Juvenile Justice Department (*Dipartimento per la Giustizia Minorile*) is clearly supportive of this approach.

A commission to prepare a bill concerning victim-offender mediation in juvenile justice has been created. This opens an opportunity to improve current regulation and possibly bring about more clarity so that the application of victim-offender mediation and restorative justice at the judicial level is improved.

As noted earlier, the practitioners hold differing views of what should be the position of victim-offender mediation in the criminal justice system. These divergent opinions about the way restorative justice is conceived make it difficult to reinforce their activity. Moreover, some of these professionals tend to act individually, lacking a common professional identity, thus weakening their chances of achieving common goals.

In light of this, the Juvenile Justice Department has carried out different types of initiatives to foster common ground among practitioners.

In 2007 with the collaboration of the IPRS- Psychoanalytic Institute for Social Research, within the National Operative Programme Security for the Development of Southern Italy, a glossary of terms for juvenile penal mediators was compiled 'The words of mediation' (*Le parole della mediazione*). It aims to provide a useful tool for service providers and practitioners. It also intends to create a *common language* in order to facilitate exchange, discussions and reflection among mediators across the country.⁴²

The Study, Research and International Activities Board of the Juvenile Justice Department in cooperation with the Psychoanalytic Institute for Social Research, organised a series of four seminars in 2007 with the goal of strengthening and consolidating the Italian community of mediation practitioners.⁴³ It was addressed to all juvenile mediators working in different mediation centres in Italy. Drawing on the experiences presented by international experts from other countries, room for discussion was provided for mediators to reflect on their own practice.

Furthermore, the materials deriving from these seminars, e.g. speakers' presentations, minutes of the discussions and recordings of sessions where mediation cases were discussed have been

⁴² Mastropasqua, I. *et al.*, (2006). *The words of mediation*. Rome, Dipartimento per la Giustizia Minorile, Ministero per la Giustizia. Available in English and Italian from: http://giustiziaminorile.it/rsi/studi/Recenti/glossario_mediazione.pdf.

⁴³ The cycle of international seminars is thoroughly described in section IV.3.

compiled and edited. These will be made available to the victim-offender mediation centres for training and educational purposes (Ciuffo and Attar, 2008).⁴⁴

Also with respect to reinforcing best practice, an international project called 'Tools in Network' is being put in motion. It sets up a multimedia platform for e-learning on the theme of restorative justice. The beneficiaries will be social workers working in the criminal justice system in the fields of both juveniles and adults.

The Study, Research and International Activities Board of the Juvenile Justice Department, aware of the relevance that the topic of crime prevention and re-offending has for policy makers, sought to conduct research on the relation between crime prevention and restorative justice. Recently the Juvenile Justice Department has been awarded the project 'Restorative Justice and Crime Prevention' funded by the European Commission within the framework of the programme 'Prevention of and Fight Against Crime'.

The objectives of the project are basically to conduct research and raise awareness with regard to the possible contribution of restorative justice toward the prevention of crime. The promoter of the project is the Juvenile Justice Department of the Italian Ministry of Justice and other partners include the University of Leeds, the IPRS- Psychoanalytical Institute for Social Research and the European Forum for Restorative Justice. The project will result in an extensive research report and a set of recommendations and specific examples of best practices that show how restorative justice can be seen from a crime prevention perspective.

3. MALTA⁴⁵

3.1. INTRODUCTION

Presently, victim-offender mediation as such is not present in the criminal justice system in Malta.

In 1994, several members of Prison Fellowship International, employed by the Home Affairs Ministry, drafted a document on criminal justice reforms, which was subsequently modified and adopted by the Maltese Cabinet as a White Paper.

The paper focused on restorative justice as a foundation for the reforms, and identified a number of recommendations for sustained government attention. Some of these had to do with the treatment of prisoners and victims. They included a provision for probation supervision, pre-release assistance for prisoners, and the launching of a victim-offender mediation programme. However, work in that direction was discontinued after 1996 and no victim-offender mediation services were ever started.

Nevertheless, it is important to highlight some significant developments in the direction of the humanisation of the Maltese criminal justice system. The juvenile justice system has introduced important reforms that affect its basic principles. The Juvenile Court Act passed in 1980, exemplified the conversion from a system based on the punitive paradigm into one based on a rehabilitative and restorative model.

This shift however, has not reached the ordinary courts; these are traditionally characterised by their very conservative attitude and a punitive approach to the criminal justice system.

The recent introduction of victim's rights provisions and the regulation of probation and suspended sentences can be perceived as an increasing openness in the Maltese criminal justice system towards the restorative justice paradigm.

⁴⁴ These materials are available from: <http://www.giustiziaminorile.it>

⁴⁵ Paper prepared by Mark Montebello for this project.

3.2. LEGAL BASE

3.2.1. Juveniles

The new Juvenile Court Act (Chapter 287 of the Laws of Malta) establishes that the proceedings need to be held in an entirely informal setting; the goal being to enhance the communication and understanding between the stakeholders.

The accused and his/her carers will take part in the hearing, sometimes with the participation of the victim. Together with the judge, all of them will sit around a table and discuss the case and the best solution under the given circumstances. This approach, although it is not a formal victim-offender mediation process, allows participants to establish a space for dialogue and to foster a more constructive response to the young offender.

Acknowledging the need to base the judicial decision on comprehensive information about the young person him/herself and not just on the criminal acts in question, the law stipulates that the magistrates will be assisted by a group of experts in human sciences. These will provide the magistrate with specialised advice on the psychosocial profile of the minor.

3.2.2. Adults

There is no legal authority for restorative justice or mediation in adult criminal legislation since no follow-up has been awarded to the White Paper that explicitly mentioned it. However there are two sets of articles that clearly favour this approach.

In fact, recent new provisions enacted in 2006 by still new amendments to the Criminal Code, stipulate that the court has the power to order the offender to pay damages whenever a person is sentenced upon conviction of any crime. Therefore, when deciding a probation order or an order for suspended sentence, the court may include the obligation for the offender to make restitution to the injured party. This is already an important step concerning the recognition of 'victims' rights.

The law establishes that the amount to be paid to the victim may be determined by the court. Among other aspects, the court shall determine the amount of any compensation that should be paid to the victim after hearing the parties. This appears to be a significant recognition of the need to give a voice to the persons directly affected by the crime. Although it is designed as a space to discuss the financial reparation, it can provide room to express other concerns regarding the personal dimension of the aftermath of crime.

Concerning victims' rights, in 2002 an amendment to the Criminal Code brought a series of general improvements that involved the victim in the criminal process.

One such improvement is that the victim is given the option to attend the hearings and to be informed of the criminal proceedings. Namely victims have the right to be notified of, and present at, court hearings.

In proceedings instituted by them, victims have a right to be assisted by a lawyer to examine/cross-examine witnesses, and to produce evidence that the court considers admissible. In the appeal phase, the victim may request permission to make submissions on the appropriate sentence to be passed on the accused.

Another improvement is the characterisation of different cases and the conditions under which the victim is entitled to receive compensation for damages suffered because of an offence:

- Victims have a right to ask for compensation from the offender through the civil courts (even in the cases in which the offender has not been arrested).
- In a criminal court, they may be considered for compensation when a probation order is made or a suspended sentence is awarded. If no offender is known, then no compensation is possible.

Art. 698 states that the Minister may make regulations to establish a scheme for government compensation of victims of crimes. However the conditions that the victim must meet to be eligible to receive this compensation render it a very distant possibility. Government compensation to the victim shall only be payable when the victim has exhausted all the legal possibilities to obtain compensation from the offender.

3.3. SCOPE

The juvenile courts are still primarily offender-focused. The latest reform does not give the victim an equal role in the criminal process.

The ordinary courts have also been traditionally offender-oriented. The recent amendments to the Criminal Code, with the introduction of clear provisions for victims' rights to compensation and a more central role within the process, represent a good starting point towards a full recognition of the victim's needs in criminal proceedings.

3.4. IMPLEMENTATION

3.4.1. Agencies: establishment and practice

Neither victim-offender mediation nor restorative justice schemes have been implemented in Malta.

3.4.1.1. Victim services

Victim Support Malta (VSM) is a volunteer based non-statutory organisation that was created in 2003 as part of the Mid-Dlam ghad-Dawl (MDD) initiative. The latter is also a volunteer-based organisation that among other tasks provides assistance and guides prisoners during the transition period in which they prepare to leave prison to go back into the community. This prisoners' organisation had identified the need to establish a service that could give more personalised attention and specialised response to victims and other people that come in direct contact with the criminal justice system. Therefore, from the very beginning, there has been a good collaborative relationship between these two organisations.

The VSM arose independently from the government. The service for victims began operating in 2004 and although it is still struggling, it has made some progress in 2006. VSM's operative staff, including all but one of its administration personnel, still work on a voluntary basis.

In 2004 VSM held talks with Malta Mediation Centre (see below) to explore the possibility and logistics of setting up victim-offender mediation. No further work has been done on this project due, in part, to VSM's limited resources and its other priorities while establishing Malta's first victim support service. This project has been shelved but, resources permitting it will eventually be taken up again.

VSM is the institution to which all types of victims of crime are referred, since it is the only victim support service in Malta. VSM offers support and information to victims of crime to help them regain their dignity and confidence.

The working procedure of the service involves a number of professionally trained volunteers who, under the guidance and support of a coordinator, meet consenting victims to plan and implement a healing process.

Meetings with victims continue as long as the victims involved wish, or when victims attain closure. The operative number of support volunteers with VSM is 33.

3.4.1.2. Probation Orders

All types of probation orders fall under the responsibility of the Probation Services. In Malta, this government office is part of the Department of Corrections within the Ministry for Justice and Internal Affairs. The head of Department of Corrections and the Probation Services is the Director of Prisons.

The Probation Office does contact some of the victims that are connected to offenders under probation, but this is only done for better sentencing practices. The office is not authorised to conduct victim-offender mediation, and in fact none is ever done.

All beneficiaries of Probation Services come from the criminal courts of justice, whether from juvenile court or the ordinary criminal courts. Probation Services are not authorised to act on their own initiative.

The main goal of the Probation Services is to help ensure stability by contributing to minimise the frequency of crime and by ensuring the re-integration of offenders to functional societal frameworks. The objective is to offer a variety of services that will address the needs of the criminal justice system with regard to non-custodial, or community, sanctions.

3.4.2. Referral numbers and outcomes

3.4.2.1 Quantity and quality of referrals

Victim services

During 2006, VSM worked on a total of 64 cases. 80% of these involved burglary. The rest involved cases of theft from property and/or person (6%), assault (5%), car theft (5%), sexual abuse (1.4%), sea craft theft (1.3%), and arson (1.3%).

The police referred 83% of all cases and 17% were self-referrals. There were no referrals from institutions other than the police. In 44% of the cases referred to VSM, the victims did not feel the need for any support through volunteers. These were sent leaflets related to their specific victimisation, suggesting ways of prevention.

Probation orders

During 2005, the Probation Services received a total of 308 new cases from the courts of Malta and Gozo, a slight increase on 2004. In December 2005, the office was handling a total of 448 active cases distributed among the 11 probation officers.

The offenders came in contact with the Probation Services for various offences, the most prominent offence being theft, a crime closely related to drug abuse. In fact, a high percentage of offenders referred to the Probation Services had a drug dependency problem.

Of those referred to the Probation Services, 45 cases concerned female offenders, while 263 concerned males.

In 2005, there had been a marked increase in the over 40 years old age group and in the 15 to 19 years old age group. The latter had been explained by the fact that the Probation Services had been concentrating on juvenile court, and had started participating in all sittings of the juvenile court.

3.4.2.2. Referral outcomes

Victim services

Of all cases referred to VSM, 40% attained closure (life for the victims regained a tolerable and/or satisfactory level of normality), indicating that those victims successfully regained their dignity and confidence, through VSM help. Most of the other cases were still open at the end of 2006.

Probation orders

It is not clear what the real effect of probation orders is having on re-offending, or on the successful re-integration of offenders to functional societal frameworks. What may give an indication in this respect is the rate of recidivism, which presently (2006) stands at 61%.

During recent years, Probation Services has been witnessing a shift to more difficult and more demanding offenders. The cases have become much more time consuming and require a closer collaboration with other agencies, whenever ancillary services are available.

3.4.3. Other interventions

In 2004, a new law called the Mediation Act was enacted. This law does not refer to the criminal justice system but is intended to encourage and facilitate the settlement of non-criminal disputes through mediation more focused on civil law and especially family disputes. It also establishes the creation of a Malta Mediation Centre (MDD) as a centre for domestic and international mediation. It fosters the establishment of provisions that would regulate the mediation process itself.

MDD is a non-governmental, volunteer-based organisation that works with prisoners, ex-prisoners, and their families. MDD assists consenting ex-offenders with accommodation and employment issues, as well with social and family relationships. This organisation however does not work on victim-offender mediation.

The Employment Training Corporation is an agency that almost every probationer is asked to visit. This agency trains people and assists them in securing jobs. The corporation also has a unit that deals particularly with people with a criminal record. Though such interventions may help offenders re-establish themselves successfully and productively in society, no reference or contact is ever made with their victims.

3.5. EVALUATION

3.5.1. Context

In the last 25 years or so, the Maltese criminal justice system has seen the beginning of a shift towards rehabilitative models of criminological practices. The creation of the juvenile court, prison reforms, the introduction of suspended sentence and probation orders, and an increasing reliance on social practitioners are viewed as important elements that would favour the introduction of more restorative justice measures.

The lack of victim-offender mediation has to be understood within the context of the entire absence of any kind of victim services in Malta until 2004. Consequently, there was no lobby to push any victim-offender mediation initiatives.

Attention to victims began as a response to the incisive criticism brought by journalists on the prison reform of the 1990s. More precisely, journalists made a plea for including victim's rights in the political agenda at the same level as the prison system's reform.

From 2002 onwards, the government made a few timid steps to introduce some victim's rights in the Maltese criminal system. However it is still reluctant to take decisive steps with regard to compensation.

Until now, VSM has only received a one-off small donation from the government. Maybe the authorities still do not fully appreciate the role of non-governmental statutory bodies in the field of victim services and government's responsibility to support such bodies financially.

As mentioned above, the scarcity of resources of VSM is the main obstacle to introducing a victim-offender mediation service. The funding has even become insufficient to run the basic activities of the agency, broadening their schemes to introduce a new service like mediation is unfeasible. Until now, the primary concern of VSM has been to achieve stability and regular funding to ensure the provision of the basic services expected from a victim support agency which provides support and information to victims of crime.

VSM, besides providing assistance to victims, also focuses on raising awareness of victims' issues within the judiciary, the police, criminal justice practitioners, and the public in general. This is a significant task that needs to be undertaken thoroughly since the importance of victims' issues and the restorative justice approach appear to be new to Malta.

3.5.2. Current evaluation

The judiciary in Malta has traditionally been very reluctant to implement any type of alternative measure such as community service which shows the rather punitive mentality that has prevailed for many years among these professionals. It is important not to underestimate the educational efforts that need to be carried out amongst judges and prosecutors as well as other legal professionals.

The principles of suspended sentences and probation orders have been accepted, and their practice by the judiciary is growing.

With regards to the victims, if victim-offender mediation ever materialises in Malta, VSM will most likely be the NGO to deal with it, considering the lack of initiatives in this regard by other long-standing bodies and VSM's political will to bring about such a service.

3.5.3. Future direction

Recognising the worth and usefulness of victim-offender mediation, VSM plans to introduce the service in Malta in the near future. However, this will not be done if VSM has not ascertained, first, that such a service will perform to the best interests of victims, and, secondly, that the maintenance and continuity of the service is guaranteed.

To this end, it is important, first, that VSM has the necessary resources to run the service efficiently, effectively and successfully, and, secondly, that VSM can guarantee the participation and cooperation of other entities (such as the police, Probation Services and possibly prisons).

When the establishment of a victim-offender mediation scheme becomes possible, VSM foresees access to services as completely voluntary and with a neutral approach aimed at satisfying both the victim's and the offender's interests in equal measure. It is also important for the agency to assure that the legal safeguards — and in particular the presumption of innocence — of its users are guaranteed. Minors (offenders or victims) should only participate in victim-offender mediation with the assistance of their guardians.

VSM also plans to introduce training and consultancy sessions on victim issues to professional bodies and personnel, including practitioners within the criminal justice system. The aim is to enhance information and knowledge in relation to victims of crime, and hence facilitate victim-oriented processes and relationships. Furthermore MDD is planning to create, in collaboration with government, a shelter for ex-prisoners who do not have any accommodation on the completion of their sentence. This will be the first shelter of this type in Malta, and it could open the possibility of developing offender-victim communication instruments. MDD is also planning to initiate a programme addressed to prisoners on the

effects of victimisation. The programme could contribute to eventual victim-offender mediation processes.

4. PORTUGAL⁴⁶

4.1. LEGAL BASE

The Portuguese legal system contemplates mediation within the Educational Guardianship Law (*Lei No. 166/99 Tutelar Educativa*), of 14 September 1999. This law was the result of substantial reform of the law governing juveniles, re-oriented from a protective approach to an approach focusing on responsibility, educational welfare and reparation. The Educational Guardianship Law is applicable to young persons between 12 and 16 years old who commit acts defined by law as crimes.

In 2005, the Ministry of Justice initiated a law to introduce victim-offender mediation into the Portuguese criminal justice system. The bill was subjected to public discussion and eventually approved by the Portuguese Parliament on 12 April 2007, under the name of Law 21/2007 introducing mediation for criminal matters (*Lei No. 21/2007, que cria um regime de mediação penal*).

This new law providing a legal basis for victim-offender mediation for adult offenders was approved in order to comply with art. 10 of Council Framework Decision on the Standing of Victims in Criminal Proceedings.⁴⁷ On 22 January 2008, one day before the official implementation of the victim-offender mediation programme, three *Portarias* (No. 68-A/2008, 68-B/2008 and 68-C/2008) and one *Despacho* (No. 2168-A/2008), regulating specific aspects of this programme, were approved by the Ministry of Justice.⁴⁸

4.2. SCOPE

4.2.1. Juveniles

Within the Educational Guardianship Law, mediation is intended to be offender-focused. It has been developed within a specific type of intervention (the guardianship intervention), the purpose of which is to ‘(...) *educate the minor in the field of law and not on retribution for committed crimes* (...)’ and to promote the reintegration of the young person into their community.

Therefore, the legal requirements for initiating a guardianship process are:

- committing of acts by a young person between 12 and 16 years old, acts defined as crimes under penal law;
- need for education in legal matters;
- no psychiatric pathology.

The guardianship process comprises two phases. The first is the evidentiary phase, presided over by the public prosecutor. It aims to determine whether the alleged acts were committed by the young person, and whether it is necessary to apply a guardianship measure. If it is not necessary, no further action is taken. If the acts do appear to have been committed by the young offender, this phase may be concluded with a petition to initiate the judicial phase. If the offence is punishable with a jail sentence of up to five years, the public prosecutor may decide to suspend the process (a diversion mechanism introduced by the new law). The public prosecutor may base his/her decision on the young person’s submittal of a plan of behaviour, if this plan persuades the prosecutor that the young offender will seek to avoid committing any further crimes. In developing and implementing the plan, the young person, his/her

⁴⁶ Based on the chapter by Frederico Marques, 2004, in Miers and Willemsens, 115-120, used with the permission of the publisher and adapted and updated by the same contributor.

⁴⁷ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, 2001/220/JHA, OJ L 82/1 of 22.3.2001.

⁴⁸ *Portaria* and *Despacho* are the names that two different types of secondary legislation in the Portuguese legal system.

parents, or the legal representatives or legal guardians may seek the assistance of mediation services. The plan may require the young person to apologise to the victim, to repair or compensate fully or partially for the damage caused either financially or symbolically, to make disbursements or engage in activities benefiting the community or to achieve certain goals related to his/her education, training or other activities.

The second is the jurisdictional phase, presided over by the judge. Its purpose is to confirm the facts, to evaluate the need to apply a guardianship measure and, if necessary, to determine which measure should be applied and make the appropriate order. A number of these measures focus directly on restoration:

- reparation to the victim (apologising, financial compensation, undertaking any activities related to the damage inflicted which may benefit the victim);
- disbursement (payments that benefit non-profit organisations, whether they be public or private entities);
- undertaking of tasks benefiting the community (undertaking activities for non-profit organisations, whether public or private entities).

In the jurisdictional phase, when the young offender (and those representing his/her interests), the victim and the public prosecutor do not reach an agreement about the guardianship non-institutional measure to be applied, the judge may suspend the hearing for 30 days and rule on the intervention of mediation services in order to reach that agreement.

According to the Guardianship Law, the use of mediation depends upon a determination by judicial authorities. However, the initiative taken may be that of the authorities, the young person or his/her parents, or that of legal representatives or legal guardians. Its use can be considered at each phase of the guardianship process.

Apart from these specific occasions, there appears to be no restriction in its use at other stages of the process. Nevertheless, judicial approval will always be required.

4.2.2. Adults

There were no references to victim-offender mediation in Portuguese criminal law before Law 21/2007 came into force. Neither the Penal Code nor the Criminal Procedure Code considered any mediation mechanism explicitly. Several measures addressing obligations with a restorative character are foreseen but their application is not preceded by a mediation process between the parties led by mediators. Nevertheless, several 'entry doors' to mediation are considered below.

- Discontinuance where sentencing is not necessary: in crimes punishable by prison sentences of up to six months or with a fine of up to 120 days, the public prosecutor, with the agreement of the judge, may decide that the proceedings are to be discontinued. The following requirements must be met: the illegality of the act and the offender's guilt are reduced, the damage has been repaired and there are no arguments against the dispensing of the sentence.
- Temporary suspension of proceedings: in cases of acts committed which constitute crimes punishable with a jail sentence of up to five years or other non-custodial sanctions, the judge may temporarily suspend the proceedings. The decision of the judge will depend upon the agreement of both the prosecutor and the defendant and is dependent on the following conditions: lack of prior criminal record of the defendant, low level of culpability and if there are favourable prospects that the compliance with certain injunctions or conduct rules (such as compensation or moral satisfaction of the victim, disbursements to the state or to charitable organisations, among others), will be sufficient as a prevention measure. In this case, mediation can

play a significant role. It would result in actively involving the victim and the offender in the decision process. Instead of the judge being the one to decide and impose injunctions and rules of conduct upon the offender, the parties actually affected, e.g. victim and offender, together with a mediator could formulate a solution that both of them deem suitable for their case (upon the approval of the judge).

- Summary Proceeding: for crimes punishable by a fine or prison sentence of up to three years, the prosecutor may consider that a sanction, namely a non-custodial punishment or a safety measure, is sufficient. In such a case, he may propose a sanction and require its enforcement by the court. If both the court and the defendant accept the sanction, the judge will issue an order which is equivalent to a sentence. Instead of having the prosecutor decide on the outcome alone, the agreement reached by the parties in the mediation process could serve as the basis for his decision.
- Suspension of prison sentences: the court may suspend prison sentences of up to three years when certain conditions have been assessed, and it is deemed that a reprimand as well as the threat of imprisonment may achieve the goal of the punishment (simple suspension). Suspension could be granted if certain duties are complied with or specific rules of conduct are observed. In determining the conditions for the suspension of sentence mediation could play a significant role.

To sum up, Portuguese penal legislation has already contemplated several possibilities for the application of restorative mechanisms: nothing prevents the court from using victim-offender mediation in the context of discontinuation when a custodial sentence is unnecessary, a temporary suspension of the proceedings, a summary proceeding or the suspension of a prison sentence, in order to determine the injunctions, conduct rules, duties or sanctions to be applied to the offender. Although these are important areas that could have been explored through mediation, only one experimental project, run by the Criminology School of the Law Faculty of Porto University between 2004 and 2007 was carried out within this legal framework.

The new Law 21/2007 introducing mediation for criminal matters provides an explicit legal framework for mediation. According to this law, the cases amenable to mediation are crimes against persons and crimes against property, subject either to semi-public or private prosecution procedures, punishable by up to five years of imprisonment or less, or with a fine. Crimes where the victim is under the age of 16, where the defendant is a legal person or offences against sexual freedom or self-determination are excluded.

When the collected evidence indicates that a crime has occurred and that the defendant was its agent, Public Prosecution can, at any time during the inquiry procedure and if it is deemed appropriate for prevention purposes, refer the case to mediation; the victim and the defendant shall be informed thereof. It also foresees the possibility for the victim and/or the offender to request the initiation of a mediation process.

The maximum length of the mediation process is three months but it can also be extended by two months upon request of the mediator to the public prosecutor. If no agreement is reached or in cases where the mediation procedure is not concluded within three months, the mediator shall inform Public Prosecution thereof, and the criminal procedure shall proceed.

The signing of an agreement has a legal significance: the victim drops the charges and the offender consents to the agreement. Given the fact that crimes eligible to mediation are subject either to semi-public prosecution or to private prosecution, the agreement effectively stops the prosecution proceedings (when the prosecution is public, the proceedings are not affected by the victim's decision).

If the agreement is not fulfilled within the prescribed timeframe, the victim may renew the charge within one month, and the inquiry shall be re-opened. The agreement may not include duties the fulfilment of which would extend for more than six months.

The parties must attend the mediation sessions in person and can be assisted by a lawyer. The content of the mediation sessions is confidential and cannot be examined as evidence in criminal proceedings.

Mediators must be at least 25 years old and should hold an academic degree (in any field) or have adequate professional experience. They must have undertaken victim-offender mediation training recognized by the Ministry of Justice. Those people who fulfil these requisites in order to be allowed to act as mediators need to be registered with the official mediators' registry.

Furthermore, mediation services are free of charge for the parties.

The Law also foresees the gradual implementation of mediation by establishing first an experimental project, which will run for two years, and its subsequent assessment. Once the evaluation of this project is completed, the effective application of the law will be extended throughout the country.

The Law chooses not to regulate the internal aspects of a mediation process in detail, thus leaving it to the rules governing the profession of mediator, professional ethics and best practices handbooks.

4.3. IMPLEMENTATION

4.3.1. Juveniles

4.3.1.1. Agencies: establishment and structure

Even though the judicial authorities are the gatekeepers to mediation, the body responsible for its implementation in Portugal is the Directorate-General for Social Reinsertion (*Direcção General de Reinserção Social*). As part of the Ministry of Justice, the Directorate-General for Social Reinsertion is a public body that acts in an auxiliary capacity in the administration of justice. Its aims are to rehabilitate young offenders and to support the jurisdiction of minors. The Directorate-General for Social Reinsertion, recognised not only the potential in the use of mediation within the boundaries of the Educational Guardianship Law, but also mediation as a means which better embodies the 'principle of minimal intervention' when dealing with crimes. The Directorate-General for Social Reinsertion (in the absence of other public or private entities in the field of mediation) decided to implement the 'Mediation Implementation Programme' within the Educational Guardianship Law. Its role was officially stated in an announcement made by its President in January 2002, in which the foundations for the implementation of mediation within the educational guardianship process were established. This announcement defines the programme as a '(...) *national action programme, which aims to create and foment better technical and logistical conditions for the execution of decisions made by the judicial authorities in which mediation processes are deemed necessary* (...)'.

The programme adheres to the principles of voluntariness, neutrality, impartiality and confidentiality and it has a number of developmental features. One is to raise magistrates' awareness of the possibilities for mediation. A second concerns the criteria to be used when determining whether or not mediation should be used, particularly focusing on the methodologies available at the Directorate-General for Social Reinsertion. A third aim is that mediation becomes one of the regular options within the educational guardianship process.

It also envisages a role for the Directorate-General for Social Reinsertion in the development of private initiatives leading to the inclusion of mediation services within the framework of the Educational Guardianship Law. Regional managers are expected to use their influence within their own areas, particularly at the institutional level.

Mediators are staff members of the Directorate-General for Social Reinsertion, hold honours degrees in the field of social sciences and have undergone a basic training programme. The trainers come from the Justice Department of the Autonomous Government of Catalonia, as

well as from the Portuguese Association for Victim Support, APAV (the latter's goal being to provide a more victim-sensitive approach).

4.3.1.2. Agencies: practice and intervention types

Once the judicial authorities have approved mediation in a case, it is the mediator's responsibility to assess the parties' requirements. There are usually one or two sessions with each party for this purpose. The adopted mediation model envisages direct (face-to-face) mediation between victim and offender. The mediation process has to be completed within a maximum period of 45 days. Thereafter, the mediation service must inform the judicial authorities of the results achieved so that these may be assessed.

An evaluation of this programme was carried out in 2004. It highlighted the need to introduce coherence in the formal and informal alternatives presented to minors within the Educational Guardianship Law. Accordingly, the programme's concepts and name were reconsidered and changed. Thus, an internal procedure manual was drafted, including, among other issues, the criteria applicable in accessing the programme, the basic principles of the mediation process, the role of the mediator and the main guidelines for its implementation. All these aspects were described in accordance with the Council of Europe Recommendation No. R (99) 19 concerning mediation in penal matters.

The primary aim of the Mediation and Restoration Programme (as it was re-named), is to allow for a type of settlement based on dialogue and where the minor is encouraged to take responsibility with the use of mediation whenever possible.

In particular some of the more relevant goals of this programme are the following:

- to allow for a meeting between the parties involved in a conflict that results from an illicit act, so that they can actively participate in its resolution with the assistance of a mediator;
- to favour de-judicialisation of the cases;
- to support restorative actions freely accepted by the parties or, alternatively, actions beneficial to the community;
- to contribute to the young offender's psycho-social development and to his/her social integration by favouring responsible attitudes and to prevent re-offending.
- to contribute to social harmony and in particular to the recovery of victims in the aftermath of crime;
- to increase restorative or reparative actions towards the victim or the community within the minors' justice system.

In the inquiry stage, with the public prosecutor presiding, the Mediation and Restoration Programme permits:

- Victim-offender mediation as a means to achieving reconciliation and/or restoration. Whenever the public prosecutor decides to refer the case to the mediation services and an agreement is reached, this is submitted for approval to the judicial authority. Should the agreement be approved, the court will supervise its fulfilment and will be responsible for closing the proceedings.
- Victim-offender mediation as a supporting feature in the process of drafting a behaviour plan. Indeed, the programme gives priority to mediation whenever the legal requirements are met, there is an individual victim and the minor meets the eligibility criteria. The commitments assumed through a mediation process when applicable, are then translated into the behaviour plan that is submitted to the court. On these grounds, the court may decree the suspension of the proceedings.

In both cases, the access to mediation is dependent upon the compliance by both offender and victim with the following basic requirements:

- The young offender shall recognise his/her responsibility and/or participation in the illegal act and thus in the resulting damage; shall be capable and willing to participate in a mediation process with the goal of taking an active role to find a solution and make reparation; shall also be capable and willing to fulfil the commitments undertaken.
- The victim should be willing to participate and to accept reparation. Furthermore, an assessment of the damages and degree of victimisation shall also be made.

These aspects are appraised in individual interviews conducted with both, victim and offender. In accordance with the Council of Europe Recommendation No. R (99) on mediation in penal matters, in assessing these requirements the differences in age, maturity and intellectual capacity are also taken into account, because these are viewed as essential for the full understanding of the process.

Where the young offender expresses willingness to reconcile or undertake restorative actions, but the mediation process cannot take place or an agreement cannot be reached, that willingness on the part of the offender will be taken into account. In order to find alternative solutions, incentives and support will be provided for the young offender. A possible option is reparation to the community, e.g. by undertaking specific tasks or by the accomplishment of a set of goals related to either personal or school training.

Lastly, the public prosecutor may require the cooperation of the Directorate-General for Social Reinsertion to support the young offender in the achievement of the commitments assumed during the mediation process or in the behaviour plan (which may contain obligations set within the mediation process). Once either the agreement or the behaviour plan has been fulfilled, both the attitude and the degree of completion will be evaluated. This includes an analysis of the entire process undergone by the young offender and the beneficiary(ies) of the task(s). Based upon this information, a report is forwarded to the public prosecutor.

When the young offender does not fulfil his/her commitments, the public prosecutor is informed and the judicial proceedings will be re-opened accordingly.

In the jurisdictional phase, the intervention of mediation services is foreseen as a means to reach a consensus with regard to the non-institutional educational guardianship measures to be applied or the conditions under which these should be undertaken. The use of mediation in this phase has not been very significant.

4.3.1.3. Referral numbers and outcomes

In 2002, the programme dealt with 183 cases, equivalent to 5% of the activities undertaken by the Directorate-General for Social Reinsertion in the framework of the educational guardianship jurisdiction. In the first half of 2003, 125 cases were registered, which represents an increase compared to the previous year.

Considering the 2002 data, the Directorate-General's intervention took place mainly during the inquiry stage envisaging drafting and/or executing a behaviour plan (80% at the inquiry stage, 17% in mediation at the initial stage of the inquiry and 3% in mediation at the jurisdictional stage).

During its first year of operation, the Directorate-General mainly intervened in cases in which the young offenders had the following profile: male, 16 years old, minimum grade four level education, student, and no regular extra-curricular activities, integrated in the family of origin, poor social-economic background and first-time offender.

In most of the cases there was an identifiable victim. When these were 'individual persons' they were predominantly students aged between 10 and 22 years old. When the victim qualified as a 'collective person' they were mainly commercial or educational establishments, as well as city or town municipalities.

The most common illegal acts were larceny, damage, offences against the person, robbery and driving without a licence.

The majority of young offenders who participated in mediation processes had an initial cooperative attitude; only 28% of victims agreed to do so.

The process is considered to have had a positive outcome, when there has been reparation towards the victim, as well as when no agreement had been reached but the young offender participated actively in drafting the behaviour plan and complied with it (here, the outcomes were positive, but not restorative).

In 2004, the 'Mediation and Reparation Programme' dealt with 192 mediation cases and from January to September 2005, 171 cases.

4.3.2. Adults

4.3.2.1. Agencies: establishment and structure

Following the provisions of the Law 21/2007, the experimental programme commenced on 23 January 2008 and is being implemented in four judicial districts - Aveiro, Oliveira do Bairro, Porto and Seixal. At least during this experimental period, the programme will run alongside some small complaints courts, thus profiting from the latter's logistics and organisation. The law establishes that the experimental programme will last for two years. However, depending on political will and on the first results, more victim-offender mediation services will be implemented in other judicial districts in late 2008.

Regarding the training, the Ministry of Justice has published a document setting out its standards. In order to be accredited, a course should include a sufficiently wide range of subjects, such as, amongst others, criminal law and criminal procedural law, delinquency and social reintegration, victimology and, of course, restorative justice. A training manual needs to be formulated.

Furthermore, these courses should include practical lessons and at least three members of the teaching staff must hold a Master degree or a Doctorate. One trainer must be a magistrate.

For people who have already undertaken mediation training and are there to gain specialised knowledge of victim-offender mediation, the course will consist of 90 teaching hours. The length will be 180 teaching hours if the course is addressed to beginners.

At the commencement of the programme, there are around ninety trained and certified mediators (90% of them are jurists or lawyers) in penal matters registered on the lists and ready to receive cases. They are individual mediators (not organized in mediation services) and will work on a case-by-case basis: the prosecutors will refer the cases to the mediators following the order of those lists.

The *Portaria* No. 68-A/2008 of 22 January, approved by the Ministry of Justice, establishes the content of the letter that the member of court administration shall send to the victim and the offender informing them that their process has been referred to mediation. This letter explains what mediation is, its principles, the name and role of the mediator and the legal consequences of an agreement being reached or not. It explains the possible contents of an agreement and states that mediation is free of charge for the participants.

The *Portaria* No. 68-B/2008, of 22 January, regulates the mediators' selection procedure.

The last of these three *Portarias*, No. 68-C/2008, also from 22 January, regulates the victim-offender mediation programme, specifying some issues covered by the law in general terms:

data collection, software applications, management and update of the lists of mediators, steps taken during the mediation process, places where the mediation sessions take place, satisfaction questionnaires, mediators' rights and duties and possible reasons for a mediator to refuse a case.

The *Despacho* No. 2168-A/2008, from 22 January, determines the fee to be paid to the mediators:

- if there was pre-mediation but, for some reason, the case will not proceed to mediation, the mediator will receive 25 €;
- if there was mediation but the participants did not reach an agreement, the mediator will receive 100 €;
- if there is an agreement, the mediator will receive 125 €.

These are fixed amounts, thus the fee won't vary depending on the number of sessions.

The Ministry of Justice signed a protocol with the Alternative Dispute Resolution Department of the Law School of the New University of Lisbon (*Universidade Nova de Lisboa*), granting this academic institution the task of screening, researching and evaluating the experimental project.

Making use of the Portuguese penal legislation's 'entry doors', the first victim-offender mediation project in Portugal (the Restorative Justice and Mediation Project) has been developed by the Criminology School of the Law Faculty of Porto University (*Universidade do Porto*), within an agreement protocol signed between the Porto District Attorney Services and this faculty, dated 16 July 2004. This project ended in 2007.

This project was not merely a mediation service, but it was run as part of scientific research in the legal and criminology domains which addressed two main aspects in connection with the mediation of the cases: the theoretical framework and an empirical methodology.

4.3.2.2. Agencies: practice and intervention types

At this time it is too early to assess the data of the programme that is being implemented by the Ministry of Justice. Instead, the features of the experimental project developed by the Criminology School of the Law Faculty of Porto University will be described.

The empirical research aimed to identify the perceptions and attitudes regarding different criminal philosophies with regard to restorative justice. This effort was framed by disciplines such as the Philosophy of Law, particularly by the Philosophy of Criminal Law, Criminology and Victimology. The objectives of the empirical outlook were the following:

- to intervene in problematic issues involving typified behaviours of crime, in order to clarify the perceptions, notions and attitudes from a pragmatic point of view. It focused on communication ethics and studying how to meet the necessary conditions under which the key players may reach conflict resolution via a process of negotiated justice;
- to question the frame and role of this 'new' justice model within the current philosophies and practices.

Research was carried out in those cases in which the law allows room for the principle of opportunity (discretionary prosecution). This mainly occurs when there is:

- a temporary suspension of the proceedings;
- a discontinuation in cases where sentencing is dispensed with.

In these cases, public prosecutors could ask for an expert opinion. These experts could suggest that the outcome of the mediation process be taken into account.

4.3.2.3. Referral numbers and outcomes

Even though the research data has still not been systematised, some issues can already be detected:

- intervention was required in 57 cases between 2004 and 2007 (mainly bodily harm);
- in 6 cases, the victims refused to participate and in 4 cases the victims opted for indirect mediation

4.4. OTHER INTERVENTIONS

Victim-offender mediation is not an isolated initiative but rather a part of a broader effort that is taking place in Portugal to develop means of alternative dispute resolution (ADR). Mediation, arbitration and conciliation are gaining more and more relevance. Arbitration, for instance, is being used in different fields such as consumers' rights, traffic accidents and car insurance, solving more than 2,500 conflicts per year. Mediation programmes are operating in three fields: civil disputes, labour conflicts and family matters.

The small complaints courts, implemented in 2002, comprise a less formal (and cheaper) means of resolving civil disputes. They deal with leasing and breach of contract. It is also suitable, among others, for cases of bodily harm, defamation, petty theft or damage, where a complaint was not filed or was dropped. It should be noted however, that the status conferred to the parties in these proceedings is not one of victims and offenders but the one of civil parties: claimants and defendants. The mediation process will have a purely civil nature hence it is not possible to consider this as Victim-offender mediation *per se*.

Mediation can be used in this court with the prior consent of both parties. Any agreement that is reached will be recorded. After its ratification by the judge, this agreement has the same standing as a court order. If there is no agreement, the case is sent to a trial presided over by the judge of the small complaints court. In around 30% of the cases the dispute is solved through mediation. In 2006, these small complaints courts dealt with 5,065 cases. By the end of 2008, they are expected to cover 43 judicial districts from a total of 233 judicial districts.

At the end of 2006, an experimental programme of labour mediation was implemented. This programme deals with all types of labour conflicts between employers and workers (like disputes related to the compensation that shall be paid to the worker in case of severance or to the transfer of a worker from one workplace to another) except those arising from work accidents and inalienable rights.

This programme is managed by the Ministry of Justice Department for Alternative Dispute Resolution: those interested in starting a mediation process (workers or employers) contact this Department, which in turn contacts the other party, nominates a mediator from the ones registered in the mediators record existing in the Labour field, and suggests a location for the mediation sessions.

The process' length is three months, but the parties may decide to extend it. The parties may also abandon the process at any moment. When an agreement is reached, it must be written down and signed by the parties. Each party pays 50 € for legal costs. The professional requisites and fees for labour mediators are similar to those in victim-offender mediation.

At the beginning of the programme, the Ministry of Justice signed a protocol with principal employers and trade unions' confederations encouraging them to make use of this initiative. Since then, more than 60 companies, employers' associations and trade unions have signed similar protocols with the Ministry of Justice, accepting labour mediation and promising to inform their workers about this new programme. They also promised to include a 'mediation clause' in all contracts, mentioning that, when adequate, the parties may decide to use the labour mediation system to solve their disputes prior to any other means of conflict resolution. So far, this programme has not dealt with many cases. As it depends upon the

initiative of the parties and perhaps because the public is not yet well informed about this scheme, numbers are still very low.

A family mediation experimental programme was set up in 1997 (*Despacho* No. 12368/97, from 5 November), as part of a protocol between the Ministry of Justice and the Bar. In 1999, a family mediation office was created in Lisbon, for cases involving determination of parental responsibilities and rights within part of the Lisbon Metropolitan area. This programme had a very limited effect: in 2004, for example, it dealt with less than 200 cases.

Since 2007, the Ministry of Justice is trying to give family mediation a new impulse. The *Despacho* No. 18778/2007, from 22 August, has three main objectives:

- make family mediation available in other cities: Coimbra, Porto, Setúbal, Leiria and Braga;
- allow the use of mediation in other situations: divorce and separation, alimony, authorisation for the occupation of the matrimonial home and authorisation to retain ex-spouse's surname;
- creation of a family mediation system: the main features of this system are quite similar to the labour mediation programme – it is managed by the Ministry of Justice Department for Alternative Dispute Resolution, so those interested in starting a mediation process contact this Department, which in turn contacts the other party, nominates a mediator (as in the other mediation programmes there is a list of mediators) and suggests a location for the mediation sessions.

The law does not lay down any specific deadline for the mediation process, but the usual length is between one and three months. The parties may abandon mediation at any moment. When an agreement is reached, it must be written down and signed by the parties. Each party pays 50 € for legal costs (except when it is the judge who refers cases of determination of parental responsibilities and rights to mediation – in these cases mediation does not entail any cost to the parties). The professional requisites and fees for family mediators are similar to those in victim-offender mediation.

The Ministry of Justice estimates that, when the family mediation system covers the whole country, it could potentially be used in more than ten thousand cases.

4.5. EVALUATION

4.5.1. Context

The preparation work for Law 21/2007 introducing mediation for criminal matters began, in a systematic way, in 2005. It gained ground through the participation of officials from the Ministry of Justice in international events and through consultation with several entities, where the different options were discussed.

At the end of that year (and the beginning of 2006), the Ministry presented a first bill for public debate. It was a clear and courageous project: recourse to mediation would be possible for all public crimes punishable with a maximum term of imprisonment of 5 years and mandatory for all complainant crimes punishable with imprisonment within that period. In other words, Public Prosecution would only have the power to make decisions concerning referral to mediation in cases involving public crimes. As regards complainant crimes, referral would be immediate and automatic. Moreover, Public Prosecution would not have any power of decision over the course of the mediation process, and would be obliged to accept it and carry out the legal consequences. In cases involving public crimes, the legal consequence is the temporary suspension of the process pending fulfilment of the agreement by the defendant. In cases involving complainant crimes, the effect will be the withdrawal of the complaint by the victim. It would only be possible for the public prosecutor to intervene in cases of human

rights violations – when the procedure entailed sanctions that restricted freedom, and violated the dignity and the rights of the accused.

It is easy to understand why this first proposal was strongly criticised by members of Public Prosecution, who viewed the referral to mediation and the prospect of settlement of the case by the parties in the cases of complainant crimes, as a reduction of their power to act.

The proposal foresaw the application of mediation in domestic violence situations. This possibility raised criticism. Despite the fact that in some countries, like Austria, Finland and Germany, mediation is used in these cases, it is a controversial matter. Political will was sensitive to some of the criticism. On 8 September 2006, the two main Portuguese political parties – Socialist Party, at that time in government and holding a majority in the parliament, and the Social Democratic Party, the opposition party – signed a political pact establishing guidelines for Justice reform. This pact addressed issues as diverse as Penal Code and Criminal Procedure Code reforms, enforcement procedure, and the reform of civil appeals and mediation. Regarding mediation, this agreement excludes it in public crimes, but allows it in complainant crimes. It could be said that the initial courageous attitude, that was willing to truly invest in mediation, lost some strength and now the current law reflects a very cautious position.

4.5.2. Current evaluation

The reluctance to adopt mediation mechanisms in Portugal is best understood in terms of the primacy of the legality principle in the Portuguese legal and judicial cultures. Public prosecutors and judges are traditionally bound to respect the non-negotiable character of criminal proceedings. One can expect strong resistance by judicial operators to the introduction of mediation, due to total lack of knowledge, but in most cases due to the fear of loss of power for some magistrates and loss of clients for some lawyers. This resistance was made clear when the small complaints courts were set up, showing strong opposition against the implementation of victim-offender mediation.

Nor has it been easy to incorporate mediation within the law that governs minors. Even so it should be emphasised that mediation plays a key role in the underlying purposes of the Educational Guardianship Law. In this context, as the aim of the educational guardianship intervention is to educate juvenile offenders about their legal responsibilities, mediation should be perceived as a means of achieving this aim.

Restorative justice ideals are gradually gaining relevance and support, mainly due to the presence in Portugal of foreign experts that participate in conferences and seminars, as well as the presence of Portuguese actors in international organisations and events. On the other hand, Portuguese authorities have experienced some pressure to increase the implementation of victim-offender mediation, due to the impact of such international instruments as the UN project in the field of restorative justice, the Council of Europe Recommendation No. R (99) on mediation in penal matters and the Council Framework Decision on the Standing of Victims in Criminal Proceedings.

4.5.3. Future direction

This is a truly a decisive moment, and the success of the mediation programme and the consequent widening of this system to cover other areas of the country will essentially depend on three factors:

Adequate mediator training, in order to ensure that this new intervention gains credibility and the respect of magistrates, lawyers, politicians and the public.

Strong awareness-raising among magistrates, namely those of the Public Prosecution Office, in order to ensure that mediation is effectively implemented. Besides supplying information on the process and the potential benefits of mediation, awareness-raising should also involve periodic meetings between magistrates and mediators. This would enable the judiciary to gain

an insight into the work done by the mediators as well as into their corresponding results. So, in the initial stages, it is not enough to persuade the prosecutors to refer cases to mediation, but it is crucial to establish collaboration with them on a permanent basis.

A full assessment of the services has now been created: a complete and detailed gathering of information is an essential requirement for its correct evaluation; therefore any instrument used in data collection must be designed carefully. An effective evaluation of the experimental programme is of utmost importance. Several entities, including specific university institutions, shall participate in this evaluation. They shall not be restricted to analysing the most immediate aspects, such as, for example, the costs per case, number of cases, the level of participation, types of cases, duration of the process, percentage of agreements reached and/or executed and the content of the agreements. They should go further and assess the deeper impact levels of mediation, namely examining the extent to which the offender understands the impact of the crime he has committed, regrets his wrongdoing and whether his/her apology is genuine. These entities should also assess whether the victim has overcome the feelings of fear, resentment and low self-esteem, for example. This initial phase is the ideal moment to carry out that kind of thorough evaluation, in so far as the dimension of this experimental programme will certainly be small in terms of number of cases, and focused on three services, a fact that facilitates the gathering of information. An evaluation that takes into account these qualitative criteria will enable a much more realistic insight into the true potentialities of mediation.

The Ministry of Justice expects the newly implemented victim-offender mediation programme to handle 20% of all criminal cases in the near future.

5. SPAIN⁴⁹

As a preliminary note, it should be mentioned that Spain, although being formally a unitary state, is organisationally known as a State of Autonomies (*Estado de las Autonomías*). It is said that it follows the federal formula due to the high degree of decentralization towards the Autonomous Communities.

The way in which the legislative and executive competencies are distributed between the Central Government and the Autonomous Communities makes policy development considerably complex. On the one hand the nature of competencies devolved to the Autonomous Communities (legislative or executive) will vary depending on the field (e.g. criminal law, health, education). On the other hand, it should be taken into account that the organisational systems and the political agendas vary between the Central Government and the Autonomous Communities as well as between the Autonomous Communities.

Therefore, this particular distribution of competencies between the Central Government and the Autonomous Communities requires paying special attention to policy development strategies especially those addressing themes in which the Central Government and the Autonomous Communities share legislative powers.

While the Central Government holds an important set of competencies over which it has exclusive legislative power, at the same time there is a high level of decentralisation of competencies with regard to other matters such as health or education. In particular competence over juvenile justice belongs to the governments of the Autonomous Communities. With regard to the criminal justice system in the field of adults, penal policy falls under the jurisdiction of the Central Government which is also responsible for the implementation of the sentences including prison or alternative sanctions. The Autonomous

⁴⁹ Based on the chapter by Jaume Martín, 2004, in Miers and Willemsens, 125-130, used with the permission of the publisher. This text has been adapted and updated by the same contributor and by Marta Ferrer, Pilar Lasheras and Clara Casado.

Community of Catalonia represents an exception having had full competency over the penitentiary system since 1984.⁵⁰

5.1. LEGAL BASE

5.1.1. Juveniles

Restorative justice provision in the case of juvenile offenders has been authorized since 1992 by Law 4/92 regulating the juvenile courts (*Ley Reguladora de las competencias y el procedimiento de los Juzgados de Menores*). This was replaced by Law 5/2000 regulating the penal responsibility of juveniles (*Ley Orgánica 5/2000 reguladora de la responsabilidad penal de los menores*), which came into force on 13 January 2001.

The penal law for juveniles formalises mediation as an integral part of the judicial process dealing with young offenders. In addition, the courts may, with the offender's consent, impose a community service order (*prestaciones en beneficio de la comunidad*) as an independent sentence.

5.1.2. Adults

There is no explicit legal basis for victim-offender mediation in the field of adults. Nevertheless the Penal Code (1995), which came into force in 1996, the regulations governing the execution of sentences, and the penitentiary system, all provide legal 'entry doors' by recognising certain legal benefits to the offender when there is grounded evidence that s/he has repaired the damage caused to the victim. The legal consequences foreseen for reparation may vary depending on the stage of the criminal process.

5.2. SCOPE

5.2.1. Juveniles

In a separate development, Catalonia supported in 1990 the introduction of a more comprehensive diversionary scheme for juvenile offenders. This pilot project was successfully concluded in 1992. Soon after, Law 4/92, which included for the first time in Spain restorative justice practices (reparation and reconciliation), was approved.

The Law 4/92 as amended created two restorative justice possibilities. The first is diversionary in effect. If the offender has made reparation or is ready to do so, art. 2.6(a) provides that the prosecutor may propose a stay of prosecution.

Secondly, according to art. 3, the court may postpone sentencing pending a mediated settlement in which the offender agrees to make reparation. This procedure follows a two-stage process. The first stage is an evaluative meeting between both parties, with a view to proposing to the court a reparative or conciliatory programme for the offender to complete. Assuming acceptance, the programme is implemented under the mediator's supervision. Upon

⁵⁰ The State of Autonomies is organized territorially into 17 Autonomous Communities and the two Autonomous Cities of Ceuta and Melilla, on the African continent. The distribution of legislative powers between the Central Government and the government of the Autonomous Community will depend on the theme being subject to legislation. There are matters for which the legislative power lies exclusively with the Central Government. There are other policies for which the Central Government is entitled to legislate to the extent possible within primary legislation (laws) and the power to introduce the secondary legislation, namely regulations and bylaws, is reserved to the Autonomous Communities. Furthermore, there are also some policies in which the Central Government holds only the legislative power to make basic policy guidelines (*bases*). In such cases the autonomous governments are then responsible for providing the legal provisions, including both laws and secondary legislation although always in accordance with the Central Government basic policy guidelines. This situation of shared legislative powers, often makes it unclear as to who is entitled to legislate which matter, to what extent and with which type of legal instrument. This situation may result in a 'conflict of competencies' either because there is an overlap of legislative instruments over certain policies or because certain matters may have been left unlegislated.

completion (or otherwise), the mediator reports to the judge, who decides what further action to take as regards sentencing.

If the victim does not wish to participate, the court may take into account the offender's willingness to do so as indirect reparation. In the Spanish juvenile justice system the primary focus of mediation is on the offender.

These possibilities previously applied to offenders aged 12 to 16; Law 5/2000 has raised both the lower and the upper limits to 14 and 18. Minors aged 14 years old and under are not considered criminally responsible according to current Spanish legislation.

Following the reform of the Penal Code in November 2003, offences punishable by up to five years of prison are eligible for victim-offender mediation.

5.2.2. Adults

The Penal Code introduced reparation of damage done to the victim as one of the new mitigating circumstances, should the reparation be accomplished before the trial.

The Penal Code also provides a legal basis for the adult community service order (*trabajo en beneficio de la comunidad*) in two different models: as an independent sanction and as an alternative to prison sentences up to one year (exceptionally up to two years). Fines are also established in these two models.

The Penal Code furthermore stipulates the possibility for the judge to suspend a prison sentence. This is applicable to crimes punishable by prison sentences up to two years and, in exceptional circumstances, up to five years. During the period of the suspension of the sentence, the offender may be required to complete certain obligations under supervision; a mediation process could be recognised as a legal effect equivalent to these obligations.

In Spain the Ministry of Interior, *Dirección General de Instituciones Penitenciarias*, is responsible for the execution of alternative sanctions, except in Catalonia where, since 1984, the Department of Justice of the Autonomous Government has been responsible.

Policies designed to advance mediation and alternative sanctions for adult offenders have so far not been fully developed in all Autonomous Communities.

Spanish penitentiary legislation creates a system in which the serving of the sentence is divided into different degrees or stages, following the scientific individualization model. The progression from one degree to another is decided upon using different criteria based on the favourable evolution of the inmate towards his/her re-socialisation. On these grounds different penitentiary benefits can be awarded including parole or conditional release.

According to specific articles of the penitentiary legislation, having repaired or even having attempted to make reparation can be considered as a sign of re-socialisation. Within this legal framework, the agreements derived from a victim-offender mediation process have full legal effect (Vall, forthcoming).

5.3. IMPLEMENTATION

5.3.1. Agencies: establishment, structure and intervention types

5.3.1.1. Juveniles

In Spain there is a combination of public and private agencies carrying out restorative justice programmes for juveniles.

Generally the mediation programmes are managed by the Technical Advisory Teams (*Equipos Técnicos*) because of their close position to the prosecutors and judges in the judiciary system. In some Autonomous Communities these teams of social workers belong (in an administrative and functional sense) to the juvenile courts; in others, as in Catalonia and the

Basque Country, the Department of Justice of the Autonomous Community employs its own specialized teams to bring these services to the judiciary (for advice and mediation). Some others contract mediation programmes to private associations.

The funding agency for victim-offender mediation for young offenders in Catalonia (Martín, 2005) is the Department of Justice. In Barcelona, which handles 75% of the caseload, there are four teams composed of 12 persons each (social workers, psychologists and mediators). On each team, half of the staff deals only with mediation while the other half advises judges and prosecutors on the psycho-social aspects concerning the minor. There is also one team of ten professionals dealing with the same tasks in each of the other provinces (Girona, Lleida and Tarragona).

In the Basque Country this competence belongs to the Department of Justice, and is managed by the Service of Juvenile Justice of the Directorate General of Human Rights and Cooperation with Justice. Since 2002 it has been responsible for the implementation of measures ordered by the Juvenile Courts. The Plan for Juvenile Justice drawn up by this Service for the period 2004-2007 includes among other goals, the promotion of victim-offender mediation. According to this Plan, this measure is viewed as a means to increase the role of victim and offender in the process of managing the consequences of a crime.

In Seville the Reconciliation and Reparation Team of the Asociación Alternativa Abierta works in collaboration with the Public Prosecutor's Office of Sevilla. Mediation might be carried out between the victim and the young offender when the prosecutor allows for an extrajudicial solution during the initial phase of the procedure.

In Madrid, the NGO TRAMA, funded by the Autonomous Government, runs the victim-offender mediation programme with juveniles.

In the case of Catalonia the purpose behind the Department's initiative is 'to encourage the young offender to take responsibility for the resolution of conflicts by means of mediation between the victim and/or the community. Ultimately the objective is to repair the damage and to foster participation by all parties in the decision-making process' (Trujillo, 2000). The same approach underlies the practice of the other existing victim-offender meditation schemes for juveniles in Spain. Possible differences in approach are due rather to the individual methodological practice of the mediator.

5.3.1.2. Adults

All the mediation programmes for adults are currently run by NGOs financed by public bodies, mostly the autonomous governments.

The first victim-offender mediation programme was set up in Valencia in 1993 as a result of the collaboration between the Victim Service of the Autonomous Government, and a particular court of that city (*Juzgado de Instrucción no. 2*). This collaboration did not develop further (Gordillo, 2005).

In 1998, another programme was started in the Basque Country on the initiative of the Victim Service of the Autonomous Government in collaboration with a Court of the city of Vitoria (*Juzgado de Instrucción no. 4*). The programme was stopped after one year of operation due to the divergences between mediators, judges and prosecutors in the interpretation of the legal provisions.

In the November of the same year, a victim-offender mediation project with adult offenders was initiated in Catalonia. During the first year the programme was handled by mediators belonging to the juvenile probation services of the Department of Justice of Catalonia, which has been funding the scheme since then. In 2000 the Mediation-Reparation Programme evolved from a pilot project to an established scheme. Since then, it has been run by two different NGOs under the supervision of the Service of Alternative Penal Measures of the

Department of Justice which funds the scheme (Dapena and Martín, 2006).⁵¹ The scheme has gradually been extended and it currently receives referrals from the four provinces of Catalonia (Barcelona, Girona, Lleida and Tarragona).

Furthermore, within this programme a pilot project with young adults on remand was started in the prison centre for offenders aged between 18 and 25 years old, situated in Barcelona. In 2007 a similar protocol was started in the Penitentiary Centre of Ponent in the city of Lleida, for adult offenders.

In Madrid, the NGO Asociación APOYO started their programme in 2001, initially only addressing drug offenders, but slowly expanding its scope.

In other Autonomous Communities like the Canary Islands or Malaga, victim services have undertaken initiatives to implement victim-offender mediation schemes but their attempts have not succeeded. The Victim Service of La Rioja, belonging to the Autonomous Government, began a pilot project in 2000 which was unfortunately discontinued after a year due to divergences in the interpretation of the law between judges, prosecutors and the mediation service (Gordillo, 2005).

Currently several new programmes are being set up in the adults' jurisdiction.

A pilot project was initiated in 2005 under the auspices of the General Council of the Judicial Power (*Consejo General del Poder Judicial*),⁵² aiming to comply with the Council Framework Decision on the Standing of Victims in Criminal Proceedings.

This pilot project has been introduced in eight Spanish cities: Madrid, Pamplona, Jaen, Zaragoza, Calatayud, Sevilla, Bilbao and Vitoria. The basic working protocols establish the following:

- The types of crime amenable to mediation are non serious offences such as assaults, thefts, threats or crimes derived from the violation of parenting duties (visiting rights or alimony), injuries resulting from a fight between relatives or other family related conflicts.
- The cases are referred by the judge at the trial stage just before the hearing takes place. Once the investigation of the case has been finalised, the case is passed onto another judge who will preside over the trial and who is also the one who frequently passes sentence on the above-mentioned types of crime. This judge may consider referring the case to mediation before the hearing takes place.
- The possible legal effects of a mediation agreement are either mitigation of the sentence or petition of the minimum penalty by the prosecutor. These are only options and the judge will always retain the discretion to decide otherwise. If any of the above-mentioned options is eventually decided upon, the procedure is simplified. In cases where the victim is entirely satisfied with the reparation, the formal hearing could even be avoided without the victim or the witnesses having to appear.

Furthermore, the NGO Asociación de Mediación para la Pacificación de Conflictos, in collaboration with the Spanish prison fellowship (Pastoral Penitenciaria) is running restorative justice-oriented programmes in several penitentiary centres. These agencies started to introduce these programmes in 2005 and they are now being implemented in the prisons of CP Madrid III and in CP Zuera.

⁵¹ In the period of 2000-2005 the programme was carried out by the NGO ACDMA (Associació Catalana pel Desenvolupament de la Mediació i l'Arbitratge). From 2006 onwards it has been run by ABD (Associació pel Benestar i Desenvolupament).

⁵² The General Council of the Judiciary represents the higher authority of the judiciary body in Spain.

The project has two related aims. On the one hand it aims to improve the coexistence of prisoners. It also aims to reduce the level of tension by applying a peaceful conflict resolution approach (mainly through mediation) to the conflicts and tensions arising between inmates in daily prison life. On the other hand it seeks to encourage offenders to take responsibility and restore the harm caused to the victim through mediation. The mediators are trained volunteers with most of them previously involved in prisoner support activities under the aegis of the Pastoral Penitenciaria.

In the city of Burgos, the association AMEPAX set up a Penal Mediation Service in 2006. The programme runs in accordance with a collaboration protocol established with the Public Prosecutor's office of Burgos and Castilla y León.

This programme, which deals with misdemeanours and crimes, chiefly at the pre-trial stage is at present being financed by the Autonomous Government of Castilla y León although in the course of the development of the programme the City Council of Burgos has also provided funding for more concrete activities carried out within the project (Asociación AMEPAX, 2007).

A new Penal Mediation Service (*Zigor Arloko Bitartekotza Zerbitzua*) for adults in the Basque Country was set up in July 2007 in the courts of two different cities, Barakaldo and Vitoria. It is funded by the Autonomous Basque Government and it is being run by GEUZ (Centro Universitario para la Transformación de Conflictos) in Barakaldo and IRSE (Instituto para la Reintegración Social) in Vitoria.

With this initiative, the Autonomous Basque Government seeks to humanise the criminal justice system and increase victims' satisfaction. It is a response to the political will to reach standards in restorative justice comparable to other European countries as well as to take part in the existing international mediation networks.

This new project is built based on a collaboration agreement between the Basque Justice Department, the Barakaldo and Vitoria courts judicial authorities and the Public Prosecutor's Office. Given the lack of an explicit legal basis for victim-offender mediation in the field of adults in Spain, this agreement constitutes an essential element. New services in other Basque cities are being implemented progressively.

An independent evaluation of the Penal Mediation Service of Barakaldo has been conducted by the Basque Institute of Criminology of the Basque Country University (Euskal Herriko Unibertsitatea).⁵³

The Catalan scheme, the project run by AMEPAX and that of the Basque Country, work by making use of the legal 'entry doors' provided by the Penal Code and the penitentiary legislation mentioned above.

5.3.2. Referral numbers

5.3.2.1. Juveniles

In 2004, a total of 21,538 measures and sanctions for juveniles were executed in Spain but only eight Autonomous Communities provide official data about the different types of measures applied.

⁵³ See Varona, 2008.

Of a total number of 11,666 measures, 4,370 consisted of mediation. According to this information, victim-offender mediation represents 27.25% of the different possible judicial responses applied to young people.

Autonomous Community (2004)⁵⁴	Measures involving victim-offender mediation	Total number of measures and sanctions
Aragón	450	625
Asturias	39	744
Baleares	203	772
Castilla-La Mancha	571	931
Castilla-León	46	1,565
Cataluña	1,824	4,442
Madrid	836	2,587
Euskadi	401	-
Total	4,370	11,666

This data could reflect the different ways in which mediation is conceived in each Autonomous Community. When compared to the use of other measures and sanctions applied to young offenders, it seems that victim-offender mediation does not play the same role in every Autonomous Community. There might be different reasons for this, for example the different approaches of juvenile workers who carry out mediation.

From a more qualitative perspective, Dapena and Martín conducted three research projects on the victim-offender mediation programme for juveniles in Catalonia during the period 1990 – 1999 (1999). They found the following:

Concerning participation and interest of the stakeholders:

- 6,624 offenders and 4,279 victims voluntarily participated in the programme;
- 25% of juvenile offenders in Catalonia participated in the programme before the end of 1996 and 50% did so from the beginning of 1997- January 1999;
- 78% of offenders were male, 22% were female;
- 63% of the total number of crimes committed by the young offenders were property crimes;
- 87% of victims agreed to participate although not all of them had the same level of interest.

⁵⁴ Ministerio de Trabajo y Asuntos Sociales, 2005.

Concerning the results of the process:

- 59% of mediation cases were carried out with direct or indirect participation of the victims;
- in 12% of cases the parties had already solved the conflict on their own initiative before the first contact with the mediator;
- in 20% of the cases, the mediation was held and agreements were reached with the assistance of a mediator but without involving a direct encounter between the parties;
- in 27% of the cases, the parties attended meetings, in the context of which agreements were reached;
- in 30% of cases different out-of-court solutions were sought without the participation of the victim;
- 11% of cases ended without obtaining positive results.

5.3.2.2. Adults

With regard to the programme in Madrid, 85% of the total amount of cases were crimes against property and 15% were crimes against public health (drug-related generally). In 2006, 215 cases were dealt with, 60 of them within their victim-offender mediation programme. One third of them were dealt with during the execution of sentence.

In Catalonia, during 2006, 459 cases were referred to the programme and 382 were finalised. In 2007 the caseload of the programme experienced a considerable increase with 793 cases referred out of which 604 were finalised.⁵⁵

Among the cases finalised, 36.92% were referred by the judicial authorities, 0.33% by the prosecutor, 17.71% by the different psychosocial advisory teams (including those who work assisting the courts and those working in the penitentiary centres) as well as the professionals in charge of the follow-up of the alternative sanctions. 33.44% of the referrals were on the initiative of the offender and 9.27% were on the initiative of the victim.

With regard to the type of offences dealt with in mediation 26% were crimes against property, 22% property damage, 21% bodily harm, 16% threat, 6% slander and 5% were crimes related to family conflicts, amongst others.

Concerning the type of agreement reached, 59.17% had a moral or relational content (including apologies or arrangements to define the future relation between the parties), 23.97% entailed material reparation, 8.98% had a purely economic dimension and 7.86% consisted in a reparative activity to be accomplished by the offender.⁵⁶

At its initial stages of the implementation, the programme run in Castilla y León, during the period of November 2006 until December 2007 has dealt with 29 cases of which 18 have been completed with an agreement. Whereas 94% of the referrals come from the public prosecutor's office, 4% of the cases proceed from the courts and the remaining 2% of cases have been initiated on the initiative of the lawyers or the parties themselves (AMEPAX, 2007).

With regard to the Penal Mediation Services set up in the Basque Country, in the first semester of the programme there have been 116 referrals of which 80 cases have been finalised. 55% of the cases have been referred at the pre-trial stage, 37.50% during the trial stage and 7.50% at the stage of execution of the sentence. The judicial authorities are the primary source of referrals.

⁵⁵ In 2006 the team was formed by four mediators and in 2007 four more staff members were hired. At present there are six mediators, one administrative assistant and one coordinator.

⁵⁶ Secretaria de Serveis Penitenciaris, Rehabilitació i Justícia Juvenil, 2007.

The contents of the agreements reached are as follows: 53.57% have a personal or moral content (formal apologies or personal reflection in writing), 14.28% implied a commitment by the offender to undergo a therapeutic treatment, 13.09% entailed payment to the victim and 4.76 involved community services to be carried out by the offender.⁵⁷

5.3.3. Evaluation findings

Several evaluative research projects have been conducted since the first schemes were set up. Only a summary of the findings of part of them is provided here.

On the basis of their evaluation of the Catalan experience with juveniles, Dapena and Martín (1999) concluded that in general the experience of mediation increases the parties' satisfaction and improves their perception of the criminal justice system.

Overall victims and offenders tend to feel that their needs have been better attended to by these initiatives than by the judicial process and appreciate having been given the opportunity to participate in the decision-making process.

The victim-offender mediation process reveals an important distinction between the seriousness of the crime as defined by the law and the seriousness of the crime as perceived by the parties in conflict.

Dapena and Martín evaluated the Mediation-Reparation Programme after the first year of implementation. The evaluation was designed with the use of quantitative and qualitative instruments in mind. Victims and offenders were consulted about their experiences, mediators made contributions by means of filling in different questionnaires and attending working meetings. Different judges were interviewed to give their opinions on restorative justice. One of the main conclusions of the study focuses on the need to promote legal reforms that introduce more flexibility in the criminal proceedings, namely, to widen the prosecutor's powers and to promote a shift towards the principle of discretionary prosecution or public interest test in the Spanish criminal justice system.

More recently, within this scheme a qualitative study is being conducted with the aim to analyse the parties' perception and understanding of the mediation process and their degree of satisfaction. A range of different aspects are being asked to the parties through a questionnaire.⁵⁸ According to the preliminary findings, most of the respondents expressed the view that the process had met their expectations (96%) and that the mediation evolved according to the information they were provided with at the outset (98%).

Amongst other questions the respondents have been asked whether the mediation process has helped them to:

	Victim	Offender
Understand better the behaviour of the other party	64.3%	75%
Understand better the reasons leading to the conflict or crime	71.4%	82.4%
Improve their knowledge about the functioning of the criminal process.	94.4%	88.9%

Furthermore, 90% of the respondents stated they would recommend participating in a mediation process to other people who may be involved in a criminal process. When asked whether they would apply for mediation if they were again party to a judicial process, 96% answered positively.

⁵⁷ Dirección de Ejecución Penal, 2008.

⁵⁸ The results provided correspond to the second semester of 2007 and are based on a sample of 48 respondents.

Interestingly, whereas 12% of the respondents viewed their participation in a mediation process as not improving their perception of the justice system, 88% considered the opposite.⁵⁹

As mentioned earlier, the Basque Institute of Criminology has carried out an evaluation project of the Penal Mediation Service located in Barakaldo. For this research different qualitative methods were used: study of the documentation of the service, direct observation of the mediation practice, questionnaires addressed to the judicial authorities and prosecutors and interviews conducted via telephone with victims and offenders. These interviews aimed to assess participants' satisfaction as well as their perception about the impact of having participated in a mediation process.

The findings of this research are included in an extensive report and it is not possible to go into detail here although it is worth briefly mentioning the report's general conclusions. These appraise to what degree the different aspects analysed have met the core principles of restorative justice. It is pointed out that there is room for improvement in aspects such as the number of cases handled by the service and the benefit of the scheme for the community or for the justice system amongst others. By contrast, the mediators' practice, the participation of the parties as well as the collaboration relationships with other criminal justice system agencies and the theoretical framework applied have accomplished the restorative justice values to a 'very high' or 'high' degree (Varona, 2008, 92-94).

5.3.4. Other interventions

In the field of juvenile criminal justice, a different type of project has been implemented in Catalonia since 2005 by the Department of Justice called the Community Prevention Plan for Juvenile Delinquency at the Local Level (*Pla de prevenció comunitària de la delinqüència juvenil en l'àmbit local*). It aims to give specialised advice to municipalities on how to address common conflict situations arising in a town's daily life which could eventually lead to juvenile criminal behaviour. The goal is to encourage the municipality to build on its own resources by creating more partnerships and cooperation between agencies and other stakeholders working in the community.

Two experienced mediators from the Penitentiary Services and Juvenile Justice Department start the meetings with the city council authorities and other relevant agencies of the municipality. The possible reasons for the problems and the resources available are analysed. Local authorities and agencies discuss the best way to coordinate their intervention in order to design local policies for prevention and social integration of 'juveniles in social conflict'. The objective is to design policy plans which are as comprehensive as possible in order to prevent further conflict and juvenile offending and tackling the possible causes. Partnerships and collaborations are built and mutual knowledge is shared and strengthened at the local level.

The resolution of the natural difficulties arising from living together in a community is to be achieved through the active participation of citizens, as well as mediation. To this end, the policy plans often include the establishment of community mediation services, educative campaigns on better co-existence and other programmes to improve the economic and social resources of families. At present, about 18 municipalities are involved in this plan.

There are numerous programmes in schools aiming to provide mediation training to children and youngsters or to introduce what is often known as the *culture of peace* approach in the educative community in several Autonomous Communities.

On the initiative of local public bodies, generally the municipalities, several community mediation centres have been implemented in the 2000s, seeing a rapid expansion in the last two years. At present there are 36 community mediation centres in Catalonia alone.⁶⁰ The

⁵⁹ Secretaria de Serveis Penitenciaris, Rehabilitació i Justícia Juvenil, 2007.

⁶⁰ Personal communication with J. Wilhelm, 2007.

programmes are commonly run by NGOs with funding from the municipality. The referrals very often come from the police, social services or schools. Community mediation centres are considered to be an effective conflict prevention instrument by increasing the satisfaction of those citizens whom otherwise would have addressed their conflict to the municipal offices or to the small complaints court. Some of the referrals concern a conflict that has reached the criminal courts. Policy on dealing with these conflicts varies depending on the centre.

In civil law, mediation becomes a compulsory feature for initiating certain types of law suit. Labour law principles require an attempt at 'conciliation' between the parties before a trial is held.

Family mediation has been implemented in the family law courts. The reform of divorce Law 15/2005 regulates mediation as a means to *'(...) try to obtain solutions by consensus on the topics being the object of dispute (...)'*. The mediation agreement can be included when initiating a civil procedure for a mutual consensus divorce or separation. The judge will probably integrate it in the judgement ruling on the divorce. Furthermore, the judge can also refer the case to mediation. There are family mediation centres and/or mediators' pools in different Autonomous Communities. To enrol in these pools, the mediator is generally required to be associated with the corporative institution corresponding to his/her profession (mostly lawyers, psychologists and social workers or social educators).

5.4. EVALUATION

5.4.1. Context

The Spanish penal system has in recent years introduced compensation, support schemes and support services for victims, and has witnessed a shift in penological thinking towards restorative models in the juvenile justice system.

Relying on a group of experts, the Juvenile Justice Directorate developed in Catalonia in 1990 the first mediation programme in Spain. This pilot project was successfully concluded in 1992, right before the enactment of Law 4/92 for juveniles which, for the first time in Spain, included reparation to the victim. Although it initially started as an offender-focused programme designed for young offenders, in the course of its first period (1990-1997), the programme evolved towards a neutral position between victim and offender.

The Catalanian Mediation-Reparation Programme for adults assumed a position of neutrality between victim and offender right from the outset when it commenced its pilot project in November 1998 and this has remained one of its strongest, fundamental principles. Currently, almost all the victim-offender mediation projects for adults being run in other Autonomous Communities are also following a neutral approach between victim and offender.

5.4.2. Current evaluation

Nowadays mediation is a very important practice in the field of Juvenile Justice in Spain; however, and despite the fact that, as can be seen above, several evaluation projects have been conducted, there is still insufficient information and evaluative research about the existing experiences.

Overall, the mediation schemes for adults still receive most of the referrals at the pre-trial and trial stage. According to a study conducted by Vall and Villanueva (2004), Spanish criminal law does not provide any prohibition or restriction on mediation; therefore the implementation of victim-offender mediation during the execution of the sentence could be promoted in a more systematic way.

It has been highlighted that there has been rather scarce communication and cooperation between victim support schemes and victim-offender mediation programmes. As a consequence of the complex distribution of powers and policies between the Central

Government and the Autonomous Communities, the degree of implementation of victim support programmes varies substantially from region to region.

Moreover, communication and exchange between mediators working in criminal matters in the different Autonomous Communities has until now occurred only on an intermittent basis. This can be partly attributable to the instability of some of the programmes. Although there are several organisations exclusively concerned with the promotion of peaceful conflict resolution methods and mediation in Spain, these have only regional reach, thus not all mediators working in the criminal field are involved.

Nevertheless, with the increase of new schemes, the communication between practitioners has been lived up and recently there have been different initiatives to strengthen networking between practitioners. Although for the moment no formal structure has yet been created it is to be hoped that the dynamics between mediators working in criminal matters in different Autonomous Communities will evolve positively.

5.4.3. Future direction

It is expected that mediation will assume a greater role in the implementation of sanctions, both for juveniles and adults. In this respect mediators and social workers dealing with alternative sanctions and other judicial orders are very interested in the continuation of efforts to increase the practice of victim-offender mediation projects throughout the country and mediation practice in other fields. However in order to make victim-offender mediation services general throughout the country, there is a need to influence the policy of the Central Government.

Indeed, there is the common feeling between practitioners and restorative justice advocates in general that only by means of proper regulation at government level will victim-offender mediation attain a consolidated status in the whole country so that restorative justice can have a substantial impact upon the Spanish criminal justice system. This should run simultaneously with proper planning and provision for resources not only for service delivery but also for monitoring the schemes.

On the other hand coordination between victim support services, offender services and mediation programmes, would be an important factor in fostering this change. To this end, better communication and the establishment of collaboration protocols not only with the judicial authorities but also with the penitentiary services and especially with victim support services, would certainly be beneficial.

On a different note, the Justice Department of the Autonomous Catalan Government has approved a grant of half a million euros in order to create the White Paper on Mediation (*Llibre Blanc de la Mediació*).⁶¹ This project will last eighteen months starting from January 2008 and consists of a thorough study of the development of existing mediation practices in Catalonia in all fields: school, family, labour law, civil and commercial matters, including mediation in the criminal field. This will include a research part to analyse different implementation protocols and the existent collaboration relationships between the different ADR practices and mediation in different fields. The financial costs as well as the social benefits will also be evaluated and a guide of good practices concerning implementation aspects will be created. Interviews with actors active in the field as well as field work and case studies will be carried out.

On the basis of these findings, general and specific indicators will be worked out in order to design statistical instruments to monitor the different types of programme. At a later stage,

⁶¹ This initiative reflects one of the objectives of the four-year strategic plan of the Justice Department which is to improve mediation in all fields: family, community, commercial and criminal matters.

these will allow a comparative evaluation to be conducted. Furthermore, recommendations for policy development will be drawn up including guidelines for legal drafting.⁶²

The Ministry of Justice is currently supportive of the implementation of victim-offender mediation in the adult field. Accordingly, a group of experts composed of magistrates, policy makers and practitioners has been nominated and is currently working on the development of a bill to introduce victim-offender mediation in the Penal Code. However, this is always vulnerable to the possibility of political changes thus it remains to be seen how this will develop.

6. TURKEY⁶³

6.1. INTRODUCTION

While different types of mediation and family conferencing strategies have for many years been part of Turkish culture and a traditional way of resolving disputes among members of the community, these processes have not been part of the justice system. Such informal mechanisms are viewed with suspicion. Due to the fact that hierarchical and patriarchal features have traditionally been influential in shaping Turkish society, there is a concern that informal mechanisms render the most powerless members of the society unprotected.

Therefore, law in Turkey has been considered as a tool for bringing about social change, rather than reflecting it. Ever since the formation of the Turkish Republic in 1923, legislation has been used as a means to modernise the country and its people by suppressing practices based on tradition and religion. Given this social context the introduction of less formal mechanisms into the justice system of Turkey has been a very painful process, viewed with mistrust and fear.

6.2. LEGAL BASE

Victim-offender mediation was introduced into the criminal justice system by the new Criminal Procedure Code (CPC) and the Turkish Criminal Code, which were adopted by the parliament in December 2004 and came into force in June 2005. At this time, victim-offender mediation is the only form of restorative justice mechanism existing within the criminal justice system.⁶⁴

It should be mentioned that this introduction of victim-offender mediation into the CPC happened as part of the sweeping reform of the criminal justice legislation. The Criminal Procedure Code (Law No. 5271), and other relevant laws, the Turkish Penal Code (Law No. 5237) and the Law on the Administration of Sentences (Law No. 5275) were adopted by the parliament in December 2004 and came into force in June 2005.

Since their adoption, some difficulties have arisen in the implementation of those laws in criminal matters. In light of this, additional amendment laws have been enacted with the goal of improving and simplifying their application.

The formulation of articles regulating victim-offender mediation in these legal provisions also left certain aspects unclear, thus these have also been subject to change through the Law amending different laws (Law No. 5560) passed in December 2006 (from now on referred to as the 2006 amendments), which aimed to clarify the many ambiguities of the initial CPC 2004

⁶² See Casanovas and Martín, 2008.

⁶³ Paper prepared by Galma Jahic in collaboration with Asuman Aytekin İnceoğlu, Ulaş Karan and Burcu Yeşiladalı. These authors have prepared a more extended version of this paper for later publication, edited by Miers and Aertsen (forthcoming).

⁶⁴ Different forms of mediation are also available under Tax law and Business law.

version. Hence, victim-offender mediation is currently regulated by the CPC amended by the Law No. 5560, which came into force on 19 December 2006.⁶⁵

According to this new legal basis, victim-offender mediation is applicable to both adults and juveniles, thus the mediation process to be followed and the types of offences amenable in either case are identical. Consequently, the Law on the protection of children (Law No. 5395), which regulates the criminal procedure for minors, has also been amended by the above mentioned Law No. 5560.⁶⁶

Since victim-offender mediation is a rather new procedure, there is very little experience in the field. Until recently there were no additional regulations providing information as to how exactly victim-offender mediation was to be implemented according to the amendments.

In July 2007, the Ministry of Justice issued a new Regulation on the implementation of mediation in accordance with the Criminal Procedure Code,⁶⁷ (from now on referred to as Regulation on the Implementation of Mediation). This regulation provides a more detailed definition of a number of aspects relating to the organisational arrangements or the mediation process, such as the eligibility criteria to be a mediator, the content of an agreement or the nature of the mediation costs, among others.

6.3. SCOPE

6.3.1. The motives for the introduction of victim-offender mediation in the Turkish criminal justice system

The articles of the CPC regulating victim-offender mediation do not give a clear indication of whether victim-offender mediation was introduced to improve the position of the victim in criminal procedures or the position of the offender. Nevertheless, the Explanatory Notes, prepared at the time victim-offender mediation was initially introduced in 2004, state that the aim behind integrating such a practice, was the protection of the victim. In fact, the Explanatory Notes state that victim-offender mediation represents a shift of focus from offenders to victims. To this end, victim-offender mediation is intended to ensure victims' satisfaction by making it easier for victims to obtain compensation through the introduction of conflict resolution means in criminal matters.

On the one hand this attitude is consistent with the general lines of the 2004 CPC, in which a chapter on 'Victim's rights' was for the first time introduced into the Turkish CPC. Hence, with the 2004 CPC, victims were given the right to a government-paid lawyer (which was previously reserved for defendants only), and their right to participate in the prosecution proceedings was further increased. This is now applicable not only to victims, but to all those who can demonstrate a loss as a result of an offence.

On the other hand, the Explanatory Notes also lay down that victim-offender mediation is expected to have a deterrent effect on the offender. By providing opportunities for him/her to take responsibility and repair the damage caused to the victim, it is expected that victim-offender mediation will promote the reintegration of the offender into society.

Finally, the issue of the courts' workloads has also been raised in the Explanatory Notes. It is a well known fact that courts and prosecutors' offices in Turkey are overburdened with cases. Peace courts in cities such as Istanbul may receive more than 1,500 cases a year per judge. Prosecution is equally overwhelmed due to the very limited room for discretion. This is evident from the fact that prosecutors are virtually forced to prosecute most if not all cases, even when the evidence is extremely weak. Many prosecutors and judges participate in

⁶⁵ Law No. 5560 also removed related provisions from the Turkish Criminal Code.

⁶⁶ Prior to this amendment, the offences eligible for victim-offender mediation were different for minors.

⁶⁷ Official Gazette No. 26594 of 26 July 2007.

hearings three to four days a week, having only one day a week to review and prepare cases, collect evidence and conduct investigation, amongst other functions. This caseload has been a major problem affecting the whole criminal justice system, and the 2004 criminal justice reform has tried to address this through different measures amongst which are victim-offender mediation and Alternative Dispute Resolution (ADR) mechanisms, in other fields of law.

In summary, it can be said that victim-offender mediation was introduced in Turkey with different aims. The primary goal was to improve the position of victims in the criminal procedure while at the same time creating the possibility of reducing court workloads and justice system costs. Furthermore, it is also regarded as a measure that will help the offender's reintegration into the community.

6.3.2. Eligibility criteria for victim-offender mediation

6.3.2.1. Offences amenable to victim-offender mediation

Prior to the 2006 amendments, all offences subject to prosecution based on a complaint were eligible for victim-offender mediation. This formulation was criticised because on the one hand, it excluded certain offences which were considered appropriate to be dealt with by mediation and, on the other hand because it included sexual offences, for which victim-offender mediation was not seen as appropriate. In particular with regard to the latter, it was feared that through victim-offender mediation, victims would be pressured by their families to accept mediation against their will in order to avoid the 'embarrassment' of a public trial. In light of these issues the 2006 amendments, while excluding sexual offences, have broadened the scope of victim-offender mediation to other offences not previously included. Hence, according to the 2006 amendments the offences now eligible for victim-offender mediation in both juvenile and adult cases are the following:

- All offences in which prosecution is based on complaint. Some examples are: threat (assault), defamation, harassment (by phone, or similar), damaging property. Moreover, a number of other offences, specified by the other special laws that include penal provisions, are included, e.g. Law on Intellectual Property or Patent Law.
- Other offences explicitly appointed by the law like deliberate (malicious) injury, negligent injury, breaking and entering a home (illegal trespass), kidnapping and detention of children or releasing protected information, such as business secrets, banking secrets or customer secrets.
- Sexual offences, as mentioned, have been excluded from victim-offender mediation, even if prosecution is based on a complaint, such as in cases of marital rape or sexual harassment.

6.3.2.2. Other criteria

Admission of guilt

In the 2004 CPC, the defendant was required to '*take responsibility for the harm caused*' by the offence in order to participate in victim-offender mediation. In the views of many legal scholars, this prerequisite placed the defendant in a disadvantaged position. His or her participation in victim-offender mediation could easily be considered as an implicit admission of guilt. In response to these concerns, this was completely eliminated with the 2006 amendments and today, the defendant is not required to admit guilt or accept responsibility in any way in order to participate in a victim-offender mediation process.

'Active remorse' criterion

The offences that are subject to '*active remorse*' provisions cannot be dealt with by mediation. '*Active remorse*' is a new legal concept, introduced with the criminal law reforms of 2005. Although its exact meaning may vary from one offence to another, its application essentially entails that a mitigation of the sentence can be awarded to those defendants who, on their own initiative, attempt to amend the harm caused to the victim, before the case is handed over to authorities or before the prosecution is initiated. By excluding these situations from being eligible for victim-offender mediation, the law is denying those offenders who are willing to repair the damage on their own initiative, the possibility of avoiding a criminal record.

Multiple offenders and victims

Scholars have also pointed out the issues that may arise when applying victim-offender mediation to cases with multiple offenders and victims. The 2006 amendments specify that a case can only be referred to victim-offender mediation if all victims involved in the crime agree. It is to be seen how victim-offender mediation sessions are to be organized in such cases, or how many mediators will be needed.

6.4. RELATION BETWEEN VICTIM-OFFENDER MEDIATION AND THE CRIMINAL PROCESS

Victim-offender mediation is primarily foreseen as a diversionary mechanism. A case can be referred to victim-offender mediation at the pre-indictment stage by the prosecutor. Judges can also make referrals at the trial stage. If an agreement has been achieved, victim-offender mediation will entail that the trial will not be held, thus having also at this stage of the criminal process, a diversionary nature.

6.4.1. Referral at the prosecution stage

The primary referring agent is the prosecutor. The CPC states that the prosecutor is obliged to offer the option of victim-offender mediation to the defendant and the victim. Both victim and offender are to be informed of the legal ramifications of victim-offender mediation. Where an agreement is reached and successfully fulfilled, the prosecutor will issue a *nolo-prosequi* decision.

Alternatively, when the parties are not formally referred to victim-offender mediation but they informally reach some kind of settlement or victim's compensation, they can document this agreement and present it to the prosecutor. If this is done anytime before the indictment has been issued by the prosecutor's office, the case will be treated as a case of successful victim-offender mediation.

It should be noted however, that if the parties have accepted to participate in a formal victim-offender mediation process but fail to reach an agreement, they cannot be referred again to mediation at any stage. In such cases, an informal agreement such as that just described, will not be accepted.⁶⁸

6.4.2. Referral at the trial stage

Judges are allowed to offer victim-offender mediation to the parties, but only in cases where the eligibility for victim-offender mediation has become apparent at the trial stage. If parties agree, the victim-offender mediation process will have the same legal implications as at the pre-trial stage. Once the agreement is fulfilled the judge will dismiss the case.

⁶⁸ It is worth mentioning that victim and offender can always reach an agreement in an informal way. Where the prosecution is based on a complaint, the withdrawal of the complaint by the victim will result in the conclusion of the proceedings. This agreement however, would not have the same legal recognition as one reached in an 'official', normal victim-offender mediation.

6.5. IMPLEMENTATION

As mentioned above, victim-offender mediation is a rather new option, and there is very little practice which could indicate how the victim-offender mediation process takes place. Legislation on victim-offender mediation changed only in December 2006 and only an additional regulation, issued in July 2007, is available, hence it is still not completely clear how exactly victim-offender mediation will be implemented. The explanation below therefore, is based on the current legal basis and the experience that has been accumulated up to this date.⁶⁹

6.5.1. Qualifications and requirements to act as a mediator

6.5.1.1. Persons who qualify to act as a mediator

Initially, the 2004 version of the CPC provided that only attorneys (practicing lawyers) were allowed to act as mediators. Nevertheless, due to various practical difficulties encountered in the implementation of this provision and further criticism raised by different professional groups and stakeholders, the regulation of the mediators' appointment, as well as the groups qualifying to act as mediators, have been subject to modifications in the course of the legal developments affecting victim-offender mediation.

According to the 2006 amendments, the groups qualified to act as mediators were attorneys (practicing lawyers), non-practicing lawyers (e.g. legal scholars or legal consultants) as well as judges and prosecutors. The 2007 Regulation has widened the eligibility criteria and now persons qualified in disciplines which, despite not being strictly law, include the study of legal topics (mainly related to the field of administrative, social and human sciences) are also permitted to act as mediators.

It should be noted that according to the formulation in the 2006 amendments, in practice judges and prosecutors could also act as mediators in their own cases. This could pose a serious limitation to their impartiality and objectivity if no agreement was reached through mediation and the criminal procedure was to continue. Likewise, the confidentiality of the mediation sessions would be breached. The Regulation on the Implementation of Mediation makes clear that prosecutors cannot mediate their own cases while no reference is made to judges.

6.5.1.2. Training and accreditation of mediators

Attorneys are required to enlist as mediators with their bar association but the legal provisions have not established further conditions as to training or experience which need to be met. Consequently, bar associations have developed their own regulations as to who can enlist for this service, therefore the criteria may differ from one bar to the other. The larger bar associations have set up Mediation Services, usually as part of their Criminal Legal Aid bureaus.⁷⁰

The Regulation on the Implementation of Mediation lays down that non-practicing lawyers and non-lawyers must register at the head office of the public prosecutor and require subsequent training. In particular, this training should include themes such as mediation, conflict analysis, mediation skills, and mediation developments in other areas of law. The

⁶⁹ As noted above, at the time this report is being written, only one regulation has been issued after the 2006 amendments, the Regulation on the implementation of mediation in accordance with the Criminal Procedure Code, published in Official Gazette No. 26594, on 26 July 2007, which will be described in the following sections. Further guidelines and regulations may have been adopted after this date but these could not be taken into consideration for this report.

⁷⁰ In Turkey, the bar associations have been entrusted with the provision and management of legal aid in both civil and criminal cases.

ethical aspects of mediation practice and victims' issues are also included. No mention is made concerning the length of the training or the way in which it will be organised.

At present, there is no body or institution that can regulate the activities of all potential mediators.

6.5.2. The practice of victim-offender mediation

6.5.2.1. The process

As mentioned earlier, the prosecutor has to offer victim-offender mediation to both parties in all cases that are eligible. This can also be done by a judge if the trial has already started. The legal consequences of their participation in the mediation process should be explained to the parties, as well as the consequences of their refusal to do so. In this respect, the Explanatory Notes of the 2004 CPC state that a very detailed explanation should be provided to the parties, but it stops short of describing the exact information that should be provided to both parties.

With the goal of addressing this matter, the Regulation on the Implementation of Mediation provides a template of the form that will be sent to the parties participating in mediation. This form intends to serve on the one hand as a means to realise the offer of mediation to the parties (either the prosecutor or the judge), and on the other hand to inform them on what mediation is and the legal implications it may entail. Should the parties agree to participate, they have to sign it and send it back to the court. Concerns are raised as to the format used in this form, as it is feared that the information provided in such legalistic language may not be accessible or comprehensible to the average citizen, thus becoming in practice a barrier to access.

If either or both of the parties refuse to participate, the criminal procedure will advance as normal. If both parties agree, the mediation process shall start. The 2006 amendments lay down the basic rules of the mediation process which are as follows:

- The mediator, upon prosecutor's approval, will have the right to receive copies of the document of the prosecution file.
- The mediator will have 30 days to complete the victim-offender mediation process. This period shall be extended by the prosecutor by an additional 20 days.
- The defendant, the victim and their legal representatives as well as the attorneys representing them, can be present during the mediation sessions.
- The mediator may consult the prosecutor as to how to go about mediating a particular case. The prosecutor can issue orders to the mediator in this regard.
- The mediator is responsible for preparing a report on the mediation process carried out and submitting it to the prosecutor, along with the other relevant documents.
- Victim-offender mediation sessions are confidential. The statements made during the sessions cannot be used as evidence.

There are neither further provisions nor regulations concerning aspects such as to how the mediator should first make contact with the parties. Nothing is provided either as to the type of mediation practice to be applied hence, for the moment, both direct and indirect mediation are possible.

Once the mediation process is completed, the mediator will submit the report to the prosecutor or the judge (depending on who referred the case). If an agreement is reached, only the terms and details of it should be described in the report. If no agreement can be reached this is to be reported to the referral source. In either case, according to the confidential nature of victim-offender mediation sessions, the report should not contain

further detail on how the victim-offender mediation procedure was conducted nor explain the reasons leading to the final outcome.

The prosecutor or judge have the discretion to refuse the agreement when there is grounded evidence that either of the parties did not act in free will, or in cases where there is an indication that the procedure used was not in adherence with the law.

If the agreement is accepted, it becomes enforceable following the terms of Law on Execution and Bankruptcy.

6.5.2.2. Possible outcomes of a victim-offender mediation process

The 2004 CPC stated that the defendant must compensate the victim for the financial and psychological damage caused by the offence either economically (by paying a certain amount) or in some other way. Due to the inexistence of any further specification with regard to other possible outcomes, in practice anything could be agreed through victim-offender mediation, ranging from participation in drug rehabilitation programmes to simple financial payments. Nevertheless, the Regulation on the Implementation of Mediation explicitly defines the possible terms that an agreement may contain. Technically, this entails that any other agreement terms that have not been foreseen by law become excluded, thus closing the door on the potentially creative solutions of the parties.

The terms that can be agreed through mediation are economical compensation to the victim as well as compensation by other means, for example the payment of a certain amount to a charity or to other organisations. Community work and apologies are also foreseen as acceptable terms of resolution.

6.5.2.3. The legal effects of victim-offender mediation on the criminal procedure

As a general rule, once the defendant completes the mediation agreement, the charges will be dropped and will not be reflected in the criminal record of the defendant.⁷¹

When the case has been referred at the pre-indictment stage, the prosecutor will issue a *nolo-prosequi* decision. However, if certain terms of the agreement are to be fulfilled at a later date, the prosecutor will postpone this decision until the agreed time period is reached. If the terms of the agreement are still not complied with, the prosecutor will issue an indictment.

When victim-offender mediation has been initiated upon the judge's referral at the trial stage, and the agreement has been fulfilled (immediately or in the agreed time period), the judge will issue a decision to discontinue the process, thus the trial will not take place. The judge will proceed with the case until a final ruling if the agreement is not reached.

It is worth mentioning that the law does not provide any indication as to how the implementation of the agreement will be supervised. It can be assumed that it will be up to the victim to inform the prosecutor when the defendant does not comply with the agreement, yet there are no guidelines in this respect.

When the referral to victim-offender mediation is made either at the pre-indictment stage or at the trial stage; if the agreement is reached and fulfilled in time, the crime will not be displayed on the criminal record of the defendant.

6.5.2.4. Specificities on the victim-offender mediation when a minor is involved

Although as mentioned earlier, the victim-offender mediation procedure is identical for both juveniles and adults, there are certain specificities of the mediation process when a minor is involved which deserve special attention.

⁷¹ In Turkey, only convictions are entered into the criminal record.

The legal guardian of a minor is given a very relevant role in cases where that minor is involved in a victim-offender mediation process. The legal guardian has to give his or her consent for the participation of the juvenile in the victim-offender mediation process. S/he has to be present during the mediation sessions. The agreement reached should also depend on the approval of the legal guardian. This prominent role is debated by some, who consider that it will lead to the minor's wishes being disregarded. Children in this way might be pressured by their families to participate in order to 'save face', even when the child may have been acquitted. This is also a concern for the victims of minor offenders whose rights may potentially be violated.

6.5.3. Funding

This aspect was also subject to change in the 2006 amendments. The costs of mediation, including the mediator's fee, are defined by law as 'judicial proceedings' costs, thus to be covered by the state treasury. The Regulation on the Implementation of Mediation establishes that mediators should be paid this fee regardless of the outcome of the process.

Once the victim-offender mediation finishes, regardless of whether an agreement has been reached or not, the judicial authority (the prosecutor or judge), shall determine the exact amount to be paid to the mediator. This fee will be determined according to the amount of work and effort invested; however, no indication of a maximum or minimum figure is provided.

This fee is to be paid by the state treasury once the mediation process is finished thus it is not necessary for the mediator to wait until the criminal process finalises. This fee, however, will need to be reimbursed by the offender to the state in such a case where no agreement is reached and results in eventual conviction.

The inexistence of any type of public body or institution responsible for the administration and implementation of victim-offender mediation raises questions as to how the payment of the mediation fee will be effectively organised in practice.

6.5.4. Referral numbers

Nation wide statistics on the use of victim-offender mediation have not yet been made available. Some preliminary information collected on cases of the Mediation Service of the Istanbul Bar up until the end of 2006 shows that in 2005, 17 cases were referred to mediation by prosecutor's offices, and 25 by judges. In 2006, 80 cases were referred to mediation by prosecutor's offices, and 129 by judges. Given the immense workload of the Istanbul courts, which receive hundreds of thousands of cases a year, many of which are eligible for victim-offender mediation, these numbers are extremely low. Out of the above mentioned 251 cases referred, victim-offender mediation was concluded successfully in 45 cases. Yet, in 168 cases the mediator did not report to the bar associations on the outcomes of the victim-offender mediation process, thus it remains unknown what the outcome of the mediation process was.

6.6. EVALUATION

6.6.1. Context

Victim-offender mediation was introduced as a part of a larger reform of the criminal justice system and as noted before, it encountered strong resistance from different actors. At political level, although it received sufficient support in the Parliament for the laws to be approved, it has been sharply attacked by the opposition parties. It is believed that the introduction of informal elements in the decision-making processes will increase instances of illegality and inequality among citizens.

The level of support for these reforms among the general population and members of the legal system is also debatable. On several previous occasions, other legal reforms have remained inapplicable in practice due to lack of resources. In fact, numerous changes have not

been implemented due to the lack of infrastructure, staff and funds, thus these repeated experiences have been another element fuelling the stakeholders' mistrust.

Many scholars have argued that most of the changes introduced have just been imported from laws of other countries, without even looking at whether they translate soundly into the legal culture and the social realities of Turkish society. In particular, some disapprove the introduction of victim-offender mediation for being an 'American practice that has no place in the European legal system', 'not in line with the Turkish culture of punitiveness', 'giving the rich the opportunity to pay their way out of the punishment', etc.

Many others view these reforms as Turkey's response to EU pressures, namely as changes which are 'forced' onto the country, rather than coming from within.

Most of these criticisms are initial reactions which indicate that little is known about restorative justice, or of its mechanisms, its goals, and other countries' experiences of it. Side by side with the lack of knowledge is the relevance of the positivist and formalist legal traditions which shape the Turkish justice system, and the working principles of its professionals. Judges, prosecutors and lawyers especially are very much resistant to the idea that the law can formally allow lay people to decide on how to address the consequences of a committed offence.

This culture of formality and rigidity in the justice system has made it difficult for both bar associations and the judiciary to conceive that people without legal education such as other professionals working in NGOs or lay persons, could have a role in the justice system. In fact, some members of bar associations have argued that mediators should have legal education and experience as practicing lawyers. This indicates that the practice of mediation, rather than being conceived as a profession in and of itself, is viewed as another legal mechanism and thus part of the services provided by an attorney. Additionally and underlying this approach is also the attorneys' concern that they may lose potential sources of income.

6.6.2. Current evaluation

At this time, it is still too early to appraise what impact the introduction of victim-offender mediation will have. Up until now, it can be said that victim-offender mediation has been used scarcely, partly due to the many ambiguities and unresolved issues surrounding its process and implementation.

It should be taken into account that in Turkey most government agencies have been going through fundamental reforms. The Ministry of Justice and the professionals working at the justice system in general have been particularly reluctant to integrate these changes and have posed considerable resistance to the 'new ways' of doing things. Particularly illustrative is the fact that following the reforms of the criminal law, many judges retired on the grounds of refusing to relearn the law and the new procedure. In Turkey, the justice system, and the Ministry of Justice in particular, is probably the most rigid governmental branch. For this reason, in general most justice system actors are appreciably distrustful of novelties, and victim-offender mediation clearly represents a new initiative in the criminal justice system.

The poor understanding of the restorative justice approach, its mechanisms and its potential benefits is clearly undermining the possible support for victim-offender mediation. Rather, victim-offender mediation is still perceived by most criminal justice system actors as just another unnecessary and futile reform.

With regard to the public's attitudes, a survey has recently been carried out. This survey has examined the degree of knowledge and understanding of what victim-offender mediation means to members of the general population. Among other aspects, the questions addressed to respondents further aimed to analyse how likely they are to avail themselves of victim-offender mediation as opposed to going to court. One of the preliminary findings of this

research indicates that the more knowledge people have about victim-offender mediation, the more inclined they are to participate in it.

It should be taken into account that, as noted earlier, different traditional forms of conflict resolution have their place in Turkish social life and are still used, especially in rural parts of the country. Therefore, despite the common belief that ‘Turkish people want to go to court’ it could be said that the social culture tends to be more conciliatory.

6.6.3. Future direction

Victim-offender mediation in Turkey is still in the early stages of implementation, thus a particular organisational model for Turkey cannot yet be identified. Certain details of the procedure still remain to be clarified and more importantly, a body or institution responsible for the implementation and administration of victim-offender mediation is still to be defined. While this is currently a difficulty, it can also be seen as an opportunity since Turkey has the possibility to benefit from the lessons learned in other countries.

Furthermore, as a result of a more general interest in promoting mechanisms for out-of-court settlements, not only in the criminal justice system but also in other fields of law, a bill on mediation in civil cases is being prepared. It is likely that this law will lead to the establishment of a central body responsible for the administration and organisation of mediation in civil and commercial matters. This could open a window of opportunity for a supportive structure for mediation in criminal matters under the responsibility of this institution.

Not surprisingly, awareness of ADR mechanisms is increasing in Turkey also at an academic level. Within the Istanbul Bilgi University an ADR initiative has been created. It gathers not only researchers and academics, but also legal practitioners interested in ADR in its different fields of application such as civil, commercial matters, labour, tax and bankruptcy law. Restorative justice practices can also be represented within this initiative, with the aim of broadening the promotion of restorative justice within the academic sector and helping to disseminate information amongst the legal practitioners who take part in the initiative.

Despite these favourable developments in other fields, it is clearly becoming crucial to raise public awareness in order to educate the public about restorative justice and inform them of the possibilities that the new legal reforms may provide.

7. BELGIUM⁷²

In Belgium, there is a range of restorative justice programmes with different scopes and organisational models. This plurality of schemes reflects the different aims, actors and political context that have influenced the implementation process in each case. Although the programmes have evolved at a different pace, it can be stated that, presently, all types of crimes at the different stages of the criminal justice process can be handled with a restorative justice response.

In light of the diversity of schemes, this chapter will follow a slightly different outline than the rest. The main headings will refer to the principal schemes in existence. Under each main heading the respective legal context, scope and implementation aspects will be addressed.

Before continuing with the analysis of restorative justice developments in Belgium, it is worth commenting on the way the Belgian state is organised. Belgium is a federation and this entails a complex distribution of competencies and policies between the different layers of the government, primarily the Federal Government and the three Communities (and economic regions).⁷³ In short, in certain areas the effective implementation of services may be hindered

⁷² Based on the paper prepared by Leo Van Garssen for this project.

⁷³ Belgium has three cultural Communities (the Flemish, the French and the German) and three economic Regions (the Flemish, the Walloon and the Brussels Region) under its Constitution. Brussels conurbation has a bilingual status.

by inconsistencies or flaws as a consequence of what is known as a conflict of competencies. This particular constitutional context has had an impact on the development of restorative justice practices in Belgium.⁷⁴

7.1. JUVENILES

7.1.1. Legal Base

Currently the legal authority for restorative justice practices in the juvenile field in Belgium is contained in the 2006 Law concerning the protection of juveniles and the taking into charge of minors who have committed an act described as a criminal offence and restoration of the harm caused by those acts (*Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade.— Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait.* - hereafter - the new Youth Law). The new Youth Law constitutes the legal framework of juvenile justice in Belgium and it results from a legal reform created by different amending laws to the Juvenile Justice Act of 1965 (Law of 8 April 1965 concerning the protection of juveniles) passed in May and in June 2006.⁷⁵

These laws, amongst other changes to the Juvenile Justice Act of 1965, introduce restorative justice into the Belgian juvenile justice system, providing a clear legal base for victim-offender mediation as well as other restorative justice practices, including conferencing. The scope is considerably broad: all types of offences are amenable to mediation either at the pre-trial or post-trial stage.

Prior to the introduction of the new Youth Law by the Federal Government in 2006, the need to reform several aspects of the Juvenile Justice Act of 1965 and amongst other things, the need to provide an explicit legal base to victim-offender mediation had been a matter of ongoing discussion for several years. Before the new Youth Law, victim-offender mediation was being implemented as an informal practice through a broad interpretation of art. 37.2 of the Juvenile Justice Act of 1965. Mediation was considered another possible ‘philanthropic or educational service’ that could be imposed by the juvenile court on a young person (Vanfraechem and Lemonne, 2005, 183).

7.1.2. Scope

According to the new Youth Law, the prosecutor shall offer mediation at the pre-trial stage if the following conditions apply:

- serious indications of guilt exist;
- the young person does not deny the act described as a criminal offence;
- a victim has been identified.

⁷⁴ Depending on the nature of the project and the interpretation made, restorative justice might fall under the competency of the Ministry of Justice or as a *persona*-related matter under the competency of the Communities or Regions.

⁷⁵ Law of 15 May 2006 modifying the Law of 8 April 1965 concerning the protection of juveniles, the Code of Criminal Procedure, the Criminal Code, the Civil Code, the new Communal Law and the Law of 24 April 2003 concerning the reform of adoption; Law of 15 May 2006 modifying legislation concerning the protection of juveniles and the taking into charge of minors who have committed an act described as a criminal offence and restoration of the harm caused by those acts; Law of 13 June 2006 modifying the legislation concerning the protection of juveniles and the taking into charge of minors who have committed an act described as a criminal offence and restoration of the harm caused by those acts.

When these conditions are met, mediation can also be proposed by the youth judge at the preparatory stage and at the decision stage of the procedure. Conferencing can be offered under the same requirements at the decision stage.⁷⁶

Once the referral is made and the restorative justice process has finished, the mediator⁷⁷ must write a brief report on the outcome to the referral source, including any mediation agreement or plan designed in a conference.⁷⁸ The prosecutor or the judge can only reject an agreement if it is contrary to public order. After ensuring the completion of the agreement, the mediator will report to the court on its fulfilment.

The prosecutor or the judge should take compliance with an agreement into account in their judicial decision. Prior to the new Youth Law, common practice was to dismiss the case when a mediation agreement had been reached. Currently, although a mediation agreement does not have a binding effect for either the judge or the prosecutor, it does have a relevant advisory value in influencing the court's final decision. This could lead to a dismissal of the case or a mitigation of the young person's sentence.

The new Youth Law explicitly highlights that, either when no agreement can be reached or when the agreement reached has not been complied with, the negative outcome of the mediation process should not be considered as an aggravating circumstance for the young person. The mediator will report to the judicial authority on the outcome of the process without however, revealing the content of the process and in particular any information related to the reasons why the mediation did not go through.

7.1.3. Implementation

7.1.3.1. Agencies: establishment and structure

Mediation is a service provided by different NGOs that, in most cases, are specialised in youth care and provide educational or prevention programmes. These NGOs are frequently involved in the implementation of juvenile community service orders and some of these agencies are also in charge of residential centres for young people. Mediators are professionals employed by these organisations.

Nowadays there is a mediation service in each judicial district in Flanders and one in Brussels which delivers the service in Dutch. In the French-speaking part there are 11 mediation services in Wallonia and three in Brussels. All of them are funded, respectively, by the Flemish and the French Community.

These schemes have a separate entity from the juvenile justice system and are generally physically located in different buildings. Although the mediators initiate the mediation process upon referral from the judge or the prosecutor, they work independently from the justice system.

It should be noted that the development of victim-offender mediation in the Flemish and French communities has followed distinct paths.

In the French speaking part of Belgium, a pilot project was set up in 1984. The development of victim-offender mediation was promoted by three, small NGOs working in the field of juvenile assistance: Arpège, Gacep and Le Radian. The pilot experience operated with cases in which the juvenile offender had to carry out a community service order. In order to encourage a more proactive attitude by the young offender, when the case was deemed appropriate, the

⁷⁶ It is not completely clear from the text of the law whether conferencing could also be offered by the judge at the preparatory stage (Vanfraechem, 2007, 5).

⁷⁷ When referring to conferencing, the neutral third party is commonly called 'facilitator'; nevertheless, the Youth Law uses the term mediator for both types of processes, mediation and conferencing.

⁷⁸ The new Youth Law indiscriminately uses the term 'agreement' and the term 'declaration of intent' to refer to the outcome of conferencing (Vanfraechem, 2007, 6). In this text, for convenience purposes, the term 'agreement' will be the only term used.

victim was contacted. If willing, s/he was involved and the possibilities of including the reparation of the damage as part of the community service were explored. This experience aimed to find new ways to address youth offending behaviour that could provide a more constructive intervention than the ones available under the Juvenile Justice Act, shaped by a rehabilitative and protective approach.

Since 1987 an agency has been responsible for administering juvenile community service orders in every judicial district of Wallonia (13 in total); however only the NGOs Arpège, Gacep and Le Radian were also carrying out victim-offender mediation practices. All the organisations concerned with services and measures for juvenile offenders, including mediation, formed a network known as Services for Educative and Philanthropic Measures (*Services de Prestations Éducatives et Philanthropiques*) which received funding from the French Community.

Arpège, Gacep and Le Radian set up a mediation project in 1993 independent of the alternative measures for juvenile offenders. From the outset, public funding received by these organisations for running these mediation activities was scarce. Moreover, in the second half of the 1990s, owing to political changes, support for mediation was withdrawn and the funding provision for mediation projects was ended. Only Gacep's mediation service was able to continue its mediation activity on the basis of other sources of funding.

Since December 2001, the French Community renewed institutional support for mediation for juveniles at the level of both prosecutors and judges. The Community increased public funding allocated to NGOs concerned with community service for juveniles, seven at that time, in order to expand the implementation of mediation programmes. Furthermore, a number of stakeholders actively involved in the field in the French speaking part of the country undertook different awareness raising and sensitisation activities. As a result, victim-offender mediation programmes for juveniles gradually started to increase their referral numbers and became more consolidated (Buonatesta, 1998).

In Flanders, Oikoten, an NGO based in the Leuven district, undertook a pilot project in 1987. Instead of limiting their intervention to simply administering juvenile community service orders referred to them by the court as provided by the Juvenile Justice Act, the youth workers also attempted to establish contact with the victim in each case. This strategy sought to realise the 'emancipatory pedagogy' ideal, which argues that the actual rehabilitation of the offender can be improved through measures aimed at strengthening the responsive attitude of the juvenile in a constructive way and avoiding interventions that tend to be overprotective of the young person. The Flemish youth workers considered also that the Juvenile Justice Act, although inspired also by the rehabilitative perspective, included measures that were usually applied and received as a 'mere penalty' without having a real educative effect on the young person. Moreover, these measures often did not pay enough attention to the victim's needs (Vanfraechem, 2005, 184).

During the course of this pilot project, the need to involve the victim in a more active and direct way became apparent. As a result, this pilot project initially based round the application community service orders, naturally evolved into a victim-offender mediation programme.

From 1995 onwards, new, similar initiatives were tried in other Flemish districts by other NGOs working with juveniles. In 1998, the Flemish Ministry of Welfare actively stimulated the generalisation of victim-offender mediation schemes in Flanders. These agencies, concerned with youth care and running the mediation programmes for juveniles, had been set up independently from one another, thus establishing their own, specific internal policies. As a result, they developed their own interpretation of restorative justice values.

The procedure designed by each agency to offer mediation, varied from one service to the other. Prior to the new Youth Law, in the absence of an explicit legal basis, judges and prosecutors from different judicial districts had defined different referral criteria and

procedures. The agencies working in a judicial district had adjusted their way of operating in order to accommodate the requirements of that judicial district (Vanfraechem and Lemonne, 2005, 190). As a result, it has become difficult to secure equal treatment for all young offenders.

This diversity in the specific restorative justice approach and divergences in the practical aspects have decreased over the years. As early as 2001, in light of this diverse context, the Support Service Special Youth Care (*Ondersteuningsstructuur Bijzondere Jeugdsorg*, OSBJ) was created with the mission to coordinate the existing mediation services for juveniles in Flanders. Since that time, this organisation has developed training programmes and informative sessions for mediators. Furthermore, aware of the diversity of approaches, the OSBJ also encourages the involvement of mediators in working groups to elaborate on theoretical topics of restorative justice or on practical aspects such as protocols, registration of cases or procedure. The recommendations ensuing from these working groups are disseminated among the different mediation services in order to promote more consistency between the procedures and practices carried out by each agency (Vanfraechem and Lemonne, 2005, 188).

In the French speaking part, an umbrella organisation called F.E.M.M.O. (*Fédération des Équipes Mandatées en Milieu Ouvert*) covers all the agencies running different programmes for young offenders, including the seven organisations implementing mediation. This federation also has coordination functions and provides a framework within which practitioners can discuss the methodological and theoretical aspects of their work.⁷⁹

The new Youth Law is expected to create more homogeneity in regard to the referral protocols used by the judicial authorities. Moreover, this will reinforce coherence in the practice and structures of mediation services.

7.1.3.2. Agencies: practice and intervention types

Victim-offender mediation is the restorative justice practice being applied by all the agencies involved in restorative justice for juveniles. Additionally, family group conferencing, although to a lesser extent, is also being practiced.

With regard to mediation, all the agencies follow a rather similar mediation methodology stated by the basic principles of voluntariness, confidentiality and active participation by the people directly affected by the crime-conflict.

When the mediation service receives a referral from the prosecutor or the judge, the mediator will contact the parties. The task of the mediator aims to facilitate communication between victim and offender and to create the opportunity for them to agree on the best way to deal with the damage caused by the offence. The stress is therefore on the process rather than on the outcome in itself. Although a face-to-face meeting is considered to be highly positive, mediators are very careful in respecting the personal readiness of the parties. Indirect mediation tends to be utilised more frequently than direct mediation.

The content of an agreement can consist of paying financial compensation or doing work for the victim. It can also involve a more symbolical arrangement, such as the offender being required to perform a particular activity or to offer an apology (Willemsens, 2004, 28).

Hergo

A type of family group conferencing has been introduced in Flanders under the name of Hergo, which stands for *Herstelgericht Groepsoverleg* (the Dutch term created to name family group conferencing).

Hergo initially started as a pilot project for serious crimes and ran from November 2000 until October 2003. This initiative sought to study how family group conferencing could be applicable to serious crimes in the social and cultural context of Belgium. This particular

⁷⁹ Personal communication with A. Buonatesta, 2008.

restorative practice aims to achieve the direct involvement of the community in the decision-making process and furthermore, aims to ensure that the victim is given a central role (Vanfraechem, 2003).

The approach introduced in Flanders corresponds to the New Zealand model in which the facilitator does not follow a script. The technique, however, has different phases including one in which the family has its own 'private time' to discuss the plan. Great attention is given to secure the central role of the victim in the process so that the process preserves a balanced focus between victim and offender.⁸⁰

In October 2003, the pilot project evolved into an actual programme implemented by five different agencies in Flanders.

According to a circular letter from the Minister of Justice, conferencing is now recognised as a restorative justice option that can be applied in similar conditions to mediation (Vanfraechem, 2007, 5). Therefore, in the context of the new Youth Law, it is foreseen that Hergo will be gradually implemented throughout the country.

The Compensation Fund

The NGO Oikoten established a Compensation Fund for juvenile offenders in Flanders in 1991. This initiative emerged from the need to provide juvenile offenders with the possibility to carry out reparation of damage caused in cases where the victim claimed financial compensation.

In such instances, the young offender has the opportunity to volunteer in agencies '*with a social, humanitarian or cultural character*' (Willemsens, 2004, 29). The choice of the activity the minor must perform is based on the educational needs of the youth. The number of working hours varies depending on the amount that must be paid to the victim. In exchange for the voluntary work, the Fund will pay the victim the corresponding financial amount.

7.1.3.3. Referral numbers

In total, the agencies concerned with juvenile offenders deal with approximately 2,000 to 3,000 cases of victim-offender mediations per year. The annual caseload of the Hergo programme was about 70 cases in 2007.

It should be noted that since the new Youth Law came into force on 1 April 2007, the caseload of victim-offender mediation has experienced a sharp increase throughout the country.

⁸⁰ The youth offender, together with his or her parents (or other supporters), sits on one side of the facilitator and his or her lawyer. The victim and his/her supporters (friends or relatives) sit on the other side. Next to the victim, a police officer might be present to symbolically represent the community. In some instances, the community can be represented by a teacher, a social worker or by other people linked to the victim or offender's neighbourhood.

After an introduction by the facilitator, every participant has the possibility to speak. This is the moment to express one's feelings and views as well as to ask questions concerning what happened. Then, the participants move on to 'family private time.' In this step, the offender and his/her caregivers debrief on what can be done in order to repair the damage. In the following stage, all participants come together again to discuss the proposals for reparation or any other action and to agree, if possible, on a plan to carry out the proposal.

The number of participants may vary depending on the case; victim and offender are invited to bring anybody they want to the process as long as a balance remains.

7.2. ADULTS

In the adult jurisdiction there are several types of restorative justice schemes. A first main distinction can be made between, on the one hand, programmes implementing mediation as a specific restorative justice practice and, on the other hand, a programme with the primary aim of introducing the restorative justice values in the penitentiary system, which undertake different type of restorative justice oriented interventions. The latter, which functions at a more structural level, is also referred to as Restorative Detention.

The mediation programmes, which operate at different stages of the criminal justice process, are based on different legal frameworks:

- mediation as a diversionary measure (Penal Mediation);
- mediation as a complement to the criminal process (Mediation for Redress, and Mediation during Detention);
- mediation for minor offences (Mediation at the Police Stage);

The different features and in particular the positions that each of these schemes has in relation to the criminal justice system, are to a great extent a reflection of the goals and context in which these programmes originated.

On 22 June 2005, the Belgian parliament approved a law which introduced the provisions concerning mediation in the Preliminary Title of the Code of Criminal Procedure and in the Code of Criminal Procedure (*Loi introduisant des dispositions relatives à la médiation dans le Titre préliminaire du Code de Procédure pénale et dans le Code d'Instruction criminelle - Wet tot invoering van beapalingen inzake de bemiddeling in the Voorafgaande Titel van het Wetboek van Strafvordering and Wetboek van strafvordering* - hereafter the Law on the General Offer of Mediation). This Law indicates there is a need to make mediation accessible at all stages of the criminal proceedings regardless of the type of offence. According to this Law, mediation is defined as a process that runs parallel to and independent from criminal proceedings (Van Camp and De Souter, forthcoming).

As will be further explained below, this new legal development brings about an important change for mediation schemes operating as a complement to the criminal procedure, namely Mediation for Redress and Mediation during Detention, which until now were being implemented without a legal basis.

Penal Mediation, by contrast, was soon provided with a legal basis, the Law of 10 February 1994 containing the regulation of a procedure for mediation in penal matters (hereafter the Law on Penal Mediation).

The Restorative Detention programme has received institutional recognition from the start. A circular letter by the Minister of Justice defined the mission of the so-called restorative justice advisors and restorative justice coordinators in a custodial setting (C.M. 1719, 4/10/2000 Circular Letter – Restorative Justice Advisors).

The full impact of the Law on the General Offer of Mediation is yet to be seen. By stating that mediation should be applicable at all stages of the criminal procedure, however, it could be argued that the new law's definition of mediation applies to all restorative justice schemes and practices operating in Belgium. If understood in this wide interpretation, less serious crimes would also fall under the scope of this law (Eyckmans, 2006), including petty offences and those crimes punishable by up to two years in prison, hence it is not clear yet how this new law will affect Penal Mediation and Mediation at the Police Stage.

7.2.1. Mediation programmes

7.2.1.1. Penal Mediation

Background

Victim-offender mediation began to draw attention from policy makers in the 1990s. At that time, the Belgian criminal justice system was undergoing a crisis of legitimacy and a loss of public confidence. Next to the impact of certain events that occurred in the criminal justice context,⁸¹ social discontent derived to an important extent from the fact that petty crimes occurring in a city setting were often being dismissed by the prosecutor (Van Camp and De Souter, forthcoming).

The principle of discretionary prosecution, applicable in Belgium, which only allowed for cases of public interest to enter the system, was at that time functioning as a means to somewhat alleviate the courts' excessive workload. This approach, however, led citizens, increasingly, to feel they were being ignored as well as giving a negative image of the criminal justice system.

In light of this, in 1993, a pilot project was set up in seven judicial districts of Ghent to explore a mechanism that would facilitate an efficient response to low intensity urban crime. Although it was not evaluated on a systematic basis, the response from the bar, the victims and the offenders as well as from the media was favourable (Aertsen, 2000).

Legal base

On the basis of this first experiment and the positive feedback received from the different stakeholders, the Belgian Parliament approved a law on 10 February 1994 which contained the regulation of a procedure for mediation in penal matters (the Law on Penal Mediation). The main aim was to introduce a diversionary scheme to give an efficient and fast response to petty crime and, at the same time, pay better attention to victims' needs and make the state's reaction evident (Van Camp and De Souter, forthcoming).

This Law on Penal Mediation introduced art. 216ter of the Belgian Code of Criminal Procedure by including victim-offender mediation as another diversionary measure available to the prosecutor.

Scope

Diversion in general can be applied to all offences that are not punishable by more than two years of imprisonment. There are four methods of diversion that the prosecutor can propose to the suspect: compensation or reimbursement to the victim (where the participation of the victim can take place through mediation), a medical treatment programme or therapy, community service or a training programme.

A case is diverted to mediation if it meets a number of additional requirements. Together with certain procedural aspects, the liaising magistrate will assess whether the offender has formally admitted responsibility for the offence and whether s/he is willing to get involved in penal mediation.

⁸¹ The famous Dutroux case, in 1996, which prompted a wide social reaction bringing together French and Dutch speaking Belgians, was only the corollary of a number of scandals that had been happening since the 1980's in Belgium. Several serious crimes, some of them involving politicians, had come to public light without the police or the judicial authorities being able to solve them. Negligent and inefficient was how Belgian citizens viewed their criminal justice system which, partly due to conflicts of competencies between different police forces and judicial instances, had not been able to clear up the crimes (see Brienens and Hoegen, 2000, fnn 8-10).

If the mediation results in a positive outcome and the agreement is complied with, the prosecutor will cease prosecution definitively and the public action will be extinguished. The offender will not need to face a trial or the risk of receiving a sentence.

If the mediation does not have a positive outcome, the prosecutor may decide to dismiss the case or to continue prosecution. In the latter case, the sentence cannot exceed two years of imprisonment or a more severe penalty of a non-custodial nature.

Withdrawal from the mediation process by one of the parties (or the refusal to participate) or the incompletion of the agreement previously reached cannot be an aggravating circumstance for either the victim or for the offender.

Implementation

This scheme is part of the criminal justice system, financed by the Ministry of Justice and is therefore available in every judicial district of Belgium. The estimated caseload is around 6,000 cases per year.

The liaising magistrate selects cases at the prosecutorial offices in accordance with the criteria mentioned above. The cases suitable for mediation will be referred to the justice assistants (also public officials) whose offices are located at the courthouse or at the Houses of Justice. The justice assistants will examine the case and make preparatory arrangements to initiate the mediation process. This includes informing the parties, assessing their interest in participating and making a preliminary exploration of the possibilities for the reparation of the damage. Once the consent of the parties is obtained, the justice assistant will then proceed to the actual mediation process. At this point, the parties will decide on how to repair the damage. This can include a joint session between victim and offender, but generally evolves in an indirect way.

If an agreement is reached, a formal session is organised before the magistrate responsible for the case. The magistrate can still impose additional conditions to be fulfilled by the offender. Once the agreement (and any additional conditions) is complied with, the prosecutor will dismiss the case. When the mediation agreement is not successfully completed, the justice assistant will report to the prosecutor who will then decide whether to continue to prosecute or to dismiss the case.

As mentioned before, introducing the option of mediation as diversion was meant to create an effective way of dealing with petty crime and to favour the involvement of the victim in the criminal procedure. Some have observed that, in fact, this practice tends to be settlement-driven. More specifically, it tends to place the emphasis on reaching an agreement concerning the financial compensation of the victim rather than on creating a space of communication between victim and offender.⁸²

On these grounds, it has been suggested that Penal Mediation might not have the realisation of restorative justice values as a primary goal. *‘Although the interests of the victims are here recognised and validated, the term “diversion” is explicitly repeated in all the relevant policy documents. Penal mediation was explicitly described as a probationary rather than a sanctioning or a restorative measure. (...) One of the Deputies in the Chamber even mentioned that he had the impression that the law was rather a means to improve the image of judicial institutions than to promote dialogue and participation.’* (Van Camp and De Souter, forthcoming).

⁸² See Aertsen, 2000, 177.

7.2.1.2. Victim-offender mediation as a complement to the criminal justice process: Mediation for Redress and Mediation during Detention.

Background

In 1993, the Research Group on Penology and Victimology at the Department of Criminal Law and Criminology of the Catholic University of Leuven launched a pilot project for victim-offender mediation involving serious crimes. The aim was to explore the possibilities of implementing mediation in serious crimes, namely to analyse the applicability of restorative justice principles to the full extent and not limit its scope to minor crimes. This project focused on offences which the public prosecutor had already decided to prosecute and, therefore, the mediation process was conceived as a complement to the criminal process and not as a diversionary measure.

The pilot project was set up in Leuven on the basis of the collaboration between the Department of Criminal Law and Criminology, the Leuven Prosecutorial Office and the Service for Forensic Welfare Work.⁸³ One part-time researcher and one part-time mediator were hired to carry out the evaluation of the three-year experiment based on case studies and independent interviews with victims and offenders (Aertsen and Peters, 1998).⁸⁴

This project gained a consolidated status with the creation of the Leuven Mediation Service in 1996 (*Bemiddelingsdienst Arrondissement Leuven, B.A.L.*), in which more partners, such as the City of Leuven, the prosecutor's office, the bar of lawyers, the municipal police and the national police were engaged (Aertsen, 2000, 159-160). This service brought together the project Mediation for Redress and the older mediation project for juveniles which was being run by the NGO Oikoten. Encouraged by the positive framework provided by this organisation, another initiative, Mediation at the Police Stage (see below), was introduced.

In 1997, the Ministry of Justice allocated funding to gradually implement Mediation for Redress throughout the country. The fact that the implementation of the mediation services in the field of adults has taken place progressively, has allowed a basic common model which incorporates the experience accumulated concerning mediation methodology and its link with the values and principles of restorative justice to be built. Therefore, it can be said that the schemes functioning as a complement to the criminal procedure (Mediation for Redress and Mediation during Detention) have been shaped within the same restorative justice approach.

The development of a common model of mediation for adults was also favoured by the creation of '*VZW Suggnomè, Forum voor Herstelrecht en Bemiddeling*' (Suggnomè) in 1998. Suggnomè is an NGO whose mission is to coordinate the implementation of Mediation for Redress in Flanders. Besides employing the mediators, this organisation also functions as an umbrella organisation, preparing the training and supervision of practitioners. Furthermore, Suggnomè is the visible entity leading relationships with the different institutions and agencies in the field.

In the French speaking part of Belgium, the NGO Gacep set up the mediation scheme as a complement to the criminal procedure in 1998 under the name *Médiation après Poursuites* (Mediation after Prosecutions, also known as Mediation for Redress). In 2000, Gacep promoted the creation of a separate agency in order to coordinate Mediation for Redress schemes in all judicial districts of the French-speaking part of Belgium. *Médiate: Forum pour une Justice Restauratrice et la Médiation* (Médiate), became the umbrella organisation for the French-speaking mediation schemes operating in the adult field.

⁸³ This project was initially funded by the King Boudewijnfund and, since 1995, by the Ministry of Justice.

⁸⁴ More information about the structure and the functioning of an action-research project according to the Belgian experience can be found in section IV. 3.

Stemming from the positive experience of Mediation for Redress, in 2001 a pilot project was initiated in both Flanders and Wallonia, to extend the possibility to apply mediation to cases that were at the stage of execution of the sentence.

Legal base and scope

Both programmes, Mediation for Redress and Mediation during Detention are aimed at victims and offenders of serious crimes. While Mediation for Redress deals with cases at the pre-trial stage, Mediation during Detention focuses on the cases in which the trial has already been held and the offender is serving the prison sentence.

Before the new Law on the General Offer of Mediation came into force, both Mediation for Redress and Mediation during Detention were applied in the absence of a legal basis. Therefore, the functioning of the programme, particularly the referral of the cases, depended on the ability of the mediation service to build strong cooperative relationships with the partner agencies. These agencies included the judicial authorities and the prosecutors' office in particular, the bar of lawyers, victim support and prison staff. Written collaboration protocols have been the instrument formalising this cooperation. Indeed, before the new law was approved in 2005, the receptiveness of the prosecutors varied substantially from one judicial district to another, and in some judicial districts only a few referrals were made.

The new Law on the General Offer of Mediation puts forth access to mediation as an option to be considered by every victim and offender irrespective of the type of offence and the stage of the process. Judges and prosecutors must inform both parties of the possibility of mediation. Judicial authorities can also refer cases. Furthermore, the law provides that mediation can be initiated upon the request of any person with a direct interest in the case.

Indeed, one of the main features of this law is to conceive mediation as a service that should be universally accessible to everyone involved in a criminal process. The government, recognising the experience accumulated over time and the degree of maturity reached, states the need to formalise the use of mediation in criminal proceedings and to make it generally available (Van Camp and De Souter, forthcoming).

One could claim that applying for mediation has now acquired the status of a 'right'. According to this, strictly speaking, the start of a mediation process will depend on the free choice of both, victim and offender (Van Garsse, 2007). The process does not rely on the referral made by the judicial authorities, who no longer hold the gate keeping function, but rather on the active demand of the persons involved.

The definition of mediation can be found in the Preliminary Title of the Code of Criminal Procedure and reflects the approach of the Council of Europe Recommendation No. R (99) on mediation in penal matters. Voluntariness, confidentiality, neutrality, active participation and communication appear as key words. In the framework of this law, mediation is primarily envisaged as a process to assist the communication between victim and offender.

It should be noted that the Law does not prescribe the specific procedure to be followed nor does it specify the legal impact of the mediation agreement in the criminal process.

Agencies: establishment and structure

Both programmes, Mediation for Redress and Mediation during Detention, are delivered by Suggnomè in Flanders and Médiante in Wallonia. Although they are funded by the Ministry of Justice, these are independent agencies functioning outside the criminal justice system.

These two NGOs are responsible for coordinating the implementation of the programmes in the whole of their respective regions and for hiring the mediators. Mediators are professionals who generally hold a degree in social sciences or humanities. They are not necessarily selected on the basis of their knowledge of mediation or restorative justice. Rather, their personal attitude and their knowledge of social and criminal justice related issues are considered

valuable aspects in the selection process. Once the mediators are hired, they will receive in-job training provided by the same agency. In addition to the initial training, specialised courses for continuous education are also offered by the organisation.

As noted earlier, Suggnomè and Médiante also act as umbrella organisations and as such, they are concerned with different types of activities that stimulate dialogue and exchange between mediators or raise awareness. Working groups have been created by mediators interested in studying a particular theme in depth that is related to the theoretical background of restorative justice. Networking and collaboration strategies with the academic world and other actors in the field are promoted on a regular basis. Furthermore, two encounters between mediators working in the French speaking part and in Flanders have been organised in the last two years.

The Law on the General Offer of Mediation states that mediation should be managed by private non-for-profit organisations that should be overseen by a Federal Deontological Commission on Mediation.

A Royal Decree lays down the criteria for the recognition of mediation services by the Ministry of Justice. The requirements aim to ensure the services' 'professionalism' and 'competence'. The conditions are basically linked to the capacity of the agencies to establish multidisciplinary teams and provide professional support to the mediators in their jobs. The establishment of a set of minimum criteria and the need for official recognition to set up a mediation service seeks to guarantee that throughout the country all citizens receive a quality service, regardless of the organisation in charge.⁸⁵

These requirements are inspired by the practice and the lessons learned through experience by Suggnomè and Médiante.

Furthermore, in Flanders, a steering committee has been set up in each judicial district. These committees are formed by a representative of each of the institutions involved in the implementation of the programme in order to streamline the coordination between partner agencies. The meetings take place once every two or three months and aim to address more general aspects of the scheme's implementation. They also aim to provide a space to build mutual understanding and trust between all the key actors as a means to cultivate collaborative relationships on a permanent basis. In order to reinforce and sustain the commitment of the different professionals and institutions involved in the steering committee the partners have signed a collaboration protocol in every judicial district.⁸⁶

By contrast, in Wallonia, collaboration with partner organisations has been built in a bilateral way between the mediator and the different partner agencies operating in the same judicial district.⁸⁷ In the judicial district of Brussels however, a steering committee has been set up.

Agencies: practice, intervention types and referral numbers

As a preliminary note, it should be mentioned that standards for good practice as such have existed only partially in Belgium. For Penal Mediation, the Minister of Justice Circular Letter of 30 April 1999 established basic guidelines on the practice of penal mediation (Common Circular COL 8/99 of the Minister of Justice and the College of general-prosecutors of April 30th 1999 - Aertsen, 2000, 170). With regard to Mediation for Redress and Mediation during Detention, this aspect is defined by the internal policy and deontological codes drafted by the agencies delivering the service. Training and supervision instruments provided to mediators serve to reinforce standards of good practice in an implicit way.

⁸⁵ Royal Decree of January 26th, 2006 concerning the creation of a Deontological Commission on Mediation and Royal Decree of January 26th, 2006 concerning the criteria of recognition of the mediation services (Van Camp and De Souter, forthcoming).

⁸⁶ See section IV 3. 7. 2.

⁸⁷ Personal communication with A. Buonatesta, 2008.

Furthermore, the collaboration protocols mentioned above, which are signed by the prosecutor's office and the partner agencies in each judicial district, establish a clear framework concerning the practical aspects of the referral procedure including the case-selection criteria. The signing of these protocols also serves to formalise the commitment of each of the partners in the implementation of the programme.

The Law on the General Offer of Mediation provides that a deontological code should be drawn up by the Deontological Commission. The deontological code should contain the basic principles and guidelines directing practice across the entire country.

The process of mediation followed in both Mediation for Redress and Mediation during Detention seeks primarily to create a space of communication between victim and offender, thus responding to a process-oriented approach. The mediator will always initiate the process with individual sessions with each of the parties. Although mediation evolves frequently in an indirect way and the mediator acts as a go-between, a face-to-face meeting can also take place depending on the willingness of the parties involved.

An agreement can include financial reparation, carrying out a specific activity, establishing rules for the future relationship between the parties, and apologies from the offender.

Before the approval of the new Law on the General Offer of Mediation, once the selection of the cases was made, generally the prosecutor's office would send a letter to the parties informing them about the existence of the mediation service. The mediator would call the parties if, after a period of time, none of the parties involved contacted the service on their own initiative.

The Law General Offer of Mediation provides that prosecutors and judges are responsible for ensuring that, at all stages of the process, the parties involved in the case are informed of the possibility of mediation; however, it does not set out how these informative steps should be carried out.

In practice, a basic procedure has been defined which works as follows: the judicial authority provides the parties with a letter or a leaflet offering the possibility of mediation and including the contact details of the mediation service. The mediation service will only start the process when it receives a request to do so from one of the parties involved.

With this approach, the intention is to emphasise the voluntariness and participation of the parties from the outset of the process. However, this approach also demands that a lot of attention is given to monitoring how the information reaches the victims and offenders and how the message of the offer of mediation is conveyed. To this end, a working group has been officially established by the Ministry of Justice in order to develop several instruments to inform the citizens either at the level of the general public or at the individual level when a person becomes a party in a criminal process. In order to ensure that the information can be properly understood by everyone, all informative materials or actions have to be carefully designed.⁸⁸

In Flanders the estimated case-load of Mediation for Redress is about 1,000 cases per year and between 100 to 150 cases for Mediation during Detention. In the French speaking part, the annual estimated figures for Mediation for Redress are also about 1,000 cases and about 500 cases per year for Mediation during Detention.⁸⁹

⁸⁸ The judicial authorities are responsible for ensuring that the parties involved in a criminal case are informed of the possibility of mediation. In practice, this is only done when there is an identifiable victim and the responsibility of the offender is clear. Either the investigating judge or the other types of judge will send a letter to the parties in which the possibility of mediation is explained and the contact details of the service are provided.

⁸⁹ Personal communication with A. Buonatesta, 2008.

The Restoration Fund

In 1999, a Restoration Fund was established to provide sentenced offenders who are insolvent with an opportunity to actively engage in paying the *partie civile* owed to the victim. The idea emerged from the collaboration among the staff of Sugnomè, the research group 'Penology and Victimology' of the University of Leuven, and other stakeholders active in the field.

In the framework of this programme, the inmate is given the opportunity to carry out voluntary work inside the prison or perform work outside the walls for an organisation with a humanitarian aim. In return, the Fund will give him/her part of the amount of the *partie civile* with a limit of 1,250 €. As a result, the victim will receive payment from the offender.

Supporting the offender in making an economical effort to pay the victim also has a symbolic purpose: this positive gesture might eventually lead to open communication between victim and offender (Willemsens, 2004, 29-30).

7.2.1.3. Mediation at the Police Stage

Emerging from the positive experiences of Mediation for Redress and in the favourable context of the creation of the Leuven Mediation Service (B.A.L.), a first mediation project at police level took place in Leuven in 1996. This project handled minor offences before the case was transferred to the prosecutor's office. Although there was not an explicit legal framework, from 1996-1998 other similar projects were set up in several cities and towns in Flanders and in Brussels.

In short, the referrals are made by the police immediately after the crime has been committed and before the police file is forwarded to the prosecutor, who may also refer cases. The selection of the cases is usually based on the offender's recognition of the facts and his or her readiness to repair the damage.

Currently (2008), there are 10 mediation programmes operating at the police stage. Mediators are employed by the police force or by the Municipality but they are not police officers. Funding is provided partly by the Federal government and/or by the regional authorities.

Indirect mediation is possibly the most frequent practice but joint sessions can also be organised. The purpose is primarily to achieve a financial or a material settlement of the offence. This does not, however, prevent the mediator also focusing on the element of communication between the parties (Willemsens, 2004, 26). Once the mediation is completed, the mediator will make a short report that will be sent to the prosecutors' office. Frequently, an agreement reached at the police level is followed by the dismissal of the case by the public prosecutor.

It is not clear whether the stage of police investigation falls under the new Law on the General Offer of Mediation and thus whether mediation carried out at this stage is affected by this legal provision or not. While establishing judges and prosecutors as the authorities holding the responsibility for informing the parties about the possibility to access mediation, the new Law remains silent regarding the role of the police. Furthermore, the new Law refers to cases in which a criminal procedure has been initiated; however, there might be different opinions on whether the police investigation is a stage of the criminal process or whether in the strict sense this can only be considered part of the criminal process once the file has reached the prosecutor's office. Nevertheless, from the process followed in the drafting of this law and the explanatory notes, it might not be unreasonable to consider that the definition of mediation and its principles should also apply at the police stage.

7.2.2. Shaping the prison policy from a restorative justice perspective

In 1998, upon the request of the Minister of Justice, a research project was initiated by the University of Leuven and the University of Liège in order to analyse the possibilities of remodelling the prison system and the deprivation of freedom from a restorative justice

perspective. This entailed linking the objective of social rehabilitation of the penitentiary services to the values of restorative justice.

As Biermans and d'Hoop (2001) state '*[t]he objective of the programme was quite paradoxical: indeed, the idea [was] to create freedom in the most controlled social institution so that prisoners can take up responsibility for their acts and deal with the conflict situation between victim and offender*'. Therefore, this programme was designed with an integrated perspective encompassing two main axes of intervention. On one hand, at the individual level, the programme addressed inmates in order to promote a responsible attitude towards victims and to promote their role in the community. On the other hand, at the structural level, the programme aimed to integrate restorative justice concepts into the working principles and internal dynamics of the prison.

After the experimental period in 2000, the programme, funded by the Federal Department of Justice, was extended to all Belgian prisons. Since then, a restorative justice advisor (*herstelconsulent - attaché en justice réparatrice*) was appointed by the Ministry of Justice to attain these objectives in each Belgian prison (32 in total). Two coordinators working at the central prison administration oversee the implementation of the programme.

It can be stated that the restorative justice advisor acts as an assistant to the prison governor. S/he has the mission of detecting which specific needs of the prison are contained in the restorative justice perspective. In order to introduce a culture of respect in prison dynamics, the restorative justice advisor will promote better understanding between the different services and staff working in the prison system so that each of them has a better knowledge of each others' missions and tasks. Moreover, information about restorative justice will be disseminated (Biermans and d'Hoop, 2001).

Their mission is also to observe and rethink the dynamics and processes occurring inside the prison which are not favourable to a restorative justice approach, e.g. designing a procedure to create a safe and respectful environment if a victim were to enter the prison. Their other core task consists of building bridges between the prison and society, including related agencies placed outside the prison and civil society organisations. Furthermore, it is vital to open communication between the inmates and the citizenry in general. Through workshops, information sessions and small interactive projects, the restorative justice advisors aim to raise social awareness about detention as well as about restorative justice values.

The restorative justice advisors try to inform the prisoners about any financial compensation owed to their victims. They organise courses, discussion groups and sensitisation activities for the inmates aimed at bringing the image of the victim into the picture, to strengthen and/or rebuild the inmates' bonds with their network of care and to promote the offender's initiative with regard to the reparation of damage.⁹⁰ In this respect, there is close cooperation between mediation services and the restorative justice advisor. In addition, these people provide the framework for the undertaking of other restorative justice actions in the prison, including mediation processes.

7.3. OTHER INTERVENTIONS

Mediation has also been taking root in Belgium to address conflict in other fields such as family, schools, community or civil and commercial disputes.

The first experiences with community mediation were carried out in the French-speaking part, and date back to 1993. These programmes deal primarily with conflicts emerging from the neighbourhood which often have civil law or penal law ramifications. As it is commonly known, community mediation has a proactive function with regard to restorative justice. This type of mediation actively involves the individual citizens in the management of difficulties arising in their daily lives and/or in the urban setting and additionally provides a safe space for communication and understanding between individuals or groups of individuals who are

⁹⁰ Personal communication with G. Van Aerschoot, 2008.

involved in a conflict. More precisely, the possibility to access a neighbourhood or community mediation service may prevent a conflict from becoming a criminal matter. Volunteers, police officers or civil servants are the individuals who act as mediators in these cases.

There have also been initiatives in the French speaking part of Belgium to introduce mediation approaches to schools. Similar programmes are currently implemented in schools in Flanders. These programmes aim to tackle violence and conflict in schools and are also used to address absenteeism and student drop-out rates (Van Camp and De Souter, forthcoming).

Mediation in the field of family conflicts and, more precisely, divorce proceedings, has been lead by the initiatives taken in the French-speaking area of the country, where the first schemes were already underway in 1989 and when specialised training courses were organised. Family mediation is currently used in both Flanders and Wallonia. The approval of the Law on 19 February 2001, later amended by the Law on 21 February 2005 modifying the Judicial disputes in the Belgian Judicial Code, constitute the legal framework for mediation for family disputes that reach the courts.

Mediators working on these cases are individuals who have been accredited by a federal commission for mediation and have certified they have received training. Their fees are covered by the parties. If an agreement is reached, this can be formalised by the judge (Van Camp and De Souter, forthcoming)

Alternative dispute resolution methods, including mediation, are practiced in the field of labour law or debt cases as well.

7.4. EVALUATION

7.4.1. Context

The development of restorative justice practices in Belgium has emerged from grass-roots movements lead by non-statutory organisations and sectors of the academia. These initiatives first started in the field of juveniles in the late 1980s and later in the early 1990s in the field of adults. In both cases, the instability of funding and unpredictable political support has been an obstacle to more sustainable development as well as to making access to victim-offender mediation generally available.

Events on the political scene and the public impact of '*high profile crimes*', have had a substantial influence on the development of restorative justice in Belgium (Van Camp and De Souter, forthcoming). As noted earlier, the 1994 Law on Penal Mediation responded essentially to the need to restore social trust in the criminal justice system. This could be achieved by putting in place a mechanism that could show the state was responding to petty crime as well as offering greater attention to the victim. However, the political will has not always been consistent and supportive of the implementation of restorative justice practices in Belgium.

Additionally, the structural factor related to the complexity of the state organisation of Belgium should also be taken into account. As mentioned before, although at the constitutional level there is a clear distribution of areas of responsibility between the federal state and the communities, in practice the lines between these areas and the powers over them often become intertwined. This leads to conflicts of competencies between the federal state administration and the communities' administration. This conflict might create confusion in identifying which institution is accountable for the practical aspects of the implementation of a policy.

It should also be noted that the fact that most projects were carried out by NGOs within a loose framework outside the criminal justice system has created a flexible context in which it has been possible to experiment with new projects and experiences. A neutral approach towards the interests of victims and offenders has characterised the programmes of Mediation for Redress and Mediation during Detention from the outset. The agencies working with

juveniles initially focused primarily on the educational effects of mediation for the offender. Gradually, these schemes have integrated a neutral approach providing the victim with equal attention.

7.4.2. Current evaluation and future direction

Restorative justice in Belgium has received significant political attention at different moments since its inception. The positive impact of this support is noticeable in the developments and progress made. However, there have also been periods of standstill during which a lack of clarity at the political level has hampered the growth of restorative justice schemes. A positive evolution in the field of restorative justice in Belgium will still require, amongst other things, a continuous strengthening and promotion of awareness and cooperation from public officials and judicial authorities.

The existence of a legal framework should not lead to neglecting the importance of promoting cooperation with the judiciary and prosecutors on a permanent basis. Next to the already existing collaboration structures, additional training programmes on the new law are being implemented. Specialised support on the technical aspects that the application of the new law entails will possibly be needed in the medium term. Some experts have stressed the importance of providing judicial authorities with the tools and criteria that will help them to make appropriate case selection and prevent mediation becoming a mere formality.

Although the introduction of these legal provisions in both the juvenile and the adult fields has answered many important aspects that had been outstanding for years, new concerns have also been raised.

In a moment of growth and expansion, improving the coherence between the practices of the different services and ensuring a level of quality for all citizens is viewed as fundamental. The creation of the Deontological Commission and the Deontological Code seeks to set the basic common framework concerning practical aspects and quality standards. The question remains, however, whether these legislative developments and subordinate legislation will still allow enough room for experimentation and innovation and will not create an excessively regulated framework.

The way in which access to the schemes is formulated clearly intends to give victim and offender the principal role in the referral process. Although judges and prosecutors have the authority to actively refer cases, it is the parties who hold the primary capacity to decide on whether to apply for mediation or not. Consequently, given the importance of the principle of participation and informed consent of the parties, public information and education becomes crucial and it should not be limited to a case by case basis, when the citizen becomes individually involved in a mediation process. Communication strategies addressed to the general public should also be foreseen. Special efforts should be devoted to awareness raising campaigns and educational materials in order to disseminate information on mediation and restorative justice.

One may wonder how such a fundamental and integrated approach to restorative justice has gained institutional endorsement. It should be noted that in June 2001, an interdisciplinary working group was created by the former Minister of Justice in order to study the possibilities of creating a legal basis for mediation. The working group was formed by representatives from the two umbrella organisations, Suggnomè and Médiante, representatives of the judiciary and public officials. *In other words, by contrast with the Law of 10 February 1994, the proposal for a new Law on a General Offer of Mediation in criminal cases was developed in cooperation and in close interaction with experts in the field*⁹¹ (Van Camp and De Souter, forthcoming), thus building a wider consensus from the outset on the aims and values the law should reflect.

⁹¹ Together with the two representatives of Suggnomè and Médiante, this working group comprised government officials, magistrates and later on also included a representative of the College of general-prosecutors, a representative of the Service of the Houses of Justice of the Federal Public Service of

The participation of researchers and academics conducting the evaluative research of the programmes of Mediation for Redress and Mediation during Detention has proven to increase the credibility and the suitability of mediation involving serious crimes with policy makers and legal practitioners. The positive scientific results and the experience accumulated have played a crucial role in the discussions of the working group when debating how access to mediation should be formulated.

The fact that a law conceives mediation as a complement to the criminal procedure and lays down the requirement of official recognition in order to set up a mediation services, leads one to expect an increase in and greater stability of funding and institutional support to the agencies working in the field. Once official recognition has been gained, there is the risk of making restorative justice structurally dependent on the sources of funding. In this respect, the issue of the institutionalisation of the schemes and the possibility that as a consequence, some of the fundamental restorative justice values will be downplayed in practice, now emerges as a concern even more pressing than before.

By addressing the aspect of the degree of institutionalisation of restorative justice schemes, the degree of participation of civil society is also seen as a matter where there is room for improvement. The possibilities of involving lay persons as mediators have been explored through a pilot project carried out in within the framework of the Leuven Mediation Service. The findings of this project will provide a clearer picture of the possibilities of involving individual citizens in the direct service delivery.

8. FRANCE⁹²

8.1. LEGAL BASE

The legal authority for victim-offender mediation (in French called penal mediation) (*médiation pénale*) derives from a combination of amendments (1999, 2004)⁹³ to the Code of Criminal Procedure, decrees and circulars. Since 1998 a law has authorised legal aid in mediation processes.

The measure Penal Mediation concerns mainly adult offenders. It can also apply to juveniles although when offenders are minors, mediation is less frequently used than other measures. In particular, for juveniles the main text is art. 12-1 of the 1945 legislation governing the entire juvenile justice system. The measure is called juvenile penal reparation (*Réparation Pénale des Mineurs*).

8.2. SCOPE

According to art. 41-1 of the Code of Criminal Procedure, the prosecutor can propose (with a consensual character) mediation to both parties before taking a decision on whether to prosecute or choose some diversionary measure. The objectives of mediation are to repair the harm done to the victim, to restore social harmony and to contribute to the offender's rehabilitation. The diversionary effect of mediation applies at the pre-prosecution stage only. Its potential application to, and impact on, any case is entirely a matter for the prosecutor's discretion. Whatever it may be, the outcome is reported to the prosecutor, whose decision whether to prosecute or to dismiss the case stands. Penal mediation belongs to the range of alternative measures available.

Justice and two public officials of the Federal Public Service of Justice (Section of alternative measures and Section of Principles of criminal law and criminal procedural law).

⁹² This section is based on the chapter by Jaques Faget, 2004, in Miers and Willemsens, 61-66 and updated by Francis Bahans, Véronique Dandonneau and Valérie Pecorilla.

⁹³ Law approved on 9th of March 2004.

8.3. IMPLEMENTATION

8.3.1. Agencies: establishment and structure

Many types of association may practice penal mediation (*médiation pénale*) or reparation (*réparation*). These include associations subscribing to the Federation of Socio-judiciary Associations, *Citoyens et Justice*, to the INAVEM (National Institute for Aid to Victims and for Mediation) and to other independent organisations. It is also possible to call on individual mediators. But in all cases the mediators must be accredited by the local prosecutor and by the president of the tribunal. Normally the associations or the individual mediators agree with their prosecutor's office the working protocols that are to govern their relationship. These protocols address such standard matters as their common objectives, administrative arrangements for handling case files, the mediation process, closure and follow-up. These agreements do not, however, have legal force, but are dependent on the nature of the relationship between the prosecutor and the association or the individual mediator.

Citoyens et Justice (founded in 1982 under a different name) and INAVEM (founded in 1986) are currently negotiating with the French Ministry of Justice to ensure that each association signs a detailed agreement with the respective prosecutor concerning penal mediation.

Whether associations or individual mediators, they are paid from central funds. These are charged as court costs, according to the duration of the mediation and the status of the mediator. For the parties, mediation is free. They may employ lawyers to assist them but not to represent them. This is because the ethic of mediation commends the personal involvement of the two parties in the process of reaching an agreement.

There is no comprehensive inventory of mediators in France. It is, however, the case that many of the associations' mediators are highly professionalised.

A national evaluation ordered by *Citoyens et Justice* and based on 32 associations has revealed the mediators' profiles: mainly women (70%) with an average age of 40 years old.

Mediators must be neutral, impartial, and independent and must treat all their victim and offender contacts in confidence. The level of their specific competence in mediation varies. Some have undergone substantial training over two years (essentially family mediators who also practise 'penal mediation'). On the other hand there are some mediators who have had no specific training.

8.3.2. Agency practice

Most associations structure their mediation practice in four phases. The preliminary phase comprises information exchange between prosecutor and association, analysis of the conflict, and initial meetings with the parties. The two central phases are the mediation itself and the completion of the agreement. The final phase comprises implementation, closure and evaluation. The association (or individual mediator) formally reports to the prosecutor on the process and the outcome.

8.3.3. Agency intervention

The associations practice primarily direct, and less frequently, indirect mediation. Concerning direct mediation, the process is usually short, with only one or two meetings. In those associations in which the mediators are more fully trained, meetings may be more frequent as their aim is not just to treat 'the symptom' but to address 'the root' of the conflict. The important thing is not only to solve the conflict but to focus on the relationships surrounding the conflict.

Contact between mediation associations and other agencies is infrequent, even where the conflict between the parties appears to come within the remit of those other agencies. Social

workers are not part of the mediation process since this measure is not related to social assistance.

8.4. REFERRAL NUMBERS AND OUTCOMES

8.4.1. Quantity and quality of referrals

Until 2003, the penal mediation programme dealt with approximately 30,000 adult offenders (persons over 18 years of age) at the pre-sentencing stage per year, thus in quantitative terms it could be considered successful. Nevertheless, experts would suggest that this did not reflect a significant impact on the French criminal justice system.

This becomes even more apparent today. Currently prosecutors and judges are more inclined to decide upon measures such as '*composition pénale*' or '*classement sous condition de réparation*' rather than penal mediation, partly because the former are seen as more cost- and time-efficient. As a consequence, the number of referrals to Penal Mediation decreased by almost 14% in 2006.

With regard to the measure called juvenile penal reparation, the diversionary measure can be proposed by a prosecutor, a judge of instruction, or by a juvenile judge. The objectives are to protect the interests of the victim and the community but the legal text places particular emphasis on the educative benefits for the young person. In this case the measure can be used between charge and first appearance, during the pre-trial process or after conviction.

The number of reparation interventions for young offenders is less developed though still an important aspect of juvenile justice (max. 15%). But if its defining feature is the meeting between the parties, then mediation has less salience in this context. This is because the majority of mediators working with young offenders prefer a pedagogic approach to attitudinal and behavioural change to an interactive approach involving the victim and the community. Practice here is more like traditional social work than mediation.

In France the measure under the name of *juvenile penal reparation* is mainly educational and only in some cases includes an encounter with the victim.

8.4.2. Referral outcomes

It is difficult to evaluate mediation outcomes. On some occasions the parties reach an agreement, but one that is an agreement only in name and whose formality commands little respect. On other occasions the parties may fail to agree, but clearly derive benefit from the process.

It may be noted that about 30% to 40% of the interventions do not proceed because one or both opponents fail to respond, fail to keep the appointment with the mediator, or although informed, refuse to participate. Where mediation does take place, the proportion of agreements reached varies between 70% and 80%.

8.5. EVALUATION

8.5.1. Context

Experiments in victim-offender mediation practice date from the mid-1980s, prompted by the implementation of a variety of penal and urban initiatives by a left-wing government. Penal mediation has historically developed as an alternative to the judicial system. The objective of social workers, academics and militant magistrates was simultaneously to avoid and to transform the repressive logic of the conventional system.

Gradually penal mediation appeared as a method to deal more appropriately with sensitive cases (for instance, family or neighbourhood conflict) for which penal responses were thought inappropriate. It also corresponded to the desire to take into account situations in which the public prosecutor would have previously invoked the opportunity principle (in contrast to the legality principle as in other European countries) to propose a closing of the case.

The gradual increase, registered until 2003 in the number of conflicts redirected to mediation, may be attributed to a variety of factors. These include the creation of *Maisons de Justice et du Droit* in certain neighbourhoods, the political will to accelerate its use, and the success of mediation in other fields.

8.5.2. Current evaluation

The use of victim-offender mediation increased until 2003. Since 2004 the number of mediations has decreased to the benefit of the traditional justice system and other diversionary measures. There are several different factors contributing to this decrease. The current tendency is to favour 'cost-reduction' policies. The other alternative measures '*composition pénale*' or '*classement sous condition de réparation*' can be carried out in a reasonably short time and often without the need to involve other professionals, thus these are considered cheaper and more effective than Penal Mediation.

Furthermore, this decline of the use of mediation could also be explained by the potential confusion the wide range of existing measures could cause. Some magistrates therefore tend to apply only those measures they know best.

8.5.3. Future direction

Penal mediation demonstrates particularly well the cultural conflict between two opposing conceptions of justice, the first based on a strong judicial and symbolic conception of conflict regulation, the second oriented towards a more democratic and instrumental conception of conflict management. A current challenge is to predict how penal mediation will develop. The risk that its development will follow the juridical conception is certainly exacerbated by the sense of insecurity about rising levels of crime.

Furthermore, interest in 'cost-reduction' policies is visibly causing a reduction in the use of penal mediation as opposed to other alternative measures. This leads to the concern that mediation in the criminal field will only be used in a very limited number of cases.

On a different note, at present the credibility and image of victim-offender mediation is at risk of being damaged. The training standards required to act as a mediator vary substantially depending on whether the mediator acts as a freelancer or whether s/he is working under the aegis of an accredited association. It is feared that some mediators might not be sufficiently trained and thus, their possible bad practices may contribute to giving mediation in criminal matters a 'bad press'.

On the other hand, the incapacity of the traditional system to respond to the social fear of crime encourages both philosophical and pragmatic arguments for the wider adoption of the restorative model.

III. CHALLENGES TO THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN SOUTHERN EUROPE

The country reports dealt with in the previous section, besides describing the state of affairs of restorative justice, show also that the differences in the process through which restorative justice has been introduced or the organisational model formed in each country can only be understood in the context of the varying legal, historical, political, social and cultural circumstances. Thus it is apparent that the way in which restorative justice practices are being organised in Southern European countries may have several aspects in common and yet differ regarding others. In the following sections, it will be explored how Southern European countries can learn from each other's experiences and strengths in the implementation of restorative justice.

Restorative justice has evolved at a different pace in each country. A quick look at the description of the state of affairs of restorative justice in each country demonstrates that restorative justice is constantly advancing in Southern Europe. Indeed, only in the time-span of this project there have been significant new developments in the field of legislation, policy development, practice and research in these countries. Hence, issues that used to be a difficulty common to several countries may already have been overcome by some of them and no longer represent a challenge for those countries.

The different developments that are taking place notwithstanding, the experts identified certain aspects that have been hampering the diffusion and consolidation of restorative justice practices in most of the participating countries as well as the key factors that can be associated with their successful implementation. The main challenging factors encountered by restorative justice in Southern European countries are outlined in the next sections followed by a detailed account of the specific factors country by country.

It goes without saying that these factors are interconnected, however, for the sake of this study, the challenging factors have been categorised into the following main groups: legal system, policy implementation practices, political context, social context and the collective of professionals working in the field (which includes practitioners, service managers, academics and other stakeholders whose work focuses on restorative justice).

1. OVERVIEW OF PRINCIPAL CHALLENGES

The following is a description of the factors hindering a wider diffusion of restorative justice in most of the participating countries.

1.1. LEGAL SYSTEM

First the formalistic legal culture and in particular, positivism and the principle of mandatory prosecution, were considered by the experts as key factors determining the implementation process of restorative justice in Southern European legal systems.

Most of these systems have traditionally featured strict adherence to acts, statutes, codified laws and established procedures as opposed to those jurisdictions based on 'case law' (common law jurisdictions). This trait of positivism contributes to the reluctance shown by the judiciary and legal professionals to apply any new experiences which do not have an explicit legal basis.

Furthermore the prevalence of the principle of mandatory prosecution in Southern European countries (with the exception of France and Belgium) substantially limits the discretionary powers available to prosecutors to consider circumstances that would allow them to cease prosecution.

These traits are in contrast with the flexibility and appreciation that is required from judicial authorities in order to integrate the outcome of a restorative justice practice into their decision-making process.

It is worth mentioning here that, as reflected by the description of the state of affairs of restorative justice in each country, the increase of flexibility in judicial proceedings with respect to minors is apparent and in some cases the principle of discretionary prosecution has been formally adopted. Furthermore, in the adult jurisdiction of some Southern European countries, a few exceptions to discontinue prosecution are provided for.

Despite this openness, the principle of mandatory prosecution prevails as the general rule and as the experts stated, the underlying formalistic legal culture is still strongly shaping the structure and the working principles of the Southern European legal systems.

The participants pointed out that the lack of cooperation of legal practitioners with restorative justice schemes has to do partly with features of the legal culture. Nevertheless, it was highlighted that there are certain values and principles which are not linked to the legal culture but rather are at the core of criminal law in itself, that are considered to be at odds with the introduction of restorative justice. The reluctance of legal practitioners to apply restorative justice on the basis of principles such as due process, the presumption of innocence, the burden of proof rule or the principle of proportionality, is recognisable by many other countries.

Second, the way in which the possibilities for restorative justice are formulated in the law (when foreseen) if not sufficiently explicit, poses clear difficulties for its regular and complete application. When the legislation does not make clear aspects such as the scope, the referral process or the legal effect of an agreement, a patchy application of victim-offender mediation in different parts of the country is frequently the consequence. More specifically, the interpretation of the scope or the legal effect given to the agreement or other aspects of the law will tend to vary depending on the court and the judicial district. In countries where restorative justice principles are applied under legal 'entry doors' this disparity can be higher.

It was noted that there are countries where, despite the existence of a legal basis, the lack of clarity on how the legal provisions should be understood or the lack of supplementary instruments such as bylaws and regulations indicating for example the processes to be followed for the referral of cases or the standards for training amongst others, is an obstacle to introducing the law and implementing it effectively in practice.

Third, an unclear legal basis tends to blur the accountability of public institutions with regard to the implementation of these services. As a result, in most cases restorative justice schemes have only been set up in those regions or areas where civil society organisations, NGOs or local authorities have a particular interest in victim-offender mediation, thus the service is not generally available throughout the country.

As discussed during the expert meetings, the lack of an explicit and well formulated legal basis has led to inequalities between citizens concerning access to restorative justice schemes. Their options may vary substantially depending on the judicial authority's interpretation of the legal text and on whether there are restorative justice schemes available in their judicial district.

1.2. POLICY IMPLEMENTATION PRACTICES

An important part of the difficulties identified by the experts for the development of restorative justice practices in Southern European countries relates to shortcomings in the design of the implementation policy. According to experts, this lack of planning gives rise to different aspects which clearly undermine the development of restorative justice.

The drafting of the law or its implementation is rarely based on data and information collected beforehand. This would provide information that would help to design an organisational model adjusted and appropriate to the legal, social and cultural context in which it will be set

up. It would also allow for a more accurate forecast and allocation of resources and monitoring mechanisms.

First, at both the national and the regional level, schemes are frequently faced with a lack of funding, often with negative repercussions on the working conditions of the mediators. Furthermore, the establishment of short-term contracts between the public body and the NGO that will deliver the service is not an uncommon practice (just as it is in other fields). All in all, this lack of funding and short-term approach to contracts contributes to the instability of restorative justice programmes and services.

Secondly, during the meetings, it was highlighted that evaluation and monitoring are often overlooked when the implementation of restorative justice schemes is defined, which noticeably limits the ability to detect flaws and improve the quality of practice. Moreover, the lack of permanent or recurrent evaluation schemes tends to markedly reduce the credibility and legitimacy of the project to the outside world.

Thirdly, preparatory research would help to foresee, from the outset, the strategies and actions that are necessary and workable to accomplish an effective implementation in the circumstances in which the restorative justice scheme needs to be set up. For example, implementation has usually lacked thorough social awareness strategies about both restorative justice in general and the functioning of the victim-offender mediation programmes specifically. Along the same lines, education and training for staff working in the related services and agencies, such as prison, policy, victim support, and probation services, is seldom foreseen. Due to the limited information that these professionals receive when a new victim-offender mediation scheme is set up, communication and networking between the victim-offender mediation scheme and the staff of these agencies will generally develop informally, on the basis of the spontaneous initiatives of some professionals; and as such remains on a small scale.

Fourthly, another visible shortcoming is related to the lack of an appropriate institutional oversight responsible for the coordination and monitoring of the implementation process and the functioning of the schemes in the long term. It was also agreed that an integrated, institutional approach has been missing. Coordination between the different departments or ministries whose policies are connected to the criminal justice system and restorative justice policies such as education and social services is often weak. The same lack of communication is often observed between the different levels of administration: local, regional and national.

Those states with a complex structure such as Belgium (which is a federation) or Spain (State of the Autonomies) may encounter additional difficulties when it comes to coordinating the action of different layers of government with competencies in related policy fields. In the case of Belgium for example, the policies depend on several administrations. Welfare and Education are competencies of the Communities and Justice is a competency of the Federal Government. Similarly, in the case of Spain, the power regarding a certain policy is shared between the different administrations in different ways. This makes it difficult to identify which agency, department or administration should be the interlocutor for any initiative or problem that has to be addressed.

On these grounds, the implementation design or policy planning can be identified as a critical stage in the development of the restorative practices in Southern European countries.

1.3. POLITICAL CONTEXT AND CRIME POLICIES

Incomplete planning and the lack of institutional accountability with regards to implementation are to an important extent attributable to a lack of political will. The experts pointed out several reasons which have lead to keep restorative justice off the political agenda.

First, the lack of knowledge about restorative justice shown by politicians and public officials largely explains the fact that over recent years victim-offender mediation has not received sufficient attention at the political level.

As some experts pointed out, in some countries this is consistent with the little interest that, until recently, policy makers have paid to victims' rights and the lack of public policies formed to develop victim support schemes.

Second, it was agreed that the fact that the supranational instruments concerning these topics are not of a directly binding nature has been a crucial reason why restorative justice is not a political priority in some of these countries.

Third, policy makers' lack of knowledge and information about restorative justice has often led them to underestimate its potential or to hold misconceptions regarding the values and goals that restorative justice really promotes. Consequently, policy makers, in those cases where an interest has been expressed in overseeing and assessing the accomplishments of restorative justice policies, the tendency has been to apply evaluation schemes based on cost-efficiency criteria which are frequently of a quantitative nature. This type of evaluation scheme aims to assess whether the implementation of restorative justice practices contributes to the reduction of the structural costs of the criminal justice system. It is therefore mostly focused on aspects such as the cost of a mediation process, the length of the process, the number of referrals or the number of agreements reached. As emphasised by the experts, these parameters are unable to appraise the degree of fulfilment of the actual objectives of a restorative justice scheme such as the degree of participation in the decision-making process by the parties, the realisation of a reparation, the sense of closure and the quality of the communication between victim and offender, let alone the social and personal effects that the mediation process may have exerted on the people involved.

Four, as the experts suggested, the neo-liberalist model of crime policies is becoming more influential in the design of the political agenda in Southern European countries too. It was remarked that strategies revealing more punitive trends such as the introduction of longer sentences for certain crimes or strategies inspired by 'law and order' or 'zero tolerance policing', are also gaining terrain in the field of crime policies in the participating countries. This approach is in contrast with the essential values of restorative justice.

Fifth, the experts discussed how the media play a crucial role in shaping the perceptions of the public and their attitudes towards crime but simultaneously determine trends in crime policies. The way the media report crime, and the use that certain types of political campaigns make of the crime issue, were identified as factors conducive to an increase in the citizens' fear of crime and feelings of insecurity. This, in some instances, can have the effect of discouraging politicians to promote restorative justice since there is the fear that this will be viewed by citizens as a soft approach to crime and thus, undermining the public's support.

1.4. SOCIAL CONTEXT

First, it should be mentioned that social awareness of restorative justice and mediation has been scarce in Southern European countries. Although the use of mediation is becoming common in certain fields such as neighbourhood disputes, family conflicts and especially ADR, which is frequently used in certain professional circles with regard to commercial or labour matters, mediation and restorative justice are still concepts that sound unfamiliar to the population at large.

As the experts underlined, to provide complete and neutral information on what a restorative justice scheme can offer, it is essential to ensure that all citizens are able to access it. The fact that information campaigns have been generally lacking in most of the countries concerned, leaves the public unaware that they can request the service.

It was stressed that the mainstream attitudes that citizens holds towards crime and criminal justice do not fully fit with a 'participatory justice' approach such as the restorative justice one. Nowadays societies tend to be rather disengaged from social problems and the mainstream approach tends to attribute all responsibilities for addressing the underlying causes of crime to the state and public institutions. According to the experts this is due to low civic participation which does not encourage the consolidation of policies that require more active citizen involvement in the way that restorative justice does. At an individual level, it was noted that in some countries it is a widespread practice for citizens to delegate to the judge the task of finding a solution for any type of conflict arising in daily life including family or neighbourhood disputes.

The insufficient support from the academic world and the shortage of research projects carried out in the field of restorative justice were identified by the experts as some of the weaknesses of restorative justice in certain Southern European countries. In these instances, although important research projects have been conducted, the academics who are interested in restorative justice are still a minority.

The lack of engagement demonstrated by universities in some Southern European countries has substantially limited the options restorative justice services and advocates have to build capacity and assess the quality of practice in a systematic way. Moreover, this has diminished possibilities for gaining credibility and recognition in the eyes of legal practitioners, society and policy makers.

1.5. RESTORATIVE JUSTICE COLLECTIVE

The experts pointed out several difficulties that are related essentially to the world of restorative justice, namely the way in which mediators, facilitators, service managers and coordinators, trainers and other restorative justice advocates in general, are organised. These challenges are related to challenges encountered in the legal or political dimensions addressed earlier.

First, in those countries where restorative justice schemes have already been set up for a number of years, it was commented that common ground amongst these professionals tends to be frail. Communication and networking between different restorative justice schemes set up in the same country has been rather spare. Similarly, instruments to encourage discussion or to develop cooperative relationships between restorative justice practitioners and advocates have been rather scarce or even missing. The weak cohesion within restorative justice collective also has the effect of downplaying the capacities of restorative justice to have a decisive role in the political arena.

Second, monitoring and data collection instruments have not been implemented on a regular basis or when they are in place, they do not operate on the basis of comparable parameters.

As said above, this has undermined the possibility of strengthening the reliability and the quality of practice of agencies providing restorative justice services.

Third, in some Southern European countries, the unavailability of specialised restorative justice and victim-offender mediation training is an evident difficulty since it limits the number of trained mediators available. Moreover, English is still the language in which most of the restorative justice related literature is being published. The possibilities for restorative justice stakeholders to access English-language materials are not always self-evident.

2. CHALLENGING FACTORS BY COUNTRY

The following is a detailed account of the specific difficulties that according to the experts each country encounters in the implementation of restorative justice.

2.1. GREECE

- The inquisitorial and positivist tradition shaping the Greek legal system together with the principle of mandatory prosecution in adult jurisdiction tends to reinforce a formalistic and conservative attitude among legal practitioners.
- Legal professionals, policy makers and public officials lack information about the nature of restorative justice. Misconceptions about what restorative justice schemes entail have caused certain sectors of lawyers to believe that it will adversely affect their professional conditions.
- There is a lack of political will.
- The implementation of new legal provisions introducing victim-offender mediation is markedly incomplete. There are no secondary legislation instruments, bylaws or guidelines describing how a referral should be made or how the mediation process should be carried out.
- There is a meagre awareness of victims' issues and the implementation of victims' rights within public policies and services has been weak.
- There is a reduced development of mediation in other fields.
- Civic participation is low; certain aspects of the Greek social structure may not be favourable to the applicability of restorative justice.
- There is low social awareness on mediation and restorative justice, which are unknown concepts for a large part of the population.
- There is very limited specialised training and information about restorative justice and victim-offender mediation available to practitioners.

2.2. ITALY

- The absence of a legal basis for victim-offender mediation or restorative justice for both juveniles and adults makes it very difficult for a formalistic legal system to integrate a new practice.
- In the juvenile justice system, some sections of the judiciary do not have a positive attitude towards restorative justice or victim-offender mediation.

- There is a lack of awareness of victims' rights and there are significant shortcomings in the provision of victim support schemes.
- Mediation in other fields such as social mediation or school mediation, as well as ADR have not sufficiently spread yet. The general public is not familiar with peaceful conflict resolution methods as a means to deal with conflicts in their daily lives.
- There is a lack of civic involvement and participation in social issues. Citizens adopt a passive attitude with an increasing tendency to refer to the government's responsibility for addressing the underlying causes of crime.
- There is a weak common ground between mediators, especially the ones who practice in the criminal field. Their rather individualistic approach limits their ability to play an influential role in the political arena.

2.3. MALTA

- The lack of an explicit legal basis becomes a significant difficulty in a country in which the judiciary and legal professionals adopt a rather conservative attitude. Although there are certain legal 'entry doors' to introduce victim-offender mediation through probation or compensation court orders these professionals are in general very reluctant to integrate informal ways of dealing with crime.
- Restorative justice has not been on the political agenda in recent years. Despite the fact that the political focus on victims' rights has increased in Malta, overall, sufficient funding and resources have not yet been allocated. The political will might be subject to changes in the coming years.
- Neither the researchers nor the academic world in general are involved in the restorative justice movement, and no victimology courses are being taught at universities.
- There is a lack of social awareness about victims' issues and citizens tend to have a distorted perception of crime. The role of the media when reporting on crime is predominantly counterproductive.
- There are no professionals trained to practice mediation nor are there training courses on mediation and restorative justice available.

2.4. PORTUGAL

- In Portugal there exists a rather inflexible legal culture due to the influence of the principle of mandatory prosecution. A significant resistance on the part of legal professionals and lawyers is prevalent. These professionals are concerned with the possibility that their income might be reduced as a consequence of victim-offender mediation. It is expected that their attitude will change when the new law becomes fully implemented.
- There is a lack of awareness and knowledge about restorative justice and ADR. This is applicable to the general public but also to professionals working in the criminal justice system.
- Sufficient funding and resources have not yet been allocated and it remains to be seen how this will develop with the implementation of the new law.
- There are only a few training programmes on victim-offender mediation and restorative justice and these topics are not taught at universities.

- There is considerably poor civic participation in Portugal. Generally speaking, in Portugal citizens do not hold a proactive attitude when facing social problems and striving for social change.

2.5. SPAIN

- In a country that adheres to the principle of legality, the absence of an explicit legal basis for restorative justice or victim-offender mediation in the field of adults makes legal professionals as well as other staff working in the criminal justice agencies notably reluctant to integrate practices which are not founded on a legal basis.
- The institutional support for restorative justice has not been determined. This has led to insufficient resources being allocated to the projects which have been set up.
- Although there is awareness of victims' needs in Spain, and their position in the criminal justice system has been recognised, in practice there is still room for improvement regarding the implementation of victim support schemes.
- The complexity of the state structure is not sufficiently taken into consideration when drafting the implementation strategies of certain policies. As a result when the policy needs to be enacted, it is often unclear which public bodies hold which responsibilities deriving from the implementation policy, thus the enforcement of legal provisions with regard to victim-offender mediation in the field of juveniles for example, may vary substantially from one Autonomous Community to another. This also applies to the implementation of victims' services.
- The academic world is not sufficiently involved in restorative justice themes.
- The civil society organisations have a limited impact on policy-making.
- Communication and networking between the different restorative justice-related projects has been insufficient, and the country is lacking a national organisation providing support to practicing mediators.

2.6. TURKEY

- The justice system's actors are appreciably reluctant to countenance the introduction of victim-offender mediation because it is perceived as an informal practice that puts at risk individuals' rights and due process. The opposition of lawyers is particularly relevant in this respect.
- The absence of a specific body or agency within the government structure responsible for implementing restorative justice-related policy also plays a role in hindering the consolidation of victim-offender mediation.
- There is a lack of awareness about restorative justice among NGOs and other non-profit agencies working on social issues related to family or human rights.
- There is a very limited availability of training programmes and trained mediators.
- The low level of awareness amongst the public regarding the negative effects of the criminal justice system concerning victims, offenders and the community clearly represents an issue. This is linked to the more general issue of weak social activism.

2.7. BELGIUM

- The complexity of the federal structure in Belgium makes it difficult to identify which governmental entities are responsible for funding, legislation, quality standards and referral criteria.
- The fluctuating political will has been at the root of the funding instability and has hindered possibilities for systematic and long-term monitoring of services.
- The reluctant attitude of legal professionals towards the implementation of restorative justice practices has also become a concern for restorative justice stakeholders.
- The general lack of social awareness on restorative justice and low civic participation in social issues has not supported the implementation of restorative justice projects.

2.8. FRANCE

- The current social and economic situation in France is increasing the fear of crime and a sense of insecurity. The supposed increase of criminality is used by politicians for electoral purposes. This is one of the main factors at the root of the adoption of more repressive strategies in crime policies
- Policy makers and the judiciary tend to look at short-term outcomes, generally based on quantitative and cost-effectiveness criteria. For this reason, other alternative measures are favoured over penal mediation because these are considered to be less costly than mediation.
- Victim-offender mediation is still generally unknown to most judicial authorities, possibly due to the lack of training and information that judges and prosecutors receive on the possibility of using this measure.
- Public opinion does not demand restorative justice or victim-offender mediation partly because civil society is nowadays concerned with other issues, such as employment, economic progress or ecology. Furthermore, citizens are far from well-informed about their rights and the possibility of applying for victim-offender mediation.

IV. SUPPORTING FACTORS IN THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN SOUTHERN EUROPE

After studying the factors hampering the implementation of restorative justice in Southern Europe, the analysis moves on to identify which elements have, by contrast, assisted the appearance and the consolidation of the different restorative justice initiatives that can be found in each of the Southern European countries

Following an overview of the factors that have primarily been conducive to the implementation of restorative justice in most of the Southern European countries, is a country by country list of the supportive factors. The last part of this section examines several good practices, namely projects or strategies implemented in the different countries.

It can already be said that the analysis of the strengths reveals that most of the supportive factors are intertwined with the same aspects associated with the difficulties experienced in implementing restorative justice, thus as mentioned earlier, the supportive factors can be grouped in similar areas as the challenging ones: the legal system, policy implementation practices and political context, social context and the restorative justice collective.

1. OVERVIEW OF THE MAIN SUPPORTING FACTORS

This section aims to summarise the strengths that, according to the experts, can be found in Southern Europe with regard to the implementation of restorative justice.

Circumstances that have favoured restorative justice at a more general level have been included in addition to factors that have had a directly positive effect on restorative justice. Although the factors have been classified under a particular theme they are interrelated with factors grouped in the other areas.

1.1. LEGAL SYSTEM

In the legal system and among the judiciary, there have been aspects that have positively influenced the introduction of restorative justice. First, in almost all Southern European countries, the judiciary holds the opinion that a lack of resources prevents the courts from dealing with the increasing number of cases in an effective way.

The courts' overload, amongst other factors, has favoured the judiciary's acceptance of the use of negotiation and ADR for matters where, regardless of the formalistic legal culture, negotiated solutions are commonly accepted (civil matters, commercial matters, labour disputes or family conflicts). Despite the important differences between these fields of law and criminal law, the development of ADR has helped some judges, prosecutors and lawyers operating in the criminal field to be more receptive to restorative justice. Likewise, the existence of a legal basis in the field of juveniles has served as a good reference point for legal practitioners when introduced to restorative justice initiatives.

Second, beyond the pragmatic interests, in some Southern European countries there are sectors of the judiciary that are opposed to the retributive and repressive approach of criminal justice. These groups of professionals subscribe to the need to introduce more constructive responses to crime and victimisation. The collaboration of these individual judges or prosecutors has made the implementation of pilot projects for adults and juveniles possible in some of these countries even when no explicit legal authority exists for restorative justice practices.

1.2. POLICY IMPLEMENTATION PRACTICES AND POLITICAL CONTEXT

First, the influence of supranational legislation and the need to comply with international standards has helped to raise awareness among policy makers and public institutions.

Second, tackling the problem of the courts' overload is on the political agenda in many Southern European countries. In light of this, and in part due to the influence of supranational legislation, laws and regulations have been approved to give formal recognition to ADR in civil, commercial, labour or family law. Along the same lines, mechanisms like small claims courts have been introduced and in other instances, the institution of the justice of the peace has been revitalised.

Third, the need to find better instruments to address crime as well as to increase the citizens' satisfaction with the administration of justice has stimulated governments to look at other approaches to justice including alternative sanctions and restorative justice practices.

Fourth, access to information about restorative justice developments in other countries, ranging from the different legislative techniques used to draft the laws to information about the practical aspects on how to set up a victim-offender mediation service has been useful in helping restorative justice gain credibility, in supporting government initiatives to draft bills and in getting more attention paid to restorative justice.

Fifth, the existence of practical experience in the field, especially of reports describing the outcomes of projects of restorative justice practices has also been encouraging. In this respect, the engagement of the university as an external and objective agent conducting research and evaluation projects has played a crucial role. Publications by academics have an added value in the eyes of policy makers.

1.3. SOCIAL CONTEXT

Factors that have facilitated the implementation of restorative justice in Southern Europe can also be found in the social context:

First, in general citizens regard the justice system as a slow and outdated apparatus. On the one hand the highly formalistic procedures and its outcomes are seen as distant and difficult to comprehend. On the other hand, many citizens have lost confidence in the capacity of the judicial system to prevent crime and to react effectively to it. The inherent constructive message of restorative justice becomes very meaningful to these people who, despite the general punitive climate, do not endorse the escalation of punishment and the retributive approach.

Second, the use of mediation and peaceful conflict resolution methods in fields that are closer to citizens' daily life is growing. In some Southern European countries, there are neighbourhood mediation services and school mediation programmes with a great deal of experience. The application of mediation in judicial procedures related to divorce, separation, visitation rights and alimony has become common in some of these countries.

Furthermore, all Southern European countries have experienced a significant increase in immigration over a relatively short period. As a result, the need to clarify meanings and values linked to the different cultural backgrounds of the citizens has popularised the term 'intercultural mediation'.

Third, civil society organisations in some of the participating countries have had a leading role in the implementation of restorative justice. It is worth mentioning that strong collaboration between public bodies and the third sector or between victim support agencies and offender support agencies has been a highly encouraging factor in this respect.

Fourth, the experts pointed out that, while in those states with a complex structure more effort in coordinating implementation policies is required, the participation of different social groups represented by the different central and regional or autonomic governments in the decision-making process as well as in the implementation is also made possible. The collaboration between different layers of the government allows the integration of different visions and perspectives, thus improving the policy's coherence.

1.4. RESTORATIVE JUSTICE COLLECTIVE

First, the available know-how deriving from existing projects or pilot experiences as well as from international exchange and cooperation has strengthened the restorative justice community in Southern Europe. The experts stressed the importance of benefiting from lessons previously learned by others. This provides the opportunity to take them into account from the outset. Participating in international projects provides the added value of conferring recognition and credibility to the agencies and public institutions in one's own country.

Second, having good working relationships with individual judges, prosecutors, policy makers or public officials has also proven to be very positive. Their role can be highly effective when promoting restorative justice among their peers even if it is usually on a small scale.

Third, the existence of well-established, good training programmes and postgraduate courses about mediation and restorative justice is clearly an advantage.

Fourth, the fact that in some countries restorative justice practices have evolved within a loose structure driven by independent organisations has allowed for innovation, e.g. by trying new methodologies or by experimenting with the application of restorative justice practices for more serious crimes or in a penitentiary setting.

Fifth, the multidisciplinary nature that it is common to find in mediation teams is an asset. Often practitioners come from different professional backgrounds (social work, law, psychology, pedagogy, criminology, etc.).

2. SUPPORTING FACTORS BY COUNTRY

The impact of these factors on the implementation of restorative justice in each country gives a more precise picture of which supportive elements are shared by all the countries involved and which are not.

2.1. GREECE

- There is a common feeling that the current legal system is overburdened. Criminal processes in Greece may last for a very long time. This unsustainable situation may favour the introduction of new approaches and methodologies to deal with crime.
- A number of members of the judiciary are in favour of promoting more humane and effective ways to face conflict and crimes.
- Participation in international projects or initiatives provides the opportunity to exchange and learn from others' experiences. It is also a way to broaden the mind and share knowledge.

2.2. ITALY

- There is a sector of juvenile judges and magistrates that is in favour of restorative justice.
- The current law for juveniles, although it does not regulate victim-offender mediation explicitly, provides legal opportunities for victim-offender mediation. Furthermore, the underlying philosophy of this law has a lot in common with restorative justice. This context in the field of juveniles can function as a good starting point for the better implementation of restorative justice schemes on a bigger scale.
- There are good collaborative relationships between the so called ‘third sector’⁹⁴ and public institutions or the government administration in general.
- Nowadays in Italy, there is a positive political attitude towards restorative justice. This situation opens a window of opportunity for developing restorative justice.
- The involvement of Italian experts and organisations in international initiatives and projects facilitates the exchange of very valuable knowledge and experience from which Italian practitioners can benefit.

2.3. MALTA

- There is very strong collaboration between the two NGOs running victim support and offender support services.
- Participation in international organisations working in the field of victims and restorative justice as well as involvement in international projects has allowed for growth based on the experience of others and has facilitated access to information and knowledge.
- The engagement of certain journalists has helped to attract the attention of Maltese media.

2.4. PORTUGAL

- The pressure of international regulations has been a determining factor for the approval of a law introducing mediation in criminal matters in Portugal.
- The perceived failure of the current judicial system is widespread. This notion has resulted in policy makers and judiciaries starting to view restorative justice as a new approach that could also meet the public’s expectations of the criminal justice system.
- Currently in Portugal, policy makers appear to have good attitudes towards restorative justice.
- Participating in international projects and in international forums or organisations allows access to the knowledge and shared experiences of other countries. As a result, it becomes possible to learn from past examples and practices.
- Both victim support and offender support are actively engaged and have been working together since the beginning of the restorative justice movement in Portugal. Their collaboration has been both on training and on cases referred to mediation.

⁹⁴ Non-governmental organisations like not-for-profit organisations or foundations.

2.5. SPAIN

- Restorative justice possibilities are increasing in other fields besides the criminal justice system. There are numerous mediation initiatives in schools and community mediation centres. In several Autonomous Communities a specific law has been passed which regulates mediation in family matters.
- The existence of an explicit legal basis for victim-offender mediation for juveniles is certainly beneficial. This should serve to improve the implementation of victim-offender mediation in certain Autonomous Communities in which it is not yet well established.
- In certain Autonomous Communities there is a pool of well-trained mediators with extensive experience in criminal matters which can support the training of new mediators in the rest of the country.
- There are good training programmes and postgraduate courses in universities in different provinces of the country. Some of the programmes are more theory oriented and others are more practice oriented. In general, however, they provide a good basis for the dissemination of knowledge about mediation and peaceful conflict resolution.
- Different research projects have been conducted and the results show that mediation has a positive impact on victims and offenders.

2.6. TURKEY

- The courts' extensive backlog of cases has become a pressing political concern. Consequently, new mechanisms such as ADR and victim-offender mediation, which favour the reduction of cases and costs of the justice system, are seen by certain policy makers as a means to address the problem of the courts' overload.
- Supranational legislation has had a decisive influence over policy making in Turkey, especially EU regulations, since Turkey is a candidate country.
- There is a significant network of NGOs working in the field of criminal justice and human rights. If informed about restorative justice, they can play a key role in supporting the implementation process.
- Several researchers and academics are involved in promoting restorative justice and ADR through different actions as diverse as research, international projects, networking and awareness raising strategies.

2.7. BELGIUM

- The collaboration of universities and academics has led to significant progress in the field of restorative justice. The scientific evaluation of the practice has provided objectivity to the positive values of restorative justice, thus becoming an important asset in securing its credibility with policy makers, the judiciary and the general public.
- The fact that restorative justice projects were carried out by NGOs within a loose framework outside the criminal justice system has created a flexible context in which it has been possible to experiment with new projects and experiences.
- Society's general feeling of disappointment with the criminal justice system reached a peak during the early 1990s. The crisis of the judicial system led policy makers to improve victims' policies and to be more receptive to the restorative justice approach.

- Active participation in international initiatives and projects has had two positive effects: international recognition has been given to the restorative justice movement in Belgium, which in turn has strengthened recognition by national stakeholders.

2.8. FRANCE

- The public holds the perception that the traditional justice system does not work well but instead creates negative unwanted side effects.
- The message that restorative justice practices have a deterrent and not just a reactive effect is seen as an added value for policy makers.
- In France there are significant, well-developed training programmes. This helps to improve the quality of practice as well as to promote the education of stakeholders.
- Victim support agencies are involved in the delivery of mediation services.

3. GOOD PRACTICES

The varying circumstances in which restorative justice has emerged in Southern Europe have guided each country in developing remarkably diverse strategies with the aim of tackling the challenges arising in the implementation of restorative justice. Therefore, in order to facilitate mutual learning on how particular needs or difficulties can be faced, experts presented several different projects that have or are being used to further the development of restorative justice in their country.

All participating countries found in this exchange of experiences constructive advice on streamlining practice or even resolving shortcomings which until then had gone unnoticed.

Bearing in mind the specific natures of the legal, political, historical, cultural and social background of each country, the idea that any given practice cannot necessarily be applied in a different context was a recurrent theme during meetings. The degree of applicability and the outcome of a specific initiative are shaped by a number of factors which mirror the individual character of each country and even the specific nature of different regions within the same country. As the experts stated, to benefit from a good idea developed elsewhere, a detailed analysis is required in order to adapt it appropriately to the situation in which it is meant to be implemented.

The following section is a summary of the ‘good practices’ presented by the experts.⁹⁵

⁹⁵ The following descriptions are based on the presentations made by the experts from each of the participating countries in the third expert meeting, held in Trier (Germany), 29-30 November and 1 December 2007. Greece, Panagiota Papadopoulou; Malta, Mark Montebello; Italy, Elisabetta Ciuffo, Isabella Mastropasqua and Silvio Masin; Portugal, João Lázaro; Spain, Pilar Lasheras, Marta Ferrer and Jaume Martín; Turkey, Galma Jahic; Belgium, Leo Van Garsse; France, Véronique Dandonneau.

3.1. GREECE

Starting a restorative justice network

With the enactment of Act 3189/2003, which introduced victim-offender mediation as a part of a broader reform of the penal legislation for juveniles, restorative justice practices and victim-offender mediation began to attract substantial interest from academics, policy makers, and lawyers.

Long before, the need to reform the juvenile justice system had been underlined by several Greek scholars. These scholars highlighted the introduction of diversionary practices, among which was victim-offender mediation, as a more appropriate way to prevent re-offending and promoting minors' successful reintegration.⁹⁶ However, research on diversionary practices was scarce and little information was available to policy makers and other stakeholders in Greece.

At the time the Act 3189/2003 was approved, the terminology of victim-offender mediation and restorative justice sounded unfamiliar to most juvenile probation officers and legal practitioners working in the field of juvenile justice. In addition to being largely unknown, guidelines and bylaws on how victim-offender mediation was meant to be implemented were unforeseen, thus leaving stakeholders uninformed. This background led a number of unconnected scholars, legal practitioners, and other actors in the field to start searching for information at the institutional level. Also, research initiatives on related topics were started in the field of law, victimology and psychology.

These early dynamics have improved with the approval of the new Act 3500/2006 introducing penal mediation for cases of domestic violence. This legal instrument also has not provided enough clarity with regard to its practical application. Informal conversations are being established between actors of the criminal justice system. Academics and lawyers are currently contacting judges and prosecutors as well as policy makers in order to gain a better understanding of how these new legal provisions are going to be applied.

In this context, a group of key actors, including academics, lawyers, juvenile probation officers, NGOs working with juveniles, and other experts interested in this subject, has been identified and an informal network is being established. A number of these experts are active in establishing contacts and raising awareness on a small scale. Specific departments of the Greek Ombudsman Office, and the Ministry of Justice, as well as public officials of the Juvenile Probation Service have been contacted.

Special efforts are being made to engage certain academics with extensive experience in the field of criminal law with the goal of creating a more solid interest group within the university sector. For example, these academics are invited to attend international conferences on restorative justice as well as other events held in Greece on related subjects. They are encouraged to present their research and perspectives on restorative justice. Their participation in these events is creating new opportunities for broadening the exchange of information and strengthening networking with other stakeholders.

It is with great hope that the now informal network continues to grow and, will result in further research projects and the creation of more stable structures of collaboration with practitioners.

⁹⁶ See e.g. Dedes, 1976; Kormikiari, 1994; Sakkali, 1994; Aleksiadis, 1996.

3.2. ITALY

3.2.1. Cycle of international seminars

The Juvenile Justice Department in cooperation with the IPRS (Psychoanalytic Institute for Social Research), organised a series of four seminars held in 2007 under the title 'Mediations: international seminars concerning cross-contamination between different mediation practices' (*Le mediazioni: seminari internazionali di contaminazione tra le pratiche meditative*).

The goal of these international seminars was to strengthen and consolidate the Italian practitioners' community of mediators. The target groups were mediators working in Italy's various victim-offender mediation centres. Each seminar hosted a guest speaker or expert who had relevant experience in the field. Each guest speaker had acquired his knowledge in different professional settings, namely, policy development at the national and supranational level, practice, training, and research. Drawing on the experiences presented by each of the experts, room for discussion was provided for mediators to reflect on their own practice.⁹⁷

Each seminar was attended by approximately 100 people from Italy's victim-offender mediation centres. The seminar programme ran for one day and a half and was divided into two parts. During the first part, the guest speaker addressed topics related to his/her professional experience and expertise in the field. In the second part, Italian mediators presented four actual cases referred to their mediation centres. On the basis of the different mediation styles, mediators studied the different methodologies that could be applied to deal with these cases with particular regard to the possibilities that the specific approach of the guest speaker could open at the practical level.

These seminars generated a process of analysis of the different methodologies on the basis of both an expert presentation and the in-depth study of the cases. Such reflection often led to the discussion of more conceptual and theoretical aspects of the restorative justice approach, thus making the link existing between practice and theory visible.

A translation service was foreseen to cover all sessions of the seminars. This was a crucial asset in order to ensure that all Italian mediators working in the victim-offender mediation centres could take part.

The guest speakers provided extensive documentation that had been translated into Italian. These materials, being provided in their native Italian were greatly appreciated by practitioners. A summary of each seminar, outlining important issues raised during the sessions was also provided. This was accompanied by a DVD including the recording of the seminar sessions and the discussion of the 16 mediation cases. All documentation ensuing from the seminars and the DVD will be made available to victim-offender mediation centres as training and educational instruments for practitioners.

Once the cycle of seminars had been completed, the organisers gave interviews to two newspapers which proved to be an opportune means to raise public awareness of restorative justice. For future seminars, special attention will be given to media coverage.

Organisers are considering inviting a small number of field professionals who are sceptical about the way victim-offender mediation centres function to upcoming editions of the seminar. This could be seen as a small-scale strategy aimed at educating and training these professionals, as well as building working relationships between them and the victim-offender

⁹⁷ The guest speakers included in the programme were Michèle Guillaume-Hofnung, Director of the Institute of Mediation, Prof. of Law and Vice-President of the Committee for Human Rights and Ethical Principles, National French Commission, Unesco; Mark Umbreit, Centre for Restorative Justice and Peacemaking at the University of Minnesota, School of Social Work, Lidia Yora and Robert Gimeno, mediators of the Juvenile Justice Department, Autonomous Government of Catalonia, Spain and Siri Kemény, senior advisor at the National Mediation Service, Norway.

mediation services. Nevertheless, the seminars will preserve the main objective of realising an effective support for practitioners' work.

This initiative, although primarily addressing practitioners, has been an opportunity for the Ministry of Justice to lend support to those local governments (including regional, provincial, and municipal governments) currently providing funding to the victim-offender mediation centres.

3.2.2. The 'Filtering Group' (*Gruppo Setaccio*)

Out of the cycle of international seminars, a working group has been created that includes public officials, an academic, and a number of mediators who participated in the seminars. Other professionals working for NGOs in the juvenile field are also involved.

The mission of this group lies in identifying (or 'filtering') the new insights and relevant recommendations developed during the seminars that can serve to streamline the design of a new bill regarding mediation for juveniles, hence the choice for the term 'filter' or 'strainer' (*setaccio*) to name the group. The topics dealt with can refer to methodological as well as to policy implementation aspects. Once the most relevant concepts have been 'filtered', amendments to the bill will be proposed. These amendments will allow policy makers to factor recommendations ensuing from practitioners and academics into the design of the implementation process.

It is important to note that this working group functions as a link between the restorative justice collective, including academics, practitioners and other stakeholders, and policy makers. It represents a bridge between issues and insights gained from experience on the one hand, and policy making on the other, being thus a means of achieving a bottom-up dynamic.

3.3. MALTA

Building collaborative relationships with policy makers and legal practitioners

Victims Support Malta (VSM) is one of the NGOs currently playing a leading role in the process of introducing restorative justice in the Maltese criminal justice system. At this preparatory stage, VSM is organising meetings with representatives of the Ministry of Justice, public officials from the correctional services, and other criminal justice system agencies in order to raise awareness about restorative justice and build working relationships. The goal of these meetings is to discuss the different legal and organisational aspects that require definition in order to introduce restorative justice or victim-offender mediation to the Maltese criminal justice system.

At the practical level, it has been noted that, despite the fact that VSM prepares the meetings and sets the agenda; it is actually the Ministry of Justice who formally calls the meetings and provides the venue. The engagement of this public body reinforces the credibility of the restorative justice approach and stresses the importance of taking part in the discussions.

Alongside studying the legal and organisational arrangements of the implementation policy, in these meetings the red flags that the future introduction of restorative justice raises to legal practitioners and policy makers are also addressed. Presumption of innocence and the possible inversion of the burden of proof rule by the participation of the offender in mediation before the trial are just some of the controversial issues that are being tackled.

Possible solutions to these and other concerns are explored in a cooperative environment. The meetings evolve positively, however, it is noted that to count on practical knowledge ensuing from experience on a pilot project would facilitate the preparative work in the meetings. This advantage would help when facing the questions and concerns reported by stakeholders during these meetings.

Having realised this need, VSM intends to launch a pilot project in order to acquire experience on real cases. The evaluation of the project will be a great asset in building on further expertise and streamlining certain aspects of the implementation.

It was highlighted, that from the outset, to create spaces for dialogue and common understanding between all the actors involved strengthens their sense of involvement in the decision-making process concerning the introduction of restorative justice. In particular, the presence of decision makers in the meetings (policy makers and public officials), helps to speed up the introduction process at the institutional and legislative level.

The collaborative dynamics generated in these meetings serve as a foundation for establishing similar methods of communication and cooperation between stakeholders at later stages of the implementation process.

3.4. PORTUGAL

3.4.1. AGIS project ‘Victims and Mediation’

This project is co-financed by the European Commission under the AGIS programme. APAV is the promoter agency working with partners, including other agencies from Portugal and across Europe.

Through this initiative, partners of the project seek to improve the protection of victims’ rights and interests by promoting research and the best known practices regarding the treatment of victims in restorative justice or victim-offender mediation schemes.

The project’s duration is 24 months (November 2006 – October 2008). Its purpose is to develop tools and further knowledge in order to improve performance within restorative justice or victim-offender mediation projects concerning victims’ treatment. It also aims to strengthen exchange and networking at the international level. The fact that the project has been developed in an international setting is likely to facilitate collaboration with similar agencies in Portugal.

Given that the implementation of victim-offender mediation schemes for adults is in the first stage of its implementation in Portugal, the findings of this project with regard to best practices for victims’ treatment can easily be integrated into the Portuguese practice.

The aim of the project is to contribute to the protection of victims’ rights by promoting international exchange and furthering research on how victim-offender mediation services best deal with victims as participants in the mediation process. The specific objectives of the project are:

- Identify the quality and appropriateness of the treatment that victims currently receive in the course of their contact with victim-offender mediation programmes.
- Analyse the interventions undertaken within a victim-offender mediation service, and identify which ones are beneficial for victims and which ones are harmful.
- Study the appropriate training for dealing with victims’ issues that mediators should receive in order to ensure appropriate treatment. Develop optimal practices and prepare strategies for their dissemination and effective implementation.

The instruments of the project are the following:

- Three study visits to Portugal, Scotland, and the Netherlands. Each visit includes a workshop designed to exchange information on aspects, such as how to contact and brief victims about mediation. Other topics may include: training of mediators on victims’ issues and ways of establishing cooperation between mediation services and victim support services.

- Study and research on the current standing of victims in victim-offender mediation programmes.
- Closing seminar.
- Bilingual publication of findings resulting from the workshops, the research undertaken, and the final seminar (Portuguese and English).

The target groups are representatives of public bodies, victim support workers, mediators, project managers, as well as trainers on victim support and mediation.

APAV is the promoter of the project⁹⁸ and the partners are the following agencies and public institutions:

- 'Department for Extra-Judiciary Administration' (Portugal): Department of the Ministry of Justice responsible for the promotion of extra judicial means of conflict resolution;
- 'International, European, and Co-operation Relations' Office' (Portugal): Department of the Ministry of Justice responsible for the coordination of external relations and cooperation policies in the field of justice. This Department played a key role in the framework decision on the standing of victims in criminal proceedings;
- Portuguese Catholic University (Portugal): university with recognised prestige and expertise in education and research;
- Victim Support Scotland (Scotland): Scottish national victim support organisation working in cooperation with existing mediation services;
- Slachtofferhulp Nederland (The Netherlands): Dutch national victim support organisation which includes among its services an autonomous victim-offender mediation unit;
- Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung (Germany): a highly renowned victim-offender mediation service in Germany, with extensive experience in mediation.

Through their specialised expertise related to victims, each of these organisations will be able to bring a uniquely insightful and valuable contribution to the activities planned.

As a result, the project is expected to attain a comprehensive and detailed overview of the current standing and treatment of victims in victim-offender mediation schemes throughout Europe. It will also prompt discussion and reflection on which practices are most adequate in providing the best treatment to victims within the victim-offender mediation services.⁹⁹

3.4.2. 'Spontaneous' awareness raising strategy

Since late 1990's, when the terms 'restorative justice' and 'victim-offender mediation' started to be introduced in Portugal, several agencies and professionals interested in restorative justice have been working together to raise awareness and sensitise stakeholders.

The strategies were addressed to aspects of policy development at different levels and reached an important number of key actors. Contrary to what might be assumed, the fact of being able to involve different actors in an effective way has been a result of spontaneous self-organisation rather than part of a comprehensive and planned campaign.

⁹⁸ APAV is member of the European Forum for Victim Services and of the European Forum for Restorative Justice.

⁹⁹ See Marques and Saavedra, 2008.

In order to inform the agencies and professionals working in the field of the criminal justice system about restorative justice and victim-offender mediation, a number of seminars were organised in cooperation with the Ministry of Justice. These events opened opportunities for future collaboration between stakeholders.

When the first victim-offender mediation scheme for juveniles was established there was no specialised training on restorative justice or victim-offender mediation available in Portugal. In order to ensure the quality of practice of the first group of mediators involved in this project, special efforts were made to bring practitioners from other countries with experience in the field, e.g. juvenile mediators from Catalonia, Spain, who were contacted to deliver the initial training courses.

The university sector has also been a focus of attention in these initiatives. It was noted that academics and researchers were often inclined to view restorative justice and victim-offender mediation as an exclusive method, reserved for liberal professions such as lawyers and psychologists. Due to this, researchers and academics remained detached from restorative justice and related topics, thus there was a need to draw their attention to it and stimulate research and scientific publications in the field. To this end they have been invited to attend national or international conferences on restorative justice. The goal of these conferences is specifically to develop interesting links between their fields of research and restorative justice. University professors and young researchers have also been encouraged to present papers or to publish short articles in newsletters and journals.

Furthermore, in order to develop materials and literature and to educate people about restorative justice, APAV has produced several publications which gather together the papers presented at seminars and conferences that have been organised.

Currently, as a result of what some would consider an ‘unplanned’ strategy, restorative justice has become well-known in Portugal. More actors in the field are sharing the principles and values that it entails and a number of them have even become advocates of the restorative justice approach. This supportive atmosphere has been one of the key factors leading policy makers to take one step further and begin the process of creating a legal instrument to introduce victim-offender mediation in the adult jurisdiction.

3.5. SPAIN

3.5.1. ‘Let’s Share’ programme

This is an initiative of the Centre for Legal Studies and Specialised Training (Centre for Legal Studies) for the group of juvenile mediators from Catalonia, Spain. It was first introduced in 2006 and it aims to provide a permanent structure for these professionals in order to support one another in their daily work by pooling their knowledge and practical experience in solving common challenges.

The programme ‘Let’s Share’ draws on a concept of ‘knowledge management’ which suggests that every professional accumulates valuable knowledge as a result of the experience gained in the daily work setting. Professionals themselves are the ones who can best identify their interests and areas of improvement in their profession. This approach represents a change of paradigm concerning knowledge creation and its use in a work place. It is argued that in the work place, it is usually the people in higher positions who decide about these aspects. Furthermore, workers are not used to sharing information concerning the methodology, techniques or tools to be used in their daily work.

By contrast this paradigm proposes that the identification of the knowledge needed; the acquisition, creation, organisation, sharing, storage and distribution of knowledge is carried out by and among co-workers. It draws on the idea that if professionals are given the tools to pool their knowledge (‘to manage it’), they can develop innovative and tailored resources in order to streamline their performance. This in turn stimulates them to evolve further, thus the

interaction between co-workers also allows knowledge building within the organisation at the general level.

The group of 30 juvenile mediators is organised in several working groups (12 at this time), which discuss and elaborate on a specific topic of interest. Within these working groups, research conducted and good practices are collected and other small-scale projects are undertaken. The topics elaborated upon relate very much to practice with the aim of providing support for the mediators' daily work.

As a fundamental tool to enable this work, a multimedia platform has been designed through which these practitioners are in connection on a permanent basis. It actually constitutes the primary means for the interaction between the members of the working group; however, face-to-face meetings have also been established.

The findings and the work completed by the working groups are presented in a seminar or meeting organised once or twice every year that all mediators attend. On the occasion of the discussion of the findings, a guest speaker who is expert on these specific topics is invited to give a presentation.

The agenda and the timetable is organised by one of the mediators who has been appointed as coordinator and an 'e-moderator' who will also take care of reporting on the meetings and the seminars.

The documents in which the findings and conclusions of the working groups are gathered are made available through the multimedia platform to the rest of mediators. These documents, which summarise the knowledge that has been shared, are an essential tool of the project and a means through which the information can reach everybody. Furthermore, they serve to build a foundation of resources permanently available for mediators to consult.

The multimedia platform can also be used as a means to circulate news and other information among all mediators, as well as to ask for or to give advice to each other on a particular mediation case.

The technical management and the funding for this platform are provided by the Justice Department of the Autonomous Government of Catalonia.

It is noted that most of the mediators have become actively engaged. Despite the usual limitations of time, the exchange of knowledge and mutual support is in turn further increasing interest and involvement. Furthermore, the dynamics generated in this framework are helping to reinforce cohesion between mediators working in the different provinces of Catalonia.¹⁰⁰

3.5.2. Internship exchange agreement

The University of La Rioja is giving an on-line postgraduate course on restorative justice. The organisers were interested in offering internship opportunities in victim-offender mediation services to their students. However, schemes have yet to be established in this Autonomous Community.

Through their participation in this AGIS project, the University of La Rioja and the Centre for Legal Studies (in Catalonia), have been given the opportunity to get to know one another's interests and capabilities. Finally, a collaboration agreement has been signed. On the basis of this agreement, internship placements in the mediation scheme for juveniles will be provided by the Centre for Legal Studies to the students of the on-line postgraduate course. In this way, these students will be able to complement their theoretical knowledge with practical

¹⁰⁰ See Fuertes, 2008.

experience. As an added bonus, networking and exchange will be greatly promoted between agencies located in different Autonomous Communities.

3.6. TURKEY

As explained in section II. 6, victim-offender mediation in Turkey has been recently introduced through amendments to the new Criminal Code and the new Criminal Procedure Code. However, the effective implementation of victim-offender mediation encounters difficulties at several levels. The legal provisions are not clear enough with regard to fundamental aspects such as guidelines concerning organisational arrangements, referral procedures, or standards for training.

Little or no information on victim-offender mediation and its legal implications has been distributed among the judiciary, prosecutors, and lawyers. This greatly reduces the opportunity for such professionals to make use of it. Bar associations are particularly indisposed towards this reform, a sector of them is even openly opposed to victim-offender mediation. They believe that their voice has not been sufficiently taken into account during the decision-making process concerning the legal amendments.

Moreover, given the novelty of victim-offender mediation in the Turkish criminal system, there are not many trained mediators available; nor are there training materials or courses for professionals who might be interested in becoming mediators.

In light of this situation and with the central goal of assisting the implementation of victim-offender mediation in criminal matters in the Turkish criminal justice system, the Istanbul Bilgi University Human Rights Law Research Centre introduced the project, 'Promoting the practice of victim-offender mediation in Turkey'. The project was awarded by the European Initiative for Democracy and Human Rights to the Istanbul Bilgi University and it encompasses a wide range of instruments; each of them aiming to address the different types of challenges emerging in the process of implementing victim-offender mediation in Turkey.

In this report, only two of the activities foreseen within this project are described. These two have been selected because they address needs most commonly noted by the rest of the participating countries. Namely, the need to build capacity for setting up mediation services, defining guidelines for training mediators, and the need to build working relationships with legal practitioners.

3.6.1. Study visits

A group of four researchers from the Istanbul Bilgi University involved in this project have visited two different victim-offender mediation centres in order to gain knowledge about the practical aspects of victim-offender mediation services. Researchers visited SACRO in Scotland and Sugghomè and Médiante in Belgium. These two projects were chosen according to their experience in the field. Furthermore, the differences between the legal and cultural contexts where the services are located provide a wider perspective by showing how similar challenges can be tackled in diverse ways.

The format of these visits allowed researchers to observe specific and practical aspects of the implementation process of victim-offender mediation services in practice. Direct contact with service managers and mediators made it possible for them to ask very practical questions on how a service works, thus clarifying details that might be unclear in the available literature. The topics addressed varied from the type of documents used for the referral of the cases to internal organisation and supervision schemes for mediators.

These visits required considerable funding, which had been previously foreseen in the budget of the project. Nevertheless, it was pointed out that for the purpose of gaining practical and detailed knowledge, such visits might be more cost effective than for example organising an international conference.

All the information gathered during the study visits has been systematised in reports and elaborated for training materials. It will be further disseminated to legal practitioners and other interested stakeholders.

Additionally, in order to support the Ministry of Justice in designing appropriate guidelines with regard to training standards for mediators, a complete training curriculum will be designed. It will bring together information on the different training models existing in other countries, highlighting their distinctive features. The degree of applicability of each of the methods in the Turkish reality will also be explored.

3.6.2. Seminars for legal practitioners

A series of seminars have been organised with the goal of raising awareness of victim-offender mediation and circulating information among judges and prosecutors, as well as Bar Associations in different regions of Turkey.

These seminars aim to engage legal practitioners in the implementation process in a more proactive way. To this end, both the content and the format of the seminars have been particularly well planned.

The topics addressed refer to the notions underlying restorative justice, the working principles of victim-offender mediation, and the fundamental themes of the implementation policy of victim-offender mediation in Turkey.

The training materials to support the seminar and training sessions have been prepared based on the information gathered in the study visits and further preparatory research on related fields, namely:

- Legal research: provides an overview of the legislation related to victim-offender mediation in Turkey and how it complies with international standards. The current referral mechanisms to victim-offender mediation by the prosecutor or the judge are also addressed.
- Ethnographic research: focuses on the traditional methods of conflict resolution existing in Turkey and explores the potential pitfalls posed during the application of the law introducing victim-offender mediation. Suggestions as to how traditional conflict resolution practices and victim-offender mediation can benefit from each other are drawn.
- Best practices on how to set up a victim-offender mediation service: the ethical and professional standards for mediators, case management and case supervision, internal organisation of the staff, evaluation of the service, and other working principles that inform victim-offender mediation services in different countries are compared. The goal is to provide background information on how a victim-offender mediation service can be established and the difficulties that certain aspects may raise in certain legal, social, political and cultural contexts.
- Public opinion on victim-offender mediation: a nationwide survey has been carried out in Turkey by the Bilgi University Human Rights Law Research Centre. The survey, called 'Justice Barometer' seeks to gain a picture of citizens' perceptions and understanding of the justice system in Turkey. Among other aspects, some of the questions asked aimed to identify the public's attitude towards victim-offender mediation. More exactly, the goal was to assess what information people possessed on mediation and whether they would be willing to participate in a mediation process as the victim of a crime. The results, among others, reveal that despite 57% of the population stating they know what victim-offender mediation is, only 27.1% has a correct understanding of it. One of the relevant findings of this research shows that

the more adequate knowledge people have about victim-offender mediation, the more inclined they will be to take part in a mediation process with the offender.¹⁰¹

Furthermore, the sessions have been designed with an interactive format with the purpose of informing and at the same time stimulating reflection and discussion among legal practitioners.

Firstly, a theme is introduced by a short presentation based on the research and training materials prepared. Secondly, in light of the information provided by the presentation, judges, prosecutors, and lawyers are encouraged to share their views on how victim-offender mediation can be better integrated into the Turkish criminal justice system. For this reason the group of participants is kept reasonably small for every seminar (30 participants approximately).

The sessions also allow room for these legal practitioners to exchange their views on how they interpret their role in the application of the law introducing victim-offender mediation.

With this approach it is intended, not only to raise awareness but also to promote the more direct involvement of judges, prosecutors, and lawyers in the effective implementation process of victim-offender mediation.

3.7. BELGIUM

3.7.1. Action-research

The first victim-offender mediation pilot experience in Flanders was initiated in 1987 as an action-research project undertaken by the Penology and Victimology Department, Faculty of Law of the Catholic University of Leuven and the NGO Oikoten, which works with juvenile offenders. It was the result of both academics and practitioners' shared interest in exploring how this new approach to crime, which was already applied in other countries, could work in practice in the Belgian context.

To this end, the trial of victim-offender mediation (the 'action') was conceived and designed from the outset as a part of a scientific evaluation scheme (the 'research'). Therefore, scientific research and mediation of cases were running simultaneously as two fundamental elements of the same project.

A rather modest budget was sufficient to start-up and hire one part-time researcher and one part-time practitioner who were working under the supervision of the academics responsible for the research project (forming the research team). Furthermore, a steering group had the task of following-up and giving feedback to the research team. This steering group was formed by academics of related disciplines and professionals from the judicial system who were involved in the project. The collaboration with the judicial authorities of the district of Leuven was essential in securing the referral of a minimum number of cases.

After this first experience, a number of other action-research projects were carried out in Flanders. This was done in order to study the possibility of implementing the different restorative justice practices such as conferencing, the introduction of a restorative justice approach into the penitentiary system, or the application of victim-offender mediation after trial, in the Belgian context. Although it has not been exempt from difficulties, the collaboration between academia and practice has proven to be a key element in introducing such novel initiatives as restorative justice practices. The scientific and objective approaches that the participation of the university can provide are fundamental for an innovative project to gain credibility and raise awareness.

¹⁰¹ Three possible definitions about victim-offender mediation were provided to respondents. For this survey, the definition that was considered appropriate for victim-offender mediation reads as follows '*a third person helping the two persons to make their own decision on the conflict*'. See Kalem and Jahic, 2008.

Based on these numerous action-research experiences in the field of restorative justice it is possible to identify some key elements.

To begin with, the first step to be made when initiating an action-research project of this kind is to define what goals should be achieved by the particular restorative justice practice to be implemented. This requires reflection on the specific restorative justice approach that should inform the practice, namely whether the interest is placed in e.g. providing better assistance to the victim, promoting the offender's rehabilitation, creating opportunities for communication between victim and offender or reducing the costs of the judicial process. At this stage the need for the integration between 'theory' and 'practice' comes to the fore. Also, the specific legal framework and the country's context will require careful consideration. On these grounds, the methodology applied to evaluate the project will need to address the type of specific objectives that the project set at the initial stages of its implementation.

Secondly, the research methodology is usually based on close collaboration between researcher and practitioner. The researcher's work is based on the mediator's view, experiences, and even his/her emotions. For this reason, their interaction should be based on transparency and confidentiality. It is essential that the mediator encounters the appropriate atmosphere where he/she feels comfortable enough to disclose the details of his/her work and his/her own impressions without feeling judged on performance. This will allow assessing the micro-processes occurring during mediation and draw constructive recommendations. Systematic follow-up is essential, especially at the start of the project. It has proven to be very important that meetings between researcher and practitioner are held frequently in order to ensure time and resources to examine every detail. However, this necessarily close collaboration and good understanding between researcher and practitioner, should not lead to confusion between one another's roles. It is essential to keep a clear division line between the theoretical analysis on the one hand, and the practice on the other.

Thirdly, the establishment of a steering group supports the work of the research team at two levels. On the one hand, in the analysis of the different issues and the findings the participation of different professionals and academics provides a broader and more comprehensive perspective. On the other hand, in respect to the practical aspects related to the implementation in order to ensure that a victim-offender mediation project will run smoothly, it is necessary to rely on the cooperation of the other actors working in the criminal justice system; such as legal professionals, prison staff, or victim services workers. For this reason their participation in the steering group is useful in reinforcing their engagement and integrating their insights into the findings of the project.

Other academics and experts, not directly responsible for the research project should also be involved in the steering group. The relevance and quality of their contributions are not necessarily linked to a particular discipline or domain. Nevertheless, it is strategic to involve academics working in the domains of criminology, law, or sociology, in other words, those directly related to the background of the professionals that should be engaged in the implementation of the project.

Fourthly, protocols can be signed between all the experts and professionals participating in the project to clarify the tasks and the responsibilities of each person involved. These protocols serve to establish the working principles of the project; such as transparency or confidentiality, as well as other more practical aspects concerning the referral procedures or the timeframes of the mediation process. It might seem difficult to define these aspects when undertaking a novel initiative of which the outcome remains somewhat uncertain. However, putting these arrangements in a written document provides assurance to all professionals involved with regard to the degree of commitment expected. In the long run, this is helpful to build mutual trust and improve cooperation.

Some of the professional members of the steering group might also be working on a case that has been referred to the project and therefore, being dealt with in the steering group meetings. To prevent a breach of confidentiality by disclosing information on the case to the lawyer, judge, or prosecutor dealing with the case, s/he can temporarily withdraw from the meeting.

Fifth, the reflections, discussions, and comments of the meetings between researcher and practitioner as well as the ones with the steering group are fundamental material for research. During these meetings key decisions related to the methodology or the practice are made. Thorough reporting of the meetings becomes essential to capture the evolution of the project and the contributions of each participant. These reports allow a record to be kept of the reasons why a decision is made so that these can be reviewed at a later date. Once completed, the final report of the project should include both, the positive results as well as findings that reveal obstacles or unclear points.

It might seem that to adopt an attitude of complete transparency when reporting on the findings, leaves the agency responsible for the project in a rather vulnerable position before the eyes of policy makers and legal practitioners.

It should actually be borne in mind that an agency may become especially vulnerable in certain contexts where the institutional approval of the project might depend on the assessment of positive outcomes which do not prove to score satisfactorily in the evaluation findings. Nevertheless, according to the experience in Belgium, transparency and the disclosure of all results of the scientific research strengthens the credibility of the agency. Political considerations aside, the project negative outcomes should result in constructive reflections. To this end, it is advisable to accompany the account of the shortcomings with an accurate explanation of the details and the context. If done in this way, the efforts to preserve the scientific approach over the possible political or institutional bias have proven to be worth the effort made.

3.7.2. Steering committees

In Flanders a steering committee has been established in every judicial district with the goal of engaging the stakeholders involved in the implementation of a victim-offender mediation scheme, and securing the necessary support for the functioning of the service.

These types of working group are usually composed of representatives of the public prosecutor's office, the judge's office, victim support, social services, and the victim-offender mediation service. The meetings are organised by the mediator of the judicial district every two or three months. The mediator will also be the person to facilitate the meeting, and to write the report.

As is generally agreed, in order for a victim-offender mediation service to function normally in its relation with the criminal justice system, cooperation and good communication between mediators and professionals working in the various criminal justice system agencies is essential. It is important to be able to rely on support from these actors not only at the early stages of setting up the victim-offender mediation service, but in a sustained way during the course of the programme.

Therefore, when starting-up a service it is important to build support from the judicial authorities and the different actors that will be directly or indirectly involved in the implementation of the victim-offender mediation scheme. Although this process may take months or even years, it is considered a necessary step to be taken before initiating any victim-offender mediation service activity. This is not only in order to secure something as fundamental as referrals of cases but also to ensure that the parties will receive the correct information and that the agreements reached will be taken into account by the judge when passing sentence.

Once established, the steering committee acts to secure a stable space for discussing mutual concerns and the specific issues arising from the practical implementation of the project. Indeed, the topics addressed can be of a very diverse nature. It might be necessary to focus on the general concerns that restorative justice raises to legal practitioners the first time they hear about victim-offender mediation as well as on the concrete difficulties and doubts that will only appear when the programme is running and judges, prosecutors, lawyers and victim support workers, start to integrate it into their daily work. Difficulties related, for example to procedural arrangements, data protection, or the legal effect of an agreement can be dealt with in this wider group where the professionals involved will collaborate to create solutions that are suitable for everyone.

In the course of the implementation of the project, the dialogue and exchange between these different actors requires that they know each others' jobs and responsibilities, thus allowing for a better understanding of each others' concerns. This helps to renew their engagement and cooperation with the programme on a permanent basis.

The steering committees become a permanent instrument to build good relationships, cooperation, and understanding between the criminal justice system professionals and the victim-offender mediation scheme. Furthermore, these can also be viewed as a mechanism through which judges, prosecutors, lawyers, and the staff working in the criminal justice system agencies, participate directly in the decisions that are taken during the implementation process of victim-offender mediation.

It is worth mentioning that in practice the functioning of these committees is not free from difficulties. A main problem lies in the fact that the people working in the represented institutions often change positions and are replaced by other colleagues. This can sometimes reduce the degree or the fluency of communication.

In order to give long-term stability to the participation and commitment of the members, the different agencies and bodies that take part in these meetings sign a cooperation protocol in which the terms of their participation and responsibilities are laid down. The formalisation of these aspects in an agreement, despite being non-legally binding, serves to acknowledge the importance of the active involvement of the different parties. However, once signed, these protocols could become a mere formality and have no substantial impact on the optimal functioning of the project. In order to prevent this, two different agreements have been devised which all the members of the steering group should sign.

Firstly, a 'Basic protocol concerning mediation in the criminal field' in which the different professionals and institutions involved commit to taking part in the steering committee, by attending bi-monthly meetings, and promoting the implementation of the victim-offender mediation programme within their field of work at the district level. By signing this agreement they are agreeing to participate actively in the discussions and contribute to the search for solutions.

Secondly, a specific 'Protocol of cooperation' is signed where the conditions for the referral process are described as are the roles and tasks of the different professionals involved. Therefore this document should be designed according to the particular victim-offender mediation scheme it is meant to support (in this case there are two different protocols, one for mediation at the pre-trial stage, Mediation for Redress and one for post-trial, Mediation during Detention).

It is stressed that after being in place for a certain period of time, these steering groups should be given official recognition by the Ministry of Justice or the Ministry of Social Affairs. By awarding formal support to the steering committees their role and their function in the criminal justice system will surely be reinforced.

3.8. FRANCE

3.8.1. 'Evolution needs evaluation': evaluating mediation in France

The actual impact of restorative justice practices in France has never been explored at the national level. In light of this, Citoyens et Justice, supported by the Department of the Judicial Protection of Juveniles of the Ministry of Justice (*Direction de la Protection Judiciaire de la Jeunesse*) has implemented a scheme to evaluate penal mediation at the national level.

The research project has been conducted by a researcher from the Faculty of Psychology at the University of Nantes and the primary targets of the evaluation are the process of mediation and its outcomes on the one hand, and, the perception that the different stakeholders hold about it on the other hand. The evaluation scheme has been designed to assess in a scientific way the real benefits of this measure and in particular its social and educational impact. This research analyses in-depth the methodologies applied and the resources invested in carrying out this measure.

The methodology used can be summarised in the following way:

- observation of the internal functioning of one of the NGOs providing victim-offender mediation;
- observation of actual mediation sessions;
- interviews with victims, offenders and legal actors involved in the cases observed;
- survey addressed to all the agencies delivering victim-offender mediation that are federated with Citoyens et Justice.

This evaluation project is viewed as a particularly important initiative because for the first time a clear overview of established achievements, as well as the shortcomings and aspects that need improvement will be gained. In addition, it is expected that this evaluation will give a sense of transparency, giving a clear oversight to the public administration and the judiciary. In particular it reveals what training is needed and which resources are required in order for mediators to provide a quality service. This is especially important in the current French context where the mainstream approach to crime policies is to enhance those measures that are considered to meet cost-effectiveness criteria and are able to show short-term benefits. As pointed out in section II.8. at present, magistrates and prosecutors are more inclined to choose other alternative measures which are considered to be less costly than penal mediation.¹⁰²

3.8.2. 'Professionalisation strategy'

With the aim of ensuring quality practice of mediators, Citoyens et Justice is currently working on a 'mediation professionalisation project'. 'Professionalisation' should be understood here as the training necessary to be a good mediator regardless of whether the person is being employed or is volunteering his/her time.

In France, prosecutors can only refer cases to mediators working in an accredited organisation such as Citoyens et Justice or INAVEM, or to individuals who have been formally accredited as independent mediators (freelancers). These two organisations, in particular, have established different ways to secure the quality of practice of their mediators. Together with mediation training a number of other initiatives are organised with this purpose in mind, e.g., supervision, specialised courses, or information sessions on new developments.

This project acts as a supportive structure by offering a framework for all the different training and supervision programmes that the federation has traditionally provided, therefore it is to be

¹⁰² See Dandonneau, 2008.

hoped that it will provide effective support in strengthening the quality of mediation practices carried out by the associations federated with Citoyens et Justice. It has also led to the creation of a specific programme for the continuous training of mediators.

By focusing on defining the type of training needed, the goal is to achieve that any person practicing mediation, regardless of whether it is paid or voluntary work, will provide a quality service.

In order to promote the study of topics relevant to the improvement of the work done by the associations, different working groups have been formed.

Furthermore, a specific mechanism called '*lettre aux adhérents*' (letter to the membership) has been established in order to systematically inform all associations about the legal reforms that are relevant to the practice of mediation which includes news concerning related matters. The Federation sends approximately 40 letters per year to the membership. This has proven to be a very useful tool for maintaining links between the members and the Federation.

Networking and information exchange between the different associations federated with Citoyens et Justice is especially encouraged. Four times a year Citoyens et Justice organises regional meetings at which the associations can discuss common concerns, exchange information on ongoing projects, as well as establish working relationships. The annual general meeting, which is chaired by the President of Citoyens et Justice, gathers all the members and provides room for further contacts between associations and professionals working in different regions.

V. FROM OPPORTUNITIES TO STRATEGIC PLANNING

1. WINDOWS OF OPPORTUNITY FOR RESTORATIVE JUSTICE IN SOUTHERN EUROPEAN COUNTRIES¹⁰²

In the previous sections, the focus was mainly on the form that the implementation of restorative justice has taken in Southern European countries; how it has emerged and the nature of the main difficulties and factors shaping the implementation process.

Commonalities as well as areas of divergence can be found in the way Southern European countries are handling the introduction of restorative justice. Similarly, the findings of the AGIS project, 'Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe', pointed out that many of the challenges in the implementation of restorative justice are shared by all countries regardless of the region (Fellegi, 2005). Difficulties such as the concerns of legal practitioners, the unreliability of funding, the need for appropriate evaluation schemes or the low civic involvement are recognisable by restorative justice advocates from other countries. The differences are rather related to the conditions available in each country to face these challenges. It should not be surprising therefore that specific measures recently recommended by the CEPEJ for facilitating the effective implementation of the Council of Europe Recommendation No. R (99) on mediation in penal matters tackle issues very similar to the ones mentioned in section III (CEPEJ, 2007).¹⁰³

Furthermore, a paradoxical link has come to the fore between certain challenges and supportive factors. During the meetings the analysis of strengths and weaknesses showed that in some cases the existence of a challenging factor is closely related to a supportive factor. Similarly, aspects that have favoured the introduction of restorative justice, depending on the circumstances, can also be identified as potential obstacles.

On these grounds, a question can be posed, namely to what degree is restorative justice applicable in Southern European countries? Or rather, what possibilities are there for expanding and consolidating restorative justice in Southern European countries given their specific political, social, cultural, legal and historical context? What priorities need to be met? What are the pitfalls to be aware of?

The experts moved on to exploring the background in which both the challenging and supportive factors have appeared. Although a complete analysis of the context of these countries falls outside the scope of this study, it would still be helpful to address some of the most relevant issues that the experts mentioned on the basis of the following pivotal questions:

- What windows of opportunity are open to restorative justice in Southern Europe?
- What potential risks need to be taken into account?

Therefore, what follows is intended to provide a sketch of the main issues arising from the legal, political, cultural and social background of the Southern European countries by drawing together the main challenging and supportive factors. On the basis of this first approach, the conditions that need to be created and the priorities for policy development will be analysed in the following sections.

¹⁰² This section departs from the experts' analysis and contributions along the project as described in previous sections and builds further providing some background information and research by the project officer. Therefore the reflections and opinions expressed may not represent the views of the experts.

¹⁰³ See Aertsen *et al.*, 2004; Willemsens, 2008.

1.1. LEGAL SYSTEM

1.1.1. Formalistic legal culture

One of the first issues addressed during the expert meetings concerned Southern European countries' legal culture. It was stressed that certain traits deriving from the legal tradition of these countries have had a distinctive impact in hampering a wider diffusion of restorative justice initiatives.

From the study of the state of affairs of restorative justice in these countries it becomes apparent that the formalistic legal culture, primarily based on the continental law tradition, has played a role in shaping the implementation process of restorative justice.

However, in other European countries whose legal system also belongs to the continental law family, like Germany, Austria or France, restorative justice developments seem to have gained more support at the formal level. Furthermore, several scholars concur that nowadays legal cultures tend to converge and the differences between continental law systems and common law systems tend to become narrower (Pizzorusso, 1998, 377 ff).¹⁰⁴

This leads one to wonder the extent to which, the legal culture is currently hampering the introduction of restorative justice in Southern European countries. In light of this, it may be worth taking a closer look at certain aspects that might help understanding the relationship between the legal culture of these countries and developments in restorative justice. The purpose is not to make a detailed description of the criminal justice system of each of these countries but to focus on some of the more salient topics emerging from analyses of the state of affairs of restorative justice in the participating countries and in particular, when the legal base was considered - namely the different principles governing prosecution policies (principle of mandatory prosecution *vs.* expediency principle), the weight of the diverse sources of law in the different legal traditions as well as the role of the victim in criminal proceedings which will be dealt with in the following section

When looking at how restorative justice practices are being introduced into different legal systems, the judicial authorities, the police and the probation services are amongst the actors that are most commonly being legally entrusted with the gate-keeping function in restorative justice. In particular, in the majority of cases it is the prosecutor who holds the legal authority to refer cases to restorative justice.¹⁰⁵ The decision to submit a case to mediation by a prosecutor presupposes that his authority holds a certain margin of discretion to decide which is the best action to take with regard to the case that has come to his/her notice. This could be to bring the case before the court, to settle it alternatively or simply to withdraw prosecution.

In the adults' jurisdiction, in those countries where the prosecutor has a certain discretionary power, namely where prosecution is governed by the principle of public interest test (also known as expediency or opportunity principle¹⁰⁶), the range of options available to the prosecutor will vary. At the other end of the spectrum, there are those jurisdictions which strictly adhere to the principle of prosecution *ex officio* or mandatory prosecution, which imposes an obligation on the prosecutor to pursue prosecution as soon as s/he receives notice of a crime. S/he will have to bring all cases before the court regardless of whether there are clear prospects of conviction or not.

In jurisdictions where the prosecutor has a degree of leeway, referral to restorative justice can take place as a precondition to the prosecutor's decision to simply waive prosecution, often on the grounds that victim's compensation has been achieved through mediation. The referral to mediation is also often foreseen as a diversionary measure itself which, if successful, will lead

¹⁰⁴ See also Albrecht, 2001, 6; Pakes, 2004, 51, 94.

¹⁰⁵ See Aertsen *et al.*, 2004, 23, 49-50.

¹⁰⁶ See Aertsen *et al.*, 2004, 23 fn 1.

to the dismissal of the case. By contrast, countries upholding the principle of mandatory prosecution officially will not have the possibility to refrain from prosecution by recognising that a restorative justice practice has legal effect.

As mentioned above in the juveniles' jurisdiction other relevant principles are involved therefore the law, as well as bringing the case before the court, often allows for different options regardless of whether the principle of public interest test is formally adhered to or not.

In the adults' jurisdiction, as reflected in section II, in Greece, Italy, Malta, Portugal, Spain and Turkey, the principle of mandatory prosecution is the general rule. In principle, except for certain types of offences (private crimes or complainant offences), this entails that every case should be brought before the court, thus the prosecutor does not have the option to decide that a trial is not necessary and cease prosecution even if the case has been settled by the parties involved.

It should be mentioned that at the formal level in most Southern European countries the principle of legality is not absolute. Besides offences subject to private prosecution and/or complainant offences (certain crimes against sexual freedom or against honour such as slander, insult or libel), other additional exceptions to the principle of mandatory prosecution have been provided for¹⁰⁷ although these exceptions tend to have a minimal impact on the judicial system.¹⁰⁸

Nonetheless, precisely due to the general prevalence of the principle of mandatory prosecution in Southern European countries, the courts' case overload is indeed a matter of concern for legal actors and also for policy makers. The support given by certain judicial authorities and public officials to pilot projects introducing restorative justice can be understood in part as a response to this concern. The principle of legality in the sense of mandatory prosecution is frequently associated with civil law countries whose legal system is based on the inquisitorial tradition, whereas a system in which the prosecutor enjoys an ample margin of discretion is often associated with common law systems which ideally follow the adversarial model of justice.

As mentioned earlier, several authors point out that nowadays almost all legal systems exhibit traits of the inquisitorial as well as of the adversarial tradition.¹⁰⁹ However, addressing the fundamental values underpinning these two ideal models of justice may help to gain a more comprehensive picture of where the legal culture of these systems stems from (Pakes, 2004, 80, 94). The premise operating in the inquisitorial tradition is that justice can be better achieved through the direct intervention of the state, hence the principle of prosecution *ex officio* according to which, all cases are a matter of public interest. The greater weight placed on legislation as a source of law as opposed to case law can also be understood as a ramification of the predominant role given to the state in the administering of justice. Whereas in the archetypal inquisitorial model the state holds a strong and 'active' role in administering justice, in an idealised adversarial model, the state is expected to maintain a more peripheral position in favour of lay participation. Accordingly, the responsibility of the state is to provide the setting and the conditions enabling the parties to settle the case on the basis of fair play (Pakes, 2004, 78ff, 93-94).¹¹⁰

¹⁰⁷ In these cases criminal action cannot be started unless the victim lodges a formal complaint.

¹⁰⁸ See e.g. Brien and Hoegen, 2000; Pedrosa *et al.*, 2001.

¹⁰⁹ See e.g. Spinellis and Spinellis, 1999, 18; Volger, 2005, 157-175; Grech, 2006, 8 ff.

¹¹⁰ Besides the different role given to the state in administering justice, there are other traits featuring the differences between these two ideal models of justice such as the degree of participation granted to the parties in the judicial process and the significance of the prosecution phase *vs.* the trial phase, which also reveal fundamental distinctions between them. See Aulet Barros, 1998, 41 ff; Pakes, 2004, 54 ff, 74 ff; Volger, 2005, 129 ff.

It can be argued that restorative justice may be more at odds with the fundamental values of a continental law system than with a common law system. A new approach advocating a larger role for the parties involved to decide on how to reach a settlement in the aftermath of a crime seems to be more in tune with the underlying values of a common law system.

It is important to note that prosecution policies awarding more leeway to prosecutors are not only embodied by common law jurisdictions. In France, a legal system typically rooted in the inquisitorial tradition, the Code of Criminal Procedure introduces the principle of opportunity (*règle de l'opportunité des poursuites*)¹¹¹ according to which the prosecutor may consider not to initiate prosecution either for technical reasons or because due to the minor nature of the offence prosecution in this case would not serve the public interest or because the victim has already been compensated by the offender.

In Germany and in Austria, formally adhering to the principle of legality, elements of expediency have been introduced so that prosecutors have the possibility to dismiss charges provided that the requirements clearly described by law are met.¹¹² According to the legal provisions, in practice, prosecutors in Germany or Austria are not obliged to bring all cases that come to their attention before the court but they can decide to dispose of them in other ways. As in other countries, the dismissal is made by means of a conditional discharge hinging on a particular condition such as the obligation to compensate the victim, or by explicitly diverting the case to a diversionary measure amongst which mediation is a possibility foreseen by law.¹¹³ The very difficulty of the public prosecution service in prosecuting all cases brought before it and the courts' excessive workload were some of the core reasons behind legal reforms to widen the prosecutor's powers in these countries.

The next step is therefore to explore the importance of the legal basis in Southern European legal systems where, according to the civil law tradition, statutes, acts, and codified texts are the primary sources of law.¹¹⁴ Even in Malta, whose legal system ensues from a blend of civil law and common law traditions, codes and acts are the prevailing source of legislation, also in criminal law (Brienen and Hoegen, 2000, 605-640; Grech, 2006, 8).

One of the aspects of common law systems that has been praised, is that precisely due to the distinctive form of reasoning followed by judges, which is case-based (also known as 'casuistry'), the law and the legal system in general becomes more adaptable and thus able gradually to integrate and to reflect the justice values and policy trends that are in place in a given historical and social context.

In an idealised civil law country, the decision-making process functions somewhat in an opposite manner. A judge must decide on the case according to the abstract norms that are laid down in the written laws, regardless of whether the solution is suited or not to the context. Case law, in contrast, enables judges to find the solution that is 'fairer to the case', thus allowing them to take into account the specific conditions and context of a particular case even if this entails moving away from previous jurisprudential decisions (Aulet Barros, 1998, 217 ff).

In summary, owing to the weight that codified law has in a civil law country, the existence of a legal base seems crucial in order to bring about a substantial change in the legal system. This is particularly true with respect to the possibilities allowed to the prosecutor when deciding how to handle a case.

¹¹¹ See Brienen and Hoegen, 2000, 295-352.

¹¹² See Löschnig-Gspandl, 2004 35ff. In Germany, formally the principle of legality governs the prosecutorial phase, nevertheless, different legal reforms have modified this with elements of expediency (Kilchling, forthcoming).

¹¹³ See Brienen and Hoegen, 2000, 59-104, 353-388; Albrecht, 2001.

¹¹⁴ In some of these countries, legal doctrine plays also an important role and despite it might not formally be recognised as a source of law, it has important weight in the eyes of the judiciary. See e.g. Brienen and Hoegen, 2000.

1.1.2. The increasing flexibility in criminal proceedings

Several studies point out that criminal justice procedure is undergoing a considerable change across Europe and beyond. Due to the need to reduce the justice system's structural costs and especially the need to reduce the courts' workload, reforms and new mechanisms to increase flexibility and simplicity in criminal proceedings were already being adopted in the 1970s in some countries and more intensively from the 1980s onwards (Albrecht, 2001, 5-8). This flexibility has been even more apparent in the field of juvenile justice.

The increasing number of powers given to the prosecutor is part of wider changes that aim to tackle the court's backlog, an issue that was already a matter of concern for policy makers and legal practitioners in 1960s. As a result, prosecutors have been granted more '*adjudicative and negotiating powers*' (Aebi *et al.*, 2006, 92) which in part correspond to the adoption of abbreviated procedures and the diversification of alternative sanctions. In addition, these measures based on cost-efficiency strategies are also aimed at preventing recidivism, hence the introduction of alternative sanctions amongst which compensation or restorative justice practices have been included. At the same time, a growing interest in favouring victim's compensation and restitution has also contributed to these changes. Indeed, the gradual acknowledgement of the need to improve the victim's role in the criminal proceedings and political interest in improving public confidence in the justice system have also been important motives for the reframing of the criminal justice procedure.¹¹⁵

These approaches have been seconded by different supranational standards urging member states to introduce measures to improve the efficiency of their justice systems and in particular, to increase their flexibility.¹¹⁶

These trends are also filtering into Southern European legal systems where the criminal justice system does not seem to be exempt from similar problems found in other countries. In these countries, where all cases need to be prosecuted, the courts' case overload can be especially alarming. Furthermore, policy makers and sectors of the judiciary are aware of the dysfunctional effects of the criminal justice system, namely its limitations in facing the problem of victimisation and in accomplishing the goal of prevention and the rehabilitation of offenders. Hence, the introduction of elements to increase the flexibility and simplicity of criminal procedures, although to a varying degree, can also be observed in Southern Europe. In some instances, when certain requirements are met (usually for minor crimes) the law lays down a highly simplified and accelerated legal procedure.¹¹⁷ The political will to comply with supranational legislation has exerted a positive impact on Southern European legislatures in the sense of improvements in the flexibility and simplicity of their criminal procedures. Supranational standards have also proven to be influential in getting victims' policies onto the political agenda.¹¹⁸

These have been arguments explicitly used by governments to enact laws introducing victim-offender mediation.¹¹⁹

More interestingly, mechanisms allowing the judge, the prosecutor and defence counsel the possibility of reaching a consensus on the sentence can be found in countries such as Italy or Spain. As long as they remain within the boundaries set by law, these actors are given the possibility of settling the penalty to some extent. Similar to the institution of 'plea bargaining',

¹¹⁵ See e.g. Albrecht, 2001; Pakes, 2004; Wemmers, 2005; Albrecht and Kilchling, 2005;

¹¹⁶ See Council of Europe Recommendation No. R (95) 12 on the management of criminal justice in Willemsens, 2008. See also Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts and Recommendation No. R (87) 18 concerning the simplification of criminal justice, amongst others.

¹¹⁷ See Albrecht, 2001.

¹¹⁸ See section V.1.2.

¹¹⁹ See e.g. Greece in section II.1, Portugal in section II.4 or Turkey in section II. 6.

a phase of negotiation between prosecutor, the defence counsel and the judge precedes the trial. During this phase, in exchange for a sentence reduction by the judge, the accused will accept the charge proposed by the prosecutor, hence the formal hearing of the trial will be substantially speeded up or even avoided. In Italy the institution of '*pateggiamento della pena*' or in Spain '*la conformidad*' can be considered as examples of such alternative measures (Albrecht, 2001, 38-40, 43).¹²⁰ Additionally, other sentencing outcomes such as the substitution of a prison sentence by a fine (or an alternative sanction) or the provisional suspension of the sentence, may also involve, although not officially ruled upon, a previous stage of negotiation between the defence counsel and the prosecution and/or the judge. The outcome of a restorative justice process could be taken into account in the course of these 'negotiations'.

The widespread promotion of ADR in labour and civil disputes has also played a role. Legal instruments foresee the use of mediation in family disputes in Portugal, Spain and Malta for example. Mechanisms of (re-)conciliation and negotiation are established by law with regard to consumer complaints or bank transactions.¹²¹

In summary, the dysfunctional effects of the criminal justice system, the need to reduce the structural costs of the courts, as well as policy transfers and the circulation of practices, are also helping restorative justice to attract more interest from policy makers in Southern European countries. The urgent need to reduce court workloads and increased attention to the position of the victim in criminal proceedings can help not only to gain the support of judicial authorities but also to place restorative justice on the political agenda. However, as has been learnt from the experience of other countries, the implementation of restorative justice, when solely guided by reasons of cost-efficiency or victim-satisfaction, while being a help, also poses considerable risks.

The concern raised during the meetings, is that a restorative justice policy introduced with the aim of reducing the structural costs of the judicial system or ensuring greater success with regard to payments of financial compensation to a victim by an offender, could lead to the drafting of a legal basis for restorative justice that loses sight of certain of its basic principles, e.g. by applying restorative justice only for a certain type of crimes or by using a settlement-driven methodology.

Indeed, when discussing the need for getting onto the political agenda in order for a legal framework to be provided, the importance of reflecting on which model of restorative justice is called for comes to the fore. In other words, what relation should restorative justice have with the criminal justice system? Should it be formulated as a diversionary measure running parallel to the criminal procedure? Should the gate-keeping function be held exclusively by judicial authorities and/or professionals working in criminal justice agencies?

The legal formulation of restorative justice will determine a particular restorative justice model. In particular, attention should be paid to choices concerning the 'scope', the 'entry point' or the 'exit point' as well as to the 'degree of specificity' of the legal instrument or the 'organisational arrangements'. Equally important is that at the stage of drafting the law, the legal, social and criminological context in which the law will be applied are taken into account since these will influence the chances of the desired model's successful application (Miers, 2007).

A restorative justice model where the access to the service is formulated as a 'right' enjoyed great consensus among the experts. This should ensure that every citizen involved in a criminal procedure, regardless of the type of offence and the judicial district, is entitled to choose whether or not to apply for some form of restorative justice. In light of the fact that the judicial authorities in most jurisdictions are being granted a gate-keeping function, envisaging access to restorative justice as a legal 'right' could serve as a starting point for

¹²⁰ See e.g. Pedrosa *et al.*, 2001, 135-210; Maffei and Merzagora Betsos, 2007.

¹²¹ See Floch, 2007.

securing universal access and regular use of restorative justice (Van Garssen, 2007). This would also require a more responsive attitude from the state in terms of the provision of means and infrastructure to secure access on a countrywide basis.

As will be discussed later, the legal basis is clearly not the only aspect necessary to the better development of restorative justice in Southern European countries. However, such a legal foundation has special relevance for restorative justice in those countries which belong to the continental law tradition and are governed by the prevailing principles of legality and mandatory prosecution.

1.2. VICTIM POLICIES

According to the restorative justice paradigm, it is of the utmost importance to ensure that victim and offender have an equal opportunity to participate and feel empowered throughout the entire restorative justice process. As some experts have stated, the quality of the practice and the accomplishment of the goals and objectives of restorative justice can also be influenced by the extent to which there is a balance between the policies and services provided to victims and offenders at both the legal and the institutional level. The degree of social awareness about victims' needs and their recognition is also important.

The victim's position in the criminal procedure, the effective accessibility to information with regard to her/his rights and the supportive services available can be considered as some of the indicators of the degree of political and institutional awareness of the needs and the rights of the victim in a criminal procedure.

Owing to policy transfer and to other national political phenomena, multiple legal reforms can be found in all of the countries interested in improving victim policies. However, the experts emphasised that in some of the participating countries there is still considerable room for improvement in this respect. Crime victims' awareness tends to be meagre and only victims of certain categories of crimes or 'high-profile' crimes have received institutional and public attention. Victim support services and compensation measures in some Southern European countries tend to be limited to victims of certain types of crimes, hence, a general or universal access approach to victims' needs and assistance is missing. Against this rather bleak backdrop,¹²² restorative justice approaches were considered by the experts to lack substantial support in part of the participating countries.

In very different countries such as Portugal, France or Belgium, victim policies have been salient and to some extent, the effective victims' rights policies have indirectly favoured the receptiveness of policy makers and legal practitioners for restorative justice. Conversely, in some Southern European countries, policy makers and legal practitioners have only recently begun to appreciate how restorative justice can assist in improving the position of the victim in the criminal proceeding. The recent introduction of victim-offender mediation in Greece (2003 and 2006) and Turkey (2004) has, according to the legal texts, been motivated in part by a political interest in improving the means through which the victim can receive compensation from the offender as well as to increase her/his role in the judicial decision-making process (see section II.1 and section II.6).

In order to have a more precise outline of the specific interaction between victim policies and restorative justice policies in each of these countries, it would be necessary to make a comparative study of current legislation in these jurisdictions as well as to map existing victim support schemes. Although this is not possible in this report, some general aspects will be addressed in an attempt to provide a better understanding of how victims' policies relate to the implementation of restorative justice in Southern European.

¹²² See Cavadinio and Dignan, 2006, 132, 140-141; Medina-Ariza, 2006, 184.

Both, the inquisitorial and the adversarial legal tradition have been considered as 'victim unfriendly', in other words, not recognising victims, albeit for different reasons.¹²³ Wemmers (2005) points out that at the formal level, civil law countries attribute important participation rights to victims and as such, the civil party and the auxiliary prosecutor are significant legal figures in this respect.¹²⁴ In most of the countries participating in this AGIS project, as in other civil law countries, the victim officially has the possibility to initiate an adhesion procedure (Brienen and Hoegen, 2000). In the course of the same criminal procedure, the victim can also claim financial compensation from the offender, thus avoiding the burden of having to file a separate civil procedure only for the civil compensation.¹²⁵

The possibility of the victim playing the role of an auxiliary prosecutor is also foreseen in some of these Southern European countries. The victim can therefore participate during the legal procedure, alongside the public prosecutor, assisted by an attorney. Amongst other possibilities, this legal instrument allows the victim to have information rights, to have access to the case file, to be heard, to present evidence, to examine and cross-examine the witnesses and to claim compensation. The victim will also benefit from actions undertaken by the prosecutor to show evidence of the crime committed and its impact on her/him. In short, through these institutions the victim has the possibility to access the case file, to be informed and to play an active role in the criminal procedure.

Traditionally, in the adversarial legal system or common law countries, victims only had the possibility to participate in the criminal procedure as a witness. This role does not necessarily give the victim sufficient room for being heard by the courts nor for expressing how they were affected by the crime. Rather, in those cases in which they would be summoned as a witness, (not necessarily always) their role was limited to answering questions posed by the prosecutor and the lawyer, an experience that was often negative for the victim. With the goal of addressing this situation, during the 1990s, institutions such as victim impact statements have been introduced in common law countries such as the USA and Canada, and later in the UK where compensation orders are common as well (Wemmers, 2005). The lobbying activity of victim's movements and the support of supranational legislation were amongst the most important factors contributing to these changes.¹²⁶

Focusing on European countries, the influence exerted on national legal systems by supranational legislation is also remarkable. The following are some of the relevant instruments urging member states to introduce measures necessary to improve the position of the victim in criminal proceedings which apply to the Southern European countries participating in this project:

- Council of Europe Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure.
- UN Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power.
- Council of Europe Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation.
- Council of Europe Recommendation No. R (2006) 8 on assistance to crime victims.

¹²³ See e.g. Pakes, 2004, 71, 81-82; Brienen and Hoegen, 2000, 5-34. Sanders and Jones, 2007, 282-308. Cennamo, 2007, 84-85; Cario, 2006, 168 ff.

¹²⁴ See Brienen and Hoegen, 2000, 1-4.

¹²⁵ In Malta by contrast, as a common law feature, legislation has not foreseen the possibility for the victim to act as a civil party, yet through a reform enacted in 2006, the legislature has introduced compensation orders (see section II. 3).

¹²⁶ See e.g. Wemmers, 2005; Albrecht and Kilchling, 2005.

Needless to say that the degree of specificity of their content and their enforceability varies depending on the type of legal instrument and the international organisation from which this emanates.¹²⁷ Nevertheless, all of them have helped, to a varying degree, to place the victim onto the political agenda of European countries and thus, also in Southern European countries.

Brienen and Hoegen (2000) conducted a study with regard to the implementation of the Council of Europe Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure in the 22 countries belonging to the Council of Europe.¹²⁸ During the 1990s these researchers examined the degree of implementation of the guidelines contained by the Recommendation at the formal level (victim-oriented legislative reforms) and at the practical level (initiatives carried out to put the guidelines into practice). The guidelines contained in the Recommendation refer to aspects that in general terms can be grouped into the following categories: the treatment of the victims by the judicial authorities, the extent to which the victim has a say during the pre-trial and the trial phase, mechanisms foreseen for the victim to obtain compensation from the offender and from the state and the type of victim support schemes and services.

One of the conclusions of this study was that Belgium, England and Wales, France and The Netherlands had performed very positively on the standards set by the Recommendation. In contrast, Greece, Italy, Malta, Turkey and Cyprus were the countries that at that time showed a weaker application of the Recommendation guidelines (Brienen and Hoegen, 2000).

With regard to some of these countries, the researchers pointed out that '*a discrepancy between the law in the books and the law in action*' (Brienen and Hoegen, 2000) could be observed.¹²⁹ While in general terms victims were awarded considerably important rights in these legal systems, on the practical level the actual possibilities for the victims to effectively take advantage of the rights foreseen in the legal provisions were substantially narrower mainly due to deficient implementation policies.

In particular, this study pointed out that one of the barriers for the application of the victims' rights established by law was the lack of information provided to the victim on his/her rights. As a matter of fact, the lack of information provided to citizens about the justice system and a shortage of resources made available to remedy this shortcoming was a fault common to many of the jurisdictions at the time of the study. It was suggested that overall not much attention had been given to informing citizens in an effective way about their rights nor about the criminal justice process in general.

This comparative study also observed that in some of the countries examined the existence of victim support services was not sufficient to give coverage to all citizens. Some Southern European countries were also within this group. In countries like Greece, Italy, Spain or Turkey, victim support services, when existing, were often focused primarily on victims of certain categories of crimes (e.g. domestic violence, terrorism or sexual abuse).

In Portugal and in Spain there is a national victim support scheme. However, in the case of Spain, the decentralisation of the state was noted as an obstacle to the effective implementation at the national level. This difficulty applied also to a certain extent to Italy. Victim support services are usually dependent on the funding that the region or the autonomous community is willing to allocate. As a consequence, the availability of victim support services varies substantially from region to region (or from one autonomous

¹²⁷ See Willemsens, 2008.

¹²⁸ The countries that were members of the Council of Europe when the Recommendation No. R (85) 11 was adopted were: Austria, Belgium, Cyprus, Denmark, England and Wales, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Scotland, Spain, Sweden, Switzerland and Turkey.

¹²⁹ See also Brienen and Hoegen, 2000, 839-880.

community to the other in the case of Spain). In Malta, the NGO Victim Support Malta was founded in 2003 in the wake of legal reforms adopted in 2002 that recognised an improved role for the victim in criminal proceedings. This is not the case in France or Belgium where grass-roots movements have created different organisations and associations to provide support and assistance to victims of crime and since the 1990s and 1980s the victim has been very prominent on the political agenda.

In summary, it could be said that the need for improving victims' policies is evermore present on the political agenda. While there is still room for improvement in certain countries with regard to the role and the rights of the victim at the legal and institutional level, in several countries a positive interaction between victims' policies and restorative justice policies can be observed.

Furthermore, by exploring the influence of victims' policies on restorative justice developments in Southern Europe, the gap between the law on the books and the law in action' in the field of victims rights draws one's attention to the implementation strategies followed in the field of crime policies in general in these countries. As the experts highlighted, besides the expertise invested in their design, implementation strategies depend a great deal on whether or not a favourable political will exists and current trends influencing crime policies.

1.3. TRENDS IN CRIME POLICIES

Understanding restorative justice as a political priority has proven to be a key factor in accomplishing an effective implementation of related policies. As has been said in section III, the flaws identified in the implementation design and application of restorative justice policies, and any kind of policies, result largely from the lack of any favourable political will. However, prior to addressing this more general aspect concerning policy-making processes and how priorities are set on the political agenda, it may be worth looking at current trends in crime policies and exploring some general tendencies regarding penal culture in Southern European countries including specific aspects related to prison population rates and crime victimisation rates.

In the first place the trends in crime policies in Southern European countries were a matter of attention as far as their relationship with restorative justice developments went. In particular the experts raised concerns about the impact the current general shift towards the 'neo-liberal penal' approach could have on restorative justice developments in Southern European countries.¹³⁰

As has already been stated, the penal culture of a given country is determined by a multiplicity of factors, some relating to policy transfer and the effects of globalisation, and others linked to each country's specific circumstances, such as its political, historical, social or cultural context. Therefore it is reasonable to think that a given trend circulating at the international level will be applied to varying degrees depending on the pre-existing realities and circumstances, hence the different outcomes of similar strategies applied in different countries.¹³¹ Bearing this complexity in mind, a thorough study of the background elements that shape the particular crime policy trends in each of the Southern European countries cannot be dealt with here. Nevertheless, some general aspects will be considered as a way of gaining a better understanding of those aspects of crime policy trends in Southern European countries that might restrict or be conducive to restorative justice.

The 'penal welfare model' prevailing during the 1960s and the 1970s in the Anglo-Saxon countries and Western Europe,¹³² has also had an important influence in shaping crime policies in most of Southern Europe. It goes without saying that due to differing political and

¹³⁰ With regard to the different types of penal strategies observed, see Cavadino and Dignan, 2006, xii.

¹³¹ See e.g. European Forum for Urban Safety, 2002; Cavadino and Dignan, 2006, 14ff, 36, 337ff; Shapland, 2008, 3-4.

¹³² See e.g. Garland, 2000.

economic backdrops these penal trends were not introduced at the same time in all the countries concerned. In particular it is reasonable to think that the rehabilitative model took root at a later stage in countries such as Greece, Portugal or Spain, which faced the aftermath of authoritarian regimes.

More recently in tune with trends in other Western countries,¹³³ there have also been changes to crime policies in Southern European countries and, although to a varying degree, an increase in the punitive climate has also been observed. Strategies based on cost-efficiency principles and measures aiming to increase security and safety such as situational crime prevention or 'zero tolerance' policing are also gaining ground in most of the countries participating in the project.¹³⁴

It is argued that crime policies are increasingly politicised and this is sometimes associated with justifications for increasing retributive policies, which are portrayed as necessary to address crime. This is particularly the case in the field of certain types of crime such as domestic abuse, organised crime and terrorism. Some suggest that the introduction of the victim's perspective in the public's rhetoric is to an important extent favoured by this wave of politicisation of crime issues.¹³⁵ As mentioned earlier, in Western countries different instruments designed to meet victims' needs and victims' satisfaction have been introduced since the 1980s, in part due to the influence of supranational legislation. As Albrecht and van Kalmthout suggest (2002, 7-8), the new measures based on the principles of restitution, compensation and reparation, amongst which are included victim-offender mediation and other restorative justice practices, may serve different purposes with respect to crime policy. Besides the primary goal of favouring the victim's position in the criminal procedure or encouraging more constructive ways to promote the offender's accountability, the promotion of compensation and restitution could also serve the interest of justifying greater severity in reactions towards offenders or the need to restrain state expenditure on the prison system. While favourable victims' policies can help to foster a better development of restorative justice, it is suggested that they can also lead to an emphasis on principles of retribution and an increase of control in crime policies.

Second, prison population rates and the problem of prison overcrowding can also help to illuminate a bigger picture of crime policies in Southern European countries. According to the Council of Europe Annual Penal Statistics (Aebi and Delgrande, 2008), prison populations vary substantially among Southern European countries. Likewise, as shown by these statistics, it seems difficult to establish a common pattern with regard to the development trends followed in these countries.¹³⁶ As the authors of this report warned, the analysis of imprisonment rates must be done carefully since there is no standardisation between the data collection systems used by different countries. Furthermore, categories used in these countries vary from year to year.

Furthermore, although these data are considered to be one of the indicators of the degree of punitiveness of a country's penal culture, it is noted that imprisonment rates alone do not necessarily provide a full picture and other elements that are not necessarily directly related to crime policies¹³⁷ can provide a more comprehensive view of the situation. Keeping this in mind, it is nonetheless worthwhile examining the data collected with regard to prison population rates per 100,000 inhabitants in 2006 (Aebi and Delgrande, 2008, 26-29).

¹³³ See e.g. Garland, 2000; Albrecht and van Kalmthout, 2002; Cavadino and Dignan, 2006.

¹³⁴ It is noted that in some instances the actual practice does not fully mirror the degree of punitiveness and retribution argued in the political discourse. See Lambropoulou, 2005; Medina-Ariza, 2006.

¹³⁵ See e.g. Garland, 2000; De Maillard, 2005; Lambropoulou, 2005; Selmini, 2005; Medina-Ariza, 2006; Cavadino and Dignan, 2006.

¹³⁶ See Aebi and Delgrande, 2008.

¹³⁷ See e.g. Cavadino and Dignan, 2006, 21 ff; Tonry, 2006, 6 ff.

In ascending order, what follows is the prison population rate per 100.000 inhabitants in 2006 country by country: Italy, 65.2; Malta, 84.7, Greece, 90.9; France, 91.6; Turkey, 91.7; Belgium, 95.6; Portugal, 119.4; Spain, 146.1.¹³⁸ Taking into account that the mean among the 49 countries surveyed is 147.4 it can be said that the imprisonment rates in Southern European countries fare low or moderately low compared to the rest of the other European countries. However, the range of figures for each country varies considerably. According to this data it is difficult to observe a common pattern in Southern European countries.

Even less consistency is found when it comes to the evolution of these trends between 2000 and 2006. In Spain, Greece, Malta, Belgium and France, imprisonment rates have been on the rise, however, France and Belgium registered acute fluctuations during this period. The prison population rate in Portugal, Turkey and Italy has decreased since 2000. Nonetheless, Italy and Turkey also show considerable fluctuations between 2000 and 2006.¹³⁹

Beyond the statistics, countries like Spain, Italy, France and Greece are facing the problem of prison overcrowding; hence, more prisons have been built. Intending to address this situation, the French and Italian governments have made use of 'collective amnesties' or generalised 'pardon laws' to prevent prison populations from reaching excessive figures. This could also explain the contrasting variations in imprisonment rates from year to year.¹⁴⁰

Third, according to the European Crime and Safety Survey (EU ICS, 2005), overall victimisation rates of common crime in the EU participating countries have been decreasing. The average victimisation rate reached a peak of 21.6 in 1996, and since then there has been a descending trend, with a mean of 14.9 in 2004.¹⁴¹ In 2004, the EU countries where victimisation rates were lower were Spain, Hungary, Portugal, France and Austria, followed by Greece and Italy. Conversely, the levels of common crime registered in Ireland, UK, Estonia, the Netherlands and Belgium was remarkably higher than the average (EU ICS, 2005, 19-22).

The Crime and Safety Survey was recently conducted in Turkey for the first time; specifically, in Istanbul. While this is one of the cities that scores higher in car theft and burglary related crimes in comparison to other European cities, when it comes to '*offences that involve proximity between victim and offender*' such as robbery, theft or assault, Istanbul scores significantly lower than the average (Jahic and Akdaş, 2007).

According to the European Sourcebook of Crime and Criminal Justice Statistics – 2006, the rate of offences reported to the police in Malta in 2003 had increased 3% on the year 2000; the same increase was registered in Spain. In contrast, total recorded crime in Greece, Portugal and Italy during this same period grew 19%, 13% and 11% respectively. The increase in France was more moderate, at 4%, while no relevant increase was recorded in Belgium (Aebi *et al.*, 2006, 37).¹⁴²

¹³⁸ Prison population rate per 100,000 inhabitants on 1 September 2006 (Aebi and Delgrande, 2008, 28-29).

¹³⁹ In Italy an important number of prisoners were released by means of an Act of Collective Pardon in 2006 (Aebi and Delgrande, 2008, 15). A similar measure was approved in 1995 (Cavadino and Dignan, 2006).

¹⁴⁰ See e.g. Cavadino and Dignan, 2006; Maffei and Merzagora Betsos, 2007; Aebi and Delgrande, 2008.

¹⁴¹ The European Crime and Safety Survey uses standardised questionnaires. It is important to keep in mind that this is a survey based on self-reports on victimisation experiences, thus subjective elements such as the underlying cultural differences or the personal memories of an incident of victimisation may influence the results (EU ICS, 2005, 8 ff). Among other questions, respondents are asked about their experience of crime over the last five years (personally or in their household). The information presented in the EU ICS, 2005 with regard to the level of common crime refers mainly to percentages of respondents victimised in the course of 2004 (EU ICS, 2005, 18 ff, 22).

¹⁴² Malta was not included in the European Crime and Safety Survey thus, there are no comparable data with regard to crime victimisation rates.

In summary, as in other European countries, the international circulation of criminal justice policies is exerting a fundamental influence in shaping crime policy trends in Southern Europe. However, it is noticeable that due to the importance of the specificities of each country, the 'neo-liberal model' in crime policies is not fully dominant in the penal culture of these countries. As in the rest of Western Europe, strategies inspired by the 'neo-liberal model' coexist with approaches and practices based on the 'rehabilitative and social prevention ideal'.¹⁴³ The underlying cultural and historical differences help to explain why the outcomes of apparently similar policies or strategies will not necessarily be comparable.¹⁴⁴

At the local level, new schemes based on 'social rehabilitation' and 'urban regeneration' have been introduced in countries such as Italy, Spain or France.¹⁴⁵ Along the same lines, the reforms adopted in the Juvenile Justice systems in some Southern European countries do not respond to the 'neo-correctionalist' model, but place emphasis on the preservation of legal safeguards for young offenders and the introduction of restorative justice principles.¹⁴⁶ It seems that trends in crime policies combine measures and strategies responding to both the 'neo-liberal and punitive models', as well as the 'penal welfare model'. While difficult, the very existence of this complexity could help restorative justice to achieve a more central role in the crime policies of Southern European countries.

As has already been mentioned on several occasions, the cost-efficiency principles currently enjoying mainstream approval in all areas of public administration, have raised serious concerns. If restorative justice practices are introduced as a means of reducing the burden on the criminal justice system as has been the case with some alternative measures, the quality standards and the evaluation criteria will not necessarily mirror the values that restorative justice intends to promote.¹⁴⁷

Furthermore, Sherman and Strang (2007) underline that there are several aspects that are often not considered when the potential costs of introducing a restorative justice scheme are estimated. The savings concerning the costs of the legal aid defence counsels, security, police and prison personnel responsible for surveillance of the transportation of prisoners from and to court should be calculated. In addition, the effects of restorative justice in reducing post traumatic stress disorder should be considered as subsequent, public health-related cost savings.

The complexity of motives and goals circulating around crime policy trends should caution restorative justice stakeholders to be mindful with regard to the goals and objectives that are set when restorative justice policies are implemented. The experts pointed out that definition of the approach and the restorative justice model is crucial to ensure that the actual practice realises the restorative justice ideal. To this end, the design of evaluation schemes and the setting of evaluation parameters are of the utmost importance. This will now be addressed in further detail below.

¹⁴³ See e.g. Tonry, 2006.

¹⁴⁴ See Cavadino and Dignan, 2006, 14 ff, 36, 337ff; Shapland, 2008, 3-4.

¹⁴⁵ See e.g. De Maillard, 2005, 333 ff; Lambropoulou, 2005; Medina-Ariza, 2006, 198; Maffei and Merzagora Betsos, 2007.

¹⁴⁶ See e.g. Spinellis and Tsitsoura, date unspecified; Cavadino and Dignan, 2006.

¹⁴⁷ Indeed, an extreme situation could be the one described in section II.7. with regard to France where the number of referrals to mediation increased until 2003 comparable with other diversionary measures. However, from 2004 onwards the number of referrals to mediation has substantially decreased to the benefit of the other diversionary measures because these are considered to be less costly.

1.4. POLICY-MAKING AND IMPLEMENTATION STRATEGY

In most of the Southern European countries, restorative justice has only recently begun to appear on the political agenda in relation to criminal justice issues, and yet not all these governments are favourable towards this approach to justice. Observing the variability of the interests and ideals shaping criminal policies, it becomes important to understand the way in which the priorities are set on the political agenda. Therefore, the experts moved on to explore a wider topic, namely the dynamics of policy-making and the process through which priorities are normally placed on the political agenda.¹⁴⁸ The goal was to gain a better understanding of the specific dynamics constraining or aiding restorative justice to become a political priority¹⁴⁹ and how the place given to restorative justice on the political agenda can determine a particular way of designing the implementation strategy and the effective realisation of the policies.

As argued by Subirats (2001) with regard to public policies in general, topics that are currently priorities on the political agenda are not necessarily the ones the general public considers to be the most serious or urgent. Rather, political priorities are often those that were labelled as urgent or preferential as a result of '*situational decision-making*' processes, characterised by a '*specific combination of power balances between competing actors and the given circumstances occurring at a certain moment acting upon the same point*' (Martín and Casanovas, 2007). What seems to be crucial is to have the capacity to intervene at the moment when 'the problem' (the issue with priority) is defined as such (Subirats, 2001, 261).

On these grounds Martín and Casanovas contend that crime policies in particular tend to be designed as 'a reaction to emerging situations' and with the goal of producing results that can be evaluated after a short period of time (2007). Consequently, such types of decision-making processes often entail policy design in the absence of expertise and knowledge on the topic. Not surprisingly, several criminologists have suggested that 'criminal policy analysis' tends to be weak in some Southern European countries. It has been rather unusual for policy makers to commission research on the legal system, criminogenic factors or social issues as a preparatory phase to drafting policy. Likewise, the evaluation of out-puts and monitoring do not receive much attention from policy makers either.¹⁵⁰

This can be understood in light of what Newburn calls '*(...) [t]he implementation failure: the fact that practical initiatives are often not implemented in such a way as to allow for a proper evaluation of a crime prevention theory. (...)*' (Newburn, 2007, 585). This applies to what was pointed out by the experts with regard to restorative justice policies, namely, that precisely this lack of preparatory research and attention given to monitoring and evaluation are the factors producing the flaws and shortcomings that prevent the policy from being appropriately carried out.

It is noted that academia and in particular, the 'criminological community' has not had until now a relevant role in influencing policy-making in most of these countries. The explanation for this may be manifold. A general factor that must be taken into account is the limited public funding that has been made available for applied research in social sciences (which in turn can be understood in terms of a lack of political will).¹⁵¹ Furthermore, some scholars point out that the recent history of authoritarian regimes and regional wars has had a negative

¹⁴⁸ See e.g. Martín and Casanovas, 2007.

¹⁴⁹ Terms used by Tonry with regard to the elements that might be more likely to favour or to discourage the introduction of restorative justice policies in a given country (2006, 1-24).

¹⁵⁰ See e.g. Barberet, 2005; De Maillard, 2005; Lambropoulou, 2005; Medina-Ariza, 2006; Provincia di Padova, 2007.

¹⁵¹ See e.g. Barberet, 2005; Lambropoulou, 2005; Selmini, 2005; Maffei and Merzagora Betsos, 2007; Faget, forthcoming.

impact on academia in countries such as Greece, Portugal, Spain or Turkey. This has been severely undermining research developments, especially in the field of social sciences.¹⁵²

Against this background, the examples of research and evaluation projects that were exchanged during the project deserve special attention. As a matter of fact, Southern European countries have recently experienced considerable progress in research and evaluation on restorative justice topics.¹⁵³ Nevertheless, aside from actions to attract more interest from the university sector, more financial support is required.

As mentioned above, the rather low interest in gathering information and research as an essential step towards designing a policy, may easily lead policy makers to lose sight of crucial aspects of the implementation strategy, e.g. drafting adequate legal instruments, providing supplementary regulations and guidelines, allocating sufficient resources or planning informative campaigns, specialised training and evaluation schemes, among others. The experts observed that new victim-offender mediation services might be set up and new laws approved, but conversely, little attention is given to setting quality standards, providing guidelines or drawing up referral protocols. In addition, the roles of the different actors involved in the effective implementation of the schemes are often not clear enough, which gives room for ambiguity and tends to diminish public accountability.

Elaborating further upon the issue of *'implementation failure'* Newburn points out that *'[t]his is related to the complexity of many of the programmes that are attempted for, even though many may be ostensibly simple in design, they are usually extremely difficult to undertake in practice. They involve partnerships between agencies that may not be used to working with each other, may have very different goals, and they operate in environments where things change on an almost daily basis and where funding is insecure (see Hope and Foster, 1992)'* (Newburn, 2007, 585). Although this author refers to initiatives taken in the broader field of crime prevention, this may very well hold true for restorative justice. Indeed, it is common that restorative justice schemes are set up on the basis of 'multi-agency partnerships' involving different types of actors including NGOs, local and regional government agencies and state institutions. It was recognised that this corresponds to the way in which public services in all fields currently tend to be established. Partnerships will take different forms and will follow different internal protocols depending on the region or the city, all of which generates a rather loose framework.

On the one hand, this rather loose structure allows the agencies delivering restorative justice schemes to preserve their autonomy and restorative justice principles *vis-à-vis* the government and justice system. This in turn leaves them room to experiment with new methodologies and practices. On the other hand, this broad structure can generate a situation of 'standstill' as a result of the different forms that the partnerships and protocols can take,¹⁵⁴ and ambiguities in the definition of the responsibilities of the different actors involved. The lack of defined quality standards and sharp variations in the evaluation criteria applicable to the different schemes can contribute to restrain the development of restorative justice. As is the case for a large number of restorative justice services, sometimes the future remains unpredictable and the project's funding possibilities are often unstable. This can lead to an extreme situation in which instead of enjoying the autonomy to introduce new developments and evolve further, the agencies become dependent on the decisions and inadequate coordination capacity of the different actors involved.

¹⁵² In some instances the disciplines of psychology, sociology, criminology or political sciences were even reduced to a part of another master degree. During these difficult historical periods, censorship and political surveillance in the faculties of social sciences held back academic activities and any research initiatives that could involve questioning the regime. See e.g. Cardoso Rosas, 2003; Stangeland, 2003; Lambropoulou, 2005.

¹⁵³ Research and studies that are already being conducted in the field of criminology show that the criminological community in these countries is being progressively consolidated.

¹⁵⁴ See Ciuffo and Mastropasqua, 2007; Selmini, 2005.

In view of these considerations, during the meetings it was argued that an independent central or coordinating body should be established; however the question of whether this body should be a statutory agency remained open. On the one hand, it could seem somewhat natural that overseeing and monitoring functions are held by a public authority, not only for the sake of efficiency but also because restorative justice can be ultimately seen as a public responsibility, hence the state should be involved.¹⁵⁵ On the other hand, this raised the concern of whether or not this would inevitably lead the way to excessive institutionalisation.

In summary, as was learned from the development of policies in other fields, the design of the implementation strategy, and especially investment in research and evaluation, seems to represent a major obstacle in Southern European countries. Resources, personnel, training and information campaigns appear to be the cornerstones of the effective implementation of any policy, including restorative justice.

At this stage however, crucial choices concerning the organisational model should be considered. The way in which the partnerships are established and the clarity with which tasks and responsibilities are distributed among the actors involved, are all central matters to be considered for the sake of the stability and autonomy of the schemes. With regard to this, the need to preserve autonomy and a flexible implementation strategy should be balanced with a certain degree of common standards of quality and guidelines valid for all schemes that would help to monitor and assess equality of access and service. This would also serve to provide more security and stability to the agencies.

Linked to this, the different aspects of a restorative justice scheme should be subject to evaluation. In other words, it is fundamental to reflect from the outset on the goals that are to be accomplished and the particular restorative justice approach that will guide the practice (e.g. process or settlement driven). These choices become critical, especially taking into account the fact that cost reduction is a central concern of policy makers.

Currently, with increasing university involvement in research and evaluation there are good prospects for the expansion and consolidation of restorative justice in Southern Europe. Notwithstanding the examination of the aforementioned points, there remains the fundamental question of what type of organisational model we want to see in Southern European countries. Apart from the discussion on the degree of autonomy operative restorative justice schemes should have, it is also of the utmost importance to reflect on the degree of citizen involvement.

1.5. SOCIAL CONTEXT

For its basic purpose of enhancing participation in the decision-making process related to the aftermath of a crime, one of restorative justice's essential values is that not only victims and offenders should participate in the process, but that the involvement of the wider 'community' should also be enabled. There is broad agreement on the fact that the consequences of crime go beyond victim, offender and their respective networks of care; it also harms society at large, not only in the formal sense by violating a norm, but it effectively disrupts social harmony. At the same time, the participation of citizens in restorative justice is also seen as their responsibility. This idea stems from the assumption that on the one hand, the reparation and reintegration of victim and offender cannot only be realised at the individual level but requires the involvement of the 'community', and, on the other hand, that to some extent citizens share responsibility for the underlying causes of crime. (UNODC, 2006, 8).

The degree of social mobilisation and the citizens' approach towards justice and crime, as main topics of discussion in the general field of restorative justice, were also regarded by the experts as fundamental aspects to reflect upon when discussing how to improve the implementation of restorative justice in Southern European countries. This posed some more

¹⁵⁵ See e.g. point 1.1. of the Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters (CEPEJ, 2007).

fundamental questions: what opportunities does restorative justice encounter in the social and cultural context of Southern European countries? And linked to this, what are the most appropriate ways to effectively enable citizen involvement in restorative justice, bearing in mind the social and cultural background of these countries?

In fact, the nature of citizens' involvement in restorative justice has been a matter of ongoing debate among restorative justice stakeholders from the academic and the practical side as well. There is no clear agreement on what the terms 'civil society involvement', 'social mobilisation' or 'community participation' mean with regard to restorative justice. In fact, there are different proposals concerning the way in which society should ideally take part in restorative justice processes and in the restorative justice movement itself.

The supranational standards clearly support the importance of civil society's involvement in restorative justice at different levels but do not specify how the participation of the wider community should be assessed. The Explanatory Memorandum of the Recommendation No. R (99) on mediation in penal matters concerning mediation in penal matters, emphasises that people acting as mediators, either professionals or volunteers, should reflect the social context in which they work and it reads as it follows: '*should, as far as possible, represent all sections of society in the areas where they are supposed to work. (...) The mediators should preferably possess a good all-round knowledge, in particular concerning the local environment in which they are active*'. The UN Basic Principles on the use of restorative justice programmes in criminal matters establishes the community as one of the beneficiaries of restorative justice practices but conversely does not attribute to it any specific, active role. It also states that 'civil society' is the actor who, in cooperation with Member States, '*(...) should promote research on and evaluation of restorative justice programmes (...)*'. The *Handbook on Restorative Justice Programmes* further points out that one of the underlying assumptions of restorative justice programmes is '*that the community has the responsibility to contribute to this process*' (UN, 2007, 8).

A broad range of aspects of a different nature need to be dealt with in order to examine this topic thoroughly. However, what follows only covers some of the main aspects discussed in the framework of this project.

The experts observed that in general, there is a rather low engagement of society in public matters including crime and victimisation issues. On the one hand, this is mirrored by the individual's attitude towards justice. It was pointed out that there is a widespread attitude among citizens to delegate responsibility to the judge for 'rendering justice'. Thus, at first sight it could seem that society does not have any particular interest in being awarded a more participatory role in the criminal process. A qualitative study conducted by Tränkle on German and French victim-offender mediation schemes touches upon this aspect. Drawing on the observations of the parties' attitude towards mediation in penal matters, this author points out that '*[o]ne reason behind the difficulty of making victim and offender participate in the mediation process can be found on the macro-social level: in modern societies, there is ordinarily no social necessity for the parties to find a solution for their conflict. There are social institutions such as the prosecution authorities who are responsible for dealing with this kind of case (von Trotha, 1982). My study shows that the participants themselves do not see the need to negotiate on their own, since it is easier to let the prosecution authorities take a decision. (...)*' (Tränkle, 2007, 409).

On the other hand, there is considerable social disappointment with the justice system and in particular with the criminal justice system. This is also true of Southern European countries where the principle of mandatory prosecution and the formality of the criminal justice system are some of the aspects contributing to people's perception of the justice system as ineffective and old-fashioned.

The focus then moved on to those Southern European countries where the implementation strategy has pursued a bottom-up process; non-statutory agencies and groups of professionals involved in the criminal justice system were the ones to lead the introduction of restorative

justice. Except for France, the direct involvement of citizens at the initial stages of the implementation and the setting up of restorative justice schemes has been rather scarce in the countries concerned.¹⁵⁶ On these grounds, it has been suggested that mediation in criminal matters in certain countries appeared rather as ‘*an aristocratic movement*’ (Ciuffo and Mastropasqua, 2007). That is to say, restorative justice practices have started as grass-roots initiatives set up on the basis of the activists’ experience working in the criminal justice field and their social commitment with the goal of searching for innovative initiatives that could provide a more constructive response to crime. Nevertheless, support from lay citizens and civil society at large for this new approach to justice was not self-evident.

Indeed, concerns were expressed by the experts about their impression that individual citizens and civil society organisations in certain Southern European countries may not be active or strong enough to strive for this different approach to justice and undertake initiatives to demand more restorative justice-oriented policies.¹⁵⁷

The debate arose on whether the involvement of lay mediators should be considered as a priority in the policy development of restorative justice in Southern European countries. As seen in other countries, this could be one method to involve regular citizens in delivering this new approach to justice. To act as a lay mediator provides citizens with a better insight into the phenomenon of crime. Hence, in an indirect manner, it helps the wider community gain a more comprehensive picture of the underlying causes of crime and how the system responds to it. Involving volunteers in mediation work also means that citizens would have to acquire knowledge and skills on peaceful conflict resolution techniques, which in turn may also have a preventive impact since they would be able to use them in other conflict situations in their everyday life.

Bearing these positive aspects in mind, during the expert meetings consideration was given to whether the involvement of lay mediators is the way in which the restorative justice values of participation and societal involvement can actually be realised to their full extent. As Aertsen observes ‘(...) *Lay people involved in mediation and conferencing practices do not necessarily reflect and activate local communities as such (...)*’ (2006, 80), ‘(...) *the activation of the individual citizen – at the micro level – is not usually accompanied by the activation of relevant organisational and structural frameworks at the meso or macro level (...)*’ (Aertsen, 2006, 79).

Related to this, the experts discussed whether the ‘culture of volunteering’ one’s private time to the community was not determined to a great extent by the social and economical conditions of a given country. It was wondered whether socio-economic circumstances in Southern European countries could favour or discourage the involvement of volunteers as lay mediators in the implementation of restorative justice. It was highlighted as a theme for further research to analyse which mechanisms would perhaps be more workable and appropriate in order to attain higher citizen involvement in the social and economic realities of the participating countries

The focus then moved on to the importance of the existence of an ‘active network of civil society organisations’ as an essential element for the better implementation of restorative justice in Southern European countries.¹⁵⁸ As mentioned earlier, there is an ongoing debate about the meaning of the term ‘community’ and about what ‘participation’ exactly entails with regard to restorative justice processes.¹⁵⁹ The term ‘community’ does not necessarily have the same meaning in all countries, and in some it is even considered as a rather ‘new’ concept that has entered the picture with the introduction of new crime policies aiming for

¹⁵⁶ See e.g. Jullion, 2000, 222-232; Milburn, 2005, 306-307.

¹⁵⁷ See section III.2.

¹⁵⁸ This can be understood using Putnam’s term ‘(...) *Networks of civic engagement (...) represent intense horizontal interaction. Networks of civic engagement are an essential form of social capital: The denser such networks in a community, the more likely that its citizens will be able to cooperate for mutual benefit. (...)*’ (Putnam, 1993, 173 ff).

¹⁵⁹ See e.g. Faget, 2000; Pavlich, 2004; Vanfraechem, 2008; Milburn, 2008.

greater involvement from local institutions in crime prevention.¹⁶⁰ In addition, there are different visions of what community involvement should involve in a restorative justice process.¹⁶¹ The experts discussed the impact civil society organisations can have on policy-making, the degree of social mobilisation or the culture of volunteering and on how the 'relation between the state and the citizens' depends on a wide range of complex historical, cultural, political, social and economic factors. Faget (2000) points out that different approaches have been proposed to explain the different cultures of participation in Northern and Southern Europe. One of the views maintains that the 'religious variable' (referring to the Protestant and the Catholic ethic) has had a strong influence in establishing a certain relationship between the state and the citizens (Weber cf. Faget, 2000, 42). A different perspective argues that the type of family structure has traditionally played a relevant role in defining the level of civic involvement (Todd cf. Faget, 2000, 42).

Although nowadays modernisation has brought about a substantial change in the family structure, it has been suggested that a similar family model has traditionally been present in Southern European countries. Intra-family solidarity ties tended to be particularly strong and frequently extended beyond the nuclear family household; hence the obligations of care and protection reached also to members of the extended family. Although this may be contested by some, the crucial role that the family has played in some of these countries as the main mechanism to obtain the necessary income and resources for sustenance, including the care of children, the elderly and the ill among others (high '*in-group solidarity*'), may be considered one of the factors associated to the rather low interest of society in public affairs and in participating in formal or informal organisations (low '*out-group solidarity*').¹⁶²

Among Southern European countries, certain common factors as well as some very significant differences are noticeable with regard to the current role of religion and family structure. Significant differences in the degree of civic involvement can also be found between regions within the same country.

On a different note, the relationship between social policies and 'active networks of civil society organisations' was also mentioned. The arrival of the welfare state is frequently named as one of the elements that have favoured the decline of the culture of participation in public issues. The fact that public authorities are the ones to hold the resources and the responsibility to provide citizens with the services required meeting their basic needs and the knowledge to solve their conflicts, discourages a responsive attitude towards public issues and social solidarity.¹⁶³ According to Puentes (2007, 40 ff) this intervention process of the state has led to a downplaying of citizens' powers and skills to organise themselves for the regulation of their own conflicts and has limited their interest in playing an active role in policy-making.

Focusing on Southern Europe, as Ferrera (2005) points out, the distinctive type of social policies in Greece, Italy, Portugal and Spain, led to significant difficulties in tackling poverty and establishing social assistance schemes. The majority of the other European countries had set up a solid social security system and strong anti-poverty policies by the 1950s. At that time, the political and economical conditions of Greece, Italy, Portugal and Spain were substantially different, thus the welfare state provision remained considerably more fragile in Southern European countries until the 1980s or 1990s when welfare state reform started and the state-supported social assistance net began to be reinforced. According to this author, the Southern European welfare state model flows from a '*unique set of constraints*' (2005, 8). Amongst others, Ferrera observes that the family model that used to be common

¹⁶⁰ See e.g. Selmini, 2005, Groenemeyer, 2008.

¹⁶¹ See e.g. McCold, 2004; Vanfraechem, 2008.

¹⁶² See e.g. Sansone, 2001; Naldini, 2003; Ferrera, 2005; Bikmen and Meydanoglu, 2006; Sotiropoulos and Karamagioli, 2006; Moro and Vannini, 2006; Putnam, 2007.

¹⁶³ See e.g. Selmini, 2005; Aertsen, 2006, 79; Puentes, 2007, 40 ff.

in these countries has traditionally played the role of the primary ‘*safety net*’ making the state the subsidiary agent of social assistance.¹⁶⁴ Partly due to the late industrialisation process, there was a rather extended informal economy. Furthermore, another aspect conducive to a weak social welfare state in Southern European countries has been the ‘*low implementation effectiveness*’ of the administrative systems in managing social policies. The significant limitations that the administrative apparatus of these countries have faced are partly due to the heritage of their respective authoritarian regimes (Ferrera, 2005, 1 ff). This has restricted their capacity to design appropriate implementation strategies, hence limiting efficiency in their performance of social policies.

The Turkish welfare state model exhibits traits of both the liberal welfare state model, and the Southern European model. The important role of the family and the extended informal economy are some of the dimensions that the Turkish welfare state shares with the Southern European model (Akçizmeci, 2006).¹⁶⁵

Citizens’ concerns and perceptions of crime and justice were also a matter of interest for the experts. Aspects such as fear of crime, feelings of insecurity and the degree of punitiveness were regarded as particularly relevant with regard to social receptiveness for the values and principles of restorative justice.

It has been pointed out that fear of crime and attitudes towards punishment are difficult to assess due to their subjective components (Boers, 2003). Accordingly, cross-country comparisons should be done cautiously since the existence of socio-cultural differences may intervene in the perception of crime and the concept of punishment (Kühnrich and Kania, 2005, 53). Bearing these limitations in mind, the findings of the European Survey of Crime and Safety (2005) indicate that in all the countries surveyed, the ‘*population feeling unsafe on the street after dark*’ rate above average in Greece, Italy, Portugal and Spain, whereas Belgian and French citizens are amongst those who feel moderately safe after dark (EU ICS, 2005, 66).¹⁶⁶ The European Survey of Crime and Safety also assessed the fear of crime specifically with regard to burglary offences. Greece, Italy, France, Portugal and Belgium amongst others, are the countries where most citizens think that a burglary in their houses is likely or very likely to occur in the coming year. Spain by contrast, rates lower than the average for European countries (EU ICS, 2005, 65).

Furthermore, when asked which type of sentence people would deem appropriate for a recidivist burglar, in France, Portugal, Spain, Belgium and Italy the respondents chose community service over prison sentence. Conversely, in Greece, followed by countries such as the Netherlands or Ireland, more people were favourable to a prison sentence than to community service.¹⁶⁷

It is well-known, that feelings of insecurity and attitudes towards crime have also been linked to structural changes experienced by contemporary societies. The decline of informal mechanisms of social control, the high degree of mobility and uncertainty in the labour market as well as the growth of urban areas and the increase of social heterogeneity are aspects that tend to erode social cohesion, thus to some extent contributing to people’s sense of insecurity and ‘distrust towards others’.¹⁶⁸

¹⁶⁴ See also Naldini, 2003.

¹⁶⁵ More research would be needed to analyse Maltese social policies and assess whether they can be grouped under the Southern European welfare state model. Nevertheless, as noted earlier, the important role of the family has been considered one of the relevant traits of Maltese social reality (Vella, 2006).

¹⁶⁶ The question asked to respondents was ‘*how safe do you feel walking alone in your area after dark? Do you feel very safe, fairly safe, a bit unsafe or very unsafe?*’ (EU ICS, 2005, 66).

¹⁶⁷ Respondents were asked ‘*what sentence they considered most appropriate for a recidivist burglar – a man aged 21 who is found guilty of burglary for the second time, having stolen a colour television?*’ (EU ICS, 2005, 86).

¹⁶⁸ See e.g. Garland, 2001, 75 ff; Cavadino and Dignan, 2006, 47.

In this respect the Eurobarometer provides an overview of the overall concerns of European citizens. According to this opinion poll, Southern European citizens' concerns are actually in line with other European citizens; after unemployment, the most relevant concerns appear to be inflation, crime and the health care system. The economic situation and immigration rank next (Eurobarometer 68, 2007).

Taking into account that immigration has only become a salient phenomenon in Southern Europe in the past 20 years (Melossi, 2003; Baldwin-Edwards, 2007) this aspect cannot be overlooked when trying to get a better understanding of the social reality of these countries. The increase of cultural heterogeneity alone demands appropriate opportunities to improve communication among citizens, who at first sight, may seem to hold different social habits or values.¹⁶⁹ Nevertheless, it has been argued that the state response towards immigration in EU countries has favoured the stigmatisation of third-world migrants. This is particularly true for Southern European countries that used to be countries of emigration and have only recently started to receive immigrants from poorer countries.

The very restrictive immigration and asylum policies present in all EU countries have forced most third-world newcomers in Southern European countries to live in a situation of social exclusion (Calavita, 2003; Reyneri, 2003). The definition of the set of rights that a person is entitled to have on the basis of their legal status, places third-world migrants in the category of 'second class citizen'. The use of police corps and custodial centres for migrants who have not regularised their stay have a strong symbolic impact.¹⁷⁰ Owing to this legal differentiation and the '*causal relation between immigration and insecurity*' (Da Agra and Castro, 2003, 280) that political rhetoric easily establishes, an important part of the autochthonous population has developed a perception of '*racial "otherness"*' with regard to third-world newcomers (Calavita, 1998, 529).

Inevitably, the role of the media in influencing social perceptions has been widely discussed by the experts as well, especially with regard to the way in which the media reports on crime. As explained by one of the experts '*(...) nowadays stories of committed crimes and their negative consequences are drawing most of the attention of the media. In particular, in relation to prisons, the public is persistently exposed to bad news. Despite the existence of positive events and progress made, success stories related to offenders and victims are hardly reported on in the news*' (Montebello, 2007)

While the importance of collaborating with the media becomes evident, the efficiency of mass media campaigns in spreading knowledge of restorative justice was questioned due to the amount of information that is received by the citizen on a daily basis. Small scale activities to sensitise a selected group of people have proven to be very efficient.¹⁷¹ Furthermore, the appropriateness of the media's methods of gathering, processing and delivering information was questioned. Clearly, the difficulty of upholding ethical standards is a concern in this respect.

In summary, thorough research on the different nature of the factors that intervene in the shaping of the 'networks of civic engagement' in a given social context, would provide a solid basis to assess how to build social support for restorative justice. The need of cooperation with the media will require careful follow-up in order to ensure that the methods used and the messages communicated are consistent with restorative justice values.

¹⁶⁹ See e.g. De Vanna, 2008; Montebello, 2008.

¹⁷⁰ In fact, immigrants are overrepresented in prisons in countries such as France, Italy, Portugal or Spain. See Melossi, 2003; Da Agra and Castro, 2003; Cavadino and Dignan, 2006.

¹⁷¹ The importance of considering small scale activities was pointed out during a workshop discussion in the seminar '*Restorative justice in Europe: needs and possibilities*', 10-12 May 2007, Lisbon (Portugal) organised in the framework of this AGIS project.

2. NEEDS AND PRIORITIES FOR POLICY DEVELOPMENT

In the previous section the intention was to get a bit closer to the background of the Southern European countries and to get a better understanding of the opportunities available for a better implementation of restorative justice as well as the pitfalls that should be avoided. Alongside this earlier exploration (which drew on the analysis of the challenging and supportive factors in section II), the conditions that should be created in order to expand and consolidate the development of restorative justice in Southern European countries have also been identified. These conditions could be considered the objectives, the main needs and priorities that, according to the experts, should be met if restorative justice practices are to be further developed in the countries concerned.

In what follows, the needs and priorities required to attain these general aims have been brought together and summarised point by point; each followed by a brief, bullet-point description of the different actions or strategies that might serve to accomplish the listed needs and priorities. The pitfalls discussed will also be mentioned. These actions and strategies are a result of meetings with experts, the seminar and the final conference, where very practical examples of good practices and strategies were shared among participants.

2.1. NEED TO RAISE AWARENESS AND DEVELOP AN INTEGRATED COMMUNICATION STRATEGY

There is a need to raise awareness, disseminate information and educate policy makers, legal professionals, academics, criminal justice related agencies and the public. All these different groups should be familiarised with restorative justice and ideally, become engaged with the principles and values of restorative justice.

Informing and raising awareness should serve the ultimate goal of engaging these different groups with restorative justice's principles and values. This would be a strong asset to ensure sustained and broad support from each of the different groups.

In light of this, the experts agreed on the importance of designing a coordinated communication strategy rather than developing different, unconnected information and awareness raising activities. To this end, to conduct a study of the type of information needed by the different groups and the most appropriate means to reach each of them would be essential as a previous step.

Following from this, as commented by the experts, more information about both the traditional justice system and the restorative justice approach is necessary to enable citizens to make informed choices when they get in contact with the criminal justice system. Furthermore, this should also make it possible for them to hold a more responsible attitude towards finding a satisfactory solution to the crime or conflict that has afflicted them.

The media and the university should be involved in this process from the outset. Qualitative research should be conducted in order to identify the misconceptions, concerns and barriers that it raises as well as what information the different public groups possess about restorative justice. On the basis of this information, this study should aim to target specific audiences and tailor the means and methods to disseminate the information effectively and ensure that the educational and informative materials are delivered in a form that is understandable, accessible and attractive to the different groups.

Once established, the importance of maintaining the information strategy over an extensive period of time and designing an evaluation scheme to permanently assess the achievements of the actions undertaken was highlighted.

Other useful actions mentioned to raise awareness were:

- Organising public events or press releases on the occasion of setting up a pilot project, publishing research findings or other publications on restorative justice-

- related topics. Creating a restorative justice award or a ‘restorative justice week’ has been helpful in other countries for restorative justice to gain salience.¹⁷²
- Translate existing restorative justice related literature into the country’s language.

Actions that were mentioned as particularly suitable for addressing policy makers, legal practitioners and other professionals working in criminal justice system agencies are listed as follows:

- Establish instruments to circulate information on new developments on a regular basis.
- Set up training programmes customised to the needs of the professional groups. These programmes should not only seek to inform but also to build trust in restorative justice professionals thus setting the basis for cooperation. To this end, case studies and meetings with practitioners and service providers can be included in the sessions. ¹⁷³ Training methods inspired by ‘learning by experience’ should be given particular attention.
- Promote the active participation of civil servants and policy makers, legal professionals or academics in national or international forums and events related to restorative justice, for example by inviting them to present or to chair a session.

When focusing on sensitising the general public, the following actions were proposed:

- Promote a demand for mediation or ADR in other fields (schools, family law, civil complaints, workplace, trade, etc.).
- Introduce peaceful conflict resolution skills not only in the regular educational curriculum (primary and secondary) but also in adult education.
- Integrate specialised programmes within university degrees.
- Create a free national phone number (‘hot line’) which people can call to ask for advice regarding on how to deal with a conflict.¹⁷⁴
- When setting up a restorative justice programme, pay attention to placing signposting strategically. Be present at local events by e.g. having a stand, sponsoring the event or getting directly involved in the organisation.
- Establish consultation and participatory processes at the local level in order to engage citizens in discussion of their concerns at the neighbourhood level (the use of certain public areas, noise, conflicts, fear of crime) and elicit/stimulate reflection and active involvement in criminal justice related matters.
- Undertake small scale projects aiming to target a limited group of people. This format should serve to go beyond the mere informative campaigns and debate and in-depth reflection about background issues such as people’s sense of insecurity or perceptions about how, amongst others, the courts, police, prisons and victim services function. The project should aim to accompany the group through the process of reflection

¹⁷² See the initiative of Correctional Services Canada: <http://www.csc-scc.gc.ca/text/rj/rj2008/lett-eng.shtml>.

¹⁷³ See e.g. Petzold, 2007.

¹⁷⁴ This idea derives from the initiative undertaken by *TOA-Servicebüro* which was informally introduced by G. Delattre in the seminar organised in the framework of this project ‘Restorative justice: needs and possibilities’, held in Lisbon 10-12 May 2007.

and draw some conclusions by, for instance, writing short papers or organising an open event to invite other key actors to take part in a round table discussion.¹⁷⁵

- Find a sponsor that can help to publicise the logo of the restorative justice scheme or the offer of mediation to a broader audience.¹⁷⁶

Specific tips were brought out when discussing concrete actions for involving the media:

- Anticipate media coverage when setting up a new scheme or presenting the findings of a research project.
- Include the topic of restorative justice in soap operas or documentaries and plan a close follow-up in order to ensure that the topic is addressed adequately.
- Provide media with information about real cases which can be seen as ‘success stories’. Upholding ethical standards and confidentiality with regard to the media’s methods of gathering, processing and delivering information is of paramount importance.
- Start up a working group including journalists, editors and other key actors from different media to develop best practices with regard to the type of language to be used or how to cover news regarding restorative justice initiatives or mediation cases.

2.2. NEED FOR COMPLETE AND EFFECTIVE IMPLEMENTATION

More effort needs to be invested in planning the effective implementation of restorative justice schemes; in particular, it is critical to plan the particular strategies to be used, informative campaigns and training, the allocation of the resources needed, as well as monitoring and evaluation.

It was stressed that a substantial responsibility belongs to the government, namely public authorities and policy makers from whom a more responsive attitude is required. Restorative justice practitioners, programme coordinators and managers are also responsible for ensuring that the design of the policy and the implementation of the schemes enjoy this planning support and for seeking to promote shared accountability for these aspects within the agency.

It was underlined that the development of strategies involving public officials and resources from different administrative or government departments would provide the implementation process with more coherence and effectiveness. It was suggested that commissions or coordination committees be created at the institutional level; these could be composed of public officials belonging to different departments who work in a restorative justice-related field.

The specific nature and relevance of restorative justice policies do not only require special planning and expertise, but also support from the government structure and internal organisation. It should be possible to identify a specific public agency responsible for

¹⁷⁵ This stems from a concrete project called *Kaffee Detinee*, undertaken by the restorative justice advisors at two Flemish prisons in cooperation with the Prevention Service of the Police of Leuven, two other agencies developing cultural, social and educational activities and programmes for the inmates (Vormingplus Oost-Brabant and De Rode Antraciet), and the Institute of Criminal Law of the Catholic University of Leuven. The goal of the project is to engage citizens and inmates to discuss and reflect on the topic of security and safety. This project, that for the time being has been carried out twice (in 2007 and in 2008) has involved a group of approximately 30 citizens on each occasion. This initiative was introduced by G. Van Aerschot, in the seminar organised in the framework of this project ‘Restorative justice: needs and possibilities’, held in Lisbon 10-12 May 2007. More information in Dutch can be found here: http://www.wie-is-wie.be/vormingplusob/index.php?option=com_content&task=view&id=67&Itemid=30.

¹⁷⁶ This initiative was introduced by G. Delattre, of the NGO *TOA-Servicebüro*, who attended the seminar organised in the framework of this project ‘Restorative justice: needs and possibilities’, held in Lisbon 10-12 May, 2007.

restorative justice policies at the government level that can be addressed by the different professionals involved and is accountable to citizens.

The aforementioned points are based on the assumption that restorative justice should be considered a public service and thus be publicly funded. The importance of being present in the political arena and promoting the inclusion of restorative justice in the political agenda therefore becomes indispensable. At the same time, this need also raises questions about the most appropriate organisational model for securing a sufficient degree of autonomy and independence from the government administration and the criminal justice system and at the same time sufficient support and stability for a quality service to be provided for all.

The following are the different actions proposed as a means to design a complete and adequate implementation strategy:

- Sounded research should be conducted beforehand with regard to the aspects that will determine the success and prospects of the implementation strategy. Legal, cultural, sociological and criminological aspects amongst others could be the object of these preparatory studies that would help to streamline the implementation policies.
- Promote exchange activities with focus groups of public officials from other countries to learn from their experiences with interdepartmental and multidisciplinary instruments that have been put into practice.
- Use the legal authority of the existent supranational legislation as a tool in awareness raising activities to engage policy makers.

In particular, it has been pointed out that in order to gain influence and intervene in policy-making and helping to introduce restorative justice to the political agenda, restorative justice actors should try to have a more relevant role in the political arena and work out a 'middle-out strategy' (Martín and Casanovas, 2007) for which the following actions were proposed:

- Create partnerships with advocacy groups or NGOs working in related fields (e.g. victim support and offenders' support agencies, neighbourhood associations, security-safety-crime prevention departments of the local or regional governments (municipality, province, etc.), and the police; create working groups or commissions to start small projects together.
- Devote special attention to disseminating research findings about restorative justice projects and victim-offender mediation programmes with regard to the needs of victims and offenders.

2.3. NEED FOR AN EXPLICIT AND CLEAR LEGAL BASE

The type of legal instruments to be drafted and their formulation must ensure the universal access to restorative justice. The possibility of applying for a restorative justice programme should be formally conceived as a 'right' regardless of the offence and the stage of the process (Van Garsse, 2007). Undoubtedly, this would mean that the features of the legal instrument such as the 'scope', the 'entry point', the 'exit point' or the legal effect of a mediation outcome need to be formulated accordingly (Miers, 2007).

Bearing in mind that the goal is that access to restorative justice should be conceived as a right for all citizens, special consideration should be given to the mandate of the judicial authority acting as a gatekeeper so that this will make it possible for the citizen to have an effective choice to apply for restorative justice (Miers, 2007). Equally important is to pay attention to the consistency and coherence of the legal authority introducing restorative justice practices with the set of laws of the particular jurisdiction, as well as victims' rights.

Recognising the concerns expressed by legal practitioners, the legal framework of restorative justice should be such that it provides legal certainty with regard to legal safeguards, presumption of innocence and confidentiality amongst others. The existence of a legal

backing concerning the monitoring of an agreement and the possible consequences ensuing when an agreement is not complied with would provide legal practitioners with better guidance concerning the legal procedures available in such cases (Creyf, 2007). The citizen can also be more fully and reliably informed of the possible outcomes of the restorative justice process.

In order to realise this need, the following actions were considered:

- Develop an advocacy scheme involving advocacy groups of lawyers and NGOs working in the field of social exclusion, victims, prisoners and related topics. This group could be established to draw up a legal argumentation giving evidence of the lawfulness of formulating restorative justice as a right. In this formulation it would put more pressure on public authorities to adopt a more responsive attitude and devote proper attention and resources to the implementation of the restorative justice schemes.
- Lobby with supranational institutions in order to gain more support for restorative justice and eventually domestic policies could be influenced. Supranational legislation that can exert a more direct and binding influence on national governments would be particularly effective. To this end, the findings of the 'EU policies' research that is being carried out in the framework of this AGIS project are of vital importance.¹⁷⁷
- Be proactive and supply policy makers with tools and instruments that facilitate their work: e.g. by drafting a bill or a white paper, elaborate codes of ethics and standards, carry out research and assist their work by providing more background information (see the following points).
- Draft a white paper or a bill as a basis for initiating a consultation process involving policy makers and legal professionals with the goal of promoting discussion on workable ways to encourage the better implementation of restorative justice
- Conduct preparatory research on the legal culture of the jurisdiction in which the legal basis is to be introduced in order to identify the appropriate legislative instruments that are workable in the context of that specific legal system. A comparative study on the different legislative provisions of restorative justice in different countries would be extremely helpful.

2.4. NEED TO ESTABLISH COMMUNICATION AND WORKING RELATIONSHIPS WITH POLICY MAKERS, LEGAL PROFESSIONALS AND RELATED AGENCIES

It is essential to create mechanisms the aim of which is to build collaborative partnerships and establish communication with the different key actors involved in the practical implementation of restorative justice schemes; namely judicial authorities, public officials, policy makers, the police, the prison service, victim support services and probation staff as well as other related agencies. In these settings, the participants would discuss the specific difficulties encountered in the course of the practical functioning of the restorative justice programme and solve them together.

Steering committees, working groups or other similar mechanisms, organised in a formal or informal way, would allow room for the different key actors to get to know and understand each others' work. The professional concerns that the practical application of restorative justice has given rise to could also be addressed and solutions could be discussed together with the key actors involved thus benefiting from a comprehensive and multidisciplinary approach. These could be organised in a formal or informal way but it is vital that the meetings are held on a permanent and regular basis. The work carried out in the framework of these meetings can progressively assist in building a solid consensus around restorative justice

¹⁷⁷ See Willemsens, 2008.

values and principles among the different key actors involved e.g. the judiciary, victim support services, prison staff, the police, lawyers and social workers.

The following are steps that could act as a useful guide to the establishment of the aforementioned mechanisms:

- Networking at the micro level; in other words building collaborative partnerships with certain individuals who have a strategic position in the criminal justice system or government administration. It would be helpful to first identify those who hold a more receptive attitude towards restorative justice.
- Draft protocols laying down the basic norms that would guide the work of the steering committee, working group or commission and introduce them to the key actors who would ideally take part.
- Include case studies and meetings with practitioners in the training programmes aimed at legal practitioners and public officials. This would be a first step to building collaboration partnerships later on.

2.5. NEED TO ENSURE QUALITY PRACTICE AND SERVICE DELIVERY

It is indispensable to design and develop mechanisms to ensure quality practice. This can be seen again as a shared responsibility between restorative justice professionals and policy makers and it will imply the development of best practice guidelines, standards of training as well as instruments for case supervision. It was stressed that training standards and the accreditation process should be such that no group is previously excluded.

In general, it was agreed that it is crucial for restorative justice professionals to hold a critical approach towards their own, individual work and the programme itself. They need to be capable of permanently questioning the work being carried out and reflecting on the goals and objectives effectively accomplished. To this end, the design of appropriate evaluation schemes becomes an essential factor alongside the need to gain knowledge and expertise about different methodologies or styles of both, restorative justice practices and service management.

As already mentioned, university support to introduce a scientific and objective approach to the actual implementation of restorative justice is fundamental.

Additionally, the quality of practice will be highly stimulated by building more cohesion and common ground within restorative justice advocates, practitioners and service providers. The following actions were considered:

- Promote bottom-up or participatory processes to build common understanding among restorative justice professionals concerning standards for training, evaluation schemes, codes of ethics and best practices. The insights and reflections flowing from these processes will be the basis of the decision-making processes on these issues.
- Undertake research projects bringing together academics and practitioners to focus on which aspects of restorative justice schemes should be measured and the instruments to be used. Adequate supervision methods should also be developed in collaboration with researchers.
- Devise educational and training programmes addressing the topics that practitioners and service providers consider they need in order to be updated or to overcome certain challenges (domestic violence, intercultural mediation, book keeping, legal information). Set up a working group or undertake a specific project in partnership with other agencies and experts in order to e.g. develop common training materials, devise supervision and self and peer evaluation schemes and make them available to all the agencies.
- Create a periodical publication with more scientific content.

With regard to focusing on building a more coherent identity between restorative justice professionals several strategies were proposed:

- Create instruments that allow room for regular and systematic dialogue and exchange, and the circulation of information as well as training at both, the national and the international level. This allows a common language to develop that enables exchange amongst different methods, cultures and disciplines. Preparing newsletters, informal gatherings of practitioners, seminars and conferences are some possible ways to achieve this.
- Create a coordinating body or an umbrella organisation at national level. Establish short-term projects or initiatives to engage people and start up a network. Afterwards, foster informal means to sustain networking dynamics between agencies and professionals working in the field in the long term.
- Get actively involved in international projects and organisations which aim to create opportunities for exchange.

These needs and priorities can be summarised in the following general aims to be accomplished through the better development of restorative justice policies.

- Achieve stability and at the same time sufficient autonomy *vis-à-vis* the criminal justice system.
- Gain credibility, legitimacy and recognition before citizens, legal professionals and policy makers.
- Render restorative justice practices equally and universally accessible as a freely available option to all citizens.
- Get on the political agenda and influence policy-making and in particular crime policies with the values and principles of restorative justice.

3. PREPARING STRATEGIES FOR A COORDINATED POLICY ON RESTORATIVE JUSTICE

In the previous sections, the supporting factors and the difficulties encountered in Southern European countries in the implementation of restorative justice were identified. Furthermore, the social, economical, political and cultural background in which the weaknesses and strengths emerge has been explored and the main priorities for policy development have been identified.

However, realising effective support for the development of restorative justice in Southern European countries also requires planning concrete, workable strategies and actions that will aid restorative justice stakeholders in their respective countries to guide their actions towards practicable ends. To this end, bearing in mind the differences between countries a necessary first step is to identify the order of priorities specific to each country.

Therefore, in the third expert meeting,¹⁷⁸ the experts, with specific regard to their own, national realities, designed a coordinated policy plan that would serve to improve the state of affairs of restorative justice in their country.

In order to do this, the experts first reflected on the general aims that should ideally be accomplished in the coming years in their country with regard to restorative justice. These were further broken down into a list of priority needs, in other words, those objectives that each country needs to focus on first in order to achieve the general aims.

¹⁷⁸ Third expert meeting, 28-29 November and 1 December, 2007, Trier (Germany).

Drawing on the strategies that were brainstormed in the first expert meeting and the seminar, as well as on the good practices exchanged, each country has designed several action plans and concrete strategies to meet the priorities they identified.¹⁷⁹

In formulating the policy plans, the experts have kept in mind not only the particularities of the context of their country, but also the need to maintain a comprehensive perspective on all the themes and issues that have been discussed in relation to restorative justice. This inevitably means that the objectives and the design of their action plans in some cases exceed the possibilities and the scope of the particular agencies the experts represent. The policy plans have been formulated on the assumption that all the relevant actors shall be involved in the implementation of the policy, including public institutions, legal practitioners, civil society organisations and citizens.

Feedback among the experts, each of them with different professional experience, has served to complement each other's perspectives and experiences and streamline the drafting of the policy plans.

In what follows, the country-specific policy plans presented by the experts are described in bullet point form.

3.1. GREECE

There are four general goals that should ideally be reached in three to five years time with regard to the implementation of restorative justice in Greece.

a) Raise awareness and make the concepts of mediation and restorative justice better known throughout the country.

This includes on the one hand, informing the public about existing victim-offender mediation programmes and particularly how to access them, and on the other hand, educating policy makers and stakeholders on the meaning and values of restorative justice and victim-offender mediation, stressing the concepts of reparation, participation, voluntariness and confidentiality. In particular, clarifying the point that victim-offender mediation does not necessarily entail a reduction of court case-loads nor is it the only reform needed to meet victim and offender needs. With this purpose the following actions would work effectively in Greece:

- Invite policy makers, legal professionals and practitioners to international conferences, seminars and other events. Suggest they take an active role chairing or presenting a session.
- Involve restorative justice experts to present or to promote panels about restorative justice-related topics in conference workshops or similar events that are being organised at the national level by Greek institutions or agencies. In this way, other professionals can be engaged in discussion and reflection on these themes.
- Facilitate the access of information and literature on restorative justice developments and research findings from other countries, for instance, by distributing periodic newsflashes among a network of interested people.

¹⁷⁹ The structure proposed to formulate the policy plans is based on the commonly known concept of 'strategic planning'. In short, this consists of setting two or three general aims to be accomplished in a period of three or five year's time. The general aims are further specified into objectives which in turn are made operational in action plans.

b) Support and promote the actual implementation of the existing legal basis,¹⁸⁰ so that the practice of mediation is effectively realised throughout the country.

This means informing and educating all the criminal justice system actors that will be involved in the implementation of victim-offender mediation as it is currently established in the law. This could be effectively achieved by:

- Designing information campaigns to reach the different professional groups.
- Developing training materials and introducing restorative justice or victim-offender mediation themes to existing training courses for the police, probation officers, prison staff, court office staff, etc.

Furthermore, it is necessary to establish special victim-offender mediation units or branches within the Juvenile Probation Service and ensure that there are sufficient probation officers dedicated to conducting mediations. Ideally, these officers should not carry out any other probation tasks. As a result, the specific character of mediation will be safeguarded and a better dissemination of the information on restorative justice and victim-offender mediation is ensured. A newsletter could be created in order to foster exchange and cohesion.

Additionally two important aspects should be on the agenda in order to secure a complete implementation of restorative justice schemes in Greece:

- Creating an institute or body specifically responsible for the supervision, monitoring and promotion of restorative justice and victim-offender mediation at the national level.
- Drafting bylaws and circulars establishing clear guidelines on how to apply the existing legal basis.

c) Further research restorative justice themes and monitor and evaluate victim-offender mediation programmes.

This entails both engaging the academic world and fund raising which could be attained by:

- Developing an informal network of interested academics and circulating information and materials on restorative justice and victim-offender mediation amongst them.
- Stimulating academic participation in international events and presenting papers.

d) Undertake a project similar to the ones funded by the European Commission that will serve as a framework to carry out initiatives and actions at different levels.

This project will include awareness raising campaigns and training programmes as well as networking and cooperation strategies to engage the different stakeholders in the implementation of restorative justice (researchers, policy makers, legal practitioners and NGOs). To this end it is necessary to:

- Explore the different funding opportunities available at the European Commission as well as in other institutions at both, the national and international level.
- Network and establish partnerships with agencies in other countries.

e) Improve the development of victims' rights, policies and general awareness about victims' issues.

It seems necessary that the development of restorative justice goes hand in hand with the development of victims' policies to ensure a coherent and balanced implementation of the former.

¹⁸⁰ As described in section II.1, in Greece there is an explicit legal basis for juveniles and a legal provision referring to mediation in the adults' jurisdiction. In this case, however, the legal text is more ambiguous.

3.2. ITALY

Four general aims can be identified for the development of restorative justice in three to five years time in Italy:

a) Enact a legal basis for juveniles and adults.

In the case of juveniles, this essentially requires the continued follow-up of the development of the bill that is being drafted within the Juvenile Justice Department. In the field of adults, however, the situation is still incipient and restorative justice must be placed on the political agenda. The following actions have been proposed:

- Organise conferences and seminars in Italy and ensure the attendance of policy makers.
- Circulate information and translate the existing literature on restorative justice topics.
- Undertake a project addressing the topics that are more attractive to policy makers such as evaluation or the relationship between victim-offender mediation and crime prevention. The partner agencies from the other countries involved should also be relevant to policy makers.
- Make the evaluation results of victim-offender mediation programmes for juveniles visible and available when research findings are finalised.

b) Raise public awareness and promote more active involvement of citizens in the field of social inclusion and conflict management.

This objective refers to the importance of promoting the development of mediation in other fields such as family mediation, neighbourhood mediation and mediation in schools. In this respect, it is advisable to introduce mediation in penitentiary institutions in order to deal with daily conflicts among prisoners.

More intense engagement on the part of the academic sector such as promoting research and publications on restorative justice topics will also contribute to realise this aim in Italy.

c) Improve the coherence and the consistency of mediation practices throughout the country.

To this end the following actions should be undertaken:

- Set up different schemes to assist and monitor the implementation of victim-offender mediation.
- Carry out a project to study and map the different mediation services and programmes existing in Italy in order to have a complete overview.
- Create a multimedia platform to support exchange, networking and the circulation of information between mediation practitioners, academics and the statutory agencies working in the criminal justice system.

d) Foster a more intense development of victims' rights, policies and general awareness about victims' issues.

Similarly to Greece, victims' policies seem to be of crucial importance for the sake of an adequate growth of restorative justice in Italy.

3.3. MALTA

Malta established as its main goal the setting up of a victim-offender mediation scheme that should be available to all victims at every stage of the criminal procedure. Malta's aim is to complete this development within five years. To this end, three general objectives can be identified.

a) Raise awareness amongst the public and the criminal justice system actors who will be involved in the implementation of restorative justice practices.

This refers to the need to sensitise and educate the public about the constructive and communicative aspects of mediation within the restorative justice framework, aiming particularly to transform the negative perception that a significant portion of Maltese citizens hold regarding mediation. The following are the practical steps that will help to accomplish this objective:

- Create educational and informative materials which are easily accessible to the general public.
- Continue and strengthen the work initiated with the media.
- Publish articles in local newspapers or broadcast programmes about restorative justice-related topics.

Furthermore, in order to inform and raise awareness among the key actors working in the criminal justice system, including legal professionals, prison staff, policy makers, victim support services and other related agencies, the following actions were deemed appropriate:

- Circulate information about restorative justice practices existing in other countries and about upcoming events. Make literature published in English available.
- Raise funding to invite stakeholders to participate in international events or to take part in study visits abroad, in particular to countries with a similar legal tradition.

b) Approve a law providing a legal basis to introduce restorative justice practices in the criminal field and realise its implementation.

Follow through on the informal consultation process that has been started with policy makers, the judiciary, court officials, lawyers, prison authorities, probation officers and social workers. It should also bring together NGOs, family mediators and arbiters on commercial matters. With this goal the following actions can be foreseen:

- Organise different types of activities, such as seminars and private meetings, to allow room for discussion.
- Draw up a strategic plan for implementation and invite all stakeholders to provide feedback for improvement.
- Review and streamline the strategic plan at a later stage.

In the context of this consultation process, the way in which restorative justice or victim-offender mediation should be regulated should be defined in order to draft a bill. To this end the following actions can be undertaken:

- Establish a working group formed by legal practitioners and representatives of agencies related to the criminal justice system in order to prepare the bill, integrating the opinions and insights ensuing from the consultation process.
- Clearly outline the legal amendments needed to introduce victim-offender mediation and restorative justice to the Maltese legal system.

c) Build capacity for service delivery.

In the first place this requires preparing and instructing the people who will act as mediators and service coordinators. Secondly, once people are prepared to mediate and run a service, set up a pilot project.

Very concrete steps have been identified in order to accomplish these objectives:

- Plan the resources needed and obtain funding.
- Organise study visits abroad, in particular to countries with a similar legal tradition.
- Train mediators locally with the help of foreign trainers.
- Prepare and organise the practical aspects and logistics for setting up the victim-offender mediation offices.
- Foresee an evaluation scheme for the projects.

3.4. PORTUGAL

The general aim to be achieved in Portugal in a three to five year term is to make restorative justice practices generally available throughout the country as the ordinary and generally available response to conflict, which should function in cooperation with the criminal justice system.

Four objectives can be identified in order to accomplish the general aim:

a) Ensure that victim-offender mediation services will be available in all judicial districts.

To this end, the following actions are deemed to be suitable:

- Develop secondary legislation, bylaws and regulations.
- Carry out information campaigns and raise awareness amongst the citizenry and the criminal justice system actors.
- Introduce victim-offender mediation and restorative justice themes in the programmes taught at the School for Magistrates.

b) Monitor and support the first implementation phase of the new law (*Lei No. 21/2007, que cria um regime de mediação penal*).¹⁸¹

It is emphasised that special attention should be paid to the two pilot projects that will be set up to secure positive outcomes and prepare for entry into a more mature phase of implementation in 2010. The following are the actions proposed:

- Organise academic evaluations of the two pilot projects in order to guarantee careful supervision.
- Set up a steering committee formed by representatives of the judiciary, public prosecutors' office, the police, probation, prison and victim support services, the ADR Office of the Ministry of Justice, policy makers, mediators and other related actors, in order to discuss the issues raised from the implementation of the law. The committee will function as a supervising agent of the implementation process (concerns, difficulties, shortcomings, best practices) and will also serve to create cooperative relationships between the stakeholders.

c) Ensure the good quality of practice.

This entails the following actions:

- Create a code of best practices and standards of quality.
- Ensure the ongoing evaluation and supervision of mediators by establishing a permanent instrument that provides support, supervision and training of freelance mediators.

¹⁸¹ See section II.4.

- Develop different training programmes for practitioners and service providers, including continuous training.
- Create mechanisms promoting the exchange of experiences, different methodologies of practice and service between practitioners.

c) Increase research and the availability of informative and academic materials on restorative justice in Portugal.

To accomplish this goal several strategies can be useful:

- Apply for a research fellowship (as an NGO) to research institutes at the national or supranational level (statutory or private). Contact the Portuguese Foundation for Scientific Knowledge, which promotes research projects in the field of social sciences.
- Participate in the European networks of researchers by attending seminars and conferences and taking part in international research projects similar to the COST Action A21 on '*Restorative Justice Developments in Europe*'.
- Open up the agencies working in victim-offender mediation or restorative justice to students and academics. Organise study visits, offer field placements and internships for students. Invite university professors to visit the agencies or offer training.
- Contact university professors and offer them the opportunity to have guest lecturers for their students. Organise informative sessions or round tables where a practitioner and academic may discuss certain topics.
- Invite Portuguese researchers and academics working in disciplines related to restorative justice (psychology, law, criminology, sociology and other social sciences) to conferences and seminars. Ask them to give a presentation on a topic in their field which is relevant to restorative justice.

3.5. SPAIN

Different aims and objectives must be defined for juveniles and adults since the state of affairs of restorative justice is different in each of the two jurisdictions.

a) Juvenile justice system: accomplish the application of the legal provisions on mediation to their full potential.

In order to realise an effective implementation of the legal basis in all Autonomous Communities the following actions should be carried out:

- Allocate more funding to support a broader implementation of mediation throughout the country.
- Establish a body or an instrument at the national level with the task of ensuring that the law is properly complied with in every Autonomous Community. Preferably, it should be a public body created within the Ministry of Justice.

To expand the effective use of mediation to all stages of the process as it is foreseen in the law the following actions should be undertaken:

- Promote more referrals of cases by judges and prosecutors.
- Build mediators' capacity and skills to deal with more serious cases.
- Stimulate the implementation of school and community mediation in order to prevent certain behaviour or conflicts from becoming a crime that will reach the court (especially petty crimes).
- Inform and educate staff working with youngsters who have been sentenced (either to custodial or to non custodial measures) about restorative justice values. This is

particularly relevant because an important number of these professionals hold an educational or rehabilitative approach.

b) Adults' jurisdiction: enact an explicit legal basis for victim-offender mediation and restorative justice practices; namely, reform the Criminal Code and the Code for Criminal Procedure.

Obtaining political support and getting this topic onto the political agenda entails the following:

- Active networking and contacting policy makers and public officials.
- Promoting action-research projects and presenting the findings to policy makers.

Analysing which types of legal instruments would be appropriate in the Spanish legal system would require:

- Undertaking comparative research on the different models and types of legislation used in other countries.
- Setting up a commission formed by experts, public officials and legal practitioners to study the Spanish legal framework and to draft recommendations.

c) Create a body or an umbrella organisation at the national level to promote and sustain networking, exchange of information and collaboration between practitioners and organisations working in the field of restorative justice.

This will require identifying the actors (agencies, experts, professional groups) that could lead this process and setting up a working group to develop a plan on how to carry out this initiative. Obtaining resources and funding to sustain this structure or instrument would also be necessary.

3.6. TURKEY

In Turkey, in five years time quality victim-offender mediation schemes should be generally available in the entire country for all types of crime. The following priorities have been identified:

a) Establish common training standards for mediators and make them available at no cost through a number of different institutions.

Mediation training should be provided free of charge by public institutions. The law formulates victim-offender mediation as part of the criminal procedure (the referral to victim-offender mediation is compulsory in some cases), thus the government should be considered responsible for ensuring the availability of mediation including the availability of a sufficient number of trained professionals.

The content, the hours and the type of training that mediators have to undergo should be defined. The training standards should be the same for all professions. This can be accomplished by:

- Elaborating on a compilation of existing mediation training materials and training programmes from other countries in order to supply the Ministry of Justice with complete information.
- Carrying out lobbying and advocating actions.

b) Ensure that victim-offender mediation is implemented properly by using evaluation and monitoring schemes.

This could be accomplished by:

- Carrying out research projects specifically focused on this topic.
- Creating an institution or body responsible for the implementation of victim-offender mediation including the monitoring and evaluation of services. In this respect it would be helpful to follow-up the legal and institutional developments in the field of ADR that are currently taking place in Turkey.

c) Raise public awareness and educate citizens to ensure that people know and understand what victim-offender mediation is, how to access it, and its legal implications.

This can be achieved by:

- Launching informational campaigns and designing materials that are catchy and easily understood by everyone.
- Develop a series of booklets informing citizens about the different aspects of the criminal justice system including restorative justice or victim-offender mediation. A small project could be developed to establish partnerships and to involve other criminal justice system actors in the design of this booklet.

d) Ensure that all judges and prosecutors receive training on victim-offender mediation and restorative justice.

To this end, the introduction of these topics as compulsory subjects in the training curricula for judges and prosecutors and in the curricula of law schools would be highly effective.

3.7. BELGIUM

The general aims to be reached in Belgium in three to five years time are related to goals foreseen by the new law:

a) Generalise the offer of mediation effectively.

Besides raising awareness and educating the public with informational campaigns, this includes informing citizens on how to access victim-offender mediation services by:

- Preparing different informative materials: design a leaflet or documentation folder. These materials should be produced by the Ministry of Justice who should handle the funding and planning of the campaign and distribution. Different actors and agencies should be involved in the design and distribution.
- Defining the procedures through which citizens involved in a criminal process will receive the information about victim-offender mediation. Clarifications should be made regarding how and when citizens will be informed and by whom. It is not clear at this point whether the responsibility is borne by the judiciary or the mediators.

It is also necessary to ensure the presence and the availability of mediators to render mediation accessible at all levels of the criminal process and for all crimes by:

- Ensuring the necessary allocation of funding.
- Defining what kind of status these mediators should have.
- Continuing to lobby and raise awareness amongst policy makers.

b) Maintain, improve and monitor the quality of mediation practices and service delivery.

First an ethical code should be drafted and especially this should foresee the procedure for submitting a complaint about mediation malpractice. Additionally, write different types of training programmes for mediators according to their needs (initial, continuous, etc.).

It would also be of vital importance to create a central body responsible for the coordination of all mediators and victim-offender mediation services working at different levels, including adults and juveniles. The body or organisation could also handle the training programmes and should have institutional recognition. To this end it is necessary to continue lobbying activities with policy makers.

c) Clarify the significance and the legal status of mediation.

It is necessary to define whether the nature of ‘the offer’ is a ‘service’, a ‘measure’ or a ‘punishment’. More precisely, this requires deciding on the legal impact of the mediation outcome at every stage of the criminal procedure (police, investigation, trial and sentencing);

In order for this to happen, a consultation process could be initiated. Policy makers, public officials and the judiciary should be invited to participate.

3.8. FRANCE

The general aims to be achieved in France in a three to five year term are the following:

a) Ensure ‘the survival’ of mediation in the criminal field and the continuance of current victim-offender mediation projects, basically by securing funding from the government.

This objective requires educating policy makers about the core values of restorative justice. More specifically, it is crucial to convey the message that the standards for the quality of victim-offender mediation are not necessarily related to cost-effectiveness principles. In order to define the standards of quality of the mediation practice the following actions should be foreseen:

- Initiate a strategy to emphasise the importance of the quality of training for mediators. For example, developing the standards for training by involving other agencies and organisations operating during the decision-making process in the field of mediation and restorative justice in France.
- Engage academics to conduct evaluation and research projects on victim-offender mediation programmes so that a scientific basis for the definition of quality standards can be created.

It would also be crucial to emphasise the fundamental role of the associations and federations in looking after the quality of the practice of the mediators working under their aegis. This could be realised by:

- Evaluating the associations and the federations at an internal level to make their positive impact on the quality of the practice evident.
- Establishing collaboration with different agencies including public institutions and other NGOs to run evaluation projects of the different mediation programmes (similar to the evaluation project of victim-offender mediation, which was run in cooperation with the Department of the Judicial Protection of Juveniles of the Ministry of Justice (*Direction de la Protection Judiciaire de la Jeunesse*)).

b) Raise awareness among the judiciary, lawyers and academics.

The following actions were proposed to meet this aim:

- Introduce victim-offender mediation and restorative justice themes in the training curricula of judges and prosecutors.
- Offer the facilities of Citoyens et Justice to carry out training sessions on restorative justice and victim-offender mediation so that magistrates can more closely examine how mediation is carried out within the federation.

- Develop collaborative partnerships with lawyers by organising seminars and debates focusing on those aspects of victim-offender mediation and restorative justice which might be relevant to their work.
- Promote the introduction of restorative justice and victim-offender mediation themes in the curricula of social sciences degrees to attract the interest of researchers.
- Invite academics to give lectures and training sessions or to write short articles for the federation newsletters.
- In order to reach the citizenry, informing and educating citizens about mediation and restorative justice in a systematic way in order to increase public demand for restorative justice.

c) Develop a restorative justice scheme at the post-sentence level.

In accordance with the restorative justice approach supported by Citoyens et Justice, restorative justice should be available at all stages of the criminal process. To this end the following steps could be helpful:

- Build knowledge and consensus about the application of restorative justice during the execution of the sentence by supporting and continuing the working group already established within Citoyens et Justice focused on this topic.
- Involve partners from other agencies and stimulate a bottom-up process regarding this topic.
- Network and exchange at the international level with other agencies and experts in the field by e.g. organising study visits or inviting policy makers responsible for the implementation of similar schemes in other countries and organising meetings with national policy makers in France.
- Submit project proposals to the European Commission or other supranational institutions that can provide funding for a more overarching project for the development of restorative justice schemes at the execution of sentence stage.

VI. SUMMARY AND CONCLUSIONS

1. SUMMARY OF THE REPORT

With the aim of realising effective support to restorative justice in Southern European countries this project had the goal of not only providing a space to promote exchange and collaboration dynamics between countries, but also to analyse the possibilities for improving the implementation of restorative justice taking into account the challenges and supportive factors to be found in the context of each country, and to design tailored strategies for policy development. To this end, a prior study to map restorative justice in each of the participating countries and to sketch the features of their legal, political, historical, cultural and social background was carried out.

When looking at the detailed country reports included in section II describing the state of affairs of restorative justice in Greece, Italy, Malta, Portugal, Spain, Turkey, France and Belgium, the first thing that comes to the fore is the diversity of the implementation processes being followed in each of these countries.

In some cases, victim-offender mediation appeared as a result of a bottom-up process, which led to the setting up of the first pilot projects in the 1990s in Spain and Italy and earlier in the mid-1980s in France and Belgium. These first experiments were carried out within the legal framework existing at that time which provided for legal entry doors, whereas a more explicit regulation of victim-offender mediation came at a later stage. In Portugal, one could say that the introduction of restorative justice has resulted in a 'two-way' movement, as the impulse towards restorative justice among non-statutory agencies and other stakeholders converged with a favourable political will.

In Greece and Turkey conversely, a top-down movement has taken place, with victim-offender mediation being introduced more recently (mid-2000s) in the criminal justice system by means of the enactment of a law. No previous experiments with restorative justice have been conducted before. In Malta finally, although neither a specific restorative justice programme exists nor a legal provision has been enacted yet, it is principally a non-statutory agency that is leading the awareness-raising initiatives and creating the conditions to launch a first pilot project.

In most of these countries, the primary reason for the introduction of victim-offender mediation has been to provide a more humane and constructive response to crime. In some countries the first victim-offender mediation projects were initiated by professionals working in the juvenile justice system and in the social sector. In other countries, victim-offender mediation was introduced with the goal of promoting a peaceful and proactive approach as a means to address the every day conflicts encountered in family or neighbourhood disputes, thus with the more general goal of contributing to improve citizens' quality of life. For other countries, the political interest in complying with supranational standards has possibly been the determining factor rather than grass-roots movements.

At present, the type of legal instrument used in each country varies substantially, also depending on whether it contains the legal basis for juveniles or adults. There are some jurisdictions in which the legal basis is explicit and in some instances, the law has also been supplemented by regulations or guidelines clarifying more practical aspects, such as the referral procedure or quality standards amongst others. Conversely, there are other countries in which restorative justice practices are being applied through entry doors or legal formulas grounded on a wide interpretation of the law but which lack explicit legislative authority for restorative justice or victim-offender mediation, hence an even implementation in the whole of the country becomes difficult.

In the Southern European countries participating in this study a wide range of different arrangements can be found with regard to the nature of the service and the mediators' profile and status. For example, in France mediators can be freelance professionals who meet a set of requirements, staff hired by a non-governmental agency (association) or volunteers. Similar arrangements are foreseen in Portugal for adults.

In the field of juveniles, in Italy, Spain and Portugal, mediators are mostly staff hired by the agencies providing the service. In Portugal they work for a statutory organisation, whereas in Italy, mediators are hired by the different mediation centres, generally run by local social services, NGOs or by the courts' social services. In Spain, depending on the Autonomous Community, juvenile mediators are either hired by NGOs or are civil servants. Juvenile probation officers act as mediators with juveniles in Greece. When adults are involved, the law states that the public prosecutor is to be entrusted to act as a mediator. In Turkey, the professionals allowed to mediate in criminal matters could be legal scholars, practicing lawyers, judges and prosecutors as well as persons who, despite not having received legal education in the strict sense, have studied legal topics as part of their education (such as degrees in administration or social and human sciences).

Overall, in all the participating countries, projects in which lay persons act as mediators are a minority. In France, mediators can be volunteers or professionals. In Belgium, a pilot project is also exploring mediation in which volunteers and professional mediators work together. Volunteers are also acting as mediators in a project run in Spanish prisons. It could be argued that for the moment, the overall tendency has been to develop a rather professionalised model.

The differences in the way restorative justice has emerged, resulting partly from the specific legal, political and social background of each of the participating countries as well as from their cultural and historical heritage, reveal both specificities and common traits among the participating countries. Based on this the report moves on to discuss how Southern European countries can learn from each others' experiences in the process of implementation. In section III and section IV it is shown that despite the diversity, the participants found common challenging and supportive circumstances within the areas of the legal system, policy implementation strategies, policy-making, crime policy trends and the social context.

The strategies put in place by restorative justice stakeholders to tackle the difficulties and promote restorative justice are described in the last part of section IV which brings together the experiences shared during the project as a way to improve know-how. The exchange has been conducted while keeping in mind that in order to benefit from a good idea developed elsewhere, the particularities of each country's reality must be taken into account. Indeed, as one of the experts expressed it, the exchange of experiences between different countries, while helping to address common difficulties, also allows people to gain a better understanding of the specificities of their own country.

Section V deals with exploring the windows of opportunity that are open for restorative justice in Southern European countries. To have a better understanding of the background of these countries, the legal, political, historical, cultural and social aspects relevant to restorative justice have been sketched. At the same time, having a more comprehensive picture of the background features of these countries has given rise to reflections and fundamental questions.

Following on from this, the experts designed strategies for policy development from a coordinated perspective geared at addressing the needs and priorities they identified in order to expand and consolidate restorative justice in their own, specific national context.

2. MAIN PRIORITIES FOR POLICY DEVELOPMENT IN SOUTHERN EUROPE

The following is a summary of the main targets for policy development identified as priorities in order to further the goal of introducing restorative justice:

- Design an effective and complete implementation policy so that restorative justice practices become a universally accessible option for all citizens. More weight and expertise should be devoted to planning the different instruments and resources needed for the implementation of the schemes.
- Raise awareness about restorative justice and develop an integrated communication strategy geared to the different target groups, namely citizens, legal professionals, public officials, policy makers, and staff working in criminal justice system agencies. The engagement of the media should be foreseen alongside other kinds of interventions and resources.
- Undertake preparatory research and pilot projects as indispensable stages of the development of a restorative justice policy. This should also include the monitoring and evaluation of the schemes.
- Have an explicit and clear legal basis that lays down access to restorative justice practices as a right so that it becomes an option generally available to every citizen regardless of the judicial district, the offence, or the stage of the criminal process. The formulation of the legal framework must also integrate due protection for legal safeguards and offer certainty on procedural aspects of critical concern to legal professionals, such as confidentiality, presumption of innocence or the maintenance of the principle of proportionality.
- Increase research and the engagement of the university sector. A more intense involvement of the academic community has to be promoted. This will not only assist the preparatory research and evaluation schemes necessary for a complete implementation of the programmes but it could also play a crucial role *vis-à-vis* communication strategies and the study of the specificities of the social context.
- Build communication and collaborative partnerships with policy makers, legal professionals and the staff of agencies related to the criminal justice system. It is especially crucial to establish permanent instruments that will allow this collaboration and communication to be sustained over time on a systematic basis.
- Ensure quality of practice and foster cohesion amongst the restorative justice collective.
- Make restorative justice a salient matter on the political agenda and increase the influence of restorative justice values and principles in crime policies and other related matters.

Similar needs and challenges to those identified by the Southern European countries are recognisable to restorative justice advocates in other countries, for example when it comes to addressing the lack of public awareness, the reluctance of legal practitioners, the unreliability of funding or undefined quality standards. Indeed, in the course of the present project what Fellegi had already observed in the conclusions of the earlier AGIS project 'Meeting the Challenges of Introducing Victim-offender Mediation in Central and Eastern Europe' became clear: the difficulties and needs surrounding the implementation of restorative justice in all

regions of Europe revolve around similar topics (Fellegi, 2005, 164), what differs are rather the possibilities and the mechanisms for coping with these difficulties.

This leads to consider that besides a country's specific characteristics, overall, current trends in contemporary societies may also play a role in determining the progress of restorative justice developments in all countries.

In light of these points, the importance of establishing and supporting instruments for systematic dialogue and exchange between restorative justice stakeholders belonging to different cultures and backgrounds was also confirmed as a priority, so that those involved can learn from each other and promote cooperation.

At the end of the project, the experts noted that the exchange of information has notably increased the visibility of the numerous restorative justice initiatives that are in place in neighbouring countries as well as within their own countries. This has widened networking and collaboration at all levels and new stakeholders have been reached in each country. It was observed that participation in the project has helped policy makers and other key actors in the respective countries to be more aware of the international relevance of this approach and the extensive network of agencies and organisations mobilised by restorative justice. This in turn, is helping restorative justice to gain salience on the political agendas of each country. Collaboration between agencies from different countries has taken place and future cooperation is being planned in the framework of European funding programmes

Therefore it is crucial for the initiators of restorative justice programmes to take an active role in organisations and projects that aim to create opportunities for exchange at the international and regional level and this involves not only Southern Europe but all countries.

3. CONCLUDING REMARKS

As a matter of fact, by bringing to the fore the different notions adhered to and practices carried out in Southern European countries, the importance of acknowledging and appreciating the different approaches and experiences through which restorative justice is being delivered becomes clear.

The projects and good practices already implemented in Southern European countries show how the challenges encountered in the implementation of restorative justice are being addressed positively, thus demonstrating encouraging tendencies towards expanding and consolidating restorative justice practices in Southern Europe.

At the same time, by analysing possibilities for furthering restorative justice in the context of these countries, and bearing in mind the lessons learned through experiences within different cultural realities, fundamental questions arise with regard to the organisational model that should be striven for in Southern Europe.

The experts emphasised that from the outset there should be ample reflection on the goals and the particular approach to restorative justice that need to be put into practice. For example, what relation restorative justice should bear to the criminal justice system (e.g. outcome driven *vs.* process driven, confined to certain offences or render it universally accessible)? This is closely linked to the choice of a particular organisational model which entails deciding on the degree of involvement of state institutions and the role of the citizen in the implementation process and service delivery. All these are fundamental issues that in fact concern the international restorative justice scene. Precisely in view of the current pre-eminence of measures aiming to reduce costs in the justice system, the experts voiced their concerns with regard to the possible 'instrumentalisation' of restorative justice practices for mere cost-efficiency ends and the possible net-widening effects of this.

In light of this, opting for creating a model where access to restorative justice is conceived as a right, appears to be not only a priority in order to ensure that it is accessible to all

citizens, but is perhaps also a means to develop a model that enjoys the necessary autonomy *vis-à-vis* the criminal justice system and the state.

Furthermore, the experiences described by the participating countries made it clear that, despite a formalistic legal culture, legal backing seems to be an essential asset. Nevertheless the existence of a well formulated legal basis alone does not necessarily guarantee an even and generalised application of restorative justice practices. While attention should be paid to the degree of specificity with which the law is formulated, the implementation phase of the process seems to be a pivotal aspect as well.

The increasing interest of universities and the research projects that have recently been conducted in these countries show positive prospects for restorative justice. Placing more weight on a scientific contribution to the development of evaluation schemes that are adjusted to assess the accomplishment of restorative justice values would give added momentum to restorative justice developments in Southern European countries.

Equally indispensable is the need to sensitise the citizen to restorative justice and its potential in addressing crime and its repercussions on victims, offenders and society. Informative campaigns should go hand in hand with other tools to generate debate and discussion among citizens. As mentioned earlier, the significance of social mobilisation depends on a wide range of complex cultural, historical and economic factors. In this respect again, research should also focus on mapping the different existing forms of social involvement and cooperation. This would help to streamline strategies geared to activate and engage civil society in the implementation of restorative justice in accordance with the social, economic and cultural factors relevant to each country.

Restorative justice developments in Southern European countries reflect the dynamism and the constant evolution that this movement is generally undergoing in all countries. It is becoming clear that new and wider opportunities for expanding and consolidating restorative justice are constantly appearing in Southern Europe and with these, inevitably, new questions and pitfalls also arise. The tension between the need to preserve the essential values and principles of restorative justice on the one hand and the need to normalise access to this approach to justice is a common place for all countries, hence the importance of promoting spaces for dialogue and exchange between cultures, disciplines and professional groups.

'(...) The Mediterranean sea symbolises the encounter with the Other, its specificity and its nature spring from its continuous role as a mediator between different cultures: the Orient and the Occident, Arabian and Latin, Christian and Muslim; there is where its real richness lies, in that perhaps violent but always dialectic and never static process of exchange and intermingling. (...)' (De Vanna, 2003, 155).

'(...) Il Mediterraneo è il simbolo stesso dell'incontro con l'Altro, la sua specificità e il suo genio nascono proprio dalla sua funzione di continua mediazione tra culture diverse, Oriente e Occidente, Arabi e Latini, cristiani e musulmani: qui sta la sua vera ricchezza, nello scambio, nel mescolamento, anche violento, ma sempre dialettico e mai statico. (...)' (De Vanna, 2003, 155).

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ANNEX 3. PARTICIPANTS

The following countries have been involved in the project:¹

	NUMBER OF PARTICIPANTS				
SOUTHERN EUROPE	First conference	1st expert meeting	Seminar	3rd expert meeting	Final conference
France	2	2	2	1	5
Greece	1	0	4	1	2
Italy	5	2	14	3	21
Malta	0	1	6	1	1
Portugal	12	2	49	1	15
Spain	25	4	17	4	12
Turkey	1	1	5	1	3
REST OF EUROPE					
Belgium	15	2	16	2	34
Albania	5	0	0	0	7
Austria	4	0	3	0	4
Bosnia	0	0	0	0	1
Bulgaria	0	0	0	0	2
Croatia	0	0	3	0	3
Cyprus	0	0	0	0	1
Czech Republic	4	0	1	0	4
Denmark	4	0	0	0	2
Finland	5	0	1	0	15
Germany	3	0	4	0	8
Greenland	0	0	0	0	6
Hungary	10	0	3	0	7
Iceland	4	0	1	0	1
Ireland	12	0	5	0	19
Kosovo	0	0	0	0	1
Latvia	6	0	0	0	3
Liechtenstein	0	0	0	0	1
Macedonia	0	0	0	0	1
Montenegro	0	0	2	0	1
Moldova	0	0	0	0	1
Netherlands	15	0	0	0	13

¹ Staff members of the European Forum also represented two different countries, namely Belgium and Spain. The following table includes the staff members and categorises them according to their country of origin.

Norway	37	0	1	0	36
Romania	1	0	0	0	0
Poland	0	0	2	0	4
Romania	1	0	2	0	0
Serbia and Montenegro	5	0	3	0	1
Slovenia	1	0	1	0	2
Sweden	17	0	2	0	8
Switzerland	1	0	0	0	0
Ukraine	2	0	1	0	1
United Kingdom	49	0	7	0	38

OUTSIDE EUROPE					
Australia	3	0	0	0	5
Canada	5	0	0	0	4
Colombia	1	0	0	0	0
Japan	1	0	0	0	0
New Zealand	4	0	0	0	0
Thailand	8	0	0	0	2
Uganda	0	0	0	0	0
USA	9	0	0	0	1
Zambia	0	0	0	0	1
Total	31	0	0	0	13

TOTAL	278	14	155	14	297
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