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“IMPLEMENTING ALTERNATIVE MEASURES TO DETENTION IN PENAL CASES”

*Introducing & sharing experiences
on restorative justice and
Victim-Offender Mediation
application for juveniles
and beyond*

Tirana International Hotel, 25 - 26 February 2009
TIRANA, ALBANIA

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Organized jointly by:

The Albanian Ministry of Justice
UNICEF-Albania (in partnership with EC and Sida)
The Norwegian Mediation Services (NMS)
The Norwegian Ministry of Foreign Affairs
The Foundation for “Conflict Resolution
and Reconciliation of Disputes” (AFCR)

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*Introducing & sharing experiences on restorative justice and
Victim-Offender Mediation application for juveniles and beyond,
held in Tirana from 25 -26 February 2009*

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***Robert Carr, Deputy-Representative
UNICEF-Albania***

Dear Deputy Minister,
Dear Participants,
Dear Colleagues,

On behalf of UNICEF, I would like to welcome you all to this Regional Forum on implementing alternative measures in penal cases - Introducing & sharing experiences on restorative justice and victim-offender mediation application for juveniles and beyond.

This forum aims at further advance the regional inter-institutional dialogue and exchange of successful experiences on implementation of restorative justice and the victim-offender mediation. It also aims at contributing to the establishment of the regional networks between professionals for the implementation of restorative justice and the raising of awareness of government and civil society for the advance of the justice reforms in the Balkan countries.

Let me take this opportunity to first thank the co-organizers of this event: the Albanian Ministry of Justice (Mr. Viktor Gumi, Deputy Minister); the Norwegian Mediation Services (NMS) (Ms. Karen Kristin Paus, Project Manager); our (UNICEF) partners, the EC and Sida, the Norwegian Ministry of Foreign Affairs (Ms. Eva Aalberg Undheim, Attaché, Royal Norwegian Embassy in Skopje); and the Foundation for "Conflict Resolution and Reconciliation of Disputes" (AFRCR) (Mr. Rasim Gjoka, executive director). Let me also thank Mr. Jean Claude Legrand, our UNICEF CEE/CIS child protection advisor for participating to the event showing the interest that UNICEF CEE/CIS RO in contributing top the JJ reform in this region.

I would like also to warmly the participants from Montenegro, Serbia, Kosovo, Bosnia I Herzegovina, Croatia, Macedonia, Slovenia and Albania, making this meeting an excellent opportunity to exchange experiences and learn from each other.

Last but not least, this event is honored by the presence of Prof. Nils Christie, University of Oslo, Institute for Criminology and Sociology of Law; Siri Kemény, Chair of European Forum for RJ; and Dr. Martin Wright, Member of the Board of RJ Consortium, UK.

I wish you all the best for the success of this forum, and now it is my great pleasure to give the floor to the Deputy Minister of Justice of Albania, Mr Viktor Gumi, who has greatly contributed to the reform of the JJ system in Albania.

Mr. Viktor Gumi
Deputy-Minister of Justice
of Republic of Albania

Dear Mr. Carr, Dear guests, Dear participants,

I would first to warmly welcome you all and wish you a pleasant stay in Tirana.

The main question we are gathering today is to discuss about and to exchange ideas, on what constitutes one of challenges that our societies are facing. This is particular nowadays, when the criminal justice is occupying more space in daily political, legal or society discussions, and everything is linked with the budgetary and financial means. Very often the discussion on alternative sentences to detention in general and restorative justice in particular is when we have prison overcrowdings we look for other means and ways, in particular when we are emphasizing the social peace.

During these two days, we'll be able to discuss about a topic that, at least in our region, is at the beginning of its development and to the way of its consolidation. It is not a question of implementing and 'transplanting' in our societies, the legal institutions already experienced in other western countries; the question goes further beyond that. We have opportunity to implement, and not just to copy, a successful strategy, resulting in effective and positive achievements in other societies, and that is recommended by various international organizations, such as the Council of Europe, as a model to be followed. National traditional circumstances and values could and should be added to this model. There are no golden rules applicable to any society and for every thing. If so, the life would have been so simple.

There are laws that reflect the social changes, that is - the legislative body exercise its competence when social relations already existing and developed, are going further than its institutional instrument which is the normative regulation. There are other laws, that provide a step forward than social relations, and they are adopted with the only scope to rule the social behavior according to other standards, which might have less chances to be applied in the normal course of life. To my opinion, the alternative measures are covering a 'grey zone' between two legal models mentioned above. In big cities and metropolitan areas, the life is more dynamic and therefore, it offers certain mechanisms, experienced first through the model of pilot projects. Afterwards, these mechanisms are transformed into domestic laws, applied everywhere within, and perhaps opposite to some social conservative beliefs.

Nevertheless, at any time and under any circumstances, our duty is to move further and to raise awareness, primarily the domestic community on some challenges that will be part of their everyday life. We then need to draft laws and by-laws of best standards, and than to deal with the most difficult part, that of implementing fully, fairly and correctly that legislation. Today's meeting is a very good occasion to exchange ideas on these historical, integrating moments for our region. For the Ministry of Justice perspective, I believe its conclusions will be a precious asset for our work in the field of criminal justice reform.

Once again, let me thank you for the invitation and wish you all success in this regional meeting.

Thank you.

**Jean-Claude Legrand, Regional Advisor on Child Protection
UNICEF Regional Office for CEE/CIS**

In a recent study conducted by UNICEF: “Lost in the Justice System” (available on our website), we reviewed main trends regarding juvenile justice in the CEE/CIS region.

Some good news:

- The number and rate of juvenile offending is decreasing;
- The minimum age of criminal responsibility is generally set high (14 to 16 years old);
- Improvement of living conditions in detention;
- Decrease in worst forms of abuse.

But some concerns:

- grave lack of data on juvenile justice;
- sentencing to deprivation of liberty still the norm;
- A twilight zone – a black hole (in terms of information and in terms of protection of the rights of children) in between arrest and conviction;
- The role of local commissions for minors is not always as positive as expected, in particular regarding their role in identifying diversion responses;
- Offenders below the minimum age of criminal responsibility are not provided with adequate responses (sent to “educational facilities” similar to detention/left without support and follow-up).

In a follow-up to this study, we developed comprehensive assessments of juvenile justice systems in countries of the region (we will get 11 of them). There is no country in the region which has achieved yet such a comprehensive reform. But a lot of positive initiatives:

- Minors’ police units in Turkey
- Alternatives to detention in Albania and Tajikistan
- Victim-offender mediation in Serbia

This is why UNICEF has embarked upon a critical mass exercise aiming at supporting comprehensive reforms of juvenile justice systems in most countries of the region.

We will pay particular attention to:

- children in conflict with the law under the minimum age of criminal responsibility;
- diversion;
- alternatives to custodial detention;
- budgeting of juvenile justice reforms;
- building capacities at different levels;
- reinforcing the use of existing monitoring and accountability mechanisms.

Exchange of information, experiences, lessons learned and potential good practices is key to accelerating reforms in the region and for getting an effective impact on the situation of minors in conflict with the law. This is why we are pleased to participate in this regional forum to share experiences on restorative justice and victim-offender mediation.

We hope to play a role in disseminating some of the findings of this forum.
Thank you.

***Karen Kristin Paus, Senior Advisor and Project Manager
Norwegian Mediation Services – Central Administration***

Ladies and gentlemen, dear friends – old and new ones, especially welcome to all coming from the region! We are so happy that there are representatives here from all the West-Balkan countries – Bosnia & Herzegovina, Slovenia, Croatia, Serbia, Montenegro, Macedonia, Kosovo and Albania.

The Norwegian Mediation Service have for a decade been involved in a colleague-to-colleague support project here in Albania, supported by The Norwegian Ministry of Foreign Affairs. Our wish is that these kind of projects can grow and develop in the whole region – where colleagues can meet and share their experiences and inspire each other to further achievements. Inter-professional work were e.g. prosecutors, judges, mediators, social workers, police come together is needed to develop good alternative measures that can help to reintegrate offenders back in society and equally important – meet the needs of the victims in a better way than the traditional penal sanctions often do today.

Our topic for these two days is Restorative Justice, victim-offender mediation in particular, focusing on juveniles, but not excluding adults as the need for mediation as a supplement or as an alternative measure is a need no matter what age or background we have.

Restorative Justice is now an international trend for developing good alternative measures – it is a relatively new idea but its origin is from old traditions of how to solve conflicts. I know that such traditions for mediation still exists here in the Balkans, so the potential for developing Restorative Justice in this region can therefore also be great!

Most countries are still at the very beginning to develop Restorative Justice, not only in this region, but world wide. And, international cooperation is crucial to develop this new idea into good practices by learning from each others successes and sometimes also our mistakes. I hope we will have a good opportunity today and tomorrow to share experiences and to discuss this topic together – and I wish us all success!

Thank you for the attention.

***Rasim Gjoka, Executive Director of Albanian Foundation
for "Conflict Resolution and Reconciliation of Disputes"***

Honorable ladies and gentlemen,

On behalf of the Albanian Foundation for "Conflict Resolution and Reconciliation of Disputes", which is one of the co-organizers of the Regional Forum on Implementing Restorative Justice, I would like to thank you all for the participation, contribution and at the same time I would like to welcome you all at this event.

The peculiarity of this Forum of regional dimensions and also beyond, is that we are gathered together specialists from state and civil society organizations. i.e. from the justice, social area, socio-criminology and penal area researchers, implementers of restorative justice, in order to discuss, introduce and exchange experiences in developing and implementing restorative justice and mediation in the respective countries.

Another particularity of this forum is the participation of very-well known experts in the area of restorative justice and mediation from European countries like from Norway, Britain, Slovenia, and also from the European Forum for Restorative Justice. Moreover, the participation and contribution of Prof. Nils Christie gives another dimension to this Forum. Prof. Christie, with his view about the conflict handling, perceived as an ownership taken from the real parties, and which should be given back to parties, is the initiator of a Pan-European movement in reforming the penal justice and particularly its restorative aspect.

Considering the long year experience of the Foundation I represent, its achievements, challenges and possibilities, the cooperation with the Norwegian Mediation Service and the European Forum for Restorative Justice, with UNICEF experts and colleagues, I fully believe that investing in Restorative Justice and mediation in general, and particularly for juveniles, means investing for the future, investing for a better life for the individual, community and humanity in totality. At the same time, such an investment is a contribution to the well-administration, democratization and humanization of penal justice.

In centuries and years, the Balkan Region has yielded lots of history, and also numerous conflicts. I think it is time that our countries be ones of making peace, establishing mutual understanding, and promoting the values of democracy and justice.

It is the time and the occasion that through a process already started, an inter-action and cooperation process, local and regional one, we contribute directly to the process of consolidation and reforming of our institutions and legislation making it compatible with the most advanced European standards. I believe that experience exchange in this Forum will help in this regard, by putting some bricks in the joint 'building' which is symbolically called the European dream or aspiration.

Let's orient all the numerous and inexhaustible energies existing in each country to the positive direction. And restorative justice and mediation make the core elements of this positive energy for which we all should contribute.

Thank you!

The Forum in Review

Ms. Migena Leskoviku,
Professor of Law, Tirana

The Regional Forum on “*Implementing Alternative Measures in Penal Cases – Introducing and sharing experiences on Restorative Justice and Victim-Offender Mediation application for juveniles and beyond*”, was held in Tirana, Albania, from 25-26 February 2009, organized jointly by Albanian Ministry of Justice, UNICEF-Albania (in partnership with EC and SIDA), the Norwegian Mediation Services (NMS), Norwegian Ministry of Foreign Affairs, Albanian Foundation for Conflict Resolution and Mediation.

During two days, the participants from all over the region – Albania, Bosnia & Herzegovina, Croatia, Kosova, Macedonia, Montenegro, Serbia and Slovenia brought their experiences and practices to this forum. Guest Speakers from Norwegian Mediation Service, European Forum for Restorative Justice, UNICEF, and some well-known European professors and practitioners gave their precious contribution to this Forum.

The aim of this forum was to further advance the regional inter-institutional dialogue and exchange of successful experiences on implementation of restorative justice and the victim-offender mediation. It also aimed at contributing the establishment of the regional networks between professionals for the implementation of restorative justice and the raising of awareness of government and civil society for the advance of the justice reforms in the Balkan countries.

Welcome and opening speech was presented by Robert Carr, Deputy-Representative of UNICEF-Albania. Viktor Gumi, Albanian Deputy-Minister of Justice; Eva Aalberg Undheim, Attaché, Embassy of Norwegian Kingdom, Macedonia; Jean Claude Legrand, Adviser on Child Protection, UNICEF/CEE/CIS RO; Karen Kristin Paus, Senior Advisor and Project Manager, Norwegian Mediation Services and Rasim Gjoka, Executive Director, Albanian Foundation for “Conflict Resolution and Reconciliation of Disputes”.

Mrs. Siri Kemény, Head of the European Forum for Restorative Justice, made an introduction to the historical development of restorative justice in Europe. She noted that Restorative Justice was born in the framework of mediation in criminal cases and in the '70 and 80's. Researchers and practitioners criticized the system of criminal justice and the way it dealt with victims and offenders. It started in practice and was based on the simple models of conflict mediation applied in the practice of indigenous people and tribes, forming a third paradigm different from retributive and rehabilitative justice. This new model was first implemented in Norway in 1981 and then it was followed by other European countries.

When describing the understanding of Restorative Justice and Mediation and its actual development, three core elements were emphasized: Social element instead of law breaking; participatory/democratic element that stresses the individual participation by promoting reconciliation), and reparative element.

Mrs. Kemény mentioned that nowadays the question of preventing crime could not be only a question of criminal justice, but it is needed a broader public participation and a closer collaboration with the society.

Participants of this Forum were informed on the role of European and international organizations, such as Council of Europe, United Nations, European Commission in the field of Restorative Justice and Mediation. These organizations has produced and published important documents, such as: Recommendation of CoE on mediation in penal matters, a UN guide on restorative justice in criminal matters, EU framework decision. The participants were introduced with the role and activity of European Forum of Restorative Justice, too. Mrs. Kemény invited organizations present to join European Forum of Restorative Justice.

Prof. Nils Christie, University of Oslo, Institute for Criminology and Sociology of Law, emphasized the approach on why we should use mediation and restorative justice in conflict resolution. According to Prof. Christie, mediation is a kind of solution, based on kindness, being friendly and kind rather than harsh. An important element of mediation is humanity; kindness as a deep element of humanity is important also in mediation process. Bearing in mind that punishment is painful, and then what mediation aims at, is the reduction of pain into the society. And that is considered as the essence of mediation. A fundamental principle of mediation is: to punish the right person, in the most appropriate and right way.

He defined Restorative Justice as a starting point to repair damages caused by crimes to community, society. The victims and offenders have the possibility to discuss about the offence and the right compensation. The criminal justice has to take into account the needs and feelings of offender, victim and the participatory role of community. By that, it will be possible to reduce the level of pain in society. This is what the criminal justice should aim nowadays. But contrary to that, still what we notice is the level of incarceration is rather high or increased in various countries. Prof. Nils provided with figures on the imprisonment rate in Balkan countries. The trendy is high and shows the level of pain as well. The way a society is organized and functions, is reflected in these figures and statistics of crimes.

In mediation process, it is the parties who decide what is relevant, contrary to the criminal justice system. In this process the victim plays an active role. As mediators are simple and ordinary people, mediation in community contributes to a peaceful and harmonious neighborhood and to the strengthening of social bonds among ordinary people. He also told the participants an interesting and very sensitive case, pointing out the idea that the communication, its power is very important for conflict resolution in society.

Dr. Martin Wright, Senior Research Fellow at the Faculty of Health and Life Sciences, De Montfort University, Leicester-UK, outlined the basic concepts of 'restorative justice', by considering the victim's perspective, relating it to statements of principles from the Council of Europe and the United Nations. A survey in England found that what victims want most is action to make the offender less likely to re-offend; other research shows that the great majority of those who experience restorative justice were satisfied with it; but safeguards are needed so that the number who are not satisfied is kept as low as possible. He stressed that members of disadvantaged groups such as Roma should be treated equally, mediators should be trained to be aware of their own prejudices.

Five requirements for the delivery of restorative justice were listed. There needs to be a good understanding of it. The general public should be aware of it. Its relationship to the criminal justice system should be clear, including measures such as deferment of sentence. Restorative services should be available throughout the country (and questions are raised as to whether they should be provided by the criminal justice system or non-governmental organizations, and by volunteer mediators or professionals or both). Lastly, it is important that offenders should be *enabled* to make reparation: work, therapy, education and other programmes should be available.

Two concluding points: lessons should be learnt from mediations and conferences about pressures towards crime, and action taken to reduce them. And restorative practices should be introduced in schools, both to improve discipline and to educate a new generation in the philosophy and practice of resolving conflicts without violence.

Mrs. Merita Bala, Project Coordinator, Albanian Foundation for “Conflict Resolution and Reconciliation of Disputes” presented results and findings of the monitoring phase of VOM and RJ UNICEF supported projects, implemented in Albania. This project puts emphasis and focused on case settling through mediation and restorative justice, where one or both parties were juveniles aged 14-21.

The aims and objectives of this project were: (i) Increase the capacity and awareness of police officers with regard to use of restorative practices for juvenile offenders and victims; (ii) Monitor the resolution sustainability, according to pre-developed monitoring schemes; (iii) Prevent juvenile delinquency and preventing juveniles from entering the criminal justice system.

The impact of the project was positive. The restorative justice approach helped the parties to find a solution acceptable by both of them; contributed to the prevention of juveniles being subject to penal proceedings and having clean criminal record; it provided with reparation for the damage caused and prevented from potential aggravation of those conflicts.

Representatives from Balkan countries made **short presentations** on the introduction and development of Restorative Justice and Mediation models in their respective countries, during the afternoon session. Special attention was dedicated to juveniles as Restorative Justice and Victim-Offender Mediation basically focused on juveniles, but without excluding other categories as well. It was pointed out that Restorative Justice is considered to be an important part of the justice reform in Balkan countries.

Different participants introduced and developed topics regarding: diversion, alternative to detention and improvement of conditions in detention, human dimension of RJ and Mediation, children in conflict with the law and their treatment in the criminal justice system, Restorative Justice from victims’ perspective, actual legislation and its improvement, reinforcing the use of existing monitoring and accountability mechanisms, etc.

International cooperation was considered important for sharing experiences, exchanging information and data, promoting effective policies, legislation and services, stimulating research, training and good practices. That is crucial for regional cooperation and for benefiting from positive experiences of each-other.

The second day commenced with a presentation delivered by **Mrs. Karen Kristin Paus**, Senior Advisor and Project Manager, Norwegian Mediation Services. First, she presented about the experience of the mediation models in Nordic countries and the influence of Prof. Christie's ideas on embracing that model. In all the Nordic countries the authorities have taken financial responsibility to support developments of a mediation service, mainly placed under the social or the justice sector, or as a combination between the two of them. For example, in Norway the Mediation Service is today both financed and organized by the Government, placed under the Ministry of Justice. Mediation is not considered as an alternative to imprisonment in Nordic countries, but rather a way of solving conflicts and disputes among young people. She mentioned the benefits and values of mediation in the society and one of them is the prevention of re-offending.

She stressed that there is no 'best model' for how to organize a mediation service that could be universal and applicable in every society. We'd rather need to measure which model fits better in our society, considering also the social, cultural and the development context of the country. Mrs. Paus pointed out some new initiatives, experienced in Nordic countries that regard the use of mediation within the prisons. That is considered as an interesting, innovative experience, whose results have to be tested into practice. In Norway, a new measure for young offenders is proposed, a conferencing process involving the young offenders under 18, which will enable to provide a network of various professionals the offender's family and friends, and other relevant services.

Mr. Per Andersen, Director of Norwegian Mediation Services, developed the features of the mediators and the concept of a lay-mediator. The latter was defined as a sensible person, resident of the local community where the case is handled and shall not be a professional, but a trusted member of the community. He provided with arguments why, the most important qualification for a mediator is to be a sensible person, and described the characteristics of a sensible person. Mr. Andersen presented also that the basic ideas in mediation emphasize that it is universal questions people are dealing with, and it is basic human knowledge the mediators need to bring forth.

The mediator is supposed to appear for the parties as an equal citizen, not a specialist, or a professional, but he/she is conceived as a trusted representative from the local community. Then, he explained the way mediation service is organized and functions in Norway. The mediation service in Norway has gained a high credibility. In general, the volunteer system functions well and enjoys respect in the society.

The afternoon session of the second day of forum continued with **working groups**. All participants were divided into 3 working groups discussing the following topics:

Topic 1 – Possibilities and perspectives to implement Restorative Justice in your country/region?

Topic 2 – Identifying common points to exchange knowledge, experiences in order to implement Restorative Justice in the Region: what benefits a regional exchange in the proper countries could bring forth?

After the presentations of the working groups some comments and considerations listed and are part of the conclusions in this paper. Prof. Christie underlined that cooperation between Albania and Norway has been very fruitful and it must be encouraged for promoting this model to other Balkan countries.

At the end of this session, **Mr. Leon Shestani** - Social Services/Juvenile Justice Specialist, UNICEF, Albania, expressed his gratitude to EC and Sida for their contribution and support of the Juvenile Justice Reform in Albania. He mentioned that the development of alternatives to detention for juveniles and restorative justice are an essential part of the justice reform that is undergoing in Albania. Research, evidence and information sharing need to be strengthened. Considering the positive results already achieved, UNICEF Albania is further contributing to the juvenile justice reform, in supporting diversion and the restorative justice models developed to be part of the new probation system.

Speeches of guest speakers, contributions from representatives of the region countries and the recommendations of the Forum are part of this working report.

Siri Kemény
European Forum for Restorative Justice

European movement and developments on Restorative Justice and Mediation - the (context) and social support for development of RJ in European countries

The theme of this seminar is the use of alternative measures in penal cases, sharing of experiences with the use of RJ (and VOM) and why and how to implement different forms of RJ as an alternative reaction in criminal cases.

To help us in this purpose I will give you a broad outline of the emergence of RJ in general, and on the European scene in particular. I will also share with you some reflections upon why RJ has turned up during the last decades, and why I think it is an important contribution to the development of our societies, (democracy). Then I will inform you about the EFRJ, and the role of the CoE, the EU and the UN with RJ.

Restorative justice theory developed in the 1970s and 1980s from the innovative practice of VOM which arose out of discontent with the way criminal justice systems were dealing with victims and offenders. It all started with practice, and RJ was frequently described by the ways in which it differed from both retributive and rehabilitative justice, forming a third justice paradigm.

A number of reform initiatives have probably influenced the emergence of RJ practice and theory. During the 1970s and 1980s, critical criminologists devoted their attention to “the counterproductive effects of criminal justice and its incapacity to assure peace in social life” (Walgrave, 2008).

The legal system was confronted with a growing crisis of confidence and informal justice critics formulated a series of proposals with “an emphasis on a) increased participation,

- b) more access to law,
- c) de-professionalization, decentralization and de-legalization, and
- d) the minimalization of stigmatization and coercion”.

(Matthews, 1988 cited in Van Ness and Heetderks Strong, 2006.)

One of those critical criminologists was professor Nils Christie - whom you will hear later today. His important point was that the state ‘stole’ the conflicts from the people, and often deprived them of the possibility to reach a resolution on their own, or at least influence the resolution or the solution, themselves.

Also the justice traditions of indigenous people have influenced the development of RJ. By indigenous people I here mean First Nations People in Canada and the Maori people in New Zealand.

The last element I will mention that has influenced the development of RJ, is the victims’ movement. Dan Van Ness says it like this:

“The contemporary rediscovery of crime victims was the product of an accumulation of criticisms and reforms by individuals and groups who were frustrated and angry that the victims’ interests

were disregarded by a system preoccupied by the criminal suspect.” Martin Wright from England will talk more in depth about the victims’ place in RJ.

RJ is far from being a unitary concept. RJ justice means different things to different people, and has been characterized as ‘a movement, a paradigm, a model, an approach, an idea, a theory, a practice, an alternative’ and so on. RJ is a cherished field for scholarly attention. In a very short time much has already been written about it, and I think even more is to come, because the development of RJ has just begun.

I will leave the scholars behind by mentioning **three core elements of RJ** that I think most people involved with RJ will agree upon:

- **a ‘social’ (life-world) element** with the perception of crime as disruption or disturbance of human relations (instead of crime as lawbreaking), of people living together (=change of lenses).
It means starting from and attending to the immediate emotional experience of the persons involved, and the concrete needs originating from this experience of hurting or harming somebody, and the experience of being harmed or being hurt.
- **A participatory or democratic element:** This implies active participation of those concerned and those affected by the conflict becoming part of the effort to achieve reparation and maybe sometimes reconciliation. It promotes ‘taking responsibility’, especially so on the side of the offender.
- **A reparative element:** The emphasis on ‘making good’ is linked to the first two orientations:
a) Concentrating on the conflict, understood as a disruption of social relations will bring about the search for means and ways of making good the harm inflicted, for reparation and for ‘healing’;
b) The active involvement of both the victim and the offender in this process makes possible the meeting of the victim’s ‘real’ needs. These needs might include the need for emotional support in addition or instead of material (e.g. money) or non-material compensation. The shift from restoring the balance (the scales of justice!) by making good (acting positively), instead of inflicting the evil of punishment on the wrongdoer (acting negatively) is the other important innovative element realized through RJ.

So - what happened to the development of RJ in Europe? In the 1980s and 1990s pilot projects were introduced in many European countries. Inspired by the ideas of Nils Christie, Norway went ahead with a pilot project on mediation in 1981. Finland and Austria followed, then England and Germany, all with small projects. Developments were in the beginning rather slow, and it also developed differently in the different countries, and mostly in isolation from one another. Austria came first with legislation that secured nationwide availability of VOM, in 1988 for juveniles, soon after also for adults. Until the last eight or ten years, VOM has been the RJ approach in Europe. It is only quite recently that conferencing (or FGC) has really started spreading also in Europe.

To give you an idea of the differences in developments, I can mention that in Norway and Finland mediation developed rather autonomously, so to say as an alternative alongside the CJS.

In Austria, Germany and the Czech Republic the lead was taken by the probation service. All the initiatives mentioned were offender-oriented. But as the practices progressed, they were slowly

attuned more to the victims' needs. Research also showed that the victims profited from the RJ approach.

The development of RJ during the last ten years, and the present situation

Even if the situation of RJ in the European countries differs widely, I have a clear impression that during the last decade, the interest and understanding of the potential RJ holds both on an individual level and on a societal level, has increased quite a lot.

How shall we understand this? I think it has to be understood in the light of the general changes in society, which includes the globalization with the rule of the free market (which has proven to be catastrophic) and the decrease and weakening of the hierarchical authorities, including state power. Right now we are in a position where both capitalism and communism have failed; the globalization which is due to the development of computer technology is here to stay, with its blessings and curses. The present financial crisis has been helped forward and accelerated by a computerized, globalized world. What direction the world and the politics of the world will take, I do not know. But the state or the state power seems to have been somewhat rehabilitated because of the financial crisis. We live in a time of uncertainty about the close future, and we are, right now, lacking the means to set the course.

What does all this have to do with RJ? Well, I think that the emergence of RJ shows that not even the most conservative sector in society, the CJS, can close its eyes for what is happening all around us. People want, more and more, to have a say in their life, to be participatory citizens, with rights – and hopefully also obligations.

In brackets: I think we have a challenge in making people understand that rights are inextricably intertwined with obligations. For a while it has seemed as if only rights exist for people, without any obligations.

A RJ approach to crime also offers an arena for democratic practice through participation and 'responsibility taking'. The politicians and more and more also the criminal justice practitioners, the prosecutors and the judges, realize that crime cannot be handled and controlled by the CJS alone. Problems with crime must be seen in a broader social context, and the citizens in general must also take responsibility to help diminish crime.

Are there more elements that have helped RJ forward in Europe?

I think so. First and foremost I will mention the numerous practitioners of RJ, researchers, civil servants and policy makers that via the **EFRJ** have joined forces to bring forward RJ in their own countries and in Europe as a whole.

International and supranational organizations like the **CoE**, the **EU** and the **UN** all have RJ on their agendas and have published documents to support the development of RJ in their member states. Their influence should not be underestimated.

The CoE has by far taken the most initiatives to bring forward RJ in their member states. The most central recommendation for our purpose is the Recommendation No. R (99) 19 on mediation in penal matters.(1999) This recommendation is substantial in the sense that it gives good advice about what to pay attention to when introducing and implementing RJ measures through legislation and practice. Last year also regulations to help the implementation of RJ according to Recommendation from 1999 have been developed by CoE.

In December 2006, **the United Nations** Office on Drugs and Crime published the Handbook on Restorative Justice Programmes. This came as a result of

1) the **Economic and Social Council that in 2002 endorsed the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters** as a guide to countries seeking to implement these programmes.

and

2) the **2005 UN Crime Congress** that concluded with a declaration recognizing the benefits of restorative justice and again urging Member States to further develop restorative justice programmes.

The first part of the Handbook focuses on restorative justice concepts, processes, and safeguards. It uses **the definition of “restorative process”** given in the UN Basic Principles, which reads:

“any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by the crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”

The EU has as its objective in the field of criminal justice, to create a **European area of freedom, security and justice**. RJ has its clear place in this endeavour; the most known legal instrument is the **Framework decision** on the Standing on Victims in Criminal proceedings of 15 March 2001. It states in Article 10, entitled ‘Penal mediation in the course of criminal proceedings’ that member states have to:

- “promote mediation in criminal cases for offences which it considers appropriate for this sort of measure”.
- Furthermore, member states have 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”.

You might notice that the contents of this provision – as of many other provisions of this Framework Decision – is very vague and leaves an enormous scope of discretion and interpretation to the member states.

As part of the **AGIS project “Restorative Justice: An agenda for Europe; The Role of the European Union in the further Development of Restorative Justice”** from 2006 – 2008, Jolien Willemsens on behalf of the EFRJ carried out a mapping of all legislation in the EU member states with relevance to RJ. The exercise showed that almost all member states have legislation with relevance to RJ, and practice of some kind. The report goes on to discuss if the EU should act in the field of RJ, either through legislation, through policy developments or other initiatives.

Apart from the national legislations, the report also collects all supranational legislation, recommendations, guidelines and handbooks with relevance to RJ. The report is not, as far as I know, yet available for the public, because it has not yet been duly treated by the EC.

Now – this has brought me to the **European Forum for Restorative Justice**. What is it, how did it come about and what does it do?

First of all – the EFRJ has succeeded in establishing itself as a central partner for CoE, the EU/EC but also the UN in questions pertaining to RJ.

I have brought some information material that can give you more information about the organisation.

The European Forum for Restorative Justice is the only organization that, as its general aim, strives to promote restorative justice Europe-wide. It was established in 2000 as a non-governmental, not-for-profit organization.

The incentive to create the Forum came from a small group of people¹ who realised that, whilst the practice of mediation in criminal cases held important promises in several countries, it often concerned relatively isolated initiatives. There was no regular exchange and mutual support between projects at an international level. Also policy makers and researchers expressed a need to interact with people from other countries. This group obtained a grant from the European Commission² to “create a forum for the exchange of information, knowledge and experience and for consultation and discussion concerning victim-offender mediation in the framework of a restorative approach of criminal justice”.

The general aim of the Forum was defined as to help establish and develop victim-offender mediation and other restorative justice practices throughout Europe.

To further the general aim, the Forum: promotes the international exchange of information and mutual help; promotes the development of effective restorative justice policies, services and legislation; explores and develops the theoretical basis of restorative justice; stimulates research; and assists the development of principles, ethics, training and good practice.

In its constitution, the Forum explicitly includes the principle that it “actively seeks to provide opportunities for expressing contradictory points of view by everyone who is working for a humane system of justice for the benefit of victim, offender and the community”.

This principle, together with the principles of openness, respect and the willingness to learn from all members, demonstrates that the Forum does not hold a dogmatic view on what restorative justice should be and how it should be implemented. The Forum is well aware of the fact that national contexts and cultures in Europe are very diverse and that these should be respected. This does not hinder that there are common understandings of the basics of restorative justice and common needs in the further development of restorative justice practices.

Individuals as well as non-governmental and governmental organizations (local, regional, national and international) can apply for membership in the European Forum. This approach has proven to give a structure which creates a lot of flexibility and dynamism.

Whereas the Forum started with 44 members in 2000, at the end of 2008 it had 257 individual members and 45 organizational members, amongst which 7 governmental departments. The members come from 42 different countries. Most EU Member States are represented.

The target groups of the European Forum are restorative justice practitioners and services, policy makers, legal practitioners and researchers. The Forum serves these four different groups in an integrated manner and this is one of its strengths. The choice of target groups reflects the underlying view that restorative justice can support a sound reform of the criminal justice system. Indeed, in developing a better way to deal with crime, it is crucial that both restorative justice practitioners and researchers inform, consult and support each other. And, both groups need to inform and support policy makers and criminal justice practitioners. The Forum is a place where these people can meet,

¹ Several of these people were part of the expert Group that prepared Council of Europe Recommendation No. R(99)19 concerning mediation in penal matters. The very first idea and initiative came from two professors at the University of Leuven, Belgium.

² Project No. 98/GR/104, “The European Forum for Victim-Offender Mediation and Restorative Justice”.

where they can enter into discussion with each other and where they can cooperate in conceptualizing and implementing restorative justice approaches.

The micro level

Before I finish, I would like to bring your attention to the factual, the real meetings between people that take place under the notion of RJ. The meetings, be they VOM, a conference or a circle: Why is it that they can be so powerful, and why is it that more and more people in the justice systems and in policy making are drawn towards such approaches?

I believe that the power lies first and foremost in the personal meetings. It cannot be measured, but the face-to-face meeting challenges you as a human being. Also indirect mediation is used, but I am convinced that the personal meeting is far more powerful than the indirect communication, the shuttle-diplomacy. I do not deny that some times indirect communication is the right choice, of course it is, if the victim does not want to meet the offender. But if people have the courage to meet, or can be supported to take courage, most of them experience it to be most gratifying.

In our globalised, world with meetings in cyberspace, we need these personal meetings more than ever. We need the dialogue, the words, but we also need the personal, physical and spiritual meetings between people. We need them to create and uphold our humanity, our dignity and respect as human beings.

It is by the face of the other that we become human", the moral philosopher Emmanuel Levinas says. "I am because we are", or "a person is a person through other persons" are the short versions of Ubuntu, the sayings of being human as it is expressed in South Africa.

Archbishop Desmond Tutu explained Ubuntu like this:

Ubuntu speaks particularly about the fact that you can't exist as a human being in isolation. It speaks about our interconnectedness. You can't be human all by yourself, and when you have this quality - Ubuntu - you are known for your generosity.

We think of ourselves far too frequently as just individuals, separated from one another, whereas you are connected and what you do affects the whole world. When you do well, it spreads out; it is for the whole of humanity.

Needless to say that also the CJS can add to the humanity in society by treating both victim and offender with respect and dignity. RJ offers this opportunity to the CJS and to society as a whole. RJ has already proven better results than the traditional criminal punishment, and it also adds to democracy. It is up to you and me, all of us, to take it forward for the best of humanity.

Prof. Nils Christie
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Why should we use mediation and restorative justice?

Dear participants,

So good to be back in Tirana.

I was here at the opening of this work, in 1996. A meeting took place in a huge hall, the Palace Congress, I think. A very heated discussion followed some of the lectures. Much skepticism was exposed. Mediation, - it would not be suitable in Albania. "We Albanians are so proud people. When someone hurt us, we want revenge, - retaliation, not mediation". This was said, again and again.

But then a white haired man rose from his seat. A military man, a former general in the army, I was later told. George Titani was his name. "I have suffered much", he said. Been imprisoned, Isolated, degraded. But I do not hate. I want peace."

His few words changed the whole atmosphere. In a way, he is the grandfather of Mediation in Albania. Later came other mothers and fathers as Rasim Gjoka from here, and Karen Paus from Norway.

* * *

But then why? Why should we use mediation?

I see several reasons.

First, it is a more **kind** solution than the one of revenge. All religious systems I know of have some elements of this. They argue for forgiveness, turning the other chin to the aggressor, and, at least in some situation, that forgiveness should rule.

And most ordinary people do this in relatively ordinary circumstances. We are born kind. It is a deep instinct. Babies smiles to their mother and make themselves the loved ones. If not appealing to their mothers instincts (and milk and care) they would not survive. And it is likewise between neighbours. To live surrounded with hatred is highly uncomfortable.

So, peace is an esteemed value in most types of social life.

Another esteemed value among most societies, is simply to attempt to reduce other peoples suffering. It is seen as a moral obligation to help people in severe pain, care for them, treat them, bring them to hospital, and attempt to soften their pain.

Mediation or restorative justice operates in harmony with these basic values. To take part in the meditative process might hurt, but that is not intended, not the goal of the activity.

This becomes very clear if we look at the other major alternatives in many conflicts; bring one of the parties before the penal court.

It is easy to forget what is the central tool in the penal activity. Punishment is intentional delivery of pain. Punishment is an evil intended as an evil, intended for creating suffering. Professors of penal law might more precisely be called professors of pain law. A question I think relevant in front of politicians, is this: What would be the suitable level of pain delivery, in Norway, - or in Albania and in the other countries represented here these days? Should we work for an increase in the level of pain delivery, or towards a decrease of the level of intentionally delivered pain?

My belief is that many among us want limits to pain. But the development moves in the other direction.

The number of prisoners per 100 000 inhabitants is one of several indicators on pain level in societies. From **Table 1** we can see the position among the countries represented here. Albania has a high level of incarceration compared to most of its neighbours. But I do want to underline that seen in an international perspective, the countries in the table do not have a particularly high prison population. Russia has more than 600 prisoners per 100 000. USA is the world champion with 756 prisoners per 100 000 inhabitants just now. 2.3 million in the US are incarcerated just now.

The level in the Balkan area is not very high. But if we look into the development of the figures during the last 8 - 10 years, we find nearly everywhere a relatively large increase in the prison figures. Albania has nearly doubled its prison population per 100 000 inhabitants during the last ten years. So has also Serbia.

* * *

What is about to happen?

A major feature of our situations in all industrialized countries is a process of increased mobility, increased number of people we are in contact with, - and as a consequence of this, also **decreased** possibilities for knowing all these other people. We are, to an increasing extent, surrounded by people we do not know very well. This has the simple consequence that when something unexpectedly happens, we turn to formal authorities for help. Police is the prime example. In the 1950's there were a bit more than 30 000 cases called crime reported to the Norwegian police. To day it is close to 400 000 such cases.

And then starts a process in the penal system that is both good and bad. Good in the meaning that the penal system is clever in finding if the suspect really was the person behind the deplorable act. Was it that man that raped her? And also good in the demand that equal cases ought to get equal punishment. If pain is to be delivered, the penal system has several built in features that guarantee some sort of fairness.

But these good features are also the weakness of the system. How does the penal systems create equality? They do so by looking away from most elements in the case. Legal training is training in what is irrelevant, what is not to be mentioned in the courtroom. Only by doing this, the courts can be left with so few elements about those to decide over that they can compare them, and their acts, with other offenders and their acts. Only in this way can an image of equality be created.

This makes the meeting in court a very artificial one. Not one between real human beings in all their complexities, but one between selected parts of human beings, one between people we know so little

about that they remain inhuman to us. And here we have an abundance of knowledge, from our personal lives as from the human sciences that a basic condition for treating human beings as human beings, is to see them as such - see them just as humans. When seen as monsters, or more or less strangers, chances are great that we slip out of ordinary standards on how to meet fellow human beings, and instead react as if they should be a special breed.

In all simplicity; restorative justice is a setting that preserves, or rather increases, the possibilities of seeing the other part as an ordinary human being. There are no limits to information revealed here, as in the penal courts. It is no emphasis on delivery of pain - and therefore no necessity to construct an image of "equal cases". What one of the participants find relevant to reveal, is relevant. The setting becomes a place for meeting between whole persons.

* * *

There is also another important reason for furthering the cause of alternatives to the penal law. This reason is at the state level. It is simply the need for protection of a participatory society. This is may be most visible in the case of the victim. That victim will in penal cases to a large extent experience to be pushed out of her or his own case. Forced to silence, forced to follow the rules of the court, rules that make the victim into a witness. And then a strongly controlled witness, - it is not feelings, anger, or emotions that are central, but the cool facts as prosecuted by the legal expert.

But so is also the case for the rest of us, in daily life in modern societies. Experts take over, we are governed by forces outside of our influence and control. We live in societies where we gradually loose contact with our surroundings. May be we have a job, which is essential. But socially, particularly in our local neighbourhoods, we are, many of us, reaching the position of being foreigners. We do not know our neighbours. And if we know them, and something goes wrong for them (or for ourselves), we do not feel it is a task for us, or them, to **do** something. There are so many experts around. It is not our task to act. We can safely return to our T.V.'s.

But this kills neighbourhoods, the little that still exists. To create living, democratic societies, we need citizen participation. Conflicts are as gasoline in a social system. They might create explosions when unattended. But they might also create neighbour participation, and in the long run help neighbours to strengthen neighbourhood ties and regain community spirit. Mediators are ordinary people. Mediation in local communities gives life back to ordinary communities for ordinary people.

Table 1. Prison population per 100 000 in the Balkan region.³

| | |
|------------------------|-----|
| Albania | 159 |
| Bosnia and Herzegovina | 66 |
| Croatia | 93 |
| Macedonia | 107 |
| Montenegro | 108 |
| Serbia | 122 |
| Slovenia | 65 |

³ From World Prison Brief. International Centre for Prison Studies. - icps@kcl.ac.uk

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Restorative justice: victims' needs and rights; experience of building up mediation services in the UK

Reconciliation and forgiveness are ancient traditions, in Albania as elsewhere: they are a 'manifestation of magnanimity, nobility, fortitude, patriotism and evidence of the civilization level of Albanian people.'⁴ Punishment and revenge are also very old human practices, but it should not be assumed that they are either effective or justifiable, or that they meet the needs and wishes of victims^{5,6} This paper will consider restorative justice, crime and responses to crime, especially from the point of view of the victim, with reference to recommendations of the council of Europe and the United Nations, with comments on the implementation of restorative measures in England and Wales.

Understanding restorative justice

Restorative practices include restorative justice, which focuses on repairing harm, but also on the process^{7,8} . They also include mediation⁹ in different contexts, such as communities and schools.

Where possible the outcome is reached by agreement. It is based on a new set of questions: not

has a crime been committed?
who was to blame?
how should they be punished?

but:

what happened?
who has been affected by what you did?
what do you think needs to happen to make things right?

The message of punishment is 'If you behave like that, we will inflict pain on you'; the restorative message is 'If you repair the harm, we will help you and re-accept you'. Repairing the harm may include an apology, compensation for the victim, work for the victim or the community, or co-operating with a programme that will help the offender not to commit more offences.

It is also worth spending a moment thinking about the meaning of 'crime'. Almost all crime causes harm to someone (or to a country, or to animals or the environment). There are other forms of harm which have not been defined as criminal; they may be dealt with by lawsuits for compensation under

⁴ Elezi, I. *Mediation in penal case reconciliation*. Transl. Merita Xhediku. Tirana: Foundation 'Conflict Resolution and Reconciliation of Disputes', 2006, p. 16.

⁵ M. Wright. 'Punishment and restorative justice: an ethical comparison'. In: R Mackay et al., eds. *Images of restorative justice theory*. Frankfurt am Main: Verlag für Polizeiwissenschaft, 2007.

⁶ M. Wright. *Restoring respect for justice*. 2nd ed. Winchester: Waterside Press, 2008, Chapters 2,5,6.

⁷ The following abbreviations will be used: CE = Council of Europe Recommendation R(99)19 of the Committee of Ministers *Mediation in penal matters*; CEPEJ = European Commission for the Efficiency of Justice, *Draft guidelines for a better implementation of the existing recommendation concerning mediation in penal matters* (2007); UN = United Nations *Basic principles on the use of restorative justice programmes in criminal matters* (2002). The Articles quoted here are a selection, and do not include every relevant reference.

⁸ CE definition

⁹ CEPEJ 6

civil law. We should remind ourselves that crime does not only mean burglary, robbery and violence; it also means actions by large companies, such as frauds, or failure to ensure the safety of workers (in a factory) or passengers (on a train or a ship). These can also be dealt with by restorative processes¹⁰ Even in the most serious cases, such as murder and manslaughter, a restorative process can help both offenders and the relatives of their victims, although here the process will be an addition to another sanction, not an alternative¹¹. There is another category of crime, which is not usually recognised by legal textbooks: crimes where the victim and offender know each other. These can be especially suitable for mediation: often there is a conflict in which both parties are to blame, and it is in the interests of both to resolve their conflict, rather than for one of them to be responsible for the other getting a criminal conviction.

When an action is defined as criminal (and when it is reported to the authorities), it means that the state can deal with it – usually by punishment, but punishment is not the only response, and it is not necessarily the most effective one. If the punishment consists of imprisonment, it often makes the situation worse: it separates the offender from people who could have a good influence on him, it gives him a stigma which makes it harder for him to find work. Courts can impose rehabilitative sanctions in the community, which may be constructive (to attend a course of training, or to learn to read and write), or restrictive (not to go out after 19.00 hours). Now they can also be restorative.

Victims' perspective

This is what many victims want. An ICM survey of 1,085 victims of non-violent crime in the UK, for the Ministry of Justice in England, found that 81% would prefer an offender to receive an effective sentence rather than a harsh one, and nearly two thirds (63%) disagreed that prison is always the best way to punish someone. An overwhelming majority of respondents (94%) said the most important thing to them was that the offender did not do it again. This figure is higher than the last survey in 2006 (91%). Many surveys (for example Shapland et al. 2007¹²) have found that the great majority of victims who have experienced a restorative process found it helpful, enabling them to tell the offender the effects of his or her actions, and ask for answers to questions, and the satisfaction rate is much higher than when the cases went to court (although it has to be remembered that cases are only referred to mediation when the accused admits being involved in the offence). However, victims should not be 'used' to help the rehabilitation of the offender, and no pressure should be placed on them to take part¹³

Since so many victims benefit from it, a restorative process should be offered to all victims, at any stage of the process¹⁴, which is unfortunately not the case in the United Kingdom. This requires the availability of restorative justice services throughout the country, which will be considered in the

¹⁰ Restorative Justice Consortium (2006). *Regulatory justice: sanctioning in a post-Hampton world: a response from the RJC*. London: RJC. Macrory, R B (2006) *Regulatory justice: making sanctions effective. Final report*. London: Better regulation executive. paras. 4.32-4.43. www.cabinetoffice.gov.uk/regulation/penalties [Note: A report by Mr P Hampton, *Reducing administrative burdens* (2005) recommended a comprehensive review of regulatory penalties.]

¹¹ Restorative Justice Consortium (2005) *Hearing the relatives of murder and manslaughter victims: response to government's consultation*. London: RJC.

¹² Shapland, J, et al (2007) *Restorative justice: the views of victims and offenders. the third report from the evaluation of three schemes*. London: Ministry of Justice Research Series 3/07.

¹³ CE 11, 31

¹⁴ CE 3, 4

next section. There should be general public awareness of this; victims and offenders in particular should have the process explained to them¹⁵; and all concerned should be aware of it: criminal justice personnel, police, lawyers, judges and social workers¹⁶. Awareness of restorative methods should start in schools¹⁷, and these Recommendations should themselves be widely disseminated¹⁸, and translated into all languages of the Council of Europe, where this has not already been done¹⁹

It should be remembered that there is a minority of victims who are not satisfied with the process, and everything possible should be done to keep this number as low as possible. Thus there is a need to maintain high quality through standards²⁰, which are the basis of the training, support, supervision and professional development of mediators²¹. Mediators should know how to handle a power imbalance between the victim and the offender and ensure their safety during the process²². There should be procedural safeguards²³ and continuing research and monitoring²⁴. There should be a complaints procedure²⁵ (and this should itself be based on restorative principles, which CEPEJ does not mention). Special attention should be given to protecting minors²⁶; The guidelines should also mention other vulnerable participants, and should point out that victims as well as offenders should be protected.

An important safeguard is that all victims and offenders should be treated equally before the law: those who refer cases to mediation should make sure that victims or offenders who come from an ethnic minority (black, Asian or Roma, for example), or another disadvantaged group such as homosexuals and people with disabilities, have as much opportunity as anyone else to take part in a restorative process. During the process they should be treated equally by mediators; mediators should be trained to be aware of their own prejudices.

Delivering restorative justice

What is necessary for restorative justice to be delivered? Firstly, there needs to be a good understanding of it. This does not mean that there is only one way of doing restorative justice; we are still learning how to do it better. But it does mean that the basic principles have to be understood; otherwise we sometimes find measures which are called restorative but are not really restorative, for example because there is not enough effort to encourage victims to take part, or because the measure imposed on the offender is a disguised form of punishment.

Secondly, as already mentioned, general awareness of restorative processes is important: everyone should know about them.

¹⁵ CEPEJ 32-33

¹⁶ CEPEJ 43-50

¹⁷ CEPEJ 42

¹⁸ CEPEJ 38-41

¹⁹ CEPEJ 37

²⁰ CE 19

²¹ CEPEJ 14-15, 19-21

²² UN 9-10

²³ CE 8, 10

²⁴ CE 34, CEPEJ 41, UN 22.

²⁵ CEPEJ 29 (and this should itself be based on restorative principles, which CEPEJ does not mention).

²⁶ CEPEJ 24-26

Thirdly, its relationship to the criminal justice system should be clear²⁷. As we have seen, in cases where the victim and offender know each other (or both are offenders and both are victims), they should be able to refer themselves to mediation (and here, with respect, I question the Council of Europe recommendation which says that a decision to refer a criminal case to mediation should be reserved to the criminal justice authorities²⁸). After that, in England and Wales, it is possible for the police or prosecutor to ‘caution’ or ‘warn’ the offender, and in some areas this is being done ‘restoratively’, which means encouraging the offender to understand that he has not only broken a law, he has caused harm to someone. In some cases the victim can be invited to take part.

In some countries prosecutors can decide to defer prosecution, to allow an opportunity for a restorative process to take place, but this is not yet used in England and Wales. The court can defer the sentencing decision (for up to six months in England and Wales), to allow the offender the opportunity to change his life, and this also provides a space in which mediation can take place). A sentence can be suspended, which has a similar effect, except that the period of time is longer, and if the offender does not comply, the sentence will be imprisonment. A community sanction can be imposed, as mentioned above.

In England and Wales there is a special measure²⁹ for young offenders (under 18) who admit their offence and are in court for the first time (unless the offence is too little or too serious). It is called a ‘referral order’, and means that the offender must be referred to a ‘youth offenders’ panel’. It consists of one official and two members of the public, volunteers who have been trained. (This fulfils one of the aims of restorative justice, namely involvement of the public, although their training and operation are kept within the official framework.) The aim is not to punish the offender but to make an ‘action plan’ which will help him to keep away from crime. It may include reparation to the victim, if the victim wants it, and victims and their supporters should be invited to be present. Until now, however, not many of them do. We believe that there are two main reasons for this: that the process and its advantages are not explained clearly enough, by someone who understands restorative principles, and that they are not consulted about the time of the meeting. An early research study found that only 13 per cent of victims attended a hearing³⁰, but efforts are being made to improve this.

In Northern Ireland victim-offender mediation has community roots: it was started by two groups, one Nationalist, one Loyalist, as an alternative to punishment beatings by paramilitary gangs. Now the Justice (NI) Act 2002 makes mediation, or ‘conferencing’, part of the juvenile justice system: cases are referred by youth courts and the Public Prosecution Service to youth conference co-ordinators. Extension of the programme to adults is under consideration. The community-based programmes, however, are now finding great difficulty, because the authorities are imposing conditions which they are unable or unwilling to meet.³¹

²⁷ CE 33

²⁸ CE 9

²⁹ Youth Justice and Criminal Evidence Act 1999,

³⁰ Crawford, A, and T Newburn (2003) *Youth offending and restorative justice : implementing reform in youth justice*. Cullompton: Willan Publishing, p. 185.

³¹ O’Mahoney, D and J Doak (2006), ‘The enigma of “community” and the exigency of engagement: restorative youth conferencing in Northern Ireland.’ *British Journal of Community Justice*, 4(3), 9-24.

Fourthly, obviously, restorative services should be available throughout the country. It is common for them to be introduced in a few places at first, and only for selected offenders, such as juveniles, but the aim should be a universal service. There is a debate about whether they should be provided by the criminal justice system, or by non-governmental organizations with support from the state. One consideration is that non-governmental organizations have more independence, and can maintain restorative principles. Another question is, Who should be mediators? Criminal justice professionals, professional mediators, or trained volunteers? Criminal justice professionals may find it difficult to change from a conventional philosophy to a restorative one, although some have done so very successfully; there is general agreement that they should not mediate in a case where they are also involved in an official role. In England we have found that mediators only need training in mediation, and do not require, for example, a degree in social work or psychology; this is in line with the principle that 'mediators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities', provided of course that they have sound judgment and interpersonal skills³².

Governments should therefore enable NGOs or others to provide mediation services, and provide safeguards, but preferably leave detailed guidelines to NGOs, because they are more flexible, innovative, directly involved with day-to-day practice, and insulated from political pressure (although they will inevitably be open to some pressures while they are dependent on the government for funding³³. The Council of Europe says that there should be guidelines, but leaves open the question of who makes them³⁴; mediation services should have sufficient autonomy in performing their duties³⁵. CEPEJ and the United Nations, on the other hand, recommend that member states should consider establishing guidelines, standards and codes of conduct, provided that there is regular consultation between criminal justice authorities and administrators of restorative justice programmes.³⁶ This should however not be necessary if there is a well supported national NGO, whose members are local mediation services which can propose updates in the light of practical experience. This would be the competent body which, in the Council of Europe's recommendation, should monitor mediation services³⁷. CEPEJ recommends the use of NGOs³⁸.

The fifth requirement is that offenders should be enabled to make amends in the way that they have promised. If they have undertaken to work for the community, the community (NGOs, the municipality, or private employers) must provide work for them to do. If they need therapy or treatment before they can undertake that, these should be available, and they should also be enabled to acquire necessary skills. The need for this is shown by a recent example. a distinguished visitor (formerly Chief Inspector of Prisons) was invited to observe a victim-offender mediation session in a prison. The victims were three young women sharing a flat, which had been burgled. They met the burglar in prison, with a prison officer as facilitator, and told him the impact of feeling that their home had been violated and their possessions taken. The offender apologised, and told them of the difficulties he had faced in life, including alcohol and drug problems and not being able to read and write. He agreed to seek treatment for drug and alcohol addiction and to enrol for a literacy course.

³² CE 22-23; UN 19

³³ Zernova, M (2007) *Restorative justice: ideals and realities*. Aldershot: Ashgate. P. 139.

³⁴ CE 7

³⁵ CE 20

³⁶ CEPEJ 27-28, UN 12, 21

³⁷ CE 21

³⁸ CEPEJ 12

The young women asked him to write at intervals to let them know about his progress. The visitor saw the prison governor afterwards, and asked whether those programmes were available in the prison. The governor replied that they were not. The visitor was very critical of the fact that the governor allowed his staff to conduct a mediation in which the offender agreed to terms which, through no fault of his own, he would not be able to fulfill ³⁹

Conclusions

In conclusion I should like to make two points. One is that restorative justice procedures provide an opportunity to look beyond the narrow legal question, such as Did this person commit this crime? In the course of discussing the context of the offence, participants will be able to see factors which offenders have in common. If many of them come from a certain school, or a certain district, or are members of an ethnic community such as Roma, the agencies responsible for social policy should look at those places and groups to see what social conditions are putting pressure on them to commit crimes. Then preventive measures can be taken – provided there is the political will.

Lastly, I suggest that above all we should put our faith in developing restorative practices in schools. Restorative principles are very simple, as we saw in the basic questions at the beginning, and teachers are finding that they make discipline easier and more educative. In February 2009 I visited the Riverside multi-agency project in Hull, a city in the north of England with a population of 250 000. It is working with twelve primary and two secondary schools and aims to introduce restorative practices to everyone who works with children. In one school, in 2007, an average of 60 pupils per week were made to leave their classrooms for misbehaviour; a year and a half later, the average was only one. In another, the average number excluded from school was reduced by 44% and physical abuse by 40%.⁴⁰ It is hoped that longitudinal research will be possible to see whether, in the course of time, the rates of crime and anti-social behaviour in that city will be reduced.

³⁹ Lord Ramsbotham, personal communication, March 2009.

⁴⁰ http://www.iirp.org/pdf/IIRPUK_SchoolResearch.pdf

Merita Bala, Project Coordinator

Albanian Foundation for “Conflict Resolution and Reconciliation of Disputes” (AFCR)

VOM seen from the perspective of victims, offenders and mediators:

Project results and findings of the monitoring phase of VOM and RJ project implemented in Albania

AFCR mission

AFCR was established in 1995 with *the aim of offering an alternative dispute resolution to individuals and social groups, and contributing to the development of the democracy in Albania.*

Organizational structure

- Headquarters in Tirana
- 10 Mediation Centers
- Mediators network operational in 10 other districts of Albania.

Each of the Mediation Offices has a local coordinator and 2 part-time mediators. These offices work in close cooperation with other part-time and volunteer local mediators in different communes, and also with local state institutions i.e. the court, prosecution office, police, local government and schools.

AFCR activity

- Mainly, conflict resolution and dispute resolution through facilitation, negotiation, mediation and reconciliation.
- Capacity building and awareness raising on the alternative dispute resolution
- Conducting research-studies, surveys, monitoring
- Publications
- Promotion of the restorative justice approach
- Promotion of education for peace, and peer mediation in schools.

AFCR’s Model of Intervention in the program of restorative justice

The AFCR program for RJ was initiated in 2000, focusing on training, public awareness, publications, case management and settlement

| <u>Services</u> | <u>Activities to improve JJS</u> | <u>Advocacy/lobbying</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| - Victim-Offender mediation for juveniles aged 14-21 - Legal service for minors and juveniles in conflict with the law; - Restoration/reintegration of victims; - Rehabilitation for offenders; - Family conferencing for | <i>Institutional capacity building</i> - <i>training of:</i> - Judges and prosecutors, lawyers, School of Magistrate students; - Staff of pre-trial detention facilities; - Police officers; - Education specialists, teachers, students; - <i>Baseline survey on RJ and</i> | - Advocacy and lobbying for harmonization of legislation on RJ and mediation; - Advocacy to insert mediation as diversion scheme in the Probation Institution; - Coordinate with UNICEF, NMS, and MoJ; - Use media to promote the |

| | | |
|-----------------------------------------------------------------|----------------------------------------------------------------|----------------------------|
| juveniles parties in conflicts; - Peer mediation in schools. | <i>mediation in Juveniles:</i> Possibilities and challenges | RJ and mediation approach. |
|-----------------------------------------------------------------|----------------------------------------------------------------|----------------------------|

The need for implementing the VOM and RJ Project in Juveniles Project

This project was undertaken considering:

- the situation with regard to the increased number of juveniles in conflict with the law;
- the overcrowding of prisons;
- the negative effects of imprisonment, the rate of recidivism among juveniles;
- the restorative justice advantages versus retributive justice;
- and the experience of AFCE in the area of applying restorative justice in settling penal cases (started since 2000).

Why should it be followed up?

- The positive outcomes of the first pilot phase Jan. 2005-March 2006, i.e. the resolution of 155 penal cases through victim-offender mediation in one year’s time, its impact and the findings of the monitoring phase, called for the follow up of this project, which in the last year covered three other districts other than Tirana.
- Being part of the alternatives to detention, developing restorative justice in juveniles was considered as an important element in the Juvenile Justice Reform that is underway in Albania (2006-2008), undertaken by Albanian Ministry of Justice, UNICEF, SIDA and European Commission. Therefore, the victim-offender mediation program was followed-up in the framework of the JJ Reform.

Project goals and objectives

- Case settling through mediation and restorative justice, where one or both parties were juveniles aged between 14-21.
- Increase the capacity and awareness of police officers with regard to use of restorative practices for juvenile offenders and victims.
- Monitor the resolution sustainability, according to pre-developed monitoring schemes.
- Prevent juvenile delinquency and preventing juveniles from entering the criminal justice system.

Targeted area

- Tirana (in the two first one-year phase, 2005-2006))
- Three other districts in the last year, Shkodra, Elbasani, Durresi (2007-2008)

Legal base

- Law on Mediation in Dispute Resolution, dated 26.06.2003
- Articles 59, 284 of the Code of Penal Procedure

Areas of intervention

- Institutional collaboration
- Capacity building and awareness raising in the area of restorative justice and mediation for the stakeholders in the process

- Case mediation through RJ and VOM, where one or both parties were juveniles aged between 14-21.
- Monitoring and evaluation

Institutional collaboration

Cooperation Agreement signed by AFCR - Albanian State Police Directorate - Police Directories in each of the districts targeted by the project consisting in collaboration for project implementation, and most important in case referral to mediation by the police).

Capacity building and awareness rising

- Training workshops and seminars in the area of restorative justice and mediation, particularly for juveniles: training of more than 50 police officers, mediators, lawyers, social workers);
- Organizing round tables with police officers in the area of restorative justice in each of the districts targeted by the project;
- Producing a TV talk on the advantages of RJ and mediation and broadcasting it on a national private TV channel.
- Preparing and publishing literature on restorative justice and mediation;
- Leaflet on the main principles of RJ, its advantages versus criminal justice, and the national legislation in this regard;
- Study-trips to Norway at high official level, exchange of knowledge.

Cases settled through mediation through the project

| Cases | Battery Article 90 of the PC | Non-serious injury Article 89 PC | Insult Article 119 PC | Total |
|------------------------|-------------------------------------|-----------------------------------------|------------------------------|--------------|
| Jan'05-March'06 | 89 | 49 | 17 | 155 |
| Nov.06-Oct.07 | 88 | 3 | 19 | 110 |
| Nov.07-Oct.08 | 209 | 74 | 57 | 340 |
| Total | 386 | 126 | 93 | 605 |

The impact of the project

- The restorative justice approach helped the parties to find a solution acceptable by both of them;
- Healing of hurt feelings of victims;
- Taking responsibility by the offender;
- Prevention of juveniles being subject to penal proceedings and having clean criminal record;
- It provided with reparation for the damage caused;
- Prevention of potential aggravation of those conflicts.

Monitoring

Objectives of the monitoring phase

- Monitoring the resolution sustainability

- The parties' perception on the RJ and mediation approach
- The parties perceptions on the role of mediator, about the place of mediation
- The mediators' perceptions on dealing with juvenile cases.
- The police officers' perceptions on the implementation of the mediation law and the referral procedure.

Monitoring by the UNICEF Office in New York: The APCR experience in implementing the VOM project was considered as a good example.

What method was used to gather the data?

- Pre-prepared questionnaires were developed for three target groups:
 - Parties in conflicts
 - Mediators
 - Police officers

- What was taken into consideration with regard to the parties in conflict:
 - The age of parties in conflict
 - Their education
 - The specialists' opinion (mediators, police officers) with regard to the mediation law.

Methodology of data gathering

- Randomly
- Balance between the cities
- Balance between the parties
 - 34 persons were interviewed:
 - 18 juveniles parties in conflicts (10 offenders, 8 victims)
 - 8 judicial police officers
 - 8 mediators

The juveniles' level of education

- 12 of them had completed only the elementary education
- 4 were high school students
- 2 were university students
- This education level of the parties makes us think that education is one of the key factors influencing in conflict rising or escalation
- Besides that, there were even other as important factors as education, like the economical, social or cultural background of the juveniles that causes juveniles to find themselves into conflicting situation.
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The age of the parties in conflicts

One finding of the monitoring was that the average age of juvenile offenders is lower than that of the victims. Respectively the average age of juvenile offenders is 17.4 years old and the average age of injured party is 18.2 years old.

What did the parties think about the mediator's role and ethics?

- 14 out of 18 report that they were satisfied with the mediator's role and ethics, communication skills, and that he had been helpful;
- 3 reported that the mediator was a good facilitator;
- 1 thought that the mediator's role had been somehow decisive in case settlement.

Would you recommend mediation to your friends?

- 16 reported that they would recommend this alternative to their relatives or friends.
- 1 were skeptic while declaring "don't know"
- Only one said "no".

The mediation place

- 12 think that the place where mediation was held was good.
- 2 juveniles did not like the mediation place, pretending mediation should be held in a better place
- 1 thought that the place conditions "were at some extent suitable for the mediation process, but it should be a better place.
- 1 thought that the place was ok, but in one of the sessions he had not felt at ease, as the other party was together with his parents, and this made him feel in an inferior position.
- 2 others reported "I do not know if the place could have been better, however it was ok".

The interviewees' opinions concerning the advantages of mediation towards judicial approach

- fear of being confronted with the penal system
- financial cost (compared with the judicial approach)
- Time saving
- spiritual calmness
- sustainable peace between the parties

The mediators' perceptions concerning mediation in juveniles' cases

Source of referral

- The mediators reported that the majority of cases had been referred from the judicial police officers, due to the Cooperation Agreement with the Police Directorates in respective districts.
- Two of the 8 mediators interviewed said that they in two cases they were contacted by one of the parties, and in both cases it was the offender.

The mediation process: difficulties?

- The mediators reported that they had had some difficulties at the beginning, the first moments when trying to get the parties together.
- However, there were cases when mediation had not been successful, as one of the parties or both were not willing to settle it through mediation (mostly the victim, pretending that the compensation offered was not the one they were expecting), and that it cannot be settled through mediation.

How many mediation sessions needed?

- 7 mediators out of 8 reported that three sessions were held till the final agreement
- 1 says that at an average he had two sessions with the parties to settle the case.

Did the parties know anything about the mediation law?

- All the parties answered negatively to this question.
- The young age of the parties, mostly under 20, explains the fact that they do not have much knowledge about the legislation in general, and the mediation one in particular.

Case sustainability:

- Have there been cases when parties turned back into conflict after settling the case through mediation?

All the mediators said no.

Moreover, there have been cases when after the case settlement the parties have become friends.

Need for legal improvement?

- 2 mediators said that that the mediation law is complete, and no need for changes: it is important that people know about this law, about this alternative and service.
- 7 were of the opinion that amendments should be made in the Code of Penal Procedure to regulate the referral procedure from the Prosecution Office, Court, Police to the Mediation Service.

**Karen Kristin Paus, Senior Advisor,
Norwegian Mediation Service (NMS)**

Victim-offender mediation in the Nordic countries - an inspiration?

Let me immediately say that there is no “best model” for how to organize a mediation service. We all need to see which model fits our society, taking into consideration the cultural context and the more pragmatic issues like where can we find space to start a mediation service and to develop it from there. This is provided of course, that we can ensure the quality of the victim-offender mediation to be in accordance with international standards such as The Council of Europe’s Recommendation No. R (99) 19 concerning mediation in penal matters; respecting basic values of mediation such as voluntary participation, good information to both parties about the legal consequences of mediation, access to advice, possibility of bringing support persons, and for the mediation service providers - being able to maintain independence (autonomy) from the criminal justice system.

Pilot years in the Nordic countries

Norway: A main inspiration was the famous article by Prof. Nils Christie “Conflict as Property” from 1976. This article focused on the importance of allowing the parties themselves contribute and be active in a constructive process for conflict handling. Christie questioned the role of experts in such processes, and said that lawyers to a large degree steel people’s conflicts. Christie used two different models to describe the role of the parties - first a traditional village council in Tanzania where the parties themselves and the local community played active roles in finding a good solution to the conflict in question. As a contrast to this he describes a Norwegian court room where the legal experts are the main actors, and the parties are silent observers to the process, only active whenever they are requested to witness. Nils Christie’s ideas of an alternative system for conflict handling based on peoples’ participation forms the ideological platform for the Norwegian Mediation Service, and also for many of our colleagues in the other Nordic countries, Finland in particular. Nils Christie’s ideas have even spread internationally - as here in Albania, encouraging politicians and practitioners towards use of mediation when unpleasant happenings occur in our societies.

Another crucial event for developing mediation in Norway was the Government’s Report on Crime Policies in 1977. Our then Minister of Justice - Mrs. Inger Louise Valle, put forward many new ideas of crime prevention, and she was particularly concerned about young persons in prison. She proposed to rise the age of criminal responsibility from 14 to 15 years old. This implied a need to develop new civil measures to deal with crime committed by children under the age of 15, and so the first project for mediation in 1981 was placed under the Ministry of Social - & Family Affairs. A third key actor in developing the mediation service in Norway was from an early stage The Director General of Public Prosecutions - who issued several Circular letters with instructions to the prosecutors on how to make use of this new service, encouraging them to cooperate with the municipalities in developing this new measure, organized by local mediation services. From the first pilot project in 1981 followed a decade with numerous projects throughout the country with various levels of success, in fact the first evaluation nationwide in 1990 was rather negative. The main critique from the researchers at the time was that too few cases were referred to mediation. However, the political will to develop a mediation service was strong, and in 1991 our Parliament unanimously passed the Act on mediation. The new act on mediation opened the service to all age groups and to

both civil and criminal cases. The law was very open and gave room for further developments, in which the Director General of Public Prosecutions continued to play an active role.

Finland started out with their first pilot project in 1983, strongly influenced by the ideas of Prof. Christie. A concrete motivation in Finland was linked to their high prison population at the time. And the first initiatives to develop alternative measures like mediation came from prison staff, social workers, prison priests, and from researchers. It seems that there was more of a social movement in Finland for developing this new measure compared to the other Nordic countries. Another interesting aspect of the mediation history in Finland is that they early on included more serious cases of violence, even complex issues like domestic violence.

Sweden, started out in 1987 with three pilot projects, two of them initiated by the police in cooperation with local authorities. All projects focused on young offenders, the youngest age group mentioned was from 8 years. Today Sweden specifically mentions in their regulations that mediation should *not* to be applied in cases involving children under the age of 12 years, unless there are strong reasons to do so.

Denmark started their first 1 year pilot project in 1995 in four police district, as a measure connected to the Governments action plan against violence. The objectives were crime prevention and meeting the victims' needs. Denmark have in Nordic context the strongest focus on the victims' situation, their rights and needs, and mediation was mainly seen as a way to empower victims of crime to be free from victimization. The victim-offender mediation in Denmark is still limited geographically to two police districts. The political support to develop the mediation projects further to become a permanent service nationwide, appeared first in December 2008 with the Governments report on mediation in penal cases including a draft law: This Law proposal is expected to be passed in Parliament during 2009.

Greenland (a colony under Denmark) has not yet started any pilot projects, but a committee appointed by the Government on justice reform in Greenland, recommends in their final report in 2004, that pilot projects on alternative measures should be started. Expectations are that mediation and restorative justice might have a great potential in Greenland with reference to the Greenlanders own cultural heritage with ancient traditions for conflict handing.

Iceland started in 2001 a project called "The Circle", much inspired from The Thames Valley Police in Oxford, UK. Victim-offender mediation is organized by Police with uniformed policemen and women as mediators/facilitators always using a conferencing method. Conferencing implies that in addition to the main parties also others that feel affected by the incident/crime committed are invited to be part of the process - e.g. persons from the parties' network - their friends and family, or others from the local community. "The Circle" reflects the fact that the participants' sits in a circle facilitated by the mediators. The results in Iceland using police officers as mediators in criminal cases are good.

By and large we should welcome and see the positive effects in the long term perspective that more institutions in our society make use of mediation methods in their work. However, I believe one should also question this model chosen in Iceland in regard to the basic principles for mediation such as the mediation service independence from the criminal justice sector. How will e.g. police officers deal with new knowledge on acts of crime that might be revealed to them through mediation processes? These and other aspects may lead to ethical challenges. And, there might be some

limitations with this model regarding further developments of the mediation service in civil cases in the local communities. Will the public freely contact a mediation service provided by the local police? On the positive side, police and public can through such activities develop a better understanding and a police that is more in harmony with the local communities. Perhaps Iceland in this regard also has a special situation in a positive sense considering their small population.

As a conclusion from the pilot phase in the Nordic countries we can say that most of the developments of mediation were top down projects, except in Finland where we also find elements of a grassroots movements. Most projects focused on young offenders and on preventing future crime, except in Denmark where the victims needs have been the priority.

Organization

In all the Nordic countries the authorities has taken financial responsibility to support developments of a mediation service, mainly placed under the social or the justice sector - or as a combination between the two sectors.

In **Norway** the Mediation Service is today both financed and organized by the State, placed under the Ministry of Justice - Civil Department, as a separate Directorate - *The Central Administration of the Mediation Service*. This unit with the Director and 10 employees are responsible for 22 local mediation service offices throughout the country. In total at national level there are about 70 employees - coordinators and advisors. Each of the 22 offices recruits local lay mediators, these are people found suited for the mediators role through interviews and trainings, and they are appointed for a period of 4 years. Being a mediator is defined as voluntary work, but with a modest fee per case. Nationwide we have 6-700 local mediators.

Finland has a state financed mediation service, placed under Ministry of Social Affairs in cooperation with the justice sector. The mediation services are organized locally at municipal level by authorized NGOs or local public bodies. The 25 local service providers with about 90 -100 employees, receive reimbursements from the state according to the number of cases handled per year. Finland also uses volunteer lay mediators that receive a small fee per case, in total there are about 900 mediators nationwide.

Sweden, also with state financing, organizes the mediation service under the social services at municipal level in cooperation with the justice sector. In Sweden they have a mix of lay and professional mediators, about 272 mediators are professional, and 125 are volunteers. Most of the professional mediators are employees within the social sector and mediation is an additional task in their daily workload. This may give some challenges regarding time spent on the mediation activity in competition with their other work tasks. After finalizing of the project phase and becoming a permanent service, another challenge at present is lack of a common national unit for supervision and monitoring of the mediation activities.

Iceland as mentioned organizes victim-offender mediation within the Police Force, under the unit for crime prevention and community policing. They meet some challenges now in the process moving from project towards a permanent service. The engagement in the police and Public Prosecuting Authority is still vulnerable dependent on dedicated individuals.

Denmark, victim-offender mediation is placed under the justice sector and so far this service is only available in two Police Districts. The mediators are volunteers, often with background from the social sector, especially from youth work. The service is not yet permanent but expected to be so very soon.

Regulations

The mediation services are regulated by separate laws in Norway (15.03.1991), Sweden (01.07.2002), and Finland (1015/2005). In Iceland they found possibilities within existing laws to provide mediation in penal cases. And, Denmark's law proposal is due to be passed in parliament during first half of 2009. The Norwegian Director General of Public Prosecutions has actively engaged from the first pilot phase in developing victim-offender mediation (VOM) by formulating a number of Circular letters defining in which penal cases mediation can be applied. Also in Iceland, Sweden and Finland the Prosecuting Authority have engaged in the developments of V-O-Mediation.

Supplement - or alternative measure: victim-offender mediation in the Nordic countries is mainly developed as a supplement to ordinary criminal court proceedings, but a supplement that may be taken into consideration whether the case goes further to court or will be dropped. Successful mediation may also have an influence on reduction of the sentence. The exceptions to this situation we find in Denmark where mediation is strictly offered as a supplement without any legal benefits for the offender, and therefore no effects on the further proceedings of a case. In Norway and Iceland victim-offender mediation is available both as a supplement - and as an *alternative measure* with separate status in the penal code. This means that penal cases of less serious kinds may be diverted from further proceedings at an early stage after completed investigation. Victim-offender mediation as an alternative measure is one of the options the prosecutors can choose between when they decide reactions such as - fines, suspended sentences etc. Further, in Norway, if an offender fulfils the agreement with the victim reached in mediation, and if he/she commits no new crime within the next 2 years the case will no longer be visible in his/her criminal record. Knowing the negative effects of having a criminal record for the individual's ability to be reintegrated in local community - with job possibilities etc., the aim is to give offenders - young offenders in particular, who have proved to take responsibility for their actions and wrongdoings, a second chance.

I believe it is important to develop victim-offender mediation both as a supplement in serious cases of crime and as a diversion measure for the less serious cases, to create possibilities for more parties to deal with their conflicts in a constructive way for the benefit of our societies. This way we can also contribute to important reforms influencing a limited punitive approach within the traditional criminal justice system towards a more human way of addressing implications of crime committed with increased ability to prevent escalation of conflicts.

Level of activity (number of cases) Finland & Norway received approximately the same number of cases in 2007 - 9583 cases and 9120. Sweden at the time of their national evaluation in October/November 2007, had received 3753 cases. Denmark still being a project in two Police Districts in 2006 and 2007 handled few cases - 26 and 27 cases per year. Iceland also had a rather modest level of cases of about 95 cases per year. Iceland has a small population of 300 000 inhabitants, so one can not expect too high number of cases there.

Referrals to mediation reflect the local co-operations, and in the Nordic countries most cases are referred by police, prosecutors, social services and other public bodies. In Norway we have succeeded rather well in developing good understanding and practical routines for referral of cases from the local police- and prosecuting authority to the mediation service: about 80 % of all our cases for

mediation both penal & civil cases are referred from prosecutors at local police level. And, only about 15 % are referred directly from the parties. To make the Mediation Service well known to the public is therefore another huge information task; - how can people make use of this relatively new service, - how to contact us, - in what kind of conflicts can mediation be a good option etc. Also in Finland most cases are referred from prosecutors, but with large variations in number of referrals between different police districts. This is a familiar challenge, the situation improved however when the Norwegian General Prosecutor a few years ago made it clear that it is not up to each prosecutor's likes and dislikes of this new alternative measure, but it is a requirement to them to refer all suitable cases to mediation. Ensuring equal practice of this alternative measure (VOM) is also part of the offenders' rights to equal process and for both parties ability to have access to mediation.

Type of cases referred to mediation e.g. in the Norwegian practice covers a broad specter from shoplifting to violence and threats, also burglary, different thefts of vehicle etc., robbery, vandalism, economic offense as steeling from your employer, family disputes and neighborhood conflicts. Sometimes also series of crimes committed by the same offender can be referred as the General Prosecutor also allows this. The tendency regarding types of cases is that the prosecutors' refer more cases of violence and threats - more serious conflicts and less of the light cases such as shoplifting that before used to be one of the main categories of cases for mediation. I believe this reflects a new deeper understanding of what mediation implies and can bring of value to both parties - especially in regard to preventing new incidents, escalation of conflicts and reflecting more insights and focus on the victims needs.

More serious cases? One objective for victim-offender mediation in Nordic context that has not been fulfilled is to use mediation as an alternative to imprisonment. One central question is - would the public accept such a solution? Looking at the results of a recent Danish study of peoples' perception of punishment the answer is most probably - yes! When people in this broad study were confronted with concrete cases they were more concerned that something was done to help the situation than to inflict traditional punishment. The interviewed persons tended to be in favour of alternative measures that could benefit all parties involved. So, from this study one can draw the conclusions - that *yes* it may be acceptable to the public to use alternatives measures also to imprisonment, and not only as alternative to fines and suspended sentences as the situation is today. Another indicator that mediation actually could be an alternative to imprisonment is a New Norwegian Governments report on "Children and Punishment" that focus on increased use of alternative measures for juveniles to prevent imprisonments of all juveniles up to 18 years. A new measure for young offenders is proposed, a conferencing process involving the offenders, various professionals that have a role in follow up of this young person, the offender's family and friends, and other relevant networks. Through a conferencing process the aim is to identify together with the offender his/her problems and challenges, and to identify who in the network of family, friends and professionals that can assist the offender towards a positive change of his/her situation e.g. in regard to managing school, work, free time, staying away from troubles etc. In cooperation with the offender they will then outline a concrete follow up plan on the relevant issues in the local community. This process is proposed to be facilitated by the mediation service and our question is now - how will these ideas' and proposals develop further and how will this proposal finally be met in Parliament?

Challenges when implementing VOM (RJ)

Efficient referrals of suitable penal cases to mediation, is seen as a challenge in most of the Nordic countries. It may seem like an endless task to provide information to motivate police and prosecutors

to make use of this new alternative measure. All levels of these institutions need to be informed in order to achieve trust and understanding of this new alternative, why it is useful and of how to cooperate with the mediation service. Good information includes examples of cases and conflict situations where mediation was a good option for both parties with proven good results. *Involvement of The Director General of Public Prosecutions is essential*: Developing VOM requires the involvement of key stakeholders such as the prosecuting authority, as experience from many countries shows - ensuring the parties access to this new service does not only depend on legal framework but even more on the good will and understanding from police investigators and prosecutors. Therefore we spend much time on information to build trust between the different institutions involved - and *cooperation* is the key word. After more than a decade of intensive work in Norway we now experience a positive change of attitude towards mediation and restorative justice at all levels within the prosecuting authority and the police. Another huge challenge is now to take more active part in our local communities before police gets involved, to be available for parties in conflict at early stages to prevent further escalation into more serious and violent situations. This leads us to a discussion on how proactive our mediators should be? And what role the mediation service should take in society. My personal opinion is that we should become more pro active in order to prevent conflict escalations, and to give more persons access to our services. In view of this, peer mediation in schools must be mentioned as an excellent activity both to develop essential life skills and to make more people aware and familiar with mediation.

Learning's from international cooperation's'

Exchange of experiences with colleagues from abroad can both be an eye opener for us, and a door opener in our communication with key stakeholders. For us in the Norwegian Mediation Services (NMS), through activities organized by the European Forum for Restorative Justice, various study visits and seminars, and our long term cooperation here in Albania, we have learned about other models, but maybe even more - we have learned about our own system when reflected in other ways of facilitating mediation. Most significant for us was perhaps learning about mediation in serious cases of violence. The idea of mediation in cases of serious violence was earlier met with much skepticism in Norway. Our colleagues in the Albanian Foundation for Conflict Resolution (AFCR) - their central staff, coordinators and mediators, has been of great inspiration to us regarding their impressive work especially in preventing further revenge in blood feuds between families. AFCR's mediators' experience in how to approach and how to facilitate a process of mediation and even reconciliation in such cases gave us new insights at a time when we mostly mediated in cases of petty crime such as shoplifting and vandalism. Another important aspect in our project cooperation was in motivation for the mediation work; AFCR saw mediation more clearly in a broader peace building perspective, as a contribution to build safe local communities and thereby supporting developments towards a democratic society. And, that mediation as supplement to court in serious penal cases, also contributes to build trust in the state's ability to deal with the whole conflict. In the early phase of developing mediation in Norway, in spite of Nils Christie's great ideas to strengthen local communities in solving their own conflicts, I believe NMS for a while had a rather limited perspective - focusing mainly on juvenile offenders. Mediation and restorative justice are however important to us all, as it is needed to meet basic human needs when conflicts occur in our societies, and so we should not limit our activities to be merely tools of crime prevention amongst juveniles. Further, Albania and Norway have quite the opposite situations regarding referral of cases to mediation and therefore gave us mutual inspiration; in Albanian most cases - up to 70 % of the about 2000 cases received per year, are referred directly from the parties or being initiated by the local mediators who take a proactive role when they learn about conflicts in their communities. This reflects the good

standing of AFCR's mediators in their local communities, a quality that ought to be protected when developing further co-operations' with police, prosecutors and courts. Independence and autonomy for the mediation services is important to maintain the trust from the local communities. Last, in short what is our contribution in Albania; NMS have I believe - contributed to developments of AFCR's mediation activities both as a door opener in new co-operations' focusing on inter-professional approaches and towards the authorities, and in the developments of trainings and other activities with co-partners and mediators.

We wish to promote exchanges like this between colleagues in this region, as a fruitful contribution to our common developments of restorative justice and victim-offender mediation. Meeting colleagues and exchanging experiences have an awareness raising effect also within our own organizations, to see our strengths and weaknesses, and our potential for improvements and further developments. International exchange has also a great door opener effect that helps in our efforts to achieve the interest and support from key stakeholders. And, even though we are a group of dedicated people - victim-offender mediation and restorative justice is still a rather new area and we need each others experiences to move forward!

Thank you for the attention.

Per Andersen, NMS Director
Professional or volunteer mediators – a topic for discussion?



Albania, February 2009

Lay – mediators or professional, Norwegian reflections

Director Per Andersen

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DEVELOPMENT OF RESTORATIVE JUSTICE IN BALKAN COUNTRIES

The following section contains information and short presentations on the developments of restorative justice and mediation, implementing alternative measures and penal reform in the countries participating in the Conference. These contributions are prepared by the experts/representatives of these countries.

1. Albania

The program of victim-offender mediation, restorative justice implemented by the Albanian Foundation for “Conflict Resolution and Reconciliation of Disputes” (AFCR), a non-governmental organization, was initiated in the year 2000. The Norwegian model of implementing restorative justice and victim-offender mediation, one of the most advanced in Europe, was an incentive to initiate such a program in Albania as well. The introduction of the Norwegian model and the experience exchange between AFRCR and NMS was accompanied by developing a training program for the network of mediators, conducted by Norwegian trainers and experts. Thanks to the cooperation with the School of Magistrates, Council of Europe, and NMS, this cooperation was expanded in the justice system, involving judges and prosecutors in a training program in the area of restorative justice, victim-offender mediation, the European experiences in this regard, the recommendation of the CoE with regard to use of mediation in criminal matters. The Norwegian model was introduced, how it was established and how it works. It was also discussed about the legal space for implementing restorative justice in Albania and the necessity of procedural improvement with regard to use of mediation and restorative justice in the justice system.

The program of victim-offender mediation and restorative justice was initiated as a pilot project in the years 2000-2001 and was expanded in the following years. In its first years, it was implemented in Tirana, and in some districts, and from 2002 the program of restorative justice was expanded in 10 other districts, where mediation centers are set up and are running, as well as in 10 other districts where a network of mediators is operational.

Restorative justice, victim-offender mediation is perceived by the AFRCR mediators generally as an alternative of conflict resolution through the facilitation of a third party and as an out-of-court alternative which aims at reaching an agreement by the parties in conflict.

The AFRCR activity in implementing restorative justice and mediation is based on the Albanian Mediation Law (2003)”, and it is focused on resolution of property and commercial cases related to damage cause, penal cases, family and civil ones as well.

Some of the main goals of the program of restorative justice and victim-offender mediation in Albania are as following:

- Introducing restorative approaches and mediation as an alternative to penal case resolution;
- Presenting the international instruments in this regard, and also introducing the most advanced European experiences in the area of restorative justice and victim-offender mediation;
- Identification of legal spaces of applying victim-offender mediation and RJ through advocacy and lobbying for legal improvements in the area of penal legislation;
- Increasing the number of cases where restorative justice and VOM are used as conflict resolution approach, and avoiding the penal proceedings;
- Increasing the community awareness on the advantages of restorative justice in penal conflicts resolution, and to create possibilities for community to resolve their conflicts through mediation,

aiming at victim's regeneration, offender's rehabilitation, and good relations between parties involved in such conflicts after the accomplishment of this process.

- Victim-Offender Mediation, Restorative Justice in Juveniles

A one-year pilot project on "Victim-Offender Mediation, Restorative Justice in Juveniles" was undertaken in 2005, with the support of the Norwegian Mediation Services, and it was followed-up in the framework of the Juvenile Justice Reform undertaken in Albania (2006-2008) by UNICEF and the Albanian Ministry of Justice, with the support of European Commission and SIDA.

The main goal of the project was applying the diversion method of mediation in penal cases with juveniles involved, either in the role of victim or offender, as the only diversion method available in Albania.

The main component of this project was providing the mediation service to juveniles, and diverting the penal proceedings for the juvenile offenders, settling the case through mutual understanding of the parties involved, abiding by the mediation rules.

2. Bosnia & Herzegovina

The specific of Bosnia & Herzegovina, when referring to restorative justice and mediation, is the situation of the post-war. There is a fast and very active growing development of mediation in the country during these last 5 years. Actually, there are 2 mediation centers with a total staff of 18 mediators and all the mediators are trained. Several round tables took place to introduce and raise the awareness on mediation. All the forms of restorative justice are experienced and explored. A lot of efforts are done to a better understanding of the restorative justice concepts and their implementation. Thus, Council of Europe Recommendations are introduced, alternative measures used by police and prosecutors, mediation for penal cases, a juvenile and youth strategy is adopted, a judiciary strategy and an action plan are in place, as well.

Some pilot projects are implemented with positive results and we hope to establish a wider network within the region when dealing with restorative justice matters.

3. Croatia

Mediation was implemented through a project started in January 2003, with a team composed of 15 persons. This project was implemented in cooperation with The Prosecution Office, Ministry of Social Affairs and University of Social Sciences.

The practical implementation of restorative justice and mediation in Croatia is enabled through a strong collaboration among different stakeholders involved and the public as well. The aim of this project is: the treatment of victims and offenders with dignity, reducing the conflict between the victim and offender, to ensure the social peace, and to assist the court when sentencing.

The most implemented measures were restitution and compensation for damage caused.

The legal basis for implementing mediation already exists as there is a law on juveniles and juveniles' court. According to the law, it is the prosecutor who decides if there is the case for proceeding with mediation between the victim and the offender. The use of mediation brought positive results in penal cases.

In Croatia, an association was founded, called Croatian Association of Mediators, which has solved around 20 000 cases so far.

4. Kosovo

In Kosovo, bearing in mind the political situation and background, there are made a lot of efforts to draft a penal legislation in accordance with European models, as well as in full compliance with UN conventions, such as: UN Minimum Standard Rules, Beijing Rules, etc. Part of this new legislation is a law on juveniles, a law on execution of criminal sentences and alternative measures according to the Criminal Code.

Restorative Justice has a special place in this legislation. Special attention is paid to juvenile offenders and their treatment either as offenders or as victims of offences. This legislation defines also the diversion measures, educational measures for juveniles. There are 8 different measures that are considered diversion measures, and among them is included mediation between victim and offender, reward compensation of the damaged party, psychological counseling, etc. The main aim is to avoid the stigmatization of young offenders and to avoid imprisonment, where possible, to offer rehabilitation possibilities and reduce the re-offending rate.

Bearing in mind this legislation is rather new, one can notice that the implementation of diversion and alternative measures is not satisfied. Reasons for that could be the role of judges and prosecutors in implementing them, lack of training, lack of professionalism among judges and prosecutors, etc.

Referring to the latest development, one of the representatives of Kosovo, mentioned the establishment and functioning of the Probation Service, as a structure under the authority of Ministry of Justice with 5 probation regional offices all over the country. The statistics mentioned during this presentation, has shown that the number of probation orders is increased from year to year and that the application of diversion and mediation is found useful and relevant. The local customs and traditions has influenced to the expanding of the diversion measures within the country.

5. Macedonia

In Macedonia, mediation started in 2006, as an approach applicable to disputes of the following nature: civil, labor, commercial, consumer disputes, but it is not applied to collective agreements, criminal cases and administrative disputes. Some pilot projects on mediation were applied in different districts with positive results.

Actually, Macedonia has adopted a strategy for the judiciary reform and has approved a law on juvenile justice, which has not entered into force yet, but it will begin to be implemented by June 2009. Mediation and diversion measures are part of this law.

The local customs and traditions has influenced to the understanding and embracing the diversion measures, mediation and restorative justice models, as well.

The Macedonian legislation defines mediation as an extrajudicial procedure on disputes resolution based upon freely expressed will of the parties supported by third person - mediator, which has no

right to impose a solution to the dispute. The mediator should have some skills necessary to perform correctly his job. Some of these skills are:

- Be neutral in the assessment,
- Keeping the negotiations until both parties present their best offers,
- Helping Parties to recognize strong and weak points in their positions,
- Knowledge in the field of the dispute at stake,
- Possession of necessary skills and techniques

Macedonia has an institutional body of mediators called CMRM - Chamber of Mediators of the Republic of Macedonia, founded on March 2007. The actual number of mediators is 98. All the mediators are certified by the Ministry of Justice as the responsible governmental authority.

6. Montenegro

In cooperation with the UNICEF Office in Podgorica, the Ministry of Justice of Montenegro is implementing the project of **Administration of Alternative Measures and Sanctions for Juveniles in Conflict with the Law**, with the aim to promote rehabilitation and re-socialization of juveniles and to improve the juvenile justice system in Montenegro. The Project has been implemented since April 2004 as an integral part of the program named "The Children's Chance for Change" funded by the Swedish International Development Cooperation Agency (SIDA).

The aim of this project is also to establish a diversion pilot model in **the municipality of Bijelo Polje** so that the juveniles in conflict with the law could be supported in rehabilitation and to prevent repeat offences. The Ministry of Justice coordinates the work of the Inter-departmental Committee in Podgorica and the Local Team in Bijelo Polje, the members of which are representatives of line ministries, judicial authorities, centres for social work, schools, youth centres and the institution of the Ombudsman. Two courses "Mediation between the victim and the offender" and a seminar "Training for Trainers" were attended, in a total duration of 15 days. A group of chosen experts acquired adequate knowledge in the field of restorative justice and specialized knowledge in mediation between the victim and offender, to be able to carry out the process of rehabilitation of children in conflict with the law and the reparation of victims and the community as a whole more efficiently.

In July 2005, a Memorandum of Cooperation was signed between the Municipality of Bijelo Polje, the Ministry of Justice and the Ministry of Labour and Social Welfare with the aim to establish a Centre for the support to children and families, based in Bijelo Polje, to provide assistance and support to endangered and socially excluded children, such as victims of violence, abuse and negligence and the children in conflict with the law. This centre shall provide services such as mediation between the victim and the offender.

In June 2006, a Memorandum of Cooperation was signed between the Ministry of Justice, the Chief State Prosecutor and UNICEF, which gave legitimacy to the implementation of the Pilot Project named "Administration of Alternative Measures and Sanctions" for juveniles in conflict with the law, which also attached particular significance to meditation. Special attention has been paid to the issue of juvenile offenders in Montenegro, primarily within the reform of criminal legislation which is being intensively implemented.

An important novelty regarding the provisions on juveniles is the introduction of **diversion orders**, not only with respect to the right of juveniles to have a “second chance” but also in view of prevention of criminality and an opportunity that will be given to a minor to mature and to integrate in the society. One or more **diversion orders** may be imposed on a juvenile criminal offender for the criminal offences punishable by a fine or imprisonment for a term of up to five years. Diversion order may be imposed on a juvenile by the court at its own discretion or on the motion of the competent state prosecutor. The conditions for the administration of diversion orders are: the confession of the criminal offence by the juvenile and his/her attitude towards the criminal offence and the victim. The purpose of diversion orders is to avoid instituting criminal proceedings against a juvenile or to discontinue the proceedings, i.e. to influence the proper development of the juvenile and strengthening of his/her personal responsibility by the administration of diversion order so that he or she does not commit criminal offences in future.

The administration of the diversion orders is regulated by a separate piece of secondary legislation – **the Rule Book on the Administration of Diversion Orders**. Pursuant to this, the Ministry of Justice has passed this Rule Book and it has been published in the Official of Gazette of Montenegro. This Rule Book regulates the manner of administration of diversion orders that may be imposed on a juvenile criminal offender and other issues relevant for the fulfillment of the purpose of diversion orders. The administration of diversion orders will take care of the best interest of the juvenile and take into account all circumstances relating to his/her dignity, personality, maturity, development, environment in which he/she lives and not to interfere with his/her regular schooling and employment. The competent guardianship authority monitors the administration of diversion orders and informs the court regularly thereof. The opinion of the juvenile will be taken into account in the administration of diversion orders. The parents, adoptive parents or the guardian of the juvenile must cooperate in the administration of diversion orders.

The administration of diversion orders regulates the settlement with the victim, so as to remove the harmful consequences of the offence, wholly or partially, by reparation, apology, work or in some other manner; regular attendance of school or going regularly to work; involvement, without a fee, in the work of humanitarian organizations or social, local or environmental activities; undergoing appropriate examinations and curing the addiction caused by consumption of alcoholic drinks or narcotic drugs; and involvement in individual or group treatment at an appropriate health institution or a counseling centre.

The agreement on settlement between the juvenile and the victim may be concluded immediately before the court, while if the agreement on settlement has not been concluded immediately before the court, the court will entrust further conduct of the settlement proceedings, with the consent of the juvenile and the victim, to a specially trained person – mediator. The mediator is appointed from the list of mediators kept by the Ministry of Justice. A mediator can be a person who must have special knowledge in the field of the rights of the child and juvenile delinquency and who completed special training according to the training programme for mediators.

The settlement proceedings must commence within eight days from the date of adoption of the decision on referral to settlement with the victim, and may last for three months at most. The settlement proceedings may be discontinued solely upon the request of the juvenile or the victim. After the agreement between the juvenile and the victim is reached and concluded and sent to the judge to be filed for record, the settlement proceedings will end.

The agreement contains the subject matter of the settlement, the deadline for the fulfillment of the obligations the juvenile assumed or the confirmation that the obligation of the juvenile has already been fulfilled, which is also confirmed by the signature of the legal representative. Periodically, with the assistance of the legal representative and if necessary with the assistance of the guardianship authority, the mediator monitors the fulfillment of the juvenile's obligations contained in the agreement and informs the court and the state prosecutor regularly thereof in writing.

In accordance with the EU law and legislative solutions in the countries of the region, contrary to the principle of legality, the state prosecutor has the right not to request that the criminal proceedings be instituted against a juvenile for the reasons of meaningfulness, which has been prescribed by the Criminal Procedure Code of Montenegro. Pursuant to this, the Chief State Prosecutor adopted the Instruction for the Application of the Principle of Opportunity.

The State Prosecutor may conditionally postpone the criminal prosecution, with the consent of the juvenile and his/her parent, adoptive parent or a guardian, for criminal offences punishable by imprisonment for a maximum term of five years or a fine, if he assesses that it would not be meaningful to conduct the criminal proceedings against a juvenile, taking into account the nature of the criminal offence and circumstances under which it was committed, previous conduct of the minor and his personal characteristics, if the minor assumes and fulfils one or more specific obligations. The State Prosecutor shall carry out the procedure of settlement between the victim and a responsible juvenile with the assistance of specially trained persons, while the competent guardianship authority shall monitor the fulfillment of other specific obligations and inform the state prosecutor regularly thereof. If the agreement has not been concluded, the state prosecutor will entrust further conduct of the settlement proceedings, with the consent of the juvenile and the victim, to a specially trained person - mediator. The juvenile and the victim will agree to one or more mediators and if they cannot reach an agreement, the mediator will be appointed by the state prosecutor.

The possibility of community service has also been introduced with respect to juvenile offenders. It is generally considered that this sanction is particularly appropriate for the juveniles (taking into account their specificities). The community service - work for humanitarian, environmental and cultural purposes has been introduced with respect to juvenile offenders as a special obligation that may be ordered by the court alongside one of the educational measures of intensive supervision prescribed by Articles 91 and 17 of the Criminal Code of Montenegro.

The results of the project "The Administration of Alternative Measures and Sanctions in Montenegro" are already visible, however all partners in the said project will face more challenges and a period of intensive work. To this end, through the Project of Administration of Alternative Measures and Sanctions the proceedings against juveniles are being directed towards rehabilitation and social integration of the child, protection of the personality of juveniles in accordance with the Convention on the Rights of the Child and enabling proper development of juveniles in conflict with the law which includes restriction of penal and affirmation of alternative measures.

The Government of Montenegro has adopted the Judicial Reform Strategy for the period 2007 - 2012 and the Ministry of Justice has prepared the Action Plan for the Implementation of the Judicial Reform Strategy. The Action Plan identifies specific measures and activities of line ministries and institutions responsible for the implementation of judicial reform. To this end, the juvenile justice

system is to be revised by the enactment of the Law on Juvenile Justice in accordance with the recommendations of the Council of Europe and the UN Conventions.

7. Serbia

The Government of the Republic of Serbia is currently in the middle of fundamental reform of its judicial system. Significant efforts have also been made to reform the juvenile justice system, with the emphasis on improvement of the protection of the rights of children and children in conflict with the law.

The main results achieved so far are as follows:

- 1) The main achievement is the adoption of the Law on Juvenile Offenders and Criminal Justice Protection of Minors (the Juvenile Justice Law), regulating criminal justice protection of juveniles as offenders, victims and witnesses, enacted on 1 January 2006. This represents a milestone in harmonizing the national legislation with both the Convention on the Rights of the Child and international and European standards for the protection of the rights of children at risk and children in conflict with the law. The Juvenile Justice Law provides a legal basis for the restorative justice approach and victim-offender mediation in criminal matters involving children. It also calls for a mandatory specialisation of all professionals dealing with cases involving children as offenders, victims or witnesses.
- 2) The Judicial Training Centre, an institution providing training to the members of judiciary, has strengthened its curricula and programmes and systematic training targeting juvenile justice professionals, resulting in provisional certification of professionals specialised to work with cases involving children.
- 3) Pilot project, developed in cooperation with UNICEF Serbia, introducing the restorative justice concept throughout the country, following the successful initiation and development of diversion schemes and victim-offender mediation, as an alternative to legal proceedings.
- 4) Revision of the curricula at the School of Political Sciences, Psychology and Police Academy (unfortunately not the Law School), to reflect child rights, principles of restorative justice, ethical and psychological standards, and methodologies of contemporary practices in dealing with children at risk and children in conflict with the law. With the support of UNICEF Serbia, Training Manual on Victim Offender Mediation has been developed, and has become an official tool of the Republic Centre for Training and Accreditation in Mediation, established by the Ministry of Justice.
- 5) Introduction, development and implementation of the innovative rehabilitation programmes in residential institutions for children in conflict with the law (primarily in the Juvenile Correctional Institution in Krusevac), which are currently being applied.

However, many novelties of the Juvenile Justice Law are not implemented consistently. They largely depend on the level to which the members of judiciary are proactive and the level to which there realistically are restorative justice-related services in place that the legal system can rely upon.

The main challenges are as follows:

- Uncompleted normative reforms – in 2009 the Ministry of Justice is planning to amend the Juvenile Justice Law in order to provide for the direct application of diversions.
- Lack of accessible data tailor-made for the purposes of monitoring the implementation of the Juvenile Justice Law, and clearly exposing the areas where the implementation is not sufficient.
- Further capacity building is needed, not only to increase knowledge but also to enable full-certificates, rather than provisional, for the juvenile justice professionals, as well as to mainstream training into regular government-funded programmes.
- Lack of capacity, resources for the development of sustainable community services for children at risk and children in conflict with the law.

Expected results in 2009:

- Establishment of a governmental body, the Juvenile Justice Council, as stipulated by the Juvenile Justice Law, that uses evidence produced by studies and research to advise the Government on further implementation of the Juvenile Justice Law.
- Amendments to the Juvenile Justice Law are adopted and the system is capacitated for the implementation of diversions, which is clearly reflected in the continual increase in application of diversions and alternative sanctions.
- Actual changes in data collection system are in place, so to ensure that data reflect the implementation of the Juvenile Justice Law and indicate the areas where the Law is not being implemented.
- Capacity of the juvenile justice professionals is increased, and training programmes are developed and integrated into government-funded training.
- Services at local level are increased in terms of quality and quantity, supported by municipal budgets, accredited treatment programmes are implemented, offering victim-offender mediation and drug prevention as integral part of their services.

8. Slovenia

In 2008, a law on mediation was approved and entered into force in Slovenia. Still, it is a law on mediation in civil and commercial cases, but not in family cases and victim-offender mediation.

The legal framework on mediation concerns:

- The Civil Procedure Act (Article 305 b) – the judge may stop the proceeding for 3 months and let the clients to try ADR
- The rules from the President of the Court: there is a very good Court annex Mediation Project (in 5 Courts)
- The draft Family Code
- Criminal Procedure Act (Art 163a) – applicable since 1994
- Prison Ministry (some try)
- Patient rights Law (2008)
- EU law: financial organisations, copy rights (2007)

The mediation approach started with some cases in Maribor in 1996 in the Centers of Social Work, and since that time a lot of developments occurred.

Some facts and figures:

- District Court of Ljubljana - Report and evaluation from the beginning
- About 1000 successful mediation per year in last 2 years (just in District Court of Ljubljana)
- successful 75% in family cases
- 50 % other cases (civil, commercial)
- 2008: first successful environmental mediation
- Private initiative for mediation (are growing continuously)

Regarding the victim - offender mediation (preliminary hearing - pretrial detention), in Slovenia there is no special ADR for minors (a new law is preparing). State Prosecutor is the competent authority who decides whether to refer a case to mediation service. State Prosecutor can suspend the prosecution if the offender compensates the damage to victim or public organisation, do some public work in benefit of the community, or pay the alimentionation for a period from 6 months to one year time, and then the state prosecutor dismisses the case.

Ms. Migena Leskoviku,
Professor of Law, Tirana

CONCLUDING REMARKS/CONCLUSIONS

This forum aimed at bringing together practitioners, decision makers, international and local NGOs and international organizations from the Balkan countries to share approaches and experiences in the countries efforts to reform the penal system and introduce restorative justice and mediation.

Various experiences, developments and good practices already implemented in region countries show how the challenges encountered in the implementation of restorative justice are being addressed, thus demonstrating encouraging tendencies towards expanding and consolidating restorative justice practices in the region. At the same time, different possibilities were analyzed for furthering restorative justice and mediation in the context of these countries, and bearing in mind the lessons learned through experiences within different cultural realities.

The experts and participants in the Forum emphasized 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; or the human and sensitive dimension of the RJ; special attention dedicated to juveniles, peer-group mediation at school, etc. This is also linked to the degree of involvement of state institutions and the role of the citizen in the participation and implementation process and service delivery. All these are fundamental issues that in fact concern the international restorative justice approach.

Furthermore, the experiences described by the participating countries made it clear that 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 generalized application of restorative justice practices. 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 momentum to restorative justice developments in Balkan countries.

Equally indispensable is the need to sensitize the citizen to restorative justice and its potential in addressing crime and its repercussions on victims, offenders and society. Informative and awareness campaigns should develop together with other tools to involve the citizens in debate and discussion on that topic. As mentioned during the discussions, the significance of social mobilization depends on a wide range of complex cultural, legal, 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.

It was discussed clearly that new and wider opportunities for expanding and consolidating restorative justice are constantly appearing in region countries. The importance of promoting spaces for dialogue and exchange between cultures, disciplines and professional groups among all the countries of the region was emphasized.

It was observed that implementation of pilot projects on mediation and restorative justice has helped policy makers and other key actors (like police, prosecutors, judges, etc.) in the respective countries to be more aware of the international relevance of this approach and the extensive network of agencies and organizations mobilized by restorative justice. This in turn, is helping restorative justice to gain salience on the political agendas of each country.

Collaboration between participants from different countries has taken place and future cooperation is being planned in the framework of the region – a regional forum on restorative justice.

SUMMARY OF RECOMMENDATIONS OF THE REGIONAL FORUM

Working groups looked into i) Possibilities and perspectives to implement Restorative Justice in your country/region and ii) Identifying common points to exchange knowledge, experiences in order to implement Restorative Justice in the Region: and what benefits a regional exchange in the proper countries could bring.

Hereafter are some of the key recommendations:

- Necessity of increasing lobbying activities and advocacy to promote the changes of penal legislation, in particular on juveniles in conflict with the law;
- Raising the awareness of governmental agencies concerning the positive values of restorative justice and mediation in conflict resolution;
- Exploring the appropriate mechanism (such as communication programme targeting behavior change) in order to encourage the judges, prosecutors and judicial police to address the criminal cases to mediation service, and alternatives to detention;
- Establishing a network at national and regional level, in order to introduce and advance the dialogue on restorative justice and mediation approach for juveniles and children in conflict with the law;
- Introduce programs on restorative justice and conflict resolution through peer-group mediation in schools;
- Organize activities for raising the support from social actors, especially the support of media in promoting the values of restorative justice practice in managing conflicts among juveniles, young people and adults.
- Implementation of pilot projects in the field of mediation along with the development of legal basis are common development in many countries - Special attention should be paid to the young people.
- The experiences of different regional countries should be a good opportunity for the regional cooperation and for exchanging these experiences.

- Introduction of the mediation and restorative justice approach training in the curricula of Magistrates' School (law schools).
- The need for inter-institutional collaboration and exchange of practical experiences in Balkan countries
- The need for training of police officers, prosecutors and judges; organizing round-tables and study visits, developing research studies and strengthening the collaboration among countries of the region – the organization of this forum was considered a the first step in this regard.
- Model of cooperation between Albania and Norway has been very fruitful and it must be encouraged for promoting this model to other Balkan countries.

ANNEXES

ANNEX 1. Program of the conference

ANNEX 2. Participants and contact details

ANNEX 1

AGENDA

DAY 1 - 25 February 2009

09.00 – 09.30 Registration of participants

Moderation: Robert Carr, Deputy Representative, UNICEF Albania
Leon Shestani, Social services specialist, UNICEF Albania

09.30 – 10.00 Forum introduction
Welcome speeches by:
Viktor Gumi, Deputy Minister, Albanian Ministry of Justice
Eva Aalberg Undheim, Attaché, Royal Norwegian Embassy in Skopje
Jean Claude Legrand, Child Protection Advisor, UNICEF CEE/CIS RO
Karen Kristin Paus, Project Manager, Norwegian Mediation Services
Rasim Gjoka, Executive Director, AFCR

10:00-10:45 European movement and developments on Restorative Justice and Mediation - The context and social support for development of RJ in European countries.
Siri Kemény, Chair of European Forum for RJ

10:45-11:00 Coffee-break

11:00-11:45 Why should we use mediation and restorative justice?
Prof. Nils Christie, University of Oslo
Institute for Criminology and Sociology of Law

11:45-12:30 Question time and discussions

12:30-13:30 Lunch

Moderation Karen Kristin Paus, Project Manager, Norwegian Mediation Services

13.30-14.10 Restorative Justice – focus on victims needs and rights. Experiences of building up mediation services in UK
Dr. Martin Wright, Member of the Board of RJ Consortium UK

14:10-14:45 VOM seen from the perspective of victims, offenders and mediators: Findings of the monitoring phase of VOM and RJ project implemented in Albania.
Merita Bala, Project Coordinator, AFCR

14.45:15.10 Coffee-break

- 15.10-16:40 Presentation from Balkan countries on their experiences in development of penal reform and elements of alternative measures to detention, restorative justice, and mediation:
Briefings from Bosnia & Herzegovina, Kosovo, Macedonia, Montenegro, Serbia Croatia and Slovenia.
- 16:40-17.00 Panel debate- what needs do we see for implementing RJ in the Balkans?
- 17.00-17.15 Closing of day 1 - information about tomorrow's agenda

DAY 2 - 26 February 2009

Moderation: Mariana Semini, AFCR Head of Board

- 09:00-09:20 Victim-offender mediation in the Nordic countries – an inspiration?
Karen Kristin Paus, Senior Advisor, NMS
- 09.20-09.45 Professional or volunteer mediators – a topic for discussion?
Per Andersen, NMS Director
- 09.45-10.00 Coffee break
- 10:00-11:00 Introduction of the group work
Topic 1 - Possibilities & potential and opportunities to implement RJ in your country /the region?

Topic 2 - Identification of common points for exchange of knowledge, experiences of RJ in the region: what benefits can regional exchange bring domestically?
- 11:00-11:30 Presentations from group work
- 11:30-12:15 Panel debate on the group work outcomes and their recommendations.
- 12:15-12:30 Closing remarks and conclusions

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ANNEX 2.

PARTICIPANTS AND CONTACT DETAILS

| COUNTRY | | NAME | POSITION | WORKPLACE | E-mail |
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Implementing alternative measures to detention in penal cases –
Introducing and sharing experiences on restorative justice and victim offender mediation application for juveniles and beyond

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