Recent Developments of Restorative Justice in Central and Eastern Europe

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Annotation

In recent years restorative justice has been in progressive developments and has received considerable attention from scholars, professionals and politicians throughout the world. Different models and approaches have been developed and experimented. Some traditional and aboriginal practices have enjoyed a revival. This research paper shows that despite the existing rich traditions, restorative approaches in the modern sense are still at an early stage and not widely established practice in Central and Eastern Europe. However, there are good indications that notwithstanding serious difficulties the perspective for future development is promising.

Key words: Restorative justice, Central and Eastern Europe, juvenile delinquency, victim-offender mediation, implementation problems

I. Introduction

After the fall of the "iron curtain", the "velvet" and not so "velvet" revolutions, Central and Eastern Europe (the former Eastern Block) had to face particularly rapid and radical political, social and economic changes. This transformation from an authoritarian to a pluralistic model of society affected the institutions of the political and legal system, the economy, cultural and intellectual life, international relations and, of course, the everyday life of citizens.

The collapse of the socialist regimes in the Eastern Block influenced the countries concerned in different ways. However, there are several common features due to the similarities of their former political systems. The (still ongoing) transitional period from socialist to democratic, market economy systems brings along some issues which make it worthwhile to study the possibilities of implementing restorative justice as a new paradigm of criminal justice (Zehr, 1990). Two main elements for this can be seen: firstly, the requirement to guarantee compatibility of domestic law with international standards; and, secondly, the societal challenges these societies have had to face during the transition (Fellegi, 2005).

As mentioned above Central and Eastern European (CEE) countries, like other developed European countries, have to bring their national laws into line with international laws and regulations, including those in the restorative justice (RJ) field. Concerning the societal changes it is widely recognized that all countries in Central and Eastern Europe had to deal with a dramatic increase in the number of crimes, associated with a significant decrease in the efficiency of law enforcement. A growing weakness of formal and informal mechanisms of control was experienced in all countries of the former 'socialist block' (Albrecht, 1999; Levay, 2000).

One of the typical examples were so-called "comrades' courts" intended to be a form of extra-judicial control, applying community-based sanctions, but step by step transformed into pure political instruments for repression (Chankova, 1997). So these countries met the urgent need to adopt new alternative procedures and diversionary measures, as well as to provide effective victim support, possibilities for social reintegration of offenders, and to outline complex crime prevention strategies.

In finding adequate social and legal responses to the increased crime rates and in searching for ways in which international standards can be implemented in the justice systems of CEE countries, the consideration of the possibilities for introducing RJ is very relevant. While several studies have

explored and analysed the procedural elements of different restorative practices, the policy-related issues raised by them and their influences on communities both on micro and macro level, there has been little emphasis on how its implementation can be effectively achieved in post-socialist countries where the new international tendencies have to compete with the traditions of strongly centralised legal systems and with the continuing monopoly of the state in relation to responding to crime (Aertsen et al, 2004; Fellegi, 2005; Miers and Aertsen, forthcoming).

This study aims to make a comparative overview of the latest legislative and practical development of RJ in several CEE countries, as one of the main issues of the contemporary criminal justice policy, and to draw some conclusions that could be of interest for the scholars and policy makers and could accelerate further progressing of RJ in the region.

II.Factors that make the implementation of RJ in Central and Eastern Europe difficult

Analyzing the latest developments in Central and Eastern European countries we can summarize the following hindrances for RJ wide spreading:

1. Still rather low level of civil activism - people are mainly busy with their own survival during the very long transitional period and current financial crisis
2. Prevailing punitive character of criminal justice systems (still post-totalitarian)
3. Poor economic conditions (as a rule)
4. Low level of people's awareness of RJ potential and benefits, lack of enough information in native language in many countries
5. Insufficient training of professionals on RJ principles and practices; lack of standards for practitioners, absence of RJ from the university and school curricula
6. Monopoly of justice, strong resistance of judiciary; RJ practices are considered as directly affecting the sovereignty of the state as well as threatening the lawyers' preserved interests
7. Centralized institutional system, strong position of state
8. Difficulties related to the transitional period (high crime rate, feeling of insecurity, despair, disappointment, frustration; as a result new ideas are not easily adopted)
9. Low trust in NGO sector, especially at the beginning, etc.

III. Central and Eastern European countries – a vanguard in RJ

Despite the difficulties, some countries from the region made fast progress in implementing RJ and are rightly considered as "champions" in the field. They had far-seeing policy-makers, active NGO sectors and highly motivated persons playing the role of "engine". As good examples could be mentioned Poland, Czech Republic and Slovenia.

POLAND

Poland was one of the first CEE countries which introduced victim- offender mediation (VOM) as the most universal and widely spread RJ instrument.

As in many other countries RJ in Poland started with initiatives in the juvenile justice field. In fact, the Juvenile Justice Act enacted in October 1982 did not include any provision for mediation or restorative justice. Despite the lack of a legal basis, RJ promoters supported a project in mid-1995 on the basis of the special philosophy of the Juvenile Justice Act, which was that the main purpose and guiding principles of juvenile proceedings concerned the best interests of the young person. The Juvenile Justice Act has been amended many times, but its core, which is oriented to the best interests of young persons, and to their education, correction and sense of responsibility, has remained unchanged. The substantial amendment adopted by Parliament in 2000[1] provided that the family court may refer the case to mediation to be undertaken by an authorised organization or person. In 2001 mediation was integrated in the new Polish Juvenile Procedure Act. The Senate Resolution of 3 June

[1] Journal of Laws, No 91, item 1010

2004 does not have a normative character but it does commend restorative justice as an alternative to retribution and it gives some important direction to professional groups within the justice system.

In relation to adults VOM in Poland was firstly introduced under the framework of the acting Code of Criminal Procedure and the Criminal Code. The experimental programme was developed and led by the Committee for Introducing Victim-Offender Mediation in Poland. The Committee acted at the beginning within the framework of "PATRONAT" – a NGO for helping prisoners and their families. Later it became an independent NGO and it is now called the Polish Centre for Mediation. Nowadays, after legal amendments, VOM is generally available in adult offender cases (since September 1998[2]) as well as in juvenile cases (since mid-2001). The Code of Criminal Procedure was further amended in 2003[3]. The new provision of Article 23a makes it possible for the police, the prosecutor and the judge to apply VOM at any stage of criminal process. VOM is now to be treated as one of the modes of operation of criminal proceedings.

As matters now stand, VOM in Poland is being actively and seriously discussed, is subject to regular revision, and is in general on an expanding trajectory. There are many initiatives at both the non-governmental and governmental levels. In general the Polish authorities appear to consider mediation to be a good instrument for promoting both social and criminal policies.

The basic promoter of RJ in Poland is the Polish Centre for Mediation (PCM). It has 40 mediation centres in Poland. There are 719 independent mediators accredited by the all Court of Appeals – volunteers paid a fixed sum per case who are undertaking the mediation work in addition to their daily professional activities.VOM is widely used, but Family group conferences have been started by the Polish Centre for Mediation since 2005. There were until now just a dozen or so in juvenile offenders cases; the PCM conducted also ten restorative conferences in three correctional institutions (statistical data for 2008).

PCM has been preparing and implementing training programmes since 1996. These are one of the most important activities of the organization. PCM currently conducts weekend-trainings (16 hours) and 6-day trainings for prospective mediators. Restorative justice is highly emphasised in all of them, but particularly in those provided for mediators. There are separate trainings for judges and prosecutors. In those trainings primarily the main differences between the penal and restorative justice approaches are highlighted.

PCM has intensive cooperation with governmental and non-governmental institutions, such as the Institute of Justice at the Ministry of Justice, with the Ombudsman and the Children's Ombudsman Office, with the Polish Academy of Sciences as well as with the Parliamentary Justice and Human Rights Commissions (Czarnecka-Dzialuk, 2004; Czarnecka-Dzialuk, forthcoming; Czarnecka-Dzialuk and Wójcik, 1999).

CZECH REPUBLIC

Czech Republic also played a pioneering work in RJ field in Central and Eastern Europe. The legislation authorising victim-offender mediation is the Probation and Mediation Act (Law No 257/2000), which came into effect in 2001. This Act created the legal base for establishing the Probation and Mediation Service (PMS). It details how the PMS should operate, provides for its organisational structure and defines its duties and responsibilities for work with victims and offenders. Specific sections of the Code of Criminal Procedure authorise two types of diversion, which are used in close relationship with mediation: Conditional cessation of prosecution (Code of Criminal Procedure No 292/1993, ss.307-8), and Settlement (Code of Criminal Procedure No 152/1995, ss. 309-14).

In Czech Republic victim-offender mediation is available at all stages of criminal proceedings for both juveniles and adults, from the time before the offender is charged until the court imposes a sentence. Mediation can be used as a means of diversion from criminal proceedings (in conditional or unconditional form applied by both the prosecutor and the court) or as a source of information relevant to the decision about the sentence (the court's responsibility). It is also possible to refer the offender to mediation during the time that the sentence is served. In practice mediation is particularly used at the

[2] Journal of Laws, No 108, item 1020
[3] Journal of Laws, No 17, item 155

pre-trial stage as an aspect of the diversionary policy that applies to criminal proceedings (Ourednickova, 2004).

The PMS is a governmental agency within the Ministry of Justice, and is funded by the government. The service operates at all stages of criminal proceedings and is responsible for both probation and mediation. The Council of Probation and Mediation is an advisory body to the Ministry of Justice. It works closely with the PMS, and is involved in planning and development. The members of the Council include representatives of the PMS, judges, state prosecutors and other experts from the field of justice and auxiliary professions. PMS has 340 officers and assistants, about 28 000 cases per year, 14% of cases involve juveniles The mission of the Czech Probation and Mediation Service focuses mainly on working towards the integration of offenders, supporting victims and protecting local communities. The activities of the PMS are rooted in the restorative justice approach.

The system of PMS is a good practice in itself concerning its legal framework, standards, supervision-system, and the special working groups of the team of mediators. There is strong emphasis on multidisciplinary cooperation. The PMS has 75 regional centers which further develop mediation practices (Matouskova, 2009).

The new specialised Youth Justice Act introducing new methods of addressing juvenile delinquency came into effect in Czech Republic on January 1, 2004. Criminal liability was set to start at 15 years of age; a juvenile is a person between 15 and 18 years of age *(*from the 1st of January 2010 the age of criminal liability is 14 years).Children under 15 are not criminally liable, but they may be subject to measures specified under this law (such as probation supervision). Measures (educational, protective and penal measures) were introduced instead of punishments. The leading principle is restorative justice.

According to this Act, the proceedings must aim at damage compensation or another adequate remedy for the victim. One of the restorative approaches in the practice of PMS are developing and implementing of multidisciplinary youth teams (MYTs) into each of the court regions. These are inspired by the British Youth Offending Teams and the Canadian Youth Commission. Now there are MYTs at 59 of the 74 court regions in Czech Republic. Participants in the teams are probation officers, judges, public prosecutors, policemen, social workers from Child Protection Board, the Municipal Authority, the crime prevention co-ordinator, providers of social, health and educational services and other agencies involved.

The other direction of work of PMS is organisation of VOM considered as a structured process of conflict resolution between victim and offender. It comprises a personal meeting between a victim and an offender which is provided by a mediator – probation officer. PMS offers VOM as the first of its activities at the pre-trial stage of the criminal proceedings but the mediation can be used also as a part of the execution of court-imposed measures.

Some statistical data for the last years show the following:

For the year 2006, from the total 5169 cases in pre-trial proceedings, the total number of VOM is 577, and the total number of VOM in juvenile cases is 142 or 25%.

For the year 2007, from the total 5802 cases in pre-trial proceedings, the total number of VOM is 614, and the total number of VOM in juvenile cases is 130 or 21%.

And finally, for the year 2008, from the total 5092 cases in pre-trial proceedings, the total number of VOM is 480, and the total number of VOM in juvenile cases is 129 or 27 % (Matouskova, 2009).

All these clearly show that VOM is gaining more and more popularity and success in Czech Republic.PMS exercises also a wide range of activities aimed at settlement of harm which has arisen as a consequence of the crime.

SLOVENIA

Slovenia could rightly be considered as the third “champion” in the RJ field in Central and Eastern Europe.Although it is a relatively recent concept in the criminal law, restorative justice is becoming well rooted in the legislation and the functioning of Slovenian criminal justice since 1995. In the case of adult offenders, authority for VOM is contained in Art. 161a of the Code of Criminal Procedure. This provision authorises the State Prosecutor to refer for mediation cases punishable by a fine or by a term of imprisonment not exceeding three years (Art. 161a, para. 1). The State Prosecutor

may also refer cases involving offences enumerated in the Code of Criminal Procedure Art. 161a, para. 2, if special circumstances for such referral exist. The referral may take place before the commencement of the formal criminal procedure or after the charge has been filed. In making the referral, the State Prosecutor must take into account the nature and circumstances of the offence, as well as offender's personality, the degree of his or her criminal responsibility and his or her criminal record, if any (Art. 161a, para. 1 Code of Criminal Procedure). Conditions and circumstances guiding the State Prosecutor's decision are further detailed by General Instructions, issued by the State Prosecutor General (Art. 161a, para.7 Code of Criminal Procedure).

Since the 2001 revision of the Code of Criminal Procedure came into force, it has been possible for the prosecutor to refer a case for VOM at any stage of the criminal proceedings but before the court passes judgment. If the State Prosecutor decides to refer a case for mediation after the main hearing has already started, the court will suspend further proceedings for a maximum of six months. If the referral is successful, that is, if the victim and the offender reach a settlement and the offender completes his or her obligations, the State Prosecutor will withdraw the charge.

According to the Code of Criminal Procedure Art. 466, para. 2, the option of mediation as provided for by Art. 161a, applies also to juvenile offenders. The scope of VOM for juveniles is slightly broader: if special circumstances exist, the State Prosecutor may also refer to VOM a juvenile case involving an offence punishable by imprisonment not exceeding five years (Code of Criminal Procedure Art. 161a, para. 2).

It is the State Prosecutor's Office that decides on referrals, trains mediators, sets up a list of mediators, pays mediators, and decides on the case after the mediation has been completed. Mediation is delivered by lay mediators. They are chosen through official public invitation published by the Ministry of Justice in the Official Gazette (Bosnjak, 2004; Willemsens, 2008). Lately mediation is successfully also applied in Slovenian prisons (Friskovec, 2009).

IV. Central and Eastern European countries – members of the European Union

ESTONIA

Estonia has started introducing RJ quite late, but rapidly achieved a significant progress. Mediation in criminal proceedings has been regulated by the Code of Criminal Procedure since 2007. Art.203 deals with the termination of criminal proceedings on the basis of conciliation. If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceeding and the suspect or the accused has reconciled with the victim using the procedure provided by this code, the Prosecutor's office may request termination of the criminal proceedings with the consent of the suspect or the accused and the victim. However, termination of criminal proceedings is not permitted in criminal offences committed by an adult person against a victim who is a minor; if the criminal offence resulted in the death of a person; in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal, offences directed against the administration of justice and in some other cases explicitly stated in the Penal code.

In the event of termination of criminal proceedings, the court shall impose, at the request of the Prosecutor's Office and with the consent of the suspect or the accused, the obligation to pay the expenses relating to the criminal proceedings and to meet the conditions of the conciliation agreement.

If the judge does not consent to the request, there will be a continuation of the criminal proceedings. Also when the suspect fails to perform the duties imposed on him, the court shall resume the criminal proceedings.

The mediation (conciliation) procedures are carried out as a public service offered by the Social Insurance Board Victim Assistance Department within the Ministry of Social Affairs. The provision of the service is regulated by the Victim Assistance Act 2007. The process of conciliation and other necessary procedures are delegated by statute to be regulated by government decrees. The procedure for conducting conciliation services is established by Decree No. 188 of the Government of the Republic of Estonia from 2007.

The method for carrying out the conciliation procedure for minors is regulated by the Juvenile Sanctions Act which authorised the Social Ministry to promulgate its Decree No. 44 of 1998. Thus,

minors and juveniles can also be referred to conciliation (mediation) by Juvenile Commissions. One or several of the following sanctions may be imposed on a minor: warning; referral to a psychologist, addiction specialist, social worker or other specialist for consultation; community service; participation in youth or social programs or rehabilitation service or medical treatment programs, etc.

Conciliation procedures are used as one of the re-socialisation methods employed in prisons and within the criminal care system. The funding of the conciliation procedure has been guaranteed by the State budget.

The provisions for conciliation in criminal matters are mainly aimed at securing a better position for victims of crime. They also have some elements that focus on the resocialization of the offender. In addition to the requirement of restitution for the victim, the offender's agreement to participate in social programs or treatment programs can be among the possible outcomes of conciliation. The conciliation process is directed by an independent conciliator.

Conciliation can result in the waiver of criminal prosecution in crimes that are punishable by a maximum of 5 years imprisonment (following the opportunity principle, i.e. discretion to discontinue prosecution). In cases of more serious crimes, the penalty may be decreased (Kruuser et al., 2008).

There is still room for discussion whether this is RJ in genuine sense or a new name of old traditions, but the efforts of Estonia to keep pace with the international developments should be recognized.

HUNGARY

Without exaggeration we can say that at present day Hungary seems to be one of the standard-setting countries in RJ area in Central and Eastern Europe. After some preparatory work well motivated scholars and policy-makers have established new restorative dimensions in criminal justice system and beyond, towards a modern system that is compatible with the European standards.

Mediation as a method of conflict resolution has been used in Hungary since 1992 in civil cases. During the mid-1990s a number of criminologists had argued for its extension to criminal cases and in 2003 this became a priority for the National Strategy for Community Crime Prevention (2003). However, further steps towards the legal and institutional implementation of victim-offender mediation were taken in 2006. The Act LI of 2006 modified the Criminal Procedure Act and the Criminal Code in order to introduce mediation in criminal cases.

The Criminal Procedure Act also regulates the organisational background to mediation. Art.221/A (6) provides that the mediation proceedings shall be conducted by a probation officer engaged in mediation activities.A successful mediation (by which an agreement has been reached and completed by the offender) is considered to be a 'voluntary restitution', whose effect is to block a criminal prosecution as prescribed in the new art. 36 of the Criminal Code.

The Act CXXIII of 2006 on Mediation in Criminal Cases (the Mediation Act) contains the detailed regulation of the mediation procedure. These regulations created the procedural and substantive base for the application of victim-offender mediation in Hungary. They came into force on 1st January 2007. The 1/2007 Decree of the Minister of Justice and Law Enforcement contains special regulations for the mediation procedure and also prescribes the qualification requirements for mediators.

VOM in Hungary can be undertaken in the pre-charge and pre-sentence phase of criminal proceedings. Accordingly the decision to refer the case lies with the prosecutor or the judge. The Probation Service has been allocated the task of implementing mediation. This Service is a government organization that works within the Hungarian Office of Justice, from whose own annual budget the entire costs of the mediation process are funded (Fellegi *et al.*, forthcoming; Willemsens, 2008).

In Hungary VOM is applicable in cases of juveniles and adults too. Specific conditions are:

- crimes against person, or
- crimes against property, or
- traffic offences, provided the maximum penalty possible does not exceed 5 years imprisonment.

But the VOM is not applicable:

- if the act caused death

- if the perpetrator was multiple recidivist
- in case of organised crime
- if the perpetrator was subject to another sanction.

In Hungary there are no cases when the referral to mediation is obligatory – it is entirely a free service for the parties. The method used is a direct mediation with the participation of the offender and the victim. A legal entity also can be a victim. Any form of restitution is accepted that is not against the law or public morals (apology, compensation, reparation of the harms caused, or an undertaking to participate in any treatment or other programme). Mediation is considered to be successful only when the agreement had been completely fulfilled.

Statistical data for 2007 show that crimes against person represent 16 %, crimes agains property 56 % and traffic offences – 28% of those sent to mediation. For 2008 from a total of 2872 cases, agreement has been reached in 20 % . In the remaining 80% no mediation or no agrement has been reached. Eight persent of the agreements have been fulfilled, 1% have not been fulfilled and 91 % of accusations have been postponed (Törzs, 2009).

Recently in Hungary restorative practices have been used for resolving school conflicts as well (Ivany, 2009). Family group conferencing are applied in the process of inmate support and after care (Velez, 2009). Probation officers have started working with Family Group Decision Making /Family Group Conferences (Negrea, 2009). In many universities RJ principles and practices are taught. To summarize, it could be said that Hungary is fast developing and applying many different RJ interventions and maybe it will be the new Eastern European leader.

ROMANIA

In Romania, one of the newest European Union countries, the understanding and introduction of RJ and other conflict resolution methods have some peculiarities. They differentiate the application of Alternative Dispute Resolution (ADR) and reserve conciliation and mediation for civil and commercial matters; they use restorative justice mainly for domestic violence; to solve problems at work places they again use conciliation and in criminal matters – victim-offender mediation.

Law No 217/2003 regarding Domestic Violence provides for mediation in cases of domestic violence. In Romania, two statutory provisions have restorative justice connections: Law No 678/2001 (revised) regarding the Prevention of the Trafficking of Human Beings, and Law No 211/2004 regarding the Protection of the Victims of Crimes. Both contain a duty to establish programs for free psychological counselling and recovery from the crime or the trafficking, and the provision of financial support and free legal assistance to engage the criminal justice process, and indirectly states that victim may benefit from mediation services.

In 2006 the Romanian Parliament enacted the Law regarding the Mediation and the Regulation of the Profession of Mediator[4]. The Romanian legislator chose an all-encompassing legal framework within which the following matters are regulated: the profession of mediator, the rights and responsibilities of the mediator, mediation procedure, and the types of conflicts (civil, commercial, family and criminal) that may be referred to mediation. The mediation law established the Council of Mediation, whose main purpose is to ensure the promotion of mediation and the representation of mediators' interests (Balahur, 2009).

In penal matters, mediation can be organized in cases of complainant offences (mainly violence against person, bodily injury, threatening, defamation), and in certain cases of unintentional bodily injury, dwelling or rape. The mediation requires the agreement of the parties and can be implemented before the beginning of the judicial proceedings or during the judicial process. In the last case, the prosecutor or the judge suspends the proceedings to allow the mediation, but no longer than the signing of the mediation contract (art. 70). If the agreement can't be reached, the legal proceedings continue; otherwise the process is dismissed (Cusmir, 2006).

In the meanwhile a number of RJ centers have been opened in Romania thanks to funding from the Department for International Development in the UK for further promotion of RJ in Romania (Codreanu, 2004).

[4] Official Monitor of Romania No 441/22.V.2006

SLOVAK REPUBLIC

Criminal policy in Slovakia, like the criminal policies in other countries, places stress on the reformative or educational function of punishment. Furthermore, the stress is placed on the humanisation of the prison system and on a reduction in the penalty of imprisonment. The alternative punishments are applied within the concept of the restorative justice. It must be said that this measure is relatively new in Slovakia and it has gradually become operational.

Fundamental transformation of the entire society after 1989 resulted in progressive changes in the Slovak criminal justice system. A pilot project of mediation and probation was launched in April 2002 and three probation officers started to work at three district courts: Nové Zámky, Spišská Nová Ves and Bratislava IV. Their role was to test various forms and methods of probation work in the Slovak criminal law system so that practical experience would contribute to drafting the Act on Probation and Mediation Officers. During the pilot project, probation officers dealt with 182 cases of probation and 61 cases of mediation. In ten months of 2004 officers dealt with more than 463 cases. The effectiveness of mediation (reaching an agreement) during the pilot project was about 85 percent (Kunova, 2005). The mediators worked on the following types of mediation: victim-offender mediation with individuals, legal entities and members of minorities. Initial concerns and uncertainty were transformed to trust in mediation. Nowadays it is clear that if mediation is well prepared and the mediators are able to follow the rules, the mediation is usually successful. Mediation is considered as a useful solution for the cases where the parties are peers, neighbours and people who will remain in contact in the future.

When the agreement is signed during mediation and the offender is on probation, the probation officer works with the offender in order to supervise the fulfilment of the agreement. The highest importance of mediation is that it has been proved to be a successful approach not only for offenders but also for victims and the law enforcement agencies.

The results of the pilot project led to the approval of the Probation and Mediation Act 2003, effective as of 1 January 2004, which provides a legal framework for mediation. The Probation and Mediation Act regulated the activity of the probation officer and mediator, his/her rights and obligations and the professional qualifications for the performance of the probation and mediation for the first time. The Slovak probation officer and mediator is a public servant who performs a civil service for the court.

The establishment of the probation and mediation service in Slovakia has not been free of difficulties. The proponents have to explain to the public and professionals the purposes, benefits and goals of the service.

Nowadays the probation and mediation service is carried out by almost 100 probation officers and mediators and by three assistants (the posts were established in three courts, the territories of which contain a larger number of the marginalised Romany communities). However the probation and mediation procedure was introduced in full following the recodifications in the Criminal Code and in the Code of Criminal Procedure in Slovakia subsequent to 2006. One of the pressing reasons for the recodification of these codes was the modernisation and adaptation to the new conditions and trends in society. Now it could be safely said that the concept of restorative justice has become the underlying philosophy in the Slovak Republic (Mrazek, 2009).

BULGARIA

Restorative justice, one of the most attractive modern policies in criminal justice worldwide, is getting more and more supporters in Bulgaria too (Chankova, 2002; Chankova et al., 2008, Chinova and Ivanova, 2005, etc.).

Considered to be a new and more humane paradigm of criminal justice, it is based on the idea of the recovery of the victim and offender, repairing damage and restoring balance in society. This new approach to crime enjoys wide support among academics and practitioners alike and society at large as it is focused on the victim and is geared towards the future and not towards the past.

The current Bulgarian legal system has traditionally used some alternative dispute resolution methods, different elements of which are integrated in the system's jurisprudence. They are primarily used in the resolution of civil, family and labour disputes, with the highest use in arbitration and out-

of-court settlement. The last Criminal Procedure Code, adopted in 2005, which came into force on 29 April 2006, reinforces these opportunities. Penal proceedings should not be officially instituted in cases of complainant's crimes. The instituted proceedings shall be discontinued if the victim and the offender have reached reconciliation. Such reconciliations can be taken at every stage of the proceedings. Although the legislation does not specifically refer to mediation or any other out-of-court method for settlements between the victim and the offender, it gives an opportunity for the application of these methods.

Bulgarian penal law envisages a number of alternative to the punishment measures. It also establishes the cases when social measures may be imposed. These measures can be found in the Juvenile Delinquency Act of 1958. Some of the measures have a restorative character that imposes a number of duties on the juvenile for example: apology to the victim, doing community service etc. The implementation agency is the Commission for combating juvenile delinquency.

The Bulgarian Mediation Act was adopted in 2004[5]. It introduced mediation as an alternative method for the resolution of family, civil, administrative and other disputes between natural and/or legal persons. A much praised achievement of the law is Article 3, paragraph 2, which provides for mediation in criminal matters as envisaged in the Criminal Procedure Code. Bulgaria belongs to the continental system of law; hence for mediation to be implemented, a detailed legislative regulation is necessary. Despite an explicit requirement in the law to that end, the Criminal Procedure Code of 2005 did not provide for any cases where mediation could be applied and left this issue to subsequent amendments.

In 2006, the Bulgarian government adopted a National Strategy for the Support and Compensation of Crime Victims. Section 13 of the Strategy's guiding principles affirms that victims may use mediation in relation to criminal proceedings. Section 2 of the immediate objectives of the Strategy refers to possible legislative amendments to 'ensure the possibility that victims take part in mediation in the course of criminal proceedings', which constitutes a clear government policy in this area.

In the newly developed Draft Strategy of the Ministry of Justice for Continuation of the Justice System Reform (2010) mediation in penal matters is explicitly mentioned as one of the high priorities.

The new changes and amendments to the Mediation Act were introduced at the end of 2006. Those changes and amendments list the requirements that mediators must meet concerning training and registration in the Unified Register of Mediators. The Minister of Justice approves the mediator training organizations with a ministerial order. The conditions for their approval, as well as the new training standards for mediators, together with the procedural and ethical rules of conduct for mediators, are detailed in regulations issued by the Minister of Justice in 2007.[6]

At the moment attention in Bulgaria is focused on introducing mediation in criminal matters, although restorative practices are being experimented in other areas such as schools, prisons and probation offices. RJ is well represented in the university curricula. This contributes to establishing a restorative culture and climate that is in line with modern trends and to some extent in contrast to traditional penal repressive policies for dealing with crimes. However, a lot should be done in RJ field in order that Bulgaria meet fully the international standards and accomplish the obligations as an EU member.

V. Former Soviet Union countries

MOLDOVA

[5] Promulgated in the State Gazette No. 110/2004, amended in the State Gazette No. 86/2006

[6] Regulation No 2 of 15 March 2007 on the Conditions and Procedure for Approval of Organizations Providing Training for Mediators; on the Training Requirements for Mediators; on the Procedure for Entry, Removal and Striking off Mediators from the Unified Register of Mediators; and on the Procedural and Ethical Rules of Conducts for Mediators, issued by the Ministry of Justice.

In Moldova, a former Soviet state, the so-called 'Gulag Mentality' was still recognisable a long time after 1989. It resulted in the high punitiveness of the general public and the justice system and the strong support of tough responses to crime, such as incarceration.

In the Republic of Moldova the implementation of RJ started in 2001, when a working group evaluated possibilities of implementation of alternatives to detention, and VOM as a part of RJ. The organization most involved in the implementation of RJ practices in criminal law in Moldova was the Institute of Penal Reform.

In 2003, the Code of Criminal Procedure allows conciliation between parties through mediation (Art. 276). Training in VOM started. First of all training programmes for judges, prosecutors and police officers were prepared, with the goal of informing the judicial community about the new approach to offending and particularly RJ. The focus of training was also to develop skills, methods and techniques applied in the process of VOM. In 2005 the Mediation Centre started activity. Some results of mediations carried could be represented as follows: During the period 2005-2006 more than 150 referrals were sent; more than 125 cases were selected for mediation; 79 cases were mediated (40 juvenile, 39 adults) and 55 (70%) reconciliation agreement reached (Popa, 2007).

At first mediation is implemented only in juvenile cases, but later on, it is extended to adult offenders. A detailed draft Law on mediation in criminal matters has received favourable expert approval from the Council of Europe (June 2004) and was adopted by the Moldovan Parliament in 2007. The law regulates the procedure for referring cases for mediation, the principle of mediation, the administrative organization of mediation and both the mediators' and parties' rights and obligations.

According to the Law on Mediation, the Mediation Board within the Ministry of Justice has been established to organize and coordinate the mediators' activity. The Mediation Board consists of 9 members appointed through the order of Minister of Justice, as a result of the public competition organized by the Ministry of Justice. In order to comply with the duties as established in art. 23 of the Law, the Mediation Board drew up several regulations: the Regulation on mediators' testing; the Regulation on registering the mediators' offices and the application of registering the individual or joint office; the Ethical Code of mediators; Curriculum on Mediation (initial training), etc. The parties can reach an agreement or reconcile with the help of a mediator in cases of minor or less serious offences (punishable by less than 5 years of imprisonment). The prosecutor, the judge or the parties themselves can refer the case to mediation, though the mediation will not suspend the criminal trial. Mediation can be initiated in all stages of the criminal procedure, but no later than when the judge or the panel of judges enters into the deliberation room. The settlement agreement has to be transmitted to the person who referred the case to mediation, as a result of which the criminal file is closed.

RUSSIA

The ideas of RJ began to be first implemented in a Russian context in 1997 when Moscow Interregional Centre for Legal and Judicial Reform started systematic efforts to launch the first Victim-Offender Reconciliation Program. In 1999 the Centre began to expand RJ practice to Russian regions. Today it is possible to speak about an interregional network of social organizations aimed at promoting RJ programs guided by the necessity to comply with norms and principles of international law and of international treaties that Russia has adopted (Interregional Non-Governmental Organization "Public Centre for Legal and Judicial Reform, 2001).

The specialists of the Centre for Legal and Judicial Reform firstly analyzed the situation regarding juvenile justice in different western countries and came to the conclusion that it is not the rehabilitation techniques but RJ programs that make the core of juvenile justice. RJ programs together with social work and psycho-therapy make it possible to accomplish rehabilitation, re-socialization and re-integration of young offenders into society because RJ lets young people realize their fault, take responsibility for the crime committed and redress the wrong.

The Centre for Legal and Judicial Reform and its partners in the regions have developed and are realizing a new concept of restorative juvenile justice. This concept is basic for the model where social workers, mediators and other specialists interact with young offenders and with courts, juvenile commissions and schools (Karnozova and Maksudov, 2006).

Currently the elements of these models are being introduced in Moscow, Tyumen, Urai, Perm, Lysva, Novosibirsk and Kazan. Similar methods are introduced in the other spheres of work with minors: in schools, juvenile commissions, etc. Thus, mediation and family conferences are becoming the core of juvenile justice, since these are the procedures which let the participants in the meeting make decisions and fulfill them for the sake of the child. So, although the use of RJ in Russia is not regulated by a specific law there is a lot of happening in the field. The implementation of restorative justice in Russia is supported by judges, lawyers, and specialists in the social services. Therefore, mostly these professionals carry out restorative justice programmes.

Restorative practices are applied in the following contexts:

1. Restorative justice programmes in penal cases, and in unreported criminal offences – in Moscow, Dzerzhinsk, Irkutsk; Velikii Novgorod, Urai,(Tyumen region), Petrozavodsk, the Perm territory, the Volgograd area, Kazan, Novosibirsk.
2. Restorative justice programmes with offenders under the age of criminal responsibility – in Dzerzhinsk, Tyumen, Irkutsk, Moscow, Velikii Novgorod;
3. Restorative justice programmes in schools – in Moscow, Urai, Tyumen
4. Restorative justice programmes in working with families in crisis (abandonment-prevention and healing intra-family relationships) – in Moscow, Arzamas, Velikii Novgorod (Maksudov, 2008; Laysha, 2005).

UKRAINE

The last Ukrainian Criminal Code 2001 contains some provisions for the application of restorative justice. Article 46 permits the court to use the outcome of the victim-offender reconciliation procedure and to close the criminal proceedings in cases of first time, minor offences (minor offences punishable by less than two years of detention or by other mild forms of punishment such as community service, fines, etc.). There are other articles in the Criminal Code, for example Articles 44, 45 and 47, allowing for the use of reconciliation for first-time offenders who are accused of crimes otherwise punishable by less than five years of detention. But the term reconciliation is only explicitly used in Article 46. Unfortunately this provision is rarely used. It is poorly understood by the judiciary and it also lacks a well-established procedural framework for implementation. However, the doctrinal interpretation of Article 46 of the Criminal Code states that its provisions apply to mediation – a widespread method to resolve criminal conflicts abroad. The good news is that the work on the new Ukrainian Code of Criminal Procedure is in progress and it is still possible to incorporate provisions for the basis of the mediation procedure, the terms as well as the justice system bodies and representative that can refer cases for mediation.

The application of RJ in cases of juveniles is supported by the Resolution of the Plenum of the Supreme Court of Ukraine on "Practice application by Ukrainian courts in cases of juvenile crimes" 2004.

The first restorative justice project in Ukraine has been initiated by a NGO – Ukrainian Centre for Common Ground – and it is functioning on a pilot basis since January 2003. At present there is informal support for restorative justice by the Academy of the General Prosecutor's Office, the Academy of Judges, the Supreme Court, the Ministry of Justice, the Ministry of Family and Youth Affairs and Kharkiv Regional Court of Appeals. All of them are interested in the implementation of restorative justice (Koval and Zemlyanska, 2004; Koval, 2005).

VI. Other Balkan countries

ALBANIA

Traditionally Albania is known as a country of revenge and blood feud, so the notion of restorative justice is a new one in the Albanian society. On the other hand, mediation and reconciliation has been known and applied in many criminal cases in the stage before the judicial proceedings.

The modern Albanian legislative system has created the necessary grounds for the application of mediation in criminal cases.

Firstly, according to Article 59 of the Code of Criminal Procedure the court has the right to undertake actions and make efforts to resolve criminal cases through mediation and reconciliation for the category of criminal cases such as: assault, serious injury due to negligence, non-serious injury due to negligence, violation of the dwelling place, slander and other case when there is a complaint of the victim towards the offender.

Secondly, Article 284 of the Code of Criminal Procedure defines the cases of criminal conflicts in which the penal procedure is initiated by the prosecutor's office or the judicial police based on the complaint of the victim, and in which the complaint can be withdrawn by turning to mediation at any stage of the proceedings. These are cases of unintentional non-serious injury, murder owing to carelessness, offences and slander for duty reasons, etc.

Albanian legislation created greater opportunities for the application of mediation through the Law on Mediation and Reconciliation of Disputes, adopted by the Albanian Parliament in March 1999, and followed up by law No. 9090 of 26 July 2003 on Mediation in Dispute Resolution. The approved law on mediation includes a wide range of disputes, foreseeing the application of mediation in civil, property, family, commercial cases, etc. Article 2 of the mediation law institutionalises mediation as an alternative in criminal conflicts.

The Albanian Foundation "Conflict Resolution and Reconciliation of Disputes" is the main institution to apply victim-offender mediation. It is a non-profit organisation founded in 1995 by lawyers, sociologists and ethnologists, with the aim of offering mediation in different kinds of conflicts (Gjoka, 2004).

SERBIA AND MONTENEGRO

RJ in Serbia and Montenegro has been developed thanks to the UNICEF global efforts in the area of juvenile justice directed towards the reduced incarceration of juveniles and the development of policies and practices that encourage the use of alternatives to deprivation of liberty. Together with governmental and NGO partners, UNICEF in Serbia and Montenegro promotes community rehabilitation as a safer and more effective approach to reintegrating the child into society than the prevailing retributive approach. For these reasons, UNICEF systematically strongly advocates restorative justice approaches, diversion, and alternatives to custodial sentencing.

UNICEF has been supporting governmental efforts to reform the juvenile justice system since 2001, which led to the initiation of the juvenile justice reform project "Children's Chance for Change" in 2003. The project has been developed in partnership between the Serbian & Montenegran governments, UNICEF and the Swedish International Development Agency. The overall project objective is to promote comprehensive and multidisciplinary reform of the juvenile justice system in Serbia and Montenegro aimed at improving the protection of the rights of children at risk and in conflict with the law. Within the project, UNICEF in Serbia lobbied for, and provided support for, the development and adoption of the new Juvenile Justice Law which came into force in 2006 (Vujacic-Ricer and Hrncic, 2007) .

One of the novelties the law introduces is the inclusion of diversionary schemes aimed at diverting children from legal proceedings. Out of the five diversionary measures defined by law, one specifically concerns victim-offender mediation. According to the law, diversionary measures can be issued by prosecutors before the beginning of legal proceedings, or later, by the judge, after criminal proceedings are initiated.

A pilot project was set up in Niš and a model of VOM that was considered the best match for the local environment was developed.

UNICEF supported the strengthening of the newly established National Mediation Centre. VOM training developed within UNICEF project was adopted as the official training package of the Mediation Centre. Finally, the VOM has been defined as a service offered by the Centres for Social Work in the new Rule Book of Centres for Social Work which was adopted in May 2008.

Some of the most significant UNICEF-led initiative in RJ and VOM in Serbia and Montenegro encompasses the following:fully operational Mediation Centre in Niš, Serbia; fully operational Mediation service in the Juvenile Correctional Institution in Kruševac/Serbia; Mediation Network encompassing community based VOM in the 14 municipalities in Serbia; establishment of the Mediation Service in Bijelo Polje, Montenegro (in 2006);inclusion of VOM into the curricula of the

Faculty of Political Sciences Belgrade University/Serbia (since 2005); establishment of the Serbian Association of Mediators (since 2006); a comprehensive RJ and VOM Manual (based on training materials developed within the "Children's Chance for Change" project) endorsed by the Ministry of Justice as the official training manual for VOM;more than 200 well-networked mediators throughout the country trained to apply VOM, of whom 50 trained as VOM trainers, etc.

However, the full introduction of VOM (and other diversion measures and alternative sanctions) still remains a challenge for all of Serbian and Montenegrin RJ proponents (UNICEF Serbia, 2008).

BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina there is practice in mediation in civil law (commercial, labour, property, etc). A Mediation Act was adopted in 2004 and lately VOM proponents were active in advocacy to introduce mediation into juvenile justice system, since there was a reform under way (Uletovic et al., 2008).

In January 2010 in Republika Srpska (one of two main political entities of Bosnia and Herzegovina) the Law on Protection and Procedure with Juveniles was adopted introducing mediation as a method of reaching two diversionary measures: apology to the victim and reparation to the victim. Mediation will be possible in all stages of juvenile penal procedure for acts otherwise sanctioned financially or with up to 5 years of imprisonment and also in criminal acts that are prosecuted upon the victim's request. Mediation would be implemented by social care centres and the Association of Mediators. The law will come into force as of January 2011.

CROATIA

In Croatia a model of VOM in the cases of juvenile offenders has been practised since 2001. VOM is implemented only during the pre-trial procedure. According to the Croatian Juvenile Court Act 1997 VOM is applicable to juvenile offenders who have committed offences punishable by financial compensation or imprisonment of up to 5 years. The VOM model was developed by the project "Alternative Dimensions for the Juvenile Offenders" by the Ministry of Help and Social Welfare, Croatian State Attorney Office and the Faculty of Education and Rehabilitation Sciences. There are approximately 3.000 to 3.500 offences committed by minors per year in Croatia. Since 1998 (the year since when the Juvenile Court Act was applied) between 35% and 45% of cases referred to the office of public prosecutor for minors were being resolved out-of-court through preliminary pre-trial procedure. The annual statistics show that up to 25% of them used victim-offender mediation.

Evaluation points to the overall satisfaction with the outcome of the VOM process. Also it indicates that the recidivism rate for juveniles who had been included in VOM is significantly lower (10 %) than for juveniles who participated in other forms of treatment of juvenile delinquency (30%) (Zizak, 2009; Peuraca, 2009). The Croatian Association for Out-off-Court Settlement was established in 2003.

VII. Conclusions

Having in mind all the data and information available and in spite of the huge dynamic in the RJ field in this region, some conclusions about the latest developments of RJ in CEE countries can be drawn:

1. Ancient traditions for reconciliation and reparation exist almost everywhere as a rule; Restorative justice in the modern sense of the word is a new idea.
2. The retributive approach still prevails over the restorative elements in the legislation and practice.
3. RJ practices are still at an early stage of development; development has been uneven in the different countries.
4. There is already an active NGO sector, launching information campaigns, various projects, pilot schemes, lobbying, training, networking.

5. Academics are one of the main proponents of RJ. Training and university education in RJ principles and practices are rapidly developing.

6. Policy makers (in some cases) are behind time

7. Still underdeveloped legislation prevents from spreading RJ practices (important for this region, as most countries belong to the continental law system).

8. Victim-offender mediation is the most popular RJ practice, family group conferencing and family group decision making are in progress.

9. In criminal justice systems RJ practices are rather a supplement than a true alternative, both for juvenile and adult offenders.

10. RJ models (to the extent to which RJ provisions exist) are available at any stage of criminal proceedings; first attempts for using RJ practices in prisons, schools and in community

11. Increasing number of referrals and agreements reached (but still small in numbers)

12. The first books (original or translated) have been published.

13. Still a lot should be done for the full implementation of the international RJ standards.

However, it is an exciting time for RJ developments in Central and Eastern Europe.

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Summary

Restorative Justice in Central and Eastern Europe is a relatively new phenomenon. Most of the former "socialist countries" are still in the process of reforming their criminal justice systems and deciding how Restorative Justice could fit into them. These states have traditionally utilized highly punitive justice systems and state stability has been of the highest priority in their transitional period. Therefore, the transition to Restorative Justice processes has taken time. An impetus for the change to restorative frameworks for justice has been the necessity to guarantee compatibility of domestic law with international standards as well as the high rates of incarceration in the region and high levels of recidivism resulting in overcrowded prisons. Member-states of the European Union have been also encouraged to make such reforms to conform to European standards. Some of the common challenges in bringing Restorative Justice to Central and Eastern Europe are: passive citizens used to paternalist, centralized policies, low levels of trust in non-governmental organizations, resistance among professionals in the justice systems, etc.Hence, there were formidable obstacles to getting the legislative change and societal support to bring Restorative Justice to the region. Nevertheless, huge progress in the field has been registered recently. Many of the countries have introduced some of restorative justice models- victim-offender mediation, family group conferencing, family group decision making, etc. As a rule, they are firstly applied to juvenile delinquency, but lately extended to adult offenders. The rest of the countries have already undertaken preparatory measures for introducing restorative practices in their legal systems. Of course, a lot remain to be done for the full implementation of the international restorative justice standards.

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