5 Key Findings about the Practices of Restorative Juvenile Justice in Eastern and Central EU Countries: Bulgaria, Croatia, Hungary, Romania, Slovenia

The recent European Model for Restorative Justice with Juveniles report illustrates the advantages of a restorative approach to child offending.

Restorative justice offers an alternative to the traditional perception of a criminal offense and how to respond to it, especially in offences involving juvenile suspects. Some of the key advantages of restorative justice measures include:

- move away from retributive punishment
- address the underlying causes and consequences of offending; repair the harm; promote the child’s rehabilitation and reintegration into community
- focuses on healing, mutual respect and strengthening relationships, may be introduced to children who are victims, witnesses or offenders and promoted at all stages of the criminal justice process
- lower recidivism rates; greater likelihood of completing education and increase their life chances

There are numerous methods how to implement restorative justice measures, such as mediation, conciliation, conferencing and sentencing circles. One of the most prominent and most commonly adopted is the Victim-Offender Mediation (VOM) method, which brings together the victim, the young offender, the child’s parents or guardians, child protection and justice professionals, the school and the community in resolving the problem.

Overall children who participate in restorative justice processes benefit from the following:

- fewer tendencies towards anti-social behaviour in the community and at home;
- an understanding of the consequences of their acts on others and an opportunity to take responsibility
- victims report lower levels of fear and post-traumatic stress symptoms after a RJP
- at least 85% of victims that have participated in a RJP express satisfaction

The following part presents an extract of key findings about the implementation of restorative justice measures when dealing with juvenile offenders in five Central and Eastern European Union countries – Bulgaria, Croatia, Hungary, Romania and Slovenia.

BULGARIA
Bulgaria’s recent documents reinforce the priority of restorative justice measures over punishment. One key aspect of the restorative justice measures – Victim-Offender
Mediation (VOM) – has the legal basis in the Mediation Act of 2004. In Bulgaria, VOM, apart from being offered only at the court level and not already during the pre-trial, however also excludes juvenile offenders.

For young offenders, the few measures with a restorative character can be found in the Juvenile Delinquency Act 1958. This includes delivering an apology to the victim, making reparation for the damage through work if possible, participation in educational programmes, consultation for rehabilitative purposes and community service. These are, however, condemned as not fully restorative, as they do not involve the victim as well as the offender, therefore lacking the fundamental restorative principle – voluntariness – as these measures are imposed by the Local Commissions for Combating Juvenile Delinquency. The approach largely preferred in Bulgaria, thus, remains retributive (punishing) rather than restorative, both in terms of the legislative framework and its implementation in practice.

CROATIA
Restorative justice processes for juveniles have been also developed in Croatia. Most prominent RJP is again the VOM – known in Croatia as “out-of-court-settlement.” In Croatia, mediation is open to juvenile offenders and young adult offenders at all stages of a criminal proceeding, although they play the greatest role at the pre-trial stage. The public prosecutor or the Juvenile Council of the court can order special ‘educational measures’ to divert the punishment, which includes apology to the victim or community work. The mediation procedure, which is to be completed within a period of three months, can be one of the ordered obligations based on the principle of voluntariness of both parties – the victim and the offender. The possibility of participating in rehabilitation programmes or undergoing psycho-social treatment with the young offender’s consent to such conditions are also included.

Mediation services operate in the cities Zagreb, Osijek and Split. An Association for Out-of-Court- Settlements in Croatia was established in 2003. Only three such services, however, represent a rather small number. There is, therefore, a great need to expand this practise further. Especially as the evaluation studies show great satisfaction of both parties - victims (95%) and suspects (94%), while 90% of the mediation cases resulted in an agreement between victim and offender, out of which 86% were completed successfully.

HUNGARY
Hungary has also embarked on the practise of restorative justice measures primarily through VOM. Other alternatives include the “probation supervision” under which the indictment of the offender is postponed. The emphasis is on providing support for the young offender and on reducing the risk of recidivism by subjecting him/her to the supervision of a probation
officer applicable to all categories of offences for juveniles offenders. The Criminal Code, incorporates the notion of “active repentance” since 2006, which refers to the achievement of the closure of the case in terms of juvenile offenders.

The VOM is available both, during pre-trial as well as court stages of the criminal procedure. Mediation is subject to several conditions, such as the time limit of three months for its fulfilment as well as the costs to be covered by the offender, unless court costs had been waived prior to the process. The referral for the VOM is again in discretion of the prosecutor or upon the request by the parties and with their consent. Although opportunity for VOM extends to juveniles for all offences punishable for up to five years of imprisonment, there are criteria under which a person can be illegible for VOM. For instance, if the offender belongs to a criminal organization, if the offence has been committed within the period for which the prosecution has been postponed, while on probation or upon conviction and prior to the enforcement of a custodial sentence or if the offence was committed within two years of successfully participating in mediation. Mediation seems to be, however, a rather limited option in practise, (around 10% of all cases in 2012). To a certain degree, this can be due to the prosecutors and courts’ preference for the alternative measure of probation supervision as well as other limiting factors, such as lacking availability and access to trained mediators.

ROMANIA

Recent criminal law reforms in Romania provided for a shift regarding the wider application of VOM. First such effort was made with the 2006 Law on Mediation. Special procedural rights of juveniles are to be safeguarded with the legal assistance and the presence of parents or guardians in cases involving young offenders; with possibility of participation from probation officers, social workers, family members or community members. The new Code of Criminal Procedure (2014) underlined mediation-related aspects. Criminal proceedings at the pre-court and the court level have to be suspended if the parties reach a reconciliation agreement through mediation. It expanded the use of mediation for offences which are punishable by a fine or imprisonment for up to seven years, the public prosecutor may dispense with prosecution if there is no public interest in prosecution and the offender has fulfilled the obligation(s) stemming from the mediation agreement. The prosecutor can determine a period of up to nine months within which the obligations shall be fulfilled. The authority responsible for training and monitoring of the mediation processes is the Mediation Council. The mediators are thus trained professionals rather than volunteers, although working on a private basis, therefore the costs are to be covered by the parties.

Only some evaluation studies have been conducted on the effectiveness and attitudes to the VOM, while official data is largely lacking. The available research points to the relatively high levels of participants’ satisfaction with the mediation procedure. Most participants
reported they appreciated their active involvement in mediation. About 90% of the beneficiaries were satisfied with the mediation agreements. Although, a study in 2010 found that perceptions of public prosecutors and judges VOM, who have been legally obliged to inform the parties about mediation; are largely positive but with limited knowledge and information, pointing to a great need for more appropriate informing of issues, such as the procedure of mediation, facilities delivering mediation services and experiences with mediation in order to enhance its effectiveness and implementation. Overall, however, Romania has come a great way forward in terms of offering alternative measures to punishment that in the long-term will surely prove highly beneficial.

SLOVENIA

The practice of restorative justice has been implemented in Slovenia since as long as 1995 with the VOM implemented since 1999. Yet there has not been any separate legislation for juveniles, although the new Criminal Code (2008) stipulated such provisions. The VOM can be used in Slovenia at both, pre-and-during the court stages, (only) upon a request of the prosecutor for an offence punishable by an imprisonment for up to five years. The law is generally more favourable towards juvenile offenders, and having previous convictions does not make the offender ineligible for mediation. With such a little number of referral it is natural that the success rates were high, considering the careful consideration for mediation of the few cases.

Despite the above mentioned challenges, including the dramatic decline in mediation cases in recent years and the lack of funding for mediators, the existing legal framework is generally favourable towards the use of mediation and other interventions that reflect restorative justice thinking to a certain degree. Restorative justice measures could thus be strengthened over time with the support of committed researchers, legal and social professionals.

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