



**Specific Programme Criminal Justice
European Commission
Directorate-General Justice – Directorate B: Criminal Justice**



**Key-Practitioners'
Report of
BULGARIA**

3E-RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe.
Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain
(including research also in Turkey, the Netherlands, Denmark, Germany)
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The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
Concerning Act_10 & 11 of the EU "3E-RJ-MODEL" PROJECT

I. Introduction

I.1.General data of the interviews

According to the research plan 7 interviews have been carried out.

The interviewees are experts in the field of restorative justice (RJ) with significant expertise, taking into account that in Bulgaria RJ is still at early stage. They are located in 3 cities - Sofia, Varna and Blagoevgrad.

The interviewees have been:

1. Mrs DB - criminal judge at Sofia City Court, with 9 years experience in RJ field, trained at Pepperdine University School of Law, Malibu, California, USA, 30 hours training in Mediation and RJ principles and practices, in 2010
2. Mrs ES - public prosecutor at Specialised Prosecutors' Office of Appeals - Sofia, 8 years experience in RJ field, trained by National Association of Mediators- Bulgaria, 16 hours, in 2007
3. Mr YG - police officer at District Directorate of Police- Blagoevgrad, 8 years experience in RJ field, trained in 2009
4. Mr YY – lawyer, Varna Bar Association, 6 years experience in RJ field, trained by the Union of Bulgarian Lawyers- Sofia, 60 hours, in 2007
5. Mr BZ - mediator, Varna, 2 years experience in RJ field, trained by the Union of Bulgarian Lawyers- Sofia, 60 hours, in 2007
6. Mr YE - probation officer, Blagoevgrad, 4 years experience in RJ field, trained by the Institute of Conflict Resolution, 60 hours, in 2008
7. Mrs EY - Executive Director of Prison Fellowship Bulgaria- Sofia, (NGO partner), 5 years experience in RJ field, trained at Queen College, Kingston University, Canada

Note: Although some of the interviewees have changed meanwhile their positions, the answers given are in their described qualities and according to their RJ expertise.

The above mentioned have been interviewed by Prof. Dr. Dobrinka Chankova - Project Participant from Bulgaria.

I. 2. Methodology

The research was conducted by implementing mainly face-to-face interviews.

The questionnaire was sent in advance, at least one week before the scheduled interview, in English. The interviews were conducted in Bulgarian.

The suggested questions were adjusted according to the profile of the respondents.

Herewith is the summary and the analysis of the findings.

II. Key-Practitioners' Interviews findings

II.1. A General Approach to Restorative Justice

II.1.1. On Restorative Justice within the Criminal Justice System

Key practitioners' opinion about the way in which Restorative Justice is implemented in Bulgaria is coherent.

It is widely recognised, and this is based on practice and relevant research, that Restorative Justice can help to raise the effectiveness of criminal justice, to improve and restore the relationship between victim and offender, and generally to recover the broken connections in the community. Despite of these self-evident benefits, and the strong theoretical input, RJ is still in the peripheral attention of the Bulgarian policy makers and far way from being a mainstream in criminal justice delivery. Although in Bulgaria does exist enabling legislation (Mediation Act 2004, Penal Code 1968, Penal Procedure Code 2005, Juvenile Delinquency Act 1958), a considerable legal vacuum remains with regard the status of RJ providers, scope of RJ application, funding, training, etc. That is why the implementation of RJ practices is still predominantly a function of the good will and the initiative of far-seeing professionals and NGO activists. It is practiced sporadically, in the frameworks of different projects and even in the "shadow of law". RJ in the way it is implemented in Bulgaria is represented mainly by victim-offender mediation (VOM) in complainant's crimes and restorative interventions towards juvenile delinquents. There are also some grass root

initiatives, mainly of NGOs, like piloting of conferencing. In fact, RJ has much more to offer, but its potential is underestimated. RJ as a measure of diversion and as a part of the sentence is not appropriately applied. So far RJ has not received the necessary and well-deserved "green line". On the opposite, there is remaining reluctance among politicians and a part of judicial society, so it cannot be claimed that RJ lines smoothly with the Criminal Justice System (CJS). To achieve the desired symbiosis many internal and external hindrances have to be removed.

All respondents share the opinion that RJ can help for reforming of justice system which desperately needs reform, especially in preliminary investigation and juvenile justice. This flexible approach, if incorporated in criminal proceedings, might help the system's transformation by developing a new method for closing the cases, considering the peculiarities of each one, dealing properly with human emotions, respecting dignity and addressing future. RJ can especially contribute to relieve the heavy workload of magistrates, and may provide an alternative, effective and cost-effective response to crime for the state and also for the parties involved. The judge interviewed even added that it is essential a special room or centre of mediation to be established in each court, but this is still rarely met - only in some courts in the country.

Shared opinion exists that today we face a globalized penal crisis and the deficits of the functioning of criminal justice systems are huge. There is a threat for rising of "penal populism". Restorative Justice is also a way to minimize repression.

II.1.2. On the objectives of Restorative Justice

The majority of respondents think that RJ is beneficial in each of the following directions:

- a) can actually help towards the community development (e.g. by promoting tolerance)
- b) can support the victims of crimes by encouraging them to express their needs and by enabling them to participate in the process
- c) can help the offenders of crimes by encouraging responsibility
- d) can contribute to the reduce of recidivism

Victims often feel disadvantaged by the fact that they are placed in a position away from the investigation and do not get satisfaction just from the punishing of

the offender. RJ can significantly help giving them a central role. Victims receive not only higher (in many cases) and faster compensation but also moral satisfaction. Transformative effect of RJ practices towards the offender and society in general, by involving its representatives in decision making process and in the implementation of accepted action plans, contributes to the strengthening of sense of belonging, further develop societal bonds and reduce recidivism. One who realizes his wrong act and the consequences of it, will never repeat it again. This is also the way towards establishment of restorative climate and culture in society, respondents say.

II.2. Restorative Justice Frame of Implementation

II.2.1. On levels and forms of implementation

Here the questions to each key-practitioner have been adjusted according to the level of the Criminal Justice System that he/she represents. However, they have also expressed their opinions in general and it should be noticed that there is a strong correlation between the answers as a whole.

All respondents agree that on *police level* of the Criminal Justice System in Bulgaria, regrettably, RJ is not officially applied at present, although they see room for this. According to the police officer there is a new trend of starting the implementation of this kind of measures on police level because there is already awareness how important they could be. However, all depends on the initiative of separate police officers.

On *prosecution level* of the Criminal Justice System for adults no statutory established options for restorative interventions either. The prosecutor interviewed finds some restorative elements in plea bargaining procedure as the compensation or reparation of the harm inflicted is a prerequisite for this procedure. Again, by the initiative of separate prosecutors some restorative interventions are undertaken as a complimentary measure.

Most respondents share the opinion that restorative practices for adults currently are implemented mainly on *court level* although much more could be done at that stage.

On *correctional level* there are separate pilot projects run by NGOs.

There is a general dissatisfaction with the fact that our CJS does not correspond to the necessary extent to contemporary penal policy as there is a

proven need for RJ application on all levels. CJS should be more sensitive to societal appeals and should accommodate restorative interventions at all stages. Remarkably, a will for implementation of these practises was clearly expressed. Of course, all agree that firstly the necessary law changes have to be made and appropriate training should be provided. Moreover, information about the benefits of RJ should be distributed broadly.

The interviewed key practitioners have been asked about the different forms of Restorative Justice applied in Bulgaria.

All confirm that the most largely used model (if we can say it, having in mind the limited scope of application) is *victim-offender mediation*. It is implemented in so called complainant's crime - more precisely the cases of minor injuries (e.g. light bodily harm, insult etc.) for which criminal proceedings are instituted on the initiative of the injured party.

Restorative family group conferencing is applied in juvenile delinquency cases (bullying, other forms of aggression, petty thefts etc.)

Restorative conferences are used in cases of adults sentenced to probation (usually for not serious crimes of different nature - against person, against property, misappropriation etc.) and in some cases of deprivation from liberty.

The other RJ models are not used in Bulgaria at present.

II. 2. 2. On categories of crimes

The Mediation Act only stipulates that VOM is applicable in cases provided for in Penal Procedure Code. Although this code as well as some provisions of Penal Code further allow RJ use, the legislative deficit in Bulgaria in relation to RJ leaves its application to great extent to discretion of practitioners. According to their experience, as mentioned above, it is mainly implemented in complainant's crimes.

The practicing mediator also finds that RJ is a relevant instrument in a specific category of crimes, so called crimes of public-private nature - when the criminal prosecution of public nature is instituted upon a complaint of the aggrieved party to the prosecution and cannot be terminated at his/her request. These are the cases when somebody causes somebody else a health disorder /minor injuries/; when somebody inflicts on somebody else, by negligence, serious or average bodily

harm or when somebody, knowing that he suffers from a venereal disease, infects somebody else with the same disease.

Some restorative interventions are used towards convicted to probation juveniles and adults for committing relatively petty offences - thefts, vandalism, hooliganism, aggression.

In prison settings restorative conferencing is used in the frameworks of pilot schemes towards deprived from liberty for almost all categories of crimes with some exceptions - heavy cases of deliberate murders and sex-related crimes. These restrictions are not because of the inapplicability of RJ, the provider from NGO says, but because of statutory limitations to the access to these offenders.

In summary, the vast majority of respondents think that at that initial stage RJ is a relevant instrument in petty crimes mainly. However, some admit that it is an adequate instrument in larger number of offences against person, citizen's rights, property, especially while covering the damages. But respondents are almost unanimous while exclude from RJ application serious crimes of high social danger - the offences against the republic, the activities of government bodies, economy, sex- and drugs-related crimes, murder, kidnapping, terrorism and other generally dangerous offences.

Moreover, most find that RJ is an adequate approach towards crimes committed by juveniles, and in that cases the legislator should be more liberal. Although repeated crimes are not totally excluded from RJ application, a careful selection and risk assessment should be made in advance.

It could be commented that the respondents are rather careful and put strong limitations to types of crimes referred to RJ. This corresponds with the social expectations to justice delivery. However, the above mentioned categories of offences represent the biggest part of crime committed so there is enough room for RJ.

II.2.3.On Children and Young Offenders

As mentioned, all interviewed key practitioners share the opinion that RJ is the most relevant instrument towards children and young offenders as it is more easily accepted and offers more effective alternatives in comparison to other formal and stigmatizing measures of Juvenile Justice System.

At the same time the interviewees are unanimous that the existing legal framework and respective practice are not adequate and satisfactory. The Penal Code 1968 and Juvenile Delinquency Act 1958 do consider application of some RJ measures (apology to the victim; attending educational programmes and consultation with a rehabilitative purpose; repairing the inflicted damage by own work, where possible; and community service) towards antisocial acts of children and youth. But it could not be claimed that these acts fully correspond to the situation now and contemporary trends. That is why we need modern legislation envisaging use of genuine RJ practices at a larger scale towards juvenile delinquents. The interviewees have demonstrated will and readiness to broader application of RJ models but they insist that juvenile justice system and the relevant legislation should be improved and modernised and should allow more flexibility.

As a good sign in this direction some respondents see the new National Strategy for Juvenile Justice 2011 envisaging wider use of restorative measures. However, the relevant legislative provisions are still forthcoming, that is why at that stage the opportunities for application of restorative practices are sought in the frames of the existing legislation.

On *police level* there are inspectors specialized to work with children and young offenders. They have special skills and education, methods of work, and definitely good results. But they could not apply RJ as a diversionary measure due to legislative restrictions, only as a complimentary measure.

On *prosecution and court level* there is a limited scope of application of RJ measures - when the offender has committed a crime that is not very harmful to society. In that case the public prosecutor, respectively the judge, could take a decision for release of juvenile offender from criminal responsibility with the substitution of appropriate correctional (educational) measures (measures of public influence), as provided by Article 78 in connection with Article 61 of the Penal Code.

On *correctional level* some RJ interventions are also applied towards juveniles.

Again, all respondents find that the huge RJ potential in relation to children and young offender is underestimated and not fully used in Bulgaria. It should be further expanded to all levels and especially to police and correctional levels. Of course, the practitioners should be dully trained for this.

At that stage the only used genuine RJ method towards juvenile offenders is *restorative family group conferencing* applied in frameworks of pilot projects for bullying, other forms of aggression, petty thefts etc. It should be further developed and institutionalised. A special accent should be put on development of VOM, as there is already a delegation in Mediation Act. The other RJ practices should be firstly piloted and if successful, should be legally established. Juvenile Justice System is necessary to be much more open for innovations and experimentation, some respondents say.

Currently Restorative Justice is mainly implemented to children and young offenders in petty crimes and some anti-social acts. The respondents find this scope of application unsatisfactory. It could and should be expanded to more serious crimes.

During the process of *restorative family group conferencing* the parents are getting involved as well as social workers, psychologists, teachers etc. The interviewees consider this involvement as a positive and helpful factor. Minors, depending on their age, are performing all legal actions through their parents or with the consent of their parents. The parents are getting involved also because they are responsible for children, their education, personal, mental and physical health, happiness and future development. So, the crime done by or against their children, makes them automatically involved. Such practice can be developed much more, and should involve police officers, specialized for dealing with this type of cases, and representatives of community.

II.2.4 On victims and offenders

During this part of the interviews quite ambivalent answers have been received.

Approximately the half of the respondents think that in Bulgaria the equal access to Restorative Justice is guaranteed for all. They justify this assertion with the absence of specific legal restrictions, so theoretically RJ services are equally available without any discrimination.

The other half takes the opposite position. These practitioners are at once that although no legal restrains, there are some practical problems. Restorative Justice is developed to different extent in different cities and regions. Not everywhere there are service providers. RJ is not institutionalised yet and its

delivery is not guaranteed by the state. There are no RJ schemes established throughout the whole territory of the country as they function predominantly in the frameworks of separate pilot projects. So, due to pure geographical reasons, RJ is not equally available.

Moreover, the competent authorities are not obliged to provide to victims and offenders full information on the possibility of a referral to Restorative Justice process. Presently only the well-informed and far-seeing professionals from CJS supply the potential RJ beneficiaries with information about this option. In general, dissemination of knowledge about RJ is not sufficient and this further prevent the users from referring to RJ programs.

That is why it is necessary the ways of distribution of information and RJ delivery to be ameliorated. One possibility is to oblige legally the competent authorities to provide information about RJ. The other is to organise public information campaigns on a broad scale. The existing frame of Restorative Justice could be further expanded to a larger number of cases available for referring to Restorative Justice process also through amendments to Penal Code and Penal Procedure Code, stipulating explicitly types of offences suitable for restorative interventions and stages of their application.

The majority of the respondents agree that those victims and offenders who, however, receive information, are dully and fully informed on the provisions of the Restorative Justice process, their rights and the possible consequences of their involvement. They are allowed to consult or to be supported by a legal counsel. In general, the protection of the rights and interests of victims and offenders is ensured as the basic procedural safeguards are applied.

But some respondents disagree. They find the information provided insufficient. The judge and the prosecutor interviewed think that only the court informs the parties properly.

Most of the practitioners answer that enough time is given to victims and offenders to decide whether they wish to take part to a Restorative Justice process. This is a positive feature of the existing justice system – quite conservative and not so fast. One respondent - the NGO partner- finds that this question is not relevant at all to Bulgarian situation as RJ is not institutionalized.

The lack of system of training on RJ of both criminal justice (CJ) practitioners and RJ providers could endanger the rights of the participants, according to the prevailing answers. It could be prevented through introducing

of RJ in the university curricula and the establishment of a system of continuing education.

II.2.5. On Restorative Justice Process and Services

The universally accepted principles of RJ like voluntary participation, informed consent etc. are fully observed in Bulgaria in the frameworks of the existing RJ schemes, according to the prevailing opinion. Only the probation officer has some ungrounded doubts in relation to their applicability.

There is common understanding about the importance of social, cultural and other factors and indicators like nationality, language, religion, and they are taken into account while referring a case to a Restorative Justice process. A good example in this direction are Roma community peculiarities observed strongly in referral procedure.

As most crucial points for a Restorative Justice process to be completed successfully and to achieve its objectives, the vast majority of respondents find the following:

First, the voluntary participation. The parties shouldn't be coerced to participate and should be able to withdraw at any time.

Second, they should be fully and properly informed about RJ process, its objectives and outcomes.

Third, not only the parties but the facilitators should be well-prepared for the process too. A critical point are their proper training and personal qualities.

On the next place, the social support of participants is also essential.

And last but not least the good cooperation and partnership between state institutions, NGOs, other actors in RJ field and society in general should be stressed.

Unanimously the respondents think that supervision and assessment of the outcomes arising out of a Restorative Justice process are necessary. Some even find them compulsory. The feedback is of ultimate importance for further developments of RJ and quality of service. This is also a means to show the effectiveness of RJ.

The practitioners are rather critical to the existing training programmes and accreditation schemes in Bulgaria. They do not find them adequate and insist on their improvement and enhancing. Not only RJ providers but also CJ personnel should be trained. The opinion about the number of trained staff in the services involved in Restorative Justice frame in Bulgaria is also negative.

While there is a common understanding about the key role of mediators and facilitators in RJ process, the opinion about their educational background is not universally shared. Some insist that they should be only professionals (lawyers, social workers, university graduates with humanitarian profile etc.), but the other admit that they could be also trained citizens.

As a whole the existing RJ services are not considered adequate - in number, geographical distribution etc. They should be further and significantly developed, and proportionally distributed throughout the whole territory of the country.

Harmonic cooperation between RJ service providers, CJ institutions and civil society bodies is still a target in Bulgaria. At that stage they even compete in some cases and search for the right modus for peaceful co-existence and better serving the interests of victims, offenders and community.

II.3. On Restorative Justice Obstacles and Good Practices

II.3.1 The respondents have already identified plenty of factors considered as obstacles for the diffusion and further implementation of Restorative Justice in Bulgaria. The most important are:

- a/ The existing legislative frame is restraining, indeed. CJS and relevant legislation should be more open for novelties.
- b/ There is a limited local experience and almost an absence of active community involvement (e.g. involvement of neighbourhoods). RJ is something new for the Bulgarian landscape, no traditions, hence the lack of civil activism.
- c/ Human and financial resources are a huge problem. Trained staff is highly insufficient and funds are not adequate at all.

d/ There is a lack of public awareness and of social acceptance towards Restorative Justice. This is partly due to the fact that the access to information is rather limited. An important factor is the inherent distrust of the Bulgarian population to the novelties.

e/ There is a lasting problem with the efficient cooperation between the public and the private sector. Moreover, there is a total lack of communication between NGOs and state authorities, according to the participating mediator.

f/ Even nowadays a good part of police officers, prosecutors and judges remain sceptical towards Restorative Justice. Being by default conservative in thinking, at that stage they are not pro-active, do not promote RJ and expect to be legally obliged to refer to RJ schemes.

3.2 Asked to identify the most crucial factors that affect them negatively as practitioners during the implementation of a Restorative Justice process, the respondents list the following:

a/ Absence of modern penal policy considering RJ as an immanent part of CJS. Hence, the lack of adequate legislation so far, which is essential as Bulgaria belongs to the continental legal system requiring legal provisions for these activities.

b/ Closely related to this are the missing funds for the purposes of RJ promotion and developments.

c/ There is no established referral system. Without referring enough cases to RJ schemes the benefits of these practices cannot be demonstrated to the public. It is proven that the most convincing factor are so called "success stories".

d/ Appropriate training of RJ and CJ staff is also of ultimate importance.

3.3 Being asked to name the most important components for Restorative Justice good practices in their experience, the key practitioners indicate the enthusiasm and dedication of RJ providers and some CJ professionals to the cause of RJ. At that stage these are the main engine for keeping programs alive and maintaining good quality of service.

In Bulgaria the first initiative for the establishment of a national network for exchanging information and good practices in Restorative Justice was undertaken in 2005 when the National Association of Mediators was created. However, it has not managed to involve all the actors in the field. In November 2012 a second attempt was made. The process is still ongoing. In the meantime there was some non-systemic, sporadic cooperation between NGOs mainly. State institutions stay aside. Some local networks in different cities where pilot projects have been launched do exist and they function quite well.

III. Conclusions, comments and suggestions

Although the limited number of the interviewed key practitioners do not allow firm conclusions, their answers are indicative in many aspects. The respondents manifest that they are well-informed and fully understand RJ philosophy. Moreover, they express their readiness to work hard in not very favorable conditions for RJ developments in Bulgaria .

Summarizing and analyzing their answers, the following conclusions, comments and suggestions could be made:

1. In relation to RJ concept and practices Bulgaria is still beyond time. RJ is not properly understood by policymakers, that it is way it is not a priority for the government and remains underdeveloped and marginalized.
2. RJ needs support of state institutions, clear state policy and action. Statutory underpinning and system of referrals of cases to RJ are essential.
3. Legislation should be further developed, allowing more types of offences to be referred to RJ practices. With some amendments to the substantial penal law and relevant procedural mechanisms both victims and offenders could be stimulated for active participation in RJ applications. It may not be done necessarily in a revolutionary way, it could follow an evolutionary path and step by step we can achieve better future of restorative justice in Bulgaria.
4. RJ should not be confronted to the existing CJS, a symbiosis with this system could be more efficient and productive.

5. A special focus should be put on developments of RJ towards juvenile offenders.
6. Training and accreditation of RJ staff and continuing education of CJ staff are of ultimate importance. RJ should be introduced in the university curricula at large scale in order to promote restorative culture in wide societal circles.
7. For raising public awareness about benefits of RJ public information campaign should be launched and the ways of dissemination of information should be improved.
8. Cooperation on national and international levels should be intensified through establishment of networks, study visits, organizing conferences , exchange of information, etc.