



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



Key-Practitioners' Report of POLAND

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)
JUST/2010/JPEN/AG/1534

December 2012

The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
Concerning Act_10 & 11 of the EU "3E-RJ-MODEL" PROJECT

Barbara Stańdo-Kawecka
Joanna Deszyńska
Jagiellonian University of Krakow
Poland

**The 3E Model for a Restorative Justice Strategy in Europe
Report on research of key-practitioners in Poland**

Characteristics of the interviewed persons, location and duration of the research

In Poland six practitioners were interviewed within the project "The 3E Model for a Restorative Justice Strategy in Europe": a public prosecutor M.B., a judge A.P., a lawyer (defense counselor) P.Z., a mediator B.M. who is also the member of the Board of the Polish Centre of Mediation, and two probation officers: AG.G. and B.W. All but one of the interviewed persons have some training on mediation; they took part in a training for mediators or courses on mediation organized for public prosecutors, defense counselors and judges. Most respondents (the public prosecutor, the judge, the lawyer, the mediator) have personal experience in referring penal cases to mediation or conducting mediation in such cases. The probation officer B.W. was the only respondent who did not attend any special training or courses on mediation but she has personal experience in conducting informal mediations at the stage of the execution of penalties between the offender placed under supervision of the probation officer and his/her family members being victims of the offence committed. The second probation officer A.G.G. completed the training for mediators, is authorized mediator and has experience in working with supervised offenders who took part in mediation. However, it was impossible to find a police officer with some experience in mediation in penal matters because the police in Poland refer cases to mediation very exceptionally and as a rule are dependent on the prosecution service what was confirmed by interviewed persons.

It should be stressed that in Poland the only form of Restorative Justice existing in practice is mediation between the victim and offender. It is the reason why Restorative Justice was for respondents often the same as mediation; when asked about Restorative Justice they were talking about mediation. "Restorative Justice" and "mediation between the victim and offender" were terms used by respondents interchangeably.

The interviews were conducted in the period of from 24 November to 15 December 2012. The questionnaire was translated into Polish. Each respondent received the Polish version of the questionnaire a week before the fixed date of the interview. Five persons were interviewed by members of the Polish research team. Two of them were interviewed by both: B. Stańdo-Kawecka and J. Deszyńska; one interviewer asked questions and the second took notes. Three other respondents were questioned by B. Stańdo-Kawecka or J. Deszyńska who at the same time asked questions and took notes. One respondent was interviewed by a student of doctoral studies at the Jagiellonian University who was prepared for conducting such an interview. All respondents received the transcription of their answers in order to check and approve it. Efforts were made by the Polish project team to find respondents from different regions of Poland; as a result two interviewed persons work in Krakow and the other four in other cities –Warsaw, Kielce, Racibórz and Krosno.

1.1. On Restorative Justice within the Criminal Justice System

To some extent, practitioners differ in their opinions on Restorative Justice within the Criminal Justice System in Poland.

According to the probation officer A.G.G., it is difficult to assess in what way Restorative Justice has been implemented in the whole country, because it depends on attitudes of particular public prosecutors and judges. During the training on Restorative Justice organized for judges last year she noticed that not all participants were supportive for Restorative Justice. According to her experience, in practice in some cases the implementation of Restorative Justice depends also on mediators; if the mediator actively makes efforts to convince the judge to refer criminal cases to mediation, the number of cases referred to Restorative Justice is increasing. She also stressed the lack of empirical research on the cost-effectiveness of Restorative Justice in Poland. Due to lack of knowledge, she is not sure whether Restorative Justice is a cost-effective response to crime. She can only assume that reaching an agreement between the victim and offender may result in closing the criminal case, what means lesser costs of the proceedings.

The judge A.P. is of the opinion that restorative Justice has been implemented in Poland in a limited scope because there are other possibilities to terminate the case quickly in the course of summary proceedings. If it is possible to give a judgement in summary proceedings (*wyrok nakazowy*), it takes some minutes while the mediation between the victim and offender takes some months. The scope to which criminal cases are referred to Restorative Justice depends on both personal attitudes of judges towards the criminal justice as well as relations between the victim and offender in a certain case; some judges in some situations perceive Restorative Justice as unnecessary delay of the proceedings.

According to the lawyer P.Z. Restorative Justice is a needed and useful approach because it may improve the traditional criminal justice system, influence positively the future relations between the victim and offender and prevent the escalation of conflicts between them in the future. This opinion was shared by the mediator B.M. and the probation officer B.W. In the opinion of the interviewed mediator Restorative Justice may provide an alternative, effective and cost-effective response to crime for both the state and interested parties, because it is fast, valuable and relieves the traditional administration of justice. Restorative Justice is valuable for the parties because it leads to reconcile the conflict which is always emotionally burdensome and detrimental to mutual relations. On the one hand, the mediation enables the victim to obtain redress; on the other hand it enables the offender to understand the consequences of his/her activities. The probation officer B.W. confirms it is difficult to overestimate the importance of Restorative Justice in terms of cost-effectiveness as well as the possibility to resolve conflicts. At the same time she emphasizes that introducing statutory provisions on mediation is not enough in order to influence the practice. The Polish legal provisions on mediation are acceptable in her opinion but there is lack of holistic thinking about the consequences of criminal policy as well as lack of confidence to use Restorative Justice process. The mediator B.M. also expressed the opinion that in Poland were proper legal regulations enabling to implement Restorative Justice, however in practice these opportunities were used very rarely by the police, public prosecutors and judges.

The public prosecutor M.B. also finds Restorative Justice very positive approach in criminal policy. According to her, there are too many behaviours treated as crimes by the Polish legislator and too many people are judged by courts as criminals in cases in which the sufficient reaction would be to restore the damage. At the same time she emphasizes that in Poland opportunities created by Restorative Justice have not been used sufficiently in practice. The basic reason for it is the common striving for completing the case as quickly as possible. In her opinion the primary goal of criminal proceedings is the good picture of

quickly completed cases in statistics. Courts use mediation frequently than the prosecution service because in courts there is not so much pressure on statistics as in the preparatory proceedings. From the point of view of a public prosecutor, referring the case to mediation means for him/her that he/she will complete the preparatory proceedings later. The interviewee pays attention to the fact that under the Polish criminal law by offences prosecuted *ex officio* the public prosecutor is not authorized to complete the case unconditionally due to positive results of mediation; there also are no provisions enabling public prosecutors to dismiss the case conditionally due to positive results of mediation and it is only the court who may drop the proceedings conditionally. Restorative Justice has not been integrated with the traditional criminal justice system because there is lack of clear rules concerning the results of restorative processes for the dealing with the case within traditional criminal justice.

1.2. On the objectives of Restorative Justice

The interviewed practitioners share the opinion that Restorative Justice could help victims, offenders and the society. According to the public prosecutor M.B., Restorative Justice helps the offender to understand the harm caused while in traditional criminal proceedings offenders often do not feel guilty. Referring to her experience, she gave some examples of cases in which mediation resulted in mitigation of the conflict between parties. As for the victim, it is important that the offender after mediation is more willing to repair the damage and make amends for the harm. She mentioned a case concerning young people charged with insulting police officers; after mediation they accepted their responsibility and made efforts to make amends. She noticed, however, that in some cases the reparation of the damage is not enough to stop further offending; in order to prevent re-offending in some cases it would be important for the offender to take part in therapeutic programs if he/she needs therapeutic interventions. In Poland, however, and particularly in small towns and villages such programs are not easy available for offenders even if they agree to participate in them as a result of mediation.

The probation officers B.W. and A.G.G. are also of the opinion that Restorative Justice may be beneficial for the victim and the offender while stressing the meaning of Restorative Justice for the whole society. According to the probation officer A.G.G., Restorative Justice may be beneficial for the whole society in both the economic and educational aspect. The economic dimension of Restorative Justice is connected with the

shortening of criminal proceedings and reduction of costs. The educational dimension is associated with the development of a sense of community responsibility for its members and perception of offenders as persons who despite committing crimes are still members of the community. Restorative Justice when compared to traditional criminal justice is focused on inclusion and not exclusion of offenders. It also is focused on healing relationships, emotional calming of victims and making amends for the harm. In traditional criminal justice system the offender rarely shows genuine remorse; even if he/she apologizes to the victim in the courtroom often makes it formally and instrumentally in order to receive a lenient sentence. Restorative Justice creates for offenders the opportunity to experience empathy as well as to see the victim as a person.

It was also stressed by the interviewed judge A.P. that Restorative Justice other than traditional criminal justice might strengthen the offender's empathy as a result of the communication between the offender and the victim. Similarly, the process of communication between the offender and the victim was noticed as important by the lawyer P.Z. During the process of Restorative Justice the relationships between the offender and the victim have been changing, the offender has the opportunity to evaluate his/her past behaviour and its consequences for the victim more objectively and critically. As a result, it makes it easier for the victim to obtain reparation of the damage. Contrary to Restorative Justice process, the formal sentence given by the court in traditional criminal proceedings does not produce such effects. As for the society he was of the opinion that Restorative Justice implemented in Poland did not have any direct effect for the development of society which as a rule was not informed about the course and outcomes of Restorative Justice process. As for the influence of Restorative Justice on reduction of recidivism, according to the lawyer P.Z. it depends on many factors, such as for example the type of the offence and characteristics of the offender.

The mediator B.M. found mediation very important for the development of civil society, the essence of which is to reduce formal and institutional approach to social problems. In the course of the Restorative Justice process the victim expresses his/her emotions and experiences liberation from pain and tension what contributes to the recovery of psychological comfort. As for offender, the basic difference between the Restorative Justice process and traditional criminal justice system is that in the first process the offender is much more actively involved in assessment of the consequences of his/her behaviour what has educational value and may contribute to preventing re-offending.

2.1. On levels and forms of implementation

According to the interviewed public prosecutor M.B., Restorative Justice has not been implemented at early stage of the proceedings by the police because the police are mainly focused on discovering the perpetrator of the offence and finishing the preparatory proceedings as quickly as possible. The police are not interested in the final outcome of the case during the court proceedings, Restorative justice is not perceived as something important by the police. The situation is to some extent similar during the preparatory stage conducted by public prosecutors, because they also are under pressure for completing the proceedings quickly. Courts use the opportunity to refer the case to mediation more often; they have more time and less pressure for a quick settlement of a case. These arguments were confirmed by the interviewed judge A.P. In the practice of her, it happened only once that the police wanted to refer the case to mediation but the interested parties (victim and offender) did not agree. From the point of view of the judge, public prosecutors use mediation rarely due to the willingness to complete proceedings quickly and also due to the belief that it would be possible to refer the case to mediation at the further stage by the court. Although courts refer criminal cases to mediation more often than the prosecution service, the total number of such referrals is also limited; most judges do not analyse cases in order to assess if they are suitable for mediation. The lack of possibility of quick and efficient communication between the court, offenders and victims by means of telephone or e-mail is one of the factors contributing to the limited scope of Restorative Justice in criminal matters at the stage of court proceedings.

The lawyer P.Z. expressed the same opinion; he stated that at the stage of proceedings conducted by the police mediation did not play any role because the police did not act independently and were dependent on the prosecution service. He noticed also that according to his experience it most cases mediation at this early stage was not possible due to high intensity of the conflict between the victim and offender as well as they initial lack of distance and reflection. Prosecutors refer cases to mediation more often than the police, but most cases are referred by courts.

Unlike the public prosecutor, judge and lawyer, the other three interviewees, this is the mediator and two probation officers, are not directly involved in the conducting of criminal proceedings. Generally, they do not have much knowledge on implementation of Restorative Justice at different stages of the proceedings. The mediator B.M. noticed it would be desirable to use mediation in a broader scope at initial stages of proceedings. The probation officer A.G.G. found it difficult to assess exactly the way in which Restorative

Justice was implemented at the stage of the police, prosecution and courts in the whole country. Personally, she is of the opinion that public prosecutors know the idea of mediation. She also met police officers who knew the idea of mediation, referred a case to mediation and took part in mediation as victims of the offence committed by young people (insulting a police officer). In her view, courts refer cases to mediation mostly in situations in which it may be expected to complete the case after mediation by means of conditional dismissal of the proceedings. The another probation officer B.W. was sceptical about the implementation of Restorative Justice in Poland because the fact that the police and prosecution service were expected to deal with the case as fast as possible. She recalled her personal experiences with contacts with the prosecution service; during a talk on the expediency principle in cases concerning drug-addicted offenders she was told by a public prosecutor that he was not going to apply in practice statutory provisions which he found wise and just because their application could result in the prolongation of the proceedings and he would have to explain the superior of why the case was not completed earlier; in a certain sense he would be punished for the application of wise and just provisions resulting in the prolongation of the proceedings.

All interviewed practitioners are of the opinion that the only form of Restorative Justice implemented in Poland has been the victim-offender mediation. Community conferencing according to the interviewed public prosecutor is not possible yet in Poland because the civil society is not highly developed. The mediator B.M. was the only interviewee who mentioned restorative conferences as the useful form of Restorative Justice in situations in which not only the victim and the offender but also individuals with their surroundings were involved in the conflict. She has not, however, met such conferences in Poland as integrated with the criminal justice system. The only restorative conference she had the opportunity to conduct was the restorative conference in a school due to a peer conflict.

Most respondents have little knowledge on Restorative Justice at the stage on the execution of sentences. The lawyer P.Z. has never met mediation at the stage of execution of sentences, however, according to him it should be developed also at his stage. The public prosecutor and the judge pointed the lack of experience in this field. At the same time they added that mediation should be implemented at every stage of criminal proceedings. For the mediator B.M. it was difficult to say whether it would be useful to extend Restorative Justice to the execution stage. More experience concerning Restorative Justice at the stage of the execution of sentences had two probation officers. The probation officer A.G.G. noticed that the court while dismissing the proceedings conditionally was not allowed to impose on the offender the obligation to implement the settlement reached during the mediation due to

lack of legal basis. The probation officer, who supervises the offender during the period of conditional dismissal, sometimes receives from the parties the information on the agreement reached between them in the course of mediation, but such an agreement is not included in the offender's file available to probation service. According to the second interviewed probation officer B.W., Restorative Justice has an important role to play at the execution stage providing that it failed to resolve the conflict between the perpetrator and the victim at the previous stages of the proceedings. An offender serving a prison sentence usually returns to his/her environment, and unresolved conflicts are "waiting" for him/her. In the opinion of her, the offender needs redemption in order to start new relationships and try again, and the victim needs to believe that the criminal process led to a change, this is to the improvement of the relationships.

2.2. On categories of crimes

The lawyer P.Z. taking into account his experience stated that in practice mediation was used mostly in cases concerning such offences as bodily injury, domestic violence and punishable threatening to someone. Due to complicated relationships between the victim and offender cases concerning rape and sexual offences committed against a minor usually were not referred to mediation. In his view, Restorative Justice as a rule is not adequate in cases in which the facts of the offence committed are complicated, and in cases concerning rape or sexual offence against a minor because the participation in the restorative process in the latter cases may be difficult for the victim. He stated, however, that generally it depends on the circumstances of a particular case; in complicated cases there is still the possibility to conduct at first indirect mediation and after it to make decision on face-to-face meeting of the offender and victim.

Similar categories of offences were mentioned by the judge A.P. In her opinion, in practice mediation is conducted in cases concerning offences against the honor and freedom (insult, punishable threat, minor assault), bodily injury and traffic offences. As for domestic violence, in the opinion of the judge the mediation may be used in some cases, because domestic violence is a complex matter and has different forms. As a rule mediation is not used in cases concerning sexual offences but it also depends on the circumstances of a particular case. Implementation of Restorative Justice according to the judge A.P. may not be adequate if the interested parties are mentally disabled, and also if the offender suffers from pathological disorders. In the latter situation therapy is needed and not mediation.

The categories of offences listed by the public prosecutor M.B. were much similar. In her opinion mediation is used in cases concerning insult, punishable threat, property damage, and also in cases in which a kind of family or neighborhood conflict is connected with the offence. The next decisive factor for referring the case to mediation in practice is the assumption that mediation may result in something beneficial for the victim and also for the offender; possible benefits for the offender may be to dismiss the case conditionally or unconditionally. In practice serious offences and offences outrageous for public opinion are avoided from the implementation of Restorative Justice because it is commonly expected that the offender would be punished. Implementation of Restorative Justice according to the public prosecutor may not be adequate in cases concerning serious offences as well as psychopathic offenders; it might be dangerous for the victim or mediator. Generally it is not adequate for recidivists, but it depends on the circumstances of a particular case.

The probation officer A.G.G. stated that in practice Restorative Justice was implemented in cases concerning property offences, because in such cases it was relatively easy to make an agreement on reparation. She also mentioned cases concerning bodily injury, forging documents and wrongfully obtaining welfare benefits. According to her, mediation is not adequate in cases concerning sexual abuse and very serious offences. It seemed problematic to her to refer to mediation cases concerning domestic violence. In her view such cases are definitely not adequate for mediation if the offender still misuses alcohol and behaves aggressively; mediation may be purposeful only after cessation by the offender of both drinking alcohol and behaving aggressively. The victim of domestic violence may be frightened by the offender and agree to mediation due to a psychological pressure. According to her experience, agreements made as a result of mediation between the victim and offender of domestic violence are rarely performed by the perpetrator of the offence. The second probation officer B.W. was of the opinion that Restorative Justice at first place should be implemented in cases concerning offences prosecuted on private accusation.

In the view of the mediator B.M., in practice Restorative Justice is implemented in cases concerning offences which violate relationships in the family, this is single violations or long-lasting domestic violence. She also pointed out offences of a episodic type, which in the light of the offender biography might be perceived as his/her error and not as a fixed pattern of behaviour. She did not know if some offences were excluded from Restorative Justice in practice. Restorative Justice according to her may not be adequate for victims and offenders mentally disabled or mentally ill because they are incapable of rational insight into the situation. Restorative Justice may also be inadequate for domestic violence in situation in

which domestic violence is connected with significant imbalance of the position of the victim and offender resulting in the victim's psychological dependence on the perpetrator.

2.3. On Children and Young Offenders

Generally respondents agree that Restorative Justice should be implemented in juvenile cases because of possible educational effects. The probation officer A.G.G. stressed that mediation was also useful in resolving conflicts between peers (schoolmates), because it learned to deal with conflicts in a constructive way. At the same time most respondents admit they have no or very little experience in dealing with juvenile offenders and Restorative Justice in juvenile cases. The public prosecutor M.B. noticed that on the basis of her contacts with a juvenile judge she knew that juvenile cases were very rarely referred to mediation. Juvenile judges found mediation purposeful in juvenile cases concerning minor assaults, punishable threats, minor bodily injuries but the circumstances of such cases usually raised doubts so judges were reluctant to use mediation. The lawyer P.Z. has also no personal experience in Restorative Justice in juvenile cases. Generally he is sceptical about this idea and is supportive for the educational influence of the juvenile judge on juvenile offenders. He also noticed that in juvenile cases the lack of maturity of the offender might be an obstacle to the implementation of Restorative Justice.

The mediator B.M. was the only respondent having more experience in Restorative Justice for juvenile cases. According to her, the existing legal framework is adequate and leaves broad possibilities for referring juvenile cases to mediation. She gave an example of positive mediation between the victim and the juvenile offender who had damaged property of an old lady; she considered that mediation to be a success because the young boy had experienced empathy and repaired the damage what had educational effect. In her view, in juvenile cases mediation should be used mostly during the court proceedings because the court may adequately assess if the mediation is a proper solution taking into account the stage of development of the juvenile and the degree of his/her demoralization. Restorative Justice is implemented in juvenile cases at first in situations in which the offender made harm (bodily injury of property damage) which may be repaired by him/her. She also mentioned that except for mediation restorative conferences should also be organized in juvenile cases. According to her, parents should be involved in the Restorative Justice process; it's the task of the mediator to influence their role in this process. The probation officer B.W. noticed, however, that including parents in the process of Restorative Justice in juvenile cases should

be dependent on the circumstances of a particular case. In her opinion, in some cases a parent of a juvenile may be a toxic factor in Restorative Justice process who paralyzes the communication process and makes the Restorative Justice process ineffective.

2.4. On victims and offenders

As far as the access to Restorative Justice is concerned, the probation officer A.G.G. noticed that in Poland apart from mediation integrated with the criminal proceedings there was also available so called mediation at the request of the parties concerned. In the latter case, mediation is independent from the criminal proceedings and is conducted outside the criminal justice system; the case is not referred to mediation by the police, prosecution or court, but it is the initiative of the parties to use the services of the mediator regardless of the pending criminal proceedings. In such a case, however, the parties interested in mediation are obliged to pay the costs of mediation. There are no mediation centers financed by public or nonpublic bodies which might offer unpaid mediation at the request of the parties concerned, although it would be useful to provide citizens with such centers in order to widespread restorative practices.

As for mediation integrated with the criminal justice system respondents differ in their opinions concerning an equal access to mediation services. In the opinion of the public prosecutor M.B. restorative justice is easy accessible for the interested parties. According to the judge A.P. there may be some problems concerning the access to mediation services in small towns and villages; if the mediation takes place in a distant town it may discourage the interested parties. The same opinion was expressed by the mediator B.M. who noticed that as a rule mediation is easier accessible in big cities. In such cities the number of highly qualified mediators exceeds demand for their services.

The interviewees are of the opinion that interested parties receive basic information on mediation. In accordance with provisions of the Code of Criminal Procedure, the injured party receives written information on mediation from the police or prosecution service no later than the first interrogation. At the same time, there are brochures and posters on mediation in the police or prosecution premises as well as TV information programs. According to the public prosecutor M.B. the problem, however, is that victims and suspects usually do not read the information on mediation received at the police station or in the prosecutor's office. The same was confirmed by the judge A.P. who noticed that the parties usually did not read the written information. The mediator B.M. also emphasized that the

way of informing parties about mediation by the police, prosecutors and judges should be improved. The most interviewees stressed that it would be very important for the police and prosecution service to explain the nature of the mediation to the interested parties orally. In practice, the interested parties are informed about mediation by the public prosecutor orally only if he/she finds it possible to direct the case to mediation. The probation officer A.G.G. added that the term "mediation" was not clear for all victims and offenders. Even if they were informed about the possibility of the referral of the case to mediation they knew little about its nature, course and consequences. So in practice, it is the mediator who explains these issues precisely when contacting both the victim and offender.

Some respondents expressed some doubts whether the interested parties had enough time to decide on taking part in a Restorative Justice process. Most of them are of the opinion that the victim and offender have enough time to take such a decision. The lawyer P.Z., however, noticed that in some cases the proposal to refer the case to mediation is made spontaneously in the course of the court proceedings (for example by the accused person or by the court). According to him, in such cases the court should more precisely explain the nature of mediation to both parties and give them more time to make a decision.

There is a common opinion among the interviewed persons that rights and safeguards of both the victim and the offender are adequately protected during the implementation of Restorative Justice. They have not met any problems concerning these issues in practice. The judge A. P. paid attention to the proposed amendment to the Code of Criminal Procedure aiming at the strengthening of the confidentiality of mediation by introducing a prohibition of questioning of mediators as witnesses.

The need to improve the existing frame of Restorative Justice in order to expand a number of cases referred to the Restorative Justice process was mentioned by the public prosecutor and the lawyer. According to the first interviewee, in order to broaden the scope of implementation of Restorative Justice in Poland it would be necessary to introduce legal provisions determining precisely the positive results of the offender participation in mediation and restoring by him/her the damage. The lack of provisions enabling to close the case after mediation in cases concerning offences prosecuted *ex officio* was seen by her as an obstacle inhibiting the development of Restorative Justice. The other significant obstacle mentioned by her was the pressure on completing the preparatory proceedings as quickly as possible what made public prosecutors reluctant to use mediation. The lawyer P.Z. suggested that the legal premises of the conditionally dismissing of the case should be broadened in order to make it possible to dismiss more cases conditionally after mediation.

2.5. On Restorative Justice Process and Services

Respondents agree that in practice principles concerning the Restorative Justice process have been followed, including the principle of voluntary participation and confidentiality. The public prosecutor added it would be needed to regulate precisely the issue of the mediator unrestricted access to the file or to a selected part of the file. She pointed also the need to introduce the statutory prohibition of hearing a mediator as a witness as to the parties statements during mediation. The prohibition of hearing a mediator as a witness was also mentioned by the probation officer A.G.G. She is of the opinion, however, that the mediator should inform the police about serious crimes if he/she knows it during the mediation. The both victim and offender have to be informed before the mediation that the mediation is confidential with exceptions concerning the information on serious crimes. Generally, she finds it a very sophisticated problem, similar to problems connected with the breach of therapeutic confidentiality.

Cultural or other factors generally are not taken into account by referring a case to a Restorative Justice process. In practice, as stated the public prosecutor M.B., there may be problems concerning foreigners who do not speak Polish because of the need to provide them with the translator what increases the costs of mediations. The probation officer A.G.G. noticed that in cases concerning conflicts between members of national or ethnic minorities it would be useful for the mediator to know their culture and basic norms. The mediator B.M. stressed that cultural and other factors were not relevant in the case of mediation, because persons of different cultures in different social situation could talk to each other.

Among the most crucial points for a successful mediation the following were listed by the respondents: good interpersonal communication skills and qualifications of the mediator as well as his/her competencies and engagement, both parties openness, the parties willingness or motivation to make an agreement, proper preparation of the parties to mediation, comprehensive information on mediation given to the parties, the neutrality of the mediator, proper organization and conducting of the mediation.

As far as the supervision and assessment of the outcomes arising out of a Restorative Justice process are concerned, different opinions were expressed. According to the public prosecutor such supervision and assessment are not necessary because in practice decisions to dismiss the procedure after withdrawal of the request for prosecution by the victim or to dismiss the case conditionally are taken when the damage was already repaired and the agreement was carried out. As the case is finally completed the supervision would be aimless. In the opinion of the probation officer A.G.G., it would be useful to assess the

outcomes arising out of mediation but such an activity should be well-planned and both the victim and offender should be informed that someone may contact them in the future in order to ask them about their satisfaction with participation in mediation. The judge found that the assessment of outcomes arising out of mediation would be desirable because it might convince to mediation persons sceptical about this idea. The mediator B.M. was against the assessment of outcomes; in her opinion it might mean the violation of confidentiality of mediation. What is more, the evaluations of outcomes she found extremely difficult due to ambiguity of the "outcome"; the outcome might be for example something beneficial in the emotional and psychological area, such as better understanding between the parties or "ventilation" of emotions, what is difficult to research.

Programmes and seminars for the training and support of Restorative Justice practitioners were assessed by the interviewees positively. The probation officer A.G.G. stated that the course for mediators in which she had participated was at a high professional level. The public prosecutor mentioned courses on mediation organised for public prosecutors by the Ministry of Justice. The interviewed judge stated that the National School of Judges and Prosecutors organized courses on mediation; in her opinion it should be more courses and they should be obligatory for all judges.

The training for mediators in Poland is sufficient in the opinion of the most respondents. The judge noticed that standards on training of mediators should be adopted in the country. Some respondents noticed that a larger number of persons should be trained as mediators (the public prosecutor, the judge), and particularly in small towns and villages. The mediator B.M. added that the best support for practitioners would be referring more cases to mediation what would contribute to the development of their professional experience. In the opinion of the respondents mediator has not to be a profession; it is sufficient for mediator to have a good training and some personal characteristics. Unlike other respondents, the probation officer B.W. was not sure whether the training for mediators was sufficient. In her view, the specialization of mediators was a very important matter; conducting a mediation in penal matters, and particularly in juvenile cases, requires special knowledge and competencies.

The services of Restorative Justice according to the public prosecutor M.B. and the probation officer A.G.G. might be better providing that more mediation centers are established in Poland. The number of mediation centers is limited because of many factors, and mainly because mediators are not provided with a place for mediation; generally it is the task of a mediator to find a suitable place (room) for mediation. The public prosecutor mentioned also that remuneration paid by the state for conducting a mediation in penal

cases was very low and it might contribute to a limited access to mediation services. Some respondents do know exactly if the services are adequate.

As for the cooperation between private, public and civil society services on the field of Restorative Justice the public prosecutor states that the prosecution service has limited contacts with non-governmental organizations and persons from local community. According to her, there is lack of system solutions in this respect. The judge shared the opinion concerning the lack of cooperation. However, the mediator B.M. and the probation officer A.G.G. gave some examples of cooperation between the local government units and mediators (providing mediators with the suitable centre to carry out mediations).

3. On Restorative Justice Obstacles and Good Practices

Some factors considered as obstacles for the diffusion and the further implementation of Restorative Justice were also mentioned by the respondents in their responses to earlier questions. Among the obstacles the practitioners listed the following:

- a) statutory provisions which do not regulate clearly the effects of successful mediation for the criminal proceedings,
- b) time constraints of the preparatory proceedings,
- c) lack of both knowledge and social acceptance towards Restorative Justice,
- d) lack of acceptance for Restorative Justice among judges,
- e) commonly shared opinion that only severe penalties imposed by courts are effective reactions to crimes,
- f) lack of a broader perspective on mediation related to the lack of interest in what is going to happen at the end of the process; it is important only to complete the case quickly,
- g) a limited local experience and lack of active community involvement.

Some of the interviewed persons do not see any factors affecting them negatively during the implementation of Restorative Justice process. The others among the most crucial factors that affect practitioners negatively during the implementation of a Restorative Justice process mentioned the following:

- a) too low number of mediators and lack of involvement of the local community (the public prosecutor M.B.),
- b) the low number of cases referred to mediation (the mediator B.M.),
- c) statutory provisions which provide too restrictive premises of conditional dismissal of the case (the lawyer A.P.).

As far as good practices are concerned the judge A.P. noticed in Poland was no exchange of information about good practices on Restorative Justice. Some respondents could not give examples of good practices. However, according to the mediator B.M. the good practice are: the publication of the quarterly titled "Mediator", the creation of the Polish Centre of Mediation website as well as workshops on mediation conducted by this center. To much extend this opinion was shared by the probation officer A.G.G. who gave such examples of good practices as dissemination of knowledge on mediation by organizing campaigns ("Week of Mediation"). The probation officer B.W. stressed that good practice on mediation was to inform the client by his/her defense counselor that among possible strategies to deal with the case was also to resolve the conflict by use of mediation.