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INSTITUTE OF CONFLICT RESOLUTION

SOFIA - BULGARIA

Key-Practitioners' Questionnaire of SPAIN

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

The Key-Practitioners' Questionnaire

Professional characteristics of responders

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1. Introduction

As stated in the main report of the present study, Spain has transferred its competencies in Justice to the Autonomous Communities. Again, we are going to look up the Catalanian situation concerning the key-practitioners of Restorative Justice, since Catalonia has a more developed mediation system. That's the same reason why most of the practitioners interviewed nowadays only base their work in Juvenile Justice, where Restorative Justice is been put more in practice.

In our researches in different subjects concerning penal matters, we often make use of the data concentrated in the Center for Legal Studies and Specialized Training of Catalonia. The relationship between the department of Penal Law of our University and the center is quite good, and we frequently share information or news. For this reason we contacted them as facilitators to arrange interviews with practitioners related to penal mediation. As a result, we were able to talk with Lydia Ayora, Head of programs Mediation Service of Catalonia, which helped us to find the most representative for the interviews we had to do.

We had the opportunity to interview five professionals directly or indirectly involved with Restorative Justice.

- Police: JG-S, Deputy Chief of the Juvenile Unit of Barcelona. 17 years of experience with minors. All members of the security forces who work directly with children and young people must make a specific course of children, which

contains a section dedicated to the mediation that is completed with their participation in a case study.

- Department of Public Prosecution: JJM, Juvenile Prosecutor Coordinator of Barcelona. 22 years of experience with minors. He coordinates 19 Juvenile Prosecutors. He is self-taught in the field of restorative justice. He points out that some years ago, prosecutors didn't have any training neither in RJ nor in minors. Now this is changing and the new graduates have the opportunity of making some specific courses.
- Probation services: AH, Coordinator of the Juvenile Probation Services of Barcelona. 25 years of experience in probation services for minors. Historically, technical of probation services were psychologists, educators or teachers. Since 2000 it was established as a requirement to work in probation services de degree on Social Education. Our interviewee has a degree in social work and is bachelor in social and cultural anthropology.
- Mediation: NM, Mediator Juvenile Criminal. 6 years of experience in mediation. She is psychologist and she did a postgraduate in Mediation, among other types of training related to criminology, victims and restorative justice.
- Foundation Victims: JG, Head of Service to Victims. Just 1 year of experience as coordinator, but almost 10 years working with victims as technical intervention. It's not very usual having a public service for victims. In the rest of Spain the attention to the victims is coordinated by private organizations or foundations. His team is comprised of social workers, social workers, psychologists and lawyers. He has specific training in domestic violence. He is the only professional which works with adults, so it has given us a different point of view.

2. A General Approach of Restorative Justice

2.1. On Restorative Justice within the Criminal Justice System

In the Juvenile Justice System, Restorative Justice is seen as a good way to solve some types of offenses as thefts or injuries. From police, to prosecutors, and obviously mediators, all of them consider that in these cases mediation process is always better as for the victim and the offender. They receive a more personal treatment and make them participating in the process. This allows the child to put in the place of the victim and the victim releases to seek only revenge.

However, knowing the mediation processes doesn't necessary mean that RJ is being well-known. There is still a lack in the training on this subject. All the key-practitioners interviewed are familiarized with the concept of conflict resolution, but in their daily practice only mediators may apply it and, at the same time, can try to develop programs to improve the victim-offender mediation.

Nowadays, around 25% cases of juvenile justice end up in mediation. This usually happens with less serious offenses and it nearly always occurs prior to sentencing. In some Spanish Autonomous Community, as Aragón and País Valencià, mediation is practiced after de sentencing. The rest of Autonomous Communities don't do much juvenile mediation and the Bask Country is more specialized in adults.

The process in Juvenile Justice runs like this: a technical team makes a report and may propose, in conclusion, to carry out a criminal mediation process. Because it is considered an important form of accountability of the child who committed the crime, the experts never exclude the possibility to recommend any type of repairing program. In severe cases, such as sex crimes and homicide attempts, this program will never end the procedure, but it can act as a mitigating factor in the measure.

It is important to note that the recognition of the child that there has been a conflict does not make him automatically guilty of the crime. When the mediation process has a negative result and the case comes to trial, the prosecutor doesn't take it into consideration. The policy followed in terms of childhood, is the principle of desjudicialization. The prosecutor and the judge act as advisories, but attempting to prevent offender and victim having to go through court. Judge and Prosecutor represent the law and, in this sense, they safeguard the interests of both the accused and the victim, not directly involved in the process.

It is necessary to point out that Spain has not implemented conferencing, although some mediators are working to develop a pilot program of conferencing regarding juvenile justice. Therefore, in all cases we are talking about processes of VOM.

After the recommendation of the judge or the prosecutor, the mediator receives the record of the accused and starts some meetings both with the child and with his family. If the mediator sees that there is willingness and attitude on the responsibility of the crime committed and its consequences, then he contacts the victim to see if it's possible to arrange a meeting between the victim and the offender, although it's not necessary to maintain direct contact. Once an agreement has been reached, the mediator monitors it. Later, he writes a report to the prosecutor so he can decide whether to continue following the case through the court or not.

Every year a mediator takes part in an average of 100 cases. They have 3 months to conclude the process. Probation services also monitor the mediation if that is the measure is imposed by the judge.

Key-practitioners agree that the new Catalan law about the Rights and the Opportunities in Childhood and Adolescence¹, approved in 2010, has been a positive change, as it is a more open and educational law.

2.2. On the objectives of Restorative Justice

The key-practitioners agree that RJ applied to juveniles is helpful to reduce the risk of recidivism. That's why they don't recommend the mediation for a recidivist offender. In this sense, in deciding whether a case is appropriate for mediation, it's important not only to seek the knowledge but also the professional experience.

The different agents that have some kind of relation with the offender are quite coordinated. While the skills are very different, cooperation between them largely determines the positive outcome of the case. In May of 2009 in Barcelona has opened the City of Justice², a huge infrastructure that brings together all organizations and legal services in order to make justice a public service quality, more efficient,

¹ Llei 14/2010, del 27 de maig, dels drets i les oportunitats en la infància i l'adolescència. <http://www.parlament.cat/activitat/cataleg/TL115.pdf>

² See further information in: <http://www.gencat.cat/justicia/ciutatdelajusticia/>

accessible and close to citizens. Physical proximity services have encouraged even more this coordination.

Related to the relationship between professionals, members of the service to the victim also make a great job with the police and the judges, but not with the mediators. This is because they keep track of the most serious cases and, therefore, they cannot arise in a mediation process. The service to the victim spent most of its dedication to cases of domestic violence and child abuse.

3. Conclusions and suggestions

We found that juvenile penal mediation system works very efficiently, and that the established protocols are followed with great rigor. However, there is still a lack of knowledge on Restorative Justice, and professionals are often more or less involved depending on their personal believes. We have also observed that probation services haven't got many opportunities to be involved in training in mediation subjects.

Once again we have seen that restorative justice is almost exclusively a matter of the juvenile field. And there is still lot of work to do concerning adults. In the rest of Spain, mediation skills are derived to private foundations, and this does not always guarantee that there is an exhaustive process and that decisions are not influenced by ideological tendencies.

We think it's important as a suggestion to test the implementation of conferencing as a way to bring restorative justice to society. Mediators have a willingness to implement such a system repair spot.