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INSTITUTE OF CONFLICT RESOLUTION  
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## **FINAL NATIONAL 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)  
JUST/2010/JPEN/AG/1534

**2013**

# **Restorative Justice in Bulgaria**

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## **A. Introduction**

Criminal matters in the Bulgarian state, founded in the early Middle Ages, were regulated predominantly by custom law and written laws, including the legislation of Khan Krum, the Old Bulgarian Law on the Trial of People, and the Byzantine Eclogue. After the Turkish invasion of the Balkan Peninsula in 1396, Bulgaria lost its independence and a criminal justice system alien to the Christians was imposed. After its liberation from the Turkish domination in 1878, Bulgaria began to develop its own justice system and legislation.

The Penal Act adopted in 1896 marked the beginning of modern criminal legislation in Bulgaria. Based on the principles of the classical school it followed the European tradition of criminal justice.

After World War II a new socialist-style criminal legislation was adopted. The latest Penal Code, adopted in 1968, has been revised repeatedly in order to preserve the basic principles and institutions of continental law tradition and to reach harmonisation with the international legislation to which Bulgaria is a party. A new Penal Code is in the process of development.

According to the acting Penal Code (Article 35) the criminal responsibility is personal. Punishment can be imposed only on a person who has committed a crime stipulated by the law. The punishment shall be adequate to the crime. Punishment for a crime shall be imposed only by the established courts.

Article 36 stipulates that the punishment shall be imposed with the purpose of: reforming the convict toward observing the laws and the good morals; preventive influence on him and elimination of the possibility of his commitment of other crime and instructive and warning effect on the other members of the society. The punishment cannot aim at causing physical suffering or humiliation of the human dignity.

The existing punishments, provided by Article 37 are: life imprisonment; imprisonment; probation; confiscation of available property; fine; revocation of the right to occupy definite state or public position; revocation of the right to practice a definite profession or activity;

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revocation of the right to received orders, honorary titles and insignia of honour; revocation of military rank; public reprobation. Life imprisonment without alternative of the sentence as a temporary and exceptional measure is provided for the most serious crimes threatening the basis of the Republic, as well as for other dangerous deliberate crimes.

The Penal Code also establishes the cases when, instead of punishment, measures of public influence and instruction can be imposed, e.g. corrective measures for juveniles, further detailed in Juvenile Delinquency Act 1958, or administrative penalties. The basic principles of criminal law are the principles of legality, democracy and humanism.

The development of the law of criminal procedure paralleled that of substantive law. Following the European traditions, in 1897 the Criminal Court Proceedings Act was adopted and later amended repeatedly. Consecutively, different Codes of Criminal Procedure were adopted in 1952, 1975 and 2005, the latest one in force since 2006, aiming to modernize, humanize and democratize criminal procedure.

Generally, the current typical criminal proceedings are pre-trial procedure and court procedure. Pre-trial procedure shall be held on cases of general nature (the majority of cases). In so called cases of private nature (concerning crime, provided for in the Special Part of the Penal Code, which is subject to prosecution on a complaint of the injured) there is no pre-trial procedure.

According to Article 192 of the Criminal Procedure Code the pre-trial procedure shall include investigation and actions of the prosecutor after the finalization of the investigation.

Court procedures include first instance court session (Articles 258 -312), appellate procedure (Articles 313-345), and cassation procedure (Articles 346 -355). There are also special rules and procedures - e.g., fast and immediate procedure, summary court investigation in the procedure before the first instance, discharge from criminal liability with imposition of administrative penalty, settlement of the case by agreement, application of compulsory medical measures, rehabilitation etc.

The fundamental principles of criminal proceedings, provided for in Chapter two of Penal Procedure Code are: independence of the bodies in the penal procedure, participation of court assessors in the court body, requirement for appointment of judges, court assessors and investigating bodies, equality of citizens in the penal procedure, competitiveness, equal rights of the parties, detection of the objective truth, taking decisions by inner conviction, right of defence, etc.

Since 2009 a new Execution of Punishments and Detention in Custody Act has been in force.

During the last decades, in pursuing alternatives to the unsatisfactorily functioning criminal justice system in a global context, some old approaches to crime and conflict were rediscovered. One of the main ones, in the course of history, is restorative justice, and enormous expectations have been assigned to it in recent years. An optimistic assertion has been made that sooner or later restorative justice will again become the mainstream response to crime.

In Bulgaria, in the face of some political difficulties and considerable resistance on the part of relevant actors, the idea of restorative justice and its application in the field of penal law and penal proceedings has in recent years come to find a place in the legal system.

The introduction of this new idea was, firstly, both a direct consequence of the influence of pro-American and pro-European tendencies and an expression of the struggle for reform of the Bulgarian legal system in accordance with more advanced models. In the early years of Bulgaria's shift towards democratic government, many American and European agencies and non-governmental organizations (NGOs) settled in the country to support its efforts towards the establishing of the rule of law and the strengthening of civil society. Among many other innovations, they introduced the idea of mediation. This was attractive, secondly, because it could successfully fill a niche in Bulgaria's social consciousness, which had been stultified by the deficiencies of the criminal justice system, a system which had not and has not yet got a sound legitimate alternative. For some legal theoreticians and practitioners victim-offender mediation as a main and universal restorative justice model offered a powerful alternative vision of criminal justice, and Bulgaria's future<sup>2</sup>.

But this vision was not universally shared. Others within the legal community were critical of the idea, often openly hostile to the suggestion that it might become a part of Bulgaria's justice system<sup>3</sup>. At a time of adaptation to social and political changes, scepticism about the value of new ideas was common. In addition, doubts about victim-offender mediation were unfairly, exacerbated by the deficiencies of such earlier structures as the comrades' courts.

However, as time went by, mediation came to be accepted as a legitimate alternative to the earlier faith in the state and its institutions. This faith, which had become hypertrophied, gave way to increasing trust in non-formal organizations and mechanisms. Good examples from other countries and successful Bulgarian experiments paved the way for a number of

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<sup>2</sup> □ Chankova 1996, *Mediation as an Innovation in the Criminal Procedure*, p. 155; Chankova 2002, *Victim-Offender Mediation*, p.65; Trendafilova 2001, *The Amendments to Criminal Procedure Code from 1999. Theoretical foundations, legislative decisions, tendencies*, p.77; Chinova and Ivanova 2005, *The Crime Victim at the Stage of Pre-Trial Proceedings*, p. 7

<sup>3</sup> Sulov 1996, *Current Problems of Penal Procedure in the Republic of Bulgaria*, p. 127; Tatarchev 1996, *Final Presentation at the Conference "A Century of Criminal Code and Current Issues of Criminal Legislation 1896-1996*, p. 259

new ideas, some of which have become legally institutionalized. Nowadays, thanks to the numerous grass-root initiatives and the efforts of few far-seeing practitioners, though still being in the "shadow of the law", we can say that step by step the restorative ideal has become a fact of the juridical reality in Bulgaria.

## **B. Legal Frame of Restorative Justice**

### **Primary Legislation**

Although in the last decade restorative justice and in particular mediation in all fields (civil, labour, penal matters etc.) had numerous adherents in academic circles and NGOs, and won recognition in wider society, it was only recently that they began to attract attention and gain support of policy makers and members of Parliament, and that was not without a push from outside.

At the same time, generally recognised was the fact that the existing criminal justice system in Bulgaria:

- is far from efficient,
- does not function in a satisfactory way, and
- is in need of a change.

The present Bulgarian legal system has traditionally used some alternative dispute resolution methods, different elements of which are integrated in the system's jurisprudence. They are primarily applied in the resolution of civil, family and labour disputes, with the highest use in arbitration and out-of-court settlement<sup>4</sup>. Opportunities for the application of alternative dispute resolution measures and of elements of restorative justice have always existed, although with a limited scope, both in Bulgarian penal law and penal procedure law<sup>5</sup>. The last Penal Procedure Code reinforces these opportunities.

In some cases, the law gives the victim the opportunity to decide whether the offender should be prosecuted or not. This is dependent on the injured person making a complaint; such cases are therefore colloquially called 'complainant's crimes' or cases of private nature. Under Article 24, paragraph 4 of the Penal Procedure Code 2005, penal proceedings shall not be officially instituted in cases of complainant's crimes; also, the instituted proceedings shall be discontinued if the victim and the offender have reached a

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<sup>4</sup> Chankova 2000, *Erfolge, Gegenwartige Probleme Und Perspektiven Der Mediation In Bulgarien*, p. 253; Stefanova 2002, *Beyond Themis: Legal Aspects of Mediation in Bulgaria*, p.197; Manev 2004, *Mediation and Civil Procedure*, p.11

<sup>5</sup> Miers and Willemsens 2004, *Mapping Restorative Justice*, p.140

reconciliation, except when the offender has, without good reason, failed to meet the reconciliation conditions. Bulgarian penal process allows for such reconciliations to be undertaken at every stage of the proceedings, even after the verdict has been pronounced. In this case, according to Article 84, paragraph 3 of the Penal Code of 1968, the punishment shall not be carried out if the complainant requested prior to its commencement that it should not be. Although the legislation does not specifically refer to mediation or any other out-of-court method for settlements between the victim and the offender, it gives an opportunity for the application of these methods.

Since 2000 it has been possible to settle the case by agreement between the prosecutor and the defence counsel (now Articles 381-384 of the Penal Procedure Code 2005). This modified procedure was adopted mainly to reduce the burdens on the justice system, to facilitate its proceedings, and to speed up the final verdict. The agreement settles in essence all the major issues to which the case gives rise, including criminal responsibility. The court of first instance is required to approve the agreement, to ensure that it does not contradict the law or public moral. Once approved, the penal proceedings are terminated. Agreements are possible for many offences, but not for deliberately inflicted serious crimes defined by different chapters of the Penal Code.

Bulgarian penal procedure law also recognizes other deviations from the norm. Chapter 28 of the Penal Procedure Code provides for the substitution of criminal responsibility with an administrative penalty according to Article 78a of the Penal Code. Chapter 30 of the Penal Procedure Code contains special rules for cases involving juvenile offenders.

In summary, recent years have seen a gradual retreat from the application of the traditional procedure in criminal cases in favour of an acceptance that the classical penal process should be the exception rather than the rule. In this sense, the Bulgarian legislature is taking cautious, but well-measured steps, which corresponds to the leading world practices.

Current Bulgarian substantive penal law, like all modern legal systems, envisages a number of alternative measures as it seeks to minimize the use of penal repression. The legislature has traditionally taken the position that in cases when minor crimes are committed by negligence, it is neither necessary nor desirable to impose criminal responsibility. Its imposition demands time, and financial and human resources; less repressive measures will usually be sufficient to correct and educate the offender, and to exert both general and individual deterrence.

Moreover, Article 1, paragraph 2 of the Penal Code explicitly states that the Code determines which publicly dangerous acts are crimes and what punishment shall be imposed for them. It also establishes the cases when, instead of punishment, social measures, such as

education and correctional orders may be imposed. These are found not in the Penal Code but in the Juvenile Delinquency Act 1958, which was passed during the socialist era, albeit for different purposes. Over time, different measures were introduced in the Penal Code. Some were transitory in effect, and of varying substance, but they were all aimed at the offender's complete or partial release from criminal responsibility while at the same time preserving the punishment's preventative and educational influence.

Now, primary attention should be paid to the release of juvenile offenders 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. These are cases in which the offender has committed a crime that is not very harmful to society. Some of the measures, which are provided for in details in Juvenile Delinquency Act 1958 have a restorative character that imposes a number of duties on the young person. They include: apology to the victim; attending the educational programmes and consultation having a rehabilitative purpose; repairing the damage inflicted, where possible; and community service (Article 13, paragraph 1, items 2, 3, 9 and 10). The implementation agency is the Commission for Combating Juvenile Delinquency, which is similar to the Youth Offending Teams that are a feature of the restorative justice provision for young persons in England and Wales.

Restorative elements could be seen in the relatively new punishment - probation, in force since 2005. According to Article 42a of the Penal Code probation is a totality of measures for control and impact without imprisonment, which are imposed together or separately. The probation measures shall be: obligatory registration at the present address; obligatory periodical meetings with a probation employee; restrictions of the free movement; inclusion in courses for professional qualification, programmes for public influence; correctional labour; gratuitous work in favour of the society. The restorative character of some of the measures is easily seen.

Having in mind these various possibilities the following conclusions can be drawn about the situation in Bulgaria:

- there is a strong tendency towards enrichment and development of non-penal methods and instruments for combating crime. Nevertheless, genuine restorative justice practices in their modern sense still remain a topic for the future;
- the unified procedure for imposition of criminal responsibility is no longer completely possible or necessary; the development of the penal procedure legislation involves the introduction of new and varied forms.

At the end of 2004 the Bulgarian Parliament finally adopted the long-awaited Mediation Act. This was the natural completion of the NGOs' work on promoting and applying mediation as a conflict resolution method. The introduction of mediation was also inevitable in the context of the harmonization of Bulgaria's national legislation with the EU law, the need to follow the Recommendations of the Council of Europe's Committee of Ministers encouraging the application of mediation in civil, family, administrative and criminal matters, and the UN resolutions on restorative justice. According to Article 3, paragraph 1 of the Mediation Act, mediation may be used in civil, commercial, labour, family and administrative disputes; disputes related to consumer rights and other disputes involving natural and/or legal persons. Paragraph 2 of Article 3 stipulates that mediation shall also be available for cases covered by the Penal Procedure Code. However, the last Penal Procedure Code did not include any provision to this effect, though it is expected to be included in the next amendment to it.

### **Subordinate legislation**

Since the Mediation Act is itself relatively short, a number of soft law texts have been developed in order to create all the necessary prerequisites for the implementation of mediation in practice. In 2005 the Minister of Justice, who is responsible for the implementation of the law, issued the Training Standards for Mediators, Procedural and Ethical Rules of Conduct for Mediators and Rules Pertaining to the Unified Register of Mediators. These three texts regulated the implementation of the Mediation Act and, at a technical level, defined the contexts in which mediation is to be applied. The regulations concerned mediation in general, in all legal branches, including penal law. It is widely acknowledged that the specific conditions required for the use of victim-offender mediation will be met by additional soft law acts. However, amendments and supplements to the Mediation Act were introduced at the end of 2006. Those changes raise the requirements that mediators must meet concerning training and registration in the Unified Register of Mediators. It is envisaged that the Minister of Justice will approve the mediator training organizations with a ministerial order. These new rules have been detailed in Ordinance No 2 of 15 March 2007 on the Conditions and Procedure for Approval of Organizations Providing Training for Mediators; on the Training Requirements for Mediators; on the Procedure for Entry, Removal and Striking off Mediators from the Unified Register of Mediators; and on the Procedural and Ethical Rules of Conducts for Mediators, issued by the Ministry of Justice.



To the extent to which we can say that restorative justice provisions exist in the Bulgarian legal system, they are primarily offender-focused. Restorative practices are applied to petty crimes (without specification) and to crimes prosecuted at the instigation of a complaint by the victim; to both juvenile and adult offenders.

As already noted, nowadays in Bulgaria there is no specific legal provisions about restorative justice, but permissive legislation. However, there are some schemes, projects, programs. Restorative practices are available at all stages of criminal proceedings, although they are primarily used at an early stage. At present they are mainly a part of the criminal process and in exceptional cases comprise an alternative to it. The Public Prosecutor's Office and the courts exercise the gate keeping function. Again, it must be emphasized that these practices only include restorative elements and they are not authentic restorative practices in the contemporary sense of the word.

### **C. Actual Situation of Restorative Justice**

At present days, as stated, there are no nationwide Restorative Justice (RJ) programmes, initiatives and services in Bulgaria. Restorative Justice is still in the peripheral attention of criminal justice policy-makers. The usual arguments are as follows: high crime rate, society is not ready yet, restorative justice is an unknown option etc. However, several different projects were implemented during the last years. Most of them were research and promotional projects, but there were some pilot projects as well.

An example in this direction is the European Project 2009-2010 "Victim-Offender Mediation at the Post-Sentence Stage", coordinated by the French Federation "Citoyens et Justice", with the support of the Ministry of Justice and project partners: the Bulgarian National Association of Mediators (NAM), with the active participation of the magistrates of Courts from Sofia and Varna Judicial Districts and academics, the Italian Ministry of Justice, the Directorate General of Justice of the Government of La Rioja, Spain and the District Courts of Nantes, Marseille and Pau and three associations working respectively with the said courts. It was remarkable that the project went beyond his original objectives and stimulated the implementation of Victim-Offender Mediation (VOM) at all stages, especially in Bulgaria. It was sponsored by the European Commission, Directorate General "Justice, Freedom and Security".

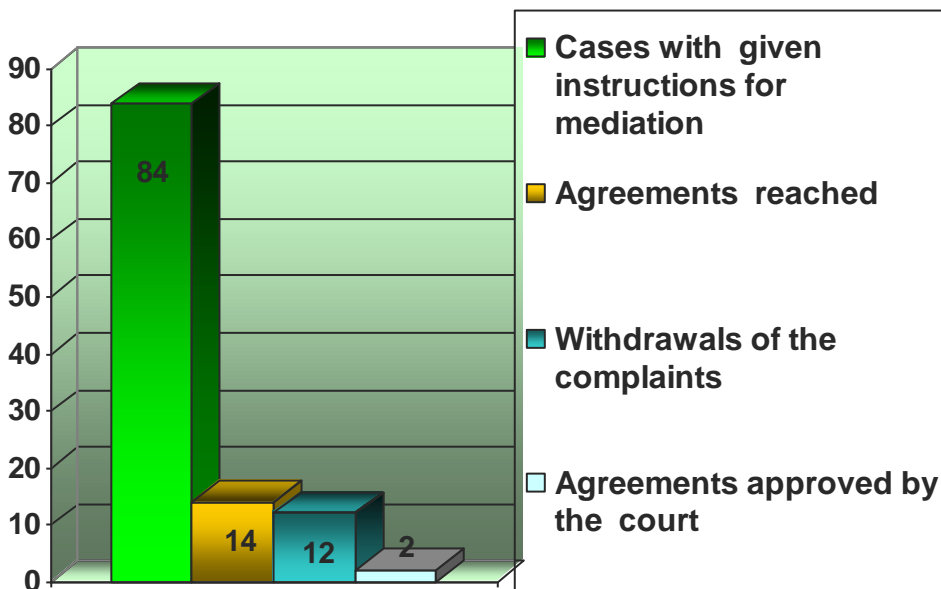
Within the framework of this project the procedural options for VOM application have been identified, namely:

- a/ Notice to the parties before scheduling the case
- b/ Informing the parties during the hearing
- c/ VOM at post-sentence stage
- d/ VOM during the second instance proceedings

The relevant procedural documentation has been developed, mainly by Varna District Court. The usual practice has been as follows: Before scheduling the case the judge informs the parties about the opportunity for reaching an agreement through extrajudicial means – e.g. mediation. During the hearing the presiding judge invites the parties to reach an agreement and instructs them for the opportunity to resolve the conflict through VOM.

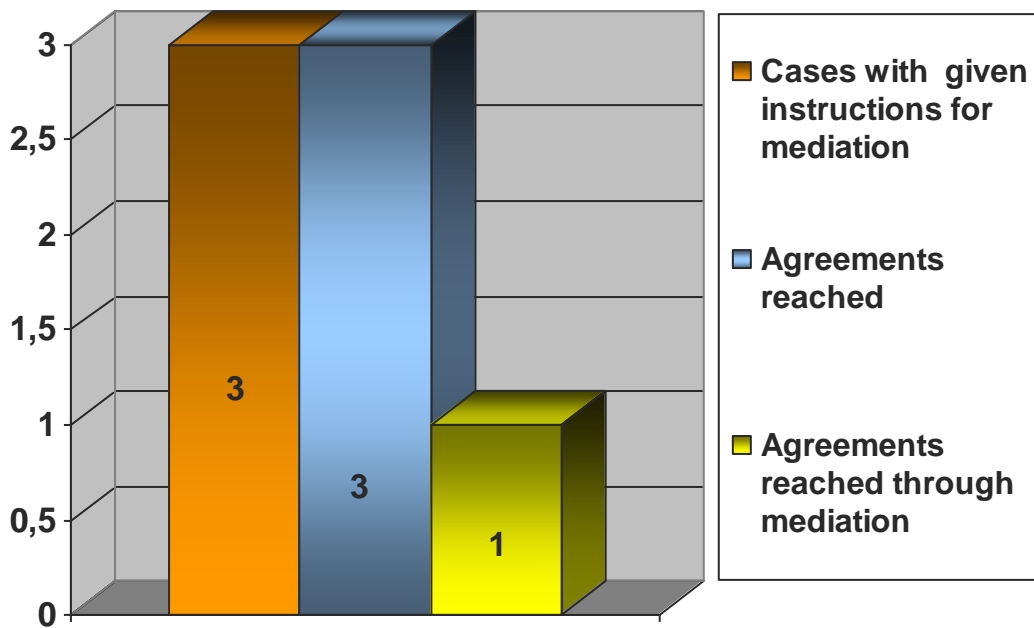
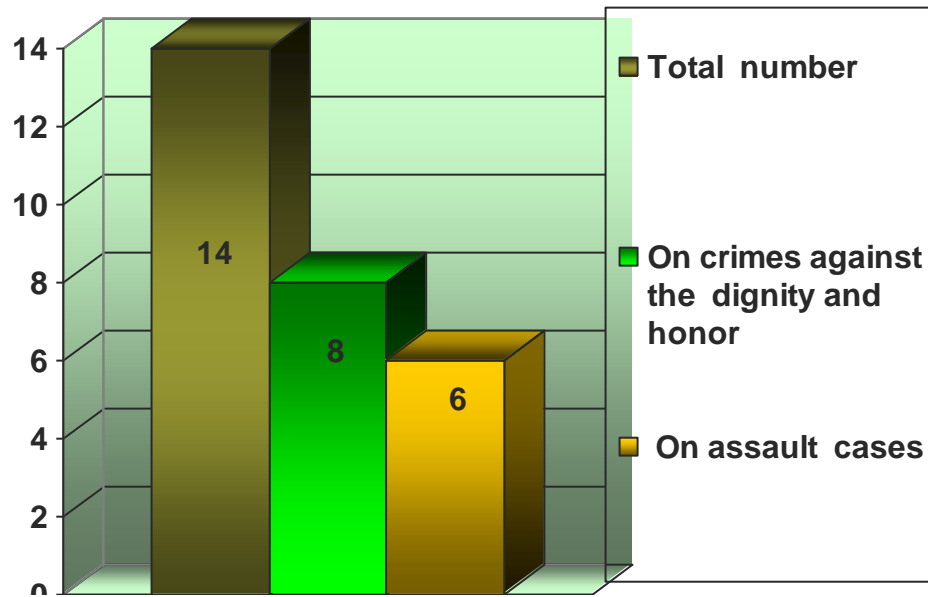
In Sofia Regional Court - the biggest regional court in the country – for the period January - October 2010, 46 panels considered 255 cases of complainant's crimes. In approximately one half of them reconciliation was reached, mainly using VOM, and in the other half complaints were withdrawn. The rest of the cases were terminated due to different reasons. Moreover, a Mediation Center was opened at the Sofia Regional Court.

Diagram 1 represents Varna Regional Court achievements:



**Diagram 1**

Diagram 2 further details the agreements reached:



**Diagram 3**

To the best of my knowledge, this is the only statistical data available on the limited number of cases that were settled through a restorative justice instrument, during the last five years. They represent an extract from the Final Report of the cited

project<sup>6</sup> . No further evaluative research has been carried out so far. The main financing source of the applied methods were the EU funds. That is why extra costs have not been required from the parties involved (the victim and the offender). As a rule VOM costs are lower than the ones for the traditional criminal justice services. As far as it concerns the time needed for the process to be completed, it is shorter in comparison to the traditional proceedings.

### **Restorative Justice Research and Promotion Projects**

Several national and transnational RJ research and promotion projects have been launched and implemented lately in Bulgaria.

#### **“Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals” (RJE) 2012-2014**

[Independent Academic Research Studies \(IARS\)](#), a leading UK-based international think-tanks with expertise in community-led solutions to crime, such as restorative justice, will lead a partnership of 5 organisations from 5 EU countries: the Institute of Conflict Resolution (Bulgaria), the University of Applied Sciences for Public Administration Bremen (Germany), Restorative Justice Netherlands (the Netherlands) and the European Public Law Organisation (Greece).RJE will also be supported by 11 Associate Partners who are experts in the area of victims and restorative justice.

The project will facilitate the implementation of the EU Directives on Minimum Standards of Victims and Protection Measures. These Directives are expected to have a significant impact on how restorative practices (e.g. mediation, conferencing) are delivered in EU member states.

#### **CONSENSUS Project 2009-2010**

The project was coordinated by Xunta de Galicia, Spain, and the partners were the following institutions: the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), Helsinki, Finland; the Research Institute on

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<sup>6</sup> Citoyens et Justice 2011, Final Report “Action-Research About the Availability of the Victim-Offender Mediation”, p.46-47

Judicial Systems (Bologna) and the National Research Council-Italy; the Directorate General for Social Rehabilitation, Ministry of Justice, Lisbon, Portugal; the University of Glasgow, Scottish Centre for Crime and Justice Research; the Institute of Conflict Resolution, Sofia, Bulgaria. The project was financed by the Prevention of and Fight Against Crime Programme of the European Commission.

CONSENSUS Project began with a study of good practices which gave the possibility to obtain up-to-date and comparative information about RJ programmes for juveniles. The aim was to identify the problems arising in their practical application, from different perspectives, as well as their advantages, being an alternative mechanism to the traditional retribution justice model, for offenders, victims and society in general. It enabled the transfer of information and experience, permitting professionals to utilize new methods of intervention which were tested.

The project ended with a transnational forum "Good Practices of Restorative Juvenile Justice", celebrated in Santiago de Compostela, Spain, on the 2<sup>nd</sup> and 3<sup>rd</sup> of November 2010, and a publication with the papers and conclusions of the forum<sup>7</sup>.

### **Tools in Network: An E-Net Approach to Share Mediation Competences (TIN Project) 2007-2009**

The project was sponsored by the European Commission Leonardo da Vinci Programme and coordinated by the Ministry of Justice – Italy, Department of Juvenile Justice. The partners were: Cras Onlus (NGO) – Italy; the Psychoanalytic Institute for Social Research - Italy; Christian Youth Village Foundation – CJD Eutin – Germany; Foundation International O'Belen – Spain; the Institute of Conflict Resolution – Bulgaria; the Association "Riga City Mission"- Latvia, and the Association for Probation and Mediation in Justice - the Czech Republic.

#### *General objectives of the project*

- Support the improvement of skills and competencies of professional operators in the field of juvenile justice system through the capabilities and services offered by an on-line documentation platform on Restorative Justice.
- Use the platform developed by the Italian Department of Juvenile Justice to share informative documents, collect best practices, strategies of intervention, operational tools, fundamental to compare, analyze and define common pathways and policies in the field of Restorative Justice.

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<sup>7</sup> Lois and Vazquez 2001, Good Practices of Restorative Juvenile Justice

### *Specific objectives*

- Develop the on-line platform to the needs of the other partner countries
- Facilitate the possibilities of the partner countries to plan innovative vocational trainings
- Improve the transnational networks between public and private organisations in the field of Penal Mediation thanks to the on-line platform's possibilities

### *Target groups and potential users*

- Professional operators and experts working in the field of the Penal Mediation
- Public and private agencies providing career guidance services and vocational training activities concerning the social workers
- Universities and Social Research Centres
- Young people graduates in psychology, law, sociology who are interested in working in the area of penal mediation
- Decision makers and managers of policy planning for young people

### *Evaluation and results*

- General upgrading of knowledge and skills about Penal Mediation
- Common interest to develop the e-learning interactive tools (platform, forum, chat) as well as concrete helpful work instruments
- Powerful instruments to realize vocational training activities and training on the job pathways for different categories of users

### *Final outcomes*

- The on-line platform for education was translated in all partners national languages
- Informative brochure was printed
- DVD with presentation of the project and other information was produced

## **A Workshop and Round Table Discussion on Perspectives of Mediation in Penal Matters - 2007**

At the end of 2007 Restorative Justice developments in Bulgaria was significantly accelerated. Two big events – a Workshop and a National Round Table discussion on Perspectives of Victim-Offender Mediation - were organized by the National Association of Mediators, and sponsored by the Technical Assistance Information Exchange Instrument (TAIEX), DG “Enlargement” of the European Commission and the Institut Francais - Sofia. The events attracted more than 80 representatives from the Ministry of Justice, the Ministry of Interior, the judiciary, NGOs, practicing mediators, and researchers from Bulgaria and abroad. A Concept for legal regulation of VOM was adopted. The Consultative Council on Penal Policy to the Minister of Justice asked NAM to develop proposals *de lege ferenda* for introducing of VOM in the Bulgarian legal system. In 2008 a Working Group was established to develop proposals for amendments to the Penal Code and Penal Procedure Code. They were submitted to the Minister of Justice.

## **Violence in School Training Action-VISTA Project 2003-2006**

There was partnership with six European countries - UK, Ireland, Belgium, Norway, Spain, Bulgaria. The main aims of this project were:

- to develop a European training package on the topic of violence prevention in the whole school context;
- to disseminate good practice through training at European, national and local levels
- to introduce restorative practices in schools

### *Objectives for participants*

- to become familiar with the restorative justice principles, ideas and values
- to become familiar with the contemporary RJ applications in a school setting
- to get prepared to promote a restorative climate in school
- to consider strategies for the application of RJ models in school

All partners considered Restorative practices in schools as a new developments of RJ. They found that the application of restorative justice in school settings had good

grounds. Traditional punishments seemed to be ineffective in responding to behavior problems in schools. For this reason restorative justice models such as mediation, circles and conferencing were adapted to the school settings.

*VISTA outcomes*

- A training package for teachers, parents and students was developed
- The package was piloted in Norway
- The package was translated in English, Spanish, German, Flemish and Bulgarian
- Now it is in the process of dissemination

Two other European projects - "Meeting the Challenges of Introducing Victim-Offender Mediation in Central and Eastern Europe" in the frameworks of AGIS Programme and COST Action A21 "Restorative Justice Developments in Europe", with an active Bulgarian involvement, have been implemented lately. They have paved the way to RJ application in Bulgaria as they met the urgent needs.

While both the Parliament and the cabinet are being convinced that introducing restorative justice is only a matter of when, not of if, a number of NGOs have started and successfully implemented trainings of mediators, judges, prosecutors and other professionals in the field. The Institute for Conflict Resolution, the Union of Bulgarian Jurists, HELP Foundation and others have worked intensively in this area. Mediation centres have been created throughout the country. A National Association of Mediators was established in 2005 as an umbrella organization to coordinate the activities of mediators and their associations.

The academics, on their part, have also contributed: special courses on alternative dispute resolution, restorative justice and mediation in criminal matters have been introduced in the New Bulgarian University and the *Neofit Rilski* Southwest University, as well as in the Institute for Postgraduate Studies with the University of National and World Economy. The main tools for promotion aiming at the adoption of restorative justice practices in Bulgaria are books<sup>8</sup>, articles, booklets, DVDs, conferences, workshops, TV and radio broadcasts, information campaigns etc.

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<sup>8</sup> Chankova 2011, Restorative Justice. A Comparative Analysis; Chankova 2002, Victim-Offender Mediation; Stefanova 2002, Beyond Themis: Legal Aspects of Mediation in Bulgaria etc.



Having in mind all the available information, the following conclusions about the latest developments of RJ in Bulgaria can be drawn:

- Ancient traditions for reconciliation and reparation still exist; Restorative justice in the modern sense of the word is a new idea.
- The retributive approach still prevails over the restorative elements in the legislation and practice.
- RJ practices are at an early stage of development
- There is already an active NGO sector, launching information campaigns, various projects, pilot schemes, lobbying, training, networking.
- Academics are one of the main proponents of RJ. Training and university education in RJ principles and practices are rapidly developing.
- Policy makers are behind time.
- Legislation is still underdeveloped and it hampers the spreading of RJ practices (important as Bulgaria belongs to the continental law system).

#### **D. Informal Referrals and Informal Initiatives**

There are rich traditions in Bulgarian customary law that may be seen to be the predecessors of alternatives to punishment and of modern notions of out-of-court methods for conflict resolution. These traditions are based on the classic understanding that the worst agreement should be preferred to the best court decision. Reconciliation between the disputing parties was a common feature of customary law, designed to avoid the referral of the dispute to the local court, with its unavoidable and considerable expense. Although most of these customs concern family, labour, commercial and other private disputes, such traditions can also be found in Bulgarian customary penal law. An illustrative example of this is the compensation for a crime that had been proved against an offender.

In the chronological development of Bulgarian customary penal law, financial or property compensation gradually replaced the vendetta as a means of settling the score between the victim and the offender. Historically, this development was intended both to prevent future blood shedding and to compensate for the harm done. In addition to its instrumental purpose, the payment of compensation was intended to achieve reconciliation between the notional 'enemies', restoring the peace that had been broken by the offender's 'mischief'. As Bulgarian customary law does not distinguish between civil and criminal offences this 'mischief' included both *delicts* (torts) and crimes. Their common characteristic

is the illegal result – the harm, which has to be repaired and compensated so that the prior social balance between the protagonists is restored. Indeed, the Bulgarian customary law went further than this. It has traditionally included rules for measuring what level of compensation was due. These rules took into consideration the seriousness of the mischief, the offender's characteristics, and the financial circumstances of the victim and the offender. In general, reconciliation was applicable in cases which today we would treat as negligently committed wrongs, or wrongs committed while the offender was affected by a medical condition that might excuse his behaviour; but it was not available for crime that were committed intentionally.

Towards the close of the 19<sup>th</sup> century these custom-based wrongs were codified as positive laws, the breach of which constituted an offence. But in their written form they continued to reflect social mores, myths and customs; even today some minority groups (such as the *Roma*) continue to apply customary law alongside official law. This could be interpreted as a signal for the need to integrate such non-formal mechanisms into formal law as an instrument for the rationalization of the official conflict resolution system in general.

## **E. The Key-Practitioners of Restorative Justice**

The process of introducing RJ in Bulgaria has had some external catalysts, e.g.:

- The Council of Europe Recommendation on Mediation in Penal Matters and the relevant EU and UN instruments;
- The regular progress reports of the European Commission on judicial reform (leading up to Bulgarian accession to the EU) and currently - Cooperation and Verification Mechanisms monitoring reports;
- The support received from some international NGOs - the European Forum for Restorative Justice; American Bar Association Central and Eastern Europe Legal Initiative, America for Bulgaria Foundation etc.

However, the main engine of the process up to date are the NGOs and the academics, who have already done considerable research work and have started pilot projects and training within the legislative vacuum, and in the face of resistance from many legal professionals.

The Mediation Act 2004 contains few provisions concerning the organizational framework for mediation. It stipulates only that the Minister of Justice shall establish and

maintain a Unified Register of Mediators (art. 8a), and that mediators may form associations for the purpose of organising their practice (art. 4). This legislative vacuum leaves substantial scope for grass-root initiatives and the involvement of NGOs. Despite the absence of any engagement on the part of state institutions and its inadequate initial funding, there has been considerable progress in the development of the basic infrastructure for the use of mediation in specific cases. The Unified Register has been set up, and has commenced its work. It enlists only those mediators who hold a certificate of training according to the training requirements for mediators, nowadays around 950. This training, which is at present days provided by a number of universities and NGOs, lasts for a minimum of 60 academic hours and includes both theory and practice. The National Association of Mediators plays the key coordinating, networking and stimulating role. Mediators in Bulgaria are volunteers, mediation is not a profession yet.

It should also be stated that some educated, well-informed and open-minded police officers, prosecutors, judges, lawyers, social workers and prison staff have already overcome the sense of their "vested interests" in the current *status quo* and seeing the potential of RJ have started to implement and promote Restorative Justice schemes in Bulgaria. They (as well as the mediators and other RJ practitioners) are guided by the existing enabling legislation and professional and ethical standards, developed and adopted by the Ordinance No 2 of 15 March 2007 on the Conditions and Procedure for Approval of Organizations Providing Training for Mediators; on the Training Requirements for Mediators; on the Procedure for Entry, Removal and Striking off Mediators from the Unified Register of Mediators; and on the Procedural and Ethical Rules of Conducts for Mediators, issued by the Ministry of Justice.

## **F. Case Study**

This was a case from the jurisprudence of Varna Regional Court.

It concerned one of the so called complainant's crimes. In the particular occasion the crime was against honour and dignity and the victim and the offender were siblings. There is no pre-trial procedure in such cases and the parties refer directly to the first instance criminal court.

During the ongoing hearing the presiding judge has found that a reconciliation was possible and gave detailed information about mediation and instructions to the parties to look for a mediator. He suspended the process and gave opportunity to the conflicting relatives to find a mediator to enable the communication. The registered

mediator B. Z. was contacted. The mediation session took place on the very same day. After some deliberations a mediation agreement was reached out of the court. It was submitted to the court and according to the will expressed by the parties, the court proceedings were terminated.

Moreover, the mediation agreement that was achieved played an extra role - it was taken into account in another court process between the same parties which also was terminated.

As a result the relationships between the relatives were improved and the court overload was reduced. Time and expenses for both the parties and the court were saved.

## **G. Current Reforms**

During the period 2005-2007 several sociological studies were conducted and showed positive attitude and readiness of the wide society and the law-enforcement authorities to apply VOM in Bulgaria. This RJ model, although uncharacteristic of the continental law system and the Bulgarian general mentality, is well known and trusted by the general public and legal professionals. The early years of establishing the idea of VOM indeed met some resistance on the part of the lawyers' association in particular, and that was understandable. The latter was not interested in having more cases diverted from traditional legal practices, as this jeopardised its historically acknowledged monopoly on conflict resolution. This period can safely be assumed to be over, as more and more legal practitioners admit the advantages of mediation for the parties to the conflict and their own daily practice.<sup>9</sup>

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

As already mentioned, in December 2007 a National Round Table discussion on Perspectives of Victim-Offender Mediation was organized by the National Association of

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<sup>9</sup> Chankova, Georgieva and Bakalov 2008, Findings of Surveys on Applicability of Victim-Offender Mediation in Bulgaria, p. 90

Mediators. A Concept for legal regulation of VOM was adopted. A Working Group was established to develop the proposals for amendments to the Penal Code and Penal Procedure Code, later submitted to the Minister of Justice. These drafts were discussed and received wholehearted support during the Bulgarian-German conference on mediation held in May 2008, with the involvement of representatives of the government, the judiciary and the academic circles. What remains to be done now is to take the decisive step of adopting those drafts and delivering on commitments already made.

Mediation in penal matters has been explicitly mentioned as one of the highest priorities in the Strategy to Continue the Judicial Reform in the Conditions of full EU Membership (2010), approved by the Council of Ministers. A new National Concept of Penal Policy of the Republic of Bulgaria for the period 2010-2014 has also been adopted. Having in mind the basic postulates of the Treaty of Lisbon and the Stockholm Program for an Open and Secure Europe Serving and Protecting Citizens, the concept offers far-seeing perspective in compliance with the common European penal policy. Here one more step towards restorative justice has been made.

Even in the latest Concept on State's Policy on Justice towards Children 2011 it is envisaged that the restorative measures should take precedence over the punishment.

Before becoming an accepted part of the traditional criminal justice system, restorative approaches have already been established in other areas, for example in schools. In the capital Sofia as well as in other cities throughout the country like Plovdiv, Pazardzhik, Rousse, etc., a number of pilot projects, again at nongovernmental levels, have been successfully implemented to experiment with restorative justice practices in school environment. Restorative practices are more frequently applied in prisons and in cases of disputes among members of the same neighborhood.

## **H. Evaluation and Recommendations**

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

At the moment attention in Bulgaria is focused on introducing mediation in criminal matters, although restorative practices are being implemented in other areas such as schools as well. This contributes to establishing a restorative culture and climate that is in line with modern trends and to some extent in contrast to traditional penal repressive policies for dealing with crimes.

There is a common belief that RJ cannot, and does not, attempt to replace traditional criminal justice but rather aims at complementing it sensibly. One cannot possibly believe that all deficiencies of justice administration will be set off by introducing RJ. Incorporated in the criminal justice system, as an integral element, RJ can indeed bring better results, namely satisfactory compensation for the victim of crime, faster procedures, avoiding excessive procedural formalism and reduced use of imprisonment.

However, there are some obstacles hampering progress of Restorative Justice implementation in Bulgaria. Analyzing the latest developments the following hindrances for RJ wide spreading could be summarized:

- Still rather low level of civil activism - people are mainly busy with their own survival during the very long transitional period and current financial crisis
- Prevailing punitive character of criminal justice system
- Poor economic conditions
- Difficulties related to the transitional period (high crime rate, feeling of insecurity, despair, disappointment, frustration; as a result of which new ideas are not easily adopted), etc.

It is also important to recognise that Bulgaria is an exception to the general tendency to humanize and to reduce the salience of criminal repression: to the contrary, there are many indicators that Bulgaria is becoming more repressive. A number of recently created criminal offences carry severe penalties, for example that envisage long periods of custody. As crime rates increase, sanctions for traditional crimes also increase. Although the legislation provides for alternatives to punishment, in reality, punishment remains a preferred instrument.

To overcome these it is necessary:

- To reformulate the Bulgarian criminal justice policy and to put it in compliance with the most advanced European and world models. Bulgaria had its representative in the Council of Europe's Expert Committee on Mediation in Penal Matters, which produced *Recommendation No. R(99)19 on Mediation in Penal Matters*. It supported the UN Resolution on *Basic Principles of the Use of Restorative Justice Programs in Criminal Matters*. Bulgaria is a full member to the EU since 1<sup>st</sup> January 2007. Bulgarian policy

makers are alert to the imperatives of the Council of the EU Framework Decision of 15<sup>th</sup> March 2001 on the standing of victim in criminal proceedings, the new European Commission's Victim Package as well as the other requirements of the process of the harmonization of Bulgarian law with the law of the European Union, and with the need to observe the standards of the European Convention on Human Rights. So, further actions should be taken without delay.

- To allocate the necessary funds. RJ services assume not only NGOs and volunteers involvement but also some state's support, especially in relation to the crime victims.

- To continue with further training of mediators, judges, prosecutors, lawyers, police officers, probation and prison staff .

- To raise awareness among general public, to disseminate widely information. In this aspect "success stories" are of ultimate importance.

It could be summarised that initial awareness, understanding and support for victim-offender mediation and the other instruments of restorative justice exist amongst the policy-makers, specialists and the broader social circles nowadays in Bulgaria. This shows that restorative justice has a future in Bulgaria. There are people ready to work for this goal, and their number is increasing every day. As a member of the UN, the EU and of the Council of Europe Bulgaria has to provide better services both for crime victims and offenders. Introducing measures enabling diverting cases from the criminal justice, including restorative practices, is a relevant approach to that problem. A continuing exchange of ideas, knowledge and expertise with foreign scientists and practitioners will stimulate the Bulgarian researchers and policy-makers and will accelerate the ongoing processes in Bulgaria.

## **I. ANNEX**

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### **Links to legislation and other relevant websites**

- Ministry of Justice- <http://www.justice.government.bg>
- National Association of Mediators – <http://www.nambg.eu>
- Institute of Conflict Resolution - <http://www.icr-bg.org>
- Mediation- Bulgaria - <http://www.mediation-bulgaria.com/>



