

VICTIM-OFFENDER MEDIATION WITH
YOUTH OFFENDERS IN EUROPE

Victim-Offender Mediation with Youth Offenders in Europe

An Overview and Comparison of 15 Countries

Edited by

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INTRODUCTION

Chapter 1

A COMPARATIVE PERSPECTIVE ON VICTIM-OFFENDER MEDIATION WITH YOUTH OFFENDERS THROUGHOUT EUROPE

Anna Mestitz

1. PREMISE

Victim-Offender Mediation (VOM) is a very ancient strategy adopted in tribal or village societies to solve conflicts, repair damages and re-establish social peace. Technically, in the “mediating continuum” the mediator is an ancestor of the judge, as noted many years ago by Martin Shapiro:

“In examining triadic conflict resolution as a universal phenomenon, we discover that the judge of European or Anglo-American courts, determining that the legal right lies with one and against the other of the parties, is not an appropriate central type against which deviance can be conveniently measured. Instead he lies at one end of a continuum. The continuum runs: go-between, mediator, arbitrator, judge. (...) The go-between is encountered in many forms. In tribal or village societies he may be any person, fortuitously present and not connected with either of the households, villages or clans in a dispute, who shuttles back and forth between them as a vehicle of negotiation (...) The mediator is somewhat more open in his participation in the triad. He can operate only with the consent of both parties. He may not impose solutions. But he is employed both as a buffer between the parties and as an inventor of mediate solutions. By dealing with successive proposals and counterproposals, he may actively and openly assist in constructing a solution meeting the interest of both parties” (Shapiro, 1981: 3).

This is the essence and the scope of VOM and other Restorative Justice strategies currently adopted in Europe, the United States, New Zealand, Australia, Canada and in many other countries. From the first experiences in the 1970s in the United States¹ and Canada², the movement for Restorative Justice has gained more and more attention among citizens, legal professionals and scholars - mainly through classic articles and books such as those by Neil Christie (1977), John Braithwaite (1989), Howard Zehr (1990) - and across a variety of continents and cultures³.

A variety of restorative practices quickly emerged in Western democracies worldwide emphasizing the increase of citizen participation in the administration of justice (Archibald, 2001). In fact Restorative Justice includes different strategies by which the victim, the offender and/or other individuals or community members affected by a criminal act actively participate together in the resolution of matters arising from the crime, with the help of a fair and impartial third party. Regardless of the label used - family group conferencing, or simply conferencing (Van Ness, Morris and Maxwell, 2001), community conferencing, community justice forums and VOM (Morris and Maxwell, 2001a) - these methods bring together victim, offender and significant other community players to give restorative responses to the criminal behaviour. Their aim is the restoration of peaceful and balanced social relations and the reparation of criminal harm, rooted in values of equality, mutual respect and concern. In practice these methods differ. In fact, VOM meetings involve crime victims and offenders and one (or more) mediator, while in family group conferences, conferencing etc. their families, supporters and representatives of the community are also involved under the guidance of one (or more) facilitator.

In the 80s New Zealand and Australia became the first “laboratories of experimentation in one form of restorative justice: conferencing” (Daly, 2001: 59)⁴, whereas some European countries began the experimentation of VOM. Namely Norway, Finland and Austria began the first experiments. In England, too, VOM and reparation programmes were adopted “by juvenile liaison bureaux and police-led cautioning panels” in “the absence of any statutory authorisation for restorative justice programmes” (Dignan and

¹ “The Institute for Mediation and Conflict Resolution (IMCR) in Manhattan established the standard for criminal mediation practice in 1971, well before any theoretical work on restorative justice” (McCold, 2001: 41).

² In 1974 in Kitchener (Ontario) a probation officer proposed the first victim-offender reconciliation to a youth offender.

³ For an exhaustive comparative overview see Morris and Maxwell (2001a). For a guide to practice and research see Umbreit (2001). For an overview in 8 European nations see European Forum for Victim-Offender Mediation and Restorative Justice (2000).

⁴ For the development of conferencing in Australia and New Zealand see Daly (2001).

Marsh, 2001: 86). Sooner or later, these examples were followed by almost all European Union (EU) member countries.

Recent studies on restorative practices have demonstrated a capacity for reductions in both recidivism rates (Morris and Maxwell, 2001b) and the costs of criminal justice. Generally restorative justice programmes are carefully structured under the criminal codes and/or youth criminal justice acts in order to protect the interests of participants and promote the ends of justice. In practice these programmes are carried out as out-of-court, near-court or in-court procedures.

At the very beginning of the second millenium VOM has grown to “over 1,300 programmes in more than twenty nations” (Umbreit, Coates and Vos, 2001: 121). Today in Europe this “unique, innovative and ancient form of handling and solving conflicts (...) seems to be stronger than ever” (Weitekamp, 2000: 101). In fact in European countries VOM is the main Restorative Justice strategy adopted with adults and youth offenders (Miers and Willemsens, 2004) since conferencing, circles, and family group conferences are for the most part disregarded:

“Almost everywhere in Europe victim-offender mediation is seen as the best actual practice (...) Often no distinction is made: victim-offender mediation is restorative justice and restorative justice remains limited to victim-offender mediation. Although we know about family group or community conferencing and sentencing circles, these two approaches do not find any significant implementation on the European scene till these days” (Peters, 2000: 11).

As a matter of fact, so far only in England and Wales, Ireland, Belgium, and The Netherlands are conferencing and family group conferences currently run. Notably, only in The Netherlands are these methods clearly preferred to VOM.

Presently in the EU, VOM is conceived as a tool to empower the victim, to diminish the state’s role and empower that of civil society, to make the citizen participate in the administration of justice and to reduce costs and workload in the criminal justice systems⁵. Even if mediation models and schemes are often different and administered by a variety of institutions, agencies and groups, various common features emerge at different levels. In this chapter, I will try to show some of them by sketching a comparative perspective of the main features of VOM in the 15 countries examined in detail in the chapters of this book. Before entering into detail it would be useful to explain briefly the background and the context in which this book was conceived.

⁵ Cfr. *Council of Europe* (2000: 11-12). For the emphasis on Canadian citizen participation in the administration of justice see Archibald (2001).

2. BACKGROUND AND CONTEXT

The starting point of this book was the international research project *Victim-Offender Mediation: organization and practice in the juvenile justice systems*⁶, which aimed to provide an overview of the state of the art regarding VOM with young offenders in the EU member nations. The specific scope was to collect comparative information on the basic conditions needed for adopting VOM with youth offenders: norms and procedures, organization and structure of the services, local/national contexts, financial and human resources (Mestitz, Pelikan and Vanfraechem, 2004).

The project was suggested by the fact that EU member states are not only asked by the Council of Europe to promote VOM (Recommendation No. R(99)19), but they are specifically requested by the EU Council to adapt their legislation to this aim by March 2006 (Framework Decision of March 15, 2001, arts. 10, 17). As a consequence the information provided by the project was expected to be useful for both participant and non participant countries.

A network of participants from 15 European nations (Austria, Belgium, England and Wales, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Norway, Poland, Spain, Sweden) was established and each participant country was asked to contribute with a national report. The contributors of this book were the participants in the project.

Two EU member states are missing: Greece, because no VOM activity has been introduced in this country, and Portugal, because when our project started a new bill on VOM existed but no practical experience had began.

Among the non-EU member nations Norway was taken into account because it had a long experience in VOM as a result of a strong governmental public policy which promoted a wide network of groups and services for its implementation. Several Central and Eastern European countries have already adopted legislation on Restorative Justice or VOM (Czech Republic, Estonia, Moldova, Poland, Russia, Ukraine⁷), so two “new” EU member nations were also included in our project: Poland because

⁶ The project was co-funded by the Research Institute on Judicial Systems of the Italian National Research Council and by the European Commission Grotius II Criminal Programme (JAI/2002/GRP/029), from November 1st, 2002 to January 31, 2004. The project was promoted and coordinated by Italy with two partners: Austria and Belgium (Mestitz, Pelikan and Vanfraechem, 2004). Namely, the author of this chapter, the project coordinator, was assisted by Simona Ghetti (IRSIG-CNR, Bologna), Christa Pelikan (IRKS, Vienna) and Inge Vanfraechem (OGJC, Catholic University of Leuven). The latter institutions also contributed in the co-funding.

⁷ For more information see: www.euforumrj.org.

it has had a network of services offering VOM for many years, and Hungary, where mediation experiences have been established in different sectors such as family, health and work.

The methods we used to obtain useful information and ensure the good quality of reports were:

- common guidelines for preparing all national reports (established at the very beginning),
- evaluation of the national reports by peer review (twice),
- final seminar in Bologna, in which participants selected for discussion the most relevant issues emerging from reading the national reports that had been made previously available on the web site of IRSIG-CNR.

After the seminar and the end of the project, all participants agreed to revise and transform the national reports into the chapters of this book. Five areas of investigation were explored in participants' nations by means of common guidelines that have been substantially maintained in the following chapters:

- a) *Norms and legislation allowing for the implementation of victim-offender mediation programmes.* An examination of national norms was performed in order to verify the existence, development, and lacunas of normative frameworks for the application of VOM.
- b) *Theoretical frameworks of VOM.* We examined a number of different models for VOM practices currently available in the various countries.
- c) *Organizational structure of VOM.* Different legislation and VOM models lead to different organisational structures. Thus, we gathered information regarding the contexts in which VOM is applied, the institutional set up, the operative units and the amount and type of cases referred to mediation.
- d) *Professional characteristics of mediators.* Information was gathered on the status of mediators, their recruitment, educational background and professional training.
- e) *VOM advantages and criticisms.* In many countries programmes are currently in their experimentation or initial phase, so we also tried to collect information in each nation on benefits, potential problems, and criticisms.

A comparative overview of such a large number of nations needs to make reference to some analytical framework. The two traditional legal categories of civil law and common law, even though useful with regard to some aspects examined in our chapters, do not explain the wide variety of VOM models operating in the nations here examined. To analyse them, it seems more useful and appropriate to make reference to geographical categories as they better explain some similarities in each group of countries. Moreover,

these categories also remind the different historical roots and legal traditions shared by the four main groups of nations:

1. British isles (Ireland, England and Wales)
2. Northern countries (Sweden, Norway, Finland, Poland)
3. Continental countries (Austria, Belgium, Luxembourg, Germany, Hungary, The Netherlands)
4. Southern “Latin” countries (France, Catalonia/Spain, Italy).

Thus the book includes these four parts. In the majority of cases the categorization works, but in some cases the inclusion of some nations in one or in another group might be questionable.

Although some authors raise relevant theoretical issues with reference to single countries, it is beyond the scope of this chapter to enter into a comparative theoretical debate. It is my more modest intention here to set out a synthetic analysis of the common steps in the field of VOM with youth offenders throughout Europe.

3. COMMON STEPS TOWARD VOM IMPLEMENTATION

The common steps discussed here refer to the following aspects:

1. the diffusion of VOM,
2. norms and practices,
3. VOM services and coordination,
4. mediators’ recruitment and training.

3.1 Diffusion of VOM

The first and most interesting cross-cultural feature which emerges from the following chapters is the process which led to the introduction of VOM. In judicial systems any reform is generally introduced top-down through new norms, but VOM was introduced in the majority of our 15 countries by spontaneous bottom-up processes promoted by different professional and social groups and introduced in absence of laws mainly through pilot projects. In England, as mentioned above, VOM and reparation programmes were adopted in absence of specific norms in the framework of the so-called “stand alone model” (Dignan and Marsh, 2001: 86). In Belgium “small non-governmental organizations for juvenile assistance took the first initiatives” (Aertsen, 2000: 153). In Finland the first action-research project was supported by different social groups and initially funded by the Academy of

Finland and the city of Vantaa⁸. In Luxembourg penal mediation was promoted by professionals from the social and judicial field and prosecutors⁹. In Austria the initiative “was taken predominantly by juvenile judges, together with public prosecutors in the field of juvenile justice and by the Probation Service Association” (Pelikan, 2000: 125). In France it was promoted by magistrates (judges and public prosecutors) and applied under “a broad (and for some magistrates daring) interpretation of article 40 of the Code of Criminal Procedure”; magistrates appreciated the “appropriateness of this procedure” which was seen as “the driving force of the development of mediation” (Jullion, 2000: 221). Juvenile magistrates (judges and public prosecutors) promoted VOM in Italy as well (Mestitz, 2004). In Germany the promoter groups of VOM included “professors of criminal law together with social and street workers, social education workers (many of them from the offenders’ assistance service) and prosecutors” (Bannenberg, 2000: 253). In Poland authorities were encouraged to plan the first 5 experiments with VOM by a mixed informal group (then transformed into a formal Committee) composed of law professors, legal practitioners, “officials of the Ministry of Justice, the employees of the Senators Service Office, employees of the Prison Service, students and employees of the municipalities” (Czarnecka-Dzialuk and Wojcik, 2000: 310). In Norway “the first idea of victim-offender mediation came from the academic sphere through the article by Professor Christie¹⁰ while the realisation was carried out by the authorities, the Ministry of Justice and Attorney General. They made use of the idea, and gave mediation status and influence” (Paus, 2000: 285-286).

Similar processes took place in other continents. In New Zealand and Australia, for instance, the family group conferences (conferencing, circles etc.) were promoted by social groups in different forms and - again - in absence of specific norms. In New Zealand the emergence of conferencing was due to different groups such as “state official and professional workers (who were subsequently supported by members of the judiciary)” and by Maori groups, whereas in Australia “mid-level administrators and professionals (including the police)”, were the promoters (Daly, 2001: 61). In 1989 conferencing was formally introduced in New Zealand; in Australia it appeared 2 years later when the first Wagga Wagga experiment based on the theory of “reintegrative shame” (Braithwaite, 1989) took place (McCold, 2001). In the mid 90s South Africa also begin the first two experiments with family group conferences in absence of norms (Skelton and Frank, 2001).

This peculiar development of restorative justice is probably due to the fact that, as has been argued, it “is a theory of justice that has grown out of

⁸ See chapter 6 by Ossi Eskelinen and Juhani Iivari.

⁹ See chapter 10 by Paul Schroeder.

¹⁰ The author refers to the article by Christie (1977).

experience. It has been informed by indigenous and customary responses to crime, both those of the past and those used today” (Van Ness, Morris and Maxwell, 2001). It has also been stressed that “What is clear is that pressure for restorative justice alternatives or complements to mainstream justice institutions are emerging world-wide. Some of these pressures come from aboriginal communities in societies that have been characterized by the imposition of state-centred retributive justice by colonialist powers¹¹. Some have their origins in moral or religious opposition to some of the more egregiously dysfunctional aspects of mainstream criminal justice¹². Other such pressures are coming from institutional tensions inherent in modern criminal justice systems whether their roots are in the European civil law tradition¹³ or in the various legal cultures which originate from the common law of England¹⁴.” (Archibald, 2001: 179).

To sum up, at the very beginning VOM was almost always introduced in Europe through spontaneous bottom-up processes actively promoted by the academy and different social groups often including legal professionals such as lawyers, judges, public prosecutors¹⁵. The process developed easily because Restorative Justice - the framework of VOM - is based more on values than on politics, it is grounded in the past and rooted in the individuals’ moral/religious values and sense of justice. In many countries public policies - both at national/federal and/or local levels - aiming to introduce VOM practices and services were based on the idea that VOM with adult and young offenders would be an effective tool for crime prevention and thus for increasing the citizen’s security.

3.2 Norms and practices

As mentioned above, a second common feature in our 15 countries is that VOM was in general introduced in absence of specific laws and through pilot projects. Only after (often many) years of practice new norms or law changes were implemented. Without entering into detail it is enough to note that a clear tendency on norms and regulations concerning VOM actually does not emerge: about half of the countries examined in this book have enforced specific laws on VOM with youth offenders while the other half have not. Thus, there is a lack of specific norms on VOM since they were

¹¹ This is certainly the case in Africa, Australia, New Zealand and North America.

¹² Zehr (1990).

¹³ Council of Europe (2000).

¹⁴ For restorative justice developments in England see Marshall (1999). For a description of Canadian restorative justice programmes, see Church Council on Justice and Corrections (1996).

¹⁵ The same process seems to be in course at present in other nations, as in Argentina (Kemelmajer de Carlucci, 2004).

not implemented in Belgium, Denmark, Finland, England and Wales, Italy, the Netherlands and Luxembourg. In these countries no specific laws have been passed so far even though the first pilot projects started many years ago¹⁶. Instead in Austria, Germany, Norway, Sweden, Poland and Spain/Catalonia, specific norms have been enforced. In France and Ireland the norms implemented are not specific for VOM for juvenile offenders.

Table 1-1 shows that the first pilot projects and experiments were run in 6 countries between 1981 and 1984 (Austria, Belgium, England and Wales, Finland, Germany, Norway), then other countries followed in the wave: Italy and Poland in 1995 and Luxembourg in 1997 were the last. Norms were enforced later and, most interestingly, the time interval between the first VOM pilot projects/experiments and the implementation of a specific law in the various countries generally ranges between long to very long, reaching even as much as 10 years (Table 1-1). Considering the 8 countries where the norms were enforced, including France and Ireland in the group, the mean time interval is 7 years (Table 1-1).

Table 1-1. Overview of the time intervals between the first VOM pilot projects/experiments and the implementation of laws regulating VOM.

countries	A first pilot projects	B first VOM specific laws/norms	C time interval (years from A to B)
Austria	1984	1988	4
Belgium/Walloon	1984	(no law)	n.a.
Belgium/Flanders	1987	“	n.a.
England and Wales	1983	“	n.a.
Finland	1983	“	n.a.
France	1984	1993*	9
Germany	1984	1990	6
Ireland	1999	2001*	2
Italy	1995	(no law)	n.a.
Luxembourg	1997	“	n.a.
The Netherlands	1990	“	n.a.
Norway	1981	1991	10
Poland	1995	1997	2
Spain/Catalonia	1990	2001	10
Sweden	1987	2002	15
Mean value	-	-	7

* no specific law

n.a. not applicable

¹⁶ The research project, previously described in section 2, was particularly useful in Italy as it permitted us to carry out the first field researches to explore these experiences enlightening the “how, where, who and when” of victim-offender mediation with youth offenders (Mestitz, 2004).

Another common feature is that in the majority of continental European countries - with a predominant civil law tradition of Napoleonic origin - VOM maintains a very close relationship with the judicial system, being an “in-court” or “near-court” procedure.

Only in the Anglo-Saxon and Scandinavian countries is VOM mainly an “out-of-court” strategy (England and Wales, Ireland, Sweden and Denmark¹⁷), often carried out by specialized groups of police officers before bringing the cases to prosecution. Indeed, in these nations a strong tendency to apply VOM before the cases are brought into the criminal judicial system has emerged.

It is interesting indeed that very often the first pilot projects and experiments were run with youth offenders. The following chapters will show this common feature in the majority of nations.

In addition, it is worth noting that the essence of VOM practice appears very similar throughout the different nations, notwithstanding the different legal models applied. For example, in all countries VOM is a process in which one (or more) mediator assists the victim and the juvenile offender to address the consequences of the offence for both parties. The aim is to reach an agreement between the victim and the young offender in order to repair in some way the crime and to make the offender aware and responsible for his/her wrongdoing. Moreover, VOM with young offenders is used as a diversionary/educational measure and follows the referral of a case involving a juvenile offender, the referral being made by an agency legally responsible for dealing with offences by juveniles (e.g., prosecutors, police, courts, social services etc.).

As we will see in detail in the following chapters, in practice the mediation activity is carried out through different steps (ranging from 3 to 6, according to the classification adopted by the various authors), that can be roughly summarized in 3 main phases:

- *Preliminary phase*, including: referral procedure, information collection, contacts with the parties, evaluation of the case to be mediated, organization of the first meeting between the victim and the offender.

- *Mediation meeting/s and agreement* are the central phase where the parties assisted by one or more mediators search for a common agreement, sometimes writing a formal agreement.

- *Concluding phase* including: evaluation by mediators, a final report to be sent to the authority who referred the case, follow-up on the implementation of the mediation agreement.

In spite of the great interest around VOM, it is still a more or less marginal practice in the majority of countries we examined (in Germany, Finland, The Netherlands, Poland, Sweden) or it is still applied in the form

¹⁷ For an analysis of Danish pilot projects with VOM see Henriksen (2003).

of pilot projects (in Denmark, Italy and Ireland). Just to give an idea of the small percentages of VOM in these countries, in Germany educational measures including VOM decreased to 4.6%¹⁸, in Sweden 7% of juveniles have been referred to mediation¹⁹. In Italy in 2000 our data regarding only 6 VOM experimental units (out of 8) show that 0.46% of all juvenile referrals to the juvenile prosecution are then referred to mediation.

Only in a minority of countries is the degree of application of VOM remarkable: in Spain/Catalonia, Luxembourg, Norway, for example, about 17% of offences committed by juveniles are referred to mediation; in Austria the figure is about 15%²⁰. Also in France and Belgium/Flanders VOM appears widespread²¹. These countries where a wide application can be noticed are those where the first VOM experiments took place, long before the procedure appeared in other European countries.

An important indicator of the degree of application of VOM are the numbers of services and mediators operating in each country. They range between very few in some countries (e.g., 3 services in Ireland, 8 in Italy) to many (e.g., 104 services in Sweden, about 200 in France and 300 in Germany). Nations with a significant number of VOM services are not those with a longer experience but those with larger national territories such as Germany, England and Wales, France and Sweden. A low number of VOM services over a small territory - as in Belgium, Austria, Ireland, The Netherlands, Spain/Catalonia - can be considered a satisfactory degree of application of VOM, but similar numbers on an extended territory, as in Italy, represent an indicator of slow development. I agree with Weitekamp (2001) that Italy is among those countries which are little involved in the restorative justice movement and I should add that after a first period (in the second half of 1990s) when VOM initiatives grew up very quickly, actually a stagnation phase seems to have set in, despite efforts by professional and social groups, including a very motivated minority of juvenile lay judges and magistrates.

3.3 VOM services and coordination

The coordination of VOM in part depends on the network of services offering VOM activities, which do not vary greatly in the countries

¹⁸ See chapter 11 by Michael Kilchling.

¹⁹ See chapter 4 by Lottie Walhin.

²⁰ See chapter 16 by Jaume Martin Barberan, 10 by Paul Schroeder, 5 by Siri Kemeny, 8 by Veronika Hofinger and Christa Pelikan.

²¹ Statistical data from France and Belgium/Flanders cannot be compared to the previous ones. See chapter 14 by Philip Milburn and chapter 9 by Anne Lemonne and Inge Vanfraechem.

examined. Basically, there are three categories: public (national and/or local) services, private services often including volunteers, and mixed public/private services. These are arranged along a *continuum*, at one end of which there is one country with only volunteer services (Norway), at the other the nations (or part of Federal states) with only public VOM services. The majority of countries stand in the middle having mixed public and private services.

In a number of countries specific public mediation services were created. This was the case in Austria, Belgium/Flanders, Finland, The Netherlands, Spain/Catalonia. In Anglo-Saxon and Scandinavian nations the “public services” are in fact the police officers who carry out VOM; in other countries the court social services do (as in France, Germany, Italy and Ireland). Local social services also carry out VOM and/or frequently cooperate with other groups such as court social services (as in Italy).

To enter in the ongoing debate regarding VOM practices carried out by police officers goes beyond the scope of this writing. Suffice it to recall that many authors have raised arguments and criticisms in this regard²², and research studies of the Canberra (AU), Bethlehem (USA) and Thames Valley (UK) initiatives has shown “empirically that police-led conferencing is prone to some distinctive pitfalls. Traditional police culture and the authoritarian questionable practices it can generate, present a significant obstacle to the successful implementation of restorative justice.” (Young, 2001: 220-221).

In general it can be noted that in continental Europe there certainly prevails a strong orientation to organize VOM in the framework of public services, while in England and Wales and Northern countries private/volunteer services and groups are more diffused.

As far as mediators are concerned, they can be classified into two main categories: professionals and volunteers. The difference between the two groups is that professionals occupy a stable position and receive a salary while volunteers have neither one nor the other. Volunteer mediators are mainly those carrying out VOM in Anglo-Saxon and Northern countries, whereas professional mediators are those specifically recruited to carry out VOM in continental nations. But we can also classify as professionals the specialized police officers as well as social workers (both of court services and of local services).

It is evident that the mediators’ categories influence to a large extent the existence/absence of a coordinating institution or agency. Volunteer groups can hardly be organized or coordinated from the top, whereas this is easier with public servants and groups. From an organizational point of view, the existence of a central agency which coordinates the different initiatives in

²² See Young (2001). On the debate on punishment and restoration see Walgrave (2001).

the field of VOM is relevant for human and financial resources. In fact, in the large majority of countries there is a central agency acting as the promoter of VOM initiatives, providing guidelines or standards, sometimes coordinating and funding local services and groups, and/or providing for the training of mediators. They may be departments of the State governments, often the Ministries of justice. A central agency is lacking only in Finland, England and Wales, and in the French speaking areas of Belgium (Walloon and Brussels). In Ireland the coordination of VOM in the juvenile area is governed by the police structure while private/volunteer VOM services without coordination carry out VOM with adult offenders.

In the majority of nations a central agency (a specific one or a Ministry) is considered an essential part of the organizational set-up concerned with the network of services working in the field of VOM. In 5 countries the Ministries of justice play the role of central agencies (France, Italy, The Netherlands, Norway, Spain/Catalonia), while in 5 other countries (Austria, Belgium/Flanders, Germany, Sweden and Poland) specific central agencies have been created. In some cases, these last are funded by a Ministry or State department.

3.4 Recruitment and training of mediators

We have noticed a major trend to recruit qualified experienced mediators and to provide for, more or less short training periods. A second minor orientation is the recruitment of both inexperienced mediators and experienced professionals who are often employed as social workers in the public services.

In almost all countries mediators undergo the training period after recruitment. Two main orientations emerge. First, the recruitment of qualified and experienced mediators is preferred probably because this choice allows to reduce training costs remarkably. Second, when the recruitment is addressed both to qualified and experienced mediators and inexperienced mediators, in both cases training periods are provided for. When police officers and social workers take on mediation responsibilities as a part of their duties, they receive specific training.

Four remarkable exceptions emerge in the framework outlined above:

1. Luxembourg is the only country where the training is provided before recruitment. Moreover, recruitment, training and mediation activities are carried out inside the same institution, the *Centre de médiation*, so the training is useful to evaluate new mediators' skills and capacities²³. This model seems to be working very well; unfortunately it would be

²³ See chapter 10 by Paul Schroeder.

impossible to transfer the model of a single centralized centre to other countries with large territories.

2. Austria is the only country where the training is very long even though qualified mediators (social workers, lawyers, psychologists, sociologists etc.) are recruited. The training lasts 4 years: the first year is devoted only to the training; subsequently mediators work under supervision and attend 5-week courses each year²⁴.
3. In Germany and Belgium/Flanders there is no training because only experts are recruited. These professionals are the same as in Austria where, however, they receive a very long training.

Only in the above mentioned four countries is recruitment of mediators based on their formal university degrees; in the majority of our nations professional experience with children and adolescents is considered sufficient qualification to work in the mediation field.

A general overview seems to show that many countries deem that a short training period of 4-5 days is enough to become mediator. This would imply that in general the role of mediator is considered to be quite simple.

Apart from Austria, the longer training periods are undertaken by mediators in Italy and Luxembourg. In Italy the training is much longer, lasting a mean of 315 hours (Mestitz, 2004). In these two countries mediators (though not all Italian mediators) have been trained by Jacqueline Morineau (1998), whose method is called in Italy the “French model”. In France itself the model lacks followers, as Philip Milburn noted: “Models (like the Morineau) that seem to have some success at international level in VOM have not made a significant impact on the French experience”²⁵.

Almost everywhere the training includes on-the-job activities, meaning, in practice, co-mediation. This is widely used in the United States (Umbreit, 2001) but rarely in Europe where in almost all nations VOM meetings are carried out by only one mediator; when a second mediator is present in the meetings he/she is engaged in on-the-job training. The only exceptions are Italy and Luxembourg, where co-mediation is adopted in line with the theories and training carried out by Morineau. This choice can be dysfunctional, requiring twice the number of mediators; indeed sometimes in Italy there are three (Mestitz, 2004).

4. FINAL REMARKS

The above overview has shown that the main differences emerged between British isles and Northern European countries on the one hand and

²⁴ See chapter 8 by Veronika Hofinger and Christa Pelikan.

²⁵ See chapter 14 by Philip Milburn.

continental and Southern ones on the other, and that they appear to stem from both the different legal traditions and organizational procedures. Suffice it to recall three aspects:

- a) VOM is mainly an “in-court” or “near-court” procedure with the exception of Anglo-Saxon and (partly) Scandinavian countries, where VOM is an “out-of-court” strategy;
- b) in continental and Southern Europe a strong orientation to organize VOM as a public service prevails, whereas England and Wales and Northern countries seem to prefer private/volunteer services and groups;
- c) volunteer mediators prevail in Anglo-Saxon and Northern countries, professional mediators in continental and Southern Europe.

Nevertheless, some common points must be noted.

In other parts of the world pressures for adopting restorative justice come from aboriginal communities returning to ancient strategies of justice, while in European societies pressure groups come back to appeal to moral and/or religious values in order to overcome dysfunctional aspects of criminal justice. Here restorative justice practices and VOM seem to gain more and more consensus because they are based more on values than on politics, they are rooted in the individuals’ values of solidarity and sense of justice. On the other hand, many common cross-cultural features emerged from our summary overview notwithstanding the different approaches, legal traditions and organization of VOM services. They are mainly concerned with the similar substance of VOM and the processes involved. Moreover, public policies aimed to implement VOM with young offenders are almost everywhere conceived as an effective tool for crime prevention, for increasing citizen’s security as well as for educational and diversionary aims and for overcoming the unsatisfactory management of juvenile justice through the retributive approach to criminal justice.

The process which led to the introduction and diffusion of VOM in EU countries shows a common model. In judicial systems any reform is generally introduced top-down through new norms, but VOM was almost always introduced by spontaneous bottom-up processes promoted by social and professional groups and/or movements. Very often this peculiar process was implemented in the absence of norms and through very similar VOM practices. Everywhere very motivated individuals and groups made VOM work. This seems a precious resource in order to further develop the restorative justice approach and VOM itself in Europe.

Another similarity was the fact that specific norms on VOM were proposed and enforced long after the first pilot experiments with VOM took place and in many nations no regulations have been introduced so far. Sooner or later the problem of norms will be overcome as EU states are

specifically requested by the EU Council to adapt their legislation in this sense by March 2006 (Framework Decision of March 15, 2001, arts. 10, 17).

Moreover, the first pilot projects were run with juvenile offenders in many European countries just as had happened in New Zealand and Australia and in other parts of the world. This shows that once again the juvenile justice system had played the role of the “Trojan horse” with the new restorative approach to crime, as two decades ago when “The move toward the welfare state was accompanied by a new approach to crime, emphasizing social policy at the expense of legal considerations, with attitudes toward crime committed by minors often playing the role of the Trojan horse in the citadel of the classic legal system” (Damaska, 1981: 126). In other words the pilot projects introducing VOM with juveniles confirm that the juvenile justice system often does play the role of a laboratory where innovations and new ideas may be tested and sometimes transferred into the adult judicial system.

A further and last point is that very frequently in continental and Southern European countries VOM is closely tied to the judicial systems. Thus judges and public prosecutors seem to lead the spread of VOM in the majority of countries. On the other hand this is confirmed by the recent establishment by French magistrates (both judges and public prosecutors) of a new European association aimed precisely to develop VOM and conciliation in the judicial context. The new association G.E.M.M.E. (*Groupement Européen des Magistrats pour la Médiation*) was founded in December 2003, and national sections are now going to be established in many countries. The association includes mainly public prosecutors and judges, but lawyers, scholars and researchers in the field of mediation may also be accepted as members. Certainly this initiative shows that the wide interest for VOM is spreading around Europe. G.E.M.M.E. can be useful as a pressure group to further develop mediation practices in Europe, but in my view there is a hidden risk. Taking into account that in continental and Southern European countries the gatekeepers of VOM are public prosecutors and judges, the new association might assume a leading role in proposing legislation and influencing EU public policies in such a way as to focus more on the interests of the magistrates and less on the interests of the mediators, pressuring countries utilizing VOM as an out-of-court procedure to modify such measures, moving more and more toward in-court procedures.

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