

VICTIM-OFFENDER MEDIATION PROGRAMMES  
IN ROMANIA – A USEFUL EXPERIENCE, UNEXPLOITED  
IN THE LEGISLATION

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*The article describes the two experimental projects of restorative justice implemented in Romania in 2003 and 2004. The article presents the main difficulties and obstacles faced by these programmes, but also the benefits brought by them into the field of Romanian justice. Despite their usefulness, the practice of restorative justice was not stipulated as such in Romanian legislation. The Law no. 192 regarding the mediation and the organization of the mediator profession ignores both the Romanian experience gained from the implementation of the two experimental project mentioned above, and also the experience from other countries with long tradition in the field, being substantially diverted from the European standards in this domain.*

**1. MAIN FEATURES OF THE MEDIATION PROCESS**

Initially developed as a simple technique used in probation, the victim-offender mediation has become, for some years, one of the most important practices used in restorative justice systems in many countries. The mediation process is considered a viable alternative to the traditional legal system based on the retributive paradigm and it is meant to humanise the legal process and to equally answer the needs and interests of victims, offenders and the community as a whole (Bazemore, G., Umbreit M. S., 1997).

The vast majority of the mediation programmes are exclusively dedicated to underage offenders, having committed crimes against properties, assaults, or other relatively minor crimes. However, mediation is also used in many cases of conflict between adults, such as those related to divorce, domestic violence, child custody, commercial litigations and others (Balahur, D., 2001).

The main aim of mediation is the support granted to the victim and to make the offender responsible. From the technical point of view, mediation is a direct

meeting, *face-to-face*, between the victim and the offender, in front of a qualified mediator trained to stimulate an agreement between the parties related to the recovery of the damages caused by the crime. Experts have shown that more than 95% of mediation meetings end up with signing an agreement regarding the recovery of the damages suffered by the victim (Umbreit, M. S., Greenwood, J., 2000). However, evaluative surveys show the fact that, for victims, more important than the recovery of such damages is meeting their information and emotional needs, as well as the possibility to directly share with the offenders (criminals) their feelings related to the crime (delinquency).

The mediation practice is also known as a *dialogue* between victim-offender, *conference* or *reconciliation* between the two parties. The dialogue between the parties can be witnessed by the members of their families, as well as by representatives of the community. Within this dialogue, victims can directly share with the offender the damages (prejudices) caused by the committed crime, they can get answers to the problems they have, being actively involved in drafting a restoration (repairing) plan making the offender financially responsible for the damages caused by his/her crime (Umbreit, M. S., Greenwood, J., 2000). The victim-offender mediation is generally defined as a process offering the victims of the crime (delinquency) “*the opportunity to meet those having committed the crime (delinquency) in a safe and structured location, for the purpose of making the offenders (defendants) directly responsible and also of offering an important support and compensation to the victim*” (Umbreit, M. S., 2001).

From this point of view, the mediation process is compatible with the fundamental values of the restorative justice, aiming among others at granting priority support to the victims (Balahur, D., forthcoming), at making the offenders responsible and aware of the severity of their deeds, at restoring the community spirit etc.

The data of the assessment surveys on the mediation programmes generally have shown the advantages and the positive effects they have. Thus, they provide underage or young offenders with alternative measures as compared to those existing in the official offender justice system, allowing the functioning of mechanisms where victims get excuses and/or repairs for the suffered damages, leading to the possibility of avoiding charges and sentences of the authorities.

One of the most important advantages of such programmes, the high satisfaction level of victims and the decrease of number of offenders re-committing crimes (save those having committed property crimes) seem to be the most representative (McCold, P., Wachtel, B., 1998). All these advantages are determined by a series of “moderating” variables, which influence both the application method of restorative justice programmes and their results. For instance, the offender’s (defendant’s) age or the severity of the deed can influence the relapse rate and the victims’ satisfaction rate.

## 2. IMPLEMENTATION OF VOM IN ROMANIA

### 2.1. THE FIRST EXPERIMENTAL PROJECT OF RESTORATIVE JUSTICE \*

In Romania, pursuant to a British project of implementation of mediation in cases with underage people in conflict with the criminal law, in year 2002 two Restorative Justice Experimental Centres were established in Bucharest and Craiova, whose priority objectives included mediation sessions.

The project, called “Restorative Justice – a possible answer to juvenile delinquency”, was carried out during September 2002 – December 2003 and aimed among others at experiencing the principles of restorative justice in Romania, as an alternative strategy to the traditional retributive legal model, and at drafting proposals for approval of an act to regulate the victim-offender mediation activity in cases involving underage offenders.

The two experimental Centres have been organised under the Social Reintegration and Supervision Department within the Ministry of Justice, the “Family and Child Protection” Foundation, the technical assistance and financial support being ensured by the International Development Department of the British Government.

The beneficiaries of the services provided by the two Restorative Justice Centres have been 14–21 year-old underage and young people, from Bucharest and Craiova, having committed crimes for which the criminal case is started after the prior complaint of the injured party, and the parties agreeing to reconcile removed the criminal responsibility; the victims of such deeds and the families of the parties involved in the litigation.

Programme functioning was based on a working methodology, focused with priority on *mediation* (conciliation) between victim-aggressor (offender). For this purpose, the employees of the two Centres carried out the following four types of activities (according to the information available on the website [www.cjr.ro](http://www.cjr.ro)):

1. Identification and selection of cases;
2. Psycho-social evaluation of the parties involved in the conflict – carried out by the social worker, with or without the psychologist, including gathering information on the victim and the offender regarding their family context, school and professional status, health condition within the family, factors encouraging the deed, the attitude towards the deed (towards the victim – for offenders), factors influencing their general behaviour etc.;

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\* The information provided under this sub-chapter is taken from the research of R. dulescu, M. S., Banciu, D. (2004), *Evaluative Research on Restorative Justice Experimental Programme in Romania*, edited in “*Evaluation of the Restorative Justice System in Romania*”, Bucharest, Oscar Print Publishing House.

3. Preparing the mediation and the proper mediation – carried out either *directly*, through a “conference”, where the parties involved meet before a mediator, or *indirectly*, through letters and messages between the mediation beneficiaries, if they, even though willing to solve the litigation, did not deem necessary a face-to-face meeting;

4. Providing specific services – offering, upon request, post-mediation services to both the parties involved in the mediation procedure, and those who, from certain reasons, were not eventually included in this action: individual and/or group psychological advice, social care for school, professional and social reintegration of beneficiaries, development groups and psychological support, guidance to other services/institutions.

The viability and efficiency degree of the restorative justice experimental programme was assessed, during May-June 2003, by a team of researchers within the Sociology Institute of the Romanian Academy. The main objective of this research was the general analysis of the way pilot-centres function and of the problems they have, in order to suggest solutions and measures for optimising their activity in the future.

#### 2.1.1. DIFFICULTIES DEALT WITH BY THE EMPLOYEES OF THE TWO RESTORATIVE JUSTICE EXPERIMENTAL CENTRES

The results of this assessment analysis have shown that the main obstacle dealt with by the employees of the two Centres was related to the *selection and reference of cases*. Thus, the restrictive feature of the Romanian criminal legislation allowed the involvement, within mediation, of only the cases for which “*prior complaint withdrawal*” and “*parties’ reconciliation*” “*calls off the criminal liability*”. For this reason, a series of other cases were excluded, cases which could have undergone mediation, for instance, those aiming at burglary, school violence or (intra)familial aggressions. Consequently, until the date of ending the assessment (June 2003), very few files had been instrumented by the two Centres – 24 in Bucharest and 19 in Craiova.

Also, the teams of the two Centres, especially the one in Bucharest, had troubles collaborating with the authorities which should have sent cases for instrumentation.

Thus, in the Capital, the lack of direct access to courts’ archives (save the one of the 6<sup>th</sup> District Court) caused the non-inclusion in the programme of many cases. On the other hand, judges did not inform the parties on the existence of the restorative justice programme, so the parties did not know what to think of the “official” capacity of such Centres, refusing to accept mediation.

In Craiova, the court’s representatives worked with the Centres; the employees had access to the archive and also they had a direct contact with the judges who instrumented cases of prior complaint.

In its turn, the collaboration with the Police was rather difficult, in Bucharest, for instance, from the beginning of the project until the end of the evaluative survey, the Police representatives sent not even one case to the Centre.

The inaction shown by the Police referring to cases was justified by the fact that the involvement in the restorative justice experimental programme was not a performance indicator for policemen. On the other hand, in Craiova, they personally got themselves involved in reconciliation of the parties in conflict, appreciating as useless the activity of the Centre's employees, thus showing little availability referring to cases.

Vicious was also the collaboration with the Prosecution Service, some prosecutors considering the actions of the Centres' employees as "*breaches*" of the institutional prerogatives of the Prosecution Service, which, together with the law court, would be the only ones able to decide with regard to parties' reconciliation. Also, some prosecutors claimed in their excuse for lack of cooperation with the Experimental Centres the legal regulations by virtue of which, during criminal investigations, information on the parties cannot be sent to an unofficial institution, as C.J.R. (the Restorative Justice Centre).

At the same time, the role of the Local Coordination Committees, that were supposed to support the activity of the two Experimental Centres, was rather a formal one. The lack of involvement of such committees in applying the restorative justice programme characterised mainly the situation in Bucharest; in Craiova, the representatives of the institutions were involved a bit more actively in finding solutions for optimising the project.

The members of the Committees did not know *how* exactly to act in order to ensure the appropriate implementation of the programme, among others also because the Orders of the Ministry of Justice do not mention liabilities and competences of each of the involved institutions, but also because there was no inter-institutional cooperation methodology, which would establish specific and "punctual" tasks and objectives.

The committees met only a few times, they did not have a well-established structure (some members left, new ones came and these new ones were not acquainted with the programme) and did not include persons with representative positions which could have influenced a more sustained involvement in the restorative justice programme of authorities they represented.

Another problem having affected the programme implementation method was the legal provision requiring parties' liability that, after finishing the mediation session, they should appear again in the court or at the Police to declare that they reconciled. This had to happen considering that the conference results was registered by mediators with a document subsequently sent to the competent authorities. The liability imposed both on the victim and the offender to notify directly and personally the police officer or the judge that instrumented the case about the reconciliation basically "cancelled" the validity of the drafted document,

determining the parties to deem “*useless*” the mediation activities carried out within the two Centres.

A difficulty with similar importance was the result of the mediator’s lack of involvement in the negotiations regarding victim’s compensation. Given the exigencies of the Romanian legislation, the mediator was not allowed to participate in finalisation of the agreement between the victim and the offender. This was a reason for which many mediation sessions turned unsuccessful. In mediator’s absence, the parties got to fight and to amplify the conflict, especially when the victim claimed exaggerated material compensations, and at the same time the parties could not reach a compromise regarding other compensative solution than money (for instance, working in victim’s benefit).

Among other obstacles, an important one was some beneficiaries’ attitude, who either refused mediation or the service provided by the Centre, or did not cooperate enough with the centres’ employees. Thus, sometimes, the assessors were not welcomed or were not let in by the beneficiaries, and in other cases they refused to provide certain data and information on the material or financial level of the family, family context, health condition etc.

In Craiova, a complementary difficulty which impeded the implementation of the experimental programme in appropriate conditions was the *limitation* of inclusion area of cases only to offenders (respectively, their victims) with permanent residence in Craiova.

The activity of the two Centres of the experimental programmes was also affected by some deficiencies, some of them determined by the above mentioned obstacles and difficulties, others directly related to the work within teams. The most important of such deficiencies include the following:

- a) *the lack of a representative selection of the on site cases*. In lack of the previously established criteria (categories of crimes, victims, authors etc.), the selection of files was exclusively carried out from the legal point of view (and not also based on sociologic criteria), only according to the provisions included in the orders of the Ministry of Justice;
- b) *the rather compendious nature of the psycho-social assessments*. The lack of more detailed information on the parties and their position in the conflict, as well as focusing especially on the social characterisation to the detriment of the psychological one impeded drawing a complete profile of victim’s and offender’s characteristics. Also, the activity of the assessors took place mostly in parties’ families, without extension to the level of other information sources (school, place of work, community police etc.);
- c) *resuming the pre-mediation activity to contacting the parties*. The files registering such activity did not contain information on offender’s recognising his/her deed or on victim’s and offender’s attitude towards the possibility of (direct or indirect) mediation and of possible repairs (compensations);

- d) *the reduced number of mediation sessions organised by the employees of the two centres.* From the total of 43 instrumented files during September 2002 – June 2003, only approximately one third were mediated (7 in Bucharest, out of which one with indirect mediation, and 8 in Craiova). This rather low mediation percentage (approximately 35% of the total number of instrumented cases) was due mostly to the victims' refusal attitudes (advised by relatives, friends or lawyers to solve the litigation with the offender only in front of the court), the offender's non-admission of the deed, parties' reconciliation separate from the centres' intervention and the impossibility of address identification of either of the parties;
- e) *the "didactic" nature of mediators' intercession within the conferences.* This caused rejection reactions of offenders, who did not sincerely regret their deed and contradicted the victim, making him/her co-responsible for committing the crime;
- f) *the lack of monitoring by the mediator of gesticulation, pantomime, language, attitudes and especially reactions of conference participants, so that the entire range of behavioural features of the parties involved in the conflict can be identified.* The role of the co-mediator was also a more "passive" one, since he/she simply observed the involved parties, without verbal interventions during mediation sessions;
- g) *the lack of community representatives within conferences,* where, excepting the victim and the offender, participated only parties' pleaders (relatives or friends);
- h) *too long duration of some mediation meetings (2-4 hours),* which bores the parties and the support people, who give more and more formal answers to the mediator's questions;
- i) *mediators' intercession for answering the satisfaction questionnaires by conference participants.* They suggested to the parties what and how to answer the questions, especially when dealing with less trained people or people with mental disabilities. The questionnaires, which were taken from the United Kingdom, without an adjustment to the programme from Romania, did not contain data on the socio-demographic variables of subjects (gender, age, occupation etc.), and some questions had a doubtful translation, confusing those filling them in;
- j) *the great number of refusals regarding the service offer, excepting mediations.* The two Centres provided limited complementary services to the beneficiaries – only 6 sessions of psychological advice and 3 guidance sessions to other institutions. Until the time of ending the assessment, the employees of the centres provided no assistance service for school and professional integration/reintegration. The refusal of possible beneficiaries and the lack of collaboration of C.E.J.R. teams with other institutions (for instance, with child protection institutions) were the main causes of such poor activity in a field which was supposed to have priority in both Centres.

### *2.1.2. BENEFICIARIES' SATISFACTION WITH THE RESTORATIVE JUSTICE PROGRAMME*

Despite such difficulties, inherent to a certain extent to any project at its beginning, the programme participants, especially those from Craiova, were very satisfied with the way the litigation was instrumented and solved, as well as with the way the mediation process was carried out. The beneficiaries also appreciated the efficiency and the utility of mediation as a method of stopping the existing conflicts.

Thus, the secondary analysis of the data and information resulted from the questionnaires run on participants upon closing the mediation conferences showed that, with regard to the level of involvement in the discussions during the mediation, most participants declared they felt being listened to all throughout the conference, they actively participated in the discussions and they could share what they had to say.

To a greater extent than the offenders, the victims appreciated that they were involved in making a decision and in reaching an agreement regarding what was about to happen next. All parents felt the same way, unlike the group of other relatives or friends, who felt it only as high as 50%.

From the point of view of the conference carrying out correctitude, almost all beneficiaries declared they were happy with the way they were treated, acknowledging the fact that they were all offered equal opportunities to express their points of view, to ask questions and to get answers. Only a few participants, especially among offenders, felt their opinions were considered as being of little importance and/or their needs were not treated appropriately during the mediation session.

More than 90% of the participants appreciated as being correct the decisions made at the end of the conference. Especially victims and parents declared they were happy with such decisions. Among offenders, one third expressed their dissatisfaction with the made decisions, considering them as being subjective. Besides, approximately 90% of offenders considered that the decisions were in favour of the victims. On the other hand, more than 70% of the victims agreed that the made decisions answered equally their needs and the offenders'. In their turn, parents felt to a greater extent that the made decisions were rather compliant with the victim's needs, while the group of friends or relatives were mostly in favour of the offenders.

The results of quality survey carried out based on interviews taken with some of the beneficiaries of such services confirmed the very high rates of beneficiaries' satisfaction with the mediation process, but they also brought a series of complementary information regarding the participants' satisfaction/dissatisfaction reasons.

Thus, generally speaking, the victims declared they were satisfied with obtaining a financial recovery, seen as a compensation for such expenses related to medical care and recovery of goods, and also they were satisfied with the celerity



of solving the conflict with the aggressor and implicitly avoiding long procedures of formal justice, as well as the possibility offered within the conference to express their point of view, to tell what they were through and to share with the others their sufferance.

As far as the victims' dissatisfaction reasons are concerned, they were mostly related to the low quantum of financial recovery and the delay of obtaining the money from the offenders, but also related to the sometimes gentle nature of the sanction received by the aggressor.

The main satisfaction reason of the offenders was the possibility offered by the programme to avoid the criminal sentence. On the other hand, the most frequent reason of dissatisfaction mentioned by the offenders was the exaggerated quantum of recoveries claimed by the victims, especially since, in some cases, the victims were, according to the aggressors, the ones that "precipitated" the initiation of the conflict.

However, regardless of the way of perceiving the litigation solving and reconciliation through mediation, both the victims and the offenders appreciated to the same extent the correctitude of the concluded agreement.

## 2.2. THE SECOND RESTORATIVE JUSTICE EXPERIMENTAL PROGRAMME \*\*

In 2004, the activities carried out in the two Restorative Justice Centres were continued and developed within a new project called "*The improvement of the juvenile justice system and crime victims' protection system*", financed by the European Union, through a PHARE programme.

The objectives of this new project were the following:

1. Development of complex services based on the practices of the Restorative Justice within the two Restorative Justice Centres from Bucharest and Craiova;
2. Encouraging the principles of the restorative justice at the level of state's authorities and the community;
3. Drafting legislative proposals for the improvement of the justice systems for underage people and for victims' protection.

Thus, this second restorative justice programme aimed at a more various range of activities, such as: providing services to beneficiaries, encouraging and raising awareness campaigns run in the community (through the so-called "*advocacy*" campaign, carried out in 5 university cities of Romania: Ia i, Cluj, Timi oara, Bra ov and Constan a), training activities for the employees and inter-disciplinary training seminars, drafting a proposal for social and criminal policies to contribute to the efficiency of this justice system for underage people from Romania.

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\*\* The information provided under this sub-chapter is taken from the research developed by R dulescu, M. S., Banciu, D., Dâmboreanu, C., Balica, E. (October 2004), *Assessment of the Restorative Justice Project Implemented in Bucharest and Craiova*, available on [www.crj.ro](http://www.crj.ro)

The focus was especially the development of complex services for the victim and the offender, in order to meet more appropriately their actual needs (need of support, guidance, assistance, information). To this extent, the new programme extended the range of services to all implementation phases of the programme, carrying on with the assessment, pre-mediation and mediation stages, ending with the post-mediation phase. Practically, such services included, apart from mediation between victim and aggressor, other various intercessions, among which: psycho-social advice, social care and psychological services, guidance for other services etc.

Another distinct project objective was the enlargement of the target population, along with the underage and young offenders, having committed crimes for which the penal action starts upon victim's prior complaint, including in the project those having committed burglary and aggravated theft (articles 208 and 209 of the Penal Code).

The activity of the employees of the two Restorative Justice Centres was based to a great extent to the experience gathered during the implementation of the first project financed by the Department of International Development of the British Government. Compared to the activity from 2003, the one from 2004 was much improved, taking into consideration also the requirements of the new project financier.

As such, the working methodology for the employees of the two centres was improved, certain evaluative techniques were refined, such as the satisfaction questionnaires filled in by the beneficiaries, and new tools were created, among which the monitoring files registering in detail the specific activities to instrument the file or case and the assessment reports (questionnaires) of the activity carried out by the employees related to the services provided to the offender, to the damaged party or to their families.

The evaluative survey carried out by the same team of researchers from the Sociology Institute of the Romanian Academy showed the following findings regarding the activity of the Restorative Justice Centres:

– During February-October 2004, both centres instrumented a total number of 79 files, out of which 48 (representing approximately 61%) in Bucharest and 31 (approximately 39%) in Craiova;

– Even though the number of instrumented files was bigger as compared to the previous year, the number of carried out mediations was still at a very low rate – 8 in Bucharest (7.3% of total services) and 10 in Craiova (approximately 9% of total provided services). Despite the fact that there were many reasons explaining this situation, mostly determined by the refusal of the damaged party to participate in the mediation, by the offender's not recognising his/her deed or by the damaged party's not being a plaintiff, the minimum number of carried out mediations affected the core principles of the restorative justice, which first requires parties' reconciliation and complementary recovery of damages;

– Even though one of the objectives of the new project was the enlargement of the range of services provided to the beneficiaries, some of them had an extremely poor percentage of the general provided activities. For instance, all in all, in the two centres, there were provided only 4 services for social care, 3 for school orientation and 5 for guidance to other institutions. The most frequently provided services were the psycho-social evaluations (54 in Bucharest and 58 in Craiova) and pre-mediations (31 in Bucharest and 34 in Craiova);

– The greatest number of services (72%) was provided to the offenders and not to the victim.

### 2.2.1. THE PROGRAMME FUNCTIONING MAIN DEFICIENCIES

From the point of view of the problems and deficiencies dealt with by the employees of the two centres, the most important findings of the above mentioned assessment were the following:

– *The restrictive nature of the legislation.* The same with the first project, the regulatory frame allowed involvement in this programme of only certain cases, strictly limited from the legal point of view;

– *The lack of standardisation of working procedures.* Some files proved to be incomplete since they did not include the psycho-social assessment reports, even though such an assessment was mentioned, others (especially those from Craiova) did not include the self-assessment reports filled in by the employees related to the types of services provided to each party, satisfaction questionnaires filled in by the beneficiaries or their approval to participate in the C.J.R. services. On the other hand, the reports did not mention the actual ways of providing certain services, such as pre-mediation, social care, school orientation and guidance to other institutions. The fact that there were no separate reports or files clearly mentioning how exactly such activities were carried out raised a series of questions related to the way in which such services were provided;

– *The faulty collaboration with the official institutions involved in the project.* The relation of the employees of the two centres, especially the one in Bucharest, with the Police representatives improved, in the sense that police stations became more “receptive” to the recommendation requirement of cases about to be instrumented. This happened also due to the “*Order no. 171/ March 19<sup>th</sup>, 2004 regarding specific tasks assigned to policemen with attributions in working with underage people*”, which regulated the collaboration between police officers from Bucharest and Dolj and the representatives of the Restorative Justice Centres. Also, there were assigned contact persons within each police section and more precise responsibilities for them with regard to the collaboration with the C.J.R. representatives.

However, the representatives of both Centres further on confronted a series of obstacles mostly determined by the way in which some police officers understood

the collaboration with the Centres. Thus, the same with the first project, police officers recommended numerous illegible cases for the two Centres.

In Craiova, the collaboration with police officers was even in regress regarding the selection and reference of cases proposed for mediation. This faulty collaboration was partly due to the fluctuation of police officers assigned as contact persons for C.J.R. Craiova, to some policemen's "mentality", who reacted only upon receiving orders from a hierarchically superior chief or not knowing the restorative justice techniques.

On the other hand, the fact that the policemen who were assigned specific tasks for recommendation of cases to C.J.R. had many other professional responsibilities was an equally important reason for the poor Police involvement in project implementation.

With regard to the collaboration of the Social Reintegration and Supervision Service (S.R.S.S.) with the two Centres, this was also faulty. Even though the protocol signed with such Service mentioned that it had to recommend to C.J.R. the cases with minor offenders to be included in the restorative justice programme, in fact S.R.S.S. recommended extremely few cases, technically only two – in Bucharest, and in Craiova – none.

From the point of view of the collaboration with the Prosecution Service, even though the relations with this institution improved compared to the previous year, such an institution had only a limited formal role in the project, to the extent which, to have access to the files including cases of burglary or aggravated theft, the C.J.R. personnel had to have obligatorily the Prosecution Service's approval.

Regarding the relation with the courts of law, unlike the previous year, the access of Centres' personnel to courts' archives became much simpler, enabling the direct selection of cases. In Craiova, the employees of the Centre obtained the direct access to the Court's archive, having the possibility to select themselves the cases as objects of mediation, and the collaboration was accomplished with a much larger number of judges. Besides, the overwhelming majority of files (approximately 84% from the total number) was referred to the centre by Craiova Court (26 files). In Bucharest, approximately 46% of files (22) were taken from the courts' archives, especially from courts from the 3<sup>rd</sup> and 6<sup>th</sup> districts.

– *The "unofficial" nature of the restorative justice Centres.* Both the victims and especially the offenders did not always recognise the authority of C.J.R. as official institution with a clearly established status, similar to the formal justice system, and as such they often refused to use the services provided by this Centre.

#### 2.2.2. THE LEVEL OF BENEFICIARIES' SATISFACTION WITH THE SERVICES OF THE RESTORATIVE JUSTICE CENTRES

As far as the beneficiaries' satisfaction is concerned, it maintained to a very high level, reaching even 100%. Thus, with some small variations, almost all beneficiaries appreciated the utility of the services and the suitability to their needs,

the correctitude of the way C.J.R. services were provided, the correctitude of the decisions made within the mediation meetings, the possibility offered in getting involved in solving the problems and, last but not least, the way in which the litigation was solved.

It is also worth mentioning that the measurement tool of the satisfaction level was much simplified, willing to reduce the difficulty level of the question content used for the first experimental project. Also, even though the “satisfaction questionnaires” were given for filling in not only to those participating in mediation conferences, but also to the beneficiaries of the entire range of services provided by the employees of the two centres, such questionnaires did not include specific items to measure the satisfaction with the advice services, social care and guidance to other institutions.

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The restorative justice programmes implemented in the two centres were a useful experiment; there is no doubt about it. The legal, institutional and financial difficulties and obstacles dealt with by both experimental programmes prevailed to the potential advantages they offered, determining the termination of their activity after only two years of functioning. Without deeming this situation as a failure in implementing the principles of the restorative justice in Romania, but only as an inevitable stage in the process of embracing new models and practices in the criminal field, we still think that the elements of such a legal approach could be applied in various forms for underage people justice.

Among the advantages which such an approach could have in the future, we could mention (R. dulescu, M. S., Banciu, D., 2004): relieving the authorities from a great deal of activities to be carried out to solve some criminal cases, generally minor ones, relieving the state from a part of the expenses needed for accomplishing the judgement, offering an opportunity to the community members to solve their conflict in a different climate and way they were accustomed to up to that moment.

### **3. THE ROMANIAN LEGISLATION IN THE RESTORATIVE JUSTICE FIELD**

In order to align the Romanian legislation to the international standards and the reform regarding justice for underage people (see Balahur, D., Littlechild, B., Smith, R. – forthcoming), our country has adopted in the recent years a series of regulatory acts regarding the protection of child’s rights in criminal cases. However, from the point of view sanctions are ruled out, the focus still stays on the punishment (often by sentencing to jail).

Neither the New Criminal Code (Law 301/2004) nor the New Criminal Procedure Code mention the restorative justice practices, recommended however in all international documents.

For the Police, the police organisation act does not mention anything related to such practices, to mediation of the conflict between the offender and the victim (R. dulescu, M. S., Banciu, D., Dâmboeanu, C., Balica, E., October 2004).

The only legal possibility which could be used for implementation at this moment of the restorative practices belongs to the Public Ministry (R. dulescu, M. S., Banciu, D., Dâmboeanu, C., Balica, E., October 2004), which, according to Law 304/2004 regarding the legal organisation (in art. 60, letter a): “(...) *performs through the prosecutor the following responsibilities: carries out the criminal prosecution in the cases and under the conditions provided by the law and participates, according to the law, in solving the conflicts through alternative means*”.

### 3.1. MEDIATION AND COMPENSATION IN THE ROMANIAN LEGISLATION

In Europe, through the Recommendations no. 19 from 1999 and no. 22 from 2000, the Europe Council has decided to stimulate the efforts of member and candidate states to ensure the legislative frame necessary for the implementation of VOM and of other restorative justice practices.

The alignment of the Romanian legislation to the legal rules of the other European states involves among others the insertion of the restorative justice as a viable alternative to the formal procedures of the retributive justice. From this point of view, the experimental activity of the two Restorative Justice Centres in Bucharest and Craiova proved the doubtless utility of such form of *community* justice which ensures its beneficiaries (victim, offender, community) increased satisfactions compared to the traditional justice system and involves judgement of crimes without social gravity in a non-criminal manner.

A first step in the implementation of the restorative justice in Romania was Law no. 217 from 2003 regarding the prevention and fighting against family violence, which stipulates the *mediation* possibility in cases of domestic aggressions.

Subsequently, *Law no. 192 from May 16<sup>th</sup>, 2006 regarding mediation and organisation of the mediator profession*, meant to solve through this activity different conflicts regarding civil, criminal, family and commercial field, was passed.

In compliance with the regulations included in this law, the mediation is a “*an optional way of amiably solving the conflicts, through a third party qualified as mediator, under such terms as neutrality, impartiality and confidentiality*” (art. 1), a “*public interest activity*” (art. 4) through which both natural and legal entities can “*solve disputes both outside and inside the compulsory procedures for amiably solving conflicts provided by the law*” (art. 3). According to art. 50, the mediation means the “*parties’ cooperation and mediator’s use of specific methods and techniques, based on communication and negotiation*” (paragraph 1), where the

latter “cannot force the parties into a solution with regard to the conflict undergoing mediation” (paragraph 3).

The law also stipulates (in chapter 5) the procedure prior to the conclusion of the mediation agreement, the content of such an agreement, the way the mediation is carried out and the “termination” of the mediation procedure. Thus, the mediation agreement “is concluded between the mediator, on the one hand, and the parties in conflict, on the other hand” (art. 44, paragraph 2) and includes (art. 45): “the identity of the parties in conflict or, as the case may be, of their representatives; mentioning the object of the conflict; the mediator’s obligation to give explanations to the parties with regard to the mediation principles, rules and effects; parties’ statement, in the sense that they are willing to initiate the mediation procedure and they are decided to cooperate therein; the engagement of the parties in conflict to observe the rules applicable to mediation” etc. In compliance with art. 52, “the parties in conflict have the right to be assisted by a lawyer or other people, under the commonly agreed terms” (paragraph 1), and “during mediation, the parties can be represented by other people, able to act on their behalf under the terms of law” (paragraph 2). An important legal provision stipulates the “agreement” concluded between the parties, “which will include all the agreed clauses and having the value of a document under private signature” (art. 58, paragraph 1). At the same time, art. 60 (paragraph 1) stipulates that “in any stage of the mediation, any of the parties in conflict has the right to waive the mediation agreement, upon a written notification sent to the other party and to the mediator”.

Other legal regulations include the conditions for mediator profession to be performed (chapter 2, section 1), for organisation and performance of mediators’ activities (chapter 3), rights and liabilities of the mediator (chapter 4), establishment and functioning of the Mediation Council (chapter 2, section 2), etc.

Unfortunately, we consider that, excepting some useful regulations, this act meets only partially the need to introduce the restorative justice in our country, without corresponding to the original idea of the British project for VOM implementation and clearly being too far from the field related European standards.

The most important deficiencies of the Law no. 192 are mainly the following:

- lack of involvement for the community and its representatives in the mediation process;
- absence of a clear distinction between cases for adults and underage offenders that can undergo mediation (the law treats undifferentiated such cases);
- exclusion from the mediation process of one or more important issues of the restorative justice, namely compensation and repairs (the law makes no reference to this matter, not even related to the community work);

- lack of mentions regarding the profession of the people able to act as mediators (even though it emphasises the fact that mediators can carry out their activity within a professional civil organisation or within a non-governmental organisation, the law does not indicate distinct professional categories, referring only to lawyers, notaries public and legal advisors, i.e. people having little to do with the community, as such, being involved, with priority, in the procedures of formal justice).

This way, the principles and characteristics defining the restorative justice (not by chance called “community” or “recovery” justice) are to be found to a limited extent in the Law no. 192 from May 16<sup>th</sup>, 2006, which besides makes no mention on the restorative justice as such.

But the current regulatory frame ignores not only the Romanian experience gathered during the implementation of the two above mentioned experimental programmes, rather it seems to ignore to a great extent even the experience of countries with long tradition in this field. This is the only way we can explain why the law lacks references to compensations and recoveries, which is a key element of mediation, regardless of the forms it takes in various countries.

The law ignores on the other hand one of the core principles of the restorative justice, requiring the offender to take the responsibility on the committed deed and to apologise to the victim, either directly, through a face-to-face meeting with him/her, or indirectly, through letters and messages (Balahur, D., forthcoming). Besides, the direct dialogue and communication of the parties involved in the conflict are minimised considering the provisions of art. 53, paragraph 2 of the law: “*excepting the cases when the mediator deems absolutely necessary the presence of the parties, they can be represented by other people, who can act on their behalf, under the terms of law*”.

It is also worth mentioning the fact that the current law does not take into consideration the propositions of the two assessment reports pursuant to the restorative justice experimental programmes implemented in our country, namely the necessity to include in the mediation procedure for criminal cases other cases than the ones involving *prior complaint*. The law does not mention the actual ways to refer the cases or the liabilities and competences of various field-related authorities and does not include provisions regarding *special services* regarding psychological advice and social care that should be provided to the victims and aggressors.

Despite such major deficiencies of the law, we consider that however it can be an important premise for the insertion and the establishment of the restorative justice procedure in our country. Provided that the legislator takes into consideration the core principles of this alternative justice form and, with priority, its exclusive *community* characteristic.



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