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EX POST PAPER

RAN study visit: 'Restorative justice in Croatia',
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Zagreb study visit: Restorative justice in Croatia

A mixed group of RAN practitioners and experts in the field of restorative justice visited the city of Zagreb to gain insight into Croatia's restorative justice process and the reasoning behind it. Policymakers, judiciaries and mediators explained their approach, and researchers analysed the Croatian context. This paper presents an overview of the insights gained and lessons learned from this study visit.

Main insight. While Croatia's restorative justice process is embedded in juvenile law and focuses on victims during this process, its scope could be extended to other areas such as hate crime or violent extremism.

Key takeaway points. Even if the preconditions for the (further) application of restorative justice are in place, it still might not be extended, due to social and cultural sensitivities. Restorative practices (i.e. elements of restorative justice) can be just as significant as the official restorative justice process. There is no single definition of restorative justice, and no individual approach that can be implemented in every setting.

Introduction

Restorative justice is considered as a broad approach oriented towards repairing, as far as possible, the harm caused by criminal acts or other transgressions. It is used when rehabilitating/reintegrating offenders who committed serious, often atrocious crimes with a disruptive effect on communities. In recent decades, restorative justice has been identified as a potential response to political violence and large-scale conflicts. A core element of restorative justice is the active participation of the victim, the offender and third parties (e.g. the community).

This paper will give a theoretical (and historical) overview of restorative justice in Croatia, and will set out the steps of the restorative justice process. Societal attitudes towards radicalism and work with victims and offenders are also explored.

Croatia's restorative justice system

Background

Currently in Croatia, restorative justice is implemented exclusively for young and juvenile offenders, but this type of justice has featured prominently in the country's recent history as well. Restorative practices were introduced during and immediately after the 1991-to-1995 armed conflict, when civil society organisations practised mediation and non-violent conflict resolution in refugee camps and post-conflict communities.

Between 1996 and 2001, the UNICEF Office for Croatia supported the Ministry of Labour and Social Welfare in running the programme 'Helping children and young people with behaviour disorders in after-war conditions'. From 2000 to 2003, another UNICEF-supported project dealt with out-of-court settlements, culminating in the creation of the Croatian Association of Out-of-Court Settlement and Criminal Proceedings.

The Croatian Association of Out-of-Court Settlement and Criminal Proceedings was established in 2003. Apart from raising awareness of restorative justice, its main goal is to promote victim-offender mediation when resolving conflicts linked to criminal offences of minors and young adults. It comprises roughly 40 professionals (social educators, social workers and psychologists), trained mediators and academics.

During the EU accession process, mediation in juvenile offending (which evolved from the project 'Alternative interventions for juvenile offenders — out-of-court settlements') became the only officially recognised form of restorative justice in Croatia.

After 2013, a new juvenile courts act was adapted and victim-offender mediation became part of the Croatian juvenile judicial system as a restorative practice. Mediators must undergo a 1-year training period in order to undertake these mediations, and all activities are carried out in partnership with the state attorney's offices and the social welfare centres. To date, over 1 400 cases of victim-offender mediation have been pursued in Croatia, with a success rate of between 70 % and 80 %. ⁽¹⁾

According to the Juvenile Courts Act (2011), the state attorney for minors has the option to not request criminal proceedings for a criminal offence punishable by a fine or prison sentence of up to 5 years. Instead, the attorney can require the offender to engage in an out-of-court settlement. ⁽²⁾

The Independent Service for Victim and Witness Support

The Independent Service for Victim and Witness Support is part of the Ministry of Justice, and its main aims are:

- provision of information and support to victims and witnesses in cross-border and war-crime cases (informative);
- provision of information to victims about the release of offenders from prison (regular or conditional release).

¹ According to Anja Miroslavjevic's presentation.

² Marsavelski, A. (2012). Alternatives to custody for young offenders: National report on juvenile justice trends: Croatia. Brussels, Belgium: European Union Project. Retrieved from http://www.oiji.org/sites/default/files/baaf_croatia1.pdf

The service provides a national call centre which victims of criminal offences can use to contact the authorities for support. However, in most cases, victim and witness support is only set in motion after criminal proceedings have been initiated. Once contact is made with the victims, they are supported and referred to related non-governmental organisation (NGOs). These NGOs provide the same services as those of the Service for Victims and Witness Support. They may also decide (on a voluntary basis) to offer additional restorative practices.

The state attorney's office

The state attorney's office determines the criminal proceedings of cases involving young people and young adults. Many charges over minor offences are dismissed unconditionally (50 % to 60 %). Of the cases brought to court and required to fulfil special obligations, 13 % are referred for victim-offender mediation. Offenders having committed a hate crime (which may have been motivated by violent extremism) might be eligible for victim-offender mediation after a preliminary measure.

'Concerning hate crime, the victims shouldn't be exposed to revictimisation, so we combine victim-offender mediation with other obligations — for example, with counselling or watching a theatre play [...] they have to think about their crime.'

This is unlikely to happen, because cases related to hate crime are considered more severe and are usually referred to the Ministry of Justice. To date, these cases have not been considered eligible for victim-offender mediation.

Criteria for successful victim-offender mediation/out-of-court settlement

1. The juvenile offender accepts responsibility for the offence.
2. Both victim and offender provide informed consent to participate in the mediation process.
3. An agreement is reached and signed by both parties.
4. The agreement is fulfilled.
5. The standing (success) of the mediation is reported to the state attorney for minors.
6. The state attorney decides not to institute criminal proceedings.⁽³⁾

The Social Care Centre Zagreb

The centre fulfils the following duties:

- determining, in the first instance, the rights in the field of social welfare, family law and criminal law protection, and other rights in accordance with a specific law;
- providing information on family circumstances, as well as providing opinions and bringing motions in court proceedings relating to family law and criminal justice;
- participating as a party or intervener before the court and other state bodies, in order to protect the personal interests of children and other family members who cannot be responsible for themselves or their rights and interests.

Staff at the Social Care Centre Zagreb include mediators who run victim-offender mediation programmes. The mediation process is designed to be swift, and should ideally comprise three sessions:

1. a meeting with the offender;
2. a meeting with the victim;
3. the actual mediation session, in which further actions can be arranged (apology, compensation, etc.)

The mediators considered this sufficient time for a successful victim-offender mediation, in most cases. But it was noted that a case involving hate crime (or violent extremism) would call for a much more extensive approach with different measures. No such cases of restorative justice have arisen yet, but practitioners are aware that

³ Dünkler, F., Horsfield, P., & Păroşanu, A. (2015). *European research on restorative juvenile justice — Vol. 1, Research and selection of the most effective juvenile restorative justice practices in Europe: Snapshots from 28 EU Member States*. Brussels, Belgium: International Juvenile Justice Observatory. Retrieved from http://www.ejjc.org/sites/default/files/volume_i_-_snapshots_from_28_eu_member_states.pdf

opportunities to work with restorative justice in this context do exist, and they are willing to do so. However, current legal provisions would have to be revised first.

Restorative justice in Croatia: societal context

Background and research

Restorative justice is seen as a potential answer to political violence and large-scale conflicts. The main element of restorative justice is active participation — of the victim, the offender and other parties (e.g. the community).

In recent years, restorative justice initiatives related to preventing and countering violent extremism (PCVE) have increased. Restorative justice in PCVE — if perceived as a form of communication allowing 'difficult' albeit respectful conversations in societal space — is viewed as a softer alternative to more restrictive 'counter'-measures. It gives a community or society the chance to deal with traumatic events in their own, personal terms, and take back ownership of their interpretation.

Social reconstruction in communities affected by war, and community recovery and the normalisation of intergroup relations in Croatia have had an immense impact on the role played by restorative justice in society. It was difficult to implement restorative practices after the conflict, owing to the different worldviews of the conflicting parties. The heavy traumatisation resulting from the conflict generated a lack of community trust — arguably the most vulnerable aspect of communities. The problem lay in reconciling the different viewpoints identifying which group was the victim and which the offender. Many Croats feel that their trauma hasn't been acknowledged enough by Serbs, while many Serbs feel collectively blamed. These two perspectives intersect in diverse and complex positions, trends and needs which are tricky to navigate in a community. These events go a long way to explain why violent extremism is such a sensitive topic in Croatia.

Research shows that young Croats maintain considerable social distance from Serbs and the Roma minority, while holding an overall positive stance towards Croats and Germans. The concept of authoritarianism has a more positive connotation than nationalism, and the most highly trusted institutions are the police, army and church (non-political, strongly hierarchical institutions). One might speak of a 'disillusioned' generation, an overall deterioration of the social standing of young people compared to that of young generations 10 to 15 years ago. Arguably, this leads to a further decline of young people's social trust, retraction into the private sphere, and disassociation from social and formal political participation, as well as a growing process of re-traditionalisation. ⁽⁴⁾ The results of a study on youth perception of radicalism suggest that young people in Croatia tend to view radicalism as operating more at the value level than the behavioural level. ⁽⁵⁾ Violence and terrorism seem to play a very small part in the radicalism narrative of these young people.

This reflects the overall feeling towards violent extremism and radicalism observed during the study visit. These terms seem to have no role to play in the public sphere. Underlying societal rifts resulting from the traumatic, devastating experiences of the violent conflict that deeply impacted Croatian society are seemingly not addressed in restorative justice measures. Possible violent extremist offences are not being recorded in the official statistics as such, but instead are labelled as 'hate crimes', without further elaboration:

'It is impossible to detect from the official statistics the actual motivation behind [hate crime]. Hate crime is cumulatively defined, so without the analysis of each file [...] it is not possible to know the exact motivation and whether radicalisation/violent extremism is behind it.' ⁽⁶⁾

Examples of restorative justice processes in Croatia and other European states

Restorative justice or restorative practices (elements of restorative justice) are being undertaken throughout the EU. These may involve restitution from the offender to the victim, or steps taken to prevent the offender from causing future harm.

⁴ Presentation of the Institute of Social Research.

⁵ Presentation of the Institute of Social Research.

⁶ Ricijaš, N., Vukadin, I. K., & Hundrić, D. D. (2017). NATIONAL (PROJECT) REPORT-REPUBLIC OF CROATIA: Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity-building and peer-learning among stakeholders (JUST-2015-JCOO-AG-TERR).p. 24.

Initiatives may take the following forms:

- mediation meetings that generate a dialogue with parental groups and/or all groups involved in the commission of a crime;
- activities of the offender in favour of the victim (personal service to the victim) or in favour of the community (community service);
- mediation between the offender and the victim (victim-offender mediation);
- meetings between victims of specific types of crime and offenders of similar crimes.

PRAGMA is an NGO based in Zagreb. Its core activities comprise counselling parents and young people (including young offenders). Its work in schools supports emotional literacy, cohesion, addictive behaviour prevention, promotion of mental health and prosocial behaviour, as well as citizenship awareness. One of PRAGMA's aims is to raise awareness among Croatian experts and authorities on the potential problem of radicalisation in Croatia. The security authorities claim that the threat of terrorism and violent extremism in Croatia is low. However, PRAGMA's experience in the field proves otherwise, i.e. that young people are indeed receptive to radical agendas: it does see cases of radicalised youth. The organisation employs an accepting approach to tackle the problem of radicalisation in young people.

According to PRAGMA, there is potential to reach more young people with similar issues, given the mandate to do so. Unfortunately, obtaining funding is quite difficult for NGOs, especially in the field of prevention of violent extremism.

To illustrate how restorative justice practices are implemented in cases of political violence in other European countries, the European Forum on Restorative Justice (EFRJ) shared the following two inspiring examples of restorative justice experiments.

- The Basque experience. In 2011, a restorative justice programme brought together imprisoned ex-members of ETA and victims of ETA violence. Inside the prison, 'indirect' mediations were held. These were restorative encounters between former ETA members and randomly selected victims. Participation was voluntary and did not imply reduction of prison sentences. Many victims were motivated to participate as an attempt to reduce the hatred and fear, 'put an end in the circle of violence' and contribute to the healing of the community, but also to seek answers to their questions. Despite the encouraging results, this particular case was complicated by obstacles from the side of the state authorities implementing the restorative process: changing government policies and restrictions in communication with prisoners made parts of the process difficult.
- The Italian experience. In this case, the restorative justice process was entirely informal. After 2 years of preparation, former left-wing terrorists, former members of the Red Brigades, victims and/or victims' relatives, and mediators as well as other stakeholders started meeting in 2007. Although this restorative justice circle opened with just 9 members, it eventually numbered more than 50. All discussions and confrontations were conducted in confidentiality, were held over the course of years (usually over one weekend to one week at a time) and were completely voluntary. Apart from the restorative justice sessions per se, all participants spent time together engaging in daily activities (participating in cooking, washing dishes, etc. and sharing the same living space). This extended proximity was a key factor, as participants got to know one another personally. Former offenders gained a greater understanding of the victims' suffering and recognised their victimisation, while victims could see beyond the terrorist 'label' and acknowledge the humanity of former terrorists. Despite the fact that this was not an official restorative justice process, this type of informal encounter governed by restorative justice values gave both parties a sense of closure and justness.

Lessons from both examples are applicable to the Croatian situation:

- restorative justice approaches to serious criminality can lead to healing, empowerment, closure and a sense of justness, despite legislative or other institutional obstacles;
- restorative justice approaches might have positive and encouraging results, not only for those directly affected by a serious criminal act (victims, offenders), but also for civil society, stability and social cohesion.

Key lessons learned

The key topics analysed were how restorative justice was established and put into practice in Croatia, the process and specific methods of restorative practice, and how restorative justice can be used in other societal contexts and especially in connection to violent extremism.

Some practitioners in Croatia are already working on the prevention of radicalisation and violent extremism. They are aware of the possibility of implementing restorative justice in violent extremism cases. Restorative practices were used in the aftermath of the violent conflict in the 1990s, and a swift transfer of restorative processes from juvenile law to other fields of law could be attainable.

In violent extremism work, a multidimensional approach is key. This is important for restorative practices as well: the needs of victims, offenders and the community must be met by professionals from diverse fields in order to ensure a beneficial and sustainable process.

Restorative justice should be sensitive to the victims' needs and focus on fostering healing. Restorative practices can empower victims, give them the opportunity to engage meaningfully in the process, and gain confidence and closure. Perpetrators, likewise, are afforded the opportunity to perceive the victims as completely human —leading to a re-humanisation of the victims. (7)

It is a challenge to define precisely what does or does not constitute restorative justice. In many restorative practices throughout the EU, elements of restorative justice are implemented in order to achieve different goals. An important guideline which should be adopted by each EU Member State is the 'Recommendation CM/Rec (2018) of the Committee of Ministers to Member States concerning restorative justice in criminal matters'.(8)

Carefully considering the history and societal traits of each country and context is essential when implementing restorative justice.

These questions are pertinent to the discussion and must be raised in future meetings on the topic of restorative justice. The findings of this study visit will be discussed in the next multi-agency meeting on restorative justice (Dublin, 3 and 4 December), in which practitioners will draft guidelines for use in implementing (elements of) restorative justice.

Participants' insights

'Restorative justice can happen everywhere, and different methods can work. Restorative justice is not for everyone, but everyone should have access to it.'

'While restorative justice in a violent extremist context is possible, this may not happen instead of legal proceedings —there must be punishment of the offender, then a restorative justice process can be implemented.'

'Restorative justice should always include the victim, the offender and society. This is often missing.'

'In other EU Member States, victim-offender mediation is voluntary, and mediators are not trained professionally. It is good to see that this is different in Croatia.'

⁷ Gavrielides, T. (2007). *Restorative justice theory and practice: addressing the discrepancy*. Helsinki: European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) (pp. 197-198). Retrieved from https://www.peacepalacelibrary.nl/ebooks/files/HEUNI_8oiteshk6w.pdf

⁸ Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters (Adopted by the Committee of Ministers on 3 October 2018 at the 1326th meeting of the Ministers' Deputies). 3 October 2018. Retrieved from https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3