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Social Aspects of Justice

The social mission of the criminal justice system

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"The Social Mission of the Criminal Justice System"

The scope of criminal policy

Criminal policy is the entity of societal decision-making that relates to crime and crime control. Traditionally, the criminal justice system in most countries can be seen to concentrate about the offender, the issues of guilt and punishment. Social issues such as attending to the victim's needs, or aspects of offender reintegration have often not received much systematic attention in this context. As one recent response to this perceived lack of balance, the issue of restorative justice has been introduced and promoted widely, also at international level (see e.g. the Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC resolution 2002/12). For some terminology, please take note of the appendix to this questionnaire where some **basic definitions** related to the topic of restorative justice are explained, as adopted in the ECOSOC resolution.

Restorative justice

Over the past decades, there has been, world-wide, a significant growth of restorative justice initiatives. Restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities. Restorative justice processes often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people. This approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs. This approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime.

Consequently, in contrast to the traditional objectives of the criminal justice system, one central objective of restorative justice is to meet **the needs of the crime victim** better than before. In part, such needs are material and may be satisfied by restitution. The needs of the victim also comprise emotional needs such as restoring dignity, and social needs such as restoring or improving the feeling of security. In the restorative justice approach, also **the needs of the offender** are considered: he or she is given the opportunity to take genuine responsibility for his or her acts and their consequences and to improve his or her behaviour. Restorative justice makes sense also in the fiscal realm: since court proceedings are expensive and slow both for the parties concerned and for the state, restorative justice can lead to an equitable result at less cost.

Examples and considerations regarding restorative justice

A typical example of victim-offender restorative justice is victim-offender mediation. There are many varieties of this approach, where the parties concerned meet with an outside mediator in order to discuss the conflict and agree on what should be done because of the crime. The parties have an active role in the process, whereas the task of the police, prosecutor and social authorities is to facilitate their coming together.

There is some, not very strong, evidence that restorative justice is successful in reducing re-offending. However, the reduction of recidivism is not the central objective of the restorative justice approach. Victims often feel that it is most important to receive information and to be able to influence the offender's behaviour. The typical outcome of mediation in practice is an agreement that is also usually implemented successfully. In most cases, the parties involved, and victims in particular, have also been satisfied with the outcome.

One of the central insights of restorative justice is that the process itself may be more important than its direct outcome. It is important for the parties involved that they have been treated in a fair manner, with attention paid to their particular needs. If the process is experienced as being fair and just, it is also easier to commit oneself to the outcome. Commitment and learning may also be facilitated by the feature that all those involved are able to participate in the decision-making and to share in the responsibility for the success of the endeavour.

One of the obstacles preventing more widespread implementation of the principles of restorative justice is the belief that the offender is let off too easily. Restorative justice may thus also be confused with restitutive justice where the offender "gets off" by paying compensation. In reality, successful mediation places higher demands on the offender than is the case in traditional court proceedings where professionals deal with the matter as his or her representatives. In practice, offenders often feel it is hard to face the victim in the mediation process. Facing the victim makes it more difficult to excuse his or her conduct and evade his or her responsibility, and discussing the consequences of the offence forces the offender to face the seriousness of the offence to a greater degree than what he or she would learn in the traditional criminal procedure. Even damages ordered by the court may become irrelevant if the offender already has a burden of unpaid debts that are subject to distraint.

A second misunderstanding related to restorative justice is that nothing is being done about crime. As a matter of fact, restorative practices are taking crime particularly seriously, much attention is being paid to crime prevention, and genuine efforts are being taken to solve crimes that have already occurred.

Questionnaire

The following nine questions are open-ended. They are intended to give you the opportunity to freely express your views and experiences of the specified items, according to your preferences. The replies are going to serve as the background for an analysis of overall views of European Ministers of Justice on the topic of restorative justice and, if you wish, on your understanding of the issue of the social mission of the criminal justice system. The replies should, if possible, be short and concise.

Mediation

There is a common misunderstanding that mediation or other variants thereof (see "definitions"), and the entire approach entitled restorative justice is promoted as an alternative to the criminal justice system, so as to influence conflict resolution in a way in which the criminal justice system is avoided and cases are systematically deflected/ re-routed/ diverted from it. In the restorative justice paradigm, this is not at all the case, albeit that in some countries, and in some debates, mediation has indeed been propagated with this end in mind. Rather than this, the restorative justice framework is offering a new perspective to how and to what end society should deal with criminal justice matters besides working on the issue of punishment. Victims in particular have been

generally satisfied with such amendments to the traditional procedure where they often have a rather marginal role.

Questions:

1. Is there mediation in action in your country? What is its scope? Does it have legal recognition? How is it financed?
2. Are there other mechanisms to this end applied in your country? If yes, please specify.
3. What are the main obstacles hampering progress in this respect?

Victim support

From the perspective of the victim, restorative justice is represented by the support he or she receives from experts and/ or laymen. Victim hotlines provide overall support to victims. The same objective is served by crisis centres, support groups, shelters for victims etc. Support means practical aid, advice, and the comforting of victims and their intimates.

Questions:

4. What kinds of victim support mechanisms or programmes exist in your country?
5. Do such mechanisms or programmes receive public financial support? Do they have legal recognition?

Reintegration of offenders

In a broader sense, restorative justice also encompasses support to offenders, the aim of which is to improve his or her situation and to prevent the crimes from recurring. Such support measures comprise for instance anti-addiction programmes, professional training that facilitates employment, rehabilitation, or halfway housing offered to offenders released from prison. Support may also be provided to the offender's family.

One of the postulates of restorative justice is that it is important to re-institute self-respect and a sense of responsibility on the part of the offender. He or she is not seen only as an offender but also his or her "better half" is appealed to. In this way, the stigmatisation and defiance created in him or her by traditional crime control measures may be avoided.

Questions:

6. What kinds of procedures or programmes intended to prevent re-offending and to improve the reintegration of the offender into society have been introduced in your country? Could you recommend some of these to be adopted also by other countries?
7. What are the main obstacles hampering progress in this respect?

Restorative justice and offender groups with particular problems, including juveniles

Models of restorative justice have most successfully been applied in the control of juvenile delinquency. The punishments directed at young people often attempt to improve their future adaptation in society. However, treatment and punishment do not always pay sufficient attention to the plight of the victim and do not always succeed even in making the young person understand that he or she has done wrong. The basic problem of young offenders often lies in their family background, their exclusion from school and employment, and their abuse of alcohol and other substances.

Questions:

8. In your country, have you introduced special reintegration procedures or programmes for offender groups who may be faced with particular problems, such as juveniles, ethnically specific groups, substance abusers and immigrants?
9. What are the main obstacles hampering progress in this respect?

The restorative role of courts and prisons

Also courts and prisons have a role in restorative justice. From the restorative justice perspective, the courts have the role of a last resort. This last resort can be used if the parties do not want to participate in mediation, if the offender denies his or her guilt or fails to keep the agreement, the offence is very serious, or the parties involved come to the conclusion that the offender should be punished. Even in such cases, however, the courts could pay more attention to repairing the problem caused by the offence, and to encourage the parties to engage in a more comprehensive discussion. The role of prisons in restorative justice processes may be related to, for instance, co-operation with local communities in the promotion of prisoners' reintegration (see Question 6).

Questions:

10. In your country, are the judges and prosecutors systematically trained on the job in order to create an awareness of the role of the courts in restorative justice?

Appendix. **Definitions related to restorative justice**

Restorative justice is a way of dealing with victims and offenders by focussing on the settlement of conflicts arising from crime and resolving the underlying problems which cause crime. It is also, more widely, a way of dealing with crime generally in a rational problem-solving way. Central to restorative justice is recognition of the community, rather than criminal justice agencies, as the prime site of crime control.

The ***Restorative justice process*** refers to any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

A ***Restorative outcome*** means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

Parties mean the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process.