Victim-Offender Mediation and other Restorative Practices in Portugal: why not?

International Institute of Mediation and Arbitration

www.institutoima.org

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“Mediation is an informal and flexible process conducted by an impartial third party, the mediator, which promotes closer ties between the offender and the victim and supports them actively, trying to find an agreement that allows the repair of damage caused by the wrongful act and contribute to the restoration of social peace”.

Law 21/2007, Art. 4
Implementation of Victim-Offender Mediation

Article 10 of the Framework Decision of the Council of the EU (2001/220/JHA) regarding the standing of victim in criminal proceedings

2004

First experimental project of VOM at the Criminology School of Porto Law University in cooperation with the public prosecutor’s Office of Porto.
Implementation of Victim-Offender Mediation

Law nº21/2007

- Fulfills the requirements of the art.10 of the Framework Decision, EU;

- Parliament approved three Decrees (ns.º 68-A/2008, 68-B/2008 and 68-C/2008) and a Provision (n.º 216A/2008) to regulate specific aspects of the mediation program;

The penal mediation system began to operate in January of 2008 during an experimental period of two years in four counties (Porto, Oliveira do Bairro, Aveiro, and Seixal)
SMP- Penal Mediation System

Office for Alternative Dispute Resolution-GRAL
Ministry of Justice

Public service

Free service

Victim-Offender Mediation
SMP- Penal Mediation System
2011

VOM in 15 Counties

- Braga
- Porto
- Vila Nova de Gaia
- Santa Maria da Feira
- Baixo Vouga
- Coimbra
- Moita
- Montijo
- Grande Lisboa Noroeste
- Cascais
- Loures
- Seixal
- Barreiro
- Setúbal
- Alentejo Litoral
Referral to Victim - Offender Mediation

Legal Requirements:

- Criminal process in the investigation stage – inquiry;
- Crimes depending complainant or private prosecution, against persons or property which are punishable by prison sentences or a fine, not exceeding 5 years;

    Except: crimes against freedom and against sexual self-determination ➞ mediation never takes place
Referral to Victim-Offender Mediation

- The offender can not be less than 16 years old;
- The form of the process can not be the form of special process (ex: summary process).

**Crimes eligible for mediation, among others:**

*Verbal offenses, simple physical offenses, robbery, fraud, threat, damage, defamation, trust abuse.*
Scope of Mediation Procedure

Complainant

Pub. Prossecutor

Inquiry Stage

Vict.and Off. Request

No agreement

Agreement

Agreement no-compliance

1 month for renew

continues
open
close

suspension of prosecution procedure
Scope of Mediation Procedure

Mediation process: 3 months, extended max. of 2 more months
The content of the agreement is free, provided that does not include:

- penalties involving deprivation of freedom;
- duties that offend the dignity of the offender;
- duties which extend in time by more than 6 months.

The agreement may consist of:

- payment of a financial compensation;
The Agreement (Cont.)

- request of an apology;
- reparation of damage property;

Agreement $\rightarrow$ Public Prossecutor

- **Legal**
  - Equivalent to withdrawal of complainant by the victim and no opposition from the offender

- **Not legal**
  - Public prossecutor send back to the Mediator to rectify the illegality with the victim and offender
The Mediator

Requirements for the function:

- To have more than 25 years old;
- To be in full possession of their civil and political rights;
- To have a degree or appropriate professional experience;
- To be enabled with a penal mediation course recognized by the Ministry of Justice;
- To be a suitable person to exercise the function.
The Mediator (cont.)

- To have proficiency of the Portuguese language;
- Being enrolled in the public lists of the Ministry of Justice.

Professional status of the Mediator

- Independent worker integrated in the mediators public lists of the Ministry of Justice.
Private Mediation Services

The new Model of Training

40 hrs Intro. ADR

140 hrs. specialization

Practical stage

Half training practical

3 months min./1 year max.
V.O.M Statistical Results

- Average of the mediation process: 58 days
- Concluded processes: 536
- Countie with more agreements: Baixo Vouga

Main types of crimes referred for mediation:

- *Simple physical offenses*: 284
- *Threat*: 62
- *Damage*: 48
- *simple larceny*: 47
# System of VOM: Opinion Surveys

<table>
<thead>
<tr>
<th>Questions</th>
<th>Values</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex</td>
<td>58 %</td>
<td>Male</td>
</tr>
<tr>
<td>Age</td>
<td>25%</td>
<td>21 to 30</td>
</tr>
<tr>
<td>Instruction</td>
<td>32%</td>
<td>H. school</td>
</tr>
<tr>
<td>Knowledge of VOM</td>
<td>69%</td>
<td>Court/ Prosecutor</td>
</tr>
<tr>
<td>Legal advice</td>
<td>54%</td>
<td>No</td>
</tr>
<tr>
<td>Lawyer in mediation</td>
<td>71%</td>
<td>No</td>
</tr>
<tr>
<td>Information given by SMP</td>
<td>46%</td>
<td>Very good</td>
</tr>
<tr>
<td>Knowledge about SMP</td>
<td>42%</td>
<td>Good</td>
</tr>
<tr>
<td>Acess to mediation facilities</td>
<td>45%</td>
<td>Good</td>
</tr>
<tr>
<td>Quality of the facilities</td>
<td>45%</td>
<td>Good</td>
</tr>
<tr>
<td>Duration of the mediation</td>
<td>93%</td>
<td>Necessary</td>
</tr>
<tr>
<td>Participation of the Mediator</td>
<td>60%</td>
<td>Very good</td>
</tr>
<tr>
<td>Satisfaction with the process</td>
<td>60% + 23%</td>
<td>Satisfied+ very satisf</td>
</tr>
<tr>
<td>Recomendation of SMP</td>
<td>90%</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Other Restorative Practices

Restorative process:

“Means any process in which the victim, the offender and/or any other individuals or community members affected by a crime, actively participate together in the resolution of matters arising from the crime, with the help of a fair and impartial third party”.

UN Declaration 2002/12- of Basic Principles on the use of RJ Programmes In Criminal matters
Other Restorative Practices: focus on Conferencing

European Forum for Restorative Justice

Developed a project titled “Conferencing: a way forward for RJ in Europe” that began in 2009 with a duration of 2 years.

Objectives:

- What extent has conferencing been developed internationally;
Other Restorative Practices: focus on *Conferencing* (cont.)

- What are the processes used in and outcomes achieved by *conferencing*;
- How could *conferencing* practices be developed in Europe;
- Developing a practical guide on setting up Conferencing programmes.
No training or practice in Conferencing and Circles

Follow-up of the European Forum and others NGO`s activities, to achieve knowledge and ways of implementation.

Juvenil mediation project in 2011, by the public Office-GRAL, as an aproach to Conferencing.
The Holistic view of Justice

- recognition
- empowerment
- obligations
- adress needs
- participation

Victim
Offender
Community
Restorative Process Diagram

*(Mc. Cold)*

- **Crimes** → **Harms** → **Needs** → **Restorative Responses**
  - Cause
  - Require
  - Prevents
  - Creates
  - Repairs
  - Meets
Restorative Practices: Difficulties in the Field

Influence of the *Legality Principle* and mandatory prosecution in the legal and judicial culture

Public Prosecutors and Judges

traditionally bound to the law and to criminal proceedings in a non-negotiable way
Restorative Practices: Difficulties in the Field

- Police, Public Prosecutors, Judges
- Lawyers, Community

- not always fully informed of mediation procedures;
- nor aware of the potential advantages of mediation;
- no addressed in their training or indeed in the course of their professional activity;
Reflexions for the Future of RJ in Portugal

Stake Holders
State, Mediation Services, Lawyers

Need to Increase

Information
Community Involvement
Sensibilization
In Public Opinion
Continues Training
“I want justice to be so pervasive that it will be taken for granted, just as injustice is taken for granted today”.

Gloria Arroyo
THANK YOU!

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