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The Role of Victim-Offender Mediation in Probation

Input Workshop 2 (2nd series)

Chair: Jaume Martín

Lecturers: Leo Van Garsse (Belgium), Kristin Henning (Austria)

Currently, **NEUSTART (Association NEUSTART – Probation, Mediation, Social Work)**¹ works with approx. 580 employees (about 60 working in the field of penal mediation) and 900 volunteers (only probation services) in 13 agencies (in Austria)².

Founded in 1957 as a private initiative, **NEUSTART** today is a nationwide private association with innumerable tasks and objectives. In the 1950s, there was a marked increase in juvenile delinquency in Austria. The experience gained by the probation systems in other countries began to be discussed increasingly in Austria, particularly in legal circles and among psychologists. In 1952, a juvenile riot in a closed institution established for teenagers with problematic behaviour, provided the impetus to look for alternatives to such camps. In 1955, a judge in the Tyrol was the first one to supervise a juvenile along probationary lines.

Judges at juvenile courts called for the introduction of probation services. The Task Force for Probation Services (Arbeitsgemeinschaft für Bewährungshilfe) was founded in 1957 and eventually developed into the VBSA Verein für Bewährungshilfe und Soziale Arbeit (VBSA, Association for Probation Services and Social Work).

The Juvenile Court Act of 1961 had provided for volunteer probation officers only. But it soon became clear that professional social workers with adequate training were needed. Nevertheless, volunteers are still carrying out part of the work today (in the field of probation).

For an organisation that advocates social constructive measures after delinquency, it soon became necessary to develop a wider range of alternatives to both court proceedings and probation services. Aside from “classic probation services” and perpetrator support, our (main) portfolio comprises today:

- Aftercare (Haftentlassenenhilfe) offered to persons released from prison who are not on probation (post-release aftercare) on a voluntary basis (since 1975)
- Assisted housing (Wohnbetreuung) for clients of the probation service and the post-release aftercare service in two of the nine federal provinces (since 1975)
- Mediation in penal matters/VOM for compensation between victim and offender (Act on Diversion Measures; for juveniles since 1985, for adults since 1992)
- Acting as an intermediary for community service under the Diversion Act, since 2000, and as an alternative to prison terms for people failing to pay fines (since 2008).

Without doubt, starting the work of mediation in penal matters/victim offender mediation in the area of juvenile delinquency 25 years ago (in 1985) was a paradigm shift. It was the beginning of a structured incorporation of victim views and interests in work with offenders. It was the natural consequence of the realisation that the various kinds of delinquencies as well as offender personalities need a differentiated reaction - from the state

¹ For further information about NEUSTART, Christoph Koss, Probation in Europe (Eds. Van Kalmthout/Durnescu), 2008, pp. 43-74.

² The following report refers to VOM in Austria. In 2007 NEUSTART gGesmbH (a 100% subsidiary of NEUSTART Austria) was entrusted with providing probation services, trial support and VOM for adults within the German federal state of Baden-Württemberg. In Germany VOM is not only possible as a diversion measure but also before court proceeding and results may be considered in mitigation.

(in court proceedings) as well as from us, as an organisation that advocates a way of dealing with crime that does not rely on deterrence but works on the underlying causes. On the other hand, experience has shown that victims have no interest in the conviction and punishment of their offenders per se; however, they want their interests to be heard and respected. The success of VOM is a consequence of the enforcement of the victims rights and self-determination.

In Austria, mediation in penal matters can only be ordered either by the public prosecutor (which is almost exclusively the case) or by a court. The following requirements must be met:

- The circumstances of the case must be sufficiently clarified. An admission of guilt is not necessary. The acceptance of the penal mediation is not a requirement for the public prosecutor (to dismiss the prosecution) but for the mediation process. If either the suspect or the victim does not agree, the mediator refers the case back to court.
- Sanctions must not be deemed necessary in order to prevent the suspect from further offending or to prevent others from offending (penalty instead of a diversion measure does not seem indicated with a view to special or general prevention)
- The offence must be within the jurisdiction of a single judge (applies to most offences with a maximum penalty of 5 years)
- The suspect's guilt must not be deemed grave
- The offence must not have resulted in the death of a person
- Requirements for mediation in penal matters are similar under juvenile criminal law. The most significant difference to the adult criminal code is that the public prosecutor can order penal mediation in cases of maximum penalties of up to 10 years and the courts in all cases (no maximum penalty ceiling).

Currently in Austria, unlike in Germany or Belgium, VOM is only implemented as an alternative to court proceedings (diversion setting).

Public prosecutors generally offer VOM to offenders with no previous convictions in minor offences related to aggressions (i.e. assault and battery, threats, coercion). Most referred offences have occurred in immediate social environments (i.e. family, neighbours, work place, school).

To conclude a positive VOM the offender must take responsibility for the offence, face up to his/her actions and make compensation for damages (if asked). The consent of the victim is needed but if a victim declines mediation for reasons which would not be considered in the criminal proceedings (for instance due to racism) the public prosecutor may still terminate the case

After a positive report of the NEUSTART mediator/social worker generally the public prosecutor will dismiss the proceedings.

In similarly mild cases, but without personal conflict/contact (i.e. damage of property) there are other alternatives to court proceedings such as community services or fines.

Objectives and benefits of penal mediation are:

- The needs and emotions of the victim are taken seriously
- The possibility of the victim to receive restitution (both emotional and material)
- The suspect is given an opportunity to consider how to make up for the offence.

Victim and offender play an active role, giving them a chance to overcome these roles and pave the way for lasting social peace. VOM gives the conflict back to the involved parties to find a solution and try for compensation, restoration and a meaningful settlement.

As mentioned before, VOM in Austria is only possible in less severe cases and as an alternative to court proceedings (diversion setting). VOM is not stipulated in combination with court proceedings and conviction (i.e. mitigation of punishment). Due to the mentioned benefits that VOM offers, **NEUSTART** is now attempting to implement elements of restorative justice in the traditional probation services as a programme consisting of three stages: Firstly, probation officers help the offender develop a sense of responsibility for his/her actions (unless he/she has already managed to reach this first aim on his/her own). Secondly, the offender is assisted in developing a sincere and viable offer for compensation. Thirdly – if it seems appropriate –, the victim will be contacted by **NEUSTART**. At the moment, due to budget shortage we are only able to focus on the first stage of this service.

To conclude this short discourse on the role of VOM in our portfolio, I would like to emphasise the important role of mediation in penal matters as a natural, completing element in an organisation that deals with the underlying causes of a crime instead of deterrence. Of course, these developments have to continue, and incorporating more elements of restorative justice such as VOM into probation services, as well as implementing mediation in other stages of court proceedings, e.g. mediation for redress and mediation during detention, should be the main goals in criminal policy.

Kristin Henning, May 2010