

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

Initiative of the Kingdom of Belgium with a view to the adoption of a Council Decision setting up a European network of national contact points for restorative justice

(2002/C 242/09)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union and in particular the Article 34(2)(c),

Having regard to the initiative of the Kingdom of Belgium,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) Recommendation No R(85)11 of the Committee of Ministers of the Council of Europe on the position of the victim in the framework of criminal law and procedure of 28 June 1985 recommends the governments of the Member States to examine the possible advantages of mediation and conciliation schemes.
- (2) The United Nations Declaration of basic principles of justice for victims of crime and abuse of power of 29 November 1985 calls for the use, where appropriate, of informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices to facilitate conciliation and redress for victims.
- (3) Recommendation No R(87)21 of the Committee of Ministers of the Council of Europe on assistance to victims and the prevention of victimisation of 17 September 1987 recommends the governments of the Member States to encourage experiments, whether on a national or a local basis, in mediation between the offender and his victim and evaluate the results with particular reference to how far the interests of the victim are served.
- (4) The 1990 United Nations Minimum Rules for non-custodial measures stress the importance of greater community involvement in the management of criminal justice and the need to promote among offenders a sense of responsibility towards their victims and towards society as a whole.
- (5) Recommendation No R(92)16 of the Committee of Ministers of the Council of Europe on the European Rules on community sanctions and measures considers that sanctions and measures whose enforcement takes place in the community constitute important ways of combating crime and to avoid negative effects of imprisonment.
- (6) The Vienna Action Plan, in point 19 thereof, states that 'Procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case'.
- (7) The Resolution 1999/26 of 28 July 1999 of the Economic and Social Council of the United Nations on Development and implementation of mediation and restorative justice measures in criminal justice calls upon the States, international organisations and other entities to exchange information and experience on mediation and restorative justice.
- (8) The communication of the Commission to the European Parliament, the Council and the Economic and Social Committee on Crime Victims in the European Union: Reflections on standards and actions of 14 July 1999, states that victim-offender mediation could be an alternative solution to long and discouraging criminal procedures, in the interest of victims, making possible the compensation of damages or recovering of lost property outside a normal criminal procedure.
- (9) Recommendation No R(99)19 of the Committee of Ministers of the Council of Europe concerning mediation in penal matters sets out principles for the Member States to consider when developing mediation in penal matters.
- (10) The Tampere European Council of 15 and 16 October 1999 determined in the Conclusion 30 that alternative, extra-judicial procedures should be created by the Member States.
- (11) Resolution 2000/14 of 27 July 2000 of the Economic and Social Council of the United Nations on basic principles on the use of restorative justice programmes in criminal matters calls upon the States to continue to exchange information and experience on mediation and restorative justice.
- (12) The European Parliament Resolution of 15 June 2000 on the Commission communication on crime victims in the European Union: Reflections on standards and action⁽¹⁾, states the importance of the development of the rights of crime victims.

⁽¹⁾ OJ C 67, 1.3.2001, p. 304.

(13) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁽¹⁾ states in Article 10 that Member States are to seek to promote mediation in criminal cases for offences which they consider appropriate for this sort of measures and to ensure that any agreement between the victim and the offender reached in course of such mediation in criminal cases can be taken into account. According to Article 17 thereof each Member State shall bring into force laws, regulations and administrative provisions to comply with the said Article 10 before 22 March of the year 2006.

(14) The initiative of the French Republic and the Kingdom of Sweden to set up a European crime prevention network, which resulted in Decision 2001/427/JHA⁽²⁾, are excellent examples of how the Member States can cooperate on a stable basis on certain topics. The inclusion of mediation with juveniles and social mediation in the first working programme of the European crime prevention network proves the growing interest in alternative ways of exercising criminal law.

(15) However, it should be stressed that the possible preventive capacities of mediation in particular and of restorative justice, in general are only one aspect of the much broader approach of restorative justice, which applies to crime, criminal justice and criminal justice procedure as a whole. Restorative justice denotes a broad approach in which material and immaterial reparation of the disturbed relationship between the victim, the community and the offender constitutes a general, guiding principle in the criminal justice process.

(16) Although thus far restorative justice has mainly found expression in different forms of mediation between victims and offenders (victim-offender mediation), other methods are increasingly being applied, as for example family group conferencing. Governments, police, criminal justice agencies, specialised authorities, victim aid and support services, offender aid services, researchers and the public are all involved in this process.

(17) This initiative was taken in consultation with the European Forum for victim-offender mediation and restorative justice, a non-governmental organisation experienced in the field of restorative justice,

HAS DECIDED AS FOLLOWS:

Article 1

A European network of national contact points for restorative justice

1. A European network of national contact points for restorative justice (hereinafter referred to as 'the network'), is hereby set up.

⁽¹⁾ OJ L 82, 22.3.2001, p. 1.

⁽²⁾ OJ L 153, 8.6.2001, p. 1.

2. Network national representatives shall ensure the proper functioning of the network in accordance with this Decision.

Article 2

Scope

For the purpose of this Decision, restorative justice refers to a comprehensive view of the criminal justice process, in which the needs of the victim are prioritised and offender accountability is emphasised in a positive manner and covers a body of ideas that is relevant to various forms of sanctioning and conflict handling in the successive stages of or in connection with the criminal justice process.

Article 3

Objective of the network

The network shall contribute to developing, supporting and promoting the various aspects of restorative justice within the Member States as well as at the European Union level. For this objective, legislative and logistic support to criminal justice authorities is an important instrument.

Article 4

Tasks and activities

With a view to achieving the objective of Article 3, the network shall have in particular the following tasks and activities and consequently it shall:

- (a) be an information point. To that end, the network shall collect, analyse and evaluate information and data on existing restorative justice practices and on their development in the Member States, in order to contribute to the development of standards of best practices and to support future national and European initiatives. The Network shall also assist the Council and Member States with questionnaires on restorative justice practices;
- (b) develop mechanisms to distribute and to make available the abovementioned information and data to authorities on a national, regional, European and international level and to other governmental or non-governmental organisations, groups, networks or forums working in or interested in the field of restorative justice;
- (c) facilitate mutual exchange of information, experience and contacts between European, regional, national and local authorities, institutions, agencies, groups, networks and individuals concerned with the topic of restorative justice;
- (d) promote research on the topic of restorative justice and to that aim the network shall contribute to identify and develop the main areas for research in the field of restorative justice;

- (e) contribute to identify and develop the main areas for training and evaluation in the field of restorative justice;
- (f) organise conferences, seminars, meetings and other activities to promote restorative justice practices and to stimulate and improve the exchange of experience and best practices;
- (g) develop cooperation with applicant countries, third countries and international organisations and bodies;
- (h) provide its expertise to the European Parliament, the Council and to the Commission where necessary and upon request, with a view to assisting them in matters concerning restorative justice;
- (i) report to the Council on its activities each year, through the competent working bodies, and indicate the areas for priority action in its working programme for the following year. The Council shall take note of and endorse the report and forward it to the European Parliament.

The concrete interpretation, fulfilment and development of the tasks and activities mentioned in this article will be subject to and will depend on the voluntary contributions of the Member States.

Article 5

Cooperation

Because of the inherent community orientation and the grass-root level of the restorative justice development, the network shall, in performing its tasks and activities as described in the Article 4, pay in particular attention to the cooperation and the stimulation of exchanges with non-governmental organisations working in the field of restorative justice. To enable the network to achieve its aims in the most efficient and valuable way, the network can decide to call upon the know-how and experience of those non-governmental organisations working in the field of restorative justice and even decide to cooperate in a more structured way.

Article 6

Composition of the network

1. The network shall consist of contact points designated by each Member State. The Commission and candidate countries for accession to the European Communities may also designate a contact point.
2. Each Member State shall designate three contact points, at most.

3. These contact points shall include at least one representative from the national authorities competent for restorative justice in its many aspects.

4. Member States may also designate researchers, restorative justice practitioners or other actors in the restorative justice field as contact points.

5. Member States shall ensure that researchers, restorative justice practitioners and other actors in the restorative justice field, such as local authorities and non-governmental organisations, are involved through the designated contact points.

6. Each Member State shall ensure that its contact points have sufficient knowledge of at least one other official language of the European Union, to facilitate the practical operation of the network and in particular the contacts with the other contact points.

Article 7

Functioning

1. The network shall hold its first meeting on ...
2. The network shall meet at least once every six months, on the invitation of the Presidency-in-Office of the Council. A representative of the Member State which is holding the Presidency of the Council at that time, shall chair the network national representatives meeting.
3. The network may decide to confer to a national contact point the secretariat of the network.
4. The network national representatives shall decide on the network's annual programme, including a financial plan. In particular, they shall decide:
 - the priority fields to be examined with a view to an action, hereby bearing in mind Articles 10 and 17 of the Council Framework Decision 2001/220/JHA,
 - the main specific actions to be carried out (conferences, seminars, research programmes, training programmes),
 - the creation, the structure and the development of an electronic information exchange system and a web site.

The national representatives shall also draw up the annual report on the activities of the network. They shall draw up their Rules of Procedure, to be adopted by unanimity.

5. The financing of the network may be subject to a decision of the Council.

Article 9

The Decision shall take effect on the day of its adoption.

Article 8

Evaluation

The Council shall evaluate the activities and the working of the network within the three years of the adoption of this Decision.

Done at Brussels on ...

For the Council

The President

...
