

CONVERSATIONS ON RESTORATIVE JUSTICE

A talk with Rasim Gjoka

*Albert Dzur**

Rasim Gjoka is one of the co-founders and the executive director of the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR), a civil society organisation established in 1995 and focused on the promotion and development of mediation in Albania. A sociologist and lecturer at the Faculty of Social Sciences at Tirana University, Rasim is author and co-author of many sociological articles, surveys, evaluations and training manuals. As a leader of AFCR, he has run promotion campaigns, contributed to the development of the legal framework for mediation and has implemented many innovative programmes in Albania, such as restorative justice for juveniles and court-connected mediation. He has also provided expertise in training new and in-service mediators and has also trained other interested parties, like judges, prosecutors, local government specialists and teachers. Rasim has been a member of the European Forum for Restorative Justice (EFRJ) since its establishment in 1999 and is a member of the Peace Collaborative Network. He is also active in some networks in the area of conflict resolution, mediation and peace education in Albania and in the region. From July 2013, Rasim has been involved as consultant, mediator and facilitator by the Compliance, Advisor and Ombudsman (CAO), the recourse mechanism of the World Bank Group for IFC (International Finance Corporation) and MIGA (Multilateral Investment Guarantee Agency), in the management of the company-company disputes in Albania. He is also part of the mediators' panel of the ADR Center Global.

1 The long road of restorative justice in Albania

Dzur: Can you recall when you first started thinking about restorative justice? What sparked your initial engagement in the field? Were there any authors or practice examples that were particularly important?

Gjoka: It has been a long road from the very beginning of getting in touch with the restorative theory and practice, to being more involved and contributing step by step to the consolidation of restorative justice in Albania. I would start this narrative with a situation that occurred in February 1996, when the newly established Albanian Foundation for Conflict Resolution and Reconciliation (AFCR) was holding its first conference focused on 'Reviving the Albanian

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Tradition of Dispute Reconciliation'. After the presentations, among which the one delivered by Professor Nils Christie on 'Modernized Legislation' drew keen attention, there was a discussion on the benefits of resolving conflicts through mediation. Many participants got very involved in the debate, arguing that we, Albanians, should not forget what a difficult period we had been through during the totalitarian regime; having pride as our main value, peace should not prevail, but revenge instead. The situation seemed to be deteriorating, but then, suddenly, a former senior member of the military of the previous totalitarian regime, who had been imprisoned for political reasons, took the floor. In fact, he enjoyed the respect of the others, and his words imposed calmness among those present. He began his speech by saying:

I have suffered many years in prison, and I have had a difficult life.
 I do not forget.
 But I do not want revenge.
 I want peace.

Dzur: Why had he been in prison?

Gjoka: During the totalitarian regime there was a prison for political beliefs. He was part of the conference and, through his speech, created a new atmosphere focused on thinking of the future and peace and not revenge. It was a strong voice. Later, during another activity in Tirana, Professor Christie reflected: 'The gentleman at that conference turned into the person who opened the door to mediation for Albania.' This story helps answer the question about the beginnings of thinking about the values of restorative justice and practices in repairing the harm and pain caused to people and providing benefits to society.

It was the generous support of the Danish people to the civil society in Albania that enabled the launch of the mediation programme. In addition, it was the well-organised and structured Norwegian experience that served as a concrete example of how public institutions and civil society can cooperate in initiating this new movement in the field of restorative justice.

The visit of the first group of representatives from Albania to Denmark and Norway in May 1996 remains an unforgettable memory. I was part of that group, and we got to know more closely the Norwegian experience of the mediation service and the concrete application of the theory of Professor Christie described in his article 'Conflicts as property' regarding the necessity of treating and managing conflicts as properties of the parties.

The first steps of cooperation were further consolidated during the relatively long partnership (1999-2009) between the Foundation I represent and the Norwegian Mediation Service (NMS), which was focused on two levels: first, the experience exchanged among experts between the two countries, which was led with great professionalism and dedication by our colleague Karen Kristin Paus, Senior Adviser at NMS, consisting of several meetings, workshops and mutual visits of professionals in the mediation field that took place in Albania and Norway, and, second, the financial and institutional support from the Norwegian

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ministry of foreign affairs to the project on the introduction and development of restorative justice in Albanian society.

Numerous activities took place between the two countries with mutual benefits, such as exploring the Albanian tradition of reconciliation and mediation in conflict management at the community level. We also explored the particularities and trends of mediation development, such as the model developed in Norway as an institutionalised service and part of the ministry of justice and the one in Albania as a service initiated by civil society, while trying to engage institutional actors such as the ministry of justice, the judiciary, prosecutors and the police.

Finally, I need to mention the inspiration to me and to the AFCR organisation from *The Little Book of Restorative Justice* by Howard Zehr. A very important message that we find in his book was his explanation that crime causes harm to victims, offenders and the community, while underlining that restorative justice addresses the needs of victims, offenders and the community.

2 The challenges and opportunities of regime change

Dzur: Your story about the former military official's intervention in the conference raises a question of the special challenges and opportunities for restorative justice presented by the political and economic transition from communism. How did this transition influence the development of restorative justice?

Gjoka: The circumstances after the fall of the totalitarian regime enabled the establishment of the foundation to contribute to conflict resolution. I can mention the positive side and also the challenges in this still ongoing process of transition. It is en route to a democracy but needs to improve a lot. The positive elements include new reforms in Albanian legislation and greater openness among many people to new trends and developments, in regard to both justice and other realms. Another positive element is the opportunity to develop programmes for conflict resolution and mediation to instil the Albanian tradition of peace and reconciliation. On the other side, we are faced with a lot of challenges and a lot of tension with society.

Dzur: What kind of tension?

Gjoka: I mean social tension. In 1996 and 1997, for example, after a breakdown of pyramid schemes in Albania, the tension began at the political level and was reflected at the grass roots too between families. For example, in 1997 more than 3,000 people were killed.

When you ask me about the challenges we have faced during this period of almost 20 years, it reminds me of a conversation, in the early 2000s, with a high representative of the justice system here who holds a decision-making position. He was surprised when we spoke with him, and he said he was hearing about the concept of restorative justice for the first time. During the conversation, one of

the colleagues from the donors was talking about the beginnings of the introduction of the restorative justice concept in the Albanian justice institutions and at the school of magistrates. His reaction was, 'What is our connection to this kind of justice you are talking about? The criminal justice and the respective codes are sufficient for us.' The message was clear to us. More information needed to be disseminated to inform the professionals and the public. We had to do more awareness-raising activities to explain what restorative justice means, what values it carries and its practical impact.

Another difficulty I would like to mention is the resistance by the judiciary and the prosecutors, in particular their reluctance to accept out-of-court solutions to conflicts through the forms and instruments of restorative justice. In my opinion, these reactions happened for several reasons. One is the lack of information about the restorative approaches. Another is the traditional trend of the system to refer only to criminal procedure and criminal code, which is like a bible for them. In many cases, we noticed a tendency to maintain the monopoly of conflict management by judges and prosecutors, who in some cases argued openly, 'What guarantees do we, judges and prosecutors, have to entrust the ownership of the conflicts to other actors, such as mediators?'

Dzur: Do you see some similarities between Albania and Central or East European countries in their post-socialist era?

Gjoka: We held meetings during the second half of 2019 with many colleagues in the field of mediation and restorative justice in some countries of the region, such as Poland, Slovakia, Hungary, Czech Republic, Croatia, Bosnia and Herzegovina. These meetings took place in the context of conducting a mapping process with the focus on 'Criminal justice in Central Eastern Europe through the lens of restorative justice'. In almost all of the meetings, apart from the opportunities for the development of restorative justice programmes, we talked about the challenges we each faced in our respective countries, and those challenges were very similar to what I described above as characteristics of Albania.

3 The current status of restorative justice practices

Dzur: Where do you see restorative justice practices currently being used in Albania? In what parts of society or the legal system is restorative justice most visible?

Gjoka: The restorative justice movement has been bottom-up in Albania. There have been 20 years of information dissemination and training rooted in civil society.

The restorative justice programmes implemented in Albania have been mostly focused on juveniles in conflict with the law. The positive outcomes of pilot programmes, consisting of awareness-raising about the values of restorative justice, capacity-building for justice professionals and restorative justice practitioners, and case management through restorative practices, were used in

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advocacy efforts to institutionalise such approaches for juveniles. Consequently, the code of criminal justice for children, which entered into force in 2018, provides for the diversion of a juvenile offender to restorative justice programmes and mediation, as part of the alternative measures.

The diversion is decided by public prosecutor or judge. However, other competent bodies can inform children in conflict with the law on the possibility of being diverted to restorative justice programmes and mediation. The prosecutor examines whether a case is suitable for referral to such a programme and whether the juvenile meets the diversion conditions. For example, the offence committed should be punishable up to five years of imprisonment or through a fine; the juvenile should not be a recidivist; and he or she has to show responsibility for his or her actions and be willing to repair the damage done. However, we have a big difference between the drafting of the law and implementation: between 2018 and 2020 only 19 cases have been diverted from prosecution to mediation.

Dzur: Do you think this is because the judges do not understand restorative justice?

Gjoka: I am not sure it is a matter of not understanding because, as I have mentioned, we have worked with judges for a long time through the school of magistrates. It could be because legal reform is ongoing in Albania. As part of the reform, all judges and prosecutors are in a vetting process and are concerned about keeping their jobs. Corruption has been a big problem as well. So there are different reasons that although restorative justice is well regulated in the criminal code for juveniles, it is little implemented in practice.

Other stages where a juvenile can be referred to mediation prior to court proceedings include those offences that are not prosecutable unless there is a formal complaint by the victim. In such cases, the role of the police officer could be to inform both parties on the possibility of using mediation to resolve their issues. This is the stage where the police can have a role.

Restorative justice practices have also been used after court proceedings for probationers who have unsettled issues with their victims, as complementary to their alternative sentence under probation.

In the case of adults, restorative justice and mediation can be used in those offences that are prosecutable only on the complaint of the victim either to the court or prosecution. The types of offences include non-serious ones, such as battery, injury and defamation.

Dzur: How is restorative justice currently funded?

Gjoka: The restorative practices and mediation services in civil society have been funded under various programmes financed by donors, such as European Delegation in Tirana, UNICEF, Save the Children, and the Organization for Security and Co-operation in Europe (OSCE). Although the code of criminal justice ensures that all services provided under the code are free of charge, therefore including mediation, until now no government budgeting covers such

services for children; they have been dependent on donor funding. It is a problem, this lack of support.

4 The role of civil society organisations in promoting restorative justice

Dzur: In 1995, you helped establish the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR). What prompted you to form this organisation? What are its chief objectives?

Gjoka: Yes, it is true. I am one of the founders of the Foundation. If we go back in time to October 1995 and reflect on the initial incentive to getting involved in the mediation and conflict resolution programme, it was the desire and agreement of a group of colleagues, mainly from the field of justice, sociology and culture, to work together to develop mediation in Albania. We jointly developed the strategic programme of AFCR, which included trainings, conferences and workshops, mediation services to communities, publications and research activities.

AFCR was established to help democratise Albanian society by resolving conflicts and disputes that may arise between individuals or social groups. The main objectives are to promote, develop and implement the mediation alternative in dispute resolution as well as to promote the culture of peace, tolerance and understanding. Initially, the strategy for the period 1995-2003 was supported by a grant provided by the Danish government through the DANIDA [Danish International Development Agency] programme and then continued with support from the Norwegian ministry of foreign affairs from 2003 to the end of 2009.

I think that a crucial moment in the organisational development of AFCR, and especially in including restorative justice as one of the priorities, was the invitation to participate in a meeting held in Leuven in 1999, bringing together colleagues from Europe, who became the founders of the EFRJ.

I need to mention here that right after we came back to Tirana from the EFRJ establishment meeting, my colleagues, Professor Mariana Semini, a lecturer at the Albanian School of Magistrates, Ismet Elezi, Professor of Criminology and AFCR Board Chair, and I prepared the first cycle of lectures in mediation for magistrate students, and restorative justice was one of the components. This series of lectures was later turned into a course that has been running now for 20 years, delivered to both magistrate students and in-service judges and prosecutors in their continuous training programme.

Dzur: That's a great example of a civil society organisation having an impact fairly directly on the legal system through training and teaching.

Gjoka: Yes. I think it was also the influence of the Danish and Norwegians to start this activity as an alternative to the courts. We spent 20 years convincing the politicians and decision makers in the justice sector to consider restorative justice as a part of the criminal justice process.

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Dzur: What are some of the advantages and disadvantages of working in civil society as opposed to working through government institutions?

Gjoka: If we talk about the advantages and disadvantages of being a civil society activist, I can say that getting engaged in the field of civil society, especially when you are committed to it for a long period of time, requires loving it with all your heart and dedication to serving the cause you have embraced. You are always looking for something new and different from your daily routine, and that requires creativity, energy and organisational skills, such as human resource management, expertise and fundraising. Another satisfaction you feel when working in the civil society is the flexibility and the ability to adapt initiatives and programmes, working outside the bureaucratic rules of the government administration. In other words, the success or failure in this field depends on the staff of the organisation itself, who, in many cases, work voluntarily and beyond working hours.

On the other hand, yes, working in civil society organisations has its disadvantages as well, and I would like to mention one of them, which in my experience, is the most dominant: unlike working in a government institution, contributing to civil society keeps you under stress and tension, as you continuously find yourself in situations of alert: looking for funding, drafting project proposals, implementing activities and communicating with donors.

5 International and regional cooperation

Dzur: How easy or difficult is it for the restorative justice movement in Albania to develop regional and international cooperation?

Gjoka: I must say from the beginning that international cooperation in the area of restorative justice has been easier owing to the fact that AFCR has been an active part of the EFRJ, through which many activities have been organised, including meetings, conferences, workshops and trainings. One beneficial experience was participating as a partner and member in the steering group of the project 'Building Social Support for Restorative Justice', led by EFRJ. Another factor that has had an impact on the restorative justice movement in Albania has been the relatively long cooperation with the NMS, which created the possibility of organising numerous international meetings in Norway, as well as our participation in other activities organised in European countries.

If we talk about regional cooperation, there have been some attempts to undertake joint activities, but they have been rarer. From 2007 to 2011, a network of mediators was established, called SEEMF (South Eastern European Mediation Forum), and some activities were organised in the regional countries, but it did not last long.

Apart from supporting the development of restorative justice in Albania, the NMS also undertook an initiative to develop restorative justice in the Balkan countries. In 2008-2009, a Norwegian expert and I delivered some workshops with the focus on restorative justice in the Western Balkan region: countries such

as Serbia, Macedonia, Kosovo, Bosnia and Herzegovina and Montenegro. The first aim was to assess projects or initiatives in the field of restorative justice and to explore potential partners in the region – organisations with an interest in developing restorative justice and restorative practices. The second aim was to create a network. But after the end of the round of the workshops in the region, we noticed that restorative justice was not much developed, apart from some small-scale projects in Serbia and in Montenegro.

Among the issues related to regional cooperation, I would mention the lack of interest in the respective countries in including restorative approaches in criminal justice or in making legal improvements according to the recommendations of the Council of Europe, as well as a general lack of funds.

6 Customary law and restorative justice

Dzur: What is the influence of Albanian customary law on the emergence and orientation of restorative justice? What role is there for mediation or restorative justice in customary law, and how does it relate to blood feud?

Gjoka: Customary law has been the subject of research and assessment by our experts at the foundation. The aim has been to discover the positive value in customary law and its potential use in combination with new restorative practices. Comparative analysis shows that there are many similarities between restorative justice and reconciliation and mediation practice based on the customary tradition.

Dzur: I'm curious, too, about how the formal legal system and the customary process overlap. Is it the case that in some parts of Albania people are more inclined to go through the customary law than other parts of the country? Or are there certain legal problems handled by customary law as opposed to formal law?

Gjoka: The customary law is considered as a juridical corpus, which regulates all aspects of life in details like organisation of the family, kinship, clan, communities according to their clans and territory and local governance. It contains penal, civil and procedural norms. Customary law is highly visible in the book *Kanun*. It was used in the context of a developing society, without rule of law, without institutions. And during the totalitarian regime blood feud and revenge were strictly prohibited and severely punished, which led to the elimination of this phenomenon during that time. Although blood feud is something that belongs to history and to the past, it also continues to be manifested even nowadays in some northern areas of Albania, especially in the highland villages. Year to year, it can also be seen in the urban areas. If we look at the content of the customary law, among the most noteworthy norms that are expressed are the promise, the truce (*besa*), friendship, hospitality, honour and dignity, forgiveness, reconciliation and mediation and respect for the words of the wise men and the elders.

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The traditional mediator is someone who is considered a well-known ‘reconciliation missionary’ in the area where the incident took place. These are people who use only the traditional norms in the resolution of conflicts in community and are not the same as the lay mediators we collaborate with in our work. The traditional mediator makes numerous efforts to reach reconciliation between the two families involved in the conflict. As a first step in the process, the traditional mediator contacts older people, who are close to both families in conflict and are known for the respect they enjoy in the families involved, and in a wider area. They are invited to join the reconciliation mission by exerting the influence they have. During the reconciliation ceremony, the parties in conflict and their family members sign a settlement agreement for creating peace and creating a new social environment and situation between those in the blood feud. They agree on the following statements:

We consider the conflict between us as something that is over and that belongs to the past.

We will normalise the relationships among us and no longer consider each other enemies.

We will re-establish communication between the members of the two families.

Through comparative analyses and evaluations, it has been assessed that restorative justice is in harmony with the conciliation and mediation instrument that comes to us from customary law and that it helps families in conflict, with motivations of revenge and blood feud, reach a conciliatory solution between them that serves to heal the damage caused and restore relations.

Another significant element regarding the harmony between restorative practice and reconciliation and mediation according to tradition is found in the values and principles on which these practices are based. We find many similar values, such as the concept of repairing or restoring the harm caused by the conflict, inclusion, respect, empowerment, responsibility and transformation. In this sense, there are some common points between the Albanian tradition of reconciliation based on customary law and the restorative approach. But in our mediation activity, especially at the community level, we also try to make use of Albanian customary law values, such as the one of promise, the truce (*besa*), friendship, hospitality, honour and dignity, forgiveness, reconciliation and mediation, respecting the words of the wise men and the elders. We include them in our programme and see how to apply them case by case.

Dzur: You’ve spoken about harmony between customary law and mediation and restorative justice ideas and practices. Are there points of difference, of disharmony?

Gjoka: The harmony we can identify through some shared values and norms. But as an instrument, they are a little bit different. In a restorative approach, we use procedures like victim-offender mediation, family group conferences or

peacemaking circles. But in a reconciliation ceremony or mediation through tradition, it is the old man who makes the decision. It is not a completely democratic process.

Dzur: I was struck by that in your earlier remarks. You were talking about 'honour' and 'the elders.' 'Honour', to me, does not signify something flexible. When I'm protecting my honour, I'm not listening to you. I'm not open to being changed. And 'elders' signifies tradition and hierarchy.

Gjoka: Yes, exactly. And also, in practising mediation through tradition, there are still problems of free choice. It is not a voluntary process. The man in the village has decided to invite the victim's family and the offender's family to reconcile and, in some cases, not to respect their will. In this sense there are differences. There are parts of the old tradition that cannot be used in restorative practices.

Dzur: In your own work, do you pay attention to gender and include women in ways that would be difficult in the traditional processes?

Gjoka: This is a good question, because gender balance has been part of the AFCR programme since its establishment. It is also one of the criteria of the donors. In our mediator network, and also within our staff, over 60% are women. In the application of restorative justice, especially with the instrument of victim-offender mediation in the North, we had female mediators who were accepted by both the parties in the conflict and the community. This has been a transformative process. It is a very important point for us to take into consideration both within school, in training, and in the community as well.

7 The value of lay mediators and relations with more professionalised actors

Dzur: You have worked with and written about lay mediators. Can you talk about their role inside and outside the Albanian legal system?

Gjoka: The lay mediators have a strong connection to tradition, and I believe they are a very important asset, especially in Albanian culture. They have played a very important role in the management and peaceful resolution of various conflicts and disputes.

Dzur: How does one become a lay mediator?

Gjoka: It is a natural process in communities. Distinguished people who have a strong voice, like teachers or nurses, take up this role.

Dzur: Are they typically invited to do this, or do they invite themselves?

Gjoka: Yes, sometimes people are invited to play a role as lay mediators. In the mediation practice, lay mediators are considered to be well-known people in areas where they live. They are persons known for their reputation in their

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communities and who have some natural negotiating skills. They facilitate the process of mediating conflicts between neighbours, over property or disputes stemming from dignity violation.

Dzur: Are they guided mostly by customary law? Or are there other norms that they draw upon?

Gjoka: The lay mediators with whom AFCR has collaborated are not guided by the customary law, but they try to combine its positive values with the contemporary forms of mediation.

I would give an example from the experience of AFCR from 1995 through 2003, when we initiated a programme of community mediation. We combined a group of 20 professional mediators qualified through training programmes and around 12 lay mediators from the community, who in most cases were engaged as supporters and facilitators in the process of conflict management and resolution. The group of lay mediators attended workshops regarding the new legislation and new techniques of providing mediation. The number of conflicts managed and resolved in a community mediation programme varied from 10 to 15 cases monthly.

The role of the lay mediators was evident in many aspects of conflict resolution through mediation. They identified conflicts and the causes of disputes in the communities where they lived and worked. They explored the conflict situation in the village or community and identified the parties in conflict, as well as other actors and family members who could have a positive role in the process of establishing bridges of understanding and peace, as well as the factors that incited the escalation of conflicting situations into more serious ones. They facilitated the communication and negotiation process with the families involved in the conflict, as well as with other actors. The engagement of lay mediators in community conflict resolution makes the restorative and reparative process for damages caused more effective.

Thus, the involvement of lay mediators makes the reconciling process between the parties more acceptable by the parties themselves and the wider community.

Dzur: So the lay mediator is, in your view, more of an insider and may have more knowledge about the people involved than somebody who may be better trained but comes from the outside.

Gjoka: Yes, you are correct. There has been a discussion between our experts and Norwegian experts because in Norway it has also been a philosophy to use the lay mediators. In our cases also, lay mediators play a role in facilitating communication and the negotiation process with families involved in conflicts related to blood feuds, as well as others. But professional mediators have the first role in solving disputes through mediation and restorative practices. In this sense, the lay mediator has been in our model an outsider, a supporter, to play a second role and not the first role. But still, they are very important, especially for Albanian culture and tradition.

Dzur: That's a difference between the Albanian and the Norwegian models.

Gjoka: Yes. It really is a pity, because the role of lay mediators and their engagement in community mediation and other forms have decreased.

Dzur: Why is that, do you think?

Gjoka: It is a result of the new process, which demands increased professionalism and standardisation of mediation, ignoring the role of lay mediators. It is a reflection also of the new legislation, which has diminished the role of lay mediators. With the adoption of the law on mediation service in 2003, the possibilities for the involvement of lay mediators were limited. This became even more apparent with recent legal changes in mediation service, adopted in May 2018. To be a mediator in Albania you have to fulfil certain criteria, and some of them are very exaggerated.

Dzur: What is the solution to this problem? If the lay mediator has something to contribute to the process you want to preserve, what is your suggestion for having both the lay mediator and the professional mediator involved?

Gjoka: Well, in our programme we tried to create a synergy with lay mediators. But they felt ignored because the new laws about mediation do not mention them or Albanian tradition. And they are absent as well in the newly drafted amendments to the law. In this sense, there is no attention from the public institutions or the justice sector. But in civil society, there is great possibility, a lot of space for cooperation, especially opportunities for lay mediators to do successful mediation and create peace and harmony in society.

Dzur: Are there organisations of lay mediators? Social networks?

Gjoka: No, there are no organisations of lay mediators.

Dzur: You have noted tensions between lay and professional mediators. When do these tensions emerge, and what can be done about them?

Gjoka: I do not think that there is any tension demonstrated between voluntary and professional mediators. But given the legal changes in which the mediation service is entrusted to professionals, voluntary mediators have felt overlooked and outside the conflict management system. This contributes to their passiveness in engaging in mediation and restorative justice programmes.

I believe that such a trend leads to what is called the loss of social capital, which is quite valuable in small traditional societies, such as Albanian society. To remedy this, in our practice, we have applied the model of delivering joint trainings, involving both professional and lay mediators. Considering our experience, I would suggest the necessity of training lay mediators in aspects related to the understanding of restorative practices, such as the philosophy and practical implementation, sharing best practices and concrete examples of restorative practices, and the legal framework on which this practice is based. This helps with the rebuilding of social capital.

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Dzur: What is the relationship between negotiation and restorative justice in the Albanian context? What are the overlaps and differences?

Gjoka: Negotiation is the communication between two or more parties in a conflict or dispute to attempt to reach an amicable settlement between them. In cases of direct negotiation, as a rule, there is no third party to assist or facilitate this process.

Meanwhile, negotiation is considered as an important element, essential to the restorative practice that is applied in Albania, as it is in other countries. More specifically, in the preparatory process for reaching an agreement through understanding, the mediator plans communication sessions with the parties involved, and such sessions involve negotiation elements to approximate the positions of the parties towards reaching an agreement. It is important that the mediator makes use of his or her mediation and facilitation skills by encouraging the parties through direct communication with them and negotiation in joint meetings to find common points that bring them together. Based on the mediation practice, I do not see any overlap of the instruments in the restoration practices.

8 The future of restorative justice in Albania: from law on the books to law in practice

Dzur: What do you see as the most important issue facing restorative justice in the next decade? Are there problem areas that need more attention than they have received so far?

Gjoka: Given the situation in Albania, I would say that the list could be long, and I would like to mention the most important ones. I think that the relevant legislation should be improved to increase access to restorative practices and mediation, not only for a limited category of groups and criminal offences but far beyond. We also need enforcement of legislation. More efforts should be made, especially by justice institutions, to respect the implementation of the new legislation on diversion to the restorative programmes for minors and youth in contact and conflict with the law.

Further, there is the necessity of providing government funds to support the financing of restorative justice and mediation programmes, especially for juveniles and young people involved in conflict situations. Last but not least, more attention should be paid to the integration of traditional, informal mediation practices with new, organised restorative justice programmes.

Dzur: It does beg the question: if legislation is the goal, how do you reach that goal? It seems to be dependent on pressure either on political parties or through social movement activism. Do you see either of those things in Albania – any large-scale social movements pressing for restorative justice or any political parties interested in restorative justice?

Gjoka: What is needed is a different instrument. We need to lobby at the parliament for influence and include the ministry of justice, the court and also the prosecutor in the process. This is exactly what we are doing now. We have organised a round table of experts for a new strategy for restorative justice in Albania. I have sent a letter to the minister of justice here to appoint two experts to be part of the process, not just to hear but also to contribute. And I received a positive answer.

The problem is that in a country like Albania there is homework to do. We need to draft legislation to EU standards. And then the gap between legislation and implementation is a big problem. How to influence this is still an open question. Providing more information and more attention to public institutions for the implementation of the law is a start.

Dzur: It sounds like you have been doing some lobbying.

Gjoka: Exactly, lobbying and including more stakeholders so we are not isolated as a civil society organisation.

Dzur: Are you finding support in parliament among legislators?

Gjoka: For the development of legislation, yes. We have been very satisfied with cooperation with members of parliament to support our suggestions and place into a draft code a number of articles about diversion and restorative justice for minors. Now we have a new struggle to use the same approach for improved legislation for the other target groups, for adults.

Dzur: Are you seeing this as a second phase?

Gjoka: Yes, we are in a second phase. For parliament, we are looking for the public institutions to pay more attention to implementation. It is not enough to have a good law; the most important thing is to implement the law based on the standards.