

SLOVENYA'DA MAĞDUR FAIL ARABULUCULUĞUNUN GELİŞİMİ

1. Slovenya'da Mağdur-Fail Arabuluculuğu'nun Gelişimi (VOM)

- 1994: Ceza Kanunu Madde 77 - direktif ve yasaklar
- 1995: Ceza Muhakemeleri Usulü Kanunu - Madde162: soruşturmanın ertelenmesi (DP)
- 1996: Slovenya Savcı Derneği'nin kurulması stand of Slovenian prosecutors association about the experimental introduction of VOM against juveniles
- 1997: Agenda 2000 - judicial sights of attachment to EU, R(99)19 and participation of Slovenian expert in working group
- 1999: Legal basis for implementation of VOM (Art 161a CPC, Regulations of VOM procedure, General directions of the State Prosecutor General about conditions and circumstances before transfer case to mediation, selection and education of mediators
- 2000: Evaluation after the 1st year VOM and DP
- 2001, 2002, 2003...:evaluation, education, VOM became known in public

Every new attempt is firstly implemented into a juvenile law. To begin with an experimental program it was very important Art 77 CC which had implemented INSTRUCTIONS and INHIBITIONS against juveniles .The first step were made after visiting Austrian colleagues, where very similar judicial system as in Slovenia is acting.

But VOM is not the only alternative form. In Slovenia we are dealing with differed prosecution (DP). It is a kind of conditional prosecution, which is governed by the prosecutor. The crucial point is the authority. VOM is governed by the mediator who is the civil person outside the judicial system, an independent person who is managing mediation process out of judicially buildings.

An important role in development of restorative justice played also our Slovenian Prosecutors Association which in 1996 had a very explicit stand about the meaning of VOM and its future development. It had resulted in our study visit to Norway, where we got acquainted whit VOM. The juvenile section of the association proposed one of the prosecutors as a specialist to be appointed into a group of experts at the Council of Europe. It was a very lucky circumstance and the membership in the group which was dealing with R (99)19 enabled me to convince my colleague's prosecutors about the meaning and the aims of this new

institute on one hand and on the other, we could prepare legal basis just in time when amendments for CPC were in implementation. After that we selected mediators following the regulations and prepared initiate training for the mediators and prosecutors - very similar as this one in Ankara is going on.

We have been very satisfied with the result after the first few years. The number of assigned cases exceeded the objective set at the beginning of the year and the expectations were no doubt overcome as to the number (and percentage) of successfully resolved cases. The total number of dismissed reports means the number of cases which otherwise have to be resolved on the merits by almost five judges of local courts.

Of all cases concluded in the first year 2000 48% were successfully resolved and 52% unsuccessfully resolved. We believe that this result can be regarded as satisfactory, especially because what is being introduced is a completely new institution which all - state prosecutors, the parties to the proceeding and the mediators - after all these years still have to adopt.

2. Phase, crimes and participants

- PRETRIAL, TRIAL
- OFFENCES WHICH PROVOKE THE CONFLICT, PROMPTLY REPAYMENT POSSIBLE
- PERPETRATORS, AIDERS, PROCURERS, JUVENILES

In brief I would like to show you how it works in practice. We can use VOM in the pretrial phase and among the trial. Most cases are transfer in the phase after receiving the police report. In last few years more and more cases are transfer after they are charged. The state prosecutor may propose to judge to make a break in proceeding for not more than 6 months. If inside this term VOM is successful the prosecutor will reject the case.

The most suitable criminal offences according to the criminal law act are in general those which are defined in CPC in Art 161a. For better understanding take a look to the first and second paragraph of the Art 161a:

- (1) The public prosecutor may transfer the report of or the summary charge sheet for a criminal offence for which a fine or imprisonment of up to three years is prescribed and criminal offences referred to in the second paragraph of this Article into the settlement procedure. In so doing, he shall take account of the type and nature of the offence, the circumstances in which it was committed, the personality of the perpetrator and his prior convictions for the same type or for other criminal offences, as well as his degree of criminal liability.
- (2) If special circumstances exist, settlement may also be permitted for the criminal offences of aggravated bodily harm (first paragraph of Article 134 of the Penal Code), grievous bodily harm (fourth paragraph of Article 135),

grand larceny (point 1 of the first paragraph of Article 212), disavowal (fourth paragraph of Article 215) and damage to property (second paragraph of Article 224); if the criminal report is submitted against a minor, this may also apply to other criminal offences for which the Penal Code prescribes a prison sentence of up to five years.

Beside these provisions state prosecutor has to respect the general instructions, which precise the conditions and circumstances for making decision of transfer case to mediation.

% of offence in total assigned cases

Simple assault		14	
Endangering by fighting or quarrel			3
Endangering safety	11		
Maltreatment		4.5	
Theft		17	
Fraud		6	
Damage to property	11.5		

In mediation process there are regular three participants: victim, offender and mediator, but often there are some others e.g. legal assistance (advocate), parents of juvenile, social worker, insurance, notary etc. In SLO mediators are volunteers.

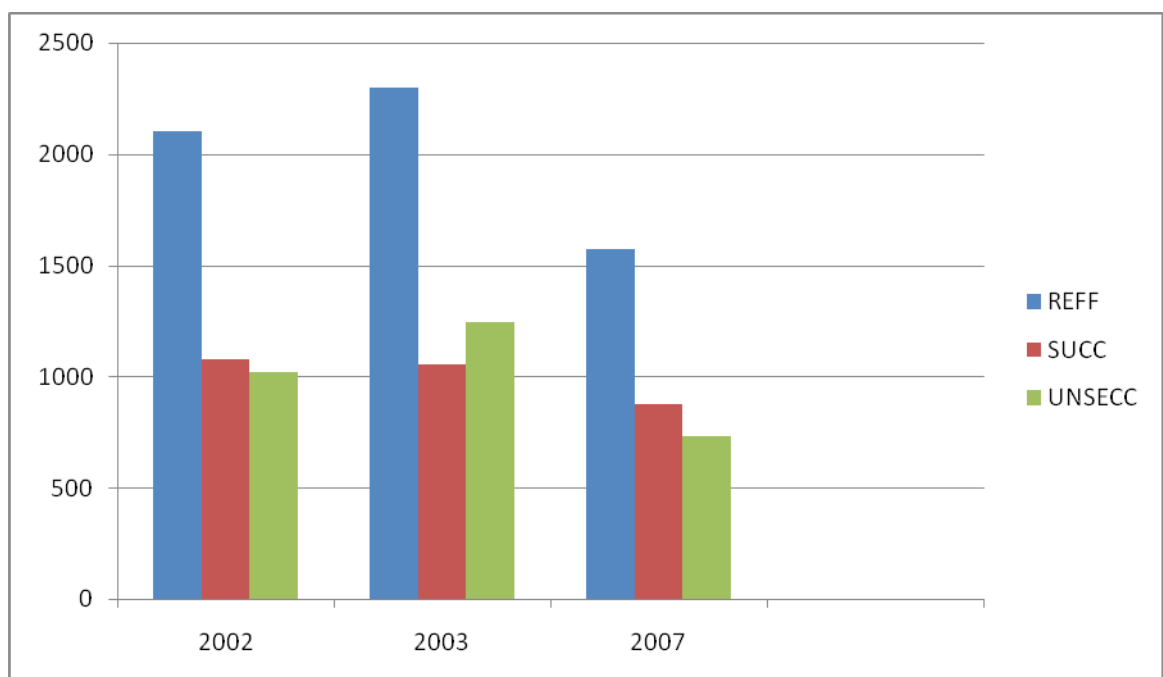
3. Mediation process

- SELECTION OF PROPER CASE
- APPOINTMENT OF MEDIATOR
- TRANSFER A CRIMINAL REPORT
- INVITATION TO PARTICIPANTS
- ACQUISITION OF CONSENSE
- COMUNICATION - MEDIATION
- AGREEMENT
- FULFILLING
- RETURN THE FILE
- PROSECUTORS DECISION

Nevertheless mediation should have been a simple process it could become pretty complicated due to all cautions which should be respected. Our Slovenian prosecutor say that too many tasks should be done and sometimes instead of transferring case to VOM they rather charge even they can only expect a minor suspended sentence.

4. Number of cases

We can do a comparison between the numbers of transfer cases in 2002 in Germany vs. Slovenia related to 100.000 inhabitants. These two countries have a very similar criminal justice system. The compared number is 35:100, that means in Germany 35 cases and in Slovenia 100 cases related to 100000 people were referred and it was an amazing number for all practicing over the Europe.



The obvious decrease of referred cases can be noticed. One of the reasons is less police reports in total and the increase of using differed prosecution measure. The 3rd reason is institution of penal order which is also very useful for the minor offences. As you can see, we have sometimes a problem with the competition of alternative measures and it could have become a problem to choose the most proper way. One of the solutions is outcomes of the regular annual controlling review of the prosecutors work. It shows where the mistakes were made and which institute should have been used.

5. Putative causes of failure

We may talk about causes owing to prosecutors, to mediators and also to participants.

- CAREFULLY SELECTION OF CASES

- FOLLOWING GENERAL INSTRUCTIONS
- PRECISELY ADDRESS OF PARTICIPANTS
- CLOSENESS OF PARTICIPANTS RESIDENCE
- CLEAR AND JUST REMUNERATION TO MEDIATORS

The reason could be owing to state prosecutors, if they don't choose the proper case or don't follow the general instructions where all relevant conditions and circumstances are provided. It is also very important that the mediator gets the right address and important thing is also the closeness of participants. We cannot imagine that there should be solved a dispute between two of them who are living 200 km apart. Our mediators are volunteers and the remuneration fixed in special provisions must be followed.

- CAREFULLY INVITATION
- SUMMARY OF MEANING AND AIMS OF VOM
- ACTIVE MANAGEMENT OF VOM PROCEDURE
- PROPER AIMING TOWARDS THE AGREEMENT
- EFFORT TOWARDS FULFILLING THE AGREEMENT

The reason could be owing to mediators, if they do not follow the regulations about the process of mediation. They have to be careful with invitation (regulated in CPC). It is important that the participants get with the invitation all relevant information concerning VOM. The leaflet should obligatory be sent with the invitation. At the first meeting they have to explain the meaning and the aims of VOM. They have to be very active during the process aiming towards the proper agreement. They should be invited in the proper time and place. On the first appointed day the mediator has to explain all relevant facts and try to get a consensus.

- FULLY INFORMATION - LEAFLET
- ADVOCATES, PARENTS
- (UN)REAL CLAIMS
- PROPOSAL OF CHARGE-WITHDRAWAL
- AGREEMENT CAPABLE TO BE FULFILLED

We have various experiences with the advocates. Mostly they complicated the proceeding and try to divert the victims out of mediation looking after higher compensation. The mediator should strive to ensure that the contents of the agreement are proportionate to the seriousness and consequences of the offence. We have most problems with withdrawal the proposals. Our victims may

dispose with the proposal to prosecute an offence during the whole process until the sentence is announced.

6. Problems with reports and controlling the prosecutor*s decision

- DEFICIENCY OF RELEVANT DATA
- OFFENDER DOES NOT ADMIT
- ADDRESS IS INCORRECT, PARTICIPANT IS UNKNOWN OR ABROAD
- THE TRUE STATE IS NOT CLEAR

I want to make a point of importance linked with a police report. Probably you won't succeed if there is a lack of relevant data concerning with the offence. It is also impossible to refer the case if the offender denies or he does not feel himself as to be an offender. As any other decisions also the decision regarding VOM could be controlled by the higher or supreme prosecutor.

- TIMING
- PROPER DECISION ABOUT TRANSFER
- PROPER DECISION AFTER REPORT IS RETURNED
- PROSECUTOR'S OPINION AND PROPOSALS
- REMUNERATION

Most of cases are solved into one month. Otherwise our mediators have 3 months to return the case back to the prosecutor office and if there is more complicated case, the prosecutor may extend the term up to 6 months. As I have mentioned above, our prosecutors should be careful about using different alternative measures. After the case is back they have to dismiss it when VOM is successful ended and (in general) to charge if VOM failed. Among the process of VOM mediator may ask the prosecutor to give his opinion or proposal about the outcome but the mediator is not obliged to follow it. The remuneration can be as follows:

- UNSUCCESSFUL MEDIATION 20 UP TO 50 EUR
- SUCCESSFUL MEDIATION 40 UP TO 150 EUR

The decision depends about the activity, difficult of case, number of participants and mediator's expenses.

7. Tasks deriving from achieved VOM agreements in %

- Apology 41.5

- Compensation for damage 34.6
- Apology and comp. for damage 10.7
- Restitution (return of chattels taken) 4
- Work for the victim`s benefit 2.2
- Work for the benefit of others 0.02
- Withdrawal of the victim`s proposal 7

Duties deriving from achieved agreements are a reflection of the type of criminal offences in question. Most often, also in other countries, victims are satisfied by an apology but our prosecutors are not so happy about it. As a pretty high number of cases are based on property damage, compensation for damage is the duty second by percentage, followed by the combination of apology and compensation for damage as the duty third by frequency. Considering the very low percentage of the other duties, it will be necessary, in future, to encourage mediators to try to achieve also other possible solutions, although some prosecutor`s offices report that there are obstacles, especially, in the implementation of the duties “work for the victim`s benefit” and “work for the benefit of the community”, what has already been established in connection with the implementation of deferred prosecution. Withdrawal of the victim`s proposal is a special problem. Deferred prosecution and VOM have put the victim into a new, more active position. Therefore, in view of the expected amendments of the CCP, it will be accepted a new regulation of the criminal offences prosecuted on (victim`s or others`) request.

8. Controlling board

- 3 MEMBERS:PROSECUTOR,MINISTRY OF JUSTICE,MEDIATOR
- REGULAR AND IREGULAR REVIEW
- VIOLATION OF RULES (REGULATIONS OF MEDIATION)
- SANCTIONS

Controlling board is our Slovenian »specialty«. Board is acting upon participants request or prosecutors complain. The board may propose sanctions to the head of the prosecutor office. The most severe sanction is cancellation from the list of mediators.

9. What about future?

- TO STIMULATE PROSECUTORS AND TO RAISE AWARENESS OF USING RESTORATIVE MEASURES

- TO STIMULATE PARTICIPANTS AND PUBLIC WITH RELEVANT AND ACCESSIBLE INFORMATION
- TO EDUCATE AND PROPER REMUNERATE MEDIATORS, TO SPREAD POSSIBLE AGREEMENTS AND BUILDING A SYSTEM FOR THEIR EXECUTION (E.G.WORKING FOR LOCAL SOCIETY)
- TO IMPROVE LEGAL BASES
- RESPONSIBILITY OF THE STATE FOR PROMOTION AND FINANCIAL SUPPORT TO RESTORATIVE JUSTICE

At the end we have to look in the future. What should be done for better results? In my opinion it is very important that beside those who are responsible for implementation of law provisions, the state, the government pay enough attention to restorative justice. Obviously you don't have any problem with the support of the government and other authorities. Therefore I am optimistic about the future of VOM in Turkey and I am very sure that it will be implemented with success.

10. Dilemmas and most frequent questions

- JUDICIAL PROTECTION OR CONTROL OF PROSECUTORS DECISION (BY SUPREME PROSECUTORS)
- SELECTION OF CASES AND EQUALITY BEFORE THE LAW
- ADEQUATE ORGANIZATION INSIDE OF PROSECUTORS OFFICE – specialization, departments, assistants
- EXECUTION OF AGREEMENT, VALIDITY AND CHANCE OF CIVIL SUIT
- MEDIATORS – PROFESSION OR VOLUNTEERS
- EVALUATION, COOPERATION WITH SCIENTIFIC RESEARCHERS