Introduction

Criminal mediation is one of the alternative dispute resolutions practices available. In 2001, the Council of Europe set a deadline for its members states to modify and include criminal mediation in their national legislation. Portugal was the last state to implement this into its legislation which came as legislation n. 21/2007, in compliance with article 10 of Decision n. 2001/220/JAI. Portuguese criminal mediation is a recent reality that began with this incorporation, which is also reinforced by the Portuguese Constitution in its article 202, n. 4, and pioneer experiences, such as the “Porto Project”. Despite this new-found application, there is jointly a scarce bibliography on the subject. Therefore, the purpose of this research is to conduct an empirical study conducting interviews with magistrates in order to verify their perceptions about the applicability of criminal mediation and restorative justice in the Portuguese Criminal Justice System, taking into account the importance of the role of judges when alternative conflict practices are incorporated to it.

Aim

The general objective of this study is to know the perceptions of judges in Portugal regarding alternative means of conflict resolution, namely restorative justice and criminal mediation, and have as specific objectives: i) to verify the experiences of judges working in the criminal area; ii) to recognize the possible impacts of Law n. 21/2007 in their professional performance; iii) to verify how judges take part in mediation practices; iv) to analyze the magistrates’ knowledge of the concept of restorative justice, criminal mediation and alternative means of conflict resolution; v) to investigate the feasibility of applying restorative justice in the Portuguese context considering judges’ perception.

Methodology

This study is in the process of being carried out as a thesis for a master’s degree in Criminology at University of Porto, which has a qualitative methodology to be carried out through semi-structures interviews with judges that work in the criminal field in Porto and Lisbon and to analyze their discourse about the application of alternative conflict practices in criminal matters. The interviews are being conducted by online platforms (e.g. zoom, webex) to guarantee the safety of the study participants by virtue of COVID-19.

Results

The research in question is still in the data collection phase, in which interviews with magistrates are taking place, so that there is still no final results of the study. What can be inferred so far from the interviews conducted is that there is a lack of knowledge on the subject regarding criminal mediation and restorative justice practices and their concepts. Until now, the magistrates who where interviewed didn’t have these concepts well defined in their speech, nor do they know or have any experience with such practices. With the lack of courses that address these subjects in the training of the magistrates, there is also little or no government and legislative interest in the implementation of alternative practices in the Portuguese legal culture, which is quite conservative regarding the traditional criminal justice model.

Conclusion

Since the study is still in progress in its data collection phase through interviews with magistrates, it is not yet possible to conclude the research, because if done, it would be biasing the study in certain direction without having all the necessary data and information needed to reach the stage of conclusion. However, it’s important to emphasize the relevance of empirical studies, which are scarce, toward the perception of magistrates about the incorporation and applicability of practices such as criminal mediation and restorative justice in the Portuguese Criminal Justice System.

References