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Final Scientific Report of the project

3E –RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe

Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain

(including research also in Turkey, the Netherlands, Denmark, Germany)

JUST/2010/JPEN/AG/1534

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Table of contents

A. GENERAL FRAMEWORK.....	3
1. The objectives of the project	5
2. Methodology and implementation.....	7
3. Terms and definitions.....	10
B. COMPARATIVE CONCLUSIONS ON NATIONAL REPORTS, EVALUATION TOOLS AND KEY-PRACTITIONERS INTERVIEWS	12
1. Overview of the traditional Criminal Procedure System.....	13
2. Overview of the Legal Frame of Restorative Justice	15
I. Restorative Justice as an overall and general scheme or fragmented and incoherent? Through specific law provisions or in the "shadow of the law"?.....	22
II. Restorative Justice applied to any kind of crime or to specific categories of crimes?	24
3. Restorative Justice in different stages of criminal proceedings	24
I. Restorative Justice at Police level.....	25
II. Restorative Justice at Prosecution level	31
III. Restorative Justice at Court level	37
IV. Restorative Justice at Correctional and Re-integration level	47
4. The key-practitioners' approach of Restorative Justice	51
I. A General Approach of Restorative Justice.....	51
II. Restorative Justice Frame of Implementation	57
III. On Restorative Justice Obstacles and Good Practices.....	69
5. The obstacles and the potential of Restorative Justice in the participant countries	71
I. Technical, organizational or/and operational obstacles	72
II. Ideological and conceptual obstacles.....	75
C. RECOMMENDATIONS AND PROPOSALS	77
1. The 3E-RJ-MODEL.....	77
2. The proposal of a Directive for Restorative Justice in European Union.....	88
BIBLIOGRAPHY.....	98

The 3E-RJ- Model
for a Restorative Justice Strategy in Europe
(Prepared by the AUTH working group)
Concerning Act_15 of the EU "3E-RJ-MODEL" PROJECT

A. GENERAL FRAMEWORK

During the last decades, Restorative Justice¹ has been developed rapidly as both a theoretical and practical perspective. Victim-offender Mediation has been the starting point, the first and yet one of the most common forms of Restorative Justice in many countries world while². Restorative Justice has further been evolved around the concept of Mediation both in legislation and actual situation of many different Criminal Justice Systems. Many countries have introduced a structured and very good organized Restorative Justice legal frame³, seeking to establish a more human, victim-oriented and Restorative Justice system. Restorative Justice provides the possibility⁴ for building an equitable and welfare society that integrates and includes⁵. The involvement of members of local communities in the Restorative Justice processes and the related interplay between victim, offender and local community offer a substantial opportunity for both an actual development of the latter⁶ through the settlement of the conflict within the community context⁷ and the traditional criminal justice system which provides limited possibilities for setting up conflicts⁸.

¹ Braithwaite, J. (2002a), *Restorative Justice & Responsive Regulation*, Oxford: Oxford University Press, Braithwaite, J. (2002b) "Setting Standards for Restorative Justice." *British Journal of Criminology*, Vol. 42, pp. 563-577. Gavrielides, T. (2007), *Restorative Justice theory and practice: addressing the discrepancy*. Helsinki: HEUNI.

² See Kurki, E. (2003), "Evaluating Restorative Justice Practices", in A. Von Hirsch et al. (Eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, p. 294. Miers, D. (2001), *An International Review of Restorative Justice*, London: Home Office Policing and Reducing Crime Unit Research Development and Statistics Directorate

³ See indicatively Grech, J.P. (2006), *Criminal Justice Systems in Europe and North America. Malta*. Helsinki, HEUNI. Aertsen, I., Daems, T. & Robert, L. (Eds.), (2006), *Institutionalizing Restorative Justice*. Cullompton, Willan Publishing

⁴ Christie, N. (1977) "Conflicts as Property" *British Journal of Criminology*, 17, pp. 1-15. Ruggiero, V. (2011) "An Abolitionist View of Restorative Justice" in *International Journal of Law, Crime and Justice*, vol. 39, no. 2, pp. 100-110.

⁵ Morris, R. (2000) *Stories of Transformative Justice*. Toronto, Ontario: Canadian Scholars' Press, p. 21. As penal abolitionist Ruth Morris (1933-2001) nicely put it: "Safety doesn't lie in bigger fences, harsher prisons, more police or locking ourselves in till we ourselves are prisoners. Safety and security – real security – come from building a community where because we have cared for and included all, that community will be there for us, when trouble comes to us. For trouble comes to us all, but trouble itself is an opportunity".

⁶ Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*. New York: Oxford University Press, p. 66.

⁷ United Nations / Economic and Social Council (2002) *Restorative Justice*. Report of the Secretary – General. Commission on Crime Prevention and Criminal Justice, Eleventh Session, Vienna, E/CN.15/2002/5, p. 2.

⁸ Schneider, H. J. (1991) "Restoration of victim and punishment – Reconciliation efforts between offender, victim and society". Translated in Greek by N. Livos. *Efimeris Ellinon Nomikon*, p. 153 (in Greek).

Over the last years, especially since the end of the decade of '90 and the beginning of the twenty first century, international and European organisations are paying more and more attention to the development of Restorative Justice⁹ with direct reference and explicit mentioning – in some of their officially adopted instruments - of its forms (mainly to Victim-Offender Mediation), its principles and values.

The United Nation has approached the Restorative Justice framework in its broad sense. In 2000, The “*Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century* (2000)’ encouraged the “development of Restorative Justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties”. In August 2002, the United Nations Economic and Social Council adopted a resolution calling upon Member States that are implementing Restorative Justice programmes to draw on a set of “*Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*” developed by an Expert Group. In 2005, the declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (2005) urged Member States to recognize the importance of further developing Restorative Justice polices, procedures and programmes that include alternatives to prosecution.

On policy level, Restorative Justice has also a “European history” to recount. The Council of Europe had been since many-many years very interested in victim-offender mediation, in a very balanced way considering both the victims and the offenders¹⁰. In 1999, the Committee of Ministers of the Council of Europe adopted one of the most important instruments considering the implementation of Restorative Justice in the region, the Recommendation No. R (99) 19 on “Mediation in Penal Matters”.

At the same period – in 1999- the European Commission made a plea for additional research and experiments in Victim-Offender Mediation in its “Communication on Crime Victims in the European Union”. Two years later, Council Framework Decision on the Standing of Victims in Criminal Proceedings of 2001 (2001/220/JHA) have been adopted: Article 10 of this Decision states that Member States should seek to promote Mediation for offences which are considered appropriate for these types of measures and to ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal

⁹See indicatively Willemsens J. (2008), *Restorative Justice: An Agenda for Europe. The role of the European Union in the further development of Restorative Justice in Europe*, Leuven: European Forum for Restorative Justice, p. 57. Aertsen, I., Mackay, R., Pelikan, C., Willemsens, J. and Wright, M. (2004), *Rebuilding community connections – mediation and Restorative Justice in Europe*. Strasbourg, Council of Europe, 2004.

¹⁰ See Aertsen, I. (2007), “Restorative Justice through networking: a report from Europe”, in van Der Spuy, E., Parmentier, S. & Dissel, A. (Eds.), *Restorative Justice: Politics, Policies and Prospects*, Cape Town, Juta & Co Ltd, p. 97.

cases can be taken into account. According to Article 17 of the same Decision, each Member State shall bring into force laws, regulations and administrative provisions to comply with said article 10 before 22 March 2006. Recently, in 2012, the new Directive 2012/29/EU has been established on minimum standards on the rights, support and protection of victims of crime: according to Article 2 (d) of this Directive, inter alia, an official definition of 'Restorative Justice' is given as any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

Although many countries have taken considerable steps to comply with the above standards, there is currently significant variability in the scope and the pace at which Restorative Justice is predicted and implemented in the countries of the European Union¹¹. Varying levels of legislation and implementation make it difficult to speak about a common European Restorative Justice aspect. Still this possibility cannot be excluded without trying to detect through the common European legal culture those points of national frames that give to Restorative Justice a dynamic European perspective for the future. While in some countries relevant legislation provides for formal recognition and implementation of mediation and other forms of Restorative Justice, in others, even if there is not still in place a detailed legal base, the practical experience acquired over the years has helped Restorative Justice to gain credibility¹². Moreover, these countries have developed different strategies to foster the implementation of Restorative Justice and to face the difficulties encountered. Indeed, Restorative Justice developments in Europe can be characterised as highly dynamic and challenged.

1. The objectives of the project

Within this frame, under the Specific Programme Criminal Justice of the European Commission (Directorate-General Justice - Directorate B: Criminal Justice), the Sector of

¹¹ See for example the Report from the Commission of the European Communities COM (2009) 166 pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0166:FIN:en:HTML>, Miers, D. and Willemsens, J. (Eds.), (2004), *Mapping Restorative Justice. Developments in 25 European Countries*. Leuven, European Forum for Victim-Offender Mediation and Restorative Justice

¹² See indicatively Miers, D. & Aertsen, I. (Eds.), (2010), *Regulating Restorative Justice. A comparative study of legislative provision in European Countries*. Frankfurt am Main, Verlag für Polizeiwissenschaft, Aertsen, I., Mackay, R., Pelikan, C., Willemsens, J. and Wright, M. (2004), *Rebuilding community connections – mediation and Restorative Justice in Europe*. Strasbourg, Council of Europe, 2004. Vanfraechem, I., Aertsen, I. & Willemsens, J. (Eds), (2010), *Restorative Justice Realities: Research in a European context*, The Hague: Eleven Publishing.

Criminal Law and Criminology had successfully submitted a relevant research proposal and took over the coordination of a research project (JUST/2010/JPEN/AG/1534) that aimed at the promotion and the further diffusion of Restorative Justice in Europe. The title of the project was: "*The 3E Model for a Restorative Justice Strategy in Europe*" and the full subtitle: "*The geographic distribution of Restorative Justice in 11 European Countries and the configuration of an Effective - Economic - European Strategy Model for its further diffusion (the 3E-Restorative Justice MODEL)*".

Co-beneficiaries of the project, research managers and partners of the Aristotle University of Thessaloniki (AUTH) in its implementation were the following institutions: 1) the Panteion University of Political and Social Sciences, Greece - Athens, 2) the Independent Academic Research Studies, United Kingdom - London 3) the Institute of Conflict Resolution, Bulgaria – Sofia, 4) the University of Lapland, Finland- Rovaniemi, 5) the Jagiellonian University of Cracow, Poland - Cracow, 6) the University of Miskolc, Hungary - Miskolc, 7) the Ramon Llull University - Faculty of Law, the Business and Management School, Spain – Barcelona.

The project was composed by two main branches, aiming at the development of a Restorative Justice response to crime in 11 European countries: **a)** a comparative study of 11 European countries from the North (Finland, Denmark), Western Central (Germany, United Kingdom, Netherlands), Eastern Central (Hungary, Poland, Bulgaria) and South (Spain, Greece, Turkey) Europe, and **b)** a relevant project aiming at the organization of a coherent strategy, the identification and the diffusion of effective measures and procedures and the exchange of good and low-budget practices through a flexible and easily applicable Model, for their wider adoption and their better appliance in Europe.

The overall objective of the project was to facilitate through transnational co-operation in a further way the implementation of good practices of crime and social disorder management on a Restorative Justice approach in European countries that have little experience on it, but also in some more experienced countries that could teach, and - at the same - time learn from the comparison, the collaboration and the networking. It has seek to contribute to the general idea of Restorative Justice in Europe, to promote a range of practices and measures inspired by Restorative Justice values, to reduce the divergence between the countries (especially between the countries of North-Central and the countries of South), to create an overview of key considerations on this field - identifying the real situation as well as the problems of implementation - and also, to offer a practical reference format and strategy guide, inspired by the values of Restorative Justice and the spirit of the Justice-Freedom-

Security European policy, that can be used by all the participant countries –especially by those who are more weak on this field - and by other European countries that would like to adopt it.

Notably, this project has aimed mainly to:

- collect specific and updated legal, factual and statistical data on law and practice of Restorative Justice of all the participant countries and study of practices and measures of Restorative Justice in 11 European countries, emphasizing to the last five years,
- analyze the information collected, categorize them and present the distribution of Restorative Justice on Europe,
- point out the obstacles of implementation and the possible risks on penal procedural rights, as well as to detect both the strengths and weakness of Restorative Justice in the various examined jurisdictions,
- contribute to a formation of a coherent model of a European strategy on this area.

The main target groups of the project were judges, police officers, NGOs, academics, groups and entities involved in the application of Restorative Justice in each of the participant countries. The main beneficiaries are the criminal justice systems of the participating countries, the offenders, the victims, and in general the citizens of the participating countries.

2. Methodology and implementation

The interest of the project was focused on how the Criminal Justice Systems are organized around the concept of Restorative Justice in the participant European countries, and this was associated with specific practical and strategic objectives¹³ concerning the formation of a coherent Restorative Justice policy. In the era of globalization, though, a contradiction is typically coming up in the field of criminal justice: while it becomes less and less appropriate to define and maintain boundaries between the different national criminal justice systems for the better response of the criminal phenomenon, cultural differences, practical difficulties and political factors hamper the cooperation between the states towards this direction¹⁴. Within this contradiction, one of the critical issues for the development of a policy influenced by the concepts of Restorative Justice is the question of when and how a society can borrow foreign ideas and practices in the field of criminal justice, which of these ideas and practices

¹³ See indicatively Nelken, D. (2007), "Comparing Criminal Justice" in M. Maguire, R Morgan & R. Reiner (Eds.) *The Oxford Handbook of Criminology*, Fourth Edition, Oxford University Press, p. 141.

¹⁴ See Nelken, D. (2002), *Comparative Sociology of Law*" in M. Travers & R. Benakar (Eds.), *Introduction to Law and Social Theory*, Oxford: Hart.

are more appropriate, and how these "legislative loans" can be smoothly integrated into an already existing framework¹⁵. This question has been - since the beginning and it has remained until the end - the big challenge of this project.

However, within an attempt of a broad comparative approach, the questions that are posed are often more ambitious¹⁶ in comparison with the conventional methodology tools that are usually used¹⁷. To overcome this problem, in order to have the opportunity to answer to as many research questions as possible in the most complete way, the project has adopted three different and complementary methodological instruments¹⁸.

a) The first methodological tool: the national reports

This methodological tool is classic in every similar project, oriented to the comparative approach between different criminal justice systems¹⁹: the national reports were based on the use of a common thematic guide for the implementation of Restorative Justice in the participant countries. In particular, each national research team was asked to develop a report describing the Restorative Justice on the axis of common thematic subsections, as, for instance, the general framework of the criminal justice system, the context of application of Restorative Justice in each participant country, the specific framework for implementing the procedures, forms and levels of implementation, the institutions, the mechanisms, the services and the agencies involved. With this activity, we also recorded information on existing Restorative Justice programs in each country, as well as information on the promotion of the philosophy and the principles of Restorative Justice, the public awareness, the participation of the local community, the role and profile of key-practitioners in Restorative Justice field in each country. Additionally, we asked for the description of the main obstacles that according to the researchers' opinion impede the implementation of measures and programs, and also the current legislative initiatives, as well as any suggestions for improving the existing framework at national level.

Apart from the national reports, two more methodological instruments were deployed in order to gain greater knowledge about the research subject.

¹⁵ See indicatively Newburn, T. & Sparks, R. (Eds.), (2004), *Criminal Justice and Political Cultures: Nationals and International Dimensions of Crime Control*, Collumpton, Devon: Willan.

¹⁶ See Nelken 2007, "Comparing Criminal Justice", as above., p. 144.

¹⁷ On methods on comparative analysis in criminal justice, see indicatively Roberts, P. (2002), "On Method: The Ascent of Comparative Criminal Justice", *Oxford Journal of Legal Studies* 22, pp. 517-38.

¹⁸ Implementing the technique of triangulation, see indicatively Robson, C. (1993), *Real World Research: A resource for social scientists and practitioner researchers*. Oxford: Blackwell.

¹⁹ See indicatively Mawby, R. (1990), *Comparative Policing Issues*, London: Unwin Hyman.

b) The second methodological tool: the evaluation tool

The second methodological instrument used by the project working team was an evaluation tool, referring to the experts-researchers on RJ and consisting of a multilayered questionnaire - with predominantly closed-ended questions - that aspired to capture step-by-step, in relation to the specific stages of the criminal justice system, the particular aspects Restorative Justice adopted and applied in different countries. With this instrument, more technical-procedural characteristics of Restorative Justice in various systems were recorded, in an attempt for a cross-section of these systems at each separate stage of the criminal justice procedures.

This tool consists of an "introductory questionnaire" in which the relevant information regarding the use of the different questionnaires and the relevant definitions. The completion of this introductory questionnaire captures directly and easily the particular stages of the criminal justice system to which more or less Restorative Justice institutions exist. Depending on the answers given by each researcher in the introductory questionnaire, the tool directed the responder towards the completion of the separate "recording questionnaires", comprising the evaluative tool: namely, beyond the introductory questionnaire, the evaluative tool consists of 12 separate questionnaires designed to provide general and codified information on Restorative Justice processes in each of the different levels of implementation for both adult and juvenile offenders, that is at police level, prosecutor level, court level, correctional and reintegration level, and also outside or completely parallel and independently to the criminal justice system. The evaluation tool was supplemented by another "assessment questionnaire" with specific closed questions - obtained after elaborating and analyzing the corresponding section of the national reports - on the technical, organizational and ideological obstacles of the implementation of Restorative Justice, and the perspective and the dynamics developed for its further development.

c) The third methodological tool: interviews with key-practitioners

The third methodological instrument was used to record more qualitative data, in order to optimally capture the general culture formed around the Restorative Justice, as reflected in the views and attitudes of professionals in key positions on this field. In particular, the national research teams have carried out 'face to face' semi-structured interviews with key-practitioners²⁰ according to an interview-guide that was set up by the research team of the Aristotle University of Thessaloniki. The interview-guide was based on the so-called 3E-RJ-

²⁰ For the qualitative method of interviews, see indicatively Warren, C. (2002), "Qualitative interviewing", in Gubrium, J. & Holstein, J. (Eds.), *Handbook of interviewing research - Context & Method*, Thousand Oaks-London-New Delhi: SAGE.

MODEL which had been formatted by the members of the working team of the project based on the the findings of the previous two methodological tools. The rrespondents of the interviews had either direct relationship and experience in the field of Restorative Justice, applying Restorative Justice procedures, or indirect relationship as professionals on services and organizations implementing or being responsible for the referral of the cases and the facilitation of the actual Restorative Justice process. The aim of the specific methodological tool was to record in an indicatively way the attitudes and representations of key-practitioners towards Restorative Justice institutions established in their countries. This instrument sought useful information from people of practice in the field of Restorative Justice concerning the different levels of implementation (police, prosecutor, court, correctional level), the categories of criminal offences, the usual problems and also the best practices that have been consolidated.

3. Terms and definitions

It has been very difficult to assure a consensus on what Restorative Justice is and what kind of forms and practices includes. However, defining some of the basic senses has been really necessary in order to distinguish it from retribution and rehabilitation practices²¹, and mainly from other kinds of alternative justice approaches²².

In order to limit as much as possible the problems of different interpretive and linguistic approaches²³, since the very beginning - since the formation of thematic guide addressed to all researchers - - the term "Restorative Justice" was used in its broadest meaning, adopting as example some of the internationally accepted definitions, including the definition given by the United Nations in the Handbook on Restorative Justice Programmes, defining it as "*an approach to problem solving, that, in its various forms, involves the victim, the offender, their social networks, justice agencies and community*"²⁴. For the further clarification, it was also proposed the definition of Gavrielides as an "*an ethos with practical goals, among which is to restore the harm done by including all affected parties in a process of understanding*

²¹ See Weitekamp, E.G.M. (1999), "The History of Restorative Justice" in G. Bazemore & L.Walgrave (Eds.), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*. Monsey, NY: Criminal Justice Press.

²² See Rudin, J. (2003), Pushing back: A Response to the Drive for the Standardization of Restorative Justice Programmes in Canada'. Paper presented at the 6th International Conference on Restorative Justice, Vancouver, B.C.: June 1-4.

²³ See Fattah. E. (1998), "Some reflections on the paradigm of Restorative Justice and its viability for juvenile justice", in Walgrave, L. (Ed.), *Restorative Justice for Juveniles. Potentialities, Risks and Problems*, Leuven: Leuven University Press, pp. 389-401.

²⁴ United Nations Office on Drugs and Crime (2006). *Handbook on Restorative Justice Programmes*, New York: United Nations, p. 6.

*through voluntary and honest dialogue, and by adopting a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals*²⁵.

Indicatively, as the main procedural forms of Restorative Justice they were proposed the offender-victim mediation²⁶ or the reconciliation²⁷, community²⁸ and family group conferencing²⁹, the peace or sentencing circles³⁰, and the reparative probation. It was highlighted that a restorative initiative can be used at any stage of the criminal procedure (from the very beginning of it), by either completing or replacing the traditional criminal justice procedure³¹.

As the project unfolded normally, after the completion of national reports and before the use of the evaluation tool, there was a need for a further re-definition of terms. As the definitions are more restrictive, while the intentions of the project concerning the concept of Restorative Justice were more extensive, further definitions were included for the sake of convenience, making it clear that any deviation or reservation concerning them in relation to the specific system of each of the participant countries was of course acceptable and could be clarified with respective comments by researchers. At this stage, it was decided to adopt a broad and synthetic definition no longer for the almost fluid and elusive concept of Restorative Justice as such - as so many complete definitions have already been given by many theorists around the world³² - but for a more specific sense, more pragmatic, more closely connected with the

²⁵ See Gavrielides, T. (2006), *Restorative Justice Theory and Practice: Addressing the Discrepancy*. Helsinki: HEUNI, p. 139.

²⁶ See indicatively Wright, M. (1992), "Victim- Offender Mediation as a Step Towards a Restorative System of Justice" in H. Messmer & H.U. Otto (Eds.), *Restorative Justice on Trial*. Dordrecht/Boston: Kluwer Academic Publishers. Umbreit, M. (2001), *The Handbook of Victim-Offender Mediation*, San Francisco: Jossey-Bass. Peters, T. (2000). 'Victim-offender mediation: reality and challenges', in European Forum for Victim-Offender Mediation and Restorative Justice (ed.), *Victim-Offender Mediation in Europe. Making Restorative Justice Work*. Leuven, Leuven University Press, 9-15.

²⁷ See indicatively Immarigeon, R. (1994), *Reconciliation between Victims and Imprisoned Offenders: Program Models and Issues*, Akron, P.A.: Mennonite Central Committee U.S.

²⁸ See indicatively Karp, D. & Walther, L. (2000), "Community Reparative Boards: Theory and Practice" in G. Bazemore & M. Schiff (Eds.), *Restorative and Community Justice: Cultivating Common Ground for Victims, Communities and Offenders*. Cincinnati, OH: Anderson Publishing, Retringer, S.M. & T.J. Scheff (1996), "Strategy for Community Conferences: Emotions and Social Bonds" in B. Galaway & J. Hudson (Eds.), *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press.

²⁹ See indicatively Hudson, J., Galloway, B., Morris, A. & Maxwell, G. (Eds.), *Family Group Conferences: Perspectives on Policy and Practice*, Monsey, NY: Criminal Justice Press.

³⁰ See indicatively Stuart, B. (1996), "Circle Sentencing – Turning Swords into Ploughshares" in B. Galaway & J. Hudson (Eds.), *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press.

³¹ See indicatively Miers, D, et al. (2001), *An Exploratory Evaluation of Restorative Justice Schemes*, London: Home Office Policing and Reducing Crime Unit Research Development and Statistics Directorate.

³² See indicatively Marshall, T. (1996), "The evolution of Restorative Justice in Britain", *European Journal of Criminal Policy & Research*, 4, pp. 21-45. Liebmann, M. (2007), *Restorative Justice – What it works*, London: Jessica Kinsley. Newburn, T. (2007). *Criminology*, Devon: Willan, Daly, K. (2003). "Mind the gap: Restorative Justice in theory and practice", in von Hirsch, A., Roberts, J., Bottoms, A. (Eds.), *Restorative and Criminal Justice*, Oxford-Portland: Hart.

legal dimension of the issue, more - one might say - procedural, more easily understood. Thus, following at that point the so-called "process-based School"³³, "Restorative Justice Process" was defined as: "*any measure, procedure, programme, practice and initiative which aims to resolve the conflict between the offender of a crime and its victim by restoring the harm done, within a voluntary and organized **process** – which can replace or complete a traditional CJ or JJ one - by including actively the affected parties (the offender, the victim and where appropriate, members of the community³⁴), being based mainly on the understanding and the dialogue between them, generally with the help of a neutral third party/person that delivers, manages or/and facilitates the process.*"

Apart from the specific procedural forms of Restorative Justice, as already mentioned above (the victim-offender mediation, community and family group conferencing), it was clarified that the result/outcome of a Restorative Justice process could be one of the following types: a dialogue between the victim and the offender, an agreement between them, a written apology, a community punishment, compensation making of commitments, the completion of an education or other programme. It was also suggested that clarified that alternatives sentences³⁵, such as compensation, probation or community service -that may have a Restorative Justice impact but not a fully restorative outcome³⁶ - are not included solely in the definition of Restorative Justice, unless they are part or result/outcome of the Restorative Justice actual process, as defined above³⁷.

B. COMPARATIVE CONCLUSIONS ON NATIONAL REPORTS, EVALUATION QUESTIONNAIRES AND KEY-PRACTITIONERS INTERVIEWS

According to the above, there has been a need for a comparative analysis between the countries that participated to the project that would help to decide on whether the EU needs to further regulate its strategy towards this direction by proposing, if so, a model for the

³³ See Gavrielides, T. (2007), *Restorative Justice theory and practice: Addressing the Discrepancy*, Helsinki: HEUNI, p. 45.

³⁴ For the role of the community in Restorative Justice see indicatively McCold, P. (1996), "Restorative Justice and the Role of Community" in B. Galaway & J. Hudson (Eds.), *Restorative Justice: International Perspectives*. Monsey, NY: Criminal Justice Press.

³⁵ For the differences between Restorative Justice and other alternative sentences see indicatively Johnstone G. (2010), "How, and in What terms, Should Restorative Justice be Conceived?", in H. Zher & B. Toews, (Eds.), *Critical issues in Restorative Justice*. Cullompton, Willan Publishing, p. 6. For

³⁶ See Van Ness, D.W. (2002), "Creating Restorative Systems" in L. Walgrave (Ed.), *Restorative Justice and the Law*. Cullompton, Devon, UK and Portland, OR: Willan Publishing.

³⁷ Regarding the means and the principles of Restorative Justice, our choice was rather influenced by the minimalistic approach, with the participation, however, of professionals and authorities of the criminal justice system. For the minimalistic and the maximalistic approach, see indicatively McCold, P. (2000), "Towards a holistic vision of restorative juvenile justice: a reply to the maximalist model", *Contemporary Justice Review*, 3, 2000, pp. 357-414.

broader and more efficient support of restorative measures and programs in all member states. The comparison results according to all the methodological tools used during the project are presented below:

1. Overview of the traditional Criminal Procedure System

The vast majority of the countries that have participated in the 3E-RJ-MODEL project are based clearly on the continental law, the European legal tradition and the concepts of classical school of penal law³⁸. The judgements of the courts may have some impact on the judicial practice, but they do not produce law³⁹. Instead, their Criminal Justice System is posed upon a formalistic legal culture. Their main source of law is the statutes which are usually codified in Criminal Codes and Codes on Criminal Procedure.

From the group of the participant countries, though, two countries are differentiated in a characteristic way. United Kingdom has a multiple legal jurisdiction where remarkable differences exist. While England and Wales is a country of common law, where decisions of courts are part of the Law along with the Acts of Parliament, Scotland's Criminal Justice System is "mixed" based both upon common law and statutes and N. Ireland's source of law is only statutes⁴⁰. The Netherlands, on the other hand, even if its Criminal Justice System is based mainly on the continental condition as the majority of the countries, is strongly influenced by a certain negligence of dogmatics and a preference for empirically oriented Common Law thinking⁴¹.

The above particularities of these two countries have played a certain role in shaping the implementation process of Restorative Justice their jurisdictions, and it has proved rather difficult to classify them in one of the groups of distinct trends of Restorative Justice implementation that have been appeared during the comparative study; Nevertheless, the differences between the above legal systems may not necessarily be a strict limit for the development of a common Restorative Justice policy, especially while taking account the

³⁸ See indicatively Harding, A., Fennell, P. Jorg, N., Swart, B. (Eds.) (1995), *Criminal Justice in Europe: A Comparative Study*, XV-XIX, Oxford: Clarendon Press. Aebi, M.F., Aromaa, K., Aubusson De Cavarlay, B., Barclay, G., Gruszczyńska, B., Von Hofer, H. et al., (2006). *European Sourcebook of Crime and Criminal Justice Systems – 2006*. Den Haag, Boom Juridische uitgevers. Grech, J.P. (2006). *Criminal Justice Systems in Europe and North America. Malta*. Helsinki, HEUNI. Available from: <http://www.heuni.fi>.

³⁹ See indicatively Langbein, J., Weinber, L. (1978), "Continental Criminal Procedure: Myth and Reality", *Yale Law Journal* 87, p. 1549.

⁴⁰ See Gavrielides, T. (2013), Restorative Justice in United Kingdom, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁴¹ See Sagel-Grande, I. (2013), Restorative Justice in the Netherlands, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

empirical characteristic of Restorative Justice implementation throughout all the participant countries.

On the other hand, the Continental Law tradition has a doubtless impact to the limits of Restorative Justice practical implementation, mainly because of the *principle of legality* and other principles that originate from this kind of legal tradition. Concrete law provisions concerning the Restorative Justice procedure are necessary in order to introduce it in the Criminal Justice System of the most of the participant countries⁴².

In the majority of the countries concerned the *principle of mandatory prosecution (or proceeding ex officio)* – as a special expression of the principle of legality - is the rule (in Spain, Hungary, Poland, Germany, Finland, Greece, Turkey, Bulgaria). Except from certain types of offences (private crimes or complainant offences), every case should be brought before the court, thus the public prosecution authority does not have the option to decide that a trial is not necessary and cease prosecution, even if the case has been settled by the parties involved. This gives to Public Prosecutors and Prosecution authorities⁴³ a crucial role within the referral system of Restorative Justice. Where the discretion of the prosecution authority is narrow⁴⁴, legal provisions posing concrete legal criteria for a settlement out of court⁴⁵ and the referral to Restorative Justice procedure are indispensable. On the contrary, where the discretion power is broader – like in UK and the Netherlands - the opportunities of a referral to Restorative Justice are more flexible. According to the Dutch Code of Criminal Procedure, for example, the Public Prosecutor has the right to wave cases, if he is convinced that this is desirable in the public interest, according to the principle of expediency. Still, in jurisdictions with broad discretion of the public prosecution authority, there is an issue on whether it would be useful if indicative referral standards or criteria should be included in legislation towards the facilitation of the Restorative Justice implementation or such standards could limit the already existence dynamic that has been formatted in practice over the years.

⁴² See Masters. G. (2010), What happens when Restorative Justice is encouraged, enabled and/or guided by legislation, in H.Zehr & B. Toews (Eds), *Critical Issues in Restorative Justice*, Boulder -London: Lynne Rienner Publishers, Inc, p. 236.

⁴³ See Tak, P.J.P. (Ed.), (2004), *Tasks and Powers of the Prosecution Services in the EU Member States*. Nijmegen, Wolf Legal Publishers. Kilchling, M (1991) "Interests of the Victim and Public Prosecution", in G. Kaiser, H. Kury and H.-J. Albrecht (eds) *Victims and criminal justice*, Freiburg: Max Planck Institute for Foreign and International Penal law

⁴⁴ See indicatively Fionda, J. (1995), *Public Prosecutors and Discretion: A Comparative Study*, Oxford: Clarendon Press.

⁴⁵ See indicatively Albrecht, H-J. (2001). *Simplification of Criminal Procedure: Settlements out of Court - A Comparative Study of European Criminal Justice Systems. (Research paper 19)*. Pretoria, South African Law Commission.

2. Overview of the Legal Frame of Restorative Justice

I. Restorative Justice as an overall and general scheme or fragmented and incoherent? Through specific law provisions or in the “shadow of the law”?

For all the participant countries of the project, the existing legislation of Restorative Justice is formatted upon three basic schemes:

- i. The first scheme is a general, overall and coherent scheme introduced by concrete law provisions: the Restorative Justice measures are integrated in the Criminal Codes, or/and in the Criminal procedure Codes, or/and are included in a more detailed specific law on mediation, providing some procedural and organisational directions for the practice.
- ii. The second scheme is also general and overall; however, it is not based on law but mainly on practice, as Restorative Justice has been developed organically and it is implemented broadly “*in the shadow of the law*”⁴⁶, without formal structures, chosen mainly on an *ad hoc* basis within the discretion power of the services and the agencies.
- iii. The third scheme is rather fragmented in separate provisions of legislation and incoherent practices, for adult offenders, and particular for juvenile offenders, either as alternative measures (like diversion measures) or measures complementary to the traditional procedures.

Table 1: Restorative Justice basic categorization schemes

RJ as an a general, overall and coherent scheme introduced by concrete law provisions	RJ as a general and overall scheme based mainly in practice, implemented in the “shadow of the law”	RJ scheme fragmented in separate provisions of legislation and incoherent practices
Germany, Poland, Finland Hungary and Denmark	United Kingdom and the Netherlands	Spain, Greece, Turkey and Bulgaria

⁴⁶ See indicatively Tränkle, S. (2007), “In the shadow of penal law. Victim-offender mediation in Germany and France”, *Punishment and Society*, Vol. 9(4), pp. 395-415.

i. Restorative Justice as a general and overall scheme based on the law:

Restorative Justice as *a general and overall scheme* introduced by *concrete law provisions is implemented* in five out of the eleven participant countries, namely Germany, Poland, Finland Hungary and Denmark. In these countries, Restorative Justice philosophy gains ground since many years, already since the decade of '80.

In Germany, Restorative Justice is nationwide expanded in the most common form of victim-offender mediation (VOM) for both juveniles and adults. Victim-offender mediation has been introduced officially to the German legal system with the first amendment of the Juvenile Justice Act in 1990 (§ 10 I no 7, 15 No.1, 45 II), as an educational measure (but also as a measure of diversion from prosecution, as a term for suspension of the procedure, as term of probation or release from prison) in the form of a directive. New changes were introduced in the Criminal Code in 1994 (§ 46a No.1) and in the Code of Criminal Procedure (§ 153 a No.1, No 5, 153b, 155a, 155b, 136 I) has introduced the institution also in penal cases of adult offenders⁴⁷.

In Poland, the first experimental program of mediation was implemented in 1996 within the Juvenile Justice System, as in Poland family courts share a relative broad scope of discretion. Some years later, in 2000, mediation was introduced (through Article 3a) in the Juvenile Act of 1982. Parallel, in 1997, two new institutions, mediation and conciliation, were introduced in the Code of Criminal Procedure (Article 320 – mediation, Article 341 – conciliation), while in 2003 (with Article 23), there has been an expansion of the legal basis for the possible use of mediation at any stage of criminal procedure⁴⁸.

In Finland, mediation in criminal cases constitutes an organized form of Restorative Justice based in legislation. Mediation has been know in Finland since 1982 with the implementation of an experimental mediation project, while in the 90's was experimentally taken in practice by municipalities. The legal frame was first introduced in 1997 (Criminal Procedure Act 11.7.1997/689, chapter 1, sections 7-8 and Criminal Code 19.12.1889/39, former chapter 3, section 5 1990/302, 1996/1060). Current situation in mediation in criminal cases was

⁴⁷ See § 46 dStGB, Grundsätze der Strafzumessung: Sein Verhalten nach der Tat, besonders sein Bemühen, den Schaden wiedergutzumachen, sowie das Bemühen des Täters, einen Ausgleich mit dem Verletzten zu erreichen. See also Parosanu, A. (2013), Restorative Justice in Germany, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁴⁸ See Stando-Kawecka, B. (2013), Restorative Justice in Poland, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

enacted on 2005 (Frame Act on Conciliation in Criminal and Certain Civil Cases 1015/2005) and it was entered into force in 01-01-2006⁴⁹.

In Hungary, Restorative Justice is also linked to the form of mediation and it is based on the law, while mediation is linked to diversion process. Although the process of reconciliation has been existed for a long period of time, it is only since 2003 that it has been officially introduced. It was exactly then, that the National Strategy for Community Crime Prevention has underlined the role of Restorative Justice. Some years later, in 2007, the necessary amendments of Criminal Procedure Code took place: mediation, accompanied by diversion, was introduced on the legal base of the country in a formal way. According to legislation, in Hungary, mediation process may be ordered in case of criminal offences against a person, traffic violations, or criminal offences against property with the maximum punishment of 5 years' imprisonment⁵⁰.

In Denmark, according to the nationwide program on mediation, all penal cases, are examined by the police in order to be referred to mediation process. The program is embedded in the police organisation and the initiative to arrange VOM as well as the education of the mediators is taken care of by the police. The nationwide program is implemented after two periods of local experiments. The experiences from the experiments were not quantitatively overwhelming but qualitatively the experiences were positive. After several years of local experiments, the code on VOM came into force in January 1st of 2010⁵¹.

ii. Restorative Justice as a general and overall scheme in the "shadow of the law":

The second *general and overall scheme of Restorative Justice which been implemented "in the shadow of the law"* concerns United Kingdom and the Netherlands which has influences of the common law tradition. In these countries, Restorative Justice is developed within the discretion of the competent authorities in the margin left by the legislation.

In case of United Kingdom (hereinafter UK), Restorative Justice was based in practice and it was developed, as it was mentioned above, mainly in *ad hoc* basis; however, or even exactly because of this fact, the experience of Restorative Justice in UK is rather wide. Of course, it is important to notice that the three different jurisdictions of England and Wales, Scotland and Northern Ireland influence its implementation according to their special tradition and practice. The multi legal jurisdictions of the country create a unified and inconsistent view

⁴⁹ See Laitinen, P, Lohiniva-Kerkela, M. (2013), Restorative Justice in Finland, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁵⁰ See Gorgenyi, I. & Jacso, J. (2013), Restorative Justice in Hungary, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁵¹ See Storgaard, A. (2013), Restorative Justice in Denmark, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

and application of Restorative Justice. It has been recognised that in all three jurisdictions, it has been particularly relevant for young offenders, while in the adults' criminal justice system is less integrated. Two attempts by the government have been made in order to construct a national Restorative Justice strategy for adult offending⁵².

In England and Wales, emphasis is given on the ability to divert offenders away from prosecution. Restorative Justice is implemented for young offenders through the Referral Order of Youth Justice and Criminal Evidence Act of 1999. For adults, Restorative Justice is mainly based on the Green Paper of 2010 "Breaking the Cycle". In Scotland, a widespread use of Restorative Justice without specific legal framework through provisions of Children Act of 1995, is implemented for young offenders⁵³. For the adult offenders, Restorative Justice initiatives function as diversion from prosecution options for procurators fiscals, while Restorative Justice services are provided through the third sector agency SACRO (*Scottish Association for the Care and Rehabilitation of the Offender*). In Northern Ireland, the emphasis is given on the preventive impact of Restorative Justice practices. Youth Conference Service of the Justice Act of 2002, through the Public Prosecutor, is provided for young offenders. For the adults, Restorative Justice is provided by the Probation Service, after sentence for victims of serious violent and sexual abuse⁵⁴.

In the Netherlands, on the other hand, the possibility of "transaction" given to public prosecutor (in some cases, also to the police) permits the implementation of empirical Restorative Justice programmes through the discretion of the competent authorities, without explicit legal provisions. Transaction is a form of conditional waiving of cases according to the discretion of Public Prosecutor within the frame of the principle of expediency, in cases of offences that can be sentenced with a prison sentence not higher than six years. Furthermore, forms of mediation (contacts, written communication sessions) between the victim and the offender take place in parallel with criminal proceedings and organized by the NGO Victim in Focus, after updating the prosecutor on the result of the contact. In particular, victim-offender mediation was introduced into the Dutch Code of Criminal Procedure Article 51h in 2009. Despite some changes in 2012, this Article remains the only legal regulation on mediation in criminal matters; it was the legal basis for the Amsterdam pilot and will be the basis for the already prepared further pilots, as yet there are no specific regulations on the actual procedure⁵⁵.

⁵² See Gavrielides. T. (2013), Restorative Justice in United Kingdom, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁵³ Scotland's Children's Hearing System. See Sagel-Grande, I. (2001), The Scottish Children's Hearing System and the Children's rights and best interests in I. Sagel-Grande (Eds.), *In the best interest of the child*, p. 81.

⁵⁴ See Gavrielides 2013, Restorative Justice in United Kingdom, as above.

⁵⁵ See Sagel-Grande 2013, Restorative Justice in the Netherlands, as above.

iii. Restorative Justice fragmented in incoherent law provisions and practices:

In four out of eleven participant countries, namely Spain, Greece, Turkey and Bulgaria, Restorative Justice policy is rather *fragmented within a frame of separate provisions of legislation and incoherent practices*.

In Spain, in 1990, in Catalonia (then followed by Madrid and other territories), informal implementation of Restorative Justice with the Mediation and Reparation Programme has been initiated. Restorative Justice for juveniles was more formalized through legislation with the law of 1992 (Ley Organica 4/1992) for the extra-judicial reparation of damages and the law of 2000 (Ley Organica 5/2000) for mediation and reparation. Since 1998, criminal mediation is implemented for adults in Catalonia. Mediation for adults is only implemented on local level without any specific legal basis⁵⁶.

In Greece, several provisions for repairing the harm caused by the crime exist in criminal law, such as in Article 289 par. 2 of Criminal Code (as regards the following crimes committed by negligence: flood, explosion, commonly dangerous damage waiver insurance facilities, causing the shipwreck, poisoning and food sources, food adulteration, poisoning the distribution of animals, spread disease animal violation measures for disease prevention, violation of measures to prevent the disease, and violation of the rules of construction, arson), in Article 384 of Criminal Code (as regards to the commission of the following crimes: theft, aggravated theft, embezzlement, concealment finding, theft and misappropriation of low value, wear foreign ownership and aggravated damage), or in Article 406A of Criminal Code (as regards to the commission of the following crimes : fraud, computer fraud, minor fraud, fraud related to insurance, fraudulent damage, infidelity, avoid paying the ticket, fraudulent acceptance of benefits, acceptance and disposal proceeds of crime, hindering competition, defrauding creditors, bankruptcy, obstruction of the exercise of a right, illegal fishing, fishing in territorial waters, seducing minors debt, usury, swindling and deception in securities transactions).

Detailed elements of Restorative Justice, however, are introduced more consciously in Juvenile Justice System⁵⁷ with the amendments to the Criminal Code by the Law No. 3189/2003: victim-offender mediation is provided as a educational measure that imposed by a judicial decision, but also in the form of diversion measure of the criminal proceedings in

⁵⁶ See Gimenez-Salinas, E. (2013), Restorative Justice in Spain, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁵⁷ See Papadopoulou, P. (2006), "Victim-offender mediation for minors in Greece", *Newsletter of the European Forum for Restorative Justice*, Vol. 7, Issue 1, pp. 1-3.

accordance with Article 45A of the Code of Criminal Procedure. For juvenile offenders, Restorative Justice contain no legislative restriction as to the type and the gravity of the crime on victim-offender mediation as an educative measure; on the other hand, as a term of abstinence from prosecution, its implementation is limited only for misdemeanours and petty offence.

Furthermore, Law No. 3500/2006 has formally introduced the institution of mediation in specific criminal cases of adults, particularly in cases of domestic violence⁵⁸ (as abstention from prosecution or suspension of criminal proceedings, or with statutory limitation after three years in compliance in terms of mediation). Finally, according to Article 17 of Law No. 3904/2010, penal conciliation is provided in Article 308B of the Code of Criminal Procedure (imposing sentence reduced to 3 years or impunity of the perpetrator) in cases of certain felonies against property and property rights (misappropriation, fraud, computer fraud, dishonesty and usury but does not apply to crimes against the State, public entities and local authorities) upon return of misappropriated thing and the final reparation of the harmed party⁵⁹.

In Turkey, the new Criminal Procedure Code of 2005 has included certain Restorative Justice elements, as for example the postponing of the prosecution or the postponing of the announcement of the verdict under the condition of the reparation of damages. According to Article 73 last paragraph of Criminal Procedure Code, reconciliation is provided for a limited number of minor offences, where the initiation of legal prosecution is a subject to the filing of a private complaint by the victim and both parties agreed on reconciliation. For juveniles, Article 24 of the Child Protection Act in 2006, as well as Articles 253-255, have introduced Restorative Justice elements on the field of juvenile justice. In cases of juveniles, reconciliation is provided for negligent crimes and also for intentional crimes with the minimum limit of 3 years for people between the age of 15-18 and 2 years for people under 15 years old⁶⁰.

In Bulgaria, already since 2000, an agreement is possible between prosecutor and the defence lawyer, giving a chance for Restorative Justice to be implemented. In 2004, the new Mediation Act included Article 3 par. 2 on mediation for penal matters but no specific provisions still exist in Criminal Procedure Code. Restorative Justice is only applied in Bulgaria

⁵⁸ See Artinopoulou, V. (2010), "Restorative Justice and Gender – The Case of Domestic Violence" in *Essays in Honour of C. Spinellis*, Athens: Sakkoulas Editions (in Greek).

⁵⁹ See Artinopoulou, V. (2013), Restorative Justice in Greece, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁶⁰ See Sokullu-Akinci, F. (2013), Restorative Justice in Turkey, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

"*in the shadow of law*", mainly for petty crimes without any specification and for crimes prosecuted at the instigation of a complaint by the victim⁶¹.

According to the above observations, two crucial conclusions should be noted:

a. In general, Restorative Justice is implemented in all the participant countries in criminal cases where either adult or juvenile offenders are involved. According to the legal systems of some of the countries, however, (such as of Germany, UK, Spain and Greece), the field of Juvenile Justice seems to be a more conducive area concerning the development of Restorative Justice both in law and in practice. In some cases, indeed, the good practices of the implementation of Restorative Justice measures in the field of juvenile offenders⁶² has functioned for the law-makers and the practitioners as "gateway" for the implementation of relevant measures also in cases of adult offenders.

b. In countries where Restorative Justice is based on a general and overall scheme upon specific legal provisions, Restorative Justice's evolution has not been coincided to the legal ratification of mediation, as it was proceeded by a long practical experience in this field, a bottom-up development of Restorative Justice⁶³, mainly during the '90. As consequence, law provisions have been the culmination of a successful empirical way, already tested for many years in an experimental or pilot way. But also in countries where the law offers only a general framework without specific settings, Restorative Justice's development was relatively high through the dynamics of practical application. In contrast, countries like Greece and Turkey, beyond legislation, seem to have difficulties in establishing institutions and Restorative Justice services that could contribute to the empirically implementation of programs at pilot or regular level.

⁶¹ See Chankova, D. (2013), *Restorative Justice in Bulgaria*, in *Restorative Justice in 11 European Countries*, Athens-Thessaloniki: Sakkoulas Publications.

⁶² See indicatively Morris, A., Maxwell (Eds.), (2001), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles*, Oxford: Hart Publishing, B. A. Arrigo, R. C. Schehr (1998), "Restoring Justice for Juveniles: A Critical Analysis of Victim-Offender Mediation", *Justice Quarterly* 15, pp. 629-666. Crawford, A. & Newburn, T. (2003), *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Cullompton, Devon: Willan Pub. Mestitz, A. and Ghetti, S. (2005). *Victim-Offender Mediation with Youth Offenders in Europe. An Overview and Comparison of 15 Countries*. Dordrecht, Springer.

⁶³ See Braithwaite, J. (2003), *Principles of Restorative Justice*, in A. Von Hirsch et al. (Eds.), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*, Oxford: Hart Publishing, p. 14.

II. Restorative Justice applied to any kind of crime or to specific categories of crimes?

It is characteristic that, with the only exception of Hungary, in all other countries where Restorative Justice is organized through a general and overall scheme, either based on legislation or developed under the discretion of the competent authorities and in the “*shadow of the law*” - namely in Germany, Poland, Finland, UK and the Netherlands - Restorative Justice processes may be applied to any kind of crime with no restrictions provided by the law apart from some specific exceptions. That is also the case in Spain where Restorative Justice is applied in a more fragmented way, mainly because of the different jurisdictions of the country.

Table 2: Restorative Justice concerning the crime

RJ with no restrictions provided by the law concerning the crime (apart from some specific exceptions)	RJ with specific restrictions concerning the kind and seriousness of crime
Germany, Poland, Finland, Denmark, United Kingdom and the Netherlands and Spain	Hungary, Greece, Turkey and Bulgaria

In German legislation, there are no restrictions on the kind of crimes; theoretically, serious crimes are not excluded. In practice, though, the majority of offences that are referred to mediation process are minor and medium crimes. On the other hand, petty offences shall not be included, as the law provides the possibility of diversion without intervention⁶⁴. In Poland, there are also no limitations on referring the case to mediation due to the kind of crime and the type of punishment provided for it⁶⁵. In Finland, Restorative Justice is provided in general for all kind of crimes. Not only petty offences but also more serious crimes can be directed to conciliation. The only exception that mediation process is excluded is provided for cases where the victim is under-age and has a special need for protection. On the other hand, in crimes of domestic violence, only police or prosecuting authority has the right to propose mediation and not the parties involved⁶⁶. In Denmark, the code on VOM is absolutely silent about what kinds of crime may be considered for VOM and in the comments to the Bill it is

⁶⁴ See Parosanu 2013, Restorative Justice in Germany, as above.

⁶⁵ See Stando-Kawecka 2013, Restorative Justice in Poland, as above.

⁶⁶ See Laitinen & Lohiniva-Kerkela 2013, Restorative Justice in Finland, as above.

said explicitly that it is not found appropriate that the Code is becoming too specific as there will be a need for continuous practical development⁶⁷. In UK also there are no restrictions or limitations by the law concerning the kind of crimes that are referred to Restorative Justice processes⁶⁸. In the Netherlands, Restorative Justice implemented by the Public Prosecutor through transaction is possible for all kind of crimes, while Restorative Justice implemented by the Police Force is possible only in cases of lesser offences and some minor cases of serious offence⁶⁹s. In Spain, no restrictions or limitations are provided by the law concerning the kind of crimes that are referred to Restorative Justice processes⁷⁰.

In Hungary, on the other hand, and also in Greece, Bulgaria and Turkey, Restorative Justice processes are more restricted regarding the kind and the seriousness of the crimes referred to it. In Hungary, the mediation process may be ordered in case of criminal offences against a person, traffic violations, or criminal offences against property with the maximum punishment of 5 years' imprisonment⁷¹. In Greece, Restorative Justice at police and prosecution level is mainly implemented for minor crimes and disputes between citizens. Law 3500/2006 provides mediation for misdemeanours of domestic violence, while specific articles of Criminal Code include Restorative Justice provisions for specific crimes, mainly against property. Law 3904/2010 has introduced penal conciliation for specific felonies against property. On the other hand, no limitations on the kind of crime are provided for mediation concerning juvenile offending. In Bulgaria, Restorative Justice practices are applied to petty crimes without any specification and to crimes prosecuted at the instigation of a complaint by the victim; to both juvenile and adult offenders⁷². In Turkey, Restorative Justice is provided for a very limited number of minor offences defined in the Criminal Procedure Code, where the initiation of legal prosecution is a subject to the filing of a private complaint by the victim and both parties agreed on reconciliation. For juveniles, reconciliation is provided for negligent crimes and also for intentional crimes with the minimum limit of 3 years for people between the age of 15-18 and 2 years for people under 15 years old⁷³.

⁶⁷ See Storgaard 2013, Restorative Justice in Denmark, as above.

⁶⁸ See Gavrielides 2013, Restorative Justice in United Kingdom, as above.

⁶⁹ See Sagel-Grande 2013, Restorative Justice in the Netherlands, as above.

⁷⁰ See Gimenes-Salinas 2013, Restorative Justice in Spain, as above.

⁷¹ See Gorgenyi & Jacso 2013, Restorative Justice in Hungary, as above.

⁷² See Chankova 2013, Restorative Justice in Bulgaria, as above.

⁷³ See Sokullu-Akinci 2013, Restorative Justice in Turkey, as above.

3. Restorative Justice in different stages of criminal proceedings

Within the Criminal Justice Systems of the participant counties, there are four main levels at which the Restorative Justice process can be initiated: (a) the police level (pre-charge)⁷⁴; (b) prosecution level (post-charge but usually before a trial), (c) the court level (either at the pre-trial or sentencing stages; and, (d) correctional level⁷⁵ (as an alternative to incarceration, as part of or in addition to, a non-custodial sentence, during incarceration, or upon release from prison). At any one of the above levels, opportunities can be created for the competent authorities to use its discretion order to refer a case to Restorative Justice process. A Restorative Justice intervention can be implemented at any stage of the criminal justice proceeding, although for some of the participant countries (e.g. Spain, Greece, Bulgaria), amendments to existing laws may be required. Police officers (at police level) can often also informally incorporate Restorative Justice principles into their decision-making when they are called upon to intervene in situations of minor disorder or conflict or in specific contexts. In the majority of the participant countries, Restorative Justice referrals are possible in parallel to the prosecution (at prosecution level) and the Public Prosecutor has a crucial role. Generally, cases involving more serious incidents are referred to the Restorative Justice process later in the Criminal Justice System.

Table 3: Restorative Justice at different levels of Criminal Justice System

Restorative Justice:	Provisions/Implementation	Specifically for Juveniles	No provisions/Implementation
Police level	Greece, United Kingdom ⁷⁶ , the Netherlands, Finland , Poland Denmark and Turkey	Greece, United Kingdom, Netherlands, Turkey	Hungary, Bulgaria, Germany and Spain

⁷⁴ For Restorative Justice at police level see indicatively R. Young, C. Hoyle (2003), *New, Improved Police-Led Restorative Justice?* in A. von Hirsh et al. (Eds.) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford: Hart, p. 273.

⁷⁵ For Restorative Justice at correctional level see indicatively Immarigeon, R. (2010), "What is the place of Punishment and Imprisonment in Restorative Justice? In Zher, H. & Toews, B. (Eds.), *Critical issues in Restorative Justice*. Cullompton, Willan Publishing, p. 143, Robert, L. & Peters, T. (2003), "How Restorative Justice is Able to Transcend the Prison Walls: A Discussion of the Restorative Detention' Project" in E.G.M. Weitekamp & H.-J. Kerner (Eds.) *Restorative Justice in Context: International Practice and Directions*. Portland, OR and Cullompton, Devon, UK: Willan Publishing.

⁷⁶ Concerning the comparison on different stages of criminal proceedings based on the use of the evaluation tool, we are specifically focusing mainly on one of the 3 jurisdictions of UK that is England and Wales.

Prosecution level	Greece, United Kingdom, the Netherlands, Finland , Poland Hungary, Germany, Spain and Turkey	Greece, the Netherlands, Poland , Hungary, Germany, Spain, Turkey and Bulgaria	Bulgaria and Denmark
Court level	Greece, United Kingdom, the Netherlands, Poland, Hungary, Germany, Spain, Bulgaria and Turkey	Greece, United Kingdom, the Netherlands, Poland, Hungary, Germany, Spain, Bulgaria and Turkey	Finland and Denmark
Correctional – Re-integration level	United Kingdom, the Netherlands, Poland, Germany, Spain and Bulgaria	United Kingdom, the Netherlands, Poland, Germany and Spain	Greece, Hungary, Turkey, Finland and Denmark

I. Restorative Justice at Police level

At police level, Restorative Justice is implemented in the majority of the participant countries, in seven (7) out of the eleven (11) countries, namely in Poland, Finland, United Kingdom, the Netherlands, Turkey, Greece and Denmark. On the contrary, Restorative Justice processes are not provided in police level in Germany, Hungary, Spain and Bulgaria.

Table 4: Restorative Justice at Police level

RJ at Police level	<i>Expressis verbis</i> provisions in legislation	Implementation in “<i>the shadow of the law</i>”
Widely	United Kingdom (for juveniles)	-
In a moderated way	Poland, Finland, the Netherlands (for juveniles)	The Netherlands
In a limited way	United Kingdom, Turkey and Denmark	United Kingdom, Greece

a) On the degree of implementation of Restorative Justice at police level:

- Moderate implementation: Restorative Justice measures and procedures are *expressis verbis* provided *moderately* in legislation of Poland and Finland for all the categories of crimes. In Poland, preliminary proceedings may be conducted by public prosecutors or in some cases also by the police. The police, while conducting preliminary proceedings have in the course of the investigation similar powers as public prosecutors. So, the police may also direct the case to mediation. In Finland, there are no specific rules for Restorative Justice at police level. According to the Act on Conciliation in Criminal and Certain Civil Cases, if the police assesses that the case is eligible for mediation, and if general conditions are filled, it is obliged to inform the parties of the possibility of mediation and also refer the case to mediation. Crimes committed by persons under the age of 15 can also be subject to mediation even though the age of criminal responsibility is 15 years. These cases are referred to mediation by child welfare authorities as a part of child care which is regulated in the Child Welfare Act. In the Netherlands, Restorative Justice at police level is also implemented moderately, by using the discretion of competent authorities, and more specifically the discretion of the police who acts under the principle of expediency.

Limited implementation: In United Kingdom, Greece, Turkey and Denmark, Restorative Justice at police level is implemented in a more *limited way*, according to the evaluators' estimations. In United Kingdom, in general, police lead or initiate some limited Restorative Justice processes that are usually incidents or disputes, which may not be prosecuted, or are specifically used as a diversion from prosecution. In Greece, police officers may in some cases informally attempt to reconcile the parties, for minor offenses and disputes between citizens, in order to avoid referral to the prosecutor. This informality is probably due to the limited role of police in the Greek Criminal Justice System, as it always operates under the orders of the judicial and prosecution authorities. Quite characteristic is the case of Denmark, where Restorative Justice is provided exclusively at this level, concerning all the categories of crimes, but it is still implemented in a limited way.

b) On the offenders and victims at police level: Concerning offenders and victims, in the majority of the countries Restorative Justice measures, procedures, programmes and practices are general concerning all the group of offenders and victims that both may have the initiative for the referral to a Restorative Justice process and both have the right to interrupt the process and remain in the traditional procedure. In Finland, on the other hand there are some exceptions: only the police or prosecuting authority has the right to propose conciliation if the crime involves violence that has been directed at the suspect's spouse, child, parent or the other comparable near relation. Crimes involving the underage victims

must not be referred to conciliation if the victim needs special protection because of the nature of the crime or because of his/her age. If the crime cannot be referred to conciliation, issues related to compensation of the damage caused by it must not be referred to conciliation either.

c) Restorative Justice at police level as alternative or complement to CJ traditional procedures: In United Kingdom and Greece, Restorative Justice procedures and programmes, at police level, are rather used as alternatives to traditional CJ procedures, as they are implemented to avoid or divert prosecution, while in Turkey, Denmark and the Netherlands, they are used rather as complements, as prosecution is continued. In Poland, positive results of mediation in some cases may result in conditional discontinuation of the criminal proceedings (decisions are taken by courts). They may also be taken into account by the public prosecutor bringing to the court a motion on sentencing the accused without trial as well as by the court deciding on the penalty; the unconditional discontinuation of the proceedings as a result of mediation is not *expressis verbis* provided by the law and is a matter of controversy in practice.

d) The referral and the actual process at police level: It is characteristic that in the vast majority of the countries where Restorative Justice is implemented at police level, the referral to the Restorative Justice process is part of the discretion of the competent authorities, that are usually either the police or the prosecution authority, or even the local government or some independent mediation agencies; only in Turkey, the referral to the Restorative Justice process is compulsory for the component authority according to provided legal criteria.

After the referral, the Restorative Justice actual process may be delivered and managed by the police, by the public prosecutor, by the local mediation offices, by a NGO or a special private agency. In Finland, each State Provincial Office is obliged to arrange conciliation services and ensure that they are available in appropriately implemented forms in all part of the province. Municipalities, NGOs and associations provide actual mediation services. In Denmark, Restorative Justice is delivered and managed by a coordinator who is not a professional police officer but still appointed by the police for the job as coordinator. The coordinator delivers the case to a mediator.

With the only exception of Greece, in all other countries, trained mediators or facilitators are involved in the actual process. For the vast majority of the countries as well, victims are actually participating in it, but the involvement of the community is something to be noticed

only in United Kingdom and the Netherlands. Also in most of the countries, no supervision of the process is provided, with the exception of Turkey and Finland where the procedures are supervised by the public prosecutor and the Ministry of Social Affairs and Health, respectively.

The evaluation of the implementation of the Restorative Justice procedure and the follow-up of each case is made by the public prosecutor in Turkey, by the Conciliation office, Local State agency, in Finland and by the Victim in Focus and the Minister that can order an extended evaluation study, in the Netherlands. In Denmark, in case of a successful VOM the mediator informs the court. Evaluation and follow-up is not provided in Poland and in Greece.

The most common form of Restorative Justice at police level is Victim-Offender Mediation or/and Conciliation. In United Kingdom, at police level, police led conferencing is also implemented. In the Netherlands, apart from mediation and conciliation, that was introduced nationwide in 2007, other forms are in use presently as experiments/pilots.

There is a characteristic plurality concerning the outcomes of Restorative Justice procedures: a dialogue or an agreement between the victim and the offender, a written apology or the making of commitments by the offender, the compensation of the damage are some of the outputs indicated by the participant countries. The completion of an educational or other programme is a result/outcome of Restorative Justice procedures only in Poland, Denmark and Turkey.

e) The effective-economic dimensions of Restorative Justice at police level: The cases that are referred to Restorative Justice at police level are recorded officially in Poland (since 1998), in Turkey (since 2005), in Finland (since 2006) and in the Netherlands, but there are not recorded in Greece, Denmark and United Kingdom. Though, only for Finland there are sufficient statistical data for the last five years⁷⁷. According to these data, it seems that more than half of the total cases are referred to a Restorative Justice process out of which the majority has reached to a successful agreement. In Denmark, there were two periods of geographically limited experiments. The VOM scheme was implemented nationwide in 2010 but no national statistics are available yet. For Poland, there are general data on cases referred to mediation in preliminary proceedings; there are no specific data on referrals made by the police or public prosecutors. For the Netherlands, Victim in Focus were

⁷⁷ In 2006: not reported (3711 totally); 2007: 5977 cases (9829 totally); 2008: 7303 cases (11005 totally); 2009: 8179 cases (11751 totally); 2010: 8692 (12092 totally) .The total amount of agreement has been: in 2006: 2857, in 2007: 5540, in 2008: 5528, in 2009: 6821, in 2010: 6908.

first organised in 2004 and introduced nationwide in 2007, but the recoding of the cases is not differentiated according the level of implementation (police level, prosecution level etc). Until now there are only data about the first 5 years, a phase of starting and building up. Only this year (2012) the project status of Victim in Focus will be transformed into a definite status. In the beginning Restorative Justice contacts were only offered to victim to interview the offender. Since 2006 they were also offered to young offenders and since 2009 adult offenders too can participate.

At police level, no specific data could be gathered on whether Restorative Justice process is more or less time-consuming than the traditional one. In Turkey, according to the experts' estimations the time needed for the Restorative Justice process to be completed is shorter in compare to the traditional CJ, while in Denmark, it is noted that VOM is almost always organised and completed while the case is waiting for court. In the same way, concerning the cost estimations, only Turkey has recorder Restorative Justice process as a lower cost process for the state, the victim and the offender. No specific answer could be conducted for the other the countries, apart form Poland, concerning the cost for the victim that is estimated as equal in both Restorative Justice and traditional CJ processes.

f) Restorative Justice in Juvenile Justice at police level: For juveniles, Restorative Justice at police level is differentiated in some points in compare to the process implemented for the adults. While for the adults, Restorative Justice is implemented moderately in Poland and Finland, for juveniles it is not implemented at all during this stage. On the contrary, In Turkey and Greece, similar to the case of the adults, Restorative Justice is implemented in a rather limited way, according to the experts' estimations.

On the other hand, while for adults Restorative Justice at police level is both provided and implemented in the "shadow of the law" in United Kingdom, for juveniles, it is based on specific legal provisions and it is implemented widely. The Youth Justice System and its legislation puts a duty on police to contact all victims and ask their views regarding reparation, at this and at all stages of offending. It is therefore possible, in theory, for Restorative Justice processes to be available. However, this is at the discretion of police, and the youth offending team. The level of Restorative Justice depends upon the local delivery and understanding of Restorative Justice. In places this is excellent; in many more this is largely ignored.

In the Netherlands, the HALT (the alternative) –project of the non profit company HALT Nederland for the juveniles, was founded in 1994, with government relation, mainly financed by the Ministry of Security and Justice (HALT-projects) and municipalities (prevention

measures), regulated in Art. 77e Criminal Code. According to the Dutch model, in 2010, juveniles who committed the following offences could principally take part in a HALT (The alternative) project: vandalism, offences against public order, property crime, rowdiness, firework offences and play truant. 35% of the cases referred to HALT were property crime, 23% firework offences and 19% vandalism. In cases of more serious offences a referral to HALT is only possible with the agreement of the public prosecutor. Since 2010 HALT works with a new method that stresses excuses, the participation of the parents and learning projects. In more serious cases also a working project can be part of a HALT reaction. The minimum of HALT is one hour, the maximum 20 hours.

For all four countries, Restorative Justice process is implemented for juveniles for specific categories of crimes, either as an alternative or as a complement to the traditional CJ procedure. *Restorative Justice at police level for juveniles seems to be more regulated than the one for the adults, as the referral to Restorative Justice is usually compulsory for the competent authorities and it is less a part of their discretion.* In all countries, the parents of the juveniles may be involved during the actual process. As for the adults, VOM is a common form of Restorative Justice, but JJ seems to be a more flexible field, concerning the ways that Restorative Justice can be applied. In United Kingdom, many types of Restorative Justice forms are possible for juveniles; though, some forms of scripted conferencing usually prevail. In the Netherlands, family group conferencing, compulsory offering of excuse to victim, compensation of damages, learning project and sometimes a working project, may consist forms of Restorative Justice procedures. In Turkey, besides VOM/conciliation, also reparative probation is provided as a Restorative Justice form for juveniles at police level.

The cases of juveniles that are referred to Restorative Justice at police level are recorded officially in Turkey, United Kingdom and the Netherlands (not in Greece). Though, only for the Netherlands, there are sufficient statistical data for the last five years: between 2006 and 2010 there were 103.076 juveniles referred to HALT. The number is decreasing since 2007 (2007: 21.341/2010: 18.044). Yearly there are about 40% of the juveniles who had police contacts referred to HALT. About 90% of all HALT referrals end successfully. 89% of all cases in 2010, HALT have been recorded as successful according to the Annual Report of 2010.

At police level, in the same way as to the case of the adults, the time needed for the Restorative Justice process to be completed is shorter in compare to the traditional CJ in Turkey. But no specific answer could be conducted for the rest of the countries concerned. Similar for the cost estimations, only Turkey has recorder Restorative Justice process as a

lower cost process for the state, the victim and the offender. No specific answer could be conducted for the rest of the countries concerned.

II. Restorative Justice at Prosecution level

At prosecution level, Restorative Justice is implemented in a more extended way than at police level, as it is detected in nine (9) out of the eleven (11) countries. Restorative Justice at this level is recorded, as exactly at the police level, for Poland, Finland, United Kingdom, the Netherlands Greece and Turkey. Restorative Justice is firstly introduced for Hungary, Spain and Germany, at this specific level. On the contrary, no Restorative Justice processes are recorded yet for Bulgaria, while in Denmark, as it was mentioned above, Restorative Justice is only recorded at the previous level.

Table 5: Restorative Justice at Prosecution level

RJ at Prosecution level	<i>Expressis verbis</i> provisions in legislation	Implementation in “<i>the shadow of the law</i>”
Widely	Poland and Hungary	-
In a moderated way	Greece and Poland (for juveniles), Germany (for adults) and Finland	The Netherlands
In a limited way	Greece (for adults), Bulgaria (for juveniles), Turkey and Spain	Germany (for juveniles) United Kingdom, Greece, Turkey and Spain

a) On the degree of implementation of Restorative Justice at prosecution level:
- Wide implementation: Restorative Justice measures and procedures are *expressis verbis* provided widely in the legislation of Poland and Hungary. In **Poland**, Restorative Justice at prosecution level constitutes the extension and expansion of Restorative Justice at police level. As it was mentioned above, preliminary proceedings may be conducted by public prosecutors – or in some cases – by the police. Public prosecutor, while conducting preliminary proceedings may, direct the case to mediation for any category of crime. According to the Act on Conciliation in Criminal and Certain Civil Cases (section 13 (2)) only the police or prosecuting authority has the right to propose conciliation, if the crime involves violence that has been directed at the suspect’s spouse, child, parent or the other comparable near relation. The mediation process (Art. 221/A. of the Criminal Procedure

Code) was introduced into Hungarian criminal law as a double-faced legal institution on 1 January, 2007. The legal institution simultaneously belongs to both criminal material and criminal procedural law. The rules concerning the mediation process are included in the Penal Code, the Criminal Procedure Code and a separate act (Act CXXIII of 2006). The prosecution level is the first one where Restorative Justice is recorded in Hungary. The mediation process officially starts at the prosecution stage, or at the request of defendant, lawyer and victim prior to accusation, or exceptionally after accusation by the judge. In accordance with European practice, *the prosecutor will play a central role*. The mediation process may be ordered in case of criminal offences against a person, traffic violations, or criminal offences against property with the maximum punishment of 5 years' imprisonment.

- *Moderate implementation:* Restorative Justice measures and procedures are *expressis verbis* provided *moderately* in the legislation of Finland and Germany, and without been provided in the Netherlands. In Finland, the prosecutor has a right to refer the cases to conciliation but he/she is not involved in other ways in actual mediation process. According to Act on Conciliation in Criminal and Certain civil cases (section 13 (1) Referral to conciliation) conciliation may be proposed by the crime suspect, the victim, the police or prosecuting authority or some other authority for all the categories of crimes. In practice 15 % of cases are referred to conciliation by the prosecutor. Prosecutor can waive prosecution on the basis of a settlement reached by the offender and the injured party, Criminal Procedure Act, chapter 1, section 8. At this stage, there is no differentiation between juveniles and adults. So successful mediation is a legitimate ground (likewise is also e.g. young age) to waive the prosecution but does not automatically lead to the waiving of the prosecution. In Germany, VOM, Reparation and Apology as forms of Restorative Justice are implemented for first time at this level, according to law provisions. Parallel, Group Conferencing ("Gemeinschaftskonferenzen") as a pilot project in Northern Germany is implemented without been provided but by using opportunities of legislation and legal system. In the Netherlands, Restorative Justice at prosecution level is implemented in a moderate way for any category of crime, by using the discretion of competent authorities, as at the policed level.

- *Limited implementation:* In Greece, Turkey and Spain, Restorative Justice at prosecution level is provided in legislation in a more *limited way*. Restorative Justice procedures are implemented in a limited way at this level, but without been provided, either by using opportunities of legislation and legal system or the discretion of component CJ authorities and officials, also in United Kingdom. In Greece, penal mediation in cases of domestic violence (Law 3500/2006, Articles 11 to 14) and penal conciliation in cases of

felonies against property (Article 308B of the Greek Penal Procedure Code, by Article 17 of the Law 3904/2010) are provided at this specific level. Parallel, the prosecutor may encourage the litigants to resolve their case or to compromise outside of court (Law 1756/1988, Article 25 par. 4 a). In terms of Spanish procedural law, a pre-condition for prosecuting the crime of defamation (injurias and calumnias) is the previous holding or attempt to hold an act of conciliation between the victim and the offender. In this regard, pursuant to the *Ley de Enjuiciamiento Criminal*, Article 804, a criminal complaint for defamation shall not be admitted without proving that the complainant has held or has attempted to hold an act of conciliation with the offender. Conciliation takes place before a judge of the civil jurisdiction, who chairs the act of conciliation and must seek for an agreement between the parties. Restorative Justice at prosecution level is also correlated to the solutions given in the Autonomous or Self-Governing community of Catalonia. The service called "Mediació i reparació penal" is offered by the General Direction of Penal Execution in the Community and Juvenile Justice, of the Catalan Government. The service is structured in "equips de Mediación i Reparació Penal" (teams of penal mediation and reparation), territorially distributed and consisting of psychologists, social workers, anthropologists, jurists and professionals of other human and social sciences who are specialised in penal mediation and reparation. These teams work upon the applications filed by the parties to the proceedings and upon the orders issued by the judicial bodies of the criminal jurisdiction located in Catalonia. It is possible to participate in this programme at any stage of the criminal proceedings: after the criminal complaint, before trial, during the holding of the trial, after sentencing and at the correctional level, etc. In Turkey, reconciliation (mediation), as provided in art, 73 of TPC, is rendered for a very limited number of minor offences defined in the Code, where the initiation of legal prosecution was subject to the filing of a private complaint by the victim and both parties agreed on reconciliation. In the Turkish system initiation of legal prosecution is subject to filing a private complaint by the victim is possible only in a few unimportant crimes. It is a way to end the dispute with alternative solutions, outside the court. It is not just reimbursement of the actual losses it also enables moral satisfaction for both sides. It serves both public and private prevention.

In United Kingdom, in theory, any party can seek out Restorative Justice services, mediation services, instead of reporting a matter to police, thence to the crown prosecution service (cps). A mediation service or an independent facilitator could take on such a case. However, they would risk clashing with the crown prosecution service. Therefore there is no real

Restorative Justice at this stage. This is only a small experiment and there will be no funding in the near future.

b) On the offenders and victims at prosecution level: As at the police level, for the majority of the countries, Restorative Justice measures, procedures, programmes and practices are general concerning all groups of offenders and victims. In Finland, similar to the police level, concerning the victims, some measures are provided for any group of victims and others are provided only for specific groups (e.g. victims of crime which involves violence directed at the suspect's spouse, child, parent or the other comparable near relation - under-age victims). As exactly at police level, in all the countries in which Restorative Justice procedures are provided/implemented at prosecution level, both the offender and the victim have the right to decide whether they wish to participate to the process and also have the right to interrupt it and remain within the traditional Restorative Justice one.

c) Restorative Justice at prosecution level as alternative or complement to CJ traditional procedures: In United Kingdom and also in Germany, Restorative Justice procedures and programmes, at prosecution level, are rather used as alternatives to traditional CJ procedures, while in Turkey and the Netherlands, they are used rather as complements, as the traditional procedure is unfolding regularly. In Poland and Finland, similar to the police level, as well as in Spain and Greece, Restorative Justice procedures are either alternatives or complements to the traditional ones, depending on each specific case.

d) The referral and the actual process at prosecution level: As exactly at the police level, the vast majority of the countries where Restorative Justice is implemented at prosecution level, the referral to the Restorative Justice process is part of the discretion of the competent authority, which for most of the countries is the prosecution authority. In Turkey and Spain, the referral to the Restorative Justice process is compulsory for the component authority according to provided legal criteria, while in Hungary, the referral to Restorative Justice process is compulsory for the competent authority in some cases and part of their discretion in some others.

Besides the prosecution authority, in Spain, the court is also component for the referral at this level; in Finland, also other authorities apart from the prosecutor may process to the referral of a case to Restorative Justice, such as municipal social authorities. In the Netherlands, the component authority for the referral is an independent private foundation,

called the Victim Aid Netherlands.

At prosecution level, Restorative Justice actual process is delivered and managed either by a specialized CJ authority/service, or a specialized social public agency, or a NGO or a specialized private agency, while at the vast majority of the participant countries, trained mediators or facilitators are actually involved. As at the police level, victims participate in the actual process, but the involvement of the community is something to be recorded only in United Kingdom and the Netherlands. In the Netherlands, similar to the police level, everybody having a stake in the offence may be involved depending on each case.

While at police level no supervision of the process is provided for the majority of the countries, at prosecution level, supervision is more formalized in many of them. No supervision is provided, on the other hand, for Poland, Germany and the Netherlands.

The evaluation of the implementation of the Restorative Justice procedure and the follow-up of each case is made by the public prosecutor in Turkey and Greece, by the court in Spain, by the Conciliation office, Local State agency, in Finland and by the Victim in Focus and the Minister that can order an extended evaluation study, in the Netherlands, and by the Ministry of Justice in United Kingdom. Evaluation and follow-up is not provided/implemented in Poland and Germany.

As at the police level, the most common form of Restorative Justice is Victim-Offender Mediation or/and Conciliation. For the majority of the countries, namely Poland, Finland, Hungary, Turkey, Spain and Greece - VOM/Conciliation is mentioned as the only form provided/implemented. In Germany, United Kingdom and the Netherlands, other forms are also possible as pilot programmes. Also at this level, there is the same plurality as at the previous one, regarding the outcomes of Restorative Justice procedures.

e) The effective-economic dimensions of Restorative Justice at prosecution level:

The cases that are referred to Restorative Justice at prosecution level are recorded officially in Poland⁷⁸, Turkey, Finland, Hungary and the Netherlands⁷⁹. Though, only for Hungary and Finland they are sufficient statistical data for the last five years. There is no data recording in Greece, Germany and United Kingdom.

At prosecution level, the time needed for the Restorative Justice process to be completed is shorter in compare to the traditional CJ in four countries (namely in Germany, Hungary,

⁷⁸ As it has been mentioned above, there are general data on cases referred to mediation in preliminary proceedings; there no specific data on referrals made by the police or public prosecutors.

⁷⁹ As it has been mentioned above, Victim in Focus were first organised in 2004 and introduced nationwide in 2007, but the recoding of the cases is not differentiated according the level of implementation.

United Kingdom and Turkey). But no specific answer could be conducted for the rest of the countries concerned. For the cost estimations, again, four of the countries (Turkey, Germany, Hungary and the Netherlands) have recorded Restorative Justice process as a lower-cost process for the state; two (Turkey and Hungary) have estimated it as also more cost-effective for the victim, and three (Turkey, Germany and Hungary) also for the offender. No specific data could be gathered on this issue for the rest of the countries.

f) Restorative Justice in Juvenile Justice at prosecution level: Apart from Finland and United Kingdom, the rest of the countries – namely Poland, Hungary, Germany, Spain the Netherlands, Turkey and Greece – Restorative Justice is provided/implemented separately for juveniles at prosecution level. Also, Bulgaria is recording Restorative Justice procedures separately and exclusively for juveniles at this specific level.

Similar to the case of the adults, Restorative Justice for juveniles is provided in the legislation of Hungary widely, in the legislation of Germany, Poland and Greece moderately, and in the legislation of Bulgaria, Turkey and Spain in more a limited way. Restorative Justice procedures and measures are implemented moderately without been provided, either by using opportunities of legislation and legal system or the discretion of competent CJ authorities and officials, in the Netherlands, similar to the way that Restorative Justice is implemented for the adults at this as well as at the previous (police) level.

For some of the countries (Hungary, Germany, Poland, Greece, and the Netherlands) Restorative Justice for juveniles may be implemented for any category of crime, for some other, though, only for specific ones. It is implemented as an alternative procedure for most of the countries (Hungary, Germany, Spain, and Greece), while as a complement in some others.

Contrary to the previous level, Restorative Justice for juveniles at prosecution level is usually part of the discretion of the competent authorities, that is usually the public prosecutor. As at the police level, the parents of the juveniles may be involved during the actual process, in most of the countries. For Germany, Hungary, the Netherlands, Poland and Turkey - with the exception of Greece, Bulgaria and Spain - trained mediators/facilitators are also involved. Contrary to the case of the adults, there is a broader involvement of the community at Restorative Justice process for juveniles at prosecution level, at it not only recorded in the Netherlands but also in Germany, Poland and Bulgaria. As for the adults, VOM is a common form of Restorative Justice, but JJ seems to be a more flexible field, concerning the ways that Restorative Justice can be applied, as in Germany, Bulgaria and the Netherlands, any form of Restorative Justice may be implemented for juveniles at this level.

The cases that are referred to Restorative Justice for juveniles at prosecution level are recorded officially in Hungary, Turkey, Bulgaria, Poland and the Netherlands (not in Greece and Germany). In the Netherlands, between 2006 and 2010 there were 103.076 juveniles referred to HALT. The number is decreasing since 2007 (2007: 21.341/2010: 18.044). Yearly there are about 40% of the juveniles who had police contacts referred to HALT. About 90% of all HALT referrals end successfully. 89% of all cases in 2010, HALT have been recorded as successful according to the Annual Report of 2010.

At prosecution level, separately for juveniles, the time needed for the Restorative Justice process to be completed is recorded as shorter in compare to the traditional CJ in four countries, namely Germany, Hungary, Bulgaria and Turkey. But no specific answer could be conducted for the rest of the countries concerned (Poland, Greece and the Netherlands). For the cost estimations, Turkey, Germany and Hungary have recorder Restorative Justice process as a lower cost process for the state and the offender; Turkey and Hungary, also for the victim; for Germany and Poland, the Restorative Justice procedures are of equal cost for the victim. No specific answer could be conducted for the rest of the countries concerned, namely Poland (for the state and the offender), Greece, the Netherlands, Bulgaria and Spain.

III. Restorative Justice at Court level

Between the participant countries, Restorative Justice at court level is implemented in an extension approximate to the one of the prosecution level, as it is recorded again in nine (9) out of the eleven (11) countries. Restorative Justice at this level is recorded, as exactly at the two previous levels (police and prosecution) of Poland, United Kingdom, the Netherlands, Greece and Turkey, and as at prosecution level of Germany, Hungary, Bulgaria and Spain. For none of the participant countries, this level consist the first level where Restorative Justice is introduced in the Criminal Justice System. On the contrary, its is notable that in Finland, where Restorative Justice is very good established in the fists stages, does not include any Restorative Justice procedures and measures at this stage, while in Denmark, as it was mentioned above, Restorative Justice is only recorded at police level.

Table 6: Restorative Justice at Court level

RJ at Court level	<i>Expressis verbis</i> provisions in legislation	Implementation in “<i>the shadow of the law</i>”
Widely	Hungary	-

In a moderated way	United Kingdom and Greece (for juveniles) Germany and Poland	the Netherlands
In a limited way	United Kingdom and Greece (for adults), Bulgaria and Spain (for juveniles), Turkey	Germany (for juveniles) Bulgaria, Spain, United Kingdom and Greece

a) On the degree of implementation of Restorative Justice at court level:

- **Wide implementation:** As exactly at prosecution level, Restorative Justice measures and procedures are *expressis verbis* provided widely in the legislation Hungary. In the court stage, mediation is possible at the request of the defendant, lawyer or victim, which also involves the suspension of the procedure for maximum six months. Unlike the ordering by public prosecutor, this may not occur *ex officio*. In the interest of the successful conclusion of the mediation process, the trial can also be postponed.

- **Moderate implementation:** Restorative Justice measures and procedures are *expressis verbis* provided *moderately* in the legislation of Poland and Germany, and without been provided in the Netherlands. In Poland, exactly as at prosecution level, Restorative Justice provisions do not contain any limitations on referring the case to mediation due to the type of the offence or the type and amount of the punishment provided for the offence. Under Article 23a of the Code of Criminal Procedure, every case may be referred to mediation at every stage of the criminal proceedings provided that both the injured party and the accused came forward with such initiative or agreed to mediation. In Germany, possibilities to apply mediation as part of diversion measures are stipulated in the Code of Criminal Procedure. According to §§ 153, 153a, both the public prosecutor and the judge have the possibility to dismiss the criminal proceedings under the conditions that minor offences are invoked and there is no public interest in the prosecution (low guilt of the offender). The Code of Criminal Procedure provides also that both the prosecutor and the judge have to assess in every stage of the criminal proceedings whether victim-offender mediation has to be taken into consideration. In appropriate cases, they shall work towards mediation. The agreement shall not be accepted against the explicit will of the injured person (§ 155a). Moreover, judges and public prosecutors are allowed to transmit personal data to an agency carrying out mediation or managing restitution (§ 155b). The law further provides that at the first examination, in appropriate cases the accused shall be informed about the possibility of victim-offender mediation (§ 136 I).

In the Netherlands, Restorative Justice at court level, as in previous levels, is implemented in a moderate way for any category of crime, by using the discretion of competent authorities, as at the policed level.

- **Limited implementation:** In United Kingdom, Greece, Turkey, Bulgaria and Spain, Restorative Justice at prosecution level is provided in legislation or it is implemented in by using opportunities of legislation in a more *limited way*.

In United Kingdom the provision of Restorative Justice in the adult sector has been mainly on a non-statutory basis. However, Restorative Justice at a post sentence stage has been successfully used by various agencies and practitioners for many years, generally without serious challenge. In December 2010, the UK coalition government published the Green Paper "Breaking the Cycle", announcing its intentions for key reforms to the adult and youth justice sentencing philosophy and practice. The response to the consultation was impressive and the implementation of the stated intentions remained to be seen. In Greece, at court level, the judge often informally encourages the litigants to resolve their case or to compromise outside of court. Moreover, many articles of the GPC (e.g. Articles 289, 384 and 406A, as mentioned in Law 3904/2010 and Law 3160/2003) propose to discharge the accused from any penalty for crimes against property (art. 375-374, 375-377, 381, 382, 386-406 GPC), arson, explosions, etc., as long as the offender with his own will fully restore/repair the damages or the harms he caused to the victim, and/or reduce the risk caused by his acts, within the deadlines prescribed by law (e.g. until the beginning or the end of the evidence procedure) and depending on whether it is a misdemeanor or felony (e.g. before the examination of the accused in any way by the authorities in case of felony). In Turkey, both the public prosecutor or the court may postpone (deter) the commencement of the public prosecution or the sentence for 5 years. One of the conditions is complete reparation of the damages incurred on the victim or the public due to the delinquency, via exact return, restoring to original state as before the extortion of the delinquency or through compensation. In some cases, the Bulgarian law gives the victim the opportunity to decide whether the offender should be prosecuted or not. This depends on whether the injured person makes a complaint to the court; such cases are therefore colloquially called 'complainant's crimes' or privately actionable cases. Under art. 24, paragraph 4 of the Penal Procedure Code 2005, penal proceedings shall not be officially instituted in cases of complainant's crimes; also, the instituted proceedings shall be discontinued if the victim and the offender have reached a reconciliation, except when the offender has, without good reason, failed to meet the reconciliation conditions. Bulgarian penal process allows for such reconciliations to be undertaken at every stage of the proceedings, even after the verdict has

been pronounced. In this case, according to art. 84, paragraph 3 of the Penal Code of 1968, the punishment shall not be carried out if the complainant requested prior to its commencement that it should not be. Although the legislation does not specifically refer to mediation or any other out-of-court methods for settlement between the victim and the offender, it gives an opportunity for the application of these methods. Spanish Penal Code provides reparation as a mitigating factor of criminal liability. Reparation may take place via restitution, compensation of damages or moral or symbolic reparation. On the other hand, the Penal Code also includes forgiveness by victims as an extinctive cause of criminal liability. While in countries with penal mediation forgiveness could be given as a result of a mediation process, in Spain, forgiveness is only relevant and assessed by judges and tribunals as long as it is introduced and accredited in the criminal proceedings according to certain legal conditions. This does not exclude, obviously, that forgiveness may actually be the result of a mediation process. It is also to be noted that many provisions in the special part of the Penal Code, for certain types of crimes, regard reparation of damages as "specific mitigating factors". There are also cases where the undertaking of reparation constitutes an absolute excuse that excludes the imposition of a penalty for the crime committed. On the other hand, mediation may be specially relevant for those crimes whose prosecution requires a *querrela*. In the case of defamation), the *querrela* shall not be admitted, without accrediting that the complainant has held or has tried to hold an act of conciliation with the offender. Conciliation takes place before a judge of the civil jurisdiction and has some similarities with mediation. Courts may suspend the execution of such kind of penalties, without affecting the civil liability *ex delicto*, only upon the fulfilment of specific criteria. Another relevant provision that incorporates Restorative Justice after the sentencing stage but before the execution of the sentence is Article 88 of the Penal Code, according to which judges or tribunals may substitute, under certain circumstances, penalties of deprivation of liberty that do not exceed a year for a fine or community work, or, in cases of penalties of deprivation of liberty that do not exceed six months for a penalty of permanent location. The adoption of this measure depends, among other circumstances, on the efforts made by the convicted to repair damages. The Penal Code includes also the concession of pardons among the extinctive causes of criminal liability. This option is open to all types of crimes, once the sentence is final.

b) On the offenders and victims at court level: As at the previous two levels, for the majority of the countries, Restorative Justice measures, procedures, programmes and practices are general concerning all groups of offenders and victims. For the majority of the

countries (namely Hungary, Poland, Turkey, Bulgaria, Greece, Spain and the Netherlands), the referral to the Restorative Justice process at court level, can be derived by an initiative of either the victim or the offender. As exactly at police and prosecution level, in all the countries, both the offender and the victim have the right to decide whether they wish to participate to the process and also have the right to interrupt it and remain within the traditional Restorative Justice one.

c) Restorative Justice at court level as alternative or complement to CJ traditional procedures: In Germany, Hungary, Bulgaria, Spain and Greece, Restorative Justice procedures and programmes, at court level, are rather used as alternatives to traditional CJ procedures or/and results. In Poland, they are either alternatives or complements, while in Turkey, United Kingdom and the Netherlands they are used rather as complements to the traditional proceedings.

d) The referral and the actual process at court level: As exactly at the police and the prosecution level, the vast majority of the countries where Restorative Justice is implemented at court level, the referral to the Restorative Justice process is part of the discretion of the competent authority, which for most of the countries is the court. As it is mentioned for Bulgaria, it is implemented when during the ongoing hearing, the presiding judge finds that a reconciliation is possible and better suits the needs of the parties. In Turkey, like in all other levels, Restorative Justice process is compulsory for the component authority according to specific provided legal criteria. As it is expected the component authority at this stage is the court. In the Netherlands, as at the previous level, the component authority for the referral is an independent private foundation, called the Victim Aid Netherlands.

As at prosecution level, at court level, Restorative Justice actual process is delivered and managed either by a specialized CJ authority/service, or a specialized social public agency, or a NGO or a specialized private agency, while at the vast majority of the participant countries, trained mediators or facilitators are actually involved. As at the previous levels, victims participate in the actual process, while the involvement of the community is something to be recorded only in United Kingdom, Hungary, Bulgaria and the Netherlands.

Supervision of the actual process is usually made by the court for many of the participant countries, while, as at the previous level, no supervision is provided for Poland and the Netherlands.

As at the previous levels, the most common form or Restorative Justice is Victim-Offender

Mediation or/and Conciliation. For many of the countries, namely Poland, Hungary, Turkey, Spain and Bulgaria - VOM/Conciliation is mentioned as the only form provided/implemented. In Germany and United Kingdom also community boards/conferencing are recorded. In United Kingdom, reparative probation also is recorded, while in Greece, reparation/restoration; in the Netherlands, similar to police level and prosecution level, apart from mediation and conciliation, that was introduced nationwide in 2007, other forms are in use presently as experiments/pilots.

e) The effective-economic dimensions of Restorative Justice at court level:

The cases that are referred to Restorative Justice at court level are recorded officially in Poland, Turkey, Hungary, Bulgaria, Germany and the Netherlands (not in Greece and United Kingdom). Though, only for Hungary and Turkey they are sufficient statistical data for the last five years. At court level, the time needed for the Restorative Justice process to be completed is shorter in compare to the traditional CJ in Germany, Hungary, Bulgaria, Greece and Turkey; for United Kingdom the time needed is equal. No specific answer could be conducted for the rest of the countries concerned Poland and the Netherlands. For the cost estimations, Turkey, Germany, Hungary and Bulgaria have recorder Restorative Justice process as a lower cost process for the state and the offender; Bulgaria, Turkey and Hungary for the victim; Turkey, Germany and Hungary for the offender. For Poland and Germany, as at the previous level, the Restorative Justice procedures are of equal cost for the victim. No specific answer could be conducted though for the rest of the countries concerned, namely Poland (for the state and the offender), Greece, the Netherlands and United Kingdom.

f) Restorative Justice in Juvenile Justice at court level: It is characteristic that in all nine countries that are recording Restorative Justice procedures at court level, it is also provided/implemented separately for juveniles.

Similar to the case of the adults, Restorative Justice for juveniles at court level is provided and implemented in Hungary widely, and in the legislation of Germany, Poland and the Netherlands moderately. In compare to Restorative Justice for adults a court levels, Restorative Justice for juveniles is more extended in United Kingdom and Greece. Limited implementation of Restorative Justice for juveniles is provided in Bulgaria, Turkey and Spain. In Poland, Germany, Greece and the Netherlands, Restorative Justice measures, procedures, programmes and practices for juveniles are general, concerning all the categories of crimes, all groups of offenders and all groups of victims. In Hungary, Bulgaria, Turkey and Spain, on the other hand, they are special, concerning specific categories of crimes; For Hungary,

Bulgaria, Germany and Spain, as at the previous level concerning juveniles, Restorative Justice procedures and programmes are rather used as alternatives to traditional CJ procedures and results. In Greece, Poland and United Kingdom, Restorative Justice procedures and programmes that are provided in legislation separately for juveniles at court level may either be used as alternatives to traditional CJ procedures or/and results, or as complements. In Turkey and the Netherlands, they are used rather as complements.

Similar to prosecution level, Restorative Justice for juveniles at court level is usually part of the discretion of the competent authorities, that is usually the public prosecutor. As at the previous two levels, the parents of the juveniles may be involved during the actual process, in most of the countries.

In Poland, according to Article 3a of the Juvenile Act (JA), that was added in 2000, the family court, while acting on the initiative or with the consent of both the juvenile and the victim, may at any stage of the proceedings transfer the case to mediation by an institution or a trustworthy person. The JA does not provide for legal restrictions on referring juvenile cases to mediation. In the doctrine of the juvenile law has been noticed that mediation is excluded in cases of juveniles who require the application of medical measures, such as for example the placement in a psychiatric hospital. It is also emphasized that juvenile cases should not be referred to mediation if there are many victims or perpetrators in the same case or the case is connected with the organized crime. The results of the mediation reported to the family judge or family court by the mediator are taken into consideration when deciding the case. The family judge may drop the proceedings unconditionally at an early stage as a result of successful mediation. Provisions of the JA allows the family court to refer the case to mediation at any stage of the proceedings. The 1982 Juvenile Act does not contain any provisions on Restorative Justice conferences. In practice, however, there were some pilot programs aiming at introducing Restorative Justice conferences within the juvenile justice system.

In Germany, with the first amendment of the Juvenile Justice Act (JJA) in 1990, the legislator provided for the legal framework for victim-offender mediation in juvenile law. The law extended the catalogue of educational measures and introduced victim-offender mediation as a new educational measure (§ 10 I No. 7). Victim-offender mediation could be applied within the diversion strategy. Mediation as a formal sanction can be ordered as an educational measure in form of a directive (§ 10 I No. 7). Furthermore, mediation can also be applied as the independent sanction of a disciplinary measure in form of restitution (§ 15 I No. 1). Restitution not only refers to financial compensation, but is also possible as unremunerated work. It lays in the discretion of juvenile public prosecutors and juvenile

judges to apply these criminal law dispositions. Given a successful mediation between victim and juvenile offender, or serious efforts towards reconciliation, either the juvenile prosecutor will dismiss the case with the consent of the juvenile judge, or, after a charge has been filed, the juvenile judge will dispense the court action. In practice, mediation is most often applied as a diversion measure under § 45 II in order to avoid formal court proceedings. Mediation as an educational or disciplinary measure (§§ 10, 15) is rarely used.

In Greece, especially for juvenile offenders Law No. 3189/2003 on the "Reform of penal legislation for juveniles and other provisions" is of a great importance on Restorative Justice for juveniles. This Law restated the educational and therapeutic measures for the reformation of juvenile offenders and increased penal nonage at the age of 13 years. The educational measures are imposed in cases which the juvenile offender is under the age of 13 years, or when his/her act is a petty offence, or when is deemed not necessary to be imposed incarceration to restrain the juvenile from committing new crimes. Among the proposed educational measures is the reprimand of the minor; the conciliation between the juvenile offender and the victim in order to settle the case out of court and for the juvenile offender to express apology and manage the consequences of his/her act; the community service; the attendance social and psychological programs in relevant public or private agencies or services; and other measures that have to do with the lifestyle or the upbringing of the juvenile. In addition, diversion from prosecution is possible when the juvenile offender has committed a petty offence or misdemeanor, and the prosecutor considers that there is no need to press charges, as he has the ability to impose (to the juvenile) educational measures and a payment of EUR 100 to a charity or an NGO (article 45A GPPC). Law No. 3189/2003 also promotes the reduction of custodial sentences for juveniles offenders who are 18 years old, as far as the court considers that it is not suitable to impose custodial sentences for the punishment of the juvenile (Article 130, paragraph 1 GPC).

In United Kingdom, The Youth Justice system is a complex set of arrangements led by the Ministry of Justice. This involves multi-agency Youth Offending Teams, on a local basis. The main reform of the YJS took place after a 1996 Audit Commission report, which severely criticised it as ineffective and expensive (Audit Commission 1996). The result was the introduction of the 'Crime and Disorder Act 1998' (CDA), which according to many writers, is the first enabling legislation for Restorative Justice in United Kingdom (e.g., see Liebmann and Masters 2001). A new governmental body was established, the 'Youth Justice Board for United Kingdom' (YJB), an executive non-departmental public body that oversees the youth justice system, that aims to prevent offending and re-offending by children and young people under the age of 18. Youth Offending Teams' (YOTs) is an other new institution, that

consist multi-agency panels formed by local authorities to provide reports for courts, supervise young offenders sentenced by the court, and to undertake preventative work. The Act also introduced a range of new orders and amended existing ones. The major impact in relation to Restorative Justice was the introduction of formal Reprimands and Final Warning, which are the response to the first offences committed by young people and are intended as a diversion from prosecution. These are designed to be delivered in a restorative manner and they call for the victim's views and involvement to be sought. The Final Warning is referred to and delivered by the multi-agency YOT and is the largest restorative response, albeit at an early stage of offending. One specific measure was the 'Reparation Order', which enables courts to order young people to undertake practical reparation activities directly to either victims or the community. VOM could be considered as a part of 'Reparation Order', and that YOTs may wish to consider establishing this restorative process (Home Office 1998: S6.1). Restorative Justice is also visible in other elements of the Act such as 'Action Plan Orders', final warnings and reprimands. A year later, the 'Youth Justice and Criminal Evidence Act 1999' (YJCEA) was passed, which introduced the 'Referral Order'. The Government has described the Order as the first introduction of Restorative Justice into the youth justice system, while the Act itself makes specific reference to VOM as a possible agreed outcome of a panel. The Criminal Justice and Immigration Act 2008 introduced the Youth Rehabilitation Order (YRO) is a generic community sentence for young offenders and combines a number of sentences into one generic sentence. It is the standard community sentence used for the majority of children and young people who offend. It simplifies sentencing for young people, while improving the flexibility of interventions. An Activity requirement, or a Supervision requirement can require reparation to a victim and, if agreed a meeting or communication with a victim. This will be the main measure to enable restorative practices with young people who offend at this level. Restorative Justice in a custodial setting can be enabled through supervision requirements, or on a voluntary basis, but there is no specific statutory provision.

In Turkey, with the Child Protection Act art. 24, reconciliation was made possible also for negligent crimes and also for intentional crimes with the minimum limit of 3 years for people between the age of 15-18 and 2 years for people under 15. With an amendment in 2006, reconciliation is transferred to the Criminal Procedure Code with considerably detailed article (TCPC. Art. 253-255) and its scope is enlarged.

In Bulgaria, some of the measures, which are provided for in details in Juvenile Delinquency Act 1958 have a restorative character that imposes a number of duties on the young person. They include: apology to the victim; attending the educational programmes and consultation

having a rehabilitative purpose; repairing the damage inflicted, where possible; and community service (Article 13, paragraph 1, items 2, 3, 9 and 10). The implementation agency is the Commission for Combating Juvenile Delinquency, which is similar to the Youth Offending Teams that are a feature of the Restorative Justice provision for young persons in United Kingdom.

In Spain, Article 51(3), on substitution of measures provides that "conciliation between the minor and the victim" that takes place at any point may release the minor from the measure imposed by the judge, upon proposal by the Public Prosecutor or by the defence counsel, and after hearing the technical teams and the representatives of the public entities of protection and reform of minors". It has been considered that the regulation of mediation in juvenile justice could be a basis for developing mediation in the ordinary criminal system. In this sense, the *Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género* ("Organic Act 1/2004, of 28 December, of Measures of Integral Protection against Gender Violence") represented a counterpoint. Article 44(5), on jurisdiction of the *Juzgados de Violencia sobre la Mujer* ("Courts of Violence against Women") expressly excludes mediation from cases of gender violence. This prohibition has been very criticized. Most of the doctrine has considered, in this regard, that mediation could be an adequate option in such cases.

The Restorative Justice actual process is delivered and managed by a specialized Juvenile Justice authority/service at this level, for the majority of the countries (in Greece, Turkey, Hungary, Germany, United Kingdom and Spain). It may also be delivered by a specialized social/public authority named or by an NGO or a social private agency. In Bulgaria, the process is delivered and managed by the court and a specialized social public agency, namely the local commission for combating juvenile delinquency. With the exception of Greece and Bulgaria, trained mediators/facilitators are involved in the actual process. The involvement of the community at Restorative Justice process for juveniles at court level is recorded in Germany, United Kingdom, Spain and the Netherlands.

The cases that are referred to Restorative Justice for juveniles at court level are recorded officially in the majority of the countries, namely Hungary, Turkey, Bulgaria, Poland, Germany, the Netherlands and United Kingdom. Though, only for Hungary, Bulgaria and the Netherlands, there are sufficient statistical data for the last five years. At court level, separately for juveniles, the time needed for the Restorative Justice process to be completed is shorter in compare to the traditional CJ in Germany, Hungary, Bulgaria and Turkey. But no specific answer could be conducted for the rest of the countries concerned. Concerning the

cost estimations, Turkey, Germany and Hungary have recorded Restorative Justice process as a lower cost process for the state; for Hungary and Turkey the Restorative Justice procedures are lower cost procedures also for the victim; for Germany and Poland, the Restorative Justice procedures are of equal cost for the victim; for Turkey it is of lower cost also for the offender. No specific answer could be conducted for the rest of the countries concerned, namely Poland (for the state and the offender), Greece, the Netherlands, United Kingdom and Bulgaria.

IV. Restorative Justice at Correctional and Re-integration level

At correctional level, Restorative Justice is not very extended as it is implemented in six (6), namely Poland, United Kingdom, Spain (Catalonia), Germany, Bulgaria and the Netherlands, in a rather limited way. It is characteristic that Restorative Justice measures and procedures for the adults are *expressis verbis* provided in legislation only in Poland; for the other five countries, they are implemented without been provided, either by using opportunities of legislation and legal system or the discretion of component CJ authorities and officials.

Table 7: Restorative Justice at Correctional and Re-integration level

RJ at Correctional and Re-integration level	<i>Expressis verbis</i> provisions in legislation	Implementation in “<i>the shadow of the law</i>”
Widely	Poland (for juveniles)	-
In a moderated way	the Netherlands (at re-integration level)	-
In a limited way	Poland (for adults), United Kingdom and Spain (for juveniles)	Germany, Bulgaria, Spain, United Kingdom and the Netherlands

For the majority of the countries, Restorative Justice at correctional level is general concerning any kind of crime and all groups of offenders and victims. For 4 out of 6 countries, namely Poland, Bulgaria, United Kingdom and the Netherlands, Restorative Justice procedures and programmes, at correctional level, are rather used as complements to the traditional CJ procedures or/and results. In Germany and Spain, on the other hand, they are used rather as alternatives. The Restorative Justice actual process is delivered and managed by the Prison authority in Bulgaria, United Kingdom and the Netherlands; by a specialized CJ authority/service in United Kingdom and Spain; by a NGO or a special private agency in

Germany and Bulgaria. For the majority of the countries, namely Poland, Germany, Bulgaria, Spain and United Kingdom, trained mediators/facilitators are involved during the actual process. For Poland, Germany, Spain and United Kingdom, the involvement of the victim is also provided/implemented. The involvement of the community is something to be recorded only in United Kingdom. Again, Victim Offender Mediation or/and Conciliation is the most common form of Restorative Justice also at this level. The cases that are referred to Restorative Justice at correctional level are recorded officially in the Netherlands. Restorative Justice is also provided/implemented separately for juveniles at correctional level only for Poland, Germany, United Kingdom and Spain.

On the other hand, at re-integration level, Restorative Justice is rather restricted. It is recorded only in and the Netherlands, moderately and in United Kingdom, in a limited way. As it is noted in the evaluator of United Kingdom, re-integration is not an component of the Criminal Justice System and there is no provision for Restorative Justice in this respect. Once a sentence is ended, either custodial or community based, the Criminal Justice System has no further part. There is some Restorative Justice work between victims and offenders, after the sentence is over. This is usually at the behest of victims. In both countries, Restorative Justice procedures are implemented without been provided in legislation, either by using opportunities of legislation and legal system or the discretion of component CJ authorities and officials and they are general concerning all categories of crimes and all group of offenders. Also in both of them, they are used as complements to the traditional CJ procedures or/and results and part of the discretion of the component authorities. In United Kingdom the component authority for the Restorative Justice referral is the YOT or their partnership agency. In the Netherlands, the component authority, the component authority for the referral to Restorative Justice process is an independent private foundation named is the Victim Aid Netherlands. At re-integration level, separately for Juveniles, Restorative Justice is implemented in both of the countries, in a limited way, also in the shadow of the law. In the Netherlands the component authority for the referral to Restorative Justice process is the Foundation Community Restoration and Rehabilitation (Bureau MHR). The referral to the Restorative Justice process at re-integration level, can be derived by an initiative of the Juvenile Penitentiary Institution or the parents of the juvenile or of the organisation with which the Bureau MHR works together, private and public ones. During the actual process the involvement of the parents of juvenile, of social workers, of the victim and of those who have a stake in the crime is possible. For United Kingdom, at this level, Restorative Justice is provided on a voluntary basis, sometimes via victim services, probation, specialist prison services, faith groups and independent Restorative Justice

practitioners; there is no funding; the legal counsel/defence lawyer may be involved. The principle of Restorative Justice is that it can be initiated by any party involved in the incident (usually the victim). After the referral, in the the Netherlands, the Restorative Justice actual process is delivered and managed by the Bureau MHR Bureau MHR that tries to help the juvenile and his/her parents to improve their life. The aim of the pedagogical program is a better relationship between the parents and their children. The mother is designated to be the key-figure of the family. She is trained and instructed. One tries to empower the mothers in order to strengthen their position as educator, so that they are better able to receive their sons or daughters when they return home from prison. It is seen as most important that the juveniles, returning home, are not punished another time for the same crime they were already sentenced for as this repeated punishing strengthens the isolation of the juvenile and can easily cause recidivism. Accompanying the juvenile there is much attention paid to the crime and the victim and the aim is that the juvenile develops the wish to apologize and compensate the damages he/she caused. When the juvenile succeeds in developing these thoughts and feelings one tries to find the victim with the help of Victim Aid Netherlands in order to be able to organise a restoration conference. In 2010 there were 6 of these conferences organized; in the first 8 months of 2011 three took place. (A. van Hoek, G. J. Slump, Inventarisatie herstelrechtelijke projecten en activiteiten in Nederland vanaf 1980 tot heden en buitenlandse voorbeelden, Stichting Restorative Justice Nederland, 2011, p. 42, 43).

Table 8: Restorative Justice overall typology in the participant countries

Participant Countries	RJ at different levels of CJS	Categories of crimes and forms of RJ process
Bulgaria	At prosecution level only for juveniles, at court level and at correctional level	In fragmented provisions of legislation and incoherent practices mainly for petty offences. Mainly in the form of Mediation facilitated by judges, attorneys, NGOs and Volunteers
Denmark	Only at police level	In an overall scheme as nation-wide programme of VOM. Cases are referred by the police, and the process is facilitated by local police or private institutions
Finland	Only at police and prosecution level for both adults and juveniles	In an overall, general and coherent scheme provided in legislation for any category of crime (with little exceptions). Mainly in the form of VOM, facilitated by

		volunteers and attorneys
Germany	At all levels, except of police level	In an overall, general and coherent scheme provided in legislation, theoretically, for any category of crime (petty offences are excluded). Mainly in the form of VOM, facilitated by public prosecutors, judges, police, youth court workers, probation officers, mediators, social workers, lawyers.
Greece	At all levels, except of correctional level	In fragmented provisions of legislation an incoherent practices. VOM and penal conciliation for economic criminal offences, in crimes against property, in domestic violence. VOM also provided for juveniles. RJ is facilitated by public prosecutors, attorneys, police officers, judges, the National Centre for Social Solidarity.
Hungary	At prosecution and court level	In an overall, general and coherent scheme provided in legislation, for specific categories of crime: criminal offences against a person, traffic violations, criminal offences against property (when threatened penalty is maximum 5 years' imprisonment). Mainly in the form of VOM, facilitated by professional mediators.
the Netherlands	At all levels	In an overall and general scheme implemented mostly "in the shadow of the law". In the form of transactions, compensation, restoration, satisfaction, reconciliation (mainly in minor cases), violent and sexual offences. Pilot victim-offender meeting projects and Restorative Justice experiments in correctional institutions.
Poland	At all levels	In an overall, general and coherent scheme provided in legislation, for any category of crime. In the form of Mediation and Conciliation facilitated by trained mediators.
Spain	At all levels, except of police level	In fragmented provisions of legislation an incoherent practices for any category of crime, but still not officially introduced in the legal system. Mediation and Reparation Programme. RJ more formalized for juveniles. RJ facilitated by judges and professional mediators.
Turkey	At all levels, except of	In fragmented provisions of legislation

	correctional level	an incoherent practices for specific categories of crime. Reconciliation in intentional injury crimes (aggravated cases excluded) and offences with investigation and prosecution upon complaint. RJ facilitated by judges and public prosecutors.
United Kingdom	At all levels	In an overall and general scheme implemented mostly “in the shadow of the law”, but in a not unified way between the three jurisdictions of the country. Various mediation forms. RJ services by youth offending agencies, NGOs and third sector agencies, probation services, police, courts and judiciary, Ministry of Justice, Crown prosecution services, community mediation centers.

4. The key-practitioners approach on Restorative Justice

The 3E-RJ-Model projects’ national research teams conducted in-depth interviews with key-practitioners working in the field of Restorative Justice (Restorative Justice). The interviews were conducted in the period between the beginning of November to the end of December 2012⁸⁰. The questionnaire created by Aristotle University of Thessaloniki (AUTH) was translated before its use to each country’s language.

All the interviewees have some direct (practice Restorative Justice) or indirect (work in institutions/organizations that implement or are responsible to apply or refer a case to Restorative Justice) experience in the field of Restorative Justice. Efforts were made by the each national project team to find respondents from different regions of their country. The research was conducted mainly by implementing mainly face-to-face interviews and the questionnaire was sent in advance, enough time before the scheduled interview, in English. Moreover, an “Annex about Key-practitioners’ characteristics” was fulfilled separately and offered valuable information on the professional characteristics of the key-practitioners.

I. A General Approach of Restorative Justice

i. On Restorative Justice within the Criminal Justice System

⁸⁰ Interviews were not conducted in Denmark.

Main key-practitioners' opinion about the way that Restorative Justice is implemented in their countries is more or less coherent (Greece, Bulgaria, Finland, Poland and Spain) and introduced in good time in order to gain ground in criminal justice system field (Hungary). However, in one case, almost all respondents believe that the way that Restorative Justice is implemented is insufficient and do not believe that the Restorative Justice is implemented in line smoothly with the Criminal Justice system (Turkey⁸¹).

Moreover, a number of key practitioners stated that, although Restorative Justice (i) already has been tried out in pilots since several years, (ii) theoretically could be integrated easily in the existing criminal justice system, (iii) is supported by important jurists as for example the president of the Supreme Court, and (iv) got already a juridical basis in legislation, it is still not introduced and regularly practiced, but further on an experimental stage (Netherlands).

Most practitioners consider the positioning of the Restorative Justice scheme as adequate, setting out a flexible approach for implementation, as the law does not set any restriction on categories of offenses (Germany, Netherlands). Sometimes there are restrictions, especially in cases where there has been violence in the commitment of the offense (Spain).

Furthermore in key-practitioners' opinion, voluntary victim-offender mediation (VOM) is positive and effective, also with regard to the fact that it may contribute to a change in the repressive approach, characteristic of current law application, but faces difficulties due to the restricted financial conditions (Hungary).

On the other hand, some of the practitioners differ in their opinions on Restorative Justice within the Criminal Justice System due to various mentioned reasons (Poland⁸²), or it is pointed that there is a reluctance among politicians and a part of judicial society, so it cannot be claimed that Restorative Justice lines smoothly with the Criminal Justice System (Bulgaria and partly Greece). So, according to their opinion, what is needed in order to achieve the desired symbiosis is to end up the underestimation of Restorative Justice's potential and to remove the existing internal and external hindrances.

It is worth mentioning that in some countries there has been an effort to introduce Restorative Justice in the Criminal Justice System, although, according to many key – practitioners' opinion, they are still at an early stage of implementing the Restorative Justice

⁸¹ In the case of *Turkey*, the general criticisms of all respondents can be grouped under a couple headings: insufficient provisions that do not reflect the general beliefs and culture of the Turkish society, unwillingness of the court officials to encourage Restorative Justice and overload of work of the courts.

⁸² For example it was stated that, it is difficult to assess in what way Restorative Justice has been implemented in the whole country, because it depends on attitudes of particular public prosecutors and judges, while it was also noticed that Restorative Justice has been implemented in a limited scope because there are other possibilities to terminate the case quickly in the course of summary proceedings.

practices, and only few hesitant steps have been made in order to find Restorative Justice's position in the criminal justice system (Greece). As is pointed out, Restorative Justice is still in the peripheral attention of the national policy makers and far way from being a mainstream in criminal justice delivery (Bulgaria⁸³). Hence, it is implemented in a limited scope (Poland), or partially integrated into the traditional criminal justice system (United Kingdom).

Moreover, the vast majority of the key-practitioners strongly believe that Restorative Justice can help to raise the effectiveness of criminal justice, to improve and restore the relationship between victim and offender, to give power to victim's voice, to provide an alternative, adequate effective and possibly cost-effective (cost-reducing) response to crime both for the state and also for the parties involved, and, generally, to recover the broken relations in community, being a true cost effective (cost-reducing) reform (Bulgaria, Greece, Turkey, Finland, Spain and partly Netherlands and Poland).

Additionally, many key-practitioners believe that Restorative Justice contribute to the general cost-reduction of Criminal Justice System, and can also offer a positive contribution towards the reduction of recidivism (Netherlands, Greece), although this is a more complicated issue, affected by many other factors. The latter is stressed especially in the cases of domestic violence and of juvenile offenders (Greece and Netherlands), in preliminary investigation and juvenile justice (Bulgaria, Finland, Spain and Netherlands).

However, there were a number of key-practitioners who stated that they do not think that mediation is a cost-effective measure, as the costs are similar to court procedures (Germany and Netherlands). The lack of empirical research on the cost-effectiveness or cost-reducing of Restorative Justice and the related lack of knowledge, made a number of practitioners not to be sure whether Restorative Justice is a cost-effective (cost-reducing) response to crime or not (Poland).

Moreover, some respondents were less optimistic about Restorative Justice as being an alternative to the Criminal Justice system and they were rather sceptical about the cultural side of Restorative Justice saying that the society is not ready for this new procedure (Turkey).

It should be noticed that many key – practitioners recognized and emphasized the deficiencies encountered by their experience, namely lack of infrastructure, lack of skilled

⁸³ Although in *Bulgaria* does exist enabling legislation (Mediation Act 2004, Penal Code 1968, Penal Procedure Code 2005, Juvenile Delinquency Act 1958), a considerable legal vacuum remains with regard the status of Restorative Justice providers, scope of Restorative Justice application, funding, training, etc. That is why the implementation of Restorative Justice practices is still predominantly a function of the good will and the initiative of far-seeing professionals and NGO activists. It is practiced sporadically, in the frameworks of different projects and even in the "shadow of law".

staff in Restorative Justice (Greece, Spain). In one case, all the key-practitioners interviewed are familiarized with the concept of conflict resolution, but in their daily practice only mediators may apply it and, at the same time, can try to develop programs to improve the victim-offender mediation (Spain).

Moreover, regarding the impact of implementation of Restorative Justice, a number of key practitioners are not stating that mediation has effect on reforming the criminal justice system, and this is mainly due to lack of knowledge (Germany).

In this respect, it was mentioned that knowledge on Restorative Justice and especially on victim-offender mediation scheme should be part of professional training of justice practitioners in order to be more familiar with the measures and increase acceptance towards it. The insufficient number of mediators in proportion to the number of cases transferred and the limited financial resources are also mentioned (Hungary).

According to a great number of key practitioners, Restorative Justice is represented mainly by victim-offender mediation (VOM) in complainant's crimes, i.e. offences, prosecutable only in case of complaint, and restorative interventions towards juvenile delinquents (Bulgaria, Germany⁸⁴, Spain⁸⁵ and Hungary). Moreover, in the Juvenile Justice System, Restorative Justice is seen as a good way to solve some types of offenses as thefts or injuries. From police, to prosecutors, and obviously mediators, all of them consider that in these cases mediation process is always better as for the victim and the offender. They receive a more personal treatment and make them participating in the process (Spain⁸⁶).

Last but not least, the vast majority of the practitioners shared the opinion that Restorative Justice is an effective, flexible and alternative response to crime, which can help us to face more effectively the globalized penal crisis and the domination of punitive approach towards crime phenomenon, and to confront with success the threat of the rising penal populism (Bulgaria, Germany, Hungary, and Finland).

In this respect, respondents were convinced that Restorative Justice is able to give a positive impulse for renewing and improving national criminal law and therefore it was thought

⁸⁴ In *Germany*, the Criminal Code, the Code of Criminal Procedure and the Juvenile Justice Act provide for the legal framework for mediation in penal matters. Furthermore, the Law on Mediation introduced general aspects referring to the definition, procedure of mediation, etc. It is left to the practitioners to decide within that legal frame whether mediation in penal matters is appropriate or not.

⁸⁵ Nowadays in *Spain*, around 25% cases of juvenile justice end up in mediation. This usually happens with less serious offenses and it nearly always occurs prior to sentencing. In some Spanish Autonomous Community, as Aragón and País Valencià, mediation is practiced after de sentencing. The rest of Autonomous Communities don't do much juvenile mediation and the Bask Country is more specialized in adults.

⁸⁶ It is worth mentioning that *Spain* has transferred its competencies in Justice to the Autonomous Communities.

favourably of by most of them (Bulgaria, Turkey, Germany, Hungary, Finland, Greece, Netherlands and Poland).

ii. On the objectives of Restorative Justice

The majority of respondents think that Restorative Justice is beneficial in actually helping towards the community development (Bulgaria, Greece⁸⁷, Hungary, Netherlands, Poland⁸⁸ and Finland), in supporting the victims of crimes by encouraging them to express their needs and by enabling them to participate in the proceedings having a central role (Bulgaria, Greece, Germany, Netherlands, Poland, Spain and Finland) and helping them to deal with their fear (Netherlands), in helping the offenders of crime by encouraging responsibility (Bulgaria, Greece, Germany, Hungary, Netherlands, Poland and Finland) and in contributing to the reduce of recidivism (Bulgaria, Greece, Netherlands, Finland and Spain), at least in theoretical level.

However, in one case it was stressed that Restorative Justice as implemented today is seen as not helping towards the community development. In this case, all the respondents, without exception, said that community development was not improved by the introduction of Restorative Justice into system for a couple reasons (Turkey⁸⁹).

Moreover, it is explicitly stated that in cases of young offenders Restorative Justice can also help them to avoid the stigmatizing character of the process before the court (Greece, Spain, Netherlands and Hungary) and the victims are getting more insights into the reality of the how and why of what happened to them (Netherlands). However, in one case, the majority

⁸⁷ In *Greece*, in some cases of implementation of article 45A of the Greek Criminal Procedure Code, juveniles are called to pay a small amount of their own pocket money to charities and social institutions.

⁸⁸ According to *Polish* key practitioners, Restorative Justice may be beneficial for the whole society in both the economic and educational aspect. The economic dimension of Restorative Justice is connected with the shortening of criminal proceedings and reduction of costs. The educational dimension is associated with the development of a sense of community responsibility for its members and perception of offenders as persons who despite committing crimes are still members of the community.

⁸⁹ More specifically in the case of *Turkey* it was noticed by the key-practitioners that, firstly, it was so scarcely used that it has no noticeable effect upon the society's development. Although there are provisions that Restorative Justice will be implemented whenever the type of crime and the prerequisite conditions are met, if the public prosecutor does not want to implement Restorative Justice provisions, by obtaining a written declaration from the victim that he or she does not want to participate in the Restorative Justice implementations, the Restorative Justice system is by-passed. So implementation of Restorative Justice rarely contributes to the development in the society. Secondly the facilities for the implementation of Restorative Justice are inadequate. The mediators and public prosecutors are not well trained and the victims and offenders are not sufficiently informed about their rights and the operation of the system. Restorative Justice is only seen and understood as monetary compensation of the victims on one side and letting the offenders free on the other side. Almost all respondents think that the current implementation of Restorative Justice in Turkey does not contribute to the societal order or promote the tolerance among the citizens.

of the respondents pointed out that, as Restorative Justice processes have an educational character, sometimes conflicts with the rights of victims (Spain).

More to the point, Restorative Justice when compared to traditional criminal justice is focused on inclusion and not exclusion of offenders. It is also focused on healing relationships, emotional calming of victims and making amends for the harm (Poland) and on facilitating victims to express their needs (Turkey). Restorative Justice can have the same effect if it is made part of the criminal proceedings as in the Dutch pilots.

However, the majority of practitioners interviewed in one country do not think that victim-offender mediation (VOM), in the way it is implemented, can help towards community development, as the relevant case numbers are rather low and there is little or no involvement of community members (Germany⁹⁰).

In the case of recidivism, many practitioners expressed some reservations and stated that although Restorative Justice, can contribute to the reduction of recidivism, other varieties adhere and influence the future recidivism or the rehabilitation of the offender, as for example the type of the offence and characteristics of the offender, cultural dimensions etc (Greece, Netherlands, Spain and Poland).

In another case, all key practitioners clearly noticed that Restorative Justice implementation does not contribute to the reduction of recidivism and the Restorative Justice implementation is seen as a way only to improve the losses of the victims (Turkey).

Moreover, it was underlined that, although there are no exact data available, the retentive power of Restorative Justice might rather be expected in the case of first time offenders (Hungary). In this respect, Restorative Justice is generally seen as mainly applicable to first time offenders.

For better results it is stated that Restorative Justice should be further implemented in terms of more time and more training for its effective implementation (Greece). Moreover, many key-practitioners stated that it is important to have follow-up assessments to evaluate the results of Restorative Justice practice and their duration (Greece, Netherlands and Spain⁹¹).

Some of the key-practitioners do not forget to mention that there is a great gap between theory and practice that must be covered and more time⁹² for preparation of the Restorative

⁹⁰ Just a few respondents believe that Restorative Justice Schemes like victim-offender mediation have the potential to increase responsibility of community members and contribute to conflict resolution at an early stage, before criminal proceedings start.

⁹¹ According to the *Dutch* key-practitioners, in the Netherlands mediation cases are generally monitored.

⁹² In the case of *Spain*, every year a mediator takes part in an average of 100 cases and he/she has up to 3 months to end up the process, while probation services also monitor the mediation procedure.

Justice process is needed and more work with the victim in order to get ahead from his/her fear. This gap is often overcome thanks to the personal commitment of key-practitioners and the fact that professionals are really convinced of the merits of the idea of Restorative Justice. In fact, this also contributes to the success of the process.

In this respect, enough preparation for Restorative Justice procedures helps for the "maturation" of the relationships between the victim and the offender and for the restoration of their relationships (Greece).

II. Restorative Justice Frame of Implementation

i. On levels and forms of implementation

In a number of countries, all respondents agree that on police level of the Criminal Justice System, Restorative Justice is not officially applied at present, although they clearly see room for this (Bulgaria, Netherlands, Turkey and Poland).

In this respect, at police level Restorative Justice implementation is mainly unofficial, informal and empirical, and police officers function rather as "peace-makers" (Greece, Turkey), limited to information provision (Hungary) or it is not applied at all, because of the absence of the relevant legal frame (Germany⁹³).

In other cases it is stated that Restorative Justice theoretically is conceivable at every stage of the proceedings, at the police, the public prosecutor, and the court, in combination with the execution of the sentence and at the probation service. For what concerns the police level the public prosecutors generally can hand certain tasks down to the police that in these cases acts according to guidelines worked out by the Parket Generaal, the board of the highest public prosecutors (Netherlands).

It must be mentioned that in one country it is pointed that Restorative Justice is implemented quite well on both police and prosecutor level (Finland).

Moreover, in another number of countries respondents were of the opinion that on police level Restorative Justice cannot actually be implemented, as police is not competent according to the law to implement Restorative Justice processes (Greece, Spain and Germany). However Restorative Justice could be further expanded at police level, after training of the police officers. But in that case, the supervision by the Public Prosecutor is

⁹³ As it was stressed, in *Germany*, at police level, information on Victim Offender Mediation may also be provided to the parties (brochures, leaflets) by police officers, theoretically. Police is not actively involved in case referrals, as legal framework does not provide for it. However, there are information brochures on Victim Offender Mediation available. Finally, there is no information on how police informs the parties.

indispensable. It could be very useful though, if in police stations there were more officers with special training on psychology, especially for cases of juveniles (Greece).

A great number of key-practitioners pointed that Restorative Justice is mainly implemented at prosecution level (Greece, Turkey, Hungary, Spain, Netherlands and Finland), while in other cases it is mentioned that on prosecution level of the Criminal Justice System for adults, no statutory established options for restorative interventions (Bulgaria).

At prosecution level, mediation is mainly used as a diversionary measure, and especially with juveniles, implementation is considered by respondents as a good practice (Germany, Netherlands and Spain) while in other cases it is not implemented frequently by public prosecutors, mainly because they are under pressure for completing the proceedings quickly (Poland).

On court level, Restorative Justice is implemented either in an extended way (Bulgaria and Finland), often (Poland) or in a limited way (Greece, Germany and Hungary). As it comes to the last case, it is pointed by some respondents that there is still more potential at this level to apply mediation, as very few cases were referred at court level to mediation services (Germany).

On correctional level a number of key-practitioners expressed the opinion that no ground for Restorative Justice implementation exists, however Restorative Justice could be further expanded and implemented after the court decision, as mediation at this level could contribute to reduce recidivism and victims' feelings of fear (Greece, Germany, Hungary, Turkey, Poland and Finland), while in other cases there are separate pilot projects run by NGOs (Bulgaria and Netherlands).

According to many key-practitioners, Victim Offender Mediation is rather implemented in cases of domestic violence but also in financial offences and it is more difficult to be implemented in cases of interpersonal conflicts (like for example insults, threats etc.), because usually there are a lot of hate and anger between the two parties, the victim and the offender (Greece). Moreover, in one case, although debatable, the national law does not allow mediation in cases of domestic violence (Spain).

An interesting point mentioned by a number of key practitioners is that the practical implementation of mediation in cases of domestic violence, as resulted by their own experience, is rather pessimistic. It is very difficult to practice mediation in domestic violence cases, because the nature of the crime of domestic violence is often result of psychopathology and contains highly levels of violence and deep trauma for the victim, physically and emotionally (Greece and Spain).

Victim Offender Mediation (VOM) is the only form of Restorative Justice that is implemented (Greece, Spain and Poland), implemented in an experimental level (Netherlands), or the most largely used model implemented in so called complainant's crime - more precisely the cases of minor injuries (e.g. light bodily harm, insult etc.) for which criminal proceedings are instituted on the initiative of the injured party (Bulgaria). Moreover, it is especially desirable to apply mediation in case of criminal acts of negligence or "breach of peace" offences (Hungary⁹⁴).

It is pointed that it is optimal to deliver victim-offender mediation at an early stage (Germany), while in countries that Restorative Justice is pilot implemented, the plans are to start with mediation in less severe cases and in cases of juveniles (Netherlands⁹⁵). In cases of traffic offences key-practitioners expressed different opinions, as some of them think it is inappropriate to prefer traffic offences to crimes against bodily integrity and health (Hungary).

Restorative family group conferencing is applied in juvenile delinquency cases such as bullying, other forms of aggression, petty thefts etc. (Bulgaria, pilots in the Netherlands), and while in other cases it is pointed that it would be useful to introduce family group conferences, among others, in cases of domestic violence (Hungary, pilot in the Netherlands). In other cases, it was noted that conferencing is not implemented, although some mediators are working to develop a pilot program of conferencing regarding juvenile justice (Spain).

Restorative conferences are used in cases of adults sentenced to probation (usually for not serious crimes of different nature - against person, against property, misappropriation etc.) and in some cases of deprivation from liberty (Bulgaria). Furthermore, pilot project are under way concerning the applicability of peacemaking circles (Hungary).

It is worth mentioning that the vast majority of key practitioners believes and advocate that Restorative Justice is worth to be extended cautiously and after the proper changes and

⁹⁴ In *Hungary*, as a result of recent amendments, there is a possibility to apply the mediation procedure if the accused has committed another criminal act in cumulation with the one that can be referred to mediation, and the relevant criminal act is decisive in the commitment, for example, in case of a cumulative criminal act of 'breach of peace' and 'assault'. Pursuant to the Hungarian Criminal Code, one of the statutory conditions of 'breach of peace' (a separate criminal act in Hungarian criminal law) is a provocatively antisocial conduct.

⁹⁵ In the framework of the recently introduced in the *Netherlands* method called '*As quickly, intelligent, selective, simple, together, society directed as possible*' (ZSM: **Z**o **S**nel, slim, selectief, simpel, samen, samenlevingsgericht als **M**ogelijk) which meanwhile is practiced in many regions of the Netherlands, the public prosecutor together with the police, the Probation Service and Victim Aid Netherlands looks at all cases that come in. This is an important step to be able to settle the often committed offences as "quickly as possible". At the same time already at this stage there can be decided whether mediation makes sense in the respective case. Many ZSM-cases are decided immediately. If the offender does not agree with the public prosecutor's proposal the judge has to decide.

actions (law changes, appropriate training and distribution of information about the benefits of Restorative Justice) to other stages of Criminal Justice System (Bulgaria, Greece, Germany, Hungary, Netherlands, Poland, UK).

Finally, a number of key-practitioners pointed that the application of Restorative Justice outside of Criminal Justice System (schools, NGO's, community, etc.), is applied more easily and becoming more widely accepted operating as a preventive tool (Greece, Netherlands, Spain and Poland). Others proposed that, forms of Restorative Justice should be applied parallel with the traditional criminal procedure, particularly in the case of young offenders and in cases of domestic violence but even with more severe criminal acts (Hungary).

ii. On categories of crimes

The key-practitioners' opinions were not so coherent regarding the categories of crimes that Restorative Justice is implemented or should/ shouldn't implemented (Greece), while in other cases it is pointed that because of a legislative deficit in relation to Restorative Justice its application to great extent is up to discretion of practitioners (Bulgaria⁹⁶) or, in other words, it is recognised that Restorative Justice is possible and beneficial at all stages and for most crimes, subject to safe practice (UK).

In other cases in principle, no category of crime is excluded by law (Germany, Netherlands) or theoretically (Netherlands⁹⁷), although there exist guidelines on diversion in juvenile justice, which provide orientation for practitioners regarding the use of victim-offender mediation, that include suitable cases for mediation and refer especially to less and middle serious offenses, e.g. property damage and minor assault (Germany).

It is mentioned that Restorative Justice is mainly implemented in complainant's crimes and it consists a relevant instrument in petty crimes mainly (Bulgaria), on minor and medium severity offenses like assault, robbery, theft, extortion, libel, stalking (Germany and Spain) offences against the honor and freedom like insult, property offences, punishable threat, minor assault, bodily injury and traffic offences, domestic violence, forging documents and wrongfully obtaining welfare benefits (Poland), in criminal acts against property, in traffic offences, and most rarely in crimes against person (Hungary), in assaults, criminal damages to property, thefts and other smaller property crimes (Finland), on domestic violence, threats, peace disturbing, interpersonal conflicts, financial offences and offences against

⁹⁶ In *Bulgaria* the Mediation Act only stipulates that Victim Offender Mediation is applicable in cases provided for in Penal Procedure Code.

⁹⁷ However, according to the Dutch key practitioners, in the *Netherlands* the leading opinion is that one should start in practice with less severe offences.

property, crimes against property, physical injuries, bullying and insults (Greece). In one case, it was explicitly notice that terrorist acts are especially controversial, particularly when there have been legal requirements for repentance (Spain).

In another case Restorative Justice in the form of reconciliation between the victim and the offender is possible for a limited number of offences, i.e. offences where the prosecution is subject to the filing of a complaint by the victim/victims but also, besides these complaint offences, is possible to the following crimes even if they are prosecuted ex officio: felonious injury, excluding the aggravated cases, negligent injury, violation of dwelling immunity, abduction or retention of a child by one of the parents who does not have the child's custody, and, finally disclosure of information or documents that are trade secrets, banking secrets or customers' secrets (Turkey).

In prison settings restorative conferencing is used in the frameworks of pilot schemes towards deprived from liberty for almost all categories of crimes, with some exceptions - heavy cases of deliberate murders and sex-related crimes (Bulgaria).

The majority of the key practitioners expressed the opinion that Restorative Justice is not applicable to serious crimes of high social danger like the offences against the republic, the activities of government bodies, economy, sex and drugs - related crimes, murder, kidnapping, terrorism and other generally dangerous offences (Bulgaria), sexual offenses, especially against minors, homicide (Germany⁹⁸), sexual abuse (Netherlands), rape and sexual offences against a minor, sexual abuse in general (Poland) serious violent crime or sex offences (Finland), cases of homicide and sexual crimes (Greece).

Moreover, according to a number of key practitioners Restorative Justice may not be adequate in cases concerning serious offences as well as psychopathic offenders, because it might be dangerous for the victim or mediator. Finally, it is not adequate for recidivists, although it depends on the circumstances of a particular case, for cases of domestic violence if the offender still misuses alcohol and behaves aggressively or for cases with victims and offenders mentally disabled or mentally ill (Poland). In this respect, a number of key practitioners suggested a restriction not on crime categories bases, but mainly with the criminal past of the offenders: when it comes to habitual offenders or offenders with a criminal history, their point of view shifted in favour of Criminal Justice System (Turkey).

In Juvenile Justice cases where there are psychological disorders in either the victim or the offender or there intensive racist characteristics at the conflict that has led to crime, the

⁹⁸ As it said, the more serious the crime, the more difficult is the implementation of victim-offender mediation.

Restorative Justice process is usually avoided since there is not a lot of time for preparation and the Juvenile Probation Officers has very little experience on it (Greece). However a number of respondents expressed the opinion that the range of crime categories eligible for mediation / reconciliation should be extended (Hungary⁹⁹, Finland, Turkey¹⁰⁰ and Greece).

iii. On Children and Young Offenders

In a number of cases on the field of Juvenile Justice, Restorative Justice is mainly implemented at court level as victim- offender mediation (Greece, Spain and Germany¹⁰¹) and as community service but is not applicable to a large extent (Greece and Poland). It was also pointed that Restorative Justice is the most relevant instrument towards children and young offenders as it is more easily accepted and offers more effective alternatives in comparison to other formal and stigmatizing measures of Juvenile Justice System (Bulgaria), it should be implemented in juvenile cases because of possible educational effects (Poland), or, more simply, Restorative Justice can be used everywhere in juvenile justice (Netherlands¹⁰²).

However, on the basis of the statistics available, it is also concluded that in the case of young offenders, there is a relatively narrow range of cases that are referred to mediation following the commitment of a criminal act (Hungary).

In another case the common view among the key practitioners is that Restorative Justice implementation for adults and children and young offenders is the same and everyone is subject to the same rules and procedures, while they noticed the fact that Restorative Justice implementation is very insufficient and superficial and new rules should be developed especially for children and young offenders (Turkey).

A rather problematic issue that was mentioned is that in some cases, if the process of mediation is not successful, a report is composed by the Probation officer but the case is not

⁹⁹ In *Hungary* many respondents expressed the opinion that mediation may be extended to more serious crimes threatened by more severe penalties. At present, only criminal acts not punishable more severely than with 5 years' imprisonment are involved.

¹⁰⁰ In the case of *Turkey* some of the respondents' key practitioner's (judges and public prosecutors) are suggesting that the Turkish Criminal Code is restricting the implementation of Restorative Justice unnecessarily, but they say that some kind of restrictions is needed. They asserted that sex crimes, murder and homicide, intentional bodily harms, crimes against children and elderly persons should be excluded from the implementation of Restorative Justice provisions.

¹⁰¹ In the case of *Germany*, mediation for juveniles (and in general) is mainly implemented at prosecution level as diversionary measure, not at court level.

¹⁰² According to *Wolthuis*, Restorative Justice factually *is* juvenile justice; see A. Wolthuis, *Herstelrecht, een kinderrecht*, Den Haag, 2012, as mentioned by Professor Irene Sagel – Grande in the Dutch report on Restorative Justice.

referred back to the court or the fact that some times the Restorative Justice process is ordered by the Juvenile court without the consent of the juvenile offender (Greece).

Moreover it is said that lack of maturity of the offender might be an obstacle to the implementation of Restorative Justice (Poland).

On the forms of implementation, Restorative Justice within the Juvenile Justice System is implemented, as already mentioned above, the main categories of crimes for which are more adequate are: crimes against property, physical injuries, bullying and insults (Greece), in petty crimes and some anti-social acts (Bulgaria) breach of peace and criminal acts involving official documents (Hungary), minor assaults, punishable threats, minor bodily injuries (Poland), crimes against property and minor bodily harm (Turkey) or simply minor offences (Netherlands and Spain).

During the process, usually the parents are not getting involved (Greece) while during the process of restorative family grouping (Bulgaria, Netherlands) and mediation next to criminal law (Netherlands) parents are getting involved as well as social workers, psychologists, teachers etc.

Furthermore, it was stated that it would be valuable to involve parents (Turkey) or parents and social workers in certain cases in the process (Germany, Hungary, Poland, Finland and Netherlands). Social workers and psychologists do not take part at the process (Greece) while lawyers do participate very rarely to provide the legal perspective (Germany). Moreover it is pointed that in case of the criminal acts committed in the school, it would be useful if teachers participated in the mediation procedure (Hungary). If the victim or the offender is/are in attendance by a psychologist, the psychologist is contacted in order to clear the question how the mediation can fit with the attendance (Netherlands).

Restorative Justice frame for children and young offenders is adequate but it should be enforced with more institutions and infrastructures (Greece) while others insist that juvenile justice system and the relevant legislation should be improved and modernised and should allow more flexibility (Bulgaria, Turkey) and extended in all areas (Netherlands and Spain). For its best implementation the investment of money is necessary and better training (Greece, Bulgaria, Turkey and Germany).

Finally it is said that community conferences are helpful in those cases in which the social surroundings can help to solve the offender's problems (Netherlands).

iv. On victims and offenders

Most of the respondents stated that there are adequate mediation services both for juvenile and adult offenders and equal access to services is provided (Germany, Greece, Finland and

partly Poland). In another case because of great differences between regions (i.e. Autonomous Communities), some regions are highly developed while others are very poor (Spain).

On the other hand there were cases where in the case of the same country ambivalent answers have been received, i.e. half of the respondents think that equal access to Restorative Justice is guaranteed for all while the other half takes the opposite position (Bulgaria).

A large number of key practitioners agreed on the fact that in general, victims and offenders are well informed on the mediation process and the rights of victims and offenders are in principle well protected during the implementation of victim-offender mediation (Germany and Poland¹⁰³). In other cases, the existing legal frame stipulates the obligation of the proceeding authority to provide information for both victim and offender and the person concerned shall certify the fulfilment of this obligation with his/her signature (Hungary¹⁰⁴). Finally, in other cases, almost all respondents stated that the information about Restorative Justice is still insufficient (Netherlands) or expressed the opinion that the rights and safeguards of both victim and the offender may not be fully protected during the implementation of Restorative Justice (Finland).

However it was also pointed that in general, dissemination of knowledge about Restorative Justice is not sufficient and this further prevent the users from referring to Restorative Justice programs (Bulgaria).

At police and prosecution level, there are information brochures on victim-offender mediation available (Germany).

Moreover, it is mentioned that sometimes either cultural or national factors can create some imbalances, e.g. in cases of Roma or foreigners (Greece) or geographical criteria can impact to Restorative Justice limited access (Greece, Bulgaria, Poland and Finland). As it was mentioned there are counties which have not referred any cases involving young offenders to mediation for several years, because there were neither enough staff nor sufficient financial resources for the probation officer working in the relevant settlement (Hungary). In other cases, the respondents were not able to tell anything concrete concerning problematic

¹⁰³ In *Poland*, in accordance with provisions of the Code of Criminal Procedure, the injured party receives written information on mediation from the police or prosecution service no later than the first interrogation. At the same time, there are brochures and posters on mediation in the police or prosecution premises as well as TV information programs.

¹⁰⁴ Act on Criminal Procedure. The sample records of the hearing of the offender and victim/witness include the following text: „Please, be informed that pursuant to section (3), Art. 221/A. of the Act on Criminal Procedure, you may propose suspension of procedure and the referral of your case to mediation procedure if statutory conditions prevail.’

situations in connection with access to Restorative Justice due to geographic reasons while the possibility of their existence was not totally denied (Netherlands).

The impact of geographical criteria was mentioned in the case where Restorative Justice is not institutionalised yet, that is where no Restorative Justice schemes are established, and its delivery is not guaranteed by the state but is running under pilot projects (Bulgaria).

The vast majority of the key practitioners expressed the opinion that distribution of information and Restorative Justice delivery is needed. In a case all participants agreed that there is no diffusion of information; there is a lack of information and raising awareness in Restorative Justice, and lack of training and therefore unsatisfactory information to victims and offenders concerning Restorative Justice (Spain, Turkey and Greece).

As means for this it was pointed to oblige legally the competent authorities to provide information about Restorative Justice (Bulgaria), to organise public information campaigns on a broad scale (Bulgaria). As it was noticed in one case, first of all the official authorities who are responsible of implementation the relevant articles of the Code of Criminal Procedures on Restorative Justice should accept, understand and appreciate the importance of implementing them. The facilities should be improved, mediators should be informed and trained in better conditions and the social workers working in these matters in connection with the courts should be subject to stricter tests and better trained according to work requirements (Turkey).

Moreover, the majority of the respondents agree that those victims and offenders, who receive information, are dully and fully informed on the provisions of the Restorative Justice process, their rights and the possible consequences of their involvement, and they are allowed to consult or to be supported by a legal counsel (Bulgaria). It was mentioned that written information, that is for example a brochure given, this in itself does not guarantee that the parties concerned will get information (Hungary and Poland), if the person with whom the one eligible for information first gets into contact – typically, the policeman conducting the investigation but the legal representative can also be mentioned here – has insufficient knowledge him/herself, too (Hungary). That is the reason why it was suggested that it would be very important for the police and prosecution service to explain the nature of the mediation to the interested parties orally (Poland).

Moreover, there were cases where most of the practitioners answer that enough time is given to victims and offenders to decide whether they wish to take part to a Restorative Justice process (Bulgaria, Poland, Turkey and partly Finland) and the time frame is adequate

(Germany¹⁰⁵ and Hungary). However as problematic situation it was mentioned the fact that in some cases the parties do not have the opportunity to change their decision in the possession of any extra information obtained later (Hungary).

Finally, in the case of mediation next to criminal proceedings (Netherlands), the condition is that the proceedings may not be delayed in connection with the mediation.

Another aspect stated is access to victim data at public prosecution or court level. In order to protect victims' rights, the provision of data on victims is not easy to access. However, according to a respondent, access to victim data would be necessary to assess whether cases are suitable for mediation. There are no rules and directives which regulate access to such data up to now, which would however be desirable for practitioners (Germany).

Finally, it was mentioned that the lack of system of training on Restorative Justice of both criminal justice practitioners and Restorative Justice providers could endanger the rights of the participants (Bulgaria and Greece) and as means to confront this problematic situation it was mentioned the introduce of Restorative Justice in the university curricula and the establishment of a system of continuing education (Bulgaria), the training for mediators more focused on juvenile law (Germany). It is a key issue to form the approach of the general public and make criminal justice experts, i.e. policemen, prosecutors, judges and legal representatives more receptive especially by organising quality programmes of further training (Hungary).

v. On Restorative Justice Process and Services

In some cases, all participants answered that the mentioned principles (i.e. sufficient evidence, agreement without being forced, voluntary participation, the right to withdraw approval) do not receive satisfactory implementation (Greece). In other cases, it is mentioned that the universally accepted principles of Restorative Justice like voluntary participation, informed consent etc., are fully observed in the frameworks of the existing Restorative Justice schemes (Bulgaria, Hungary, Netherlands, Poland, Spain and Finland).

In another case the respondents' answers are evenly divided. Half of them said that equal access to Restorative Justice could not be achieved because of geographical reasons and for the other half of the respondents there is no problem in this respect. They said that the laws

¹⁰⁵ In *Germany* usually, parties can decide within three months if they want to participate, sometimes the period is limited to six weeks. When the period to decide for victim-offender mediation is too short, mediators ask for extension of time which is granted without problems. There is also enough time to consult with the lawyer. Moreover, usually, investigation proceedings take two or three months and afterwards mediators are allowed to contact victim and offender.

are not restricting anyone to implement Restorative Justice. Although the laws are supposed to be applied equally to everybody, there are restrictions arising from the geographical reasons (Turkey¹⁰⁶). Finally, all the key-practitioners in one case noticed that equal access to Restorative Justice could not be achieved because of geographical reasons (Spain).

Respondents emphasized that key practitioners ensure that the parties are willing to participate in mediation and do not put pressure on the parties and when referring a case, practitioners assure voluntary participation in the process while both victim and offenders can withdraw their consent at any time, bearing their right to consult with their lawyer (Germany, Netherlands).

Social and cultural issues are taken into consideration (Germany, Hungary, Greece, Bulgaria, Finland, Turkey and Netherlands), although it was said that allochthones are less often referred to Restorative Justice than autochthones (Netherlands and Finland). In other cases cultural or other factors generally are not taken into account by referring a case to a Restorative Justice process (Poland).

The training, clear objectives and guarantee of the principles of Restorative Justice, information and awareness of the parties involved, a good mediation process, a capable facilitator reported as key factors in the successful implementation of Restorative Justice (Greece), plus the good atmosphere sufficient calmness and time (Netherlands¹⁰⁷). According to others the most critical factors from the aspect of the successful operation of Restorative Justice is the provision of a suitable system of means, the provision of thorough and substantial information and the formation of the appropriate approach in the case of both citizens and criminal justice experts (Hungary).

Professionalism, voluntariness, confidentiality and transparent operating were also mentioned as the most crucial conditions for a successful mediation (Netherlands and Spain). In another case it was mentioned that among the most crucial points for a successful mediation the following were listed by the respondents the good interpersonal communication skills and qualifications of the mediator as well as his/her competencies and engagement, both parties openness, the parties willingness or motivation to make an

¹⁰⁶ We should notice that *Turkey* geographically is a big country in terms of European standards. More than half of the population lives in rural areas. During the winter months some part of the country is cut off from the rest due to heavy weather conditions. It is not enough to have a couple articles in the Code of Criminal Procedure to have Restorative Justice be implemented in the whole country. In some regions they don't have enough judges for the courts. That everyone has equal access to Restorative Justice in the law is not a realistic picture of the present situation.

¹⁰⁷ As one of the *Dutch* key practitioner nicely put it "*the most important point for a successful ending of Restorative Justice is creating a good atmosphere, a pleasant room, sufficient chairs, coffee, tea and biscuits (that is very Dutch!)*" (as it was mentioned in the Dutch report on Restorative Justice conducted by Professor Irene Sagel – Grande).

agreement, proper preparation of the parties to mediation, comprehensive information on mediation given to the parties, the neutrality of the mediator, proper organization and conducting of the mediation (Poland).

In addition, in some cases all responses of the participants agreed to monitoring and evaluating the effects of Restorative Justice (Greece, Bulgaria, Germany, Hungary, Turkey and Netherlands). Evaluation of the outcomes of mediation is considered by most respondents to be important and communication of the positive results of victim-offender mediation was considered to be a crucial point for a Restorative Justice process to achieve its objectives (Germany) as it is important to get always feed-back (Netherlands and Spain).

In another case, as far as the supervision and assessment of the outcomes arising out of a Restorative Justice process are concerned, different opinions were expressed: others expressed the opinion that supervision and assessment are necessary and others not (Poland). However the assessment of Restorative Justice process and outcomes is a problematic issue so the relevant frame of assessment and supervision should be revised (Greece).

In most of the cases all key-practitioners agreed that there are not sufficient programs and seminars on Restorative Justice, nor is there a sufficient number of trained personnel in the services, nor sufficient Restorative Justice services (Greece, Turkey and Bulgaria), neither even sufficient cooperation and networking between private, public and third sector Restorative Justice services (Greece) being a target to be achieved (Bulgaria and partly Spain).

On the other hand, in other cases, practitioners deem there are adequate seminars on victim-offender mediation and the number of trained staff in mediation services is adequate (Germany and Poland), although there is space for more (Netherlands).

In some cases most practitioners suppose that mediators should be professionals and not trained citizens (Germany). In other words, they really should be specially educated mediators in view of the difficulties of the tasks of mediation (Netherlands). Also it was emphasized disregarding qualifications, not every person has the personality to be able to work as a successful mediator and it is considered necessary to obtain suitable experience for example, under a mentor's supervision, prior to starting to work independently (Hungary¹⁰⁸).

However it was also stated that mediators can be both professionals and trained voluntary citizens (Finland), while in another case, some of the respondents suggested that the

¹⁰⁸ As it was said by a *Hungarian* key practitioner: 'Anybody may become a good mediator, if he/she has the training. It is not sure that higher education qualifications are necessary, a person may simply be selected from a community, and he/she will fulfil this duty.'

mediators should be trained among the law graduates and should be under the auspices of a government office. A separate body of officials should be created, with special rules for promotions, but everything should be under the control of the state (Turkey).

In other cases, in the opinion of the respondents mediator has not to be a profession; it is sufficient for mediator to have a good training and some personal characteristics (Poland). Regarding cooperation between public and private services, in some cases most respondents agreed that cooperation is good (Germany, Hungary, Poland and Finland) while other cases it was said that between the private, public and civil society sector the cooperation is good on the field of community service, but there is not any other cooperation on the field of mediation (Greece).

Finally, in other cases the opinion shared was that although there is not detailed information on this topic, that there is in any case not enough cooperation (Netherlands).

III. On Restorative Justice Obstacles and Good Practices

Mainly the factors identified as obstacles for the further the diffusion and implementation of Restorative Justice were reported the lack of human and financial resources (Greece, Turkey and Poland), lack of public awareness (Greece, Hungary, Netherlands and Finland), lack of training of experts, the lack of awareness of relevant services (police, prosecutors, judges, etc.) in order to promote Restorative Justice, gaps in the legislative framework, the lack of cooperation of legislators with experts and other professionals in designing the legislative framework and the lack of infrastructure (Greece and Spain).

Apart from legislative factors it was also mentioned the limited local experience and almost an absence of active community involvement, e.g. involvement of neighbourhoods, the insufficiency in human and financial resources (Bulgaria, Turkey, Poland and Finland), the lack of public awareness and of social acceptance towards Restorative Justice (Bulgaria, Spain, Germany, Hungary, Netherlands and Poland), the lasting problem with the efficient cooperation between the public and the private sector and the total lack of communication between NGO's and state authorities, according to the participating mediator and the fact that even nowadays a part of police officers, prosecutors and judges remain sceptical towards Restorative Justice (Bulgaria, Netherlands and Poland). It was also mentioned the statutory provisions which do not regulate clearly the effects of successful mediation for the criminal proceedings (Poland).

It is also interesting that, in some cases, as factors were identified and pointed the rising populism, the mainstream overemphasizing of harder sanctions (Netherlands), and the commonly shared opinion that only severe penalties imposed by courts are effective reactions to crimes (Poland). As it was mentioned by all the key-practioners in one case, this is one of the reasons that Restorative Justice has not been reached to implement in the adult criminal system (Spain).

However, in other cases all respondents assume that the legal framework is not restraining and provides flexibility (Germany), while in terms of active community involvement, most key practitioners from the same group, do not think that involvement of community members is necessary (Germany).

The lack of human and financial resources (Greece, Turkey, Spain, Netherlands, Poland and partly Germany), lack of public awareness (Greece and Finland), lack of training of experts, the lack of awareness of relevant services, i.e. police, prosecutors, judges, etc. (Greece, Hungary, Turkey, Poland and Netherlands) in order to promote Restorative Justice, gaps in the legislative framework, were also mentioned as obstacles and factors that negatively affect the key-practitioners in the implementation of Restorative Justice (Greece).

The low number of mediators, the lack of involvement of the local community, the low number of cases referred to mediation and the statutory provisions which provide too restrictive premises of conditional dismissal of the case, were also mentioned (Poland).

In some cases participants agreed that there is insufficient networking among professionals to exchange information and good practices on Restorative Justice (Greece and partly Germany¹⁰⁹ and Netherlands). In other cases it was mentioned the absence of modern penal policy considering Restorative Justice as an immanent part of Criminal Justice System and the lack of adequate legislation, the missing funds for the purposes of Restorative Justice promotion and developments, the absence of a referral system and the lack of appropriate training of Restorative Justice and Criminal Justice staff (Bulgaria).

As most important components for Restorative Justice good practices in their experience, the key practitioners indicate the enthusiasm and dedication of Restorative Justice providers and some Criminal Justice professionals to the cause of Restorative Justice (Spain, Bulgaria and United Kingdom), maintaining relations and giving restoration a chance, zooming in at solutions and strengthening what already works well and developing networks (Netherlands), and increasing of the knowledge about victims and offenders right (Finland).

¹⁰⁹ More specifically, in the case of *Germany*, exchange between mediation professionals is good and regularly organized, but a number of key practitioners stated that exchange between mediators and judicial practitioners could be improved.

Moreover, the significance of respecting the standards and principles of Restorative Justice while applying it was pointed out. At the same time, practitioners stressed the need to respect the flexible nature and community led ethos of Restorative Justice (United Kingdom). A number of practitioners felt that more contact with schools in the field of conflict prevention/resolution would be of advance while nationwide campaigns and other forms of publicity on victim-offender mediation could further contribute to the promotion and increased acceptance of this Restorative Justice scheme (Germany).

Moreover as good practices were mentioned the publication of a quarterly magazine, the creation of a Centre of Mediation website, as well as workshops on mediation (Poland), regularly organized meetings with police authorities, prosecutor and mediators (Finland).

Finally, key practitioners stressed the need for more free education on Restorative Justice and the dissemination of material at international levels, being against setting up registers of practitioners (United Kingdom).

5. The obstacles and the potential of Restorative Justice in the participant countries

The experts-researchers from the eleven European countries that have participated to the project have indicated the most important obstacles for the further diffusion of Restorative Justice in their countries. According to all methodological means used in the project, there have been recognized two main categories of obstacles: 1) the technical, organizational or/and operational obstacles on the one hand, and 2) ideological and conceptual obstacles, on the other.

Without any doubt, there are some notable regional differences between the countries concerning the framing of these obstacles, differences especially between those countries that have been implementing Restorative Justice since many years though an overall and general scheme and those how have only introduced Restorative Justice through a fragmented approach into their Criminal Justice System though an incoherent and rather reluctant way. However, the research has showed that problems and obstacles of a similar nature are faced all over Europe, and that only the have been differentiated to the degree and the extension. A general analysis of these problems based on the reports and the evaluation tool used by the participants during the project, is presented below.

I. Technical, organizational or/and operational obstacles

The obstacles of the first category that have been recognized by the participants can be summarized under the headings below:

a) *The lack of legislation and the limits of legislation:* Even if Restorative Justice has often been developed in a bottom-up way, usually starting in an informal or semi-formal way of dealing with conflicts in a society by using practices, habits and social unwritten rules, legal regulation is still of great importance, as it is necessary for the management of criminal offences, especially in order to assure the legal protection and the safeguards of the persons involved, the offender and the victim, especially taking into account that Restorative Justice unavoidably contains punitive aspects¹¹⁰.

As it was already mentioned above, the majority of the jurisdictions of the participant counties are based on "the principle of legality" according to which the CJ authorities have little discretion on whether or how they shall proceed with criminal cases brought before them¹¹¹. In consequence, Restorative Justice should be mainstreamed through the Criminal Justice System and the CJ procedures must be strictly regulated by the law, otherwise the authorities shall have a very narrow possibility to implement a Restorative Justice alternative solution¹¹². Towards this direction, legislative regulation is necessary for a broader and more systematic diffusion and implementation of Restorative Justice, while it is absolutely needed in order to provide procedures of judicial control of the actual process and assure the fundamental CJ principles, the rights and the safeguards of the parties involved.

Additionally, many of the participant countries, especially those who have recently started to implement Restorative Justice in a fragmented and incoherent way, are facing difficulties because of the general lack of trust of CJ practitioners to the informal, alternative and community-based responses to crime offered by Restorative Justice approach. The impact of legislation to the legitimacy of Restorative Justice could in this case be very important, since a legal frame could work as a very effective instrument for the further implementation of Restorative Justice, providing the necessary proceedings, measures and institutions, through a top-down development.

¹¹⁰ See Daly, K. (2000), "Revising the Relationship between Retributive and Restorative Justice" in H. Strand & J. Braithwaite (Eds.) *Restorative Justice: Philosophy to Practice*. Dartmouth, UK: Ashgate, p. 34. Duff, A. (2002) *Restorative Punishment and Punitive Restoration* in L. Walgrave (Ed.), *Restorative Justice and the Law*, Devon, UK: Willan Publishing, p. 97.

¹¹¹ See Aertsen et al. (2004), *Rebuilding community connections – mediation and Restorative Justice in Europe*. Strasbourg, Council of Europe, 2004, p. 46

¹¹² See Masters, G. (2010), What happens when Restorative Justice is encouraged, enabled and/or guided by legislation, in H.Zehr & B. Toews (Eds), *Critical Issues in Restorative Justice*, Boulder -London: Lynne Rienner Publishers, p. 227

Countries with an incoherent and fragmented legislation on Restorative Justice have to face the huge challenge of implementing Restorative Justice through pilot projects, vulnerable to funding cuts¹¹³, without the legitimising role of legislation. It is quite characteristic that the experts from Greece, Bulgaria and Turkey (countries that are rather in an initial stage of Restorative Justice implementation in compare to the rest of the countries) have characterized the lack of relevant legislation as a very important obstacle for the implementation and the further diffusion of Restorative Justice. Towards the same direction, though, even more experienced countries, as Hungary and Poland, have agreed to this. Additionally, also in United Kingdom, which has managed to unfold an extended Restorative Justice scheme in the shadow of the law (since its jurisdiction is not based on the principle of legality), legislation yet is recognised as a quite necessary instrument towards this direction. On other hand, countries that had managed to implement Restorative Justice in practice since many-many years and afterwards they included it in their legislation, as for example Germany and Finland, do not record the lack of legislation as an obstacle any more.

It also worth mentioning that unfinished CJ reforms have been recorded as an obstacle for the further Restorative Justice implementation, again for many of the countries, as for example for Germany, Hungary, Greece, Denmark, United Kingdom, Turkey and Bulgaria. Equal important has been also for many of them (e.g. Greece, Bulgaria, Turkey, Denmark but even Poland and United Kingdom) the lack of regulations and relevant directions concerning of the actual process as a legal framework for the practical implementation of Restorative Justice procedures. More detailed and clear procedural regulations are necessary for the designing and the implementation of more effective procedures that allow cases to be actually referred to Restorative Justice process. The insufficient referral system was recorded ad a serious problem for Greece, Bulgaria, United Kingdom and Turkey, and also for Poland. On the contraries, three of the countries that has a quite extended implementation of Restorative Justice over the last years, namely Hungary, Germany and Finland, are based in a sufficient referral system that is proved very effective. As came up from the research, for all of the countries, it is important that Restorative Justice should be based on a very well organized and effective referral system and a very good preparation of the actual (main) process. All of them also agreed that Restorative Justice shall emphasize to the early stage of CJ procedure and that the Restorative Justice system shall allow both to the victim and the offender the initiative of starting the Restorative Justice process.

¹¹³ See Marshall, T., Merry, S. (1990), *Crime and Accountability*, London: Home Office, Umbreit, M. Roberts, A. (1996), *Mediation of Criminal Conflict in England & Wales. An Assessment of Services in Coventry & Leeds*. St Pauls, MN: University of Minnesota, Center for Restorative Justice and Mediation.

For the majority of the countries that have used the assessment tool, namely Hungary, Bulgaria, Greece, United Kingdom, Turkey and also rather for Poland and Germany, it is recorded as very important for the further and more effective implementation of Restorative Justice to be based on a common European perception. Also, according to the assessment of Greece, Hungary, Turkey, and also of Bulgaria, Poland, United Kingdom and Finland, it is very important Restorative Justice to be based on detailed legal schemes provided by legislation.

On the other hand, even if legislation seems to be considered by the majority of the participants as a crucial factor for the further implementation of Restorative Justice, there are specific risks concerning this issue: the risk on legalising practices that are implemented in an informal way; the risk of losing its initial innovation based on the flexibility and creativity of practice¹¹⁴. In other words, it is very crucial to manage the integration of Restorative Justice within the CJ law system without just degrading it to another routine measure in the retributive and managerial frame of this system. That is why the majority of the countries (Greece, Finland, United Kingdom and Bulgaria very much, and also Poland, Germany and Turkey) has agreed that it is very important that Restorative Justice shall be flexible in implementation, even if there are relevant legal provision, so that the legislation shall not make Restorative Justice process to lose the personalised and spontaneous characteristics.

b. The insufficiency of the resources and the institutions

Human and financial resources are very crucial for the implementation and the further diffusion of Restorative Justice in all the participant counties. For the majority of the countries that have used the assessment tool, namely for Greece, Bulgaria, United Kingdom, Turkey, Finland, as well as for Hungary, the insufficiency of human resources constitute an actual obstacle for the Restorative Justice further diffusion. Accordingly, insufficient financial resources is an obstacle for Restorative Justice in Greece, Bulgaria, United Kingdom, Turkey, Finland, Hungary and Germany.

On the other hand, other organizational issues was recorded as difficulties during the research. It is characteristic that for the countries where Restorative Justice is implemented in a quite limited and fragmented way (namely for Greece, Bulgaria, Denmark and Turkey), the lack of specialized institutions consists a serious problem. Additionally, the limited local experience was assessed as an obstacle for Restorative Justice diffusion for the majority of

¹¹⁴ See Bazemore, G. (2000), Why we need Restorative Justice Conferencing: A Discussion Paper. Fort Lauderdale, FL: Florida Atlantic University.

the participant countries (very much in Greece, Poland and Turkey, as well as in Hungary, Denmark, Bulgaria and Finland). The lack of coordination between CJ and social services/agencies seems to affect very much Restorative Justice in Greece and Turkey, and also in Bulgaria, Poland, United Kingdom and Finland. Low level of civil activism (such as lack of adequate number of NGOs, and other relevant initiatives) consist of an obstacle for Bulgaria, Greece, Hungary and Finland. For many of the countries (Greece, Bulgaria, Hungary, Poland, Turkey, Finland and Denmark), it is important to expand more the Restorative Justice process towards the social services; Also the majority of the participants assessed that is very important to emphasise to the creation of mediation centres and other Restorative Justice agencies/services all over the country; and that the Restorative Justice implementation and diffusion must be supported by a central advisory committee for the better coordination and the promotion of Restorative Justice. Also they have agreed that the support of a central database for gathering all data on relevant programs and initiatives, relevant literature, empirical research and statistics would be important. For many of them, it is also important to promote national Restorative Justice programmes with the wide cooperation of CJ and social services, academics and NGOs. Additionally, all the participants have agreed that it is important to promote local Restorative Justice programmes with the cooperation of local community.

Greece, Finland, Bulgaria, Denmark, Turkey and United Kingdom seem to have a difficulty on the Restorative Justice further diffusion and implementation concerning the lack of training to the personnel of the services involved. This is not an problem for Poland, Hungary and not at all for Germany. Restorative Justice actual processes requires a wide range of personal skills, and a deep understanding of not only of Restorative Justice philosophy but also of the Criminal Justice System aspects. The recruitment and training of mediators/facilitators is a critical issue for all the participant countries for the efficient implementation of Restorative Justice.

The participants have emphasised the need for the establishment of specific criteria for training practitioners, and of educational and ethical standards. All of them assessed the high professional standards, the ethics and accreditation as very important factors for Restorative Justice better and more effective implementation.

II. Ideological and conceptual obstacles

The obstacles of the second category that have been recognized by the participants can be summarized under the headings below:

a. Scepticism on behalf of CJ practitioners

Scepticism and concern on behalf of CJ practitioners may consist a very serious obstacle concerning the further implementation of Restorative Justice in the participant countries. Scepticism on behalf of police towards the Restorative Justice procedures is assessed as an obstacle in most of the countries (Bulgaria, Greece, Denmark, Poland, Hungary, United Kingdom and Turkey). Accordingly, scepticism on behalf of the prosecutors is a also an obstacle for Greece, Bulgaria, and also for Poland, Denmark, United Kingdom. Scepticism on behalf of the judges is less a problematic as it is recorded only in four countries (Bulgaria, United Kingdom, Greece and Poland). On the other hand, the hesitance of the lawyers and bar associations is an ideological obstacle very much in Greece and United Kingdom; also in Poland, Bulgaria, Denmark and Turkey, but is not a problem for countries where Restorative Justice is more integrated such as Germany, Hungary and Finland.

Scepticism on behalf of the CJ practitioners concerning the implementation of Restorative Justice could stand upon the doubt that Restorative Justice might be considered 'unjust' or "unequal" for the criminal cases and the persons involves, or that it does not give priority to the assumption of innocence or to the principles of equality or proportionality. By including adequate safeguards into Restorative Justice practices and laws and by keeping Restorative Justice process in close relation to the Criminal Justice System, as it should be available at any stages of the procedure for the parties involved to go back to the traditional procedure and withdraw from the Restorative Justice one – as it is recorded for the vast majority of the participant countries, this kind of scepticism or concerns may be surpassed. For the majority of the participant countries which are based on continental legal system, the "principle of legality", the assumption of innocence and the assurance of legal safeguards are strongly emphasised. Within this frame, all the participant countries have agreed that for the better and more effective implementation of Restorative Justice, it must be assured that the offender will not to be coerced on Restorative Justice procedures, that the Restorative Justice should be based on the principle of empowerment of the victim, the principle of confidentiality, and also that any Restorative Justice process should fully respect the rights of the offender and the presumption of innocence.

On the other hand, by providing training to the key-practitioners of Criminal Justice System, this could help considerably towards the further diffusion of Restorative Justice. If professional who make important decisions about the handling of individual cases gain a basic knowledge of Restorative Justice and its principles, its efficiency and its implementation can be increased considerably.

b. The lack of public awareness and the limits of social acceptance

It is rather difficult to assess the perception of general public on Restorative Justice potential. The attitude of the public towards Restorative Justice is usually connected to the general attitude towards punitiveness which is a quite is ambiguous issue. Sometimes the general public's perception about Criminal Justice System' leniency is inconsistent with the actual practice of sentencing. The perception of high crime rates might easily result in a punitive attitude and a public demand for more severe sentencing through a traditional CJ process and sentence. Additionally, the acceptance and efficacy of Restorative Justice is difficult, due to the lack of awareness about shared values of Restorative Justice.

Most of the participants (from Poland, Hungary, Greece, Bulgaria, Turkey, Germany and United Kingdom) have agreed that the lack of public awareness is a crucial issue for Restorative Justice further diffusion. Accordingly, lack of social acceptance and confidence on Restorative Justice and the public demand for more severe sentencing is other ideological obstacle that must be surpassed for many of the participant countries, except from Germany, Turkey and Finland. Though, establishing effective communication strategies for the public could help towards the opposite direction.

C. RECOMMENDATIONS AND PROPOSALS

Based on the methodological tools used for the research and the dialogue between the participants during the meeting of the project a number of recommendations has been formulated, relating to the actual legal and actual situation of Restorative Justice at the participant countries, the obstacles and the perspectives presented by them by identifying concrete recommendations in a model and a proposal for a potential Direction. This recommendations have been an effort to respect the existing difference of the participant countries and compromise the distances between them.

1. The 3E-RJ-MODEL

The proposed 3E-RJ Model for a coherent Strategy of Restorative Justice in European Union has the following content:

I. Strategy Suggestions

Taking into account the existing international instruments of United Nations, Council of Europe and European Union in respect with Restorative Justice, the mediation and the rights of the victims in criminal proceedings.

Specifically taking into account the:

(United Nations)

- Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power (1985);
- Handbook on Justice for Victims (1999) on the use and application of the Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power;
- Resolution on Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice (1999);
- Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century segmented of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (2000);
- Resolution on Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (2000);
- ECOSOC Resolution 2002/12 on Basic Principles on the use of Restorative Justice programmes in criminal matters, adopted on 24 July 2002;
- Declaration of the Eleventh United Nations Congress on the Prevention of Crime and Treatment of Offenders (2005);
- Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law (2005);
- Handbook on Restorative Justice Programmes - United Nations Office on Drugs and Crime (2006) and
- Draft Convention on Justice and Support for Victims of Crime and Abuse of Power (2010).

(Council of Europe)

- Recommendation (87) 21 on assistance to victims and the prevention of victimization (1987);
- Recommendation (96) 8 on crime policy in Europe in a time of change (1996);
- Recommendation (99) 19 on mediation in penal matters (1999);
- Recommendation (2003)21 of the Committee of Ministers to member states concerning partnership in crime prevention (2003);
- Resolution No 2 on The Social Mission of the Criminal Justice System - Restorative Justice, adopted on the 26th Conference of European Ministers of Justice (2005);
- Recommendation (2006)8 on assistance to crime victims (2006);

- European Commission for the Efficiency of Justice (CEPEJ), Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters, CEPEJ (2007)13, 7 December 2007;
- Recommendation CM/Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules (2010).
(European Union)
- Vienna Action Plan, in which is included an implicit link to Restorative Justice (1998);
- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA);
- Council Decision of 28 May 2001 on setting up a European Crime Prevention Network (2001/427/JHA);
- Report from the Commission of 3 March 2004 on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings;
- Report from the Commission of 20 April 2009 pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings [COM\(2009\) 166](#);
- Green paper on the approximation, mutual recognition and enforcement of criminal sanctions (2004);
- Opinion of the European Economic and Social Committee on the prevention of juvenile delinquency 'Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union' (2006), and
 - the Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime (2012).

Noting the team work of all partners of the "3E-RJ-Model" project, in particular the national reports, the use of the record and assessment evaluation tool of the project and all comments and recommendations during the group's meetings;

Taking note that there are considerable differences between the participant countries in the way that Restorative Justice has been developed, as it has come across with several obstacles, such as: lack of relevant legislation concerning the Restorative Justice within the Criminal Justice System; lack of common definitions; lack of detailed regulation and relevant directions concerning the process; limited local experience and absence of active community involvement; absence of active community involvement; insufficiency of human and financial resources; poor evaluation and follow-up strategies; lack of public awareness; lack of

cooperation of public and private sector; lack of the social acceptance and confidence on Restorative Justice, and scepticism on behalf of the police, prosecutors and courts.

In order to surpass the obstacles and promote further the Restorative Justice on a common European basis, strategy suggestions are proposed, according to the three following components:

(A) Adoption of a Common European Frame: The European Union should introduce legislation concerning the relation of Restorative Justice to criminal law and as far as it matters the place of Restorative Justice within the Criminal Justice System of the Member States. In particular key-aspects of the Restorative Justice procedures, as well as definitions, common training standards and code of ethics for the participant involved should be introduced, so that a *common European perception* could be formatted. Within this frame, it is important to draw on some European basic principles in the development and operation of Restorative Justice legislation and programmes which will be disseminated among countries that took part to the "3E-RJ-Model" project and also other states of the European Union, the institutes of Criminal Justice Systems of the states and other public or private organizations;

(B) Knowledge exchange and vertical-horizontal diffusion of Restorative Justice: Member States that have adopted and implemented any Restorative Justice measures, programmes and practices should exchange knowledge, information and good practices concerning the development of research, the training of personnel and the further implementation of Restorative Justice; Member States that have adopted and implemented further and advanced Restorative Justice procedures should provide support to other countries upon request.

The diffusion of Restorative Justice should be both *vertical* and *horizontal*: Member States that have developed widely Restorative Justice – upon adequate legislation - on a specific stage, e.g. pre-charge stage, or based on a specific Restorative Justice form, e.g. mediation, should be encouraged to expand Restorative Justice perspective to other stages of Criminal Justice System and other forms of implementation (*vertical diffusion*); in parallel, they are encouraged to expand the existing Restorative Justice implementation to a broader number of cases that are available for referring to the already existing procedures (*horizontal diffusion*).

(C) Human-rights orientation and effectiveness balance: The implementation of Restorative Justice should be oriented towards respect of human dignity, human rights and needs of all the persons involved within a restorative frame; it should build upon mutual understanding within community; it should also try to respond to crime by promoting human relationships and reparation and by rejecting any superficial and managerial approach of this social phenomenon; it should include a range of procedures that will be flexible in their adaptation to the existing Criminal Justice Systems and that will either be alternatives or complements to the traditional procedures, taking into consideration each countries' legal and social frame.

Additionally, Restorative Justice *as an alternative process* to the traditional one especially at the early stages of Criminal Justice System should be encouraged further, as it may provide *a cost-effective response* to crime and an *economical valuable form of alternative conflict resolution*, not only for the state but also for the parties involved.

II. Definitions

"Restorative Justice process" is any measure, procedure, programme, practice and initiative which aims to resolve the conflict between an offender of a crime and the victim by restoring the harm done and/or the relationship disturbed, within a voluntary and organized process – which can replace or complete the traditional Criminal Justice or Juvenile Justice one – being based upon the interaction of the affected parties (the offender, the victim and where appropriate, members of the community), and upon the understanding and the dialogue between them, generally with the help of an impartial third party/person that delivers, manages or/and facilitates the process.

Restorative Justice may include indicatively one or more of the following forms through which the actual process is delivered and managed: victim- offender mediation, community boards/conferencing, restorative family group conferencing, restorative conferences.

Restorative Justice may include, as part or as a result/outcome of the actual process, indicatively one or more of the following types: a dialogue between the victim and the offender, an agreement between them, a written apology, a community punishment/community service, reparation/restitution, making of commitments, the completion of an education or other programme.

Reparation/restitution, probation and community service are not being included solely in the definition of Restorative Justice, unless they are part or result/outcome of the Restorative Justice actual process.

“Victim-offender mediation” means the Restorative Justice process within which the affected parties use the services of a trained facilitator/mediator who meets with them in an attempt to resolve their conflict.

“Restorative family group conferencing” means the Restorative Justice process that includes a wider circle of participants than mediation, by including also other persons connected to the affected parties, such as family members or friends.

“Restorative conferences” means the former conferences whereby the facilitators gather all the parties involved to the crimes and seek to resolve issues and come to an agreement on a reasonable outcome upon a specific script.

“Community boards/conferencing” includes a small group of people, with intensive training, that conducts public meetings with the affected parties, in order to discuss the impact of crime, usually until a unanimous agreement is reached on specific actions for the offender to take.

“Reparation/restitution” is the financial amount paid by the offender to compensate, even partly, the injury, loss or harm suffered by the victim as a result of crime.

III. Basic Principles¹¹⁵ and Fundamental Safeguards of Restorative Justice

(1) Restorative Justice process should be implemented at any stage of the Criminal Justice System, either at police, prosecution, court or correctional level, either by replacing or completing the traditional procedures of each level.

(2) Restorative Justice process should be used only when the offender with his/her own consent agrees to be referred to such a process and he/she is not coerced to it; the victim is voluntary participating to the process; neither the offender nor the victim should be coerced to accept an outcome coming up from the Restorative Justice process.

(3) Both the victim and the offender should be fully informed on the provisions of the process, the principles, their rights and the possible consequences, being allowed to consult or be supported by a legal counsel.

¹¹⁵ For Restorative Justice principles see indicatively Braithwaite, J. (2003), “Principles of Restorative Justice” in A. von Hirsh et al. (Eds.) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* Oxford: Hart.

(4) In cases involving children (as defined by international law) and young people below the age of majority, their parents, or those adults who are legally responsible for them should be involved in the process. Other relevant adults, including social workers and psychologists may also be involved, in accordance with the needs and best interests of the child or young person.

(5) The acknowledgement of responsibility and the voluntary participation of the offender in a Restorative Justice process should not be considered as an admission of guilt for the purposes of the traditional Criminal Justice process.

(6) Social and cultural particularities and specific needs of the participants should be taken into account when a case is referred to Restorative Justice process; where necessary, translation and/or interpretation must be provided.

(7) Personal data used during the actual process, if it is not public, should be confidential and not to be used as evidence, if the case is referred back to the traditional process, unless parties consent on it or the use is made in accordance to exceptions provided by the international human rights legislation and national law.

(8) In case that a Restorative Justice process does not come up with a positive outcome, the case should be referred immediately back to the competent authorities without affecting the status of the participants within the Criminal Justice System.

(9) The victim should be able to withdraw at any stage of the process, without this affecting his/her status within the Criminal Justice System. The offender should be able to withdraw at any stages of the process without this affecting his/her status within the Criminal Justice System, as long as the reasons for his/her withdrawing are justified according to the competent authorities judgement.

(10) Involvement in a Restorative Justice process should not restrict any of the human rights or the procedural safeguards of the victim or the offender that are provided in national legislation or/and international law.

IV. Strategy Guidelines

1. National Legislation

Member States should enable Restorative Justice application on national level; in their legislation, they should set out the basic principles for the implementation of Restorative Justice, the basic procedural safeguards for the offender and the victim, the legal standards and terms for the referral of cases to Restorative Justice, the structure and the administration of the Restorative Justice process and the adequate description of the

Restorative Justice actual process; national standards on the qualifications and training of the personnel involved should also be provided.

Member States should establish general guidelines and standards for the implementation of Restorative Justice processes; detailed regulations and directions for the actual Restorative Justice processes could be available.

2. The Referral System and the Quality of the Actual Process

Restorative Justice should apply to all categories of crimes, especially when Restorative Justice processes are used as complements of the traditional Criminal Justice ones.

Even if special categories of serious crimes (e.g. organized crimes, drug-related crimes, terrorism) may be avoided from *alternative Restorative Justice processes*, they should not be excluded *in abstracto*, especially when Restorative Justice processes for them are used as *complement* to the traditional procedures.

Specific provisions for special categories of crimes and special groups of victims may be included in the national legislation of the countries.

Specific provisions for juveniles and young offenders should be encouraged. Member States should integrate Restorative Justice process *mainly as alternatives* to prosecution, even with no restrictions concerning the severity of crime, assessing the age of the juvenile and other relevant conditions (e.g. social or family environment, cultural background). If the prosecution is not avoided, comprehensive Restorative Justice processes *as alternatives to sentencing* should be encouraged.

Restorative Justice should be based on a very well organized and effective referral system.

The Criminal Justice authorities should assess *ex officio*, mainly before prosecution but generally at any level of the Criminal Justice System, at least until court of first instance, whether a case is adequate to be referred to Restorative Justice procedure or not.

It is important that the system should allow, in general, both to the victim and the offender the initiative of starting the Restorative Justice process.

The conditions for the referral to Criminal Justice procedure may include that: a) the offender has admitted responsibility for the offence, and b) both the victim and the offender are willing to take part to a Restorative Justice process upon information by the competent authority. If a case is not referred to Restorative Justice process only due to unwillingness of the victim, the intention of the offender to take part to a Restorative Justice process should be taken into consideration positively by the competent Criminal Justice authorities.

If a referral is possible, the competent authorities should provide to both the victim and the offender full information and call them by appropriate means to participate on a Restorative

Justice process; the competent authorities may also suspend the criminal procedure for a justifiable period of time so that the actual process of Restorative Justice could be completed.

In cases where more than one offenders or/and victims are involved, the referral to a broad Restorative Justice process should not be excluded for those who agree on the referral, even if not everyone of those involved in the crime agrees on it.

Successful Restorative Justice procedure may result to the final discontinuation of the Criminal Justice procedure within *an alternative frame*; in any case, especially when it is not resulting from an alternative process and is not connected to diversion or suspension or discontinuation of the criminal procedure, the successful completion of a Restorative Justice procedure should be taken into consideration by the competent Criminal Justice authorities for the benefit of the offender (e.g. either during sentencing or upon conditional release from prison).

Restorative Justice's more effective implementation should be based on a very good preparation of the actual process, according to specific criteria of a code of ethics.

It should be possible, according national legislation, for the competent authorities to set reasonable time-limits for the Restorative Justice process to be completed; they should allow, though, within an appropriate period of time and upon notification the victim to decide whether he/she wishes to take part to a Restorative Justice process or not.

The use of modern communication technologies should not be excluded in any Restorative Justice process.

Member States should encourage the effective quality control mechanisms concerning the deliver of Restorative Justice services.

The outcomes arising out of a Restorative Justice procedure should be supervised and assessed by the competent Criminal Justice authorities.

The successful ending of Restorative Justice process, when it is incorporated to a judicial decision, should be considered as equal to any other decision of judgement and be recognised as an official decision or judgement in other member states of the European Union in accordance with Community and national legislation.

If no positive outcome results from the Restorative Justice process or the outcome is not implemented adequately, the case should be referred back to the traditional process without any delay.

The implementation of the outcome of each case should be assessed in a follow-up process that shall be supported by the competent authorities. If there is no implementation of the

outcome, the case should be referred back either to Restorative Justice process or to the traditional process without any delay, according to each country's national legislation.

3. The Restorative Justice Services

The third party/person that delivers, manages or/and facilitates the Restorative Justice process should be impartial and respect the parties involved; they should understand the cultural background of the parties involved and be trained according to specific training standards.

For this purpose, Member States should organise adequate training programmes in cooperation with schools and Universities and set up code of ethics upon common European standards concerning the training and accreditation.

Member States should be encouraged to create specialized public institutes and also cooperate with NGO's and other private organisations in order to involve trained facilitators/mediators in the actual process.

4. Restorative Justice Availability

Member States should expand the availability to Restorative Justice processes to a wide number of offenders and victims at all levels of Criminal Justice System; they should provide for an equal access of offenders and victims to Restorative Justices processes.

In particular, Member States should emphasize to the early stages, especially where Restorative Justice is used as an alternative to criminal procedure in order to make a diversion from the traditional process. Towards this direction, all persons and services involved in Restorative Justice and mainly police officers should provide early information and advice on Restorative Justice processes to the victims and the offenders, updating them on the potential benefits and effects that may come up from their participation to such a process.

Member States should also ensure the availability on the Restorative Justice process for cases that are adequate for this kind of process, not just locally but nationwide. In parallel, they should make an effort to promote Restorative Justice processes with the cooperation of local community.

5. Awareness and Motivation Strategies

Member States should work on national strategies aiming at the development and further diffusion of Restorative Justice among the competent justice and social authorities but also public and local communities.

Member States should organise regular seminars between Criminal Justice and Restorative Justice authorities, services and organizations in order to facilitate and extend the implementation of Restorative Justice processes and ensure their further effectiveness, in accordance to the traditional Criminal Justice procedures. Schools and Universities should include Restorative Justice education on their curriculum and organise seminars and training for Restorative Justice practitioners.

Member States should establish training and feedback support for police officers, prosecutors and judges as well as other Criminal Justice officials who play a crucial role in the further implementation and diffusion of Restorative Justice as the competent authorities for the referral to Restorative Justice process and are able to communicate the Restorative Justice idea and principles to the persons concerned. They should also be encouraged to expand more the Restorative Justice process towards the social services, public and private and promote national Restorative Justice programmes with the wide cooperation of CJ and social services, academics, schools, Universities and NGOs. Additionally, they should motivate lawyers in order to promote the referral to Restorative Justice process and get ahead from their hesitance.

Member States should also promote advanced research and regular evaluation of Restorative Justice implementation and diffusion that could be supported by a central advisory committee for its better coordination and promotion; towards this direction it is recommended the support of a central database for gathering all data on relevant programs and initiatives, relevant literature, empirical research and statistics.

Member States should ensure financial support to Restorative Justice services analogue to the traditional Criminal Justice services. The cost of such services should not affect the equal accessibility of citizens.

Member States should recognise and promote already existing as well as new Restorative Justice processes by financial support and mainly by recruitment of adequate and well trained personnel.

Finally, Member States - with the support of existing Restorative Justice services, either public or private - should develop appropriate strategies – through Internet, information articles, conferences, seminars or advisory centres – in order to raise awareness of the benefits of Restorative Justice among public.

2. The Proposal of a Directive on Restorative Justice in European Union

1. The first thing one should consider upon the idea of making a proposal for a Directive on Restorative Justice in the EU is whether such a Directive is actually allowed to be issued in the European Union. As it is well known, the role of the European Union in the area of criminal law is defined by the *general principle of subsidiarity*: the EU intervention is allowed only when the goal pursued cannot be reached more effectively by measures taken at national level and, due to its nature and scope, can be better achieved at Community level.

These prerequisites are indeed met in this case. It should be noted, initially, that after the entry into force of the Lisbon Treaty, there is general concern about the overall valid, throughout the European Union, of *the principle ne bis in idem*. The Greek Supreme Court, for example, has already recognized the binding force of this principle. According to its decision 1/2011, Greek authorities can not bring criminal proceedings when a case is considered by a Court of another EU Member State.

Within this frame, if a country provides for an extrajudicial resolution of a criminal case, there should be a general consensus of all Member-States on its acceptance, in order this case not to be judged for a second time in another country. If, for example, according to the jurisdiction of a Member-State, the possibility of diversion of judicial proceedings is provided for a case of a serious bodily harm arising from domestic violence, under the term that the offender shall attend a specific program, the non-prosecution of this offense in another Member-State is indeed conceivable, only if it recognizes the Restorative Justice procedure that has taken place in the other country.

Even in case that a court judgment is needed in order to be considered that a Restorative Justice procedure has been completed, which – as already mentioned in the presented reports - is not the case for all the countries that have participated to the program, the **implementation modalities** of this alternative process or the extrajudicial procedure is really important. It is well known, that in the context of mutual recognition of criminal courts' decisions, the formation of a "road map", for ensuring the fundamental rules of criminal proceedings in all Member-States (especially rules which are related to the safeguards of the rights of offenders and victims) has already been considered necessary.

Accordingly, the formation of a Directive that shall define the fundamentals of Restorative Justice in the European Union seems to be absolutely needed.

2. Of course, certain rules are already set in the Directive 2012/29/EU of 25 October 2012 on “establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA”¹¹⁶. Specifically:

(a) Article 1 of this Directive expressly stresses that victims “are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or Restorative Justice services or a competent authority, operating within the context of criminal proceedings”.

(b) It is also given the definition of Restorative Justice (Article 2 section d) and as such is defined only “any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party”. According to this definition, it is clear that Restorative Justice can only be implemented with the consent of the offender and the victim and never unilaterally.

(c) There are also some basic rules for Restorative Justice procedure, concerning the victim’s right to withdraw his/her consent at any stage of the process, measures for the process in order to function in the interests of the victim, the information provided to the victim about the process, its potential outcomes and the procedures for supervising the implementation of any agreement, the confidentiality of discussions in Restorative Justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public (Article 12 § 1).

(d) Finally, it is reiterated that the Member States **are required** “to facilitate the referral of cases, as appropriate to Restorative Justice services, including through the establishment of procedures or guidelines on the conditions for such referral”, just as the requirement is laid down in Council Framework Decision 2001/220/JHA (Article 12 paragraph 2).

¹¹⁶ See OJ L 315/ 14.11.2012, p. 57.

However, this latter obligation is the one that creates the most significant problems, as long as its fulfillment has been left to the Member States, because, as it has already been demonstrated by the national reports presented during this Conference, as well as by a relevant assessment report prepared by the Commission in 2009¹¹⁷, there are major differences in the Restorative Justice processes adopted by Member – States. Differences associated with the stage at which the proceedings of Restorative Justice are taking place, with the person that facilitates the process, with the crimes concerned, with the obligations undertaken by the offender and the consequences of a successful closing. The very quality of the provided Restorative Justice services is significantly different in each country. On the other hand, there are no evaluation mechanisms, which affects the confidence of Member-States in the Restorative Justice institutions that have been developed in other countries. Finally, the 2012 Directive, focused on the rights of the victims, as it is, has left outside its scope crimes against legal interests of the community, such as crimes against the environment, for which the Restorative Justice services - with community involvement - seem to have positive effects in many countries.

So it is absolutely critical for the EU, at this stage, to adopt a new Directive, that will define the basic rules under which Restorative Justice procedures should be implemented. By this way, not only the quality of these procedures could be better ensured, but also the decisions and processes of Restorative Justice in one state could be easier recognized in other EU Member-States, just as it has happened with mediation in the area of civil law.

3. Towards this direction, the scientific team of the program makes the following recommendations on the content of the Directive:

3.1. In the first chapter, in addition to the definitions, the basic principles of Restorative Justice should be included:

(a) As regards the type of crimes that can be referred to a Restorative Justice process, we have concluded that it should be applicable to **all** crimes, regardless of their severity (as already foreseen in all international texts and several national laws), regardless to the fact that the consequences of a successful Restorative Justice outcome cannot be the same in all cases.

(b) It was also agreed that the use of Restorative Justice processes should be possible **at all stages** of criminal justice system, even at the police stage.

¹¹⁷ COM (2009)166 final

(c) For this purpose, it should be provided that the police or/and the prosecutors will inform both the offender and the victim about the possibility that their case may be referred to a Restorative Justice process. The information should include details about the process itself, the advantages of this process in compare to the traditional one, and the consequences of their choice. It is suggested that the oral briefing should be accompanied by relevant brochure. Similar information may as well be given by the judicial councils or the court at any stage of the proceedings.

In any case when, according to national law, the successful outcome of Restorative Justice does not only complements the judicial process, but it may also lead to its diversion, the authority that decides about the classification of the crime and thus about the effects of Restorative Justice process to the case, should have all the guarantees of an independent judiciary authority. Therefore, even if at first place the police can provide information about the possibility of referral to Restorative Justice services, the police must refer the case to the local competent prosecutor or other - if applicable - judicial body, which will feature the offense and will fully inform the offender and the victim about the actual consequences of the completion of the Restorative Justice procedure.

(d) Finally, it is important to emphasize in this Chapter that if there is no referral of a case to a Restorative Justice process solely due to the denial of the victim, while the offender is willing to participate and he/she makes a sincere attempt for reconciliation, this shall be assessed by the court and the evaluation should be reflected in positive way at the penalty imposed.

3.2. In the second chapter, it is recommended to determine in general the referral process of a case to Restorative Justice services. Specifically:

(a) When the referral is decided **before** penal prosecution and, according to the national law, Restorative Justice process may lead to full diversion from judicial proceedings, the prosecutor or other judicial officer, competent for the referral, should bring the case to a **special file**, setting a time deadline for completion of the procedure. When Restorative Justice process is complementary to judicial criminal proceedings, these proceedings continue according to the rules, but a decision should not be issued before the Restorative Justice process is completed.

- (b) The judicial order, according to which a case is brought to the special file, should be in valid *erga omnes*, precluding prosecution in another country for the same offense.
- (c) When the agreement for referral to Restorative Justice service is achieved **after** penal prosecuting, the referral should only be possible with the simultaneous postponement of the judicial criminal proceedings until the completion of the Restorative Justice process.
- (d) Finally, it is important to specify that since the referral of a case to Restorative Justice process, and until the completion of this process, the limitation period of the crime shall be suspended.

3.3. In the third chapter of the Directive, it is proposed to introduce rules that will determine the substance and quality of Restorative Justice services:

1. Here one should included first of all the **key-forms** of implementing Restorative Justice, for example, victim offender mediation, community or family conferencing, sanction circles etc., as already mentioned in many international texts.
2. It should also be specified **who** will have the position of the victim in crimes against the whole society, such as crimes against the environment or commonly dangerous crimes. In these cases, representatives of local governments, environmental organizations and other interest groups can participate in relevant procedures.
3. The Directive should additionally identify the specific outcomes of Restorative Justice processes, common features of which are the recognition of the demerit of the crime and the assumption of responsibility by the offender, the restoration of the previous situation when it is possible, and the reintegration of both the offender and the victim. Therefore, the outcomes may vary, starting from the dialogue between the offender and the victim, an agreement between them to restore the damage to the extent possible, a written apology, community service, completion of training or a supporting program or, finally, a statement binding on the non-repetition of the offence, such as is currently in force in Greece in cases of domestic violence. The restitution of the damage done may not certainly be considered as part of a Restorative Justice process, if it is not accompanied by the basic common features mentioned above. Thus, it cannot be considered as an example of a Restorative Justice process, the opportunity offered by the Greek law to an offender of a

misdemeanor against property to pay only the capital and the default interests, and in this way to be exempted from penalty (Article 384 par 3 PC), even if the victim has not even been asked in order to accept or decline the offer¹¹⁸.

4. In the Directive it must also be explicitly stated ,that not only the victim - as required by the Directive 2012/29/EU – but also the offender may at any time withdraw his/her consent to participate in the Restorative Justice process, requesting the initiation of the traditional judicial criminal proceedings.
5. Moreover, it must be explicitly provided, that the fundamental procedural safeguards for the offender and the victim must be protected during Restorative Justice process, just as during judicial criminal proceedings. Thus, both the offender and the victim should be given access to a lawyer and a translator, when necessary. Especially, when the offender or the victim is less than 18 years old, it should be provided, that their parents or persons entrusted with their custody should be involved in their best interest.
6. Special provision should also be provided in order to assure the privacy of the individuals involved but also to establish an obligation of confidentiality for the independent third parties that facilitate the process of Restorative Justice.
7. It is also necessary to be emphasized, that accepting the referral to a Restorative Justice process should not be considered as confession of guilt, if there is no positive outcome between the parties.
8. Finally, it is important to be indicated, that any agreement and outcome of Restorative Justice should not only be concluded voluntarily, but it should also be feasible and consistent with the principle of proportionality.

3.4. In the fourth chapter of the Directive, arrangements should be integrated regarding individuals that facilitate as independent third parties the actual process of Restorative Justice (facilitators/mediators):

- (a) In this chapter, it is primarily important to set the accreditation criteria for facilitators/mediators, who should - in addition to their basic studies in the social

¹¹⁸ See also *Ch. Mylonopoulos*, The institution of plea bargaining. Thoughts about its theoretical foundation and practical function, *Poinika Chronika* 2013, p. 81 et.sec.[in Greek].

sciences - have successfully completed specific programs of theoretical and practical training in the field of Restorative Justice.

- (b) It is also important to be clarified, that the completion of these programs as well as the ability of facilitators / mediators to carry out their duties with high quality standards and in an impartial way, recognizing the social and cultural characteristics or special needs of the parties involved, should be **certified by the states** or entities controlled by them,
- (c) that Member - States will foster the creation of special **education centers** for facilitators/mediators in collaboration with universities, non-governmental organizations or other entities,
- (d) and that each State will draw up a Code of Conduct for facilitators/mediators and institutionalize **effective mechanisms** to control the quality of the service provided by them.
- (e) A similar control mechanism is also proposed to be enacted as a **European Union Institution**, which will be given the power to interfere with recommendations to Member States, in order achieve better quality of Restorative Justice services.

3.5. In the fifth chapter of the Directive, it is proposed to integrate rules concerning the consequences of a successful outcome of a process of Restorative Justice. These effects can either lead to the full diversion of the judicial process or to the continuation of the traditional judicial criminal proceedings. The main question, that should be answered at this point is, of course, for what types of crimes is a country willing to tolerate a full diversion of the traditional criminal proceedings, in other words, for what types of crimes is a country willing to tolerate Restorative Justice processes as alternatives to judicial criminal proceedings. In most states full diversion is conceivable for two crimes categories: (a) crimes prosecuted only after a complaint and (b) ex officio prosecuted crimes of lesser gravity. However, the European legislator can only define the common extreme tolerances of the Member - States, regarding the circle of crimes for which a full diversion of judicial proceedings could be accepted. For example, if a state provides a conciliation service as an alternative process to the traditional criminal proceedings even for the crime of homicide, it is obvious that this could not be easily accepted by another state, where Restorative Justice services are acceptable as alternatives to judicial proceedings only for crimes of lesser gravity. Certainly, sanction systems of the Member States present large differences between them, however a

“common ground” should be found – for example a common maximum penalty or specific types of crimes, such as those against property, regardless to the criminal sanctions provided for them - in order to ensure that decisions taken within Restorative Justice processes could work as alternatives to judicial criminal decisions and could be equally acceptable under the principle *ne bis in idem* in all Member States. Especially, however, when the offender is a child or a young adult, this “common ground” should be determined with greater flexibility, because for these offenders it seems to exist a wider consensus, that the goal of their social reintegration can be better achieved through Restorative Justice services than through the traditional criminal proceedings. Moreover, for this group of offenders, even if full diversion from criminal proceedings cannot be accepted for certain categories of serious crimes, it should be provided that Restorative Justice measures should be used as an alternative to the imposition of criminal sanctions by courts.

3.5.1. After having determined the categories of crimes for which Restorative Justice services could work as alternatives to judicial proceedings, one must also determine what has to be done when these services lead to positive outcomes. For this case it is proposed that:

- (a) When the referral to Restorative Justice services has been decided before penal prosecution, the prosecutor or other competent judicial officer, after receiving from the facilitator/mediator the agreement achieved and after checking that this is indeed consistent to the principle of proportionality, should **issue an order for its implementation**, which will be valid *erga omnes*. This means that the implementation of this order is legally entitled to be carried out also in other Member States, according to the provisions of Council Framework Decision 2008/909/JHA¹¹⁹, which can be applied *mutatis mutandis*.
- (b) If the implementation of the Restorative Justice outcome is successful, the same judicial officer should put the case permanently on file, which is also binding for all, under the principle *ne bis in idem*.
- (c) If the implementation is not completed, because the offender failed to comply with Restorative Justice agreement, then the competent judicial officer retrieves the case

¹¹⁹ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327/5.12.2008, p. 27.

from the special file where he/she had put it and the criminal proceedings continue normally.

- (d) If the referral to Restorative Justice services was decided after the prosecution, the successful completion of the Restorative Justice process and the implementation of the agreement reached should lead to the continuation of the postponed criminal proceedings and to the exemption of the offender from every penalty.

3.5.2. Continuation of trial also takes place after a successful completion of the Restorative Justice process, when this process will be acceptable only as complementary of the traditional judicial proceedings. In this case, it is suggested that the national legislators should have a wide margin of options. Member States may in particular choose between: (a) keeping the initially threatened penalty and giving the judge the possibility of reducing it, a choice that has been adopted, for example, by the German legislature, (b) treating the successful process of Restorative Justice as a mitigating circumstance reducing obligatorily the threatened penalty, (c) providing for a new framework of significantly lesser penalty, which could also lead to suspension or even convertible penalty, a choice that has been adopted, for example, by the Greek legislature for felonies against property.

3.6. In the next, sixth, chapter of the Directive, it is proposed to bring one provision, associated with the consequences of unsuccessful outcome of a process of Restorative Justice. Certainly, in this case the facilitator/mediator should immediately inform the competent judicial authority, so that penal prosecution to be started or traditional criminal process to be continued.

3.7. Finally, with the seventh chapter, a number of provisions relating to specific information and awareness initiatives should be introduced, which must be taken by the Member States in formulating a national strategy for the promotion of the concept of Restorative Justice. These include primarily the promotion of relevant research, the realization of seminars for police officers and judges, but also wider public information about the advantages of Restorative Justice services, and also of its possible adverse consequences. It is also proposed, as obligatory for Member States, the configuration of national Institutions which will develop a regular dialogue between Restorative Justice services and criminal justice mechanisms, in order to achieve mutual understanding and trust between them. Finally, it is suggested that quality control mechanisms concerning the provision of Restorative Justice services at national and European level, as mentioned above, also be responsible for

assessing the information and mobilization as well as for statistical data collection and recording "good practices" in each Member State.

4. We want to believe, that our proposals contribute to the creation of an institutional framework with enough flexibility, so that it can be integrated seamlessly into the different criminal justice systems of Member States, but also with sufficient "stricktness" regarding the quality of Restorative Justice services and their connection to the traditional judicial mechanisms, so that the relevant decisions be recognized as binding across the European Union.

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