Specific Programme Criminal Justice

European Commission

Directorate-General Justice – Directorate B: Criminal Justice

INSTITUTE OF CONFLICT RESOLUTION

SOFIA - BULGARIA

FINAL NATIONAL REPORT OF DENMARK

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

2013

Restorative Justice in Denmark

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A. Introduction

Denmark belongs to the Nordic countries which apart from Denmark comprise Finland, Iceland, Norway and Sweden. Greenland and the Faroe Islands are also Nordic, but not fully independent states, although they are to a great extent politically autonomous. Since the Danish/Norwegian Vikings conquered Iceland as well as Greenland and the Faroe Islands in 800-1200, there has been strong connections and to some degree Danish dominance over those areas. Iceland became independent in 1944. Greenland and the Faroe Islands are both still part of the Danish Realm, but equal nations in the Danish kingdom , have their own parliaments and to a large extend they have their own legal systems. Today Greenland and the Faroe Islands still have two members each in the Danish parliament. Greenland and the Faroe Islands are not members of the European Union even though Denmark is a member, but they are both included in the Danish membership of the North Atlantic Treaty Organization.

Continental Denmark is a kingdom with 5.25 million inhabitants on an area of 43.000 km2. The biggest part is a peninsula, Jutland, which borders Germany in the south; in addition, there are more than 400 islands around the peninsula, of which 80 are inhabited. The biggest Island is Zealand, where the capital, Copenhagen, with its 1.75 million inhabitants (including suburbs) is located.

As for judicial tradition Denmark is based on a continental tradition. All main national regulation is laid down in laws decided by the majority of the members of the Parliament and most often initiated by the relevant minister, i.e. the government. It is not uncommon in Denmark that the government rules on the basis of less than 50% of the votes in the Parliament. This implicates a necessity of cooperation and consensus in policy making which traditionally has been dominant in Denmark.

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What crime policy concerns the tradition of consensus was not an issue (never questioned) until the beginning of the 1990'ies. Until then crime policy was not only based on political consensus it was also closely connected to national and international criminology and research. Political decisions (including new regulation) were mainly based on dialogue between criminologists, other academics and politicians. But in the latest two decades the forming of the crime policy has been moved away from the experts into the hands of the politicians. Crime policy has even become an issue in the election campaigns. Having become a hot political issue criminal policy has become less tolerant and more punitive. Some political parties are profiling themselves on being tough on drugs other parties are claiming for "more consequence" (i.e. less tolerance) to juvenile crime. One example of the new tendency is the lowering of the minimum age for criminal responsibility was from 15 to 14 in 2010 where a right wing government was in power and the change back to 15 in 2012 where the country got a new more leftish government.

This paper is not questioning the national codification as such, neither is it questioning the relations between formal and informal punishment. It is mainly based on accept of the way crime is defined and reacted to in Denmark anno 2012.

The Minister of Justice carries the political responsibility and is in principle the superior of as well investigation, prosecution, courts and execution of punishment. The main legal source of the regulation of as well investigation and procedural matters is The Administration of Justice Act, first book (different sections) and fourth book (sections 683-1021h). The basic conditions for conviction, the legal definition of the main crimes and the maximum and minimum penalties for each crime are all laid down in the Criminal Code and finally the regulation of rights and duties of the prisoners, disciplinary means in prisons etc. are described in the Corrections Act.

The Commissioner of Police is the national head of the police and he refers directly to the Minister of Justice.

Investigation of crime is carried out by the police who at the national scale are divided in 12 districts. Each district has its own director. The Police Director is a lawyer him- or herself and not only the head of the police but also the head of the District Attorney, who is prosecuting in the court of first instance (city courts).

Prosecution is carried out by the prosecutors, who are lawyers (academic jurists with specific supplementary courses and training). The prosecutors are divided in a hierarchy of three levels. The national superior of prosecution is the Director of Public Prosecution, whose office is taking care of prosecution in cases before the Supreme Court. Below the Director of Public Prosecution rank 12 Public Prosecutors of which six are responsible for geographical regions and six are responsible for specific types of cases, like for instance complicated cases of economic crime. Each Public Prosecutor has prosecutors working for him or her and they carry out the prosecution in cases, which are tried before one of the two High Courts in the country. Finally the prosecutors from the offices of the 12 District Attorneys are prosecuting cases in one of the 24 city courts each. The organisation of the prosecution and the division of competences is mainly laid down in The Administration of Justice Act, chapter 10 (1st book).

Exceptions to this main structure are some more important jury-cases, which are treated in city courts in first instance. In these specific cases lawyers from the office of the Public Prosecutor act as prosecutors.

It is explicitly laid down in the Constitution § 65.2 that lay judges must be included in criminal court procedure. The Administration of Justice Act, chapter 6-8 (1st book), defines the scope and the competences of the lay judges.

At all stages it is a duty for the prosecutor to proceed the case as quick as circumstances allow and not only to look after that guilty offenders are convicted but also to look after that no innocent person is convicted (§96, 1st book).

Suspects may be arrested by the police but must be set free within a time limit of 24 hours if they are not taken into custody (pre-trial prison), which must be decided in the court. The decision of taking a suspect into pre-trial prison may be taken for a period of maximum four weeks at a time. Up till 2008 there was no legal limit of how many times a four-week period of pre-trial imprisonment might be repeated. But since 2008 the total maximum duration of pre-trial imprisonment is limited to one year for adults and 8 months for suspects below the age of 18years. These time limits may be prolonged by the court under special conditions (§768a, 4th book). The judge who decides a suspect to be taken into pre-trial imprisonment must be replaced by another judge when the case is going to be tried in court in case there is any doubt that he can act impartially (§60 and §61, 1st book).

During the latest decade averagely 25% of a total of about 4000 prisoners in Denmark are not yet convicted, i.e. they are in custody (pre-trial imprisonment). The majority of the not convicted prisoners are kept in city-jails but at small number, mainly juveniles and mentally disordered are placed in more adequate facilities.

There are two main penalties in the Danish Criminal Code namely fine (day-fine or a fixed sum) and imprisonment. Fine and imprisonment are not alternatives to each other. Fines are mainly used for breaches of punishable rules not included in the Criminal Code, such as the Traffic Code but they may also be used for relatively minor breaches of the Criminal Code. Imprisonment is used for more serious breaches of the Criminal Code. Imprisonment is imposed by the court either conditional or unconditional. Conditional and unconditional imprisonment is used equally often but what the different crimes concerns unconditional imprisonment is almost always used in cases about personal assault whereas conditional imprisonment is often the first choice in cases about theft and burglary. It may happen, but very rarely; that a person, who does not pay a fine, can be taken into prison to serve the sentence (one day fine is one day of imprisonment).

With the exceptions of mentally ill offenders and the main part of the juvenile offenders any detention related to (suspicion of) criminality in Denmark takes place in institutions ruled and controlled by The Department of Corrections under the responsibility of the Minister of Justice.

The two main categories of the penal institutions are *firstly* the custodies (pre-trial-prisons), which are located near by the court-buildings in the cities and may house persons waiting for the trial as well as convicted persons either serving a relatively short sentence or waiting for a place in a prison, and *secondly* the prisons, which are (almost) solely housing convicted persons serving sentences. In the custodies there are about 1700 places at a national scale, whereas there is a total of about 2400 places in the prisons. The average utilization rate in the penal institutions as a whole is 94-97%.

The majority of the five closed prisons in Denmark are located in cities whereas the open prisons are to be found in the countryside. Closed prisons and custodies (pre-trail prisons) are having a similar – very high – security level. They have perimeter walls, electronic monitoring of the yards and the prison-wards are separated from each other and cannot be left without keys.

Several of the eight open prisons were founded immediately after World War II as work camps for those who collaborated with the German occupying power. So they do not have perimeter walls etc. Even if there is no wall the inmates are not allowed to leave the prison area. The prisoners can move (more or less) freely around on the prison areas, for instance they can go to work in the prison-factory or frequent the prison-school without being accompanied by a member of staff. From 9 or 10 pm till the following morning the prisoners in open prisons normally are locked up in the cells.

Included housing, guarding, occupation and so on a cell in an open prison costs about half as much as a cell in a closed prison. The daily price for a cell in an open prison is 1.158 Dkr and the daily price of a cell in a closed prison is 1.973 Dkr (1 Euro=7,5 Dkr).

While the courts decide the length of the prison-sentence, the location and the security regime of the exact prison is decided administratively by the Department of Corrections.

After having been sentenced in the court the person is either moved to imprisonment via the custody or released till he is called in to serve the sentence. The decision about where a sentence must be served must be made within the framework of sections 20-30 of the Corrections Act, where guidelines for the choice of institution and the transfer of prisoners from one institution(al regime) to another are laid down.

The penalties and the daily life in the prisons are regulated in respectively the Criminal Code and the Corrections Act.

As for Denmark it makes good sense to differ between alternative criminal procedures and alternative reactions to crime. But it must be firmly underlined that Danish alternative measures only to a certain and very small extend fit into the ideas behind Restorative Justice. Further it is necessary to stress that the program in Denmark that has the most in common with the ideas behind Restorative Justice, namely *Konfliktråd* (hereafter named: Victim-Offender-Mediation, VOM) is *not* a program that replaces a criminal justice procedure but a *facultative (for the parties) supplement* to a criminal procedure. This means that even if a Victim-Offender-Mediation is successfully fulfilled a conviction and sentencing will follow. The Victim-Offender-Mediation was developed after the introduction of the Restorative Justice ideology in the world wide criminological debates during the 1990'ies.

After a short introduction to alternative programmes and practises in Denmark in general this part (part A) as well as the following parts of this paper will focus on the Victim-Offender-Mediation (VOM).

Turning firstly to alternative *criminal procedures*; the main option in Danish criminal procedure is *withdrawal of charges* which is a competence in the hands of the prosecutor. Withdrawal of charges has been part of the Administration of Justice Act since it was adopted for the first time in 1939. Section 722 (4th book) defines the very limited scope of minor cases, not least against juvenile offenders, where the prosecuting authority may withdraw a charge. A withdrawal may be combined with conditions of the same type as a conditional sentence. In these situations the case must pass by the court, where the judge controls the properness of the conditions. The offenders' guilt is not tried in court. The withdrawal is based on a confession that must be confirmed by the circumstances.

In 1998, the so-called *youth contract* was introduced in Danish criminal procedure via The Administration of Justice Act sections 722-723 in combination with the Law on Social Services section 52. The signing of a contract is a special condition for receiving a withdrawal of charges and may only be used when the offender is not yet 18 years old and the crime committed does not include personal injury (Instruction from The Commissioner of Police 4/2007, latest revision September 2011).

Originally the aim was to introduce a quicker and more adequate reaction (i.e. minimize recidivism) towards crime committed by juveniles who did not already have a substantial criminal record.

By including not only the young offender but also the parents and the social authorities in the preparation and signing of a contract before having it approved by the court, it was the hope that all parties (not least the parents) would feel more committed.

Like all non-custodial measures the youth contract always contains a standard condition of not re-offending within a certain period of time. Furthermore it puts individual obligations on the juvenile to participate in certain activities, for instance to finish school and go through a social training program. If the juvenile fulfils the period and meets the obligations laid down in the contract the offence will be deleted from his or her criminal record one year after the contract was signed, i.e. practically in the moment it is fulfilled. Normally withdrawal of charges is deleted from the criminal record after two

years. Like the withdrawal of charges the youth contract is based on confession and the criminal guilt is not tried in court.

After about five years the Youth Contract was evaluated by a researcher from the Ministry of Justice (Stevens). It was found that the concept did not speed up the process neither did it minimize recidivism markedly. But bearing in mind that the general recidivist rate after a withdrawal of charges is very low, it seems like a rather optimistic ambition to minimize recidivism further.

By *alternative reactions* is mainly meant the two options which are introduced and integrated as general options in the penalty system, namely Community Service Orders (CSO) and electronic anklet (EA), further there is the youth sanction (YS) which is only an option for juveniles, who were criminal responsible but below the age of 18 at the time when their crime was committed.

The first alternative reaction to be mentioned is *Community Service Order* which was introduced gradually in the 1980'ies. Formally the idea is that when the court has decided that an unconditional prison sentence is to be imposed, it may change the sentence into a CSO if it is reasonable to believe that it is not necessary to lock the person up for the time being. The court decides how many hours (between 30 and 300) the person has to do Community Service and the Probation Service finds a working place. Technically a CSO is formed as a condition in a conditional sentence to imprisonment described in The Criminal Code §§62-67.

Secondly there is the *Electronic Anklet* (EA), which was introduced gradually from the beginning of the 2000'ies. In case the length of a sentence to unconditional imprisonment is 5 months or shorter the convicted person will shortly after he is sentenced receive a letter from the Department of Corrections informing him of his right to apply for a so-called "home-serving". This implicates that the person for a period equalizing the length of the prison sentence must carry an electronic ring around one ankle making it possible for the Probation Service to control that he does not leave his home except for the periods of the day agreed upon for instance to frequent school, job etc. EA is not a permanent electronic monitoring. The anklet is connected to a devise in the home of the person whereby it is controlled that the person is at home when he is not allowed to be out. Contrary to the CSO the electronic anklet is not decided in court but by the Department of Prison and Probation after sentencing and consequently to this

construction the EA is not mentioned in The Criminal Code but described in The Corrections Act, sections 78a-78f. EA is not an option in case a convicted person has already started to serve his sentence. Only those who are sent home after court in order to wait for further information about when and where to check in to serve the sentence receive the letter mentioned above.

Thirdly there is the *Youth Sanction* (YS), which was introduced by an amendment to the Criminal Code on July 1, 2001 now regulated in section 74a. YS is imposed by the courts but fulfilled by the social authorities.

YS was decided as a result of a strong political demand on more serious responds towards serious offences, committed by juveniles, who have not reached the age of 18 at the time of the crime. In the preamble to the amendment of the Criminal Code of 2001, the YS is defined as an alternative to imprisonment in cases where a sentence of between one and 18 months unconditional imprisonment is to be expected. YS is composed of three phases altogether mandatorily lasting two years. In most cases YS begins with up to 12 months of deprivation of liberty (secure accommodation in a social/pedagogical institution) followed by mandatory accommodation in an open social institution and finalised by a period of not less than six months without any deprivation of liberty this period is dedicated for supervision in freedom. The aim of YS is described as not primarily to impose a punishment but to help and support the juvenile in the direction of his life into a noncriminal future. However, the secure institutions are built like prisons with perimeter wall, monitoring, small units and locked doors in the night. The means of power in the institutions are very much alike those of a prison[2].

Finally before we turn to part B a few introductory words about the Danish Victim-offender mediation (VOM) program. VOM (in Danish: Konfliktråd) is a nationwide concept of confrontation between offender and victim. The confrontation is prepared by a mediator who is also present at the confrontation. It is mandatory in the meaning that it must in principle be considered in all cases but it is also facultative in the meaning that VOM can only be arranged after the consent of both parties. 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.

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2 □For further information on YS: Storgaard, pp. 381

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. The now codified program is almost fully a true copy of the program of the latest experiment and there were only few differences between the two experimental programs. The Code on VOM came into force January 1st 2010[3].

B. Legal Frame of Restorative Justice

VOM is laid down in its own Act with only 8 sections. The Code on VOM is just setting "the scene" all details must be found in the preparatory documents[4] respectively developed in practise. As all decisions about VOM are administrative there will not be much court decided prejudices as time passes by. But of course there will be developed some administrative practices which will influence for instance the selection of cases.

The mediators and the mediation

Section 1 in The Code on VOM says that every police district must organise VOM, which is legally defined as a meeting between offender and victim under the presence of a neutral mediator.

According to the comments to the Bill point 3.3.2 every police district appoints a responsible coordinator for VOM. But the day to day mediators are not full-time mediators. The mediators are citizens with other jobs but willing to be taken in for specific VOM cases. The mediators are paid the same sum per case no matter if it is a very simple or a very demanding case and no matter if an agreement is reached by the parties or not.

The police are responsible for the training of the mediators. Most typical a future mediator attends a one week course, where the participants play roll plays and have lessons in legal rights, ethics, different possibilities of victim counselling and compensation. Later there should be supplementary courses.

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3 □ Code on VOM, Lov om konfliktråd i anledning af en strafbar handling. Nr. 467 from 12.06.2009.

4 □ The Bill with comments (Lovforslag med bemærkninger) and the Report (White Paper) 501/2008.

Section 6 in the Code on VOM delegates the competence to decide specifically on different subjects to the minister of Justice one of the subjects is the question of the mediator being allowed to accept the presence of third parties to be present at a mediation. The comments to the Bill point 3.5.5 states that the questions that the mediator may take into consideration before allowing a third party may be for instance differences in ages or in checks and balances between offender and victim. Also there may be situations where the victim cannot attend (because he/she is dead or severely injured) and a third party may act as stand-in for the victim. Lawyers are not allowed to be invited as professionals, but of course a lawyer can attend if he or she is a close relative to one of the parties.

It comes indirectly forward in section 2 of the Code on VOM and is further implied in Report 1501 point 6.2.3 that the mediator has no decisive role to play at all. The mediator's task is to help the victim and the offender to find their own solution. Report 1501 refers to a Danish author[5] defining mediation as a reflexive, mandatory and confidential process where the parties themselves by the help of a neutral third person (the mediator) find a solution which is satisfactory for them. Vindeløv elaborates on Riskin's matrix, saying as follows:

In brief mediation may be *evaluative* or *facilitative*: the *evaluative* mediator is focussed on the output, he evaluates the viewpoints of the parties (or their lawyers), use separate meetings and will not stand back from putting pressure on the parties in order to make them accept a proposal. The *facilitative* mediator puts more questions than he gives answers. He does not put any kind of pressure on the parties in order to make them accept a proposal.

Mediation may also be *broad* or *narrow*. In *broad* mediation all kind of questions may in principle be included. The mediator tries to learn about all interests and needs that the parties have. The *narrow* mediation, however, sticks to the issues of the actual conflict and does not include other (related) needs.

Mediation may technically be described as all four combinations: evaluative and narrow, evaluative and broad, facilitative and narrow and facilitative and broad.

Transferred into Riskin's matrix the ideal in Danish mediation in (as well civil as) criminal cases is that the mediation is a facilitative and broad "event" focussing on all relevant

5 □Vindeløv, chapter 1

interests and the needs of the parties and not solely (or rather not at all) on possible outcomes of the conflict in court.

As a consequence of the fact that VOM is confidential section 5 in the Code on VOM includes the mediators under section 152 in the Criminal Code which defines criminal responsibility for civil servants who break confidentiality with a client. Further section 5 includes the mediators under section 170 in The Administration of Justice Act which deliberates specific professions[6] from the duty to testify against the wish of their client. However, section 170.2 says that the court may order some of these professions[7] to testify in cases where this is seriously necessary. This option includes the mediators.

The crime

The Code on VOM is absolutely silent about what kinds of crimes may be considered for VOM and in the comments to the Bill it is said explicitly that it is not found appropriate that the Code is being too specific as there will be a need for continuous practical development, point 3.2.1. And in point 3.4.1 it is said even more directly: "The committee is of the opinion that the experiences from the latest experimental period prove, that VOM may be practised with positive results for as well victim as offender in all cases with an identified victim[8]. This is also the case in criminal cases involving more serious crimes such as for instance robbery."[9]

Consequently there is no codified general limitation of the crime type which may be taken into consideration for VOM. But it is a main rule that there must be an identified victim. This means that for instance breaches of rules aiming to protect the environment are not normally eligible for VOM.

Victim and offender

Both the victim and the offender must accept to take part in VOM before it can be arranged. If one of the parties is below the age of 18, accept must also be given by the parents. Apart from the demand that the parties should be legally competent (not below

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6 Such as priests, medicals, lawyers

7 Medicals and lawyers apart from the defense lawyer in the concrete case.

8 This means that for instance socalled victimless offences cannot be taken into VOM, i.e. tax fraud, pollution and the like. It is also debated if for instance shoplifting in big supermarket chains fits for mediation because also in these cases the victim-identity is unclear.

9 My translation.

18 years old) the code does not specify any preconditions what age, gender, criminal record, mental health, nationality or the like concerns.

But VOM will not be arranged until the offender has confessed the crime or at least the main parts of the facts around the crime. This claim is laid down in section 2 of the Code on VOM and point 6.6 in report 1501.

According to as well the comments to the Bill point 3.5.3.1 and report 1501 point 6.4.1 it is possible that VOM is arranged when the offender has not yet reached the age of criminal responsibility[10]. It is argued that this is for crime preventive reasons. This subject is not mentioned in the Code on VOM but it is mentioned in section 6 in fine that the Minister of Justice may decide that also cases that are not criminal cases may be taken into VOM. The only legal possibility for taking minor offenders into VOM is this sentence.

What mentally ill offenders concerns there is no out say in the Code on VOM. The Criminal Code section 16 says explicitly and clear that persons who 1) by the psychiatrists are defined as mentally ill (at the time they committed their offence) *and* 2) about whom the court is convinced that the illness caused the crime may not possibly be punished. They may, however, be sentenced to different forms of psychiatric treatment including forced institutionalisation. Report 1501 states in point 6.4.3 that individuals included under section 16 are not appropriate for VOM. But it is also stated that it might be in strong interest for the victim to face the offender and if this is the case the coordinator of the local VOM system may – under the condition that the offender seems to be able to understand what VOM is all about – arrange VOM with a mentally ill offender.

The relation between VOM, criminal procedure and sentence

Section 4 in Code on VOM is short and clear. It says: "VOM does not replace punishment or any other court decision as a consequence of a crime." And the Code is silent about the stage in the criminal procedure where VOM can take place. Consequently VOM may be arranged at whatever stage in the procedure it seems convenient, i.e. before the conviction, between conviction and sentence or during the execution of the sentence, for instance when the offender is in prison.

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10 □This is 15 in all the Nordic countries but was 14 in Denmark for a short period of less than two years.

However, the majority of VOM arrangements take place before court. There is nothing in the law or the preparatory works that indicates that a positive VOM *must* influence the sentence. But as well report 1501 point 6.7.1 as the comments to the Bill point 3.7.1.2 refer explicitly to section 82 no 11 of the Criminal Code saying that cooperation and efforts to repair the damage from the side of the offender might be a lenient factor in the sentencing. It was argued that the wording of section 82 no 11 should explicitly include VOM in order to ensure that a successful VOM would always be taken into consideration in the sentencing. After some debate pro and con the wording of section 82 no 11 was maintained after the Code on VOM went into force. Paradoxically one very strong viewpoint against mentioning VOM in section 82 was that the courts already are aware of VOM being taken into consideration.

The legal status of VOM playing a role in the sentencing is: It is not codified though to a wide extend expected that VOM has a certain (but unspecified) lenient influence on the sentencing preconditioned that VOM was evaluated as successful by the mediator and took place before the court procedure! If VOM takes place at the time where the offender is already in prison there is obviously no possibility of influencing the sentence. Of course the Code on VOM is silent about this possibility, too, but Report 1501 point 6.2.3 says very briefly that the mediator must immediately inform the prison and probation service so that the successful VOM after the circumstances can influence the administration of the execution of the prison sentence. This is not clarified or exemplified further!

The committee behind report 1501 was divided into two subgroups in the debate whether VOM should go on from the experimental local status to the permanent nationwide status as solely a supplement to ordinary criminal procedure or be developed to (partly) an alternative/a replacement.

The majority, namely seven persons, argued that it was preferable to keep VOM as solely a supplement to a criminal justice process like it had been during the periods of geographically limited experiments. The main arguments from the majority was that because it is an unbreakable principle that taking part in VOM is of one's own accord (absolutely voluntary) it would put very much power in the hands of the victims if VOM was replacing the criminal procedure. A victim of a minor theft would in that case – by denying VOM – be in power to dictate a criminal justice procedure whereas another

victim of a serious assault by accepting VOM could divert "his" case into the alternative procedure. A consequence of this would from this viewpoint be unacceptable losses of proportionality and equality. Further the majority was aware that a replacement would open for some "fake" VOM situations where the offender excuses himself without being deeply regretful only in order to avoid the criminal procedure.

The minority, which was formed by five members of the committee, stated that VOM should be introduced as a replacement of a criminal procedure in some cases where the sentence would not be long. CSO and EA were mentioned together with cases with young and/or first time offenders. At least, they argued, this should be tried on an experimental basis. The viewpoints were mainly that there are very positive international evaluations saying that VOM used as an alternative turns out to lead to much lower recidivism than ordinary criminal justice cases. About the risk of "fake" excuses from offenders the minority was of the opinion that the mediators would "catch" these (expectedly few) cases and simply stop the mediation, which of course lead to a criminal justice case.

The viewpoints from the majority were followed in the Bill and later the Code on VOM.

C. Actual Situation of Restorative Justice

The programmes and sanctions that to some degree reminds on Restorative Justice in Denmark are described above in part B. The only program that comes relatively close to the ideas behind Restorative Justice is VOM, which is more deeply described in part B.

VOM is – as it may be obvious from above – very much victim-focussed. This was also one of the remarks when the second experimental period of VOM was evaluated by an external evaluator: "...that in Denmark is a dominant focus on the victims and it might be considered to draw in a crime preventive perspective in the Danish model for VOM....", Report 1501 point 3.3 in fine.

Empirical experiences – small scale evaluation

There has not yet been published any statistics about VOM after the Code on VOM was decided and implemented. But the first four years (1998-2002) of the second period of experiment was evaluated and reported. The experiment took place in three police

districts and in the four-year period the police found 1.430 cases suitable for VOM and asked the parties if they would be willing to meet in VOM. Hereafter 360 cases were sent to the VOM coordinator and in 150 cases VOM took place. As there were markedly more VOM cases in the last part of the evaluated period than the first there is reason to believe that it needs some time for everybody to become familiar with the concept.

The evaluation was both quantitative and qualitative but it did only include the VOM cases that took place. Interviews were made with (as many as possible) offenders, victims, mediators and police and big amounts of data were collected from the police data (anonymous of course).

More than 50% of the victims were men and more than 90% of the offenders were men. This is comparable to general criminal statistics.

Neither offenders nor victims in VOM were (averagely) among the youngest compared to general criminal statistics. The average age for the victimised women was 35 and for men 32. What the age of the offenders concern the average age for men and women in the cases where VOM took place was 27. But if we look at the cases which were found suitable for VOM there were an equally number of offenders below and above the age of 25. This division in age groups mirrors the general criminal statistics much better than the VOM-cases do.

More than 50% of the cases which were found suitable for VOM as well as the cases where VOM was arranged concerned minor violence, whereas burglary was number two, though below 10 % of the cases. However, also more serious crimes were included such as robbery and serious personal injury, but only to a very small scale.

Victims as well as offenders were interviewed about their experiences with VOM. More than 80 of 100 found VOM successful or very successful. Few more offenders than victims had this conclusion. Below 10 of 100 found VOM unsuccessful or very unsuccessful. Among those who were not satisfied the offenders were in (very little) majority, too.

As VOM is absolutely voluntary for both parties it is obvious that both must have had positive expectations from the beginning. This gives them a better chance for a positive outcome. Further it was voluntary to take part in the interview and not all did so. And finally: only parties from cases about simple violence were interviewed as the representation of all other crimes was too low.

Any way a few "results" will be mentioned here. Among the more important subjects for the victims were if they via VOM had the chance to express to the offender what the crime did to them and that it frustrated them. More than half of those who answered found that VOM gave them this opportunity. Further about half of the responding victims said that VOM to a large or to some degree helped them to be less scared about what happened. 70% of the responding victims had the impression that the offender changed his view on the crime during the VOM.

What the offenders concerns 70-80 % answered that VOM to a large or to some degree gave them the opportunity to prove that they regret and to say they are sorry and that this was good for them. Also 70-80% answer that they feel that they to a large or to some degree understand the other party better now, for instance this is described in this way: ".. it is good to be able to smile and say hallo when we meet". It is also pointed out by some respondents that VOM has solved other problems between the parties. One offender expresses the following: "I have got back my wife"![11]

Financing

The Danish VOM is what housing, salary for mediator etc concerns financed by the state as a part of the police budget. Consequently the parties do not have to pay for VOM[12].

Compared to the criminal justice procedure VOM is extremely cheap as the wages for mediators are remarkably lower as those for judges and no prosecutors nor lawyers are to be present. But on the other hand VOM is an extra (though modest) expense on the state budget as the criminal procedure is not replaced by VOM.

The offender has the right (and often the duty) to legal defence in the criminal justice case. This is initially paid for by the state, but if he is found guilty and sentenced he will receive a bill for the defence-costs after he is released from prison or has paid his fine. These costs are not seldom very high as they also include the expenses for technical evidence, blood tests etc.

Promotion of Restorative Justice

The Crime Preventive Council, which is basically funded by the state, has been the promoter for VOM since the very beginning of the talk about this subject, i.e. since the

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11 □See the evaluation report.

12 □This goes for crime cases only. Mediation in civil cases may be very expensive for the parties but on the other hand here mediation replaces a (even more expensive) court conflict solution.

1980'ies. The Crime Preventive Council runs a secretariat with about 20-30 employees (partly academics). The council itself is not doing research but acts as a communicator of research results and a consultant for local crime preventive initiatives, which are also basically funded by public finances. Further the Council arranges workshops, seminars etc. where "experts" of different observations and backgrounds meet and debate strategies etc.

The universities do not run courses explicitly in Restorative Justice. Conditioned of the interests among the teachers and the students Restorative Justice is mentioned as a (relatively minor) part in courses in criminology or criminal law. Restorative Justice is also mentioned (in small scale) in courses in Alternative Dispute Resolution, which mainly focus on civil law conflicts.

Denmark does not have a long tradition of NGO´s like for instance UK. And especially when it comes to criminal justice and criminal cases the focus is traditionally very strong on legal rights, proportionality, equality etc. which does not open very much for NGO's. However, after conviction, i.e. in the prisons a relatively new tendency is awakening. For instance some NGO's organise extra teaching like help for homework to prisoners who attend prison school or simply organise visits for prisoners who do not receive visit from relatives.

D. Informal Referrals and Informal Initiatives

enmark the approach to definition and reaction to crime tends to be very formal and based on legal rights principles.

However, principles very closely related to Restorative Justice – or maybe rather alternative dispute resolutions – are introduced in quite different contexts. One very remarkable idea is that several schools teach pupils ADR-principles and train them in solving conflicts among pupils. These ideas are described very optimistic. Also workplaces are implementing schedules or programmes for caretaking when employees tends to be sick often or when workers are fired caused to cut down or the like. These ideas have something in common with the ADR-ideas of taking a holistic perspective to the whole person in order to uncover needs and interests in a broader sense in order to help establishing a new positive situation as alternative to the more defeatist approach where a temporary problem maybe initiates a negative snowball effect.

E. The Key-Practitioners of Restorative Justice

Sticking to the narrow focus on Restorative Justice the main organiser of VOM is the local police. Policemen themselves are not acting as mediators, but policemen pick up the – in their eyes – suitable cases and hand them over to the coordinator of VOM who is a not police trained colleague. After having studied the case and found it suitable he or she gives the case to a mediator who establishes contact to the parties. The mediators are paid per case and VOM is not expected to cover living expenses for the mediator. Apart from certain local agreement on practises and the like it is not likely that VOM-mediators will form a big and strong national union or even a smaller club.

But in a broader view there are private institutes who offer alternative conflict resolutions and/or training in ADR for company-leaders, leaders in trade unions etc. Also the Danish Lawyers Union runs a well estimated specialist course for established lawyers and organise a subgroup in the Union for those who did that course.

It looks like as well conflict owners (the parties) as conflict solvers (mediators) in the field of civil law conflicts or conflicts with a smaller or no legal aspect have found a "profitable" corner in ADR.

F. Case Study

The main stages in a criminal justice case (a traditional case) are as follows: once the police learn about a possible crime they start investigating the case. The questions are: Was it a crime? Who did it? If possible or necessary[13] the suspect is taken into custody until investigation is finished and the local court have found a time in the schedule. If the person is found guilty the court will sentence him and if he was in custody he will normally be taken back to custody to wait for a place in a prison. If he was not in custody he will go home and wait for at letter informing him where end when he must serve the sentence. If he is sentenced to three months of imprisonment or more it will be considered after two thirds of the time to release him on parole. This happens for between half and two thirds of the prisoners.

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13 □This is a debate between practitioners as well as others interested in criminal policy: how often and how long should we accept to keep people in custody?

VOM fits into this procedure after the investigation is finished and the person has confirmed the main facts of the "episode" (made a confession). If the case is found suitable the parties will be informed about VOM and asked if they want VOM. If they do want it, VOM will typically be arranged in the meantime between end of investigation and court.

G. Current Reforms

The current reform in Denmark is still that VOM has been introduced as a mandatorily available program nationwide. It may turn out in the future that successful VOM will more systematically lead to deduction of the length of the sentences. But till now this is not the case.

H. Evaluation and Recommendations

Like it has been described above the Danish way of understanding crime and reactions to crime is formal compared to many other countries and also compared to a general tradition of pragmatism in Danish policy. Apart from that and in spite of an increase of the length of sentences Denmark does not have a very punitive policy of sentencing compared to other countries.

The only element in Danish criminal justice practice that has a tiny "taste" of Restorative Justice is the Victim-Offender Mediation. But contrary to other countries a successful VOM does not replace a criminal justice procedure in Denmark. The founding fathers of the VOM-concept on Danish ground, namely the Crime Prevention Council has never argued that VOM should be a replacement for criminal justice. It is not clear if this attitude was founded on tactics (the idea of VOM was not welcomed among politicians for many years) or the Council really was convinced that this would be the best solution. Anyway the committee which prepared the Code on VOM debated this intensively and the viewpoints are described above in part B, in fine.

Experience shows (among others from the introduction of CSO) that introduction of new popular/progressive programmes often includes a risk of net widening in Denmark. This might also be a risk if VOM was introduced as purely a replacement. On the other hand there is also a net widening aspect in the Danish model now, namely concerning minors. By opening VOM for children below the age of criminal responsibility there is a risk that

when these children reach the age of criminal responsibility and maybe once again show up at the police they might be met with the viewpoint that they have "had their chance" so diversion (which should always be first choice for young first timers) is now too late.

Experiences from abroad illustrates that it is a very small risk to systematically give VOM a chance as an alternative to criminal justice in minor first time cases. If the offender reoffends (which he probably will be less likely to do) he will be sentenced next time and if he does not reoffend his live will be much better and the society will save money and time if he avoids the criminal justice procedure. Like it was mentioned in the evaluation the Danish model should develop from a purely victim perspective into a combined victim/crime preventive perspective.

Though VOM has existed as experiment for decades local police felt that the nationwide implementation was expected to go very fast. The Code on VOM was published six months before everything was supposed to be functioning. Among other things mediators had to be found and trained. The relatively poor education of the mediators must be understood in that light. Now that the first rush is over it should be considered seriously how to educate and train the first mediators further. It should also be considered to evaluate the education and on the basis of the evaluation to develop it if this turns out to be a good idea. Specific attention should be paid to the fact that the mediators are not fulltime in that job. There may be as well pros and cons to this fact. But the practise should not be kept only because "this is the way we are used to do it"!

In cases where VOM does not (also not in the future) replace criminal justice it should be considered to (re)offer VOM during the offenders' time in prison. In some cases where one of the parties was not ready before court it may be that they would be able to profit from VOM after some more time. When listening to the good experiences from victims as well as offenders it might also be considered seriously to develop ways of motivating the parties without pushing them in an unethical manner.

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I. ANNEX

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