



Developing judicial training for restorative justice: Towards a European approach

Final Research Report

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Tzeni Varfi, Stephan Parmentier & Ivo Aertsen (eds.)

FINAL REPORT

EU – PROJECT

Developing judicial training for restorative justice: Towards a European approach (JUST/2011/JPEN/AG/2977)

Tzeni Varfi, Stephan Parmentier & Ivo Aertsen (eds.)



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Detailed information about this research project can be found on the European Forum for restorative Justice Website: www.euforumj.org

European Forum for Restorative Justice

Herbert Hooverplein 10

3000 Leuven

BELGIUM

COLOPHON

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Project Coordinator: Tzeni Varfi, European Forum for Restorative Justice, Belgium

Project Supervisor: Stephan Parmentier, Catholic University of Leuven (KU Leuven), Belgium

Steering group members: Galma Akdeniz (Turkey), Tim Chapman (United Kingdom), Katinka Lünemann (The Netherlands), Jan Mietus (Poland), Helena Soletto (Spain)

Local Researchers: Maria Orfanou, Martin McAnallen, Cristina Ruiz Lopez, Ezgi Taboglu, Annemieke Wolthuis

Experts: Marianne Rootring, John Thornhill, Ana Carascosa, Ivo Aertsen, Agnieszka Pilch, Katarzyna Krysiak, Pieter Verbeeck, Bart Claes, Anne Corr, Mahmut Erdemli, Anne Freson

Partners (Co-Beneficiaries) of the project:

University Carlos III de Madrid, Spain

<http://www.uc3m.es/Home>

Verwey-Jonker Institute, The Netherlands

<http://www.verwey-jonker.nl/>

University of Ulster, Northern Ireland (UK)

<http://www.ulster.ac.uk/>

Mediation Development Foundation, Poland

<http://www.fundacijamediacji.pl/home/>

Partner (Associate) of the project:

İstanbul Bilgi University, Turkey

<http://www.bilgi.edu.tr/en/university/>

A few words about the European Forum for Restorative Justice

The European Forum for Restorative Justice (EFRJ) since 2000 has been a driving force organisation for the development and implementation of restorative justice (RJ) practices in Europe. The EFRJ focuses on the application of restorative justice to criminal matters while also giving attention to other areas, such as family, school and community mediation. The EFRJ brings together practitioners, researchers and policy makers in the field of RJ and builds constructive partnerships with relevant organisations at both national and international level. In this coordinating function the EFRJ has initiated various European projects in the field of RJ, and is asked frequently to act as a partner, due to its knowledge, experience and contacts.

Moreover, the EFRJ counts today over several hundreds of members (individuals & organisations) all over the Europe and tends to expand its presence world-wide. In recent years, the EFRJ, together with partner organisations have played an important role in persuading governments to support effective RJ programmes that are making a measurable difference in resolving civil and criminal disputes.

Over the past three years, the EFRJ has cooperated strongly on a number of important European projects to provide a basis for sustained restorative justice models. Through international conferences (e.g. Belfast – June 2014), several workshops and many virtual meetings it has had the chance to identify RJ trends across Europe and abroad and reach consensus with regards to the development of RJ programmes in civil and criminal matters. This joint learning experience together with partners provides a sound basis for even closer future cooperation in the field of RJ.

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time.”

—Abraham Lincoln—

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Tzeni Varfi, European Forum for Restorative Justice,
Leuven Project Coordinator

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List of acronyms

Acronym	Full name
CEPEJ	European Commission for the Efficiency of Justice
DG JUST	Directorate General for Justice
EC	European Commission
EFRJ	European Forum for Restorative Justice
EJN	European Judicial Network
EJTN	European Judicial Training Network
EU	European Union
GEMME	European Association of Judges for Mediation
RJ	Restorative Justice
UN	United Nations
VOM	Victim-Offender Mediation

FOREWORD

After a 21 month period of guided development towards restorative justice (hereinafter RJ) in the criminal justice system, the European Forum for Restorative Justice is very pleased to present the final results of this challenging project. The core of this European project remains focused on the premise that RJ could find application in criminal cases. However, a much debated issue is the very notion of RJ, so basic to practitioners, but confusing or not known at all to legal professionals.

Restorative Justice is increasingly achieving attention worldwide. The interest for RJ practices is reflected also at European and national level. An increasing number of mediation and conferencing programmes are being implemented at all levels of national criminal justice systems, for both young and adult offenders. Notwithstanding this lack of knowledge at the judicial level, we experienced directly how RJ could be applied successfully to criminal cases and restore the harm caused by the crime. At EU level, the European Commission has adopted the Directive establishing minimum standards on the rights, support and protection of victims of crime (Directive 2012/29/EU). Article 11 of this Directive sets out some conditions regarding the access to safe and competent RJ services for the victims who choose to participate to RJ processes.

Despite the widespread acceptance of RJ and the considerations from RJ proponents of being a cost effective instrument, it has gained, unfortunately little interest among the judiciary. Additionally, RJ related practices have been developed unequally across the European Union. The number of implementation bodies, the practices (VOM, conferencing, family circles etc.) and the status of the decisions to refer a criminal case to RJ differ greatly. This suggests that there could be disparities in understanding and making use of RJ by the judiciary in different countries. Major changes in judicial recruitment, increasing caseloads, and more complex laws and restorative tools have increased the demand for continuing judicial training in criminal matters. Many if not most European judiciaries now appoint at least some experienced professionals to the judiciary later in their careers, and their training needs are therefore similar to new appointees. Moreover, judges and public prosecutors face increasing media scrutiny of their decisions, and the growing need for 'quality control' measures for the judiciary implies that judicial training provides judges and prosecutors with the updated knowledge.

Furthermore, the Consultative Council of European Judges (CCJE) in Opinion No 4 (para. 11) goes further by stating that the State has a duty to guarantee that the judiciary or other independent body is responsible for both organising and supervising judicial training. In practice, European countries have generally set up specific entities charged with judicial and prosecutorial training. For this reason, this final report aims at examining the situation of RJ in training sessions of judges and public prosecutors through assessing their needs, identifying best practices and the existing gaps.

Prof. Stephan Parmentier, KU Leuven

Scientific Supervisor

1. Introductory note

The primary focus of this research project “Developing judicial training in restorative justice: Towards a European approach” (JUST/2011/JPEN/AG/2977) is to increase knowledge about Restorative Justice (RJ) to judges and public prosecutors. More specifically, this project envisages contributing to identify best practices of judicial training and promote promising practices in the field of RJ. It further addresses the question whether a more comprehensive RJ theory in the EU is needed and, if so, how this can be achieved.

Professional associations of judges and prosecutors, at the national and European level, were expressly chosen as the main focus of the current project. They play the most dominant role in the development of judicial trainings. Differences in criminal law and socio-legal contexts between EU Member States made it difficult to identify a uniform cross-border promising practice in the field of judicial training in Restorative Justice (hereinafter RJ). In this regard, the application of common principles and methods can enhance the effectiveness of efforts aimed at promoting the development of RJ training. The European Union has taken an interest in issues of mediation in criminal matters since the adoption of Council Framework Decision 2001/220/JHA. Directive 2012/29/EU introduced the wider concept by discussing RJ in criminal matters more explicitly (recital 9, 2, 46, 61, 64, Art. 1 (1), Art. 2 (d), Art. 4 (j), Art. 12, Art. 25 (4)) and brought RJ to the interest not only of mediation practitioners but also of legal professionals. Nevertheless, an important consideration is that the adoption of EU legislation on victims of crime could be fully satisfactory when the RJ practice will be used.

Although national criminal law systems differ, the main elements of this approach have found acceptance in most EU Member States. The guiding principles of RJ can also be found in the following documents:

- ⊕ UN Resolution E/CN.15/2002/L.2 “Basic Principles on the use of Restorative Justice programmes in criminal matters”;
- ⊕ Handbook on Restorative justice programmes, UNODC; Criminal Justice Handbook series, New York, 2006;
- ⊕ Recommendation No. R (99) 19 adopted by the Committee of Ministers of the Council of Europe on 15 September. Strasbourg, France: Council of Europe 1999;
- ⊕ Resolution No. 2 on the Social Mission of the Criminal Justice System – Restorative Justice. In Conclusions and Resolutions of the Conference, Report by the Secretary General of the Council of Europe, at the 26th Conference of European Ministers of Justice, Helsinki, 7-8 April. Council of Europe, MJU 26(2005).

Despite these provisions, gaps still exist in the regulatory framework at national and EU level, therefore a need to strength the knowledge about RJ for the judiciary became a valuable scope.

Having this objective in mind, in 2011, the European Forum for Restorative Justice (hereinafter EFRJ) prepared a project proposal for developing judicial training in RJ, in response to action grants calls of proposal by the European Commission DG Justice. At that time, RJ was largely seen as suitable for juvenile offenders and for less serious offences, even though not much was in the legislation of EU countries. Many countries had at least an RJ practice in place, and in some others the use of RJ was beginning to be explored through pilot projects.

With the start of this research project in January 2013, the EFRJ undertook research and developed strategies by reviewing the possibility of the use of RJ within the criminal justice systems across Europe.

1.1. Outline of the report

The central purpose of this report is to present the main findings concerning the introduction of restorative justice in training programmes for judges and prosecutors in a small number of EU countries (the Netherlands, Northern Ireland, Poland and Spain), as well as Turkey. The research team in collaboration with a group of RJ experts across Europe has identified strategies and promising practices in favour of the implementation of restorative justice in judicial trainings in the future. These strategies and practices fit within the specific legal frameworks of restorative justice in the countries concerned and the European Union as a whole.

Furthermore, the current report reflects the process and insights upon which the main outcomes of the project have been built over 21 months of work. The aspects that require further research, as well as the fundamental questions that have been raised are also pointed out in the different sections of the report with the goal of contributing to further discussion among restorative justice scholars and practitioners in Europe.

Besides the introduction this report comprises four parts:

- ⊕ Part one provides a very brief discussion on definitions and key concepts underpinning restorative justice, and a short overview of the legislative frameworks for restorative justice across the EU;
- ⊕ Part two constitutes the core aspect of the research project and presents an assessment of judicial training for judges and prosecutors in the European Union, first in general terms and then related specifically to training in restorative justice;
- ⊕ Part three discusses some challenges relating to the training of judges and prosecutors in restorative justice and also identifies some good/promising practices;
- ⊕ The conclusion contains the major findings of the research project and also lists a number of prominent recommendations for the further development of RJ in judicial trainings.

In finalising this research report the editors have drawn extensively on the many preparatory documents that were compiled in the course of the project, both by the project coordinator and the respective partner institutions. The most important documents are reproduced by way of annexes to this report.

1.2. Rationale of the project

The first project aim was to improve the knowledge of judges and public prosecutors on restorative practices in criminal matters. One priority of this project was to deal with exchanges and promising practices in judicial trainings. Specific project objectives were the following:

- ⊕ Increase knowledge of legal professionals about RJ Identify
- ⊕ best/promising practices of RJ & judicial trainings Develop
- ⊕ innovative training for judges & prosecutors Establish a
- ⊕ network of legal professionals in RJ

The research project was conceived under the Criminal Platform of the European Commission policy and aimed to increase the understanding of judges and public prosecutors about RJ and promote exchange of knowledge on innovative training practices. Concrete measures such as a literature review, steering group meetings, trainings in this field and a final expert meeting were organised to ensure the implementation of this project objective. In order to reach these objectives, networking and cooperation were identified as core means. Moreover, on the basis of knowledge exchange and motivation of legal professionals we were able to develop promising practices and use innovative methods and techniques. The underlying vision was to increase the knowledge of RJ but also the participation of legal professionals in judicial trainings organised in the area of RJ. A few guiding questions were put on the table during the implementation of the project.

- ⊕ What are the relevant training practices and policies so far adopted in European countries?
- ⊕ Can we further develop innovative training models, which will be tried out in a few countries and be evaluated in function of their possible generalisation?
- ⊕ Can networking among the judiciary be stimulated and established both at national and European level in order to support the sustainable implementation of RJ?

Moreover, existing legislative provisions have not yet led to a widespread use of restorative justice in the partner countries. Rather, restorative justice is still widely unknown amongst legal professionals, notably judges and prosecutors. Thus, this action research project also intended to promote RJ among the gatekeepers of criminal law. This intention was reached through direct involvement of the solicited target group via consultations and training activities.

Main project deliverables

Deliverable 1 *Desk literature review*

This part of the research comprised the legal provisions of RJ in criminal justice systems of EU Member States as well as court referrals of criminal cases to RJ.

Deliverable 2 *Survey on understanding and interpretation of RJ by judges & prosecutors*

The overall aim of this consultation was to obtain insights into the criminal law of the EU member states as regards RJ practices. The intent was not to assess whether RJ practices are implemented in their respective legal systems, but to scrutinize whether such practices are applied by judges and public prosecutors and in which way.

Deliverable 3 *Surveys on judicial training practices for judges and prosecutors*

Survey A – Target survey sent to national training institutes: 28 EU Members states + 1 non EU country (Turkey) participated in the process. The main focus of the surveys was to identify the performance trends of judicial training, the significance of tangible indicators and challenges on delivering training sessions on restorative justice practices.

Survey B - Target survey sent to individual judges and public prosecutors

The aim of this survey was to identify existing training modules, needs of target groups and challenges where judges and public prosecutors believe further action is needed in order to improve RJ judicial trainings at national and EU level.

Deliverable 4 *Judicial training on RJ for judges and prosecutors*

Attractive training programmes were delivered in three partner countries of the project: The Netherlands, Northern Ireland and Spain. The main focus was to ensure increased participation of judges and prosecutors in these trainings, as well as to promote RJ in their practices.

Deliverable 5 *Manual on innovative training practices*

The manual was based on innovative and best practices identified during the training programmes in the respective countries. The use of the manual is supposed to be broader than the stakeholders attending these activities and to demonstrate innovative practices to follow in the future.

Deliverable 6 *Final report*

A descriptive report of all activities allocated for each work stream delivered at the end of the project.

Summary of the project: key objectives and activities

The table below (Table 1.2) demonstrates the overall circle of implementation of the project from the beginning in January 2013 to the end in September 2014. The objectives and the activities undertaken during the project, produced a comprehensive landscape of RJ practices and training programmes across EU Member States, with an additional more detailed overview of innovative and promising practices used in training modules received by the judiciary.

1.3. Methodology and sources of data used

This project is informed by data gathered from a variety of sources. The various methods used and the purpose of each method is outlined in Table 1.1 below.

Table 1.1. Methods and data sources used for the needs assessment

Method	Data source(s)	Purpose
Review of websites	<ul style="list-style-type: none"> ⊕ EJTN ⊕ EJN ⊕ Council of Europe/CEPEJ ⊕ European e-Justice portal ⊕ ERA ⊕ EIPA ⊕ UN 	<ul style="list-style-type: none"> ⊕ To gather information on different training platforms and training needs of judges and prosecutors

Method	Data source(s)	Purpose
Literature review	<ul style="list-style-type: none"> ✦ EFRJ previous reports AGIS I (AGIS/2003/195) and AGIS II (JLS/2006/AGIS/052) ✦ CEPEJ reports ✦ EIPA reports ✦ RJ books ✦ GEMME reports ✦ RJ journals 	<ul style="list-style-type: none"> ✦ To triangulate EFRJ estimates of training needs with EU estimates and elaborate relevant training modules ✦ To identify current gaps of RJ training of legal professionals
Target online surveys with judges, prosecutors and national judicial training institutes	<ul style="list-style-type: none"> ✦ 3 surveys <i>For further information see section 3.2 of the report</i> 	<ul style="list-style-type: none"> ✦ To gather information about the RJ implementation at national level ✦ To seize the knowledge of judges and prosecutors about RJ in criminal matters ✦ To assess the training needs of judges and prosecutors in RJ
Review of project documentation from the pilot projects	Reporting from the pilot actions (final reports, minutes of meetings, etc.)	<ul style="list-style-type: none"> ✦ To assess the lessons learnt in relation to the added value of including RJ in the training programmes of judges and prosecutors
Expert seminar	Attending – judges/prosecutors/penal mediators/researchers	To brainstorm about: <ul style="list-style-type: none"> ✦ The drivers to include RJ in training programmes; ✦ Classifying these skills according to the most important and most certain to be needed; ✦ Identifying drivers that might influence whether certain methods of RJ are required or not; ✦ Validating the draft needs assessment

Table 1.2. Implementation of the project (January 2013 – September 2014)

Implementation of the project																					
Tasks and steps	Work programme and deliverables - 2013												Work programme and deliverables - 2014								
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
Work stream 1 - Preparatory research																					
Step 1.1 Mobilise and project team meeting	✓																				
Step 1.2 Literature review		✓	✓																		
Step 1.3 Survey to judges & public prosecutors in EU				✓																	
Step 1.4 Roadmap of future actions				✓																	
Step 1.5 - 1st Steering group meeting					✓																
Work stream 2 - Identifying, analysing and further elaborating good training practices																					
Step 2.1 National reports from 5 partner countries						✓	✓	✓													
Step 2.2 Consultation with stakeholders						✓															
Step 2.3 Elaboration of the survey							✓	✓													
Step 2.4 Report + Country Factsheets									✓												
Step 2.5 Developing training modules to be tested in 4 partner countries									✓												
Step 2.6 2nd Steering group meeting									✓												
Work stream 3- Applying an evaluating training modules																					
Step 3.1 Implementation of 4 training modules										✓	✓	✓	✓	✓	✓						
Step 3.2 Evaluation & reporting on the trainings															✓	✓					
Step 3.3 Training seminar																	✓				
Step 3.4 3rd Steering group meeting (last)																	✓				
Work stream 4- Reporting																					
Step 4.1 Elaborating training manual																		✓	✓		
Step 4.2 Research (final) report																				✓	✓
Work stream 5- Networking																					
Step 5.1 European network of judges & prosecutors in RJ									✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

2. Restorative Justice – A brief introduction

Whilst it has been gaining traction in Anglo-Saxon and European countries since the mid 1980s, restorative justice is still considered to be a new or ‘innovative’ way of doing justice, and is often contrasted with the criminal justice system. In criminal justice processes, crime violates the state and laws, violations lead to guilt, justice requires that the state pronounces guilt (apportions blame) and imposes punishment (pain), and the central focus is offenders getting what they deserve. In restorative justice, however, crime is conceptualised as a violation of people and relationships, violations reveal obligations, justice requires that the victims, offenders and community members work together to put things right, and the central focus is on the needs of the victim and the offender’s responsibility in repairing the harm.¹ Despite these apparently contrasting elements, restorative justice and criminal justice can successfully exist together, working in continuous cooperation.²

This chapter provides a brief introduction to, rather than an exhaustive description of, the concept of restorative justice in order to provide judicial training for judges and prosecutors. Attention is first given to understanding restorative justice: a European policy framework is presented and the challenges around the definition of restorative justice are discussed (2.1). Next, a number of other challenges facing restorative justice are presented (2.2). Finally, specific information is given about the legislative framework for restorative justice in several EU countries (2.3).

2.1 Understanding restorative justice

2.1.1. European policy framework

Restorative justice has been increasingly legitimised through various pieces of national and supra-national legislation, which in practice have variously been permissive, coercive or mandatory in nature. Restorative justice received initial prominence with the 1999 Council of Europe recommendation³, which focused on mediation. The first legally binding measure at the European level was the 2001 EU Framework Decision on the standing of victims on criminal proceedings.⁴ This stipulated in article 10 that Member States should “seek to promote mediation in criminal cases for offences which it considers appropriate for that sort of measure” and “ensure that any agreement between the victim and the offender reached in the course of such mediation (...) can be taken into account”. More recently, restorative justice was featured in the binding 2012 EU Directive establishing minimum standards on the rights, support and protection of victims of crime⁵. Specifically, this Directive in its article 12 guarantees safeguards for victims who participate within a restorative justice process.

Whilst the 1999 Recommendations and the 2001 Framework Decision make reference specifically to the practice of ‘mediation’, restorative justice is wider than just this one practice. The subsequent Directive of 2012 better reflects this with its specific mention of three important forms of restorative justice: “victim- offender mediation, family group conferencing and sentencing circles”⁶. Mediation, or victim-offender mediation (VOM) refers to a process of communication between the victim and the offender. This is usually facilitated by a neutral party, and the communication may be in the form of a face-to-face meeting, or through indirect means such as letters. Family group conferences (FGCs) usually involves a face-to-face meeting between the victim and the offender, but this differs from VOM because both parties can be accompanied by family members, friends and other people who

¹ Zehr, H. (2002). *The little book of restorative justice*. Intercourse, PA : Good Books.

² Aertsen, I., Daems, T. and Robert, L. (eds.) (2006). *Institutionalizing restorative justice*. Cullompton: Willan Publishing.

³ Council of Europe (1999). Mediation in penal matters: Recommendation No R.(99) 19 and explanatory memorandum. Strasbourg: Council of Europe.

⁴ Council Framework Decision of 15 March 2001 on the standing of victims on criminal proceedings (2001/220/JHA).

⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

⁶ Recital 46.

can offer support. FGCs usually, but do not always, have an external facilitator who can be a neutral party or, in some models, a police officer who represents the community. Sentencing circles often involve a broad range of community representatives who have been impacted by the crime in addition to the offender and possibly the direct victim. The participants sit in a circle and have the opportunity, in sequence, to speak. Here, the process is often led by a facilitator or 'circle keeper', who may in some cases be a judge. What unites these restorative justice processes are the questions that are asked within them: who has been hurt?; what are their needs?; whose obligations are these? This differs from the criminal justice system, which more commonly asks: what laws have been broken?; who did it?; what do they deserve?⁷ Despite the similarities across restorative approaches, there is sometimes a degree of disagreement regarding what should be included under the umbrella of 'restorative justice'.

2.1.2. Defining restorative justice

Restorative justice has a strong and ever-expanding theoretical basis, but also incorporates a body of practices, and both theory and practice develop in relationship to each other. In this way, both as a concept and as a practice, restorative justice can be thought of as living, growing and evolving. The 2012 EU Directive defines restorative justice 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".⁸ Other widely respected definitions include the community as a third stakeholder. In some restorative conceptualisations, restorative justice can be said to have taken place when any two of the three stakeholders are involved, whereas in other models all three stakeholders must be represented for the process to be considered 'fully restorative'.⁹ The Recommendations of 1999 provides further detail with its three working principles for mediation¹⁰: (1) voluntary participation¹¹, (2) confidentiality within limits¹² and (3) impartiality.¹³

These principles are not universally agreed upon. Restorative justice 'purists' take a 'minimalist' stance, believing the term 'restorative justice' should only be applied to programmes that are entered into voluntarily and that meaningfully involve all of the stakeholders (including the community). For these 'purists', outcomes such as compensation agreements are of far less importance than 'the process' or 'the journey' between the stakeholders. They also tend to shun formalisation and institutionalisation of restorative justice processes, and consequently resist its co-option into criminal justice. Those who adopt a 'maximalist' approach are more willing to involve professionals from different spheres, including criminal justice professionals. Maximalists also tend to value the outcome over the process. For 'maximalists', restorative justice can still occur even without the voluntary participation of all of the stakeholders. In practice, the term 'restorative justice' has been broadly applied to a variety of different actions including: juveniles undertaking a 'written project' (Belgium), Youth Referral Order Panels (England and Wales), damage settlements (the Netherlands) and practices involving different neighbour, school or family disputes in addition to criminal matters.¹⁴

⁷ Zehr, H. (2002). *The little book of restorative justice*. Intercourse, PA : Good Books.

⁸ Article 2(d).

⁹ McCold, P. (2002). Toward a holistic vision of restorative juvenile justice: A reply to the maximalist model. *Contemporary Issues in Criminology*, 3(4), 357 – 414.

¹⁰ Whilst these were given for mediation they also apply for restorative justice more widely.

¹¹ Article 1.

¹² Article 2 & Article 30.

¹³ Article 26.

¹⁴ Vanfraechem, I. and Aertsen, I. (2010). Empirical research on restorative justice in Europe: Perspectives. In I. Vanfraechem, I. Aertsen and J. Willemsens (eds.), *Restorative justice realities: Empirical research in a European context*. The Hague: Eleven International Publishing.

2.2 Challenges for restorative justice

The lack of a universally accepted definition poses a challenge on the one hand:¹⁵ it points to a lack of total consensus amongst restorative justice practitioners and theorists. On the other hand, this generates scientific discussion and debate, and an accompanying rich discourse, which finally strengthens the concept and practice of restorative justice. Three additional issues have also presented challenges: (1) legal safeguards; (2) the position of the victim, and; (3) restorative justice in serious cases.

2.2.1 Legal safeguards

The issue of legal safeguards is contentious and part of the wider debate about the extent to which restorative justice should seek to fit within and calibrate itself against the criminal justice system. The issue of proportionality is used to highlight some of the challenges that are applicable to the wider issue of legal safeguards in restorative justice. The notion of proportionality is a key procedural safeguard, guaranteeing individual human rights within the criminal justice system and crucial to retributive theory. Its absence could arguably result in “arbitrary revenge or unlimited intervention”.¹⁶

In restorative justice, however, there are often “wide discrepancies in the amounts of reparation asked by different victims”¹⁷ even for similar offences committed under similar circumstances. This lack of proportionality in restorative justice is one of the main reasons for scepticism¹⁸ and those who believe proportionality to be a fundamental component of what makes a justice system ‘just’¹⁹ find restorative justice inherently flawed. Some theorists view restorative justice as a separate entity to the criminal justice system, arguing that the legal notion of proportionality is incompatible with the theoretical ideals of restorative justice²⁰ and that in restorative systems justice is achieved despite, or even because of²¹, the absence of proportionality. For those who shun proportionality, its pursuit does not always lead to the most positive or useful outcomes²². It has also been argued that restorative justice has its own conceptualisation of proportionality, prioritising whether the repair achieved is proportionate to the harm as it is perceived by the victim²³.

On the other hand, those who argue for proportionality in restorative justice argue that proportional outcomes are necessary to limit unfair settlements that arise through power discrepancies, such as when juveniles have to make reparations to adults, who may have superior negotiating skills.²⁴ It is

¹⁵ Walgrave, L. (2008). Restorative justice: An alternative for responding to crime? In S. G. Shoham, O. Beck and M. Kett (eds.), *International handbook of penology and criminal justice*. London: Taylor & Francis.

¹⁶ Hartmann, A. (2007). Restorative justice and the law. In R. MacKay, M. Bosnjak, J. Deklerck, C. Pelikan, B. Van Stokkom and M. Wright (eds.), *Images of restorative justice theory*. Frankfurt am Main: Verlag Fur Polizei und Wissenschaft.

¹⁷ Wright, M. (2007). Punishment and restorative justice: Ethics. In R. MacKay, M. Bosnjak, J. Deklerck, C. Pelikan, B. Van Stokkom and M. Wright (eds.), *Images of restorative justice theory*. Frankfurt am Main: Verlag Fur Polizei und Wissenschaft.

¹⁸ Walgrave, L. (2008). Restorative justice: An alternative for responding to crime? In S. G. Shoham, O. Beck and M. Kett (eds.), *International handbook of penology and criminal justice*. London: Taylor & Francis.

¹⁹ See, for example, Ashworth, A. (2007). Sentencing. In M. Maguire, R. Morgan and R. Reiner (eds.), *The Oxford handbook of criminology (4th ed.)*. Oxford: Oxford University Press.

²⁰ Wright, M. (2003). Is it time to question the concept of punishment? In L. Walgrave [Ed.], *Repositioning restorative justice*. Cullompton: Willan Publishing.

²¹ Braithwaite, J. (2002). In search of restorative jurisprudence. In L. Walgrave (ed.), *Restorative justice and the law*. Cullompton: Willan Publishing.

²² Braithwaite, J. (2002). In search of restorative jurisprudence. In L. Walgrave (ed.), *Restorative justice and the law*. Cullompton: Willan Publishing.

²³ Braithwaite, J. (2002). In search of restorative jurisprudence. In L. Walgrave (ed.), *Restorative justice and the law*. Cullompton: Willan Publishing.

²⁴ Eliaerts, C. and Dumortier, E. (2002). Restorative justice for children: In need of procedural safeguards and standards. In E. G. M. Weitekamp and H. Kerner (eds.), *Restorative justice: Theoretical foundations*. Cullompton: Willan Publishing.

argued that offenders should only undertake burdens that are directly appropriate to the crime committed.²⁵ As is the case with many other legal safeguards, there are ways to introduce elements of proportionality without totally departing from restorative principles. In one model, the victim and offender are free to make decisions amongst themselves regarding the reparation but the state makes the ultimate sentencing decision to protect the wider public interest, whilst taking the restorative agreement into consideration.²⁶ This last point raises the issue of public interests in cases. Often the reluctance to engage with restorative justice is greatest in cases that are considered to be serious.

2.2.2 Restorative justice in serious cases

In European countries such as Belgium, Denmark, England and Wales, and The Netherlands there are no restrictions around which cases can be addressed through restorative justice. Indeed, there have been successful restorative justice programmes that specifically target ‘serious crimes’ in Belgium, Germany and Scotland.²⁷ Yet there are limitations in the application of restorative justice in serious cases, and it is important to reiterate that restorative justice can serve as an addition to criminal justice, rather than a replacement, and can be implemented at all stages of the process, including pre-conviction and post sentence. Moreover, restorative justice has been shown to fulfil important needs for victims and offenders, which often cannot be addressed by the criminal justice system.

Sexual violence is an example of the type of serious case for which public support for restorative justice is increasing.²⁸ Common criticisms of the use of restorative justice for sexual violence cases, and particularly instances of intimate partner violence, often include the arguments that victim safety cannot be guaranteed, and that the power imbalances that were present during the sexual violence will be reinforced. In practice, victims of sexual violence who have participated in restorative justice value both the opportunity to talk about their experience as well as the control they can be given within a restorative process.²⁹ It is important to acknowledge, however, that these cases are sensitive and should only be facilitated by skilled practitioners.³⁰ It is also important to acknowledge the realities of sexual violence cases within the criminal justice system: these cases still have high attrition rates³¹ and legal processes can be a source of re-traumatisation for victims³².

2.2.3 The position of the victim in restorative justice

The position and role of victims in any justice system are important. As is the case with the criminal justice system, the protection of victim needs and interests may present a challenge for restorative justice. Indeed, one of the functions of the 2012 EU Directive is to enshrine victim safeguards in restorative justice legislation and practice. Despite the potential challenges, empirical evidence from practice is generally positive. Victims report high levels of satisfaction with restorative justice

²⁵ Von Hirsch, A., Ashworth, A. and Shearing, C. (2003). Specifying aims and limits for restorative justice: A ‘making amends’ model? In A. Von Hirsch, J. V. Roberts and A. Bottoms (eds.). *Restorative justice and criminal justice: Competing or reconcilable paradigms?* Oxford: Hart Publishing.

²⁶ Willemsens, J. (2003). Restorative justice: a discussion of punishment. In L. Walgrave (ed.), *Repositioning restorative justice*. Cullompton: Willan Publishing.

²⁷ Dunkel, F. and Parosanu, A. (2015). Research and the selection on the most effective juvenile restorative justice practices in Europe: Snapshots from 28 EU Member States. Brussels: International Juvenile Justice Observatory (IJJO).

²⁸ Marsh, F. and Wager, N. M. (2016). Restorative justice in cases of sexual violence: Exploring the views of the public and survivors. *Probation Journal*, 62(4) 336–356.

²⁹ McGlynn, C., Westmarland, N. and Godden, N. (2012). ‘I just wanted him to hear me’: sexual violence and the possibilities of restorative justice. *Journal of Law and Society*, 39(2), 213-240.

³⁰ Mercer, V., Sten Madsen, K., Keenan, M. and Zinsstag, E (2015). *Doing restorative justice in cases of sexual violence: A practice guide*. Leuven: KU Leuven Institute of Criminology.

³¹ McGlynn, C., Westmarland, N. and Godden, N. (2012). ‘I just wanted him to hear me’: sexual violence and the possibilities of restorative justice. *Journal of Law and Society*, 39(2), 213-240.

³² Koss, M. P. (2006). Restoring rape survivors: Justice, advocacy, and a call to action. *Annals of the New York academy of sciences*. 1081 (1): 206 - 234.

programmes³³, and participation can reduce victims' fear of victimisation, and increase their sense of procedural justice.³⁴

However, some programmes that claim to be restorative take place without meaningful input from the direct victim. One such example is the Youth Referral Order, a Court disposal used in England and Wales for first time entrants into the Youth Justice System. Purportedly restorative, the restorative credentials of this programme have been questioned because of the limited input from victims in practice.³⁵ The risk is that programmes claiming to be restorative are primarily focused on the needs of the offenders at the expense of those of the victims. A further risk is that victims within the process become agents to extract change and rehabilitation from offenders, as opposed to a fully equal partner in the process. The challenge of how to include victims in meaningful ways can often be met with the help of skilled and creative restorative justice facilitators, who are able to creatively engage the victim, for example by exchange through letters, video link technology, or through the victim's appointment of a proxy.

2.3. Legislative frameworks of RJ in the EU

Having defined what RJ stands for, as well as some of the controversies and critiques, it is useful to have a closer look at the legislative frameworks of several EU member states to illustrate that a wide array of approaches to the implementation of RJ is covered. In order to give the reader the benefit of multiple perspectives on the law, a review table is available in Annex 1 to this report. The data collected through a literature review were divided by country and examined by the research team. Where appropriate, the responses have been averaged and weighted by national correspondents. The participation by RJ practitioners and national researchers in the data collection was highly satisfactory; therefore the project team was attentive to include their inputs in the study findings as much as possible.

Since judges and public prosecutors, as gatekeepers of the criminal justice system, have an important role in the development of RJ, data were also collected on their position in the respective countries. Depending on the applicable legal framework, public prosecutors and judges may be able to initiate RJ processes themselves, they may refer cases to RJ programmes, or they may invite victims and/or offenders to get into contact with RJ services. EU Member States have encouraged the cooperation between judges and prosecutors on the one hand, and mediation services on the other hand, to reach victims and offenders more effectively.

The project team proceeded to a first screening of the legal provisions about the role of judges and prosecutors in the development of RJ and in certain cases also as referral authorities to RJ practices. The main findings are presented below, followed by an in depth analysis of the RJ legal landscape in the five partner countries (the Netherlands, Northern Ireland, Poland, Spain and Turkey).

³³ Bolivar, D., Pelikan, C. and Lemonne, A. (2015). Victims and restorative justice: towards a comparison. In Vanfraechem, I., Bolivar, D. and Aertsen, I. (eds.), *Victims and Restorative Justice*. London: Routledge.

³⁴ Miller, S. L. and Hefner, M. K. (2015). Procedural Justice for Victims and Offenders?: Exploring Restorative Justice Processes in Australia and the US. *Justice Quarterly*, 32(1), 142 – 167.

³⁵ Hoyle, C. and Rosenblatt, F. F. (2016). Looking back to the future: Threats to the success of restorative justice in the United Kingdom. *Victims & Offenders*, 11, 30-49.

Main features and common trends of RJ in criminal matters in EU Member States

Box 1	Legal Framework
	<ul style="list-style-type: none"> <li data-bbox="256 456 1402 546">✦ From the literature review of the legal frameworks of 21 EU MS, it appears that almost all of them regulate RJ practices by hard law (Criminal codes, Code of Criminal Procedure) (e.g. Belgium, Austria, Czech Republic, France, Germany, Greece, Hungary, Italy, Norway, Poland, Slovakia, Slovenia). <li data-bbox="256 568 1402 636">✦ Nevertheless, not in all countries penal mediation is regulated by law (e.g. Lithuania, The Netherlands). <li data-bbox="256 658 1402 725">✦ Geographical discrepancies may lead to a problem of effective access to restorative justice (ex. In Sweden only 1/3 of the population has access to mediation). <li data-bbox="256 748 1402 904">✦ Countries seem aware of the importance of penal mediation as an alternative dispute resolution method. Especially Belgium has a myriad of legislative frameworks when it comes to Restorative Justice: Code of Criminal Procedure, Juvenile Justice Act and subordinate legislation. In other countries (Austria, France, Slovenia) the RJ provisions can be found in the Code of Criminal Procedure or in the Criminal Code (Bulgaria and Spain). <li data-bbox="256 927 1402 994">✦ Most countries have provisions for RJ for both juvenile and adult offenders (exception in France: only for adults – and, in Spain, UK and Greece: only for juveniles.) <li data-bbox="256 1016 1402 1084">✦ Some countries face difficulties with regards to the implementation of Restorative Justice related practices. <li data-bbox="256 1106 1402 1173">✦ Where the specific guarantees for minors are missing, the provisions for minors' participation in the criminal proceedings apply by analogy (e.g. Romania). <li data-bbox="256 1196 1402 1263">✦ The lack of guiding principles both for awareness raising and implementation is another important loophole. The lack of resources and limited accumulated knowledge and expertise on the topic are defined as obstacles in the development of guiding principles. <li data-bbox="256 1285 1402 1352">✦ Most of the countries consider RJ practices under the provisions of diversion measures (e.g. Austria, Greece, Slovakia, Hungary and Northern Ireland). <li data-bbox="256 1375 1402 1417">✦ In Slovenia, criminal mediation is known as settlement in criminal matters, and in Sweden, according to Act 445 of 2000, RJ is considered as complementary to the retributive justice system.

Box 2 Patterns of restorative justice

- ✚ Practice differs between RJ programmes for juvenile and adult offenders (Austria, Italy, Romania, Spain).
- ✚ VOM is mainly applicable to offences involving natural persons, often minors, who do not know each other before the offence was committed and have not committed offences placing one of the parties in a humiliating situation (Austria, Slovenia and Italy).
- ✚ In some countries, VOM applies also to natural persons in the position of victims (Austria, UK). Legal entities can also be part of VOM (Hungary).
- ✚ Some countries have adopted a coercive/interventionist approach in cases of young offenders i.e. the referral to mediation in criminal matters. Nevertheless, some countries have adopted a more permissive approach while dealing with young offenders (Finland, Bulgaria, Germany, Poland, Slovenia) and some others a coercive approach (Austria and Belgium, England and Northern Ireland).
- ✚ Mediation in criminal cases is in some cases possible at any stage of penal procedure (Belgium, Italy, the Netherlands), and in some countries VOM is confined to pre-trial proceedings (Czech Republic).
- ✚ Generally, there are two limitations set forth for penal mediation:
 - A) Nature of the relationship between the victim and the offender (marital violence, violence/damage between neighbors, sexual assaults)
 - B) Specific feature of penal matters: seriousness of the offence
- ✚ Consent of the parties as compulsory element to start penal mediation (Belgium, Germany, Norway, the Netherlands, Hungary). No such provision under the Greek law, although in practice it is sought.
- ✚ Several countries apply the model of direct/indirect penal mediation (Belgium, Italy, UK), some only use direct mediation (Austria and Greece).
- ✚ Penal mediation is cost free for the users (covered by public funds) (Germany, Hungary, Slovenia and Sweden).

Box 3 Role of judges in referring cases to restorative justice

- ✚ The role of the judge as gatekeeper varies. In some countries, the court has jurisdiction to propose RJ *ex officio* (UK, Hungary), in others is a residual competence (Austria, Germany).
- ✚ In Poland, judges can refer cases to mediation for juvenile offenders (as can the public prosecutor) in the absence of initiative by the parties or by the prosecutor, and only the judge is entitled to refer the case.
- ✚ The power to make referrals to mediation in criminal matters belongs to the judge and the public prosecutor (Austria, Germany, Hungary) or exclusively to the prosecutor (Slovenia).
- ✚ Judges are prohibited from practicing penal mediation (Belgium, France, Greece, Italy, the Netherlands, Poland, Norway (except in civil cases), Slovakia, Slovenia and Sweden). The possibility for judges to act as volunteer mediator is recognised in the UK.
- ✚ Judges can encourage the use of VOM to reduce the punishment: Austria, Belgium, and Germany.
- ✚ In Italy 1/3 of the mediators are volunteer legal professionals, including juvenile lay judges.

Box 4 Role of public prosecutors referring cases to restorative justice

- ⊕ In almost all EU member states the prosecutor is the central figure. In France, for instance, only the public prosecutor can refer cases to RJ.
- ⊕ In countries, where the judges and the prosecutors share the power to refer cases to RJ, most of the pending cases are referred to the mediator by the prosecutor (Austria, Belgium, Czech Republic, Germany, Hungary, Ireland, Italy, etc).
- ⊕ Penal mediation is requested by prosecutors only at the pre-trial stage (Italy and Poland).

Box 5 Loopholes in implementing restorative justice at national level

- ⊕ In criminal matters, the countries make little efforts to raise awareness about RJ (all 21 EU Member States analysed). The way in which RJ is formulated in the law (when foreseen) is not sufficient for its effective implementation and poses difficulties for its correct application.
- ⊕ The prevalence of the principle of mandatory prosecution in some European countries (except France and Belgium) substantially limits the discretionary powers available to prosecutors to consider RJ processes and cease prosecution.
- ⊕ There are limited statistics available about the referral of cases by judges and prosecutors (Belgium, Austria).
- ⊕ Cases can only be known to prosecutors by consulting the case documentation, without meeting the parties (Germany, Austria, Italy).
- ⊕ Fragmented RJ practices in the criminal justice system (Belgium, the Netherlands, Spain and Italy) or limited use of RJ practices (Poland and Sweden). In most cases RJ schemes have only been set up in those regions where NGOs or local authorities have a particular interest in RJ, thus the service is not available throughout the whole country.
- ⊕ Restorative justice is not seen as a leading tool for conflict resolution (France, Finland and UK) or there is a lack of RJ procedure/regulation (Greece, Hungary, Italy, Poland).
- ⊕ Lack of funding in supporting RJ programmes: often with negative repercussions on the working conditions of the RJ delivering services.
- ⊕ Lack of an appropriate institution for the coordination and monitoring of RJ. Coordination between the legal professionals and mediators is often weak or non-existent.
- ⊕ Complex country structures, e.g. Belgium and Germany (Federation) or Spain (autonomous provinces or regions), may engender additional difficulties when it comes to coordinating actions about RJ development. In Belgium, welfare and education are competencies of the Communities while justice is mainly but not totally a competency of the Federal Government. In the same vein, in Spain the power regarding a certain policy is shared between the different administrations in different ways. This makes it difficult to identify which agency, department or administration should be the interlocutor for any initiative or problem that has to be addressed.

Legislative records of RJ in project countries

Below are short presentations of the legislative framework on restorative justice in the five partner countries of the current project: the Netherlands, Northern Ireland, Poland, Spain and Turkey.

The Netherlands

The Dutch criminal law for juveniles is regulated in Articles 77a-77hh of Part VIII A of the Criminal Code, entitled Special regulations for juveniles. It contains mainly a sanction system that differs from the sanction system for adults. Furthermore there are some special regulations for juveniles included in the Code of Criminal Procedure, namely in the Articles 486 and following. The special provisions of the Dutch Criminal Code for juveniles are applicable for children who at the time they committed an offence are already 12 but not yet 18 years old. Children younger than 12 years of age are principally not prosecuted. For adults the Criminal Code is applicable.

In the Netherlands, like in many other European countries, there is no uniform definition of RJ. The Dutch Foundation Restorative Justice³⁶, a leading NGO in RJ practices, did not provide a RJ definition but pinpointed out three main features³⁷ applicable to RJ cases: participation of the stakeholders (1), restoration of the balance disturbed by the crime (2), and RJ guided by emotions and individual experiences of parties involved (3).

VOM is usually recognised as part of the criminal law proceedings, where in certain stages of the procedure, a specific case can be referred to a mediator. This model has been applied but without being properly institutionalised. RJ (VOM, conferencing) is however considered also as a diversion measure from the criminal lawsuit. The diversion is mainly used in neighborhood and school conflicts.

Since 2007 VOM in criminal law cases has found a primarily place. During the conference “*Moving Mediation*” in November 2009, the president of the High Court, G. J. M. Corstens, stressed that mediation in criminal cases must receive more attention. Interestingly enough, shortly after, Article 51h was introduced into the Dutch Code of Criminal Procedure. It gives a legal basis for mediation. It says that the office of the public prosecutor arranges that the police will inform both victim and offender in an as early stage as possible about the possibility of mediation.

Referral process to RJ

VOM is a nation-wide model introduced and mainly carried out by two independent organisations: Victim in Focus and Eigen Kracht (Real Justice/Family group conferences).

In both cases the contacts are independent from the criminal law proceedings. The RJ practices can take place before, at the same time as or after the lawsuit. The public prosecutor, respectively the judge can be informed about the outcome of the process.

Northern Ireland

Within the United Kingdom there are three distinct Criminal Justice Systems in operation: England and Wales; Scotland; and Northern Ireland. The three justice systems operate under differing laws, procedures and governing agencies however there are common themes between the systems, particularly England and Wales and Northern Ireland.

The trial process across all three criminal justice systems in the United Kingdom is predicated on adversarial legal principles. The prosecution is required to prove beyond reasonable doubt the guilt of the

³⁶ <http://www.restorativejustice.nl/>

³⁷ Van Hoek, A., Slump G.J., Ochtman, A., Leijten, M. (2011). De toepassing van herstelrecht in Nederland: toekomstvisie en advies, page 9: http://www.restorativejustice.nl/user/file/adviesnota_rjn.pdf

defendant in a criminal trial or on the balance of probabilities in a civil case. 'The prosecution and the defence are adversaries and are central to the process. They prepare and present their cases in court to judges who are neutral and act as umpires. Judges are not involved in the investigation of offences and have no prior knowledge of cases before they appear in court as they do under inquisitorial systems'. (Hucklesby, 2009: 69)

Although the United Kingdom is said to have an unwritten constitution it is important to note that there are three fundamental principles within such a constitution. Firstly the principle of the rule of law dictates that every individual up to and including the Head of State is equal in the eyes of the law and no one is above it. Secondly the principle of Parliamentary Sovereignty permits Parliament to pass whatever laws it likes. The third and final principle of the separation of powers provides that separate bodies hold responsibility for making laws, administering laws and the judging of disputes. 'The diffusion of authority among different centres of decision-making has long been regarded as a safeguard against totalitarianism and a means of preventing the abuse of power'. (Leyland, 2007: 53)

The role of the judge is to apply the rule of law justly and independently. As a result judges do not innovate policy such as the development of restorative justice. They are led by legislation and their role is to interpret its provisions in specific cases. It is important to note that those appointed as judges will be very experienced lawyers who have gained a reputation for their competence within their profession. This reality has a major influence on the content and delivery of judicial training in Northern Ireland.

The Justice (Northern Ireland) Act 2002 defines the principal aim of the youth justice system as '*to protect the public by preventing offending*'. It provides the authority for restorative models and for the establishment of the Youth Conference Service, located in the Youth Justice Agency. The Youth Conference Service is empowered by statute to facilitate restorative justice conferences between children and young people aged from 10 until their 18th birthday who offend and their victims. These conferences are arranged either at the request of the Public Prosecutor, known as Diversionary Youth Conferences, or the Court and these are known as Court-ordered Youth Conferences. Since 2003 the Youth Conference Service has had consistently high victim participation rates (over 60%), with 91% victim satisfaction rates, and has substantially reduced the use of custody for young people in Northern Ireland. The Youth Justice Agency (YJA) was launched in April 2003 as an agency of the Northern Ireland Office, with the principal aims of reducing youth crime and building confidence in the youth justice system. The agency works with children aged between 10 and 17 who have offended or are at serious risk of offending. The principles of restorative justice have been placed at the heart of the youth justice system in Northern

Ireland has been involved in RJ since 1998. The system of RJ which has been established involves the use of 'youth conferences' in which the offender, victim (or victim representative), professionals and others are brought together to discuss the offence and its repercussions, and to agree on an action plan for the offender. Youth conferences are fully integrated into the criminal justice process.

At a youth conference, the young person is invited to give an account of the offence and the victim, if present, is encouraged to ask the young person questions about what has been said and how they have been affected by the crime. Others in attendance are also invited to give their views on the crime and its effects. A critical element of the conference is the collaborative development of a youth conference plan, which sets out actions to be taken by the young person to make amends for the offence and reduce the likelihood of further offending.

The Justice Act 2002 Chapter 26 provided for the introduction of the youth conferences and youth conference orders. The legislation empowers the Public Prosecution Service to arrange restorative youth conferences for virtually every young person (juvenile offender) charged with a criminal offence in Northern Ireland. Diversionary conferences avoid court prosecutions and result in voluntary agreements made by young people to make reparation and to prevent re-offending. If they do not comply with the agreement made at the conference, they may be prosecuted in court for the original offence.

Young people who have committed serious offences or have developed a pattern of offending will be prosecuted in the Youth Court. In all cases except for those criminal offences that attract mandatory sentences (e.g. murder) the District Judge in the Youth court must offer the young person the opportunity of a youth conference.

Referral process to RJ

A young person can be referred for a youth conference at one of two stages of the criminal justice process:

- ⊕ Prior to conviction if, having been charged by the Public Prosecution Service (PPS), the young person admits to having committed the offence; in such cases, the referral is undertaken by the PPS, and the conference is known as a diversionary youth conference;
- ⊕ Following conviction, in which case the conference is known as a court-ordered conference. A guilty plea is not a precondition for a court-ordered conference.

If the case for a conference has been referred by the Public Prosecution Service (PPS), the agreement must be sent to the PPS for authorisation. They may insist on changes to the agreement on the basis of proportionality or when the public interest has not been respected or taken into account enough. If the Youth Court has referred the case to a conference, the agreement must be authorised in the court and again may be amended by the court. Once it is endorsed it becomes an enforceable court order, the youth conference order. This order is supervised by the Youth Justice Agency (YJA).

Poland

In Poland, the Code of Penal Practice was amended to permit mediation in restricted cases in 1997. The Juvenile Justice Act was amended in September 2000 to permit the use of mediation in juvenile offences (Czarnecka-Dzialuk & Wojcik, 2002; Miers & Willemsens, 2004). In January 2003, a further amendment to Polish law greatly expanded the range of potential uses of mediation in the country. RJ is now practiced by academics and the state. Poland had a goal to comply with European Union standards for victim-offender mediation by March 2006. This included producing research on the process, creating national mediation databases, refining legislation, supporting relationships between government bodies and private agencies, and providing information and training to stakeholders (Czarnecka-Dzialuk & Wojcik, 2002; Restorative Justice Consortium, 2005, 2006). In spite of this official acceptance of mediation, there is still a great reluctance on the part of prosecutors and judges to refer cases to mediation (Platek, 2004; Restorative Justice Consortium, 2005). However, the National Council of the Judiciary, the Main Council of Lawyers, and the Association of Public Prosecutors created their own codes of mediation ethics (Czarnecka-Dzialuk & Wojcik, 2002).

Referral process to RJ

A criminal case can be referred to mediation by:

- ⊕ A prosecutor, on his/her own initiative or based on a motion by the parties at the stage of preparatory proceedings;
- ⊕ The court, at the stage of court proceedings, but before the reading of the indictment.

The regulation on criminal matters lays down:

- ⊕ The conditions to be met by institutions and persons authorised to conduct mediation proceedings;
- ⊕ The appointment and dismissal of institutions and persons authorised to conduct mediation proceedings;

- ⊕ The scope and conditions of access of institutions and persons authorised to conduct mediation proceedings to the case file;
- ⊕ The method and procedure to be followed in mediation proceedings.

Spain

In Spain, the Organic Law 5/2000 regulating juvenile criminal responsibility (*Ley Orgánica 5/2000, Reguladora de la Responsabilidad Penal de los Menores*), explicitly includes victim-offender mediation (VOM). This VOM aims at the reintegration of the offender and compensation of the victim. Implicitly, patterns of VOM can be also found in several legal instruments such as the Spanish Constitution and the Criminal Code. The penal jurisdiction for juveniles (for ages 14 to 18) in Spain differs from that of adults. The former is conceived as a tool of re-education of the minor. The main documents that demonstrate this diversity are:

- ⊕ Criminal law and procedure (Ley Organica 5/2000)
- ⊕ The organization of the courts and organic dependence of judges (Law 1/85)
- ⊕ Administrative regulations of services for the enforcement of judicial decisions.

VOM is mainly accomplished by teams supporting the service responsible for the prosecution of minors, so called *Fiscalía de Menores*. This service can also be carried out by the Autonomous Communities and other associations.

For adults, in the absence of explicit VOM regulations or any other RJ provisions, via the interpretation of provisions of the criminal codes and codes of criminal procedure, a reduction of the sentence is possible. Despite the positive implementation in the juvenile justice system, VOM in gender violence is legally excluded. Taking into account the seriousness of these crimes, none of mediation process is considered an efficient option. Until now, Catalonia and the Basque Country count numerous cases of VOM in a general way.

Referral process to RJ

Spain applies the principle of *discretionary prosecution (principio de oportunidad)*, implemented to seek satisfaction of the best interest of the child, introduce a margin of discretion to the public prosecutor and to the judge, who both, under the advice of the Technical Team (*Equipo Técnico*), can opt for a solution which is best interest of the juvenile offender. This is a limited discretion, given that the Spanish Juvenile Criminal Justice system is governed by an express *discretionary prosecution principle* only in certain cases (the Ley Organica establishes in Art. 18 and Art. 19 under which conditions this discretion power may be used).

Turkey

In Turkey, victim-offender mediation (VOM) is the only RJ mechanism currently established in the field of criminal law. It was introduced in 2005 together with a major overhaul of the criminal law. After extensive amendments to both the Criminal Code and the Code of Criminal Procedure over the last decade, VOM is currently regulated by the Turkish Code of Criminal Procedure (CPC) (Law No. 5271)³⁸. Furthermore, in 2007 the “Directive on the Application of Mediation Procedure According to the Criminal Procedure Code” was issued, and it further regulates the procedure.

At this time, VOM is still considered a novel process in Turkish criminal procedure. It’s main purpose is to eliminate or restore any harm caused by the crime. The goal of protecting the victims of crime has gained importance through the modification of CPC mentioned above. Same modifications also aimed

³⁸ Law 5271, promulgated in Official Gazette No. 25673, 17 December 2004.

at making the application of VOM more practical and procedurally structured. The Directive further addressed some issues that were still vague after the amendment and thus aimed at fostering better implementation.

The first paragraph of Article 253 of the CPC enumerates the offenses for which penal mediation is applicable. Those include all offenses whose prosecution is dependent on the complaint by the victim, plus the following offences:

Deliberate bodily injury (except third paragraph Article 86; Article 88);

- ⊕ Aggravated bodily injury (Article 89); Violation of
- ⊕ Dwelling Immunity (Article 116); Kidnapping and
- ⊕ forcibly keeping a child (Article 234);
- ⊕ Disclosure of information or documents constituting trade secret, banking secret or customer privacy (except fourth paragraph, Article 239).

Mediation is not available for cases that involve sexual assault³⁹. It is available, however, to both adults as well as minors (both offenders and victims)⁴⁰.

When VOM results in an agreement, and if that agreement is fully implemented, the prosecution of the case will be dismissed. If however the VOM does not result in an agreement, or an agreement is reached but not implemented, that case goes back to the criminal process, and the prosecution continues. In that sense, VOM is mainly a diversion process.

Referral process to RJ

Public prosecutors do not have much discretion when it comes to referring cases to VOM: in all cases that involve an offence eligible for VOM as listed above and fulfill other criteria listed in Art. 253 of the CPC, VOM must be proposed to parties. Cases that were eligible, but where VOM was not offered, were later overturned by the higher courts⁴¹. In this sense, offering VOM has become an integral step of the criminal procedure, and the offering of mediation is essentially a “*precondition to prosecution*” – prosecution cannot continue without offering VOM first.

Offering of VOM is done by the prosecutor himself, or under his orders by the members of law enforcement. Judges can also offer VOM at the trial stage if, for some reason, only at this stage it has become clear that the case was in fact eligible for VOM.

In order for VOM to proceed, all parties must agree to participate (including all victims). VOM is offered only once – if it is refused, or if it fails to result in an agreement, the case goes back to prosecution with no further options of VOM.

Once all parties agree to participate, the case can be mediated directly by the prosecutor in charge of the case, or it can be referred to a mediator (either through a local Bar association who appoints lawyers to act as mediators, or through mediator lists established by courts). This decision is left to the prosecutor’s discretion. If a case is referred to a mediator, after completion of the mediation process the mediator informs the prosecutor of the result (agreement/no agreement), who then follows up on implementation of that agreement, and finally drops the case / continues the prosecution, depending on the result of VOM.

³⁹ Turkish Code of Criminal Procedure (CPC), Art. 253, para. 2. Directive on the Application of Mediation Procedure According to the Criminal Procedure Code, Art. 7, para. 3.

⁴⁰ Child Protection Law, Art. 24, para. 1.

⁴¹ Turkish Code of Criminal Procedure (CPC), Art. 174, para. 1/c.

3. An assessment of judicial training in the EU

In this section, we examine one of the core aspects of the current project, i.e. the judicial training implemented in the 5 partner countries. Judicial organisations and legal systems in European countries are different, due to differences in constitutional systems and legal traditions. Nevertheless, there is an important element to take into account for all European judicial systems: justice is the cornerstone of the rule of law and consequently the independence of the judiciary is considered vital in a democratic society.

In recent years, RJ has been adapted and applied in a criminal justice context as part of an overall package of criminal justice. Across Europe, there have been developed a range of RJ practices for dealing with criminal offenders, including all RJ programs such as VOM, family group conferencing, and circle sentencing (Table 3.1).

Table 3.1. Basic restorative justice practices

RJ practice	Description
Direct Victim-offender mediation (VOM)	A face-to-face meeting that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime. VOM is one of the most well-known restorative programmes used especially in Europe and North America. It very often identified with RJ.
Indirect Victim-offender mediation (VOM)	No direct, face-to-face meeting, but communication takes place through the mediator/ facilitator who acts as a go-between.
Family group conferencing	Facilitated meeting between parties in conflict and their supporting family members, friends and possibly professional actors). Originally from New Zealand and Australia, conferencing is a generic term that encompasses several types of conferencing models both in criminal and non-criminal matters.
Circle sentencing/peacemaking	Facilitated meeting involving the broader community and possibly professional's use of a talking piece. Circles derive from Native American and Canadian First Nations dispute resolution processes. These programmes are usually used alongside the criminal justice system and therefore not asked as a form of diversion, but as part of the court process which might result in conviction for the offender.

To gather new evidence for judicial training in the field of RJ, the research team conducted some empirical research by means of two surveys addressed to two different target groups across the EU: legal professionals (a), and judicial training institutions (b). The interest was particularly focused on identifying the state of play of the judicial trainings at national level in the field of criminal justice, and in particular of judicial trainings on RJ.

Before starting this wide EU research, a clear need emerged to gather general information about judicial training process and needs in project partner countries. To this end, the project partners produced national reports on the organisation of judicial training in their respective countries.

3.1. Mapping the organisation of judicial training in Europe

Generally, the training of judges and prosecutors remains a state responsibility. **In Northern Ireland** is the responsibility of the Judicial Studies Board, a public body funded by the government. **In The Netherlands** the Dutch Training and Study Centre for the Judiciary is competent for organizing judicial trainings. **In Spain**, the General Council of the Judiciary (in Spanish: *Consejo General del Poder Judicial, CGPJ*) is the constitutional body that governs all the judiciary. **In Turkey**, three different bodies are responsible for continuing trainings of the judges and prosecutors: the Judicial Academy, the High Council of Judges and Prosecutors (HCJP) and the Ministry of Justice. Since no other institution can organise trainings for judges or prosecutors without cooperation of these three bodies, it can be concluded that trainings are centrally managed.

Furthermore, it was considered whether the judicial training is mandatory. From the data gathered through the research process in the project partner countries and the exchanges with the local correspondents, the following results came up:

In Spain, ongoing trainings are not mandatory neither for members of the Judiciary nor for members of the Prosecution Service, except in cases of a change of court or of specialisation. In the field of penal mediation, several judicial trainings are organised under the auspices of the CGPJ and in agreement with mediation associations.

In Northern Ireland the spectrum is quite different: there is no mandatory training for judges and prosecutors; in particular due to the principle of separation of powers, judges will never undertake training with public prosecutors. Nevertheless, RJ trainings initiatives are undertaken by experienced judges specialised in the Youth Court, where the most court based restorative youth conferences are referred. As regards prosecutors, they are recruited from experienced lawyers. The appointment process is extremely competitive and as a result prosecutors are very competent professionals. However, prosecutors operating in the youth justice system receive already specialist training on restorative youth conferences. The adversarial model of UK and Irish justice means that judges make decisions on the basis of submissions from the prosecutor or the defence lawyer. Consequently judges' decisions are generally reactive. They are rarely proactive in determining courses of action such as an adjournment for a restorative process to take place. Legislation drives restorative justice in the courts and judges are only likely to participate in training on restorative justice in the event of new laws being passed. This is unlikely to happen in the immediate future.

In Poland, judicial trainings related to penal mediation have been included in the training programme of judges. These trainings intend to familiarise the judiciary with the institution of penal mediation. **In the Netherlands**, the Dutch Training and Study Centre for the Judiciary (SSR) is the one responsible organisation for the training of judges and prosecutors, since 2013 both groups receive a different education programme while there are still links. The SSR offers continuing trainings for the judiciary, including courses in mediation and coaching, although it argues that more should be done around training of restorative justice and VOM. **In Turkey**, training regarding specifically RJ are not a part of the apprenticeship training for the judges and prosecutors. However, continuing trainings on RJ have taken place mostly within the scope of different one-off projects undertaken by the Ministry of Justice.

Key findings on judicial training in Europe

- The majority of European countries (Bulgaria, Denmark, Estonia, Hungary, Lithuania, Spain, Sweden, UK, Finland) organise a completely separate training for judges and for prosecutors and some other countries organise only one part of the initial training for both professions (Austria), or some specific activities (Slovenia, Belgium, Czech Republic, Poland, Romania, the Netherlands). Only Portugal, France, Italy, Luxembourg, Germany have a common training for judges and prosecutors.
- Practical training is longer than training session within a School for the Judiciary or a similar training institution: the average length of practical training in most of the European countries is more than one year. On the other hand, when there exists a School or training Institution (Italy, France, Austria, Bulgaria, Poland, Portugal, Romania, Spain) the training session lasts six months or more. In Estonia, Hungary, Lithuania, Luxembourg, Slovenia, Spain, Sweden, UK and the Netherlands, the training session for prosecutors lasts less than six months. Only Italy, France, Austria, Belgium, Luxembourg, Poland, Spain, Denmark organise mandatory traineeships in penitentiaries, social services, etc, and in most cases they last between a week and ten days. All the countries adopt a combination of different methodologies, especially seminars, lectures, group discussions, simulations, mock trials, and case studies.

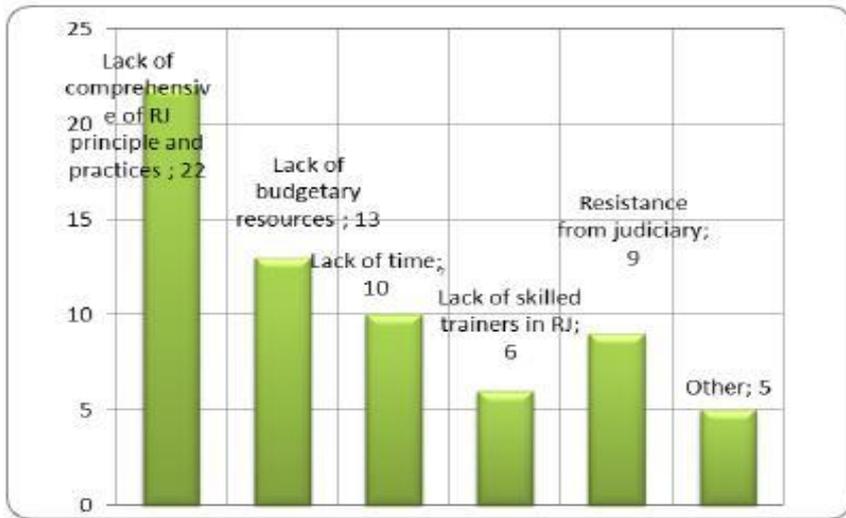
3.2. Current developments of judicial training in RJ

The country reports mentioned in the previous section, besides describing the organisation of judicial training itself, also demonstrated the state responsibility of organising and planning training programmes. This section will explore judicial training from the perspective of judges and prosecutors. Different developments in judicial trainings are taking place in Europe, and the experts identified many challenges when organising or attending judicial trainings.

Similarities as well as areas of divergence can be found in the ways of conducting judicial training for judges and prosecutors. Similarly, the findings from our project partners pointed out that many challenges in organising RJ judicial trainings are shared by all countries, regardless of the region. Difficulties such as the concerns of legal practitioners/mediators qualified in RJ, the unreliability of funding, the need for appropriate evaluation schemes of the training methods and outcomes are recognisable by RJ experts from many countries. The differences are rather related to the willingness and the conditions available in each country to face these challenges. It should in this regard be desirable to facilitate in each EU country the effective implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Faced with these findings we raised two additional central questions: What possibilities are there for expanding RJ in judicial trainings for judges and prosecutors in European countries, taking into account their political, cultural, legal and historical context? What are the pitfalls to be aware of? The project experts explored the background in which both the challenging and supportive factors have appeared in their respective countries. Therefore, what follows is intended to provide a sketch of the main key findings arising from the wide consultation with judicial training institutes and legal professionals by drawing together the main features of judicial trainings in RJ and supportive factors. The complete information can be found in the survey reports under Annex 2.

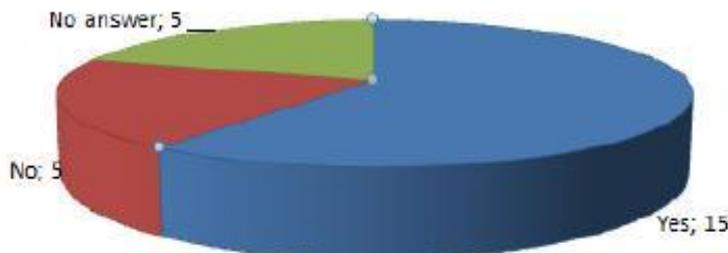
Figure 3.1. Obstacles of judicial training in restorative justice



25 judicial training institutes from across the EU participated in the consultation exercise: 22/25 respondents indicated the “*lack of comprehensive RJ principles and practices*” as the main obstacle to organise judicial training courses. With respect to the analysis of this choice, the majority of countries explained that they do not have a specific methodology or experienced trainers in the field of RJ. For them this issue is a big problem to organise and to attract judges and prosecutors.

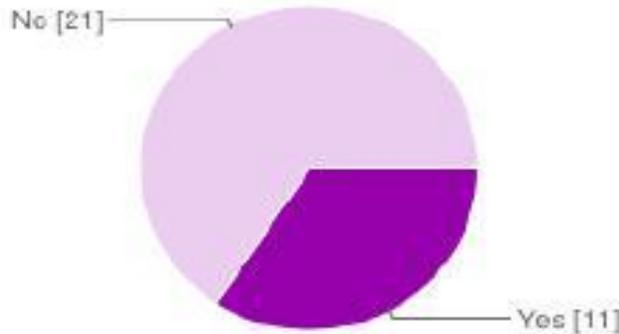
In a majority of countries (15/25), the reforms aiming to promote the RJ practices are being implemented. However, in a limited number of countries, the RJ has encountered a lot of resistance from the judiciary. 5 of the respondents confirmed that the reform proposals on RJ are directed at a change in court and prosecutors’ competences, therefore these reforms are not welcomed, notably by requisitioning the efficiency and effectiveness of courts working methods. In the following diagram, the replies are summarised:

Figure 3.2. Current state of RJ reforms



From the consultation with judges and public prosecutors (36 respondents contributed to this survey), we collected the following data:

Figure 3.3. Judicial training courses attended by the judiciary



As indicated above, 66% of respondents state that their country is active in organizing RJ training programmes. This is not an indication that RJ programmes are listed as a priority, but it demonstrates that countries are showing some interest in developing new policies of criminal justice.

As illustrated in the scheme below, 24/36 respondents indicated to deal only once per year with RJ cases. For the most part, the criminal cases referred to RJ are of a limited importance. A few respondents said that several times they have referred cases to RJ after requested by the parties or the prosecutor of the case.

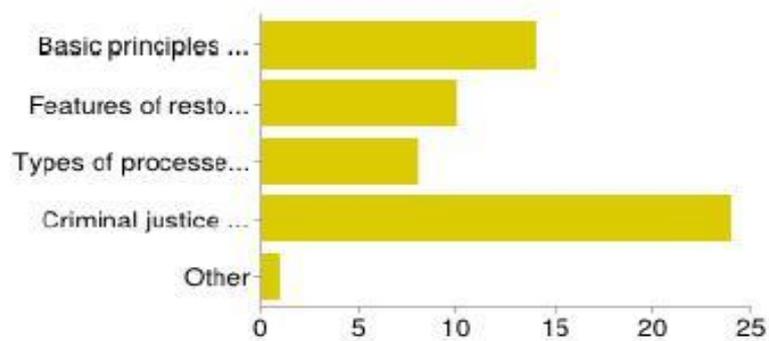
Figure 3.4. Frequency of RJ cases in daily work



Amongst the RJ subjects proposed to our respondents, they indicated 'Criminal justice and RJ' as most favourite (42%). This can be partly explained by the fact that they are already good practitioners of their respective criminal justice. The interest for them would be to see how the RJ approach should find its way in their criminal legal system and how they can identify the suitable cases to such practices. For judges and public prosecutors having a large vision of the criminal system and alternative instruments would be a great advantage for their professional development. On the other hand, in some cases the RJ practices are explicitly stipulated in their criminal law as a diversion clause.

Therefore, it is in their best interest of gatekeepers of the criminal justice, to make use of this diversion measure in compliance with their national law.

Figure 3.5. Subject of RJ that should be delivered in judicial training



The majority of respondents (53%) indicated the lack of comprehension of RJ principles and practices (1st alternative) as the main obstacle to attend RJ training. This perspective allow us to hypothetically state that even if judicial trainings in RJ are organised, the willingness to attend those training is limited, by the fact that not enough knowledge is given to judges and prosecutors in this matter. On the other hand, this indication of lack of comprehension could be interpreted as a stimulation to attend training courses, in order to clarify their knowledge and build a conscious about alternative tools of dealing with criminal cases.

Moreover, 22% of respondents state that the lack of budgetary resources is also one of the important reasons that they cannot attend the training courses. The public resources are often limited for judicial training courses. Often judges and prosecutors find themselves prioritising their need to the availability of budget resources. Thereupon, the choice of less familiar courses for them, make them declining the possibility to participate in favor of a more familiar subject. For a few national correspondents, the limited financial resources orient them towards new courses, with the intention to be trained in something particular, without wasting the money with a training subject they already know.

4. Promising practices of RJ trainings stemming from project partner countries

The varying circumstances in which judicial training, both in general and within restorative justice, has emerged in the European Union guided us in developing several RJ sessions in the partner countries with the aim of attracting judges and prosecutors to attend innovative judicial training programmes. Therefore, in order to facilitate mutual RJ learning, the partners of this project assisted in conceiving innovative training modules and stimulate exchange of experiences constructive to the further development of RJ in criminal matters. Pivotal to the objectives of these training programmes was the idea of sharing knowledge on, and contributing to the development of RJ in training programmes. Several progress reports on the organisation of the judicial training seminars are reproduced in Annex 3.

4.1. Challenges faced during the design of the training activities

The project team considers that the judicial trainings conducted have been successful overall and have produced useful results. However it is important to emphasise that the project team also had to face some difficulties that are worth flagging as they underline some of the considerations that have gone into shaping the recommendations.

First and foremost, we found that it was very difficult to obtain information from all judicial training providers about the interest of judges and prosecutors in attending programmes addressed to RJ. This seems to illustrate that unless there is an immediate or mandatory reason to get involved, for many training providers there is little interest in developing RJ training programmes. In this respect, working closely with some training institutes was useful, in particular with a view of disseminating information about the trainings and exploiting further the results of training projects and promoting RJ in future training activities.

Secondly, the responses to the web survey produced data were difficult to analyse because they were clearly only fragmentary and far from the wide landscape of RJ in individual Member States that we had envisaged beforehand. As a result, we pursued a strategy of increasing the reliability of the information via multiple sources, particularly through regular consultations with associations of judges and public prosecutors.

Thirdly, we also wish to highlight that a major conceptual challenge in this project has been the lack of awareness-raising about what is RJ. This is a particular problem in relation to training in RJ theory and methods for judges and public prosecutors. If there is to be follow-up work, it would be useful to focus on making RJ more visible and also involve the training institutes to differentiate between 'RJ and ADR'.

Finally, the problem of weak attendance of training sessions due to the participation fees was encountered. While evaluating via survey exercises the attendance and non-attendance reasons of judges and public prosecutors to training activities, the problem of their heavy workloads and the lack of knowledge about RJ were mentioned. Thus, for the project team it was surprising that there existed a great deal of reluctance on the part of the stakeholders that came to light as a result of the participation fees. The project team did further research about this matter and from the information gathered it resulted that the participation fee (particularly to a certain amount) tends to result in low or no attendance rates from stakeholders.

4.2 Good / Promising RJ judicial training practices

The concept of ‘good practices’ and ‘promising practices’ was designed at an early stage of the project to ensure a common understanding of the type of experiences we were looking for. As the project team was aware of the low level of awareness on what could constitute a ‘good’ judicial training practice, it opted for a training model, in which many aspects could be considered a good/promising practice.

The degree of applicability and the outcome of these training initiatives have been shaped by a number of elements which mirror the individual character of each country. As the experts stated, to benefit from a good idea developed elsewhere, a detailed analysis is required in order to transfer it appropriately to the situation in which it is meant to be implemented. The following section is a summary of the ‘promising practices’ developed in three partner countries of the project (Full information can be found in progress reports on the judicial training seminars in Annex 3 to this report and in the judicial training workbook).

The following examples illustrate innovative training programmes developed in three project countries:

Spain – Factsheet

Title of the training	RJ career-long professional course called: Restorative justice: a formative meeting for judges and prosecutors.
Location	San Sebastian - Spain
Type of practice	Innovative curricula and training plan Type of practice best practice - This particular training programme was considered a best practice & its transferability, with the necessary adaptations to each national training environment is recommended.
Training design and methodology	The first part of the training was designed as theoretical- food for thoughts - presentations of European legislation: Directive 2012/29/EU1 establishing minimum standards on the rights, support and protection of victims of crime, and national legislation: Ley Orgánica 5/2000, Código Penal, Código Procesal Penal, Ley de Enjuiciamiento Criminal, Estatuto de la Víctima del Delito, Instrucción 2/2009 Fiscalía etc. In the second part, brainstorming group discussions and video presentations on RJ process attracted the interest and the self-reflection of participants. Through dynamic methodology, participants were able to practice the knowledge in identifying RJ and penal mediation by illustrating practical experience and lastly the participants were able to determine the importance of RJ for adult offenders.
Key features	In Spain the training programme provided an example of a comprehensive course on RJ from legal and forensic aspects. This is an example of a successful innovative programme adopting different approaches where judges - prosecutors & experts non judges train together in the same room. The curricula enabled trainers to use case-specific examples from their areas of work, so that realistic and detailed discussion, both legal and RJ subject-specific occurred. This different version of small group training was highly valued, both by the judge and the trainers, who described their own learning experience as positive. The two days’ training sessions brought various experiences in applying RJ for young offenders. Key achievements:



	<p>Merged training groups within and outside the judiciary:</p> <ul style="list-style-type: none"> ⊕ Judges ⊕ Prosecutors ⊕ Judicial investigators ⊕ Judicial administration ⊕ Ministry of Justice employees ⊕ Penal mediators ⊕ Researchers <p>Merged training teams:</p> <ul style="list-style-type: none"> ⊕ Experienced and trainee judges/prosecutors ⊕ Judges and prosecutors ⊕ Judges and court administration ⊕ Prosecutors and prosecution office administration ⊕ Magistrates and experts (researchers, mediators) <p>Merged training formats:</p> <ul style="list-style-type: none"> ⊕ Interview techniques ⊕ Small & plenary groups ⊕ Video and movie projection ⊕ Simulations & role play ⊕ Debates (case studies) <p>Feedback to participants:</p> <ul style="list-style-type: none"> ⊕ Certificate of attendance ⊕ Informal discussions
<p>Key outcomes</p>	<ul style="list-style-type: none"> ⊕ Coherent & dynamic training programme ⊕ Wide geographical coverage of participants ⊕ Broad attendance from different target groups ⊕ Relevant time allocation for each topic ⊕ The training increased awareness of advantages of using RJ by judges & prosecutors ⊕ The possibility to include RJ in education curricula of magistrates ⊕ RJ considered as an effective & efficient way of doing justice ⊕ Donors expressed particular interest in funding future events on RJ

The Netherlands – Factsheet

Title of the training	Mini Master Classes on RJ
Location	Utrecht – the Netherlands
Promising practice	<p>Good training practice – Comprehensive training package.</p> <p>Innovative Curricula on RJ (including mini-master class with combinations of visual exercises, theoretical background and small group work).</p> <p>Use lecturers and practitioners from abroad and build on their expertise.</p> <p>Limiting training to evening + full day is good for busy professionals.</p> <p>The training is a good example to tackle this kind of RJ challenge. It is easily transferable and should be adopted in future training on RJ.</p>
Training design and methodology	<p>The method of talking stick gave to the participants the opportunity to express their perceptions and resistance about RJ.</p> <p>The focus of our training was twofold:</p> <ul style="list-style-type: none"> To give them some in-depth knowledge on RJ theory, but also To provide practical tools to work with RJ practices. <p>On the first day, an American documentary ‘Burning Bridges’, demonstrating a conference process after the destruction of the historical bridge in a small town by young offenders, was shown to participants. This part of the programme was delivered to participants with the idea to attract their curiosity about how RJ works in practice. It already resulted in interesting discussions and ideas about different RJ models and ways of RJ processes.</p> <p>Good connections with trainers and training institute:</p> <ul style="list-style-type: none"> - found some independent trainers and RJ experts who were willing to work on a voluntary basis. - connections made with the national training institute for the Judiciary and received all information on the way they work and what they currently offer in relation to mediation, but due to a change of personnel they were not able to work out the training together or to attend it.
Key features	<p>The objective of raising awareness among judges and prosecutors was achieved through proactive discussion via different interactive methods. One of the measures used was the talking-stick technique⁴² (Spencer Kagan, 1992: 1). This technique intended to develop interpretation on the status of RJ by mixing the ideas of judges and prosecutors and bringing to their attention different scenarios of judicial activity in the field of RJ. In trainings for judges and prosecutors the accuracy is the key element. Thus, it is an important tool to improve empathic listeners and speakers.</p> <p>Talking stick rule</p> <p>The talking stick technique enforces the ideas that taking turns to speak to the group, without interruption. It is a vestige from our days as hunters and gatherers, when egalitarian forms of</p>

⁴² Talking Stick method is developed by Spencer Kagan (1992: 1). It belongs to a group of studies in which students learn independently from one another, each student has the same chance to express his/her ideas and concerns with the equal participation of students. It is one kind of a Cooperative learning method.



	discourse where as important as rules of governance. Each person gets a turn to rise and hold the stick thumping the stick and the stick confers authority to speak until one is done. Movie projection & debates (informal atmosphere and unfreezing participation)
Key outcomes	<ul style="list-style-type: none"> ⊕ Increased the interest and necessity to provide to the victims the necessary information about RJ processes. ⊕ The mindset of judges and prosecutors was changed through the training programme. ⊕ Build a RJ mentoring in the workplace of judges and prosecutors. ⊕ The training Increased the interest of using VOM more often in cases with young offenders .

Northern Ireland – Factsheet

Title of the training	Raising awareness of RJ in Northern Ireland.
Location	Belfast - Northern Ireland
Type of practice	Promising in a state of responsive development. We are likely to see exponential growth in such activities in the coming years.
Training design and methodology	<p>Through this training participants received several handouts including case studies, assessment tasks and group exercises. Electronic copies of these materials plus any Power-Point presentations were also made available to participants.</p> <p>A range of teaching methodologies were employed throughout the training. They included presentations to explain information and historical background of RJ in Ireland; plenary discussions to obtain participants views and opinions; group activities to enable participants to work with one another; demonstrations, role plays and live cases.</p> <p>Teaching methods took into account the special needs of participants including their ability to understand difficult concepts and the desire to engage participants in a rewarding learning experience. All material was customised to the Ireland judicial context.</p>
Key features	<p>The real effectiveness of this training programme resides in fostering the interest of prosecutors on RJ processes.</p> <p>The emphasis of the training programme was the practical learning and the application of key practices of RJ, notably conferencing (as most used practices in UK). To ensure this practical knowledge a reflection model called Social Window of control⁴³ was delivered to participants.</p>

⁴³ Social Discipline Window (In Pursuit of Paradigm: A Theory of Restorative Justice Paper presented at the XIII World Congress of Criminology, 10-15 August 2003, Rio de Janeiro).



	<div style="text-align: center;"> <p>High</p> <p>Accountability</p> <p>(Responsibility)</p> <p>Low</p> </div> <table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td style="padding: 10px; text-align: center;"> Do to Out of anger <i>Be punitive</i> Stigmatising Coercive Retributive </td> <td style="padding: 10px; text-align: center;"> Do with Out of respect <i>Be restorative</i> Inclusive Participative Transformative </td> </tr> <tr> <td style="padding: 10px; text-align: center;"> Move away from Out of fear <i>Be neglectful</i> Manage risk Withdraw Avoid </td> <td style="padding: 10px; text-align: center;"> Do for Out of sympathy <i>Be permissive</i> Protective Interventionist Rescuing </td> </tr> </table> <div style="text-align: center; margin-top: 10px;"> <p>Low High</p> <p>—————→ Social —————→</p> <p> Support</p> <p> (Relationship)</p> </div> <p>Live-case method –considering practical cases and the options to refer to RJ processes</p>	Do to Out of anger <i>Be punitive</i> Stigmatising Coercive Retributive	Do with Out of respect <i>Be restorative</i> Inclusive Participative Transformative	Move away from Out of fear <i>Be neglectful</i> Manage risk Withdraw Avoid	Do for Out of sympathy <i>Be permissive</i> Protective Interventionist Rescuing
Do to Out of anger <i>Be punitive</i> Stigmatising Coercive Retributive	Do with Out of respect <i>Be restorative</i> Inclusive Participative Transformative				
Move away from Out of fear <i>Be neglectful</i> Manage risk Withdraw Avoid	Do for Out of sympathy <i>Be permissive</i> Protective Interventionist Rescuing				
<p>Key outcomes</p>	<ul style="list-style-type: none"> ⊕ Prosecutors’ intentions to improve the quality of judicial service delivery by using RJ in their daily work. ⊕ The training programme encouraged participants to work with RJ, ex-change best practices on RJ methods and build consortia in the field of RJ. ⊕ The innovative training had a great impact among participants, as they feel confident to be part of the European network for judges and prosecutors of RJ. ⊕ Public Prosecution Service in Belfast will work on organising future exchanges between judges and prosecutors, regarding the use of RJ for adult offender. ⊕ Overall, the project has a significant social impact in Northern Ireland. It has raised the Public Prosecution Service’s awareness of Restorative Justice and increased its motivation to extend it to adults. It has stimulated the Department of Justice, the Probation Board and the Police Service to work actively towards a new strategy and policy to develop restorative justice in Northern Ireland further. 				

5. Conclusions

With the aim of realising effective support to RJ in judicial trainings in European countries this project had a double objective: first, to promote synergies and collaborations between judges and prosecutors on the one hand, and practitioners on the other hand; and secondly, to improve the implementation of RJ in criminal justice systems taking into account the political, culture and historical factors to be found in the context of each country. To this end, a preliminary mapping RJ in European countries and the analyses of the main features of their legal backgrounds was carried out.

5.1. Some major findings

When looking at the country reports included in section 2 describing the state of affairs of RJ, the first thing that comes to the fore is the similarities of the legal provisions allowing judges and prosecutors to refer cases to RJ programmes.

In most of the countries, VOM was the most used RJ approach, followed by conferencing and family circles. In most cases, the primary reason for the introduction of VOM to judicial training programmes has been to provide a higher constructive response to crime. Nevertheless, the number of European countries developing training for RJ remains low and the usual way to attract legal professionals to these trainings is through the conviction that RJ is an efficient way of their workload reduction. For other countries, the political interest in complying with European standards, more precisely with European Directive 2012/29/EU made possibly the implementation of RJ methods in their legislation. Interestingly enough, the type of legal instruments used in each country varies substantially, and also depends on whether it contains the legal basis for juveniles or adults (Italy, Spain, Portugal, Netherlands, Northern Ireland and Poland). Moreover, there are jurisdictions in which the legal basis is explicit and in some instances, the law has also been supplemented by regulations or guidelines clarifying more practical aspects, such as the referral of cases by the judges or the public prosecutor. Conversely, in most of the countries, RJ practices are being delivered by NGOs and other social organisations, a fact that can jeopardise the successful implementation of RJ if the cooperation between the judiciary and RJ mediators/facilitators is weak or inexistent.

The development of judicial training and promising practices described in the last section of the report brings the experiences shared during the project as a way to improve know-how. These practices conducted in the countries involved in the project, constitute valuable models to be used elsewhere, by taking however, into account the particularities of each country's reality. Indeed, the exchange of promising training experiences between European countries, helps to address common difficulties and also allows gaining a better understanding of the specificities of their criminal justice system.

The last section provides, in this regard, a landscape of opportunity that is open for developing innovative models of judicial training, particularly in RJ. At the same time, having a more comprehensive optic of the background features of judicial trainings and considering the challenges encountered, has given rise to reflections and recommendations. In this regard, the project team addressed certain recommendations to be taken into account in the future development of judicial trainings in RJ.

5.2. Lessons learnt and recommendations as a path to the future

This project has revealed many interesting insights about the current state of play in the training of judges and prosecutors in the European Union. It suggests that there is perhaps more to be done to promote 'RJ knowledge' in training practice amongst judges and prosecutors and training providers. There is a role in doing so for all of these players individually and collectively, as well as for the European Institutions.

Although the project team considers that it belongs to the responsibility of the training institutes to lead on the road to improving RJ in training activities for the judiciary, it is equally crucial to overcome the fragmentation that already exist in criminal justice systems.

The project team expresses the sincere hope that there will be an opportunity for further engagement between the European Institutions and judicial training institutes in including RJ in training programmes for legal professionals.

In light of the foregoing, we suggest some recommendations that can be useful for the future:

Recommendation 1:

It is recommended to build strong information and disseminated strategies through associations of judges and prosecutors in Europe, in order to raise further awareness about RJ practices and increase the possibility to include them in judicial training programmes. In the same vein, it is also recommended that the training providers cooperate with the national training offices on training modules and country factsheets. This cooperation would certainly increase the interest to develop RJ and consider them as a potential programme for future training activities.

Recommendation 2:

Improve quality and relevance of training activities on RJ theory and practices. This can be done first through the assessment of existing judicial training activities in this field but also by identifying good practices, as well as the relevance they have for the everyday practice of judges and public prosecutors. To improve greatly the relevance of training activities, it could be helpful to build a practice and skills-oriented model, which truly answers the needs of referring cases to RJ programmes. Cooperation between mediators and the judiciary is also an essential aspect, on which depends significantly the success of organising judicial trainings.

Recommendation 3:

Many RJ training providers have developed their own case studies and best practices which can be disseminated via internet or e-learning modules and thus allow the exchange of training experiences in a more dynamic setting. Moreover, common activities and workshops between several training providers may facilitate the exchange of training experiences and good models to follow.

Recommendation 4:

Judicial trainings in RJ should be of important objective of umbrella organisations of RJ. This role can imply some initial seed core funding to encourage the development of training activities, to develop training modules adaptable for many EU Member States (for instance, RJ training programmes we organised in the framework of this project, could not have been possible without the support of European Commission).

Recommendation 5:

In order to contribute to the objective to train judges and prosecutors in RJ, training providers, RJ practitioners, judges and public prosecutors could usefully consider a structure or a network that reflects this issue. This structure can be beneficial for the exchange of good/promising/best practices but can also stimulate training programmes in RJ. The support of a consolidated network can help achieving these objectives with concrete actions supporting the needs of existing training providers and legal professionals. A concrete proposal to set up such network is found in Annex 4.

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ANNEXES

Annex 1 Literature overview of RJ in the EU

Annex 2 Surveys

Annex 2.1 Survey on judicial training requirements in the EU

Annex 2.2 Survey on judicial training practices in Restorative Justice

Annex 3 Progress reports of RJ judicial training seminars

Annex 3.1 Progress report - Spain Annex 3.2 Progress

report - Netherlands Annex 3.3 Progress report -

Northern Ireland

Annex 4 Proposal to establish a European network of judges and prosecutors for RJ

Annex 1 - Literature overview of Restorative justice in the EU

Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Austria	Section 90 of Code of Criminal Procedure	Practice differs btw young offenders and adults	Apart from the prosecutor's initial diversionary decision, there is the subsidiary discretion of the judge to refer cases to mediation, If the prosecutor had abstained from doing so	State prosecutor can drop a charge when the offender make a real effort to compensate the victim	General feeling of frustration that VOM will not end in an accusation	Raise awareness about the importance of RJ in criminal cases
	1994 the VOM has been introduced in the CCP as a diversionary measure	The VOM is considered out-of-court settlement, which means that VOM is not necessarily always carried out btw the offender and the victim	The judges can divert a murder case, but in practice doesn't happen	Prosecutor has a large margin for discretion: however under two conditions: a) no severe penalty related to the offence b) take into consideration the individual and general deterrence	Prosecutors sometimes refer cases to mediation without checking the exact facts of the case	Develop training for judges and prosecutors as gatekeepers of RJ
	Section 198 of CCP on diversion measures	The guilt of the offender must not be considered to be severe All cases start with a pre-mediative phase where the offender or the victim take place		The victim can agree on mediation, but is not necessary (except in case of juveniles)		Clarify the criteria of cases suitable for medication procedure
Belgium	2005 Belgian Law on Mediation	RJ as a generalized manner both in:	No mediators themselves: counterproductive to their role	Prosecutor can refer cases to mediation	No national statistics concerning the mediation practice	Support of the government for the breakthrough of mediation
	Part VII of the Belgian Judicial Code (Art. 1742-1737)	- juvenile delinquency - adult delinquency	Cconciliation procedure is foreseen in before & by the court		Some statistics are limited to specific courts	Profound examination and following up of the mediation practices is necessary;
	EU Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters	- Penal mediation in each judicial district from within the public prosecutor's office - Mediation for redress in each judicial district	Information provided to judges on mediation Judges can refer cases to mediation and to homologate (as mediation offers a more tailored solution for the parties involved		Limited scientific research Local projects to promote the meditation exists Mediation applied on a far too limited way Competitive win-lose tendencies	A good spreading and flow of information on mediation for the public and for every concerned Professional (with a transparency of its costs) stays crucial;



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Czech Republic		<p>-VOM in prison</p> <p>RJ during the administration of prison sentence</p> <p>-The distinction between the probation model of mediation and an independent mediation model is highly relevant</p>	than a legal decision		Parties are more concerned by the fairness of the process than their outcomes	<p>A change of the mentality in the minds of all the practitioners of justice is indispensable;</p> <p>A respectful partnership between all actors of justice seems to be the way of a further</p> <p>Introduction of mediation within the judicial system</p>
	<p>Youth Justice Act 2004 (juvenile delinquency)</p> <p>Criminal Code</p> <p>Act on Probation and Mediation Service</p>	<p>Probation and Mediation Office founded in 2001</p> <p>Crime Prevention Board in 2007 recommend the implementation practice of youth justice</p> <p>VOM during the pre-trial proceedings</p> <p>Probation officer can mediate all types of juvenile offences: no restrictions</p>	No relevant information	No relevant information	No relevant information	No relevant information
Finland	<p>Since 1966 mediation is possible in criminal cases where prosecution action was waived</p> <p>Until 2006, mediation in criminal cases was not regulated by a separate law</p> <p>The Act of Mediation in</p>	No relevant information	No relevant information	No relevant information	The lack of research on the impact of mediation on determining the sentencing	No relevant information



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
France	<p>Criminal and certain Civil cases 2006 : equal access and right to good quality mediation, regardless the place of residence</p> <p>Government Decree on duties and the composition of the National Advisory Board on mediation in criminal & civil cases</p>					
	<p>Lack of legal basis for Restorative justice as an autonomous alternative tool for dispute resolution.</p>	<p>Phantomlike existence of RJ in France for different reasons: conceptual, institutional, historical, linguistic</p> <p>The concept of social justice prevails</p> <p>Penal mediation model is widespread in the country, but such process is far from being equivalent to truly restorative</p>	<p>Judicial and legal practitioners are prohibited from practicing penal mediation, in order to avoid confusion</p>		<p>Confusion about the caution and mediation</p> <p>Restoration is not yet a leading principle for conflict resolution.</p> <p>Penal mediation carried out by practicing or retired lawyers who have not specifically been trained in mediation</p> <p>The time available for mediation is short</p>	<p>VOM underestimated</p>
Germany	<p>No mediation law in Germany</p> <p>Section 46a of the Criminal Code (StGB) is mention the reconciliation btw the offender and the victim</p>	<p>Possibility to force the offender to do VOM</p> <p>All cases can be dropped if not more than one year of imprisonment</p> <p>German federal association is established</p>	<p>Judges are entitles to refer cases they evaluate are suitable to mediation</p> <p>Judges can inform the parties to follow the mediation but</p>	<p>Prosecutors are entitles to refer cases they evaluate are suitable to mediation</p> <p>Under one condition: he can drop a case if the Vom mediation is done</p>	<p>The prosecutors only know the documents, they never see the victims</p> <p>Prosecutors estimate that it takes a lot of time to do VOM</p>	<p>To overcome the conservatism attitude of judges and prosecutors</p> <p>Principle of legality</p> <p>No many prosecutors assist in</p>



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Greece	<p>VOM part of section 45 and 47 of Youth Court Act</p> <p>Section 10, subsection 7 Juvenile Criminal Court Act</p> <p>1994: VOM also included in the Penal Code (section 46)</p> <p>The law does not set a limit in regards with the legal characteristics of the offence</p> <p>Section 155a of Criminal Procedural Code encourages the application of VOM in everyday criminal practice</p>	<p>Experience on training of judges and prosecutors</p>	<p>they cannot impose it</p> <p>Judges have also the discretion in the final verdict, the order of young offender to try hard to find a solution with the victim</p> <p>Parties in court proceedings cannot be forced to take part in mediation</p> <p>In family disputes: the judge plays an active role in considering how parents can best provide for the future needs of their child.</p> <p>Judges can also reduce the punishment in serious offences</p>	<p>In 90% of cases is the prosecutor who sends the case to mediation</p> <p>Prosecutors cannot impose the mediation process</p>	<p>VOM is not used a lot</p> <p>North Germany more progressive, South Germany more conservative</p>	<p>the seminars and trainings for RJ</p>
	<p>Act 3500 in 2006 regulating the consequences of domestic violence and introducing VOM</p> <p>Act 3189 of 2003 on the Reform of Penal Legislation for Juvenile and other regulations</p> <p>Section 45a of GPPC (diversion measures from prosecution)</p> <p>Juvenile Probation Service (Act 378)</p>	<p>No mention of the consent of the parties to start mediation, although in practice is sought</p>			<p>VOM focus mostly in the outcome of the compensation rather than in the conciliation of the parties</p> <p>Lack of guidelines and information about the procedure</p> <p>Lack of trained staff</p> <p>Judges and prosecutors are overloaded with cases</p> <p>No support from juvenile probation officers</p> <p>High demanding task and</p>	<p>Very sceptical attitude about the RJ in criminal cases</p> <p>Unwillingness of judges and prosecutor to motivate their decision without the evidence basis but on the report of probation officer</p>



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Hungary	of 1976 monitors the educational measures				responsibility to assess the profile of the juvenile offender	
					Principle of legality and opportunity	
	Section III/A/3 of the National Strategy for Community Crime Prevention (2003)	No mandatory to apply VOM by law	The judge may only order mediation if one of the parties requests so (no ex officio prerogatives)	Prosecutor is the first authority in the procedure who may order the suspension of the procedure and refer a case to mediation as a diversionary measure	The workload of judges and prosecutors is very heavy therefore they do not have time to participate on trainings of RJ	They apply punishment in everyday practice
	Criminal Procedural Code (Act XIX of 1998)	VOM is provided to parties free of charge	The court can suspend the criminal procedure for a period of max 6 month after a personal hearing of the parties and their consent	Prosecutor has the right ex officio to initiate a mediation and request the victim and offender consent	Regulatory background is very rigid to allow the discussion btw judges and prosecutors and the victim	
	Act CXXII of 2006 on criminal Mediation	Apart the natural persons, the legal entities can also be part of VOM	Active repentance (Art.36 of Criminal Code) once the mediation agreement is achieved	More than 80% of cases are referred to mediation by prosecutors		
Minister of Justice Decree 1/2007 (I.25) and 58/2007 (XII.23)	Direct mediation: face-to face meeting			Prosecutor can suspend the criminal procedure for a period of max 6 month		
		If the agreement is not achieved, the parties does not have the right to apply for mediation again				
		A case can be referred to mediation if the criminal procedure has started				
		Victim and the offender are entitled to initiate a mediation procedure				
		Mediation procedure in criminal cases is carried out by probation officers providing mediation services at the Probation Service (separate department)				



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Northern Ireland	<p>Children Act, 2001 no explicit reference to restorative justice per se (Diversion programme)</p> <p>The Justice (NI) Act 2002</p>	<p>Juvenile Liaison Officer (JLO)</p> <p>Youth Justice Agency (YJA) was launched in April 2003 as an agency of the Northern Ireland</p> <p>The system of restorative justice which has been established involves</p> <p>the use of 'youth conferences' at which the offender, victim (or victim representative), professionals and others are brought together to discuss the offence and its repercussions</p>	<p>Following conviction, in which case the conference is known as a court-ordered conference.</p> <p>With certain exceptions, there is a statutory requirement for the court to order a conference</p> <p>for a convicted young person who agrees to participate</p>	<p>Prior to conviction if, having been charged by the Public Prosecution Service (PPS), the young person admits the offence; in such cases, the referral is undertaken by the PPS, and the conference is known as a diversionary youth conference</p>	No relevant information	No relevant information
Italy	<p>Adult offenders: DPR 274/2000 to use VOM for misdemeanours</p> <p>Youth offenders: No specific provisions: mediation is foreseen in the code of juvenile criminal procedure DPR 48/1988</p> <p>President Decree 448/1998 juvenile criminal mediation</p>	<p>Mediation is managed by local authorities or private welfare bodies working with local authorities</p> <p>Mediation in juvenile criminal proceedings can be initiated at any stage of procedure and at any instance</p> <p>Part-time or full-time basis for the training of Juvenile Welfare Office staff</p> <p>Direct/indirect mediation is possible</p>	<p>Judges refer cases to mediation</p> <p>During probation, the mediation can be only be ordered by a judge</p> <p>Judge can also order the mediation during court proceedings</p> <p>The court social service can carry out the mediation directly</p> <p>Judge dismiss the case when the outcome of the mediation is positive</p> <p>Generally judges admit to refer cases to</p>	<p>Refer cases to mediation</p> <p>Mediation can be requested by the prosecutor at the pre-trial stage</p> <p>Public prosecutor asks the judge to dismiss the case or to give judicial pardon</p>	<p>Not enough evaluative researches as the law of protecting privacy is quite strong, especially when it comes to young offenders</p> <p>Financial insecurity of handling mediation: decision on allocation of funds are brought at a local level</p> <p>Not a unified method of meditation</p> <p>Lack of correspondence between the outcome of the mediation and the sentence of the case</p>	<p>Improve the communication between the magistrates and the mediators</p> <p>Improve the national standards regarding judicial trainings</p>

Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
The Netherlands			<p>mediation by taking into account the nature of the offence but also the relationship between the victim and the offender</p> <p>Interesting from the empirical researches: the female juvenile magistrates refer fewer cases than the male magistrates</p> <p>One third of the mediators are volunteer professional: including juvenile lay judges</p>		<p>The absence of an official communication to mediators about the sentence from the prosecutor to the judge</p> <p>Mediation is carried out for a minority of cases</p> <p>Italian juvenile justice landscape is still quantitatively marginal</p> <p>Incorrect methodological criteria to measure the application of VOM</p>	
	<p>Mediation in criminal law under an experimental stage</p> <p>No statutory rules on VOM or family group conferencing</p> <p>Directive of the care of victims 1995/ amended in 1999</p>	<p>HALT programme for juvenile offenders 12-18</p> <p>Mediation possible in any stage of the penal process</p> <p>Claims mediation: a practice that invites the offender to pay a sum of money to compensate the victim for damages</p> <p>RJ is rapidly growing outside the criminal justice system</p>	<p>Judges are never mediators. The mediators are always from outside the judicial organisation. Often they are (ex-) lawyers or psychologists</p> <p>Mediation officer</p> <p>Mediation coordinator: He or she is a senior judge who advises the mediation officer and works as a bridge between the mediation desk and the judges</p> <p>The possibility of mediation by a mediator during the court session itself</p>	<p>Prosecutor can refer cases to mediation</p> <p>Most of the initiatives to mediate come from the prosecutor's office</p> <p>Public prosecutor has the discretion to decide if and how he will take into consideration the results of VOM or conferencing in his final decision</p>	<p>Number of cases referred to mediation dropped in 2011 as parties have to pay themselves as soon as they chose mediation.</p> <p>In 2010 only 0.25% of cases were referred to mediation</p> <p>Action research in the field of RJ has not been done in the Netherlands</p> <p>RJ remains a marginal phenomenon</p> <p>Fragmentary resonances of RJ in the criminal justice system</p>	<p>Enhancing the support and cooperation of Probation Service and Victim Support</p> <p>The high level of institutionalization and bureaucracy within the criminal justice <</p>

Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Norway	<p>Act of March 1999, N°.3 relating to mediation and conferencing</p> <p>Criminal Procedural Act (ask for mediation in all cases suitable for mediation)</p> <p>Circular 1993 by the Director General of Public Prosecution</p>	<p>Mediation for re-offenders is possible</p>	<p>Judges take into account the decision of Mediation Board, although no legal impact</p> <p>The mediation can suspend the sentence</p> <p>Judges cannot influence the content of mediation session, only the hours</p> <p>In civil cases: the judge can mediate (mediation done by another judge)</p>	<p>Prosecutors (prosecute 80% of cases) and District Attorneys (serious cases)</p> <p>If the Mediation Board (out of criminal justice system) reach an agreement, the case is closed by the prosecutor</p> <p>New prosecutors are obliged to visit the Mediation Board and participate in a mediation session</p>	<p>Not a good financial support when following the mediation channel</p> <p>Only a few people can view the registry of mediation cases</p>	
Poland	<p>Code of Criminal Law, Section 23a</p> <p>Code of Criminal Procedure</p> <p>Law on Juvenile Responsibility 2000</p> <p>Mediation has played a part in administrative court proceedings since 1 January 2004</p> <p>On 28 July 2005, parliament passed an amendment introducing mediation to the Code of Civil Procedure (CCP)</p> <p>Standards for Conducting Mediation, 26 June 2006</p> <p>Standards for Mediators'</p>	<p>Not mandatory for judges and prosecutors to send a case to mediation</p> <p>Judges can send ex officio, /or upon application of /or with the consent of the injury party and the accused, refer cases to mediation</p> <p>The duration of the mediation does not count as being part of the duration of pre-trial proceedings</p>	<p>Judges can refer cases to mediation at any level of judicial proceedings up to the final judgment</p> <p>Code of Civil Procedure provides for limited powers and duties of courts with respect to the mediation process</p> <p>The engagement of courts in mediation is in fact limited to (i) the referral of cases to mediation, and (ii) the control and approval of settlement agreements</p> <p>The court may issue an order to refer the case to</p>	<p>Prosecutors can refer cases to mediation at any stage of the pre-trial proceedings</p> <p>The mediator cannot be asked as a witness in a court by a prosecutor</p> <p>The selection of cases is made by prosecutors: mostly minor cases</p> <p>The prosecutor can change the mediation agreement if he/she wants</p> <p>In practice, prosecutors are not eager to send cases to mediation</p>	<p>Incomplete and unsuitable regulation discourage judges and prosecutors from the use of mediation in criminal proceedings</p> <p>Definition or statement of purpose of mediation, the principles of mediation and a lack of legal guarantees and the requirements for special training of mediators</p> <p>Lack of professional mediators</p> <p>The utilisation of mediation in Poland remains limited</p>	<p>Changing legal regulations</p> <p>Increase the use of mediation</p> <p>The problem of enforceability of the agreement to mediate has been the subject of debate in Polish jurisprudence.</p>

Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
	<p>Training, 29 October 2007</p> <p>Code of Ethics for Polish Mediators, 19 May 2008</p>		<p>mediation (Art. 1831(2) CCP) on the motion of one party or on its own initiative.</p> <p>The parties may also jointly request the court to refer their case to mediation.</p> <p>If the court wishes to order a case for mediation ex officio, it can do so by the end of the first hearing (Art. 1838(1) CCP).</p> <p>The Code of Civil Procedure explicitly excludes judges from conducting mediation, but this exclusion does not apply to retired judges (Art. 1832(2) CCP).</p> <p>There is an explicit rule that excludes the judge who conducted the settlement procedure from a later appointment as a trial judge</p> <p>The judge-coordinators are responsible, among other things, for:</p> <ul style="list-style-type: none"> - promoting mediation in their local courts, - developing the court's relations with mediation organisations and 		<p>Mediation represents a very small portion of court caseloads</p> <p>No confidentiality of the mediation process: as the mediator is called to refer about the case in court</p> <p>Unfortunately most of judges lack specific training in mediation.</p> <p>Polish law does not provide the criteria for how the cases are selected for mediation.</p> <p>There are no requirements as to the education or training of a mediator in civil matter: Only mediators for family matters are affected by Art. 436(4) CCP</p> <p>There is no legal guidance on the right and/or duty to use the title of 'mediator', nor are there any regulated complaint schemes or disciplinary proceedings.</p>	



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Romania	<p>Law 211/2004 referring to the Protection of the victims of crimes.</p> <p>Article 6 from Law 192/2006 foresees the obligation of the judiciary and arbitrary organs to bring to knowledge and counsel the parties on the possibility of deferring the conflict to an authorized mediator under legal conditions.</p>		<p>individual mediators and</p> <p>providing mediation related guidance to other judges.</p> <p>The judges can change the agreement if they want.</p> <p>The judges are more eager than prosecutors to refer cases to mediation process</p>			



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
Slovakia	<p>Recodification of Criminal code and Criminal Procedural Code in 2006 to introduce the probation and mediation procedure</p> <p>Probation and Mediation Act 2003: application and execution of alternative punishments</p>	<p>Judge refers cases to mediation</p> <p>The probation officer, in order to carry out the mediation must obtain the consent of the presiding judge</p> <p>If the court orders probation supervision or custodial supervision, the supervision is carried out in accordance with the court decision</p>	<p>Prosecutor settle the criminal case through diversion</p>			<p>Improve the qualification of probation officers and mediators</p>
Slovenia	<p>Mediation in Civil and Commercial Matters Act (Mediation Act) in 2008 was Directive 2008/52/EC</p> <p>The Alternative Litigation Settlement Act (ALSA) which was adopted in 2009: It does not apply to social, criminal and administrative matters.</p> <p>Civil, family and commercial cases</p>		<p>Referral of cases by a judge</p>	<p>Supreme State Prosecutor is responsible for the alternative measures</p> <p>Still some District State Prosecutor's Office are not using RJ</p> <p>Two alternative forms:</p> <p>a) mediation</p> <p>b) deferred prosecution</p> <p>Dismissal of charges if the mediation agreement is made</p> <p>The victim's consent is needed for the prosecutor to suspend prosecution and impose tasks on the offender</p>		
Sweden	<p>Act 445 od 2002 on Mediation: retributive</p>	<p>Bottom-up approach</p>	<p>.</p>	<p>Prosecutor can initiate the mediation</p>		



Country	Legal framework	Patterns of RJ	Role of judges	Role of prosecutors	Loopholes	Challenges
UK	<p>justice: the restorative justice as complementary</p> <p>Young Offenders Act 167 of 1964</p>	<p>Council of Crime Prevention is entitled to develop the mediation service</p> <p>Mediation is not mandatory</p> <p>Mediation is done in parallel with the legal process</p> <p>The Mediation act does not regulate mediation in details</p> <p>Unified perspective of mediation in the whole country</p>				
	<p>Crime and Disorder Act 1998</p> <p>Youth and Justice and Criminal Evidence Act 1999</p>	<p>Youth justice prospective</p> <p>Direct and indirect RJ</p> <p>Family group conferencing</p> <p>Victim-offender conferencing</p> <p>Youth Offending Teams (YOT)</p>	<p>The possibility for lay magistrates to act as volunteer mediator</p>		<p>A lot of confusion about what is RJ and what is not</p> <p>RJ does not make a important difference to the way the people perceive the crime</p>	<p>Data Protection Act hamper the process of RJ as it is difficult to get info about the victims</p>

Annex 2.1

Survey on judicial training requirements in the EU

**In the framework of
Developing judicial training project: towards a European approach project
(JUST/2011/JPEN/AG/2977)**

October 2013



**Criminal Justice 2011
with the financial support of the European Commission
Directorate-General Justice, Directorate B: Criminal Justice**

Background information

The European Forum for Restorative Justice (EFRJ) is a non-governmental organisation based in Leuven, Belgium. The general aim of the EFRJ is to help establish and develop victim-offender mediation (VOM) and other RJ practices in criminal matters throughout Europe by: promoting international exchange of information; stimulating research on RJ; assisting the development of principles, ethics and good practices. The EFRJ provides trainings, networking opportunities and professional enhancement tailored to the development of effective restorative justice policies, services and legislation.

You are invited to visit the ERFJ website at: www.euforumrj.org

European Forum for Restorative Justice (EFRJ)

Hooverplein 10

3000 Leuven

BELGIUM

Purpose of the survey

To gather new evidence for the *Developing judicial training for restorative justice: Towards a European approach* project, the European Forum for Restorative Justice (EFRJ) is currently conducting this survey with professionals of judicial training institutions. We are particularly interested into identifying the state of play of the judicial trainings at national level in the field of criminal justice, and in particular of judicial trainings on restorative justice (hereinafter RJ). Therefore, it is important that all national institutions contribute to the survey to ensure that the results accurately reflect the situation on the ground in each country.

The EFRJ would be honoured if your institution could respond to this survey. Through this survey the EFRJ seeks to identify existing training modules, needs of target groups and challenges where national training institutions believe further action is needed in order to improve RJ judicial trainings at national and EU level.

The survey must be completed and submitted online or in paper. Filling out the survey will not take longer than 20 minutes. The results will be published on EFRJ website to reflect the overall state of play in each country. The data gathered from the survey will be used in summary form only, to protect confidentiality.

Please note that:

- Most questions allow multiple answers. In most cases, your institution may also specify other issues of relevance
- In some questions, your institution is asked to rate the importance of some issues at stake. Please ensure that the answer reflects the viewpoint of the institution and not personal opinions
- For open-ended questions where you are asked to type in text, we encourage you to do so in English
- For the online version you should click the 'SUBMIT' button only after you have answered all the relevant questions

The consultation will run until 30 November 2013.



For any further information or questions on this survey, please contact the project coordinator Ms. Tzeni VARFI at tzeni@euforumrj.org

The EFRJ would like to thank you in advance for participating in this survey.

Introduction

Section 1 Your profile

- Type of the organisation

Public organisation
Organisation under private law
Private organisation with public mission

Other, please specify _____

- Name of your organisation and address

- Please select the country in which your institution is located

Austria

Belgium

Bulgaria

Croatia

Cyprus

Czech Republic

Denmark

Estonia

Finland

France

Germany

Greece

Hungary

Ireland

Italy

Latvia



Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom

Section 2 The state of play

- Are you aware of any official internet site/portal which the general public may have access to:

- Judicial training materials? Yes _____ No _____
- Evaluation report on judicial training? Yes _____ No _____
- Statistics on training programmes?
-Yes _____ (Please indicate the sources for answering these questions)

- According to practice in your country/region, what procedure must be followed by judges or public prosecutors who wish to attend judicial trainings? Does it involve a closely regulated budgetary procedure?

- How frequently does your institution organise judicial trainings?

Always
Often
Sometimes



Seldom

Never

- On the basis of what qualifications are the trainers recruited?

Do trainers work on a full-time or occasional basis?

- Are judicial trainings financed by the state or by other means? Please specify

- What is the approximate percentage of your institution's overall budget for judicial training in general? (at most 100)

Section 3 The state of play of RJ trainings

- Did your institution organise any judicial training on RJ the last 5 years?

Yes _____ What are the main reasons of organising such training? _____

No _____ What are the main reason of not organising such trainings?



- Which target group received restorative justice trainings?

- Judges only,
- Public prosecutors only
- Judges and public prosecutors
- Judges and public prosecutors including judges' assistants, clerks, deputy prosecutors etc?
- Other, please specify

- How do you measure the quality of judicial training on RJ and identify the educational goal of these trainings?

Section 4 External cooperation

Does your institution engage in cooperation with other training institutions?

Yes _____ Please indicate details of this cooperation _____ No _____

- Does your institution participate in European events on European judicial trainings?

Yes _____ Please specify in which ones _____
 No _____ Why? _____

Section 5 Concluding question

What is the main obstacle of organising RJ training programmes in your country? *Multiple answers are possible*

- Lack of comprehensive of RJ principle and practices

- Lack of budgetary resources
- Lack of time
- Lack of skilled trainers in the field of RJ
- Resistance from judiciary
- Other, please specify

Can you provide information on the current state in your country regarding the judicial training strategy? Are there foreseen reforms? For example changes in legislation, innovation programmes etc.

Having reflected all these questions, do you have any further comment?

Thank you for completing this survey!

Annex 2.2 - Survey on judicial training practices in Restorative Justice

EUROPEAN FORUM FOR RESTORATIVE JUSTICE (EFRJ)

Key definition of RJ

RJ is an option for doing justice on repairing the harm that has been caused by the crime

BACKGROUND INFORMATION ABOUT RESTORATIVE JUSTICE

Many scholars have written about the roots and the history of restorative justice (Braithwaite, 1998, 1999; Frindlay and Henman, 2005, Hudson and Galaway, 1975 etc). Nevertheless, one of the common agreed definition of RJ is given by Tony Marshall (1996) according to which the RJ is “a process whereby all the parties

with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”. This definition has been considered as “minimalist” approach of RJ. It exist thereupon a “maximalist” conception of RJ in the literature developed by Walgrave which considers RJ as “an option for doing justice on repairing the harm that has been caused by the crime”. A combination of these definitions has been proposed by United Nations (2002, 2006):

“Restorative justice is a way of responding to criminal behavior by balancing the needs of the community, the victim and the offender”.

The literature on RJ definitions is wide and not always clears as to what the RJ refers to. Moreover, there is not always agreement about the RJ principles. Therefore, the idea of RJ as being complex and open concept that continues to develop throughout experience is considered as enriching rather than limiting.

PRACTICES AND MODELS OF RESTORATIVE JUSTICE

- **Victim-offender mediation (VOM):** face-to-face meeting that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime. VOM is one of the most well-known restorative programmes used especially in Europe and North America. It very often identified with RJ.
- **Indirect mediation** (No direct, face-to-face meeting, but communication takes place through the mediator/ facilitator who acts as a go-between)
- **Conferencing** (Facilitated meeting between parties in conflict and their supporting family members, friends and possibly professional actors). Originally from New Zealand and Australia, conferencing is a generic term that encompasses several types of conferencing models both in criminal and non-criminal matters.
- **Peacemaking circle** (Facilitated meeting involving the broader community and possibly professionals use of a talking piece). Circles derive from Native American and Canadian

First Nations dispute resolution processes. These programmes are usually used side-by-side the criminal justice system and therefore not asked as a form of diversion, but as part of the court process which might result in conviction for the offender.

EXAMPLE OF RESTORATIVE JUSTICE CASES

- **A teenage boy took keys from sheltered housing and stole money⁴⁴.**

A VOM session took place after the facts. During the face-to-face meeting, the boy gave an account of his actions and expressed remorse for his behavior. The victim was given the opportunity to ask questions and to inform the offender of the consequences and effects his action had on her. The victim's mother also had the opportunity to share her views with the offender, and how much she had been affected by this incident. The VOM process was successfully finalised and the boy did not reoffend since.

- **A 14 year old male stabbed another boy in the back with scissors after enduring bullying⁴⁵.**

A meeting took place just after school in the mobile classroom damaged during the offence. They were all nervous. After introductions each boy gave an account of his involvement in the crime and apologised for the trouble that he had caused. The junior school Head Teacher explained the impact on the elderly Premises Officer who had been called out by the police on the day of the crime. The Head Teacher of the high school explained that, due to the rise in insurance premiums because of the burglary, they had not been able to buy several new computers for the school that had been ordered. These had had to be cancelled. All of the boys had attended this school before moving to their current college.

At the end the conference was successful in that all three victim satisfaction surveys were returned and were all positive. Three out of the four boys have not re-offended.

RATIONALE OF THIS SURVEY

To gather new evidence for the *Developing judicial training for restorative justice: Towards a European approach project*, the European Forum for Restorative Justice (EFRJ) is currently conducting this research survey with judges and public prosecutors. We are particularly interested in identifying the state of play of the judicial trainings at national level in the field of criminal justice, and in particular of judicial trainings on restorative justice (hereinafter RJ), with a view of compiling an inventory handbook of training methods and best practices. Thenceforth, it is important that all judges and public prosecutors contribute to the survey to ensure that the results accurately reflect the situation on the ground in each country.

The EFRJ would be honoured if you could respond to this survey. Through this survey the EFRJ seeks to identify existing training modules, needs of target groups and challenges where judges and public prosecutors believe further action is needed in order to improve RJ judicial trainings at national and EU level. The study aims to cover all 28 Member States.

The survey must be completed and submitted online or in paper. Filling out the survey will not take longer than 20 minutes. The results will be published on EFRJ website to reflect the overall state of

⁴⁴ http://restorativejustice.pbworks.com/f/40_cases_final.pdf (page 13-14)

⁴⁵ Ibid, page 16-18

play in each country. The data gathered from the survey will be used in summary form only, to protect confidentiality.

Please note that:

- Most questions allow multiple answers. In most cases, your institution may also specify other issues of relevance
- In some questions, your institution is asked to rate the importance of some issues at stake. Please ensure that the answer reflects the viewpoint of the institution and not personal opinions
- For open-ended questions where you are asked to type in text, we encourage you to do so in English
- You should click the 'SUBMIT' button only after you have answered all the relevant questions

The consultation will run until 15 December 2013.

For any further information or questions on this survey, please contact the project coordinator Ms. Tzeni VARFI at tzeni@euforumrj.org

The EFRJ would like to thank you in advance for participating in this survey!

RESEARCH SURVEY

Your profile

1. Country of work (We don't expect our respondents to provide complete information for the whole country. Therefore, if your information is only partial, please specify, which specific region are you referring to) _____
2. Profession_____
3. Which is your area of expertise?
 - Alternative Dispute Resolution
 - Criminal Law
 - European Law (General)
 - Alternative Dispute Resolution
 - Human Rights Law
 - Judicial Remedies
 - Other, please specify_____
4. How many years' professional experience do you have?
 - 0-2
 - 2-5
 - 5-10
 - More than 10



A Baseline assessment – judicial training

1. Reason for participating in judicial trainings (More than one answer is possible)
 - A good opportunity of sharing good practices and promoting personal development
 - A reflection exercise on important issues
 - Relevant to work profile
 - Request from superiors
 - Promotion to senior posts
 - Practical relevance
 - International judicial exchange
 - Other, please specify

2. Reasons for not participating in judicial trainings (More than one answer is possible)
 - Lack of such training programmes
 - No available time
 - Not interested
 - Not necessary
 - No funding available for such trainings
 - Infringement of judicial independence
 - Permission denied by superior
 - Other, please specify

3. Is the right or requirement to attend judicial training stipulated in law or national regulation?

If yes, please specify _____

4. According to practice in your country/region, what procedure must be followed by judges or public prosecutors who wish to attend judicial training?



5. Who is responsible for conducting the evaluation of training programmes in your country/region?
 - State judicial schools
 - Government ministries
 - Units located within the Ministry of Justice
 - Judiciary
 - Independent organisations (Ngo's)
 - University affiliated bodies
 - Other, please specify

6. How do the competent authorities measure the quality of judicial training and identify the educational goal of these trainings?

7. Do judges /public prosecutors receive promotion based on the fulfilment of training programmes? If yes, please specify

8. In your knowledge are judicial training financed by the state or by other means?

Judicial training structure

1. What was the structure of the judicial training?
 - Theoretical (please bring an example)_____
 - Practical (please bring an example)_____
 - Both (please bring an example) _____

2. Which target group received RJ trainings?
 - Judges only,
 - Public prosecutors only
 - Judges and public prosecutors
 - Judges and public prosecutors including judges' assistants, clerks, deputy prosecutors etc?
 - Other, please specify

3. Were the judicial training organised in small groups or impersonal lectures?

Judicial training methods

1. What methods were used during the RJ trainings in your country? (More than one answer is possible)
 - Centralised, face-to face programmes (programmes in which judges and prosecutors travel and attend face-to face trainings, seminars, workshops etc)
 - Decentralised, court-based programmes (trainings directly to the court or through IT)
 - IT & web-based programmes (delivery of trainings through the use of IT, online judicial information r computerized case management system)
 - Modules (trainings programmes delivered by training providers)
 - Screened programmes for individual judicial ranks (trainings delivered to judges & prosecutors based on their judicial rank)
 - Integrated programmes for judiciary and prosecutors (trainings attended by judges, p.prosecutors and supporting staff all together)
 - All of them
 - None of them
 - Other, please specify
2. Which of the following modules of training courses are currently offered to judges/prosecutors?
 - General law principles and practices
 - Procedural Law
 - Case management skills
 - Judicial cooperation in criminal matters
 - Legal skills
 - Judicial ethics
 - European Law
 - Alternative Dispute Resolutions

- Restorative Justice programmes
 - Other, please specify _____
3. What was the number of materials distributed in training sessions?
- Less than 10 pages
 - 10 pages
 - More than 10
 - Other, please specify _____
4. Which of the following format was relevant to judicial training attended? (More than one answer is possible)
- Technology-Based Learning (Basic PC-based programs/Interactive multimedia based CD-ROM/Interactive video - using a computer in conjunction with a VC)
 - Simulations approach (exercises to illustrate real work/life experiences)
 - On-The-Job Training (read the manual/ccombination of observation, explanation and practice)
 - Coaching/Mentoring (set up a formal mentoring program between senior and junior judges/prosecutors)
 - Lectures (classroom-format with the intent to deliver a huge amount of information to people in a short amount of time- no interaction process)
 - Group Discussions & Tutorials (a group discussion that allows the target group to ask questions and provide ideas on how to resolve new issues)
 - Outdoor Training (a break from regular classroom or computer-based training, the usual purpose of outdoor training is to develop teamwork skills)
 - Case Studies (develop analytical and problem-solving skills, and provide practical illustrations of principle or theory)
 - Other, please specify _____



Frequency and duration of judicial training

B On average, how often do you attend judicial training events per year?

-.....None

- 1

- 2

- 3

- More

2. How long did the judicial training event last?

- 2 hours or less

- half a day

- 1 day

- 2 days

- 3-5 days

- Longer, please specify _____

3. Your attendance in judicial training sessions was?

- Compulsory

- Not compulsory

- A combination of both

4. Which day of the week do you consider suitable for a training event? (More than one answer is possible)

- Monday

- Tuesday

- Wednesday

- Thursday

- Friday

- during the Weekend



B Restorative justice training assessment

1. Does your country/region organise any judicial training on restorative justice (RJ) programmes?

- Yes
- No

If yes, please specify the following:

By which providers?

2. On which subject of RJ did you receive training programmes?

- Victim-offender mediation (VOM: face-to-face meeting that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime)
- Indirect mediation (No direct face-to-face meeting, but communication takes place through the mediator/ facilitator who acts as a go-between)
- Conferencing (Facilitated meeting between parties in conflict and their supporting family members, friends and possibly professional actors)
- Peacemaking circle (Facilitated meeting involving the broader community and possibly professionals, use of a talking piece)
- Other, please specify

3. How often do you receive trainings on RJ?

- Regularly
- Occasionally
- Rarely
- Never

4. How often do you deal with RJ cases?

- Several times a year
- Once a year, on average
- Less than once a year, on average
- Regularly

5. On which subjects of RJ would you like to receive trainings? (More than one)
 - Basic principles on the use of RJ
 - Features of restorative justice programmes (victim-offender mediation (VOM)/indirect mediation/family conferencing etc)
 - Types of processes in restorative justice programmes
 - Criminal justice system and RJ
 - Other, please specify

6. What were your expectations when attending RJ judicial trainings?

7. Do you consider the content of judicial trainings in RJ as sufficient from the perspective of your everyday duties?
 - To a very large extent
 - To a large extent
 - To some extent
 - Only to a minor extent
 - Very minor extent

8. Do you consider the judicial training on RJ programmes provided sufficient to upgrade further your professional skills?
 - Yes, sufficient
 - Partly sufficient
 - Not sufficient

9. Are you satisfied with used methodology and the level of professionalism of the trainers?
 - Very satisfied;
 - Partly satisfied;
 - Not satisfied

Concluding questions

1. If you were a RJ judicial trainer, which will be the RJ topic that you would like to present and what kind of training methodology you will use during the training event?
2. What would be your incentive to attend RJ training programmes?
3. Do you prefer the RJ training programmes to be organised at national or local level? Why?
4. What is the main obstacle of organising RJ training programmes in your country/region?
 - Lack of comprehensive of RJ principle and practices
 - Lack of budgetary resources
 - Lack of time
 - Lack of academic research and curricula
 - Lack of skilled trainers in the field of RJ
 - Volume of cases
 - Resistance from judiciary
5. Can you provide information on the current state in your country regarding the judicial training strategy? Are there foreseen reforms? For example changes in legislation, innovation programmes, etc. Please specify _____
6. Having reflected all these questions, do you have any further comment?

THANK YOU FOR YOUR CONTRIBUTION

Annex 3.1

Progress report of RJ judicial training seminar in Spain

San Sebastián (Donostia)

Thursday 6 March 2014

Friday 7 March 2014



Criminal Justice 2011
with the financial support of the European Commission
Directorate-General Justice, Directorate B: Criminal Justice



**CONSEJO GENERAL
DEL PODER JUDICIAL**

Introduction

1.1 The overall evaluation of the RJ judicial training

On 6 and 7 March 2014, the University Carlos III de Madrid in collaboration with General Council of Judicial Power and Department of Justice of Basque Government organised an innovative RJ career-long professional training called: “*Restorative justice: a formative meeting for judges and prosecutors*”. The 2-day training was hosted in the Provincial Court of Justice in San Sebastián (Donostia) and the opening session was chaired by the President of the Provincial Court.

26 judges and prosecutors from different cities of Spain (Sevilla, Madrid, Teruel, Martutene, Zaragoza, Azpeita, Calahorra, Navarra and San Sebastian) attended the training delivered by three renowned trainers.

Trainer’s Profile



Diana Perulero – Penal mediator and Advocate



Marta de Diego – Mediator and Psychologist



Anna Carrascosa – Inspector of penal mediation (General Council of Judicial Power CGPJ) and member of GEMME

The training programme was conceived in an interactive setup between theory and practical skills on how judges and public prosecutors use restorative justice (RJ) in their daily work.

The learning approaches, structures and practical cases aimed to accommodate the participants to explore RJ related practices through active discussions. The training also provided an opportunity to see issues and constraints in regards with the referral of criminal

cases to RJ, and the way how to apply appropriate strategic negotiation in managing critical cases.

1.2 The objectives of the RJ training

1. Define the general knowledge of judges and prosecutor about RJ practices
2. Understand the importance of RJ in criminal cases
3. Strengthen the ability of judges and prosecutors to refer criminal cases to RJ
4. Identify the difference between the penal mediation and RJ related practices
4. Contribute to the establishment of a European network of judges and prosecutors in the field of JR

1.3 Training design and methodology

The first part of the training was designed in e theoretical- food for thoughts- presentations of European legislation: Directive 2012/29/EU⁴⁶ establishing minimum standards on the rights, support and protection of victims of crime and national legislation: Ley Orgánica 5/2000, Código Penal, Código Procesal Penal, Ley de Enjuiciamiento Criminal, Estatuto de la Víctima del Delito, Instrucción 2/2009 Fiscalía etc.

In the second part, brainstorming group discussions and video presentations on RJ process attracted the interest and the self-reflection of participants. Through dynamic methodology, participants were able to practice the knowledge in identifying RJ and penal mediation by illustrating practical experience and lastly the participants were able to determine the importance of RJ for adult offenders.

Post-testing evaluation was conducted to evaluate the learning process of RJ.

Key outcomes

- Coherent & dynamic training programme
- Wide geographical coverage of participants
- Broad attendance from different target groups
- Good performance of trainers
- Relevant time allocation for each topic
- The training increased awareness of advantages of using RJ by judges & prosecutors
- The possibility to include RJ in education curricula of magistrates
- RJ considered as an effective & efficient way of doing justice
- Donors have expressed particular interest in funding future events on RJ

⁴⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

2. Summary of the training topics

Below are the detailed outlines of the 2-day training programme:

DAY 1 6 March 2014

Main modules	Inputs
<p>Module 1 Presentation</p> <p>Presentation of the EFRJ Presentation of the European project on judicial training Presentation of Spanish context & legislation</p> <p>Speakers: Helena Soleto (UC3M), Tzeni Varfi (EFRJ), Concepción Sáez (CGPJ), Victoria Cinto (CGPJ)</p>	<ul style="list-style-type: none"> • The criminal process as a “meeting of losers” and the possibility that it is a participatory meeting of the legitimate rights and interests of victims and offenders. • Penal mediation in Spain neither means privatisation, nor implies an alternative to criminal proceedings
<p>Module 2 RJ as an option</p> <p>Speakers: Helena Soleto (UC3M) & Ana Carrascosa (CGPJ)</p>	<ul style="list-style-type: none"> • Attempts on defining RJ and its suitability in serious crimes. • Similarly regarding the use of the term "<i>conflict</i>" • expansive character of RJ inside and outside the criminal sphere • International standards on RJ: International legal corpus as start point • Unbalance across EU countries: in particular the limited use of the different RJ practices (conferences, circles, VOM ..) • Spanish law and its relation to Directive 29/2012/UE: field of children and adults (reform projects). What is their relationship to restorative justice? • Importance of RJ from a self-critical view of motivation and effort of judges, prosecutors, clerks, mediators ...



<p>Module 3 The role of the mediator in RJ practices</p> <p>2 Video projections: mediation cases</p> <p>Speaker: Carlos Romera (mediator)</p>	<ul style="list-style-type: none"> • Stages in the mediation process, defined by uncertainty: • Home-and host (important to assess the attitudes, the voluntariness and vulnerabilities) • Meeting (technological and artistic creativity without losing direct and humane treatment) • Agreement and follow-ups
<p>Module 4 Judges & prosecutors in RJ</p> <p>Interview by Dr. Isabel Germán Mancebo (Researcher. Basque Institute of Criminology (UPV) /Substitute Judge. Guipúzcoa Provincial Court)</p> <p>Speakers: Ignacio Subijana (AP Guipúzcoa), Marta Sánchez (Prosecutor), Isabel Germán (UPV)</p>	<ul style="list-style-type: none"> • Integrating the restorative process in the judgment: differentiate conformity of restorative practice • Disparities between the truth of the parties and the judicial truth • The role of judges and prosecutors throughout the restorative process, how they control RJ guarantees and principles?
<p>Module 4 Experiences of RJ</p> <p>Movie projection: Hablamos?</p> <p>Speakers: Pilar Sánchez (mediator), Gema Varona (UPV), Marta de Diego (mediator)</p>	<ul style="list-style-type: none"> • Experiences of victims & offenders • Initially: surprise, ignorance, fear of the victim • At the meeting: "Why me?", "what is wrong with me?" – the self-culpabilisation of the victim • The idea of justice for citizens is not real but real conditions, motivations, behaviors and confidence in the administration of justice

DAY 2 7 March 2014

Main modules	Inputs
<p>Module 1 Practical cases</p> <p>Speakers: Diana Perulero (mediator), Izaskun Porres (GEMME), M^a. Josefa Barbarín (AP Guipúzcoa), Marta de Diego (mediator)</p>	<p>3 different practical cases</p> <ul style="list-style-type: none"> - Classical mediation case - Complicated case: not always possible to mediate - Case that is not possible to mediate
<p>Module 2 Final reflections</p> <p>Speakers: Ana Carrascosa, Diana Perulero, Ignacio Subijana, Helena Soletó</p>	<ul style="list-style-type: none"> • Build a constructive cooperation between magistrates and mediators • Consider RJ practices (VOM, peacemaking circles, conferences etc) as an effective way of doing justice by restoring the harm caused to the victim • Differentiate the practices of RJ in penal cases and distinguish the appropriate practice for each particular case. • Acknowledge the voluntary participation of parties (victim-offender) in the RJ process: take into consideration the satisfaction of the victim (not always symbolic) • Building a European network of judges and prosecutors in RJ

2.1 About the participants

There were 26 participants (judges and prosecutors) attending the innovative training. The participants fully attended and were participative and satisfied with the training. They were provided with a lot of opportunities to discuss on RJ and the practical advantages of using it in their daily work. In addition to that discussion, provided with negotiation skill and solution in the training. More importantly, they were highly satisfied with brainstorming discussion about practical cases and movie presentation.

The participants were quite interested in the topics and they preferred the ways the training were conducted, in particular the group work exercises and the movie projection. They were very interested in sharing the knowledge and experiences in several modules. Hence, it proved the motivation and relationship building among the participants and trainers. This sign had been reflected a strong participation, support, and cooperation from the participants towards the success of the training.

2.2 Photo gallery



2.3 Action steps ahead

The following important steps were reflected during the training:

- Lobbying towards the legislator to include RJ practices in the penal
- legislation Define precisely suitable criminal cases for RJ.
- Organise future workshops/seminars/conference about RJ in criminal
- matters Conceive and include educational curricula of RJ for magistrates
- Include RJ topic as obligatory subject of judicial
- training Include the RJ in the penitentiary system.

2.4 Challenges

- Stakeholders consider RJ mechanism a limited option due to the frequent use of penal mediation already foreseen in law
- Lack of RJ legislation for adults, lead several stakeholders no possibility to use RJ in their daily work
- Very few seminars and conferences are organised in the field of RJ

Annex 3.2

Progress report of RJ judicial training seminar in the Netherlands

Utrecht, 6 and 7 February 2014

On the 6th and 7th of February 2014, the first training of the “**Developing judicial training for restorative justice: Towards a European approach**” – European project took place in Utrecht, the Netherlands. The Verwey-Jonker Institute hosted 20 participants (a mix of judges, public prosecutors and a few mediation officers) and three trainers in a 1,5 day training on restorative justice. The training was set up together with two local trainers and an expert from Belgium and a trainer. It resulted in an interactive programme with theory and practical goals on how judges and public prosecutors will implement RJ in their own work. Participants, trainers and organizers were very satisfied with the overall results. The next trainings will take place in Northern Ireland, Spain and Poland.

The current situation in the Netherlands with mediation in penal cases is that there are since October 2013 pilots in six courts where public prosecutors and also judges can refer to mediation. This is partly a result of the Victim Directive that needs to be implemented before the end of 2015 and a Dutch (draft) policy paper of 27 February 2013 concerning restorative mediation in penal cases. It describes the way restorative justice can support strengthening the position of the victim (Ministry of Security & Justice: VenJ 2013). As a purpose of the penal mediation it is mentioned that: victim and offender should be given the possibility to restore the harm (material or immaterial) done after a criminal offence. It also stimulates the participation of others directly involved; it strengthens the social capability of citizens and creates procedural justice. Among the criteria is arranged that the public prosecutor and the judge need to be informed about the outcomes of the mediation. They will use the information when making the final or follow up decision within the criminal procedure.

Even though there is more long term experience in courts with mediation in civil cases and in areas of for example employment conflicts, there is not yet much experience with mediation in penal cases. The current situation is that for many judges and prosecutors working in this area it is a new way of working. The focus of our training was thus twofold: to give them some in-depth knowledge on RJ theory, but also to give some more practical tools to work with the current projects.

Day one: During the programme on Thursday afternoon/evening a dinner was served and the American Film Burning Bridges was shown in which a group of young men burned down a historical bridge in a small town after which a conference is set up where persons of the community, the young men and their parents came together to discuss the aftermath of such a crime. This part of the programme was done to get the judges and public prosecutors informally together and to see how RJ works in practice. It already resulted in interesting discussions and ideas about different forms of restorative justice and different ways of working towards agreements and how to use this in the final sentence.

Day two: we had a full programme and the participants were welcomed warmly in the meeting room of the Verwey-Jonker Institute. Maria Leijten, judge in Amsterdam, was the chair of the day. She got inspired years ago in mediation and is convinced that more can be done also in the penal process. Annemieke Wolthuis, researcher at Verwey-Jonker introduced the European project and how this training fits in that programme.

The first lecture was given by Lode Walgrave about RJ theory and about developments and lessons learned with victim offender mediation and conferencing in Belgium. It resulted in lively discussions afterwards.

A method called dialogues was afterwards introduced by Maria Leijten who gave the participants in small groups so called talking sticks to talk about their first experiences and feelings of resistance with restorative justice.

After lunch Gert Jan Slump went more in-depth with his mini master class on working with RJ. After an introduction on the current projects and back ground of the developments in the Netherlands, he continued with interactive sessions. The reactions from the judges and public prosecutors afterwards and the evaluation forms they filled in show that they were happy with the training and see the need for future events like this.

Quotes from the trainers:

"I enjoyed working with a group of about twenty very motivated members of the judiciary. They were well prepared, receptive for the message and constructively critical. Their questions were pertinent and based on experiences. It made the session interactive and lively. In my feeling, this was an excellent meeting, reaching the objectives which were making members of the judiciary more acquainted with the restorative justice philosophy and theory, and informing the participants about concrete developments in Belgium".

Lode Walgrave, Professor Criminology KU Leuven

"My goal during our master classes 'making work of restorative justice' is to make and challenge trainees mastering their own professional process.

During this training judiciaries were eager and seduced to get out of their comfort zone, take responsibility in innovating their practice into a more restorative way.

Great job!"

Gert Jan Slump, criminologist and trainer, co-founder of Restorative Justice Nederland

"I noticed that the quote we used during the dinner was more than true: Involve me and I will understand. The effect of the training was that my colleague judge who knew about the pilot mediation in criminal Justice all along, was now willing, eager even, to submit cases to the pilot. Before the training he was not. A training like this makes all the difference in a field that has no time to do anything else than work away the daily cases.



We developed a training that suited the professionals very well. It was diverse, challenging and to the point. THE question was why we should do this, and the answer was convincingly YES.”

Maria Leijten, judge in Amsterdam

“Dear colleagues,

Friday I was at a meeting on Restorative Justice. Even though I was somewhat cynical at first, I got totally convinced that this is a new method that we need to embrace.

Victim offender mediation is a method to take away penal grief instead of adding it. It is an additional way to do justice towards victims and society.

The good thing about it is that we can integrate this method in our internal work processes. It will not give an extra burden to the normal process. It can even give enlightenment, if parties find (partial) solutions themselves. Even more important is to create a larger platform for the victim and the offender for the process and an offender who takes responsibility. Finally it is also a way to show for us that we are a legal profession that is progressive and on top of things happening in society.

I suggest that we make a plan.”

One of the stakeholders

PROGRAMME

1. Opening - Maria Leijten

After a short introduction round, we looked back at the film ‘Burning bridges’ that was shown during the evening programme on 6 February. In short, there are three phases in the restorative process (the example in the film shows conferencing) :

1. feelings about what happened are expressed and directed to someone involved. For example victim-offender-victim or parents.
2. Regret : accountability is taken for what the offender has done.
3. Action : what will we do ?

The film shows phase 1 and 2, 3 was missing.

2. Introduction Judiciary project - Annemieke Wolthuis

Goal of this European project “Developing judicial training in restorative justice: Towards a European approach” is to unite effective practices, testing innovative training modules for judges and public prosecutors –in de implementatie van herstelrecht- and to start setting up a European network. Five European research institutes are involved: University of Ulster from Northern Ireland, University Carlos

III de Madrid from Spain, Mediation Development Foundation from Poland, Istanbul Bilgi University from Turkey and the Verwey-Jonker Instituut. This Dutch training is the first of four, the others will take place in Spain, Northern Ireland and Poland.

Wolthuis shortly briefs the outlines of this investigation. The suffered damage is central in restorative justice. Central in criminal law is the offender. Since Belgium employs restorative justice since the late nineties, a Flemish expert is also invited. A policy paper from secretary of state Fred Teeven caused the mediation pilots in criminal cases. In the practical part of the training we discuss some of those. In addition are international and European guidelines, in force since 1996. Publications about restorative justice that were presented are: het tijdschrift voor herstelrecht, an evaluation research of the Verwey-Jonker Instituut 'Schade herstellen tijdens jeugd detentie' and the dissertation of Wolthuis: Wolthuis, A. (2012), Herstelrecht, een kinderrecht, Voorstellen voor integratie van herstel in het hart van het jeugdstrafrecht (diss.), Den Haag: Boom Lemma uitgevers.

3. Restorative justice in theory and in (Belgian) practice– Lode Walgrave

Lode Walgrave is emeritus professor of criminology at the University of Leuven in Belgium. He talks about the theory of restorative justice and the (Belgian) practice of it.

Belgium knows a child protection law, not a juvenile justice system. This purely protective system received heavy criticism, even though people also did not want to switch to a purely punitive system. In the Dutch journal for youth- and family rights, Lode Walgrave published the idea of 'herstel' (restoration) in 1981. Only later he became familiar with restorative justice. He then launched the term 'herstelrecht' as it is still used today. To victims (and perpetrators), restorative justice can mean a lot, but the same goes for peace in a society. It is never a solution to everything, but should get priority. It has received a place in the Belgian justice system, for both juvenile and adults. The different options are: victim offender mediation and family group conferencing.

Restorative justice in a nutshell: 1. Victim movements, 2. Communitarianism (people becoming alienated from the state, more community should arise), and 3. Critical Criminology (Hulsman). From perpetrator-oriented to more victim-oriented and also to include society.

Question from the audience:

- *Will it lead to a superficial view on criminal cases?*

In restorative justice the question is: What is the damage and how can we restore that? In criminal law the question is: what should we impose on the offender. It's a different paradigm. Restorative justice is about all damage. And turmoil is public damage. Secondary victimization is a border of restorative justice.

- *What about the satisfaction of victims?*

Victims experience has been the topic of previous held research, showing that it has been learned that suffering should follow bad conduct. But the other possibility is not per se suffering, but recovery/restoration. Victims are mostly positive about this. Comparative research shows that victims are a lot more satisfied in the case of a restorative justice intervention than after a criminal penalty. They felt that justice was done.

- *Does the offender restore the damage?*

Primarily, the perpetrator is always involved. It is about the responsibility of the offender. This will be made as constructive as possible, thus making recovery possible and it must be reasonable with respect to the degree of responsibility: not just deserts. In the film "Burning Bridges" the boys had to pay fully for the bridge. That will lead to a life of poverty, which is far from reasonable.

There are also group processes, i.e. at rape convictions. These are inspired by conferencing. Behind both the offender and the victim stand teachers, youth workers and more, people who can all be invited. There is also room for the police in this type of discussion.

- *What about the lawyers? In restorative justice they make peace, while being trained to 'win a war'. How do you get the legal profession on board in this restorative-oriented approach?*

Through training and assistance, that should be financed. They should receive the same amount they get for a hearing.

4. Dialogue – coordinated by Maria Leijten

The participants are split up in groups. With the use of a 'talking stick' discussions take place on restorative justice and in particular what has been discussed before. In one of the groups these were the main items:

- In Maastricht the office of the public prosecutor has not much experience with RJ.
- What often goes wrong is that the office of the public prosecutor does not know well how to inform the victim well and then the victim does not want to cooperate. It is important to them that they get the right info on what RJ is and what it implies.
- In Amsterdam a paradigma-shift is needed, to give RJ a solid basis. There are many less severe cases in which something needs to happen. In the criminal justice procedure you often not succeed.
- Often criminal offences are taking place within a relation or by people with a psychiatric disorder. Should you react with a criminal procedure?
- According to Walgrave (who came to sit with this Group) you should talk about a 'case justice or a justice of incidents' and not per se of a criminal justice. Think about justice as dealing with behaviour and to protect norms.
- A point of concern is that the equality of justice should be in place. On top of that there are very different victims and offenders. In case of mediation one can be more vulnerable than the other.

In each group one person summarised the main outcomes. Items that occurred several times were that the work load is high and the question what to do with psychiatric clients. Restorative justice can fit within the current justice system, but there also should be a platform for it and social support. Another important issue is legal equality.

5. Mini masterclass 'Working with RJ and restorative practices' – Gert-Jan Slump

There are different views on the position of the public prosecutor service and the Courts in RJ cases. Restoration is taking place in a threefold perspective:

1. Victim (strengthen, compensate, recognition, restoration)
2. Community (assistance, doing justice and restore)
3. Offender (understand, guilt / shame, responsibility, resocialisation)

Victim offender mediation: European Directive 2012: concept policy paper Dutch Ministry of Justice: plan 40.000 cases.

Forms of RJ already active:

- Neighbourhood mediation.
- Peer mediation in schools.
- HALT (the alternative).
- Mediation / family Group conferencing (eigen kracht conferenties).
- Victim offender conversations / SIB mediation.
- Mediation.
- Restorative detention and restorative workers in prisons.
- Restorative aftercare.

Effects: meta-research on RJ shows: positive participants, often decrease of recidivism, increasement of feelings of justice.

Slump asks the question what is going well and what should improve. The participants write their thoughts on sticky notes which are all collected and read out.

Problems and suggestions for change?

- Make sure the environment knows about the possibility to use mediation in penal cases.
- To refer more often to mediation.
- To create a large 'draagvlak' within the courts/among justice is not an easy and a slow process.
- Also to discuss matters on RJ with lawyers is difficult.
- Output-oriented.
- The role of the victim in the penal process is often seen as time consuming.
- Conditions (voorwaarden) are being imposed on an offender: different input of the accused.
- To refer to the mediation officer of the office of the public prosecutor.
- To talk about restoration with victims and not about money.
- Mindset / cultural change.
- The legal attitude of lawyers – not being able to look at a case differently.
- Communication towards victims.
- Information sharing among colleagues.

- Delivery of case to case work (maatwerk).
- To bring victim and offender together in a conversation.
- Repressive culture.
- Broad scope and meaning full.
- More attention for what is useful, less attention on only the process.
- Too fast mediation request: is the offender oriented on his own interests or on that of the victim?
- Legal attitude on civil law cases in stead of solution oriented.
- Not enough training for judges to increase practical knowledge.
- Damage restitution is not part of the process.
- Cultural change: opening for RJ.
- Not much space for the victim.
- For certain criminal offences or offenders create a way to dare to react differently, to use RJ.
- Reflect on purposes of ‘punishment’ .
- To refer to mediation when acquittal is a possibility?
- Everything that is new needs acclimatization; thus focus on getting it in the minds of people.
- Not looking each other in the eye to stay out of trouble.
- Quality of the conversations with the victims on their openness to take part (many victims want more).
- Knowledge of mediators on how mediation fits into the justice system should increase.

Sessions per group

The participants are split up in groups. In every group one persons is appointed to give his/her understanding of RJ. The following points were mentioned:

- With restorative justice you can take away the harm.
- It fits in the normal work process.
- Research shows that victims are more often in favour of RJ than simply the criminal justice system.
- RJ is progressive and fits within modern society.
- The use of RJ fits in the same reasoning than the reason for becoming a Judge: it creates justice for human beings and society and you can solve a conflict with it.
- RJ fits within the new ‘ZSM’ method in the judiciary as a meaningful intervention.
- During a mediation session offenders confess sometimes more than can be proven. More recognition for the victim.

Again: the use of RJ asks for a cultural change. The biggest challenge is to convince others. It definitely does not have a solid base yet at the penal sections of the Dutch courts.

Action plans

The participants are split up in groups again. Every group makes an action plan which is focused on the implementation of restorative justice. The following issues were mentioned in one group:

- Priority number 1: to create public support (draagvlak).
- Make Best Practices of the pilot known and present it in an attractive way: mail the focal group.
- Make clear which cases are suitable for RJ.
- To discuss it in team meetings is not the right place because of the changing court schedules of the judges.
- Education asks for a communication plan. Material can be launched nationally, but it should be locally distributed (better for the creation of a platform).
- Inspiring people with RJ experience should be invited to lunch meetings.
- Knowledge for referrals needs to increase: give questions that can be posed to the offender and instructions on which cases are suitable for RJ.
- Commitment of management.
- Change to mediation on the basis of a state allowance.

One of the persons of the Group presents the ideas. The following actions are mentioned:

- Make visible which cases are suitable.
- To invite speakers.
- To make posters: attention for mediation.
- Weekly update via the mail: every Monday a mediation news flash/novelty.
- Use quotes as: 'leer en selecteer', 'verwijs en verwacht' and 'lever maatwerk!'
- Ambassadors function: in need of money.
- Education for professionals in the chain: internal booklet on RJ.
- Discussions with lawyers: what are the obstacles for these professionals to start working with RJ?

Annex 3.3

Progress Report of RJ judicial training seminar in Northern Ireland

Training Summary

This report provides an overview of progress made during the judicial training program held on the 1st of April 2014 in Belfast, Northern Ireland. The training was organised in the framework of the project “*Developing judicial training in restorative justice: towards a European approach*” financed by the European Commission.

Twenty two participants (only prosecutors) attended the event entitled “*RJ awareness-raising in Northern Ireland*”. The training was hosted in the Public Prosecution Service in Belfast and welcomed by Senior Public Prosecutor, Mr. Stephen Donaldson. The Researcher Coordinator, Ms. Tzeni Varfi presented in the opening session an overview of EFRJ project’s objectives.

The main aim of the training program was to provide participants with a relevant knowledge of RJ related practices and equip them to be confident to refer criminal cases to RJ.

The objective of the training was that participants will acquire knowledge, skills and attitudes necessary to competently consider RJ as a valid option of doing justice and promote RJ practices in their country.

Training materials

Participants received a folder during the training that contained the background information on RJ and complementary documents. Throughout the training the participants received several handouts including case studies, assessment tasks and group exercises. Electronic copies of these materials plus any PowerPoint presentations were also made available to participants.

Methodology

A range of teaching methodologies were employed throughout the training. They included presentations to explain information and historical background of RJ in Ireland; plenary discussions to obtain participants views and opinions; group activities to enable participants to work with one another; demonstrations, role plays and case studies.

Teaching methods took into account the special needs of participants including their ability to understand difficult concepts and the desire to engage participants in a rewarding learning experience. All material was customised to the Ireland judicial context.

Trainers’ profile

The training was delivered by:

- **Prof. Tim Chapman**, Senior Lecturer at the Ulster University,
- **Belfast Martin McAnallen**, Researcher of Ulster University (retired)
- **Hugh Campbell**, Senior Lecturer at Ulster University.

The three trainers have a solid background of training experience including researches on RJ.

The training programme was very successful despite the fact that judges, as important gatekeepers of criminal justice, did not participate. The main obstacle of their absence is their heavy workload as well as the lack of compulsory training courses once appointed in their function.

None of the participants had ever received any training prior to attending this programme. The post-training feedbacks revealed that over a third of participants had no confidence to deliver sensitive criminal cases to RJ due to little knowledge of basic RJ concepts.

This training allowed all participants to significantly increase their level of RJ knowledge and felt much more confident referring cases to RJ practices. Nevertheless, the impact remains partial as in the legislation the RJ is possible only for young offenders.

Each participant participated actively in the discussion and group exercises designed in the programme.

Post-training assessment

1. Summary of Responses regarding quality and value of the training

The following statistics represent those participants who responded to the post-training evaluation form (21 replies/22). Only one participant did not complete the form.

- **40%** of participants felt confident as to the understanding of RJ rationale and related practices.
- **60%** of participants felt very confident as to use RJ in criminal cases at the conclusion of the training.
- **13.33%** of participants felt that the aims of the training were clear and had been substantially achieved.
- **80%** of the participants felt that the aims had been fully achieved.
- **6.66%** of participants felt that the information presented during the training was quite useful to them as prosecutors.
- **93.3%** of participants felt the information presented was extremely useful.
- **13.33%** of participants felt that the materials provided by the trainers were quite relevant and useful for their professional development.
- **86.66%** felt the material were extremely relevant and useful to their professional development.
- **26.66%** of the participants felt that the trainers and presentations were quite effective and allowed for adequate participation and interaction.
- **73.33%** of participants felt the trainers and presentations were extremely effective.
- **20%** of participants were quite satisfied overall with the training programme
- **80%** were extremely satisfied with the overall training programme.

2. Summary of responses regarding RJ knowledge content

- 18.75 % of participants were able to identify RJ patterns in a criminal case with adult offenders.
- 73.3% of participants were able to explain the purpose of conducting a RJ analysis in criminal cases with young and adult offenders.
- 81.25% of participants were able to list different methodologies of RJ.
- 62.5% of participants were able to define RJ and its related practices.
- 43.75% of participants were able to list 4 suitable cases that should be dealt through RJ option.
- 50% of participants were able to explain the purpose of Rj in criminal cases with adult offenders.
- 85% of participants stated that RJ is not suitable for domestic violence cases in their country

Participants found the most useful experience of the training was delivering a training session confidently to a group of prosecutors and the process of designing an innovative programme. The majority of participants could not identify anything that was *'least useful'* in the training.

RJ Training outcomes

- Prosecutors' intentions to improve the quality of judicial service delivery by using RJ in their daily work
- The training programme encouraged participants to work with RJ, exchange best practices on RJ methods and build consortia in the field of RJ.
- The innovative training had a great impact among participants, as they feel confident to be part of the European network for judges and prosecutors of RJ.
- The Public Prosecution Service in Belfast will work on organising future exchanges between judges and prosecutors, regarding the use of RJ for adult offender

Some suggestions for improving the further judicial trainings in RJ

- The need of a summary of main discussion of the training as an ending note;
- Interlink the national background legislation with the situation in other EU countries in the field of RJ
- Reward the participants with a training certificate



Annex 4

Proposal to establish a European network of judges and prosecutors for RJ

A proposal of the European Forum for Restorative Justice (EFRJ) in the framework of European project '*Developing judicial training for restorative justice: towards a European approach*' financed by the European Commission – DG Justice

BACKGROUND DOCUMENT

European Forum for Restorative Justice (EFRJ)
Herbert Hooverplein 10
3000 Leuven
BELGIUM
Email: info@euforumrj.org
Webpage: www.euforumrj.org

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Summary

The EFRJ is conceiving the possibility of a European network towards the final outcome of the project '*Developing judicial training for restorative justice: towards a European approach (JUST/2011/JPEN/AG/2977)*'. This proposal has been jointly developed by a group of implementing partners of the project and external experts within the project. The process started following a '*strategic consultation*' on partnership at which external experts heard the concerns from EFRJ project team about the possibility to attract judges and prosecutors to be part of such a network. Each external expert has their own priorities and strategies in place taking into account their own experience of networks.

The purpose of this network will consist of representatives of the Member States' judicial authorities and boost cooperation among judges and prosecutors across Europe in RJ matters. This will be achieved through setting up a permanent secretariat, staff exchange among national associations of legal professionals, and training workshops for members. Strengthening the exchange of RJ practices and promoting RJ all over Europe is the key strategy of the current proposal initiative by the EFRJ project team. RJ is under used by legal professionals in EU and not well-received among a few of them due to the resistance in their legal culture towards innovative tools of delivering justice.

Such weaknesses highlight the need to improve the opportunities by increasing the knowledge of legal professionals about RJ. The above-mentioned European project constitutes an isolated initiative that needs to be reinforced through a well-established network.

What has been accomplished so far?

The creation of the European Network for judges and prosecutors for RJ comes from the idea that the gradual use of RJ practices across Europe entails the need to build and improve effective judicial cooperation. The origins of this idea are situated in the framework of the project '*Developing judicial training for restorative justice: Towards a European approach*' as the final outcome.

It is also justified by the idea of extending the concept of the European Judicial Networks in criminal matters to embrace RJ practices. Since the start of the project in January 2013, the EFRJ project team put as a core objective the exchange with existing European networks to make visible the deliverables of this project and build partnership.

A few highlights from among the accomplishments include:

- ⊕ **February-March 2013** -the 1st survey addressed to judges and prosecutors in Europe was facilitated by the European Network of Judicial Trainings (EJTN) and European Networks of Councils for the Judiciary (ENCJ). The EFRJ survey was disseminated among the contact points of the respective networks via their secretariat;
- ⊕ **February 2013** - a project proposal to increase the knowledge of RJ practices at EU level was undertaken with MEP. Luigi Berlinguer, member of Committee on Legal Affairs (European Parliament). The proposal was presented during the conference organised by European Commission -DG JUST 'Developing European Judicial Training' October 2013;
- ⊕ **September 2013**, during the 2nd Steering group meeting in Leuven - Judge John Thornhill, attended the meeting and shared this experience about RJ, as Vice-President of UK Magistrate's Association and member of EJTN;
- ⊕ **September –December 2013**, the dissemination process of the 2nd survey was facilitated by The European Judges and Prosecutors Association (EJPA) and EJTN;
- ⊕ **January 2014** -a quality check collaboration was established between EFRJ project team and EJPA on survey report and elaboration of the data collection of the 2nd survey;
- ⊕ **February 2014** -after the delivery of the 2nd survey report, the participants were contacted by the Project Coordinator about the possibility to establish a network of judges and prosecutors for RJ. A list of judges and prosecutors willing to be part of such initiative has been elaborate by the Project Coordinator;
- ⊕ **March 2014** – informal consultation between the Project Coordinator and the Council of Bars and Law Societies of Europe (CCBE) about the possibility to publish the EFRJ training activities and promote them in new European training platform (pilot project of the European Commission, implemented in 2014);
- ⊕ **March-April-May 2014**- 4 judicial training programmes were delivered in 4 partner countries: The Netherlands, Spain, Northern Ireland and Poland. A large number of participants were very keen to strength their cooperation with other legal professionals interested in RJ and welcomed the idea of a network for RJ;



- ✦ **June 2014** – a group of 13 external experts, composed by judges and prosecutors from different European countries, was invited to discuss the outcomes of the judicial training activities. A session of the evaluation seminar was addressed to the establishment of the European network and the exchange between the EFRJ team and the experts was fruitful.

Proposal's description

This proposal is a request towards the establishment and operationalisation of a network of judges and prosecutors for RJ.

The aim

The main purpose of the network is to promote cooperation and facilitate the coordination of RJ activities organised by EFRJ as well as to encourage and advise association of legal professionals about RJ practices in Europe.

The tasks

The Network will support and strengthen the application of RJ in Europe, inter alia, planning, facilitating and encouraging training, conferences, workshop activities and implementing and following up on decisions taken by European Union in the field of RJ. Other tasks include encouraging and facilitating co-operation between judges and prosecutors themselves as well as between them and other proponents of RJ, such as: mediators, academics, researcher, lawyers, bailiffs etc.

The Secretariat

The secretariat of the network should be based on the EFRJ. Another possibility is to share the secretary work with another secretariat, in case the EFRJ network will join an existing network. The work of the Secretariat will be to facilitate the roles and functions of the network through training, exchanges, research and publications as well as organising conferences and workshops.

Proposal's goals

- ⊕ **The first goal** of this proposal is to establish the European network of judges and prosecutors in RJ.
- ⊕ **The second goal** is to establish and operationalise a functional secretariat of the network. **The**
- ⊕ **third goal** is to strengthen the capacity of judges and prosecutors across Europe to enable them efficiently and effectively undertake RJ practices and promotion RJ in their country. This will mainly be undertaken through trainings and exchange programmes.

Proposed scenarios

Short description – Scenario 1

The EFRJ network as an independent European network with its structure and management tasks. The collaboration with other existing networks will be possible when organising activities for legal professionals or co-applying for a European grant

Short description – Scenario 2

The EFRJ network shared with another existing European network (e.g network in civil and criminal matter or the EJTN). The daily management of the network to be trusted to the EFRJ existing secretariat but the meeting and decision-making process should be shared with the authorities of the existing network.

Short description – Scenario 3

The EFRJ network only as a particular policy of an existing European network without any management structure. The main activity should be limited to share information about RJ and participate in the meetings of this particular thematic.

Network objectives

The objectives of EFRJ network shall be:

- ⊕ To provide information to judges, prosecutors, practitioners about RJ and the application of RJ practices
- ⊕ To facilitate connections between judges, prosecutors, lawyers and proponents of RJ
- ⊕ To encourage judges and prosecutors to refer cases to RJ as an effective tool to render justice
- ⊕ To engage judges and prosecutors with their associations and to encourage intelligent and informed legal activism/advocacy for RJ.
- ⊕ To organise events to provide a forum for an exchange of views and opinions about new developments in RJ
- ⊕ To facilitate the sharing of information, ideas and other resources that relate to progressive developments in RJ

These objectives will be achieved by means including but not limited to the following:

- ⊕ To facilitate a national network for RJ and engage with other legal professionals interested in RJ
- ⊕ To offer support in the form of resources, fundraising, information, and networking.
- ⊕ To increase the discussion and sharing of information, regarding the interaction between penal mediators and legal professionals
- ⊕ To provide a website with an online library of RJ articles/books/journals to facilitate information sharing.

The Network shall be composed of:

- ⊕ **A contact points** designated by the Member States (e.g it can be an association of judges and prosecutors at national level)
- ⊕ Any other **judicial or administrative authority** with responsibilities for judicial trainings activities or exchange programmes in order to accommodate RJ theory and practices
- ⊕ **Individual judges**, prosecutors, lawyers, court bailiffs etc

Meetings of members of the Network

Meetings should be open to all members of the Network enable them to get to know each other and exchange experience, provide a platform for discussion of practical and legal problems that RJ meet and deal with specific legal questions. The Board, in close cooperation with the Managing Director, should fix for each meeting the maximum number of participants. The meetings should also help to identify good practices of RJ in civil and criminal matters and ensure that relevant information is disseminated within the Network. When possible, the members should also be able during the meetings to draw up guidelines for future RJ practices and theory.

Network outputs

The main outputs are:

- ⊕ The Constitution of the Network of adopted by EFRJ and association of judges and prosecutors – **as Memorandum of Understanding between the EFRJ and the EU-level judicial networks.**
- ⊕ A functional Secretariat of the network should set up and discharging its mandate. Competent
- ⊕ core staff of the Secretariat, including the Managing Director should be decided. The capacity
- ⊕ of the network to be enhanced through training, information sharing, exchange programmes and the creation of a website (or use the existing EFRJ website).

Network establishment steps

The following are the key project activities.

Phase 1- Establishment of the Network

The Constitution of the Network will be drafted by the EFRJ and experts and discussed and approved for circulation by the current EFRJ Board

The draft Constitution will be sent to the existing network (in case the EFRJ network will be a shared practices). The draft should be circulated to all associations of judges and prosecutors at national and Europe level. After comments are received, the final draft will be prepared and presented, with the approval of the EFRJ Board, for adoption.

Phase 2 -Establishment of the Secretariat

Setting up of the Secretariat

This will involve the following:

- ⊕ Identification of suitable office space/ or use the existing EFRJ secretariat (allowing to perform duties for the network)
- ⊕ Procurement of a plan of exact duties
- ⊕ Formal launch of the Secretariat

Phase 3 - The managing staff of the network (optimal scenario)

The following are the key staff

- ⊕ **The Managing Director** of the network will be in charge of day-to-day management of the Secretariat under the direction of the Board. The Managing Director will be a person with an advanced degree, in RJ at a managerial level.
- ⊕ **The programme officer** will be responsible for trainings, exchange programmes, annual journal, website coordination, and information sharing.
- ⊕ **The secretary/ office administrator** will be responsible for secretarial work, including day-to-day administration of the network

Phase 4 -Exchange programmes for RJ judges and prosecutors

3-4 exchange programmes should be organised yearly in collaboration with training institutes and associations of judges and prosecutors (e.g offer the possibility to pass 2-3 days in the Forum and follow the work that the EFRJ does in the field of RJ with different projects, or the possibility to follow a case that have been referred to RJ by another judge/prosecutor)

The focus will be to strengthen the perspective of RJ and its application in practice by giving to judges and prosecutors the opportunity to work in and interact with another colleague. Detailed rules for qualification for the exchange programmes **should** be developed by the Managing Director, and discussed and agreed by the Board.

Production of a bi-annual newsletter

The Secretariat should publish a journal/newsletter twice a year, which will be a forum for judges and prosecutors to share their best practices, as well as challenges, with each other. The newsletter should also include articles on emerging areas of RJ work.

The newsletter should be of a practical and concise nature. The information should be written in easily comprehensible language. The newsletter should be focused on at least the following subjects:

- ⊕ Principles, values of the RJ and judicial organisation of the Member States;
- ⊕ Procedures for referring cases to RJ, with particular reference to small claims/petty crimes, and subsequent court procedures
- ⊕ Practices from non-governmental organisations (NGO's (EFRJ in particular, Research Institutes) in the field of RJ

Both hard copies and electronic copies should be available. The existing newsletter of EFRJ should also be disseminated through this network.

Expected Outcome

The establishment of this network will be an important step in assisting judges and prosecutors to meet the challenges that they face in the referral of cases to RJ.

This proposal will be accomplished with the establishment of the supporting Secretariat that will build and enhance the capacity of the network to effectively promote RJ practices all over Europe. The overall expected outcome therefore is strengthened and capacitated Network working towards improved promotion and protection of RJ within their respective jurisdictions and in their national legal system. This proposal recognises the fact that cooperation, networking and mutual support between the EFRJ network and other existing network will be a particularly important step in developing better and working mechanisms for the promotion of RJ.

Risks and sustainability

The output of this network may be affected by inadequate collaboration from the various national associations or existing European networks for judges and prosecutors. The difference from the existing network is that they have their supporting structures but the advantage is that this network will be the first one related to RJ.

Financial management

The network should operate with a different bank account from the EFRJ, specifically to receive and manage grants for the future (e.g particular activities that the network will organise).

The Managing Director will be designed to follow expenditure for each grant received, and monthly financial reports are generated and reviewed by management.

Important note: In the first year, the EFRJ network will be composed from members on the voluntarily basis. After one yearlong test, should be possible to introduce a membership fee (different fees for individuals and associations of judges and prosecutors).