IMPROVING KNOWLEDGE AND PRACTICE OF RESTORATIVE JUSTICE
EU-PROJECT `IMPROVING KNOWLEDGE AND PRACTISE OF RESTORATIVE JUSTICE IN CRIMINAL MATTERS BY INTERNATIONAL COMPARATIVE RESEARCH´

Duration 01/10/2010 – 30/09/2012

Promoter

Schleswig-Holsteinischer Verband für Soziale Strafrechtspflege; Straffälligen- und Opferhilfe e.V. (Schleswig-Holstein Association for Social Responsibility in Criminal Justice, Victim and Offender Treatment) www.soziale-stafrechtspflege.de

Partners (Co-beneficiaries)

Ministry of Justice Schleswig-Holstein
http://www.schleswig-holstein.de/Justiz/DE/Justiz_node.html

Kiel University of Applied Sciences
http://www.fh-kiel.de/index.php

Thames Valley Probation (UK)
http://www.thamesvalleyprobation.gov.uk/

Baltic Institute of Crime Prevention and Social Rehabilitation (Estonia)
http://www.crimeless.eu/eng.php

Justice Service of Ministry of Public Administration and Justice (Hungary)¹

Partners (Associates)

CEP The European Organisation for Probation (Netherlands)
http://www.cep-probation.org/

City Council of Archangelsk (Russia)
http://www.arhcity.ru/

European Forum for Restorative Justice (Belgium)
http://www.euforumrj.org/

¹ The name of the Hungarian project partner has changed two times during the project. In 2010 it joined the project as Office of Justice; between January 2011 and August 2012 its name was Justice Service of Ministry of Public Administration and Justice, and from the 16th August 2012 it is called Office of Public Administration and Justice. For reasons of simplicity, we use the name Justice Service of Ministry of Public Administration and Justice hereinafter.
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Ricarda Lummer, Otmar Hagemann, Mario Nahrwold – November 2012
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# Abbreviations

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<th>Description</th>
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<tbody>
<tr>
<td>AI</td>
<td>Appreciative Inquiry</td>
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<tr>
<td>AR</td>
<td>Action Research</td>
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<td>AWO SH</td>
<td>Arbeiterwohlfahrt Schleswig-Holstein</td>
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<tr>
<td>BAG TOA</td>
<td>Bundesarbeitsgemeinschaft Täter-Opfer-Ausgleich</td>
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<td>BCI</td>
<td>Baltic Institute for Crime Prevention and Social Rehabilitation</td>
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<td>CEP</td>
<td>European Organisation for Probation, Netherlands</td>
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<td>CEPEJ</td>
<td>European Commission for the Efficiency of Justice</td>
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<td>CICA</td>
<td>Criminal Injuries Compensation Authority</td>
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<td>CJS</td>
<td>Criminal Justice System</td>
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<td>COREPOL</td>
<td>Conflict Resolution, Mediation and Restorative Justice and the Policing of Ethnic Minorities in Germany, Austria and Hungary</td>
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<td>CPGE</td>
<td>Conference of Prosecutors General of Europe</td>
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<td>CPS</td>
<td>Crown Prosecution Service</td>
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<tr>
<td>ECOSOC</td>
<td>Economic and Social Council of the United Nations</td>
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<td>EU</td>
<td>European Union</td>
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<td>FGC</td>
<td>Family Group Conferences</td>
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<td>FH</td>
<td>Kiel University of Applied Sciences</td>
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<tr>
<td>GBH</td>
<td>Grievous Bodily Harm</td>
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<td>GMK</td>
<td>Gemeinshaftskonferenz/Family-Group-Conference</td>
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<tr>
<td>GO</td>
<td>Governmental Organisation</td>
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<tr>
<td>ICMS</td>
<td>Integrated Case Management System</td>
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<td>IQSH</td>
<td>Institut für Qualitätsentwicklung an Schulen Schleswig-Holstein</td>
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<td>IUC</td>
<td>Inter University Dubrovnik</td>
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<td>LAG</td>
<td>Victim Offender Mediation Consortium Schleswig-Holstein</td>
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<td>LINC</td>
<td>Leuven Institute of Criminology</td>
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<td>LV</td>
<td>Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim- and Offender Treatment</td>
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<td>MEREPS</td>
<td>Mediation and Restorative Justice in Prison Settings</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
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<td>MoSA</td>
<td>Ministry of Social Affaires</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<td>NOMS</td>
<td>National Offender Management Service</td>
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<td>OASYSs</td>
<td>Offender Assessment System</td>
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<td>PC</td>
<td>Peace Circles</td>
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<td>PSR</td>
<td>Pre-sentencing Report</td>
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<td>QC</td>
<td>Queen’s Counsel</td>
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<td>RC</td>
<td>Restorative Conferencing</td>
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<td>RJ</td>
<td>Restorative Justice</td>
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<td>RJC</td>
<td>Restorative Justice Council, UK</td>
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<td>RQ</td>
<td>Research Question</td>
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<td>SH</td>
<td>Schleswig-Holstein</td>
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<tr>
<td>SSR</td>
<td>Specific Sentence Report</td>
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<tr>
<td>StA</td>
<td>Staatsanwaltschaft (Public Prosecution Office/Service)</td>
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<tr>
<td>SV</td>
<td>Study Visits (observations)</td>
</tr>
<tr>
<td>TV</td>
<td>Thames Valley</td>
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<td>TVP</td>
<td>Thames Valley Probation</td>
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<td>TVPS</td>
<td>Thames Valley Partnership</td>
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<td>TVRJS</td>
<td>Thames Valley Restorative Justice System</td>
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<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>VOM</td>
<td>Victim Offender Mediation</td>
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<td>VORP</td>
<td>Victim Offender Reconciliation Program</td>
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<tr>
<td>VS</td>
<td>Victim Support</td>
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<td>YOT</td>
<td>Youth Offending Team</td>
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0. INTRODUCTION

The primary focus of this action research project `Improving Knowledge and Practice of Restorative Justice in Criminal Matters by International Comparative Research´ is to improve knowledge on restorative justice (RJ), identify effective methods and procedures as well as improve the implementation of those. Restorative justice is `an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence´ (Walgrave, 2008: 21).

Restorative justice arose in the 1970s from the `bottom-up´ through practice and was only afterwards theoretically evaluated and systematised. Restorative justice builds upon the achievements of modern democratic legal and societal systems. Central principles of restorative justice are restitution of the damage, hence compensation, through the communication of emotions, needs, expectations, possibly material compensation and to reach mutual understanding through dialogue. Ideally, the offender understands the impact of his/her behaviour and takes responsibility for it showing genuine regret. Restorative justice is an option for victims to speak about the offence, its impact and their own perspective, which can have a healing effect. If these emotions are communicated, they can be used as a basis for reparation, allowing closure to all participants. The process is therefore at least as important as the outcome agreement, as long as all participants are treated with respect (Aertsen et al., 2004). An important aspect, stressed by Nils Christie (1977), is that of ownership, which means that the conflict is returned to those who it belongs to. RJ also means empowerment, to solve the conflict by oneself and come to a solution that appears most appropriate to the needs of those involved, in order to attain sustainable reconciliation, if possible.

There are some objections regarding the power of lay people (ownership) who can on one hand establish consensus on the basis of power and tradition in small communities (life-world orientation) but can on the other hand also stigmatise, or sanction inhumanely, as far as enforcing forms of vigilantism, or treating victims inappropriately and thereby cause secondary victimisation. These issues can be addressed and have been included in standards and recommendations on the application of RJ. Limitations of RJ, amongst other reasons, relate to the ability of participants to speak for themselves (because for instance they are too young, mentally challenged or not able to speak) and to confront others with respect. It is the responsibility of RJ
facilitators to prepare participants carefully, in order to guarantee safe and constructive settings in which RJ can take place.

Thus `restorative justice is a theory of justice that emphasises repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders´ (Restorative Justice Online). The parties meet on an equal footing in an informal process. Ted Wachtel (2003) defines RJ as a philosophy and also means an ethical attitude, which can be applied to various life situations. Striving for justice is a virtue; justice is a state of social peace. Perhaps this condition can never be reached perfectly but nevertheless the practice to work towards this condition can be implemented. The restorative justice philosophy can, for the purpose of a `restorative society´, be applied to all life situations, since problematic situations in the widest sense (Hulsman, 1986) and conflicts in a narrow sense (Christie, 1977), can be identified in every field. Conflicts refer to mutual clash of interests or goals of two or more parties, whereas problematic situations can also be one-sided. After more than 30 years of RJ-practice in criminal and other matters, there are rising practical and theoretical attempts to apply this philosophy not only to certain fields, but also to extend it to the whole of societal living and structure altogether (Wright, 2010; Maxwell & Liu, 2007). This research project, however, concentrates on restorative justice in criminal matters solely.

According to McCold and Wachtel (2000) there are methods and procedures that are fully restorative thus that involve all three parties, the offender, the victim and the community into a dialogical process. There is a great variety of different restorative justice methods, e.g. social group work including for instance the procedure of victim empathy training, counselling, mediation etc. Mediation, however, is one of the most commonly referred to methods when speaking of RJ, this is because it satisfies most RJ principles, allowing a dialogical process between two or more parties. It is therefore also in the focus of this research project.

Perhaps the most common mediation procedure in criminal matters in Europe is victim offender mediation (VOM) which is in regard to McCold and Wachtel’s theory partly restorative since it only involves victims and offenders. The origin of victim offender mediation work can be seen in the Canadian victim offender reconciliation program of 1974 (Yantzi, 1985). Since then, it has become a very common tool all over the world. In Anglo-Saxon countries, on the other hand, the procedure of restorative conferencing is more widespread and compared to VOM generally seen as fully restorative. Restorative conferences originate from New Zealand (also termed Family-Group-Conferences) where they were grounded in Juvenile Law in 1989. Since
then conferences have become a legal obligation in New Zealand, which has also been taken up by other countries although partly modified. A third common procedure is peace circles which often embrace an even larger group of persons involved in the conflict but also prosecutors and judges. Peace circles stem from North America and can be traced back to Native American traditions and were discovered for criminal matters in the 1980s (Pranis et al., 2003). Procedures of mediation/RJ in criminal matters can be carried out at any point of the criminal justice process, before and after conviction. The case referral in most of the partner countries is at pre-sentencing level with the exception of Thames Valley where RJ is generally applied at post-sentencing level, after conviction.

Other aspects of restorative justice, such as the severity of suitable crimes, must be discussed further. The current state of scientific research mirrors the consensus that no specific type of crime can be excluded from mediation on a general basis. Opposed to current practice, congruent research findings show greater effectiveness in more severe cases (Aertsen, 1999; Kerner et al., 2008; Shapland, 2011). Nevertheless, it is important to apply the most appropriate procedure for a specific case and the individual circumstances, particularly with regard to the danger of secondary victimisation. Some basic requirements must be fulfilled in order to carry out mediation, as for instance the willingness for active participation in the process, mutual respect, understanding and a large degree of communication ability. The restorative justice movement receives more and more attention, which is also a result of the dissatisfaction with, and the unsatisfied expectations of, the current criminal justice system (Shapland et al., 2011). Not only do victims receive insufficient attention and scope of influence, but also success in terms of the rehabilitation and reintegration of offenders leaves much room for improvement.

Since Article 10 of the Council Framework Decision 2001/220/JHA of the Council of the European Union all member states are obliged to introduce restorative justice programs. However, methods, actual developments, outcomes and the extent of evaluation vary within the EU. Facing this picture of RJ, there is a demand for research on effective methods and procedures of RJ for victims, offenders² and communities. This question is crucial for legitimating and promoting RJ in jurisdictions all over Europe. It is therefore intended to involve GOs and NGOs from different parts of Europe in an analysis of the practical state of RJ in the mutual development of future RJ implementation. This action research project therefore tries to improve

² Although being problematic and partly discriminating for reasons of simplicity, the terms ‘victims’ and ‘offenders’ are used instead of ‘the injured party’, ‘sufferer’, ‘wrongdoer’, ‘accused’ or the like.
the implementation of restorative justice in the partner countries/counties\(^3\), Schleswig-Holstein, Thames Valley, Hungary, Estonia, Belgium, the Netherlands, Archangelsk and beyond through activities such as conferences, workshops, study visits, publications and most importantly through networking and cooperation. Furthermore, the project aims to identify the state of affairs of RJ in the partner countries in order to compare and identify best practices. The findings are documented in the following chapters.

Having described the project, its goal and methodology in the first chapter of the report, the second chapter will specify the status quo of restorative justice in the four partner countries: Schleswig-Holstein, Thames Valley, Hungary and Estonia. The data have mainly been collected at the first and the second conference through a Matrix. This Matrix has been developed in order to be as complete as possible in data collection. Based on these findings, this current practice will be compared and analysed in the third part of the report, in order to identify best practices. As part of the process, it was recognised that the identification of best practices is confused by an unclear use of terminology. Therefore the fourth chapter suggests a set of terms that could clarify the application of restorative justice in the future. Following this, there is an evaluation of whether the project has reached its initial goals and what impact it had on each of the individual partner countries. Lastly, 20 concrete recommendations are made based on the previous findings which will improve the further application and implementation of restorative justice. This report is addressed to practitioners, decision makers, legal professionals, researchers and everyone interested in restorative justice.

\(^3\) Throughout the report partners are referred to ‘countries’, although in the UK we have specifically looked at the partner county/region Thames Valley only. In Germany, the focus lies on the federal state of Schleswig-Holstein.
1. PROJECT DESCRIPTION, GOALS AND METHODOLOGY

1.1 PROJECT DESCRIPTION, GOALS AND OBJECTIVES

The first project aim is to improve mutual knowledge and exchange best practices by comparative research and international cooperation. The goal is to address the practitioners’ level, legal professionals and decision makers who are dealing with restorative justice in criminal matters. One priority of the project is to deal with this aim by comparative research based on the exchange of knowledge and best practices at conferences, workshops and primarily through study visits to further improve the implementation of restorative justice. Thus, the project objectives are to:

1. Improve Knowledge
2. Identify Effective Methods, Procedures and Techniques
3. Improve the Implementation of RJ

In order to reach these objectives, networking and cooperation are identified as central means. Furthermore, establishing best practices on the basis of knowledge exchange, motivating practitioners, reaching decision makers and legal professionals is regarded as part of this process. The underlying vision is not only a broader use, thus the increase of case numbers, but also the more widely applied use of restorative methods, procedures and techniques. Central are therefore questions such as how can civil society and individual citizens be involved in the promotion of RJ and what role do the media play in this regard? These questions and many more were addressed at three project conferences in Kiel, Tallinn and Oxford and are picked up throughout this report.

Existing legislative provisions have not yet led to a widespread use of restorative justice in the partner countries or regions. Rather, restorative justice is still widely unknown amongst legal professionals and the general public. Thus, this action research project also intends to promote RJ so that individuals involved in conflict have information on their possibilities, in order to make a choice of whether to participate in this option. This will be reached through the direct involvement of all sorts of target groups, but also indirectly through the dissemination and the training of relevant actors. By relying on experiences from other countries and informing in
detail about the capability of restorative justice it is meant to increase openess and acceptance of RJ interventions in the minds of experts and others. The following target groups are meant to be addressed:

- Judges
- Prosecutors
- Ministry officials
- Mediators
- Social workers (e.g. victim support)
- Scientific and academic personnel
- National authorities and EU-citizens in general
- Other legal professionals
- Those involved in a conflict
- Politicians
- Journalists
- General public

Regarding the implementation of restorative justice in the criminal justice field, the project relies on Article 10 of the Council Framework Decision on the Standing of Victims in Criminal Proceedings, adopted in 2001, which states:

→ Penal mediation in the course of criminal proceedings reads:

1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure.

2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.

The project supports and improves the implementation of adopted EU instruments in particular with a view to networking and exchange of best practices between practitioners – as one central question of the research is: which RJ methods are most adequate for which kind of offence and which type of offender and victim? A priority is to support victims of crime and work towards their rights. Legal measures of RJ intend to restore the relationship between crime victims and offenders. It may therefore help to prevent future victimisation and support victims in achieving their own definition of adequate satisfaction for the crime committed against them. The promotion and development of best practices for the protection of crime victims requires the analyses of current practice.
The added value of this project is primarily seen in the direct impact it has on the individual countries with its action research approach. Here, it is largely relied on the supplementary effect of being `international´, not only in that this adds more importance to the subject matter, it also increases the amount of knowledge that can possibly be exchanged creating new ideas and rising motivation. Furthermore, the project involves countries of different systems of law (Anglo-Saxon vs. continental) and therefore also contributes to a convergence of different judicial cultures in Europe. Regions of the former Western Europe and of new member states (plus Russia) from the former Eastern Bloc are involved and can largely benefit from the impact of this possible exchange. Regarding criminal justice the latter are subject to much more intensive change processes than the `old´ states. The same is true on the more specific level, namely the variation of practices in restorative justice regarding for example the organisation within governmental or non-governmental structures or the differing cooperation between justice and non-governmental organisations. Hence, another added value is seen in the results gained through this knowledge exchange which are being delivered in the form of concrete recommendations for further RJ implementation as part of this report.
1.2 METHODOLOGY, RESEARCH DESIGN, METHODS AND IMPLEMENTATION/LINE OF ACTION

1.2.1 RESEARCH QUESTIONS

The research questions that are approached in the framework of this study are essential for the build-up and structure of this research. They shape and clarify the intentions, as well as thereby arising strategies and actions for the implementation of the purpose. The following research questions mirror the previously outlined research goals and objectives.

1. **What is the status quo of RJ in the partner countries?**

The first research question aims at improving knowledge and identifying the status quo of restorative justice in the partner countries. The goal is to gain transparency of the reality of RJ. This involves the identification of measures being applied, their individual variation in each country and the evaluation of roles of public and private organisations in their application. Throughout, maximum structural variation of perspectives is desirable. This is distinguished through the different influences of contrasting perceptions in fields such as practice vs. theory, law vs. social work etc. These different directions of influence are of great value to the data collection process and its outcomes, and lead to substantial theoretical sampling. The thorough overview of applied measures is then used as a basis for approaching the subsequent research questions.

2. **Which methods, procedures and techniques of RJ are most effective?**

Based on the knowledge gained on the status quo in the partner countries, the second objective is to outline concepts, numbers and factual outcomes in order to identify good practices. The comparison of different forms of RJ in different situations, conflicts and legal frameworks lead to conclusions on best practices to apply for different types of cases. Thus, the evaluation of activities, more precisely study visits/observations and the subsequent comparison between different practices assist conclusions on the identification of effective methods, procedures and techniques, in order to promote the development of best practices across the partner countries. To
reach the political level, it has to be studied, whether existing RJ programs follow professional standards and how these can be improved.

3. How can the implementation of restorative justice be improved?

Alongside the identification of effective measures, the third research question focuses on ways to improve the implementation of restorative justice. For this to be effective, the first step is to identify best practices and develop strategies to implement those into current systems. One aspect that requires attention has already been specified, namely cooperation. Thus, for broader use of restorative justice, it is to strengthen:

- Cooperation of judicial and social services
- Cooperation with the media to inform the public about RJ
- Cooperation with civil society organisations (e.g. cultural organisations, schools, religious communities) to get the public involved in RJ
- International networking for possible transfers of methodology

Moreover, for further growth of RJ-practice, the potential role of private organisations has to be examined. It is to gain insight into whether RJ should be further integrated into the existing criminal justice system and/or be established as a more or less independent resource to do justice outside the more formal processes. For that to occur, the awareness of the RJ potential does not only have to be raised in the respective judicial and social fields, but does additionally have to be promoted amongst individual citizens, in order to increase their involvement and make local RJ programs more functional. To satisfy this third research question, concrete recommendations for improving the implementation of RJ, are essential.

1.2.2 RESEARCH METHODOLOGY

Methodologically this project is based on three pillars: a) qualitative-heuristic methodology, b) action research and c) appreciative inquiry. The central aim of this qualitative approach is to remain open and process oriented, not to follow a standardised method. Qualitative research entails that structures and individual cases are observed, recorded and represented on a concrete
level. Furthermore, the approach must be grounded, meaning that data\textsuperscript{4} must be gained on the basis of experience. It is to remain open and capture data on the status quo, as well as best practices of RJ measures applied in the partner countries.

\textit{a) Qualitative-Heuristic Methodology}

Qualitative-heuristic methodology was outlined by Gerhard Kleining (1982)(see Hagemann and Krotz 2003a) and is in many aspects very similar with (broader known) grounded theory (Glaser and Strauss, 1979). It has also many aspects in common with ethnographic approaches (Coffey and Atkinson, 1996) although it claims to go far beyond description being inherently critical.\textsuperscript{5} There are 4 basic rules which apply according to Kleining (1995a) to all kinds\textsuperscript{6} of qualitative methodological approaches:

1. Openness and open-mindedness of the researcher(s)
2. Openness of the subject to be researched
3. Maximal structural variation of perspectives
4. Analysis of communalities in data

Furthermore, the research process in qualitative-heuristic methodology is driven by a dialogic approach of constant comparison between existing knowledge, findings and new emerging questions which will continuously lead to better understanding of the subject in question. Thus, it can be described as an inductive strategy of discovery and Kleining (1995b) has pointed to

\textsuperscript{4} Social scientists often differentiate between ‘hard’ and ‘soft’ data. ‘Hard’ data is usually used for variables which are exactly measurable like income, which can be determined precisely in Euros and Cents or comparable currencies (to determine financial harm caused by a victimization to give an example). ‘Soft’ data can refer to the emergence of fear or subjective loss in quality of life caused by such an incident. Although sometimes attempts are made to measure the latter exactly by using scales this will result only in a spurious accuracy on the surface, because the phenomena in question are subjective and various persons will attribute different meanings to the same category. In the context of social conflicts soft data seem to be more relevant than hard data e.g. to assess the strengths and weaknesses of different procedures. Thus, even a simple table of procedures (see Matrix) and types of conflicts may not just be a simple description. To give another example a setting consisting of one victim, one offender, a mediator facilitating the dialog and another back up mediator for various purposes and an observer in the corner of the room may be classified as a ‘conference’ (according to TV) or as a variant of ‘VOM’ with two mediators present (according to the observer) See page: 108. Thus data refers to all kind of information units ranging from ‘hard facts’ to ‘relevant impressions’.

\textsuperscript{5} Kleining has been influenced by the classic ‘Marienthal study’ (Jahoda et al., 1975), by the early work of Karl Marx and Friedrich Engels as well as Mach (1980), Gestalt psychologist Max Wertheimer (1967) and by the dialectical approach of Critical Theory (Horkheimer & Adorno, 2012).

\textsuperscript{6} As a second big family of qualitative methodology we can differentiate hermeneutic approaches based on interpretation of data by experts.
processes such as the discovery of the double-helix by Watson (1997) and his colleagues or Darwin’s emerging theory of evolution (see Neffe, 2008). Although quantitative measurement is not principally excluded (see Krotz, 1990, who has used quantitative data to develop a qualitative-heuristic theory on life worlds of German society) this will always be the second step after having explored the qualitative features and structural insights concerning the subject in question. Thus, only after the discovery of double-helix and the like it makes sense to begin with measuring the phenomenon in a quantitative sense (e.g. `genetic fingerprint`).

\( b) \quad \text{Action research as a learning process} \)

The term action research is credited to be invented by Kurt Lewin in the 1930s. He used it for research directed towards the solving of social problems. As a social psychologist Lewin’s roots were in Gestalt theory and he was interested in the causes and forces which influence behaviour of people. `Individuals were seen to behave differently according to the way in which tensions between perceptions of the self and of the environment were worked through. The whole psychological field, or `lifespaces`, within which people acted had to be viewed, in order to understand behaviour… behaviour was determined by totality of an individual’s situation…’ (Smith, 2001: 2). Furthermore, Lewin was researching group processes and developed a field-theory, both significant work-pieces in the context of action research. Although Lewin relied on measuring phenomena using quantitative tests and tools the openness of his approach, the involvement of the perspectives of the people under study and the constant comparison relate to qualitative methodology in the sense of Kleining (1995a). Therefore it is adequate to combine these methodological foundations.

Action research as a dialogical process is about the concrete change of practice, thus it is expected that the research itself has an impact on the field and does not remain with the sole construction of theory. In other words, action research aims at influencing everyday practice by interactive processes, getting involved with practitioners in the field and turning them into co-researchers. The goal is to make direct changes, since the limited application of restorative justice is less a problem of theoretical knowledge, but rather facing practical difficulties and a general lack of knowledge. Therefore, it is about reaching practitioners, legal professionals, politics and the general public, in order to make an alteration.
Moreover, it is about direct cooperation with members of the system to make improvements on common ground and direction. Here the advantage is that ideas have been developed collectively on the basis of practitioner’s experience in combination with theory. This active participation and influence of practitioners on their `own` system may raise motivation, confidence and satisfaction. For researchers, it allows more insight into the practical needs and processes, as well as flexibility in data collection.

For Bonß (1985: 36) action research should be a practical critical qualitative negation of quantitative research. This demand is partly due to the absolute hegemony of quantitative methodology in the social sciences in the post-war period up to the 1970s and partly due to the enormous gap between science and practice at that time (the lack of practical relevance of science was blamed: `Ivory Tower`) which was deemed to include among others that the practice ignored scientific evidence.

`Action research focuses on social and political issues and is working towards concrete changes in practice; especially the situation of socially disadvantaged groups should be made transparent and improved. Action research involves stakeholders/affected people very largely in the research process, and treats them as equal experts in the decisions of substantive and methodological issues.´ (Bortz & Döring 2002: 345 – translated by O.H.)

The link with conventional science feeds on qualitative methodology and anchoring in life world experiences (also the inductive process leading from the data to the theory). Epistemologically, there is a contradiction to the postulate of value-freedom (see value-judgment dispute; Hammersley, 2000), and thus there are similarities to critical theory, feminist positions or Freire's liberation theology (1985). Partisanship may only be accepted if justice standards are implemented and guaranteed, e.g. human rights respected. Otherwise there is a risk to legitimise ideology in the name of science (whether socialist, racist, Muslim, etc.). In a post-modern society, characterised by diversity, action research can only be a gradual, dialogic, democratic and constantly verified heuristic process.

The impetus for action research to be carried out can emerge of the field itself (Soldiner Kiez, 2005) if the people affected are dissatisfied with their position and alternatively or additionally decide on policy initiatives for a scientifically legitimate way to resolve the grievance. It can also be justified morally sought by an initially small group of supporters for an ethically (possibly political) informed campaign as in the Norwegian example of the abolition of
certain forms of punishment or in the Belgian example of the involvement of the victim’s perspective, or of pedagogical and developmental insights restraining the punishment of young people (which is very close to our concerns).

As late as the 1960s – sometimes longer – the idea of a policy advice by science (sociology as a social technology, such as social indicators, technology assessment, inquiries) was widespread and generally accepted. Some critical scholars authored e.g. alternative commentary to the Prison Act (Feest & Lesting, 2012) others – as Mathiesen (1979; 1989) – developed the `strategy of the unfinished’, a negation of the existing (i.e. science was limited to the unmasking of grievances without developing suggestions for improvement), which was perceived as destructive by the powerful elite. In this context, basic issues as the so-called value-judgment dispute (Weber, 1980) or debate about qualitative and quantitative methodology would have to be discussed but will go beyond our purpose here. At the latest with the emerging concept of postmodernism in the 1980s, this conflict was pushed into the background, because now the coexistence of different methodologies and theories is raised to the normal case, i.e. from now on there are different truths referring to the same world.

The traditional separation of researcher and `humans as objects of research’ (in the current context especially members of the VOM Consortium, perpetrators, victims, communities, judges, prosecutors, etc.) has to be overcome, at least partly, because the research subjects are not objects, but participate in the design of the research. (Researchers and stakeholders move closer to each other [as in comprehensive ethnographic research]; there is an on-going dialogue rather than one-off data collection taking place.)

`In the course of an action research scientists define, together with stakeholders/affected people, the problem, look for causes (...) and develop solutions (interventions). The success of the intervention will be evaluated together (formative evaluation...) and gives rise to the modification of theories and intervention strategies. In this process substantial impetus comes always from those affected, to whom the status of experts is assigned/given (...).´ (Bortz & Döring 2002: 54f. – translated by O.H.)

7 The dialogical approach to action research seems to be broader (see Kleining 1988 for inherent critique), because Mathiesen’s (1989) desired permanent change process will be created, but it also integrates the persisting or emerging forces in a different direction.
8 The steering group of mediators in criminal matters in Schleswig-Holstein who meet on a regular basis.
Building on the ideas in the previous section and related to the disillusioning experiences of many action research projects in the 1970s it is considered necessary to modify this postulate in terms of our approach. But if we modify `action research´, we expose ourselves to the danger of the false label. However, authors such as Moser (1995), who revised and reissued their works from the 1970s, confirm this point. They have invented a new term as practice research or `activating research´ (Lüttringhaus & Richers 2003), thus also cut off from the traditions and origins! For that very reason we stick to the term action research and integrate this whole discussion.

From research on volunteers (civil society) we know that mainly professionals (more men than women, more successful than low status persons) are involved in this kind of work. No reason not to take advantage of this potential (and we may have tried inadequate). However, there is no evidence that we can expect that a significantly large number of people would be willing to take the stress of our research on top of their work with positive feedback. Projects such as the Soldiner Kiez (2005) complain that after the initial euphoria, the `ranks are thinning´ very quickly – implicitly it seems that the gains of the enormous expense to be obtained for these people to be too low. Considering all this, our factual approach can be legitimised.

But how can we make sure not to deviate from demand by taking action? The argument about Marcuse's (1964) `true vs. false needs´ is not without risk. Several political movements (primarily Socialist) have miscalculated what people wanted. Others (e.g. green party) were initially ridiculed, then accepted reluctantly and after a foreseen event (Fukushima) suddenly even lifted in the decision-making positions. If our hypothesis is true that the lacking or restrained support of the `common man´ can be attributed primarily to a lack of information, then activating or action research is the right way (the reluctance within parts of the justice system can be explained by systems theory because systems tend to stabilise themselves against pressure for renewal). The current lack of success in raising enthusiasm for restorative justice is then an indication that we have prioritised convincing the experts too much, and that the distance between researchers and researched so far has not been overcome. (However, it does not speak against the approach!)
Susman’s (1983) five phases of action research include:

1. **Diagnosing**: The identification or definition of a problem. What is the problem and why is it important to change it?
2. **Action Planning**: The consideration of alternative courses of action. How will the questions be addressed and how will the strategy or approach be implemented? Will the study be focused on existing practices and if so, which?
3. **Taking action**: The selection of a course of action and data collection. Which data must be collected to answer the posed questions? How will multiple perspectives be ensured?
4. **Evaluating**: The study of the consequences of an action – analysing the data. What can be learned from the data? What patterns, insights and understandings do they allow and what does that mean for practice?
5. **Specifying learning**: The specification of learning and the plan for future action. What will be done differently as a result of this study? What are possible recommendations?

Although these phases are defined precisely, it is not meant to be a set chain process; rather, it is a cyclic process which is not determined in advance, where phases can be repeated depending on the interaction between practitioners and researchers. It is essential to plan, act, observe and reflect at all times throughout the process (Atweh et al., 1998).
c) Appreciative Inquiry

Cooperrider et al. (2008) are critical of conventional action research as it is mainly focusing on problem solving (see phase 1 – Diagnosing: The identification or definition of a problem), which implies that there already is knowledge on how the situation should be. Furthermore, they criticise that action research produces only limited theoretical output and if that it is again largely problem oriented. Based on that, Cooperrider et al. (2008) have developed a new mode of action research, namely Appreciative Inquiry (AI), stating in context (pg353):

`For action-research to reach its potential as a vehicle for social innovation it needs to begin advancing theoretical knowledge of consequence; that good theory may be one of the best means human beings have for affecting change in a post-industrial world; that the discipline’s steadfast commitment to a problem solving view of the world acts as a primary constraint on its imagination and contribution to knowledge; that appreciative inquiry represents a viable complement to conventional forms of action-research; and finally, that through our assumptions and choice of method we largely create the world we later discover.´

Appreciative Inquiry is a complement and `conceptual refiguration of action research´, as well as a strength-based philosophy aiming to put into practice the collective will of a group (pg381). Instead of problem solving, the analysis of causes, possible solutions and treatment, it focuses on appreciation, social innovation, dialogue and transformation through search for the best. AI avoids negative values, dislike, doubts or expectations; neither does it concentrate on the identification of obstacles or worries. Through positive questioning, it searches for strengths that can be a starting point for positive change. The following four principles motivate the practice of AI: Research into the social potential of organisational life should …

1. ... begin with appreciation
2. ... be applicable
3. ... be provocative
4. ... be collaborative

In order to do that, two basic questions are being asked in AI methodology. Firstly, referring to principle one, what, in this particular setting and context, gives life to the system – when is it most alive, healthy, and symbiotically? The second question concerns the possibilities that provide opportunities for more effective forms of organising. In search for knowledge and a theory of collective action, the inquiry follows a cyclic procedure (Cooperrider et al., 2008):
1. Discovery: discover positive aspects and successes. Value those things that are worth valuing. As part of that process, individuals engage in dialogue.
3. Design: construction of the future. What has worked in the past combined with new ideas for the future?

Whitney and Trosten-Bloom (2003: 233) conducted a survey with organisations that used the AI-methodology and found that it induces six conditions (also called `Six Freedoms´):

1. AI creates a context in which people are `free to be known in relationship´
2. AI makes a space in which people are `free to be heard´
3. AI opens the opportunity for people to be `free to dream in community´
4. AI establishes an environment where people are `free to choose to contribute´
5. AI provides the context for people to be `free to act with support´
6. AI opens the way for people to be `free to be positive´

These `Freedoms´ fit the basic principles of restorative justice which may be one possible justification for using this specific methodological approach. Moreover, this adapted action research approach is being considered as it promotes changes in existing criminal law practice and the implementation of new routines and means of collection of relevant data and discussion with the relevant actors. More precisely, action research means to improve mutual knowledge through continuous exchange of information and international interaction of practitioners and legal professionals. As part of this intensive further training of relevant actors in the field of
criminal law, experiences and best practices can be exchanged and specific issues discussed. Our concept of partnership includes regions like Thames Valley, which seem to be relatively advanced in respect of RJ-implementation, and regions, which have only recently started with RJ or which are still in a starting phase as Estonia and Russia.

This bottom-up approach may have a greater impact on individual practices and horizons than sole theoretical input from researchers. Furthermore, it adds to the build-up of an international network and cooperation in the field. Active interaction with the media, with civil society organisations and individual citizens will raise awareness of restorative justice and may reduce possible preconceptions. These aforementioned aspects have an impact on the improvement of implementing RJ in Schleswig-Holstein and the partner countries.

The purpose statement central to this study is to use an Appreciative Inquiry approach to increase knowledge and identify effective measures in order to improve the implementation of restorative justice. Precisely this embraces the quality and quantity of applied methods, procedures and techniques in all concerned countries. The overall goal is to achieve a broader use of those tools in daily work practice by increasing the motivation of practitioners and legal professionals, by raising knowledge and awareness in all sectors, by improving the cooperation between relevant actors at a local level as well as by building-up an international network. Best practices must be identified and exchanged between the participating countries, as well as common objectives communicated, in order to design the future of restorative justice in those countries. With reference to the mentioned four core principles of AI, the identification of best practices is an appreciation of the system, hence it is the primary task of the research project to discover, describe and explain the already existing practices. This study should lead to concrete recommendations of what can then be turned in practice. The research should be provocative by encouraging those involved to shape their own development by designing the potential ideal future situation of restorative justice. This process should however also at all times occur collaboratively, hence in cooperation with all those concerned.
1.2.3 APPLYING METHODOLOGY INTO RESEARCH METHODS AND PRACTICE

Why is this foundation appropriate in the given project?

Although we were not at a tabula rasa starting point when the project began we could not rely on generally accepted existing theory. Restorative justice is a relatively new field for which a definitive theory still has to be developed. Obviously the understanding of the RJ philosophy differed between the regions in focus but also between professions. While it could be very interesting for scientists to focus solely on theory development, our intention of the project consortium consisting of theoretical, practical and political perspectives was primarily directed at the practical and political level of service delivery and implementation. With such a focus on change processes, the participatory action research approach and the open-minded qualitative heuristic research strategy emphasising maximal structural variation of perspectives seem to combine methodologically well-grounded approaches in an ideal manner. Furthermore, despite considerable proportions of RJ cases in some European regions, we knew beforehand that there would not be a chance for quantitative statistical measurement at least in big parts of our project regions – especially regarding the second research question of a comparison of different RJ procedures.

The goal is to change practice. That does not necessarily imply changing norms (e.g. ‘law in books’), existing standards or theories. In our case, Germany has formally implemented the EU ‘Council Framework Decision on the standing of victims in criminal proceedings’. Mediation in criminal cases is possible. According to §155a of the German Code of Criminal Procedure the parties should even be encouraged to work towards reparation, restitution, reconciliation, settlement and/or social peace. The way in which such a process should be designed – actually the question of designing the concrete process within the mediation method – is left open. Thus on the normative level at least at first glance, there seems to be no need for change. In practice though, we see relatively low allocation rates (partly unsuitable cases) and a monoculture of VOM (predominantly in one specific form only). In accordance with the five aims of the steering group\(^9\) action research is called to help develop ideas, strategies and concrete proposals in order to come closer to these aims. We have asked for the mandate for such a purpose through the preliminary discussions with the Ministry, VOM Consortium, etc. and followed by the grant application. Through the establishment of the steering group and the final application approval

\(^9\) See page 37.
we have received a mandate from `above`. In contrast to the `pure doctrine´ of action research there was virtually no involvement of affected victims, offenders and communities in this initial phase.10

In the classical doctrine of action research, the results are owned by the persons concerned. When we refer to the VOM Consortium and the referring judges/prosecutors, then our project is in line with the demand. If we focus on `perpetrators´, `victims´ and affected `communities´, then there is only an indirect benefit such that both qualitatively and quantitatively improved offers and service deliveries satisfy their `objective´, but not often conscious interests. So in serving the ordinary people we are moving but very close to conventional research. Although this is not the fundamental contrast it is morally still favourable compared to manipulative research as it is often operated for industrial or any other bodies.

How was this methodological foundation implemented?

Action research is research that wants to change its subject, which will activate people (Freire, 1985). The original term action research is not frequently used today (Moser, 1995) – instead we often find practice research, activating social research or intervention research. In Germany action research was used particularly in the 1970s (see Haag et al., 1975) in the fields of educational research and social work. Especially in connection with disadvantaged social groups or with insufficiently developed social spaces (AG Kiezforschung, 2005 referring to the Soldiner Kiez in Berlin), it makes sense not merely to describe and analyse the object of research from a distant point of view but to become active in an emancipatory way (as an advocate of certain groups or areas, see Chicago Area Project advocacy function; Whyte, 1981) and/or to encourage people to undertake changes. In this sense we rely on two initiatives which were quite similar in regard to our central research questions or objective, respectively. First, a group centred around the Norwegian sociologist Thomas Mathiesen (1974), founded the organisation KROM and campaigned via traditional media11 against labour colonies, prisons, long-term imprisonment and

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10 Apart from the fact that the Elmshorn respondents of the GMK project encouraged us to go that way – however, that was just a small group.
11 Mathiesen (2000) describes action research as a continual learning experience documenting a wide range of practices and policies in penal policy and stresses that `having a non-prisoner and a prisoner side in the organisation has proved extremely fruitful`. In 1970 13% of all prisoners were released because criminalisation and long-term forced labour of alcoholic vagrants was abolished. The youth prison system was abolished in 1975 and preventive detention was only very reluctantly used during that time. However, according to Mathiesen it is all the more important to keep the debate over penal policy alive and therefore continuity is very important.
the treatment of juveniles and alcohol addicts at that time (Papendorf, 1985). Second, researchers from the University of Leuven promoted restorative justice among others by carrying out pilot projects on conferencing and were successful in implementing RJ in the Belgian Juvenile Law (see Aertsen, 2011; Vanfraechem, 2007; Walgrave, 1995).

`In the 70s, first the politically oriented action research dominated that aimed to replace the validation logic of conventional research by a logic of action to change social practice rather than the methodologically oriented form. Instead of testing hypotheses common learning processes of researchers and stakeholders justified as 'empirical research as political action' (Fuchs, 1971) should be initiated particularly in education and in the so-called group work with marginalised people.’ (Bonß, 1985: 37)

In the scientific community and among experts qualitative methodology is now widely accepted, but there is still debate over partisan, emancipatory research (Hammersley, 2000) – this may be justified. On the one hand it is really sympathetic to put research at the service of neglected issues and underprivileged people (Becker, 1967). On the other hand at times ideologies have been proclaimed as science and we must be aware that research is carried out within the societal power structure.

In line with Moser (1995), we see proximity between action research and qualitative research, which often takes place for the same reasons. In our view, action research is even a strategy of qualitative research. If that is correct, then we can take advantage of the debate on quality criteria. Some qualitative researchers stuck to the concepts of validity and reliability of the quantitative research (kept the names, but modified the meaning), others have developed new criteria or attempted an integration of traditional quantitative and new qualitative criteria (Steinke, 1999, 2010; Lamnek, 2005; Guba and Lincoln, 1985).

Which Research Methods were used?

According to Kleining’s (1982) rule 3 qualitative-heuristic methodology, which demands looking at the object of research from different perspectives, including the use of various methods, we relied on the following more or less classical methods of social research:
1. Communication, dialogue

We do not use the term `interview´ here because verbal collection of data did only exceptionally take the form of a classical interview, where a researcher poses questions and the interviewees give answers which are recorded to be analysed later. Most of this communication was less one-sided and took place in rather `natural settings´, that is rather informal dialogues on the subject when meeting for daily routine purposes or specific events as conferences. Most of this communication was orally and notes were taken afterwards\(^{12}\) as well as through email-exchange.

2. Observation

Our team carried out formal and informal (participant) observations of direct RJ-practice but also of meetings and the like where RJ and our research was just one of many topics of an agenda. Whereas the former mentioned form of observation usually resulted in a structured protocol which was analysed later the latter observations were by-products of `natural settings´ as meetings and conferences. Furthermore introspection, meaning a regular process to observe systematically one’s own reactions and feelings, the subjective dimension of acting within a specific field and interacting with specific people, was used by one researcher resulting in writing a research diary. Although introspection is sometimes seen quite critically because of its subjectivity and the impossibility of checking validity of data which are produced by this method it can be very valuable combined with other methods (see Burkart et al., 2011).

3. Analysis of documents

Dialogs and participant observations are reactive research methods as well as experiments. The documents we have in focus here have been produced for other purposes and are thus not reactive from the perspective of our research (e.g. circular decree, recommendations, framework decisions, directive). As long as the documents are older than our project there is no reactive dimension. On this level we studied law texts and the history of RJ in the participating regions. There are a number of documents that have come into existence during or even in close connection with our project. Of course these, too, have been analysed to track the impact of our activities but also to reveal independent developments in the field of RJ.

\(^{12}\) See research diary or specific field notes and official minutes.
4. Some actions resemble experiments

Some scholars regard an action research project per se as being an experiment. In a narrower sense of this method we might point to our Estonian colleagues who introduced a form of indirect VOM using video-technique. Statements of the offender and of the victim are recorded on video tapes and then presented to the `other party´ by a facilitator. Although this is principally similar to handing out letters or communicating orally messages from the other party it involves the dimension of body language, at least to a certain extent. Thus, it may add an important dimension and it may help the receiving party to assess the trustworthiness of the message.

But above all, we have tried to describe actual situations and procedures/rituals (see ethnologic research, e.g. Barley, 1997; Geertz, 1999; Girtler, 2001). In the best sense of Kleining (1995c) and Glaser/Strauss we have constantly compared data and tried to learn how we might do things differently and to ask, whether an alternative way of doing things makes sense in a different context.

Assessing the Quality of the research

According to Guba and Lincoln (1985) trustworthiness which is established through credibility, transferability, dependability and confirmability is the central criterion for evaluating a qualitative research study. Each of these concepts can be operationalized by certain sub-concepts. Credibility refers to the confidence in findings. One ethnographic technique is termed `prolonged engagement´ and deals with minimising the distance between a researcher and the field (see also the general concept of action research). It means `spending sufficient time in the field to learn or understand the… social setting or phenomenon of interest. This involves spending adequate time observing various aspects of a setting, speaking with a range of people, and developing relationships and rapport with members… Development of rapport and trust facilitates understanding and co-construction of meaning between researcher and members of a setting.´ Part of our team belonged to the field beforehand and we have constantly kept close contact to all relevant actors.

`If the purpose of prolonged engagement is to render the inquirer open to the multiple influences – the mutual shapers and contextual factors – that impinge upon the phenomenon

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13 All quotations in this section stem from the homepage of the ‘Qualitative Research Guidelines Project’ by Deborah Cohen and Benjamin Crabtree and their colleagues in healthcare research (see www.qualres.org)
being studied, the purpose of persistent observation, which is another aspect, is to identify those characteristics and elements in the situation that are most relevant to the problem or issue being pursued and focusing on them in detail. If prolonged engagement provides scope, persistent observation provides depth (Lincoln & Guba, 1985: 304).

The third aspect, Negative or Deviant Case Analysis, involves searching for and discussing elements of the data that do not support or appear to contradict patterns or explanations that are emerging from data analysis (see Kleining’s (1982) rule on maximal structural variation of data). ‘Deviant case analysis is a process for refining an analysis until it can explain or account for a majority of cases. Analysis of deviant cases may revise, broaden and confirm the patterns emerging from data analysis.’ Due to Kleining’s (1995a) challenge that in qualitative analysis no single case or data can be ignored (100%-rule), ‘majority’ is not sufficient, instead the contradiction is to be cleared, probably by collecting additional evidence.

Thick description, a term which was made famous by Clifford Geertz (1987) helps to demonstrate transferability. ‘It is described by Lincoln and Guba (1985) as a way of achieving a type of external validity. By describing a phenomenon in sufficient detail, one can begin to evaluate the extent to which the conclusions drawn are transferable to other times, settings, situations, and people.’ If a description of a phenomenon or process in question is ideal others might use it as a blueprint to draw their own practice upon. Our so-called handbook with the glossary was compiled to deliver a first step and the reaction of some readers not really familiar with the field of restorative justice indicate that they indeed became able to understand core techniques and got a sense of specific procedures.

The next dimension, ‘dependability is used to showing that the findings are consistent and could be repeated.’ Readers familiar with quantitative research might think about reliability which is often measured by a correlation between two tests with the same group at different points in time. Such a concept is not appropriate as the phenomenon in question might have changed over time or the participants might have learned or have been influenced in their attitude by the previous test. Thus, dependability is captured by audit processes. ‘External audits involve having a researcher not involved in the research process examine both the process and product of the research study. The purpose is to evaluate the accuracy and evaluate whether or not the findings, interpretations and conclusions are supported by the data.’ Glaser & Strauss in their Grounded Theory propose to present findings in front of knowledgeable audiences and publish the results to get feedback instead of an explicit audit process which will be very costly. We have
followed the line of them presented orally at several occasions and published diverse articles and two books plus one handbook during the project period. Although occasionally disputants did reject the idea of restorative justice completely, usually accompanied by calls for harsher punishment the overwhelming majority of experts and lay persons supported our findings and conclusions and discussions, often turned into constructive search of better implementation of RJ-programs. Instead of a formal audit process we try to use the final report as a kind of audit trail by documenting the main actions we have undertaken during the research project. `An audit trail is a transparent description of the research steps taken from the start of a research project to the development and reporting of findings. These are records that are kept regarding what was done in an investigation.´

The fourth criterion for trustworthiness is confirmability although for epistemological reasons in a strict sense this might be impossible as several research paradigms will only allow falsification or a temporary or culturally normed truth. However, from a pragmatic standpoint it makes sense to claim confirmability as long as being aware that these limitations do exist. Kleining (1995a) demands that every new set of data must affirm the given insights as long as it falls into the range of maximal structural varied field of study. Otherwise it would expose a mistake either violating rule 3 or ending the research ahead of time. The consequence will be to include this deviant case and to reformulate the final conclusion or theory. To avoid never-ending research processes Kleining (1995a) asks for explication of the limits of the findings. In our case we can only claim confirmability for the regions involved and neither for other federal states of Germany or English counties nor for the whole European Union. Nevertheless the scope of the problems under study and of the methods and procedures to address these problems within the RJ framework will allow extending the scope of relevance significantly as many other regions would not broaden the maximal structural varied field of study. Instead of Kleining’s term Guba and Lincoln use the term ‘triangulation’ which is defined as ‘using multiple data sources in an investigation to produce understanding’. Confirmability is also related to reflexivity as ‘an attitude of attending systematically to the context of knowledge construction, especially to the effect of the researcher, at every step of the research process’. There are three recommendations concerning this potential source of error: ‘Designing research that includes multiple investigators; this can foster dialogue, lead to the development of complementary as well as divergent understandings of a study situation and provide a context in which researchers – often hidden – beliefs, values, perspectives and assumptions can be revealed and contested.’ This is the case
with an inner circle of three researchers even stemming from different academic backgrounds (sociology, criminology and law). Furthermore, the action research approach implies that other `lay researchers` from the fields of administration, politics, social work, theology and the like contributed also to the final result. Moreover, the project involved extensive discussion between people from different cultures, law systems and with different experience with RJ.

`Develop a reflexive journal… This is a type of diary where a researcher makes regular entries during the research process. In these entries, the researcher records methodological decisions and the reasons for them, the logistics of the study and reflection upon what is happening in terms of one's own values and interests. Diary keeping of this type is often very private and cathartic.´ One of the researchers made use of this tool. However, open-mindedness does indeed lead to very private thoughts and emotions and impedes publication of this research diary. To use this method uncovers the emotional part of research (from joy and excitement to disappointment and exhaustion) which is usually ignored in traditional research.

`Report research perspectives, positions, values and beliefs in manuscripts and other publications. Many believe that it is valuable and essential to briefly report in manuscripts, as best as possible, how one's preconceptions, beliefs, values, assumptions and position may have come into play during the research process.´ Although being part of the research diary and of internal communication in our research team we refrain from disclosing much of these. It is no secret that most proponents of RJ do not believe in punishment and take a more critical position regarding existing power structures in society but we do not see a necessity to explicitly outline values other than general human rights or empowerment of the suppressed (structural victimization which is also to be addressed by RJ) and to promote social peace in form of a belief statement.

1.2.4 RESEARCH INSTRUMENTS

The following combinations of research instruments were used:

1. Conferences
   Three conferences were held in three different countries to discover and appreciate applied practices, reach mutual exchange of knowledge and build a network (RQ 1 and 2).

   a. Kiel: `Restorative Justice – A European and Schleswig-Holsteinian Perspective´
      Focus: Status Quo of Restorative Justice in the project partner countries
b. Tallinn: ‘Restorative Justice from the victim perspective’
   Focus: Victim perspective and victim support in project partner countries

c. Oxford: ‘Restorative Justice and cooperation’
   Focus: Cooperation

At the first conference in Kiel, the Matrix was developed which is a table including a number of relevant variables to identify the status quo of restorative justice in the partner countries. This Matrix was then filled with data, partly already through the status quo reports at the first project conference but partly also within a specific workshop at the second project conference in Tallinn. The content of the Matrix was then used as a basis of the next chapter on the status quo and also for the following analysis to identify best practices.

2. Questionnaires/Collection of facts

We conducted a few relatively open but structured questionnaires, some of which in turn are based on observations (see next paragraph). We have tried to gather ‘facts’ (on numbers of RJ-cases, different procedures, also facts about legislative norms) to assess what was going on in the regions and first of all to construct the Matrix.

3. Study Visits/Observations

Study visits were carried out in combination to the three conferences to reach direct exchange of practitioners and their knowledge on techniques and the observation of individual cases/procedures. This is an instrument to improve the implementation of Restorative Justice (RQ 3). With the use of a questionnaire, data on the experiences made during the study visits was collected.

4. Workshops/Trainings Events

Workshops and training events with specific groups of professionals and practitioners aimed to improve the implementation of RJ-instruments (RQ 3).
A particular homepage was created for internal project purposes, as well as for the direct exchange of information and to create a network. The dissemination of results is achieved on two levels simultaneously:

a) Personal experience and exchange of written information among experts from the fields of criminal law and restorative justice

b) Public information accessible for legal professionals, decision makers, practitioners, researchers as well as information for the general public

The ideas of RJ gain much more attention and importance when presented in an international context. This is true for the experts and for the general public as international appreciation adds to the news value of more or less existing practice. By stressing the level of personal contacts and experiences there is a guarantee for sustainability regarding the expert group which have an impact on the structures and relationships within the criminal justice system. Furthermore, the creation of a network and the website are used for the dissemination of information. By these means a certain distance between jurists, social worker and the police may be overcome.

Concrete dissemination means will be:

- 2 Books covering the content of three conferences
- A handbook/manual for practitioners and decision makers
- A final narrative and scientific report
- Publications

6. Research diary including introspection

During field work many ethnographic researchers have to take notes about their subject without being able to exchange experiences with colleagues. At the same time the person is integrated in the field and changes continuously but subtly. To observe and write down one’s own reactions, feelings and attitudes will later become a valuable source for analysis. Similar to the instrument of a diary, Glaser and Strauss recommend producing so-called `memos´ in the form of field notes or theoretical ideas. Thus, reading the diary after several months allows becoming aware of one’s own learning and adaptation to the field.
# 2. STATUS QUO IN THE PARTNER COUNTRIES

Having explained the project, its objectives and methodology, this chapter will thoroughly focus on the description of the status quo in the four partner countries: Schleswig-Holstein, Thames Valley, Hungary and Estonia. The data for this chapter was mainly collected through the instrument of a Matrix which has been developed at the first project conference in Kiel. The Matrix collected data on the following categories for each implemented restorative justice method and procedure in the particular country. As mediation procedures are the most common practice of RJ methods, already the data collection focused slightly more on mediation (e.g. only phases of mediation have been documented) than on other methods, although, these are also recorded. This is mainly due to the fact that only these will be subject of the subsequent comparison (Chapter 3.).

**DESCRIPTION OF THE METHOD/PROCEDURE**

- Historical overview and implementation – for each country, it was shortly described how and when restorative justice was implemented.
- Voluntary process – is the participation in the procedure fully voluntary?
- Stage – with the help of a flow chart, the general process of the procedure is described and therewith explained at which stage of the system it is being applied.
- Referral – who generally refers the cases to the mediation service and what are the cooperation channels?
- Finances – how is the method/procedure financed?
- Target group – at which target group, juveniles or adults, is the method/procedure directed?
- Types of offences – which types of offences are generally referred to the method/procedure?
- Exclusion criteria – are there any specific exclusion criteria?
- Mediator/Facilitator – who are the mediators/facilitators, what kind of training do they have to take part in and what is their background?
- Agency – which agencies are involved in the provision of restorative justice methods and procedures?
- Guidelines – are there any official national or institutional guidelines?
- Quality control – are there quality control systems or quality marks, either for institutions or for individual mediators?
- Legal base – what are the specific legal bases?
- Case Numbers – how many cases are referred or carried out?
GOALS AND PROCEDURE

- Legal and social goals – what are the official and informal legal and social goals for the procedures?
- Preliminary interview – are preliminary interviews always carried out?
- Legal advice – is legal advice given to participants by mediators?
- Phases of the procedure – are the procedures following specific phases?
- Agreement – are agreements always made and if, are they generally oral or written?
- Victim compensation fund – does the country/region have a victim compensation fund that assists the victim to be paid straight away while the offender has the possibility to pay back the amount in instalments?
- Is restorative justice generally accepted amongst the public and within the system?
- How is victim support organised in the partner country?

The data collected for this purpose only represent the perspective of the particular project partner agency and that correlating region. Certainly, in other areas of the countries practices may be different and other procedures common practice. Furthermore, it has been attempted to be as complete as possible, nevertheless, this could not always be achieved.\(^{14}\) Data is only limited to programs that are fully implemented into the adult or juvenile criminal justice system. There may be procedures occasionally carried out here and there; these have not been regarded as implemented and were therefore not recorded systematically. Hence, reports and presentations on RJ taking place in schools, at workplaces and at other settings have been very much appreciated but are not included in the description of the status quo of the partner countries here. Moreover, it must be taken into account that the development of restorative justice is continuously moving on, therefore this is only a snapshot of the current state of affairs.

\(^{14}\) Wherever data is incomplete, it is stated in a footnote.
2.1 SCHLESWIG-HOLSTEIN

In Schleswig-Holstein, the term restorative justice is hardly known and used. This is partly due to the fact that there is no adequate translation for it. Furthermore, as mainly only one restorative justice procedure is used, namely victim offender mediation, this has become the common terminology to use. Other partly restorative procedures are not new, for instance, community work and victim empathy work has been done for many years. These have however not been considered as restorative justice procedures, which makes it difficult to build up a thorough picture and historical overview. A number of fully restorative pilot projects have developed in recent years and have been termed as such. The current RJ-state of affairs shall be outlined in the following, structured along the Matrix.

2.1.1 DESCRIPTION OF METHOD AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Victim-Offender-Mediation</th>
<th>Restorative Conferences</th>
<th>Kieler Modell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implementation</td>
<td>Ca. 199115</td>
<td>2006</td>
<td>2008</td>
</tr>
<tr>
<td>Voluntary Process</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Stage</td>
<td>Pre-sentencing</td>
<td>Pre-sentencing</td>
<td>Police investigation</td>
</tr>
<tr>
<td>Referral</td>
<td>Prosecutors/Judges</td>
<td>Prosecutors/Judges</td>
<td>Police</td>
</tr>
<tr>
<td>Finances</td>
<td>MoJ/Municipalities</td>
<td>Mixture</td>
<td>Ministry of the Interior</td>
</tr>
<tr>
<td>Target Group</td>
<td>Juveniles/Adults</td>
<td>Juveniles</td>
<td>Juveniles/Adults</td>
</tr>
<tr>
<td>Type of Offences</td>
<td>Minor</td>
<td>Minor</td>
<td>Minor</td>
</tr>
<tr>
<td>Exclusion Criteria</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mediator/Facilitator</td>
<td>Social workers + VOM certificate (120 h)</td>
<td>Social workers + VOM certificate (120 h)</td>
<td>Police officer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No VOM certificate</td>
</tr>
<tr>
<td>Agency</td>
<td>GO/NGO</td>
<td>NGO</td>
<td>GO</td>
</tr>
<tr>
<td>Guidelines</td>
<td>National</td>
<td>Institutional</td>
<td>No</td>
</tr>
<tr>
<td>Quality Control</td>
<td>Collegial</td>
<td>Collegial</td>
<td>No</td>
</tr>
<tr>
<td>Legal Base</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

METHODS, PROCEDURES AND IMPLEMENTATION

HISTORICAL OVERVIEW

Prior to the implementation of VOM in Schleswig-Holstein a working-group (consortium) was established. It was made up of representatives from the judiciary, non-governmental agencies from offender support, social services of the judiciary, the Ministry of Justice, and the Youth Welfare Office. Parallel to these developments, social workers from non-governmental agencies were educated in conflict resolution and mediation in criminal matters.

15 According to Bannenberg (1993: 95) the first VOM-project in Kiel was founded already in 1984.
VOM was implemented in Schleswig-Holstein with a circular decree of the prosecutor general to carry out VOM, in 1991. Especially Ostendorf, who was the prosecutor general at the time, his successor Rex and his representative Müller-Gabriel were involved in the development in cooperation with the consortium. Since the implementation of VOM in Schleswig-Holstein, it is being successfully applied in close cooperation between social services of the judiciary and non-governmental agencies (NGO). The creation of jobs at NGOs by the Ministry of Justice has formed an extensive structure for mediation in adult cases.

WHICH METHODS AND PROCEDURES OF RJ ARE BEING APPLIED?

In Schleswig-Holstein, the most commonly applied procedure is victim offender mediation, direct and indirect. The term restorative justice is slowly coming into notice but still struggles with acceptability due to the lack of a clear translation. Hence, restorative justice procedures are not usually summarised under this term but stand on its own. Other than victim offender mediation, there is a pilot project on restorative conferencing in criminal matters in Elmshorn, termed ‘Gemeinschaftskonferenzen’. This conferencing project is based on the New Zealand Model of conferencing (MacRae and Zehr, 2004; Zinsstag et al., 2011).

Another approach to implement conferencing has been made by a single police officer in Kiel which is closer to the Australian Wagga Wagga police-led model of conferencing although it does not strictly follow the procedure e.g. a script is not used (Zinsstag et al., 2011). This project, which is carried out in cooperation with a mediator from the Court Assistance, is called ‘Kieler Modell’. It is carried out prior to the prosecution level as a form of police diversion. It does usually not involve supporters from the community; rather it is termed conferencing as it focuses on larger groups of participants who were involved in a conflict, e.g. gang crime. As this is a punctual measure by one dedicated police officer, it cannot be regarded as a structural offer in Schleswig-Holstein.

Generally, all restorative justice procedures are voluntary, though it is debatable what voluntary means in this context. According to the law, there are no consequences for the offender if participation is denied. In practice however this is hardly avoidable as participation is surely regarded as benefit to the following criminal justice procedure.
GENERAL PROCESS, STAGE, REFERRAL, FINANCES AND TARGET GROUP

OVERALL RESTORATIVE JUSTICE PROCESS

Generally victim offender mediation and restorative conferences can be carried out at every stage, as there are no official restrictions. In practice, however, almost all cases take place at the prosecutors’ level, hence before accusation/sentencing when the investigation procedure is still on-going. A smaller number of cases, particularly with juveniles, are referred by the courts, either before the main trial or during the trial – the trial is then suspended. Some are also directly reporting to the VOM services by persons involved, if for instance a lawyer or the court assistance has drawn attention to that possibility; this however is rather rare. In that case, a VOM is suggested to the public prosecution office or the court. In single cases prisoners also directly
get in contact with the VOM services. Cases that are carried out as part of the `Kieler Modell´ take place before any legal interventions are made, during police investigation as a form of police diversion.

In SH, there is a widespread offer of victim offender mediation for adults carried out by the court assistance and several NGOs, which are financed by the MoJ. For juveniles on the other hand, for whom the municipalities – the juvenile court assistance which is part of the youth welfare office – are responsible, the offer is rather limited. There are three well running projects carried out by NGOs across SH that focus on juveniles VOM and which are also financed by the MoJ. The conferencing project Elmshorn was focusing on juveniles but has received no further funding since September 2012. Previously it was financed by the `Kriminalpräventiven Rat´, a municipal network for the prevention of crime, the `Schleswig-Holstein Foundation for Offender Treatment´ and the Ministry of Justice. The `Kieler Modell´ project at Kiel police is addressing both, juveniles and adults. It does however not receive any specific funding as it is carried out as part of the general duties of one police officer.

TYPE OF OFFENCES AND EXCLUSION CRITERIA

According to the law, there are no specific exclusion criteria. In a circular decree of the general prosecutor (2012) it is stated that victims must generally have had a damage that needs to be regulated. Victim offender mediation is also considerable in regard to immaterial damages, in cases where no property loss has occurred and in cases of criminal attempts. Furthermore, it is written that a criminal record does not exclude from VOM. Neither is previously carried out mediation a reason for exclusion. Victim offender mediation may not lead to restriction in the presumption of innocence and of the right of defence. A requirement in the investigation procedure is therefore sufficient suspicion for accusation.

Nevertheless, exclusion occurs based on a personal level at the selection of cases which are referred to mediation by judges and prosecutors. Another selection occurs through the institution or the mediator. Some institutions may have specialised in domestic violence for instance. Furthermore, the mediator decides, usually on the basis of the preliminary interviews, whether a case is carried on. There are no set criteria for this decision, it is however rather dependent on the individual judgment of the mediator. If an offender does not show any understanding or willingness to repair the harm done, nor shows interest in communicating the
occurred, the mediator can decide to terminate the case to prevent secondary victimization of the aggrieved party.

Generally only cases with personally aggrieved victims shall be referred. Victim offender mediation is furthermore also possible if specific persons represent an aggrieved organisation or corporation. Minor offences where the procedure would otherwise be closed shall not be applied. Main field of appliance shall be medium to fairly serious crimes. However, serious crimes are not excluded from victim offender mediation. The `public interest’ in the prosecution of the offence is not counteract the conduction of victim offender mediation. On the contrary especially cases of bodily harm are to consider for VOM.16

Most referred cases are of minor severity. The main offence type is indeed bodily harm and grievous bodily harm, followed by threat, assault and insult. Further offences are criminal damage, theft, resistance to executing officers and sometimes robbery or sexual assault. If the victim is interested in an out-of-court agreement, but does not want a face-to-face meeting to take place, there is the possibility to carry out mediation between the parties without direct dialogue, namely indirect/shuttle mediation.

MEDIATOR, FACILITATOR AND AGENCIES

In the adult sphere in Schleswig-Holstein, VOM is carried out by social workers employed by the court assistance and in contract with the prosecution office by independent NGOs. In NGOs, there is one position in each of the four court districts, which is financed by the Ministry of Justice. At the court assistance Kiel and Lübeck, there are also social workers carrying out VOM. While for the court assistance, VOM is only one part of their duties, the focus of those working at NGOs is only VOM. For juveniles, the situation is less distinct. Three non-governmental agencies have three half time positions. Otherwise, VOM is carried out by the juvenile court assistance at the local youth welfare office. In terms of the `Kieler Modell´ mediation is carried out by a police officer who cooperates with a mediator from the court assistance Kiel.

The court assistance is part of the German probation system and `carries out investigations to the personality of an offender and his social relations (at request of the public prosecutor/the court). If the investigation concerns the preparation of a pre-sentence report, the court assistant has to ask the defendant whether he or she agrees with preparation of the report.

16 Circular decree of the prosecutor general on Victim Offender Mediation within the framework of prosecutors decisions on 3.01.2012
Besides, in most federal states they also have to organise community service and are involved in victim offender mediation´ (Kalmthout, 2009). Overall, ´Germany has a decentralised system of probation services (which are known as ´social services in the criminal justice system´). The federal law regulates the legal tasks and functions of all probation staff across the entire country´ (Kalmthout, 2009). Actual probation officers or more precisely offender managers (Bewährungshelfer) and ´mainly have to assist, guide and supervise offenders in case of a suspended sentence, conditional sentence or electronic monitoring. They are also in charge of the supervision of a convict’s conduct, which is a special measure of recovery and protection´ (Kalmthout, 2009). They are however, it must be pinpointed, not at all involved in the practice of restorative justice in Schleswig-Holstein, neither in its conduct, nor in the referral of cases.

Generally, the background of RJ practitioners varies, whereas most are social workers. The majority of them have attended special training in mediation in criminal matters from the TOA-Servicebüro, an umbrella organisation for VOM in Germany. The 120 hour training course is composed of five separate workshops (each 3-4 days). These cover restorative justice theory, VOM guidelines, victim perspective and needs, civil law, legal aspects and cooperation, restorative justice procedures/techniques and individual case work. Overall, the training period is one year.

In terms of cooperation in the field of restorative justice, there are a number of group meetings on a regular basis following distinct objectives. The VOM consortium, for instance, where practitioners meet on a regular basis to exchange current issues and procedures, meets every three months. Occasionally the consortium invites other professionals from the field, as for instance prosecutors or judges to discuss certain subject matters. The conferencing pilot project Elmshorn has a specially installed working group made up of the NGO, mediators, academics carrying out the research, a prosecutor and a judge who refer the cases, as well as a police officer.

In 2010 the Ministry of Justice installed a steering group on restorative justice to improve the cooperation and implementation of RJ in Schleswig-Holstein. It is a response to Article 10 of the current Council Framework Decision on the ´Standing of Victims in Criminal Proceedings´. The goal of the steering group is to promote the thought and the concept of restorative justice in all fields of relevance, to plea for greater acceptance and implement concrete ideas. More precise its objectives are the

   a) quantitative extension of RJ cases (increase referral rates)
   b) qualitative improvement and variation of RJ services
c) continuous improvement of qualifying practitioners

d) improvement of communication between relevant actors (particularly in the juvenile field).

The steering group meets every three months and consists of members of the Ministry of Justice, Ministry of the Interior, Schleswig-Holstein Association for Social Responsibility in Criminal Justice, VOM-consortium, Kiel University of Applied Sciences, General Public Prosecutor’s Office, Court, Youth Court Assistance, Probation Service and Victim Support Agencies.

GUIDELINES AND QUALITY CONTROL

The TOA-Servicebüro has published the 6th revised version of VOM-Quality Guidelines. These guidelines are not strictly legally binding but shall be a reference for practitioners. They do however only focus on VOM and not RJ in general. Based on these guidelines on best practice, the BAG TOA (national VOM-Consortium) offers a quality control certificate for institutions carrying out VOM. To receive this certificate an inspection of current practice is undertaken every five years. Furthermore, quality control is assured through a consortium in each federal state, which meets on a regular basis for supervision. Additionally, every VOM service in SH provides an annual report summarising the most important facts with their explanations.

LEGAL BASE

LEGAL INSTRUMENTS FOR RJ WITH JUVENILES

- Youth Courts Law
  
  **Section 10 Instructions**
  
  (1) Instructions shall be directions and prohibitions by which the youth can conduct his life and which are intended to promote and guarantee his education. Instructions must not place unreasonable demands on the way the youth conducts his life. In particular, the judge may instruct the youth to: [...] 7. attempt to achieve a settlement with the aggrieved person (settlement between offender and victim), [...]  

  **Section 45 Dispensing with prosecution**
  
  (2) The public prosecutor shall dispense with prosecution if a supervisory measure has already been enforced or initiated and if he considers neither the participation of the judge pursuant to subsection 3 nor the bringing of charges to be necessary. An attempt by the youth to achieve a settlement with the aggrieved person shall be considered equivalent to a supervisory measure. [...]  

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17 Were translated into English as part of this project, and are available under http://www.toa-servicebuero.de
Section 47 Discontinuation of proceedings by the judge
(1) If the bill of indictment has been submitted, the judge may discontinue the proceedings if
1. the conditions set out in section 153 of the Code of Criminal Procedure have been met,
2. a supervisory measure within the meaning of section 45, subsection 2, which renders a decision by judgment dispensable, has already been conducted or initiated, [...] In the cases designated in the first sentence, numbers 2 and 3, the judge may temporarily discontinue the proceedings with the consent of the public prosecutor and fix a period of no more than six months in which the youth must comply with the conditions, instructions or supervisory measures. The decision shall be handed down as an order of the court. That order shall not be subject to appeal. If the youth complies with the conditions, instructions or supervisory measures, the judge shall discontinue the proceedings. Section 11, subsection 3, and section 15, subsection 3, second sentence, shall not apply. [...]}

LEGAL INSTRUMENTS FOR RJ WITH ADULTS

- German Criminal Code
  Section 46a Reconciliation; restitution
  If the offender
  1. in an effort to achieve reconciliation with the victim, has made full restitution or the major part thereof for his offence, or has earnestly tried to make restitution; or
  2. in a case which making restitution for the harm caused required substantial personal services or personal sacrifice on his part, has made full compensation or the major part thereof to the victim, the court may mitigate the sentence pursuant to section 49 (1) or, unless the sentence to be imposed on the offender is imprisonment of more than one year or a fine of more than three hundred and sixty daily units, may order a discharge.

- The German Code of Criminal Procedure
  Section 153a [Provisional Dispensing with Court Action; Provisional Termination of Proceedings]
  (1) In a case involving a misdemeanor, the public prosecution office may, with the consent of the accused and of the court competent to order the opening of the main proceedings, dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle. In particular, the following conditions and instructions may be applied:
  1. to perform a specified service in order to make reparations for damage caused by the offence [...]
5. to make a serious attempt to reach a mediated agreement with the aggrieved person (perpetrator-victim mediation) thereby trying to make reparation for his offence, in full or to a predominant extent, or to strive therefore; [...] 

Section 153b [Dispensing with Court Action; Termination]
(1) If the conditions under which the court may dispense with imposing a penalty apply, the public prosecution office may, with the consent of the court which would have jurisdiction over the main hearing, dispense with preferment of public charges.
(2) If charges have already been preferred the court may, with the consent of the public prosecution office and of the indicted accused, terminate proceedings at any time prior to commencement of the main hearing.

Section 155a [Perpetrator-Victim Mediation]
At every stage of the proceedings the public prosecution office and the court are to examine whether it is possible to reach a mediated agreement between the accused and the aggrieved person. In appropriate cases they are to work towards such mediation. An agreement may not be accepted against the express will of the aggrieved person.

Germany is organised in a federal system composed of 16 states. Legal frameworks are regulated on a federal level but the regulations for execution differ between the states. Regulations for Schleswig-Holstein:

- Circular decree of the prosecutor general to carry out victim offender mediation, in decision of the prosecutor, has become applicable on 01. September 1991
- Revised version of the circular decree became applicable on 01.12.1996
- Joint decree of the prosecutor general and the State Investigation Bureau in regard to victim offender mediation within the framework of prosecutor decisions on 23.03.2005
- Circular decree of the prosecutor general on victim offender mediation within the framework of prosecutors decisions on 3.01.2012

CASE NUMBERS

Schleswig-Holstein had 2.837.641 inhabitants at the end of 2011. The following VOM case numbers have been compiled by the Ministry of Justice Schleswig-Holstein through numbers referred by the individual prosecution offices, thus only include cases that have been referred by the prosecutor.

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>VOM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juveniles</td>
<td>448</td>
<td>359</td>
<td>363</td>
</tr>
<tr>
<td>Adults</td>
<td>685</td>
<td>651</td>
<td>841</td>
</tr>
<tr>
<td>Altogether</td>
<td>1133</td>
<td>1010</td>
<td>1204</td>
</tr>
</tbody>
</table>
The following table of VOM shows case numbers provided by the individual mediation services in Schleswig-Holstein\textsuperscript{18}:

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012\textsuperscript{19}</th>
</tr>
</thead>
<tbody>
<tr>
<td>VOM</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juveniles</td>
<td>403</td>
<td>379</td>
<td>333</td>
<td>266</td>
<td>219</td>
<td>108</td>
</tr>
<tr>
<td>Adults</td>
<td>787</td>
<td>768</td>
<td>899</td>
<td>779</td>
<td>823</td>
<td>784</td>
</tr>
<tr>
<td>Altogether</td>
<td>1190</td>
<td>1147</td>
<td>1232</td>
<td>1045</td>
<td>1042</td>
<td>892</td>
</tr>
</tbody>
</table>

\textsuperscript{18} Numbers for juveniles may not be complete as the exact number of services carrying out VOM is unknown.
\textsuperscript{19} Only includes case numbers until the end of September 2012.
There is an obvious discrepancy between the numbers provided by the Ministry of Justice and those of the individual mediation services. Those of the referrals by the prosecution offices are continuously a little bit higher than those carried out by mediators, although mediators additionally have a small numbers of self-referrals each year which are not detected by the prosecution offices. Explanations for this difference could be:

- that not all mediation services have recorded their numbers accurately and/or at the same time of reference,
- that displacement of cases occur at the turn of the year, due to absence, illness or vacation, so that a case which has been referred in the old year is carried out in the new year by the mediation service,
- that what is being counted differs. Mediation services generally count the accused persons whereas others may count one case.

What is known and common are yearly variations of numbers which are hardly explainable. They may be dependent on subjective opinions and decisions of individual referrers or management. It has been reported by mediators that there is a steep rise of numbers since 2011 in the adult field. In particular the number of cases referred by court after accusation is accelerating. In the course of a survey, conducted by the general prosecutor in 2011/2012 in the juvenile field, more data on case numbers has been collected. According to a representative of the Ministry of Justice however the results from this research remain unpublished.
2.1.2 GOALS AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Victim-Offender-Mediation</th>
<th>Restorative Conferences</th>
<th>Kieler Modell</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Legal Advice</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Agreement</td>
<td>Written</td>
<td>Written</td>
<td>Oral</td>
</tr>
<tr>
<td>Victim Fund</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

LEGAL AND SOCIAL GOALS

The formal goal of victim offender mediation in Schleswig-Holstein is the restoration of legal peace. Victim offender mediation is a procedure to achieve an out-of-court conflict resolution, based on the effort of offender and victim to resolve the existing problems, burdens and conflicts through communication and to reach an agreement. With victim offender mediation especially the interests of victims shall be considered regarding the legal consequences of a crime. This is based on the expectation that compensation is often more in the interest of victims than punishment. Victim offender mediation is a chance to resolve the conflict between offender and victim which was caused by the offense. This is independent of whether the offender is a juvenile or adult. Confrontation with the victim and the effort to resolve the consequences of the offense can, as a means of special prevention, have a sustainable effect on the accused. Victim offender mediation is therefore a useful addition and alternative to the imposition of a fine or a custodial sentence.\(^{20}\) Informally, a major legal goal is also to save money and time. There is however no reliable data confirming the notion that victim offender mediation costs and time effort is less than in a court proceeding.

The legal goal of the conferencing Project in Elmshorn is to avoid punishment and diversion. The social goal on the victim side is to cope with the consequences of the offense. On the offender side it can be a holistic learning experience effecting reoffending behaviour. Also it can improve informal control, as family members and the community are being involved.\(^{21}\) In terms of the ‘Kieler modell’ the main goal is to avoid legal interventions and divert from further prosecution.

\(^{20}\) Circular decree of the prosecutor general on Victim Offender Mediation within the framework of prosecutors decisions on 3.01.2012

\(^{21}\) Concept ‘Gemeinschaftskonferenzen Elmshorn’
PHASES OF THE MEDIATION PROCEDURE

Phases of victim offender mediation:

1. Mediator welcomes everyone present and informs about the phases of the procedure, the setting which allows for fair conversation, e.g. seating, rules, transparency, impartiality of the mediator
2. Each party gets the chance to outline their subjective experience of the occurred and related emotions
3. Look back at the occurred and reappraise related emotions
4. Find possible solutions and suggestions for restitution
5. Write down results in an agreement
6. Make sure agreement is realisable
7. Feedback/Summary

Phases of a restorative conference in Elmshorn:

1. Mediator welcomes everyone present and informs about the phases of the procedure, the setting which allows for fair conversation, e.g. seating, rules, transparency, impartiality of the mediator, introduction of participants, obligation of secrecy
2. Police summarises the facts
3. Offender and victim (move into a smaller circle with mediator) get the chance to outline their subjective experience of the occurred and related emotions
4. Everybody else gets the chance to speak, general discussion
5. If everybody has said what they wanted to, each person can contribute their wish and expectation for the future
6. Break: during the break, the offender and his/her supporters go to a separate room to develop a future plan and their proposal for solution
7. After the presentation of solution/plan, everybody gets the chance to remark
8. Possibility to modify the solution/plan
9. If agreement was found, the solution is written down and signed by all participants
10. Feedback

Preliminary interviews are carried out separately with offender and victim. Usually the offender is invited first, except in cases of domestic violence, where the victim is contacted prior to the offender. Regularly there is only one preliminary interview with each party. Participants are informed about the procedure, the safe environment, the framework in which VOM is taking place and about civil law issues. In a conference, only the offender and the victim are invited to preliminary interviews. If supporters do not already come along with the offender or victim to the preliminary interview, they are only being informed via telephone. Legal advice is not given by mediators but must be organised at own expenses or through the victim support agency `Weißer Ring`, depending on the income.

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Agreements can be either oral or written. In most cases written agreements are made which then have to be sent back to the prosecution office or judge, if fulfilled. Oral agreements are only occasionally made in juvenile cases. All agreements are legally binding and are being monitored by the mediator or in the case of conferences and the `Kieler Modell´ by the police.

If the agreement includes financial compensation and the offender is not able to pay the amount at once, there is the possibility to receive money from a victim compensation fund. In that case, the victim receives the full amount immediately and the offender has the possibility to pay off the debts in monthly rates. This fund was established in 1995 by the `Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim and Offender Treatment´ with an initial capital of € 25.000, mainly made up of fines assigned by the prosecution office. Since 2007 the fund is administered by the `Schleswig-Holstein Foundation for Social Responsibility in Criminal Justice´. The victim fund is accessible to all those carrying out VOM in Schleswig-Holstein, as it is an important instrument in the successful conduction of VOM.

The following table shows the amount of money paid by adult offenders as compensation for pain/suffering and compensation for material damages as part of agreements in Schleswig-Holstein:22

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>for material</td>
<td>22.347</td>
<td>17.755</td>
<td>20.199</td>
<td>13.506</td>
<td>13.824</td>
</tr>
<tr>
<td>damages</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alltogether</td>
<td>43.197</td>
<td>44.330</td>
<td>45.839</td>
<td>38.456</td>
<td>32.053</td>
</tr>
</tbody>
</table>

22 Not all numbers have been made available or some services do not record compensation amounts. In juvenile cases, the amounts are very low and are therefore not documented at all services.
Figure 6: Victim Compensation by Offenders through VOM in Schleswig-Holstein

GENERAL ACCEPTANCE OF RJ AMONGST THE PUBLIC AND IN THE SYSTEM

Victim offender mediation is not very well known amongst the public. The majority of the injured parties and victims do not know the procedure. After they have been informed through flyers and single interviews, the approval is very high, in contrast to the acceptance amongst those who refer cases, prosecution and courts. A study by Sessar (1992) examined a representative sample of citizens in Hamburg and their opinion towards restoration. Accordingly, 75% of the general public favoured restoration but only 25% to 30% of prosecutors and criminal judges did.

This problem of acceptance is reflected in referral rates. If comparing the total number of criminal procedures in Schleswig-Holstein last year, which were about 200,000, to the number of cases referred to VOM, which is less than 1%, the gap becomes very clear. A discrepancy can be identified, when referring to relevant literature, which says that about 20% of all criminal procedures would be suitable for VOM (Wandrey and Weitekamp, 1998).

The positive effects of VOM experienced in practice, are also shown in qualitative research, according to which victims and offenders report high satisfaction (Jansen and Karliczek in Gutsche and Rössner, 2000). An empirical study on the satisfaction with VOM, carried out in Kiel and Itzehoe, reveals that 90% of the respondents would participate in VOM again (Koller, 2006; Koller and Hagemann, 2007). The available results on recidivism show that VOM has a
positive influence. As in comparable studies, Keudel (2000) found that there is no doubt that VOM cases in Schleswig-Holstein have a special preventive effect and that 74% of the respondents did not reoffend. In regard to recidivism the results show that VOM is much more effective in comparison to fines and custody for adults, as well as custodial sentences for juveniles (Keudel, 2000).

VICTIM SUPPORT IN SCHLESWIG-HOLSTEIN/GERMANY

The State recognises the responsibility to protect its citizens including potential or actual victims, if they cannot protect themselves. In order to do justice, the State can and should not only institute pure safety mechanisms, but also have available programs for clarification, prevention and follow-up that is oriented towards both victims as well as offenders.

A mandatory protection of victims shows in other respects the fact that the State established its goals in legal regulations. The objective of this article is to provide a short overview of the legal protection of victims in Schleswig-Holstein which is in our federal constituted state similar to whole Germany. First, a short historical overview of the legal protection of victims in Germany will be presented. Next, an overview of how victim protection systematically rediscovered a place in German Law will be provided.

HISTORY

In order to improve the protection of victims, the Federal Republic of Germany introduced a range of reforms.

The Victim Protection Act of 1986 led to the improvement of witness protection, especially before exposure in the main trial of the criminal proceedings. In addition, victims of crime could more easily demand compensation claims from the offender. Beyond that, this reform held for the first time the entry of victim offender mediation (or in Germany known as offender-victim-mediation) in the German criminal law and to be exact as sentencing guidelines. In other words, the court could mitigate the sentence or possibly even completely wave the sentence, when the offender is serious about engaging in VOM and/or compensation.

The Fight Against Crime Act of 1994 was established following VOM and reparation for harm caused was a typical mitigation of punishment in adult criminal law.

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23 Written by Mario Nahrwold.
The Witness Protection Act of 1998 authorised video recording for example of child victim witnesses and video broadcast of witness statements in the courtroom. A concern of the Victims Claim Security Act also from 1998, which granted victims a legal lieu of claims from offenders, was that victims might exploit their offenders in the media. With the Act establishing VOM in the criminal procedure from 1999 should counteract or work against the sluggish application of VOM to date, in which prosecution and the criminal judge were obligated `at every stage of the process´ to consider whether a case is suitable for VOM. Furthermore, the law led to the advanced setting of possibilities by balancing efforts of the perpetrator.

With the First Victim’s Rights Reform Act (2004) and the Second Victims’ Rights Reform Act (2009), procedural rights of victims in criminal proceedings were strengthened. Central elements of the act include: the expansion of the use of victims as accessory prosecution, the strengthening of witness rights and the prevention of multiple hearings and the extended protection of child and adolescent victims. The German accessory prosecution (Nebenklage) may allow a victim of a charge to join with the prosecution, and thereupon remain active in influencing the criminal procedure through application, clarification and questions. The use of accessory prosecution, however, is only designated for specific types of criminal offenses. The Second Victims’ Rights Reform Act (2009) expanded the range of offenses for the inclusion of accessory prosecution, for example forced marriage and special conditions of serious coercion. In addition a catch-all element was created, whereupon the accessory prosecution is possible, regardless of the respective crime. If the consequences of crime are very serious, the accessory prosecution is an option in order to be able to recognise the victims’ interests

The strengthening of witness rights was partly due to enhanced disclosure of information requirements. Injured persons and relatives are referred at an early stage to assistance through victim services and the possibility of psychosocial process support. If there is a risk of disclosing data, witnesses also have increased rights and may refuse statements about their residence or personal identity.

LEGAL SYSTEM OVERVIEW

The protection of citizens before and after criminal offenses through legislative measures can be found in Germany in all three major branches of law.
PROTECTION OF VICTIMS OF CRIME IN CRIMINAL LAW

The protection of victims of crime takes place on two levels. Firstly through criminal provisions of the substantive criminal law. Furthermore, the rules of the procedural rights of victims in the criminal procedure should be used to protect them.

a. Substantive Criminal Law

Substantive criminal law contains standards making certain behaviours against victims punishable. According to the preventative purpose of punitive theories, it can be said that, in principle, any criminal provision, provided that it seeks to protect the personal legal interests of the individual and also serves the protection of victims. More significant, however, is that the state, acting by criminal standards, tackles social problems and through this makes criminal offenses visible. In this respect, criminal provisions promote appropriate public awareness, which ultimately serves the protection of victims. This article, however, will not aim to address this, nor can all criminal provisions be explained here.

For example after a long discussion in 2007, stalking was criminalised. Thus behaviour that is extremely uncomfortable for victims, and in some cases resulted in a deadly escalation, is outlawed. This and the increased public awareness safeguards victims, as they are not left alone with their problems.

b. Procedural Rights of Victims in Criminal Proceedings

The procedural rights of victims in criminal proceedings can be divided into participation, information and protection rights.

Participation Rights of Victims

Crime victims may be involved in various forms of the criminal proceedings. They can occur as joint plaintiffs (accessory prosecutor), private plaintiffs, and applicants in a civil action or without special role.

In the case of particularly serious crime, victims receive the possibility of accessory prosecution or co-plaintiff allowing a real influence in the course of the criminal proceedings. Provided, however, that the prosecution has in turn filed charges. The accessory prosecutor, or co-plaintiff, then has the right to be present at any time of the trial. The accessory prosecutor has the right to ask questions at any time. He can reject judges or experts for bias, may pass orders of
the judge and may even himself submit admission of evidence, which will be followed by the court and can also make a formal declaration. The accessory prosecutor has the right to his own closing argument, including proposals of concrete penalties for the case, and if the guilty party is not convicted, he can appeal, which usually only the prosecutor can do. Through this elevation position, the accessory prosecutor is to a large extent procedurally equivalent to the perpetrator and prosecutor. However it is limiting to say, that victims' rights are actually suppressed by the very strong possibility of dismissal of the charges by the prosecutor from discretionary reasons (§§ 153 ff. StPO). In this regard, the victims have neither formal participatory rights nor legal remedies available.

For less serious offenses (e.g. trespassing, insults and damage to property) victims have the option to file a private suit. This therefore gives them the ability to take over the role of public prosecution by pressing charges through private prosecution instead of the prosecution through criminal action. This is relevant in cases where the prosecutor refuses to charge due to lack of public interest but the injured party may therefore seek reparation through the initiation of a criminal process.

From the victim’s point of view, the compensation of the damage the perpetrator caused is of particular interest. This is actually a question under civil law protection for victims. Should the offender not be willing to settle the damage, the victim must press charges if necessary in a separate civil proceeding. To spare him this and especially a different judgment by the Civil Court, in criminal proceedings a civil action is available. Thereafter, the criminal court may already have a say in the civil claims for damages by the victim. The victim is spared further proceedings and is therefore faster to seeking justice. Furthermore any injured party has the ability to enforce legal action through prosecution at the Higher Regional Court if the prosecutor refused to indict due to lack of evidence and therefore closed the case. Another important component in the protection of victims is victim offender mediation. How has the legislature now created the criminal law, in order to give VOM the broadest possible space?

First, there is the possibility that the sanctions for the perpetrators will be mitigated, if they endeavour to participate in a VOM. In the case of less serious offenses (misdemeanours), the prosecutor or court can set the criminal proceedings for the time being against the condition of participating in a VOM. If the offender has made insofar genuine efforts, the final proceeding will be terminated. Where this is not a termination of the proceedings, the court may mitigate the sentence or completely waive it, if only a small punishment is forfeited (§ 46 a StGB). The court
can also suspend a prison sentence and probation, if there is an effort of the convicted person, to make amends for the damage caused by the offense – possibly by means of a VOM (§ 56 II 2 StPO).

The question is, however, how a case results in a VOM. In principle, all parties at any time can initiate a VOM. In order to strengthen the practice of VOM, in 1999 both the prosecution and courts were obliged to consider the possibility for a VOM at each stage of the process and encourage suitable cases (§§ 136 I 4, 155 a StPO). It must be noted that under German criminal law any offense is suitable for a VOM. Practitioners complain, however, that even after this law, the potential for the VOM is not exhausted. Even when victims and perpetrators wish to take part in VOM, it often does not take place. Legal policy is therefore to complain that the decision of prosecution and the court to classify a case not suitable for VOM, according to the current legislation, is not justiciable and does not need to provide an explanation.

Victims’ Rights to Information

The injured party should be informed whether and for what reason a criminal process has been set against the accused (§ 172 StPO). At the victim’s request, they are informed on the outcome of the judicial process, their offender’s relief measures and release from prison. This regulation is intended to help primarily victims of violent and sexual offenses, who fear a random encounter with the perpetrator. Injured parties have the right through an attorney to access the criminal records, or without an attorney, the right to information contained in record (§ 406 e StPO). Furthermore they are notified of this and additional rights as early as possible, written regularly and in a language they understand.

Protection Rights

Victims may be represented by an attorney at their own expense in the process or take advantage of a counsel (§ 406 f StPO). In particular, this ‘counsel’ has the right to be present during interrogation with the victim. Victims of particular serious crime, as accessory prosecutors, may appoint a victim attorney at the public’s expense, irrespective of their income (§ 397 a StPO). To protect against secondary victimisation, witnesses can refuse to provide information about their residence or identity (§ 68 I, III StPO). In addition, the public may be excluded from all or part of the trial in order to protect the victim's privacy or if their inclusion would otherwise endanger the witnesses body, life or freedom (§172 Nr. 1 GVG). The court may remove the defendant for
the duration of the examination of witnesses from the courtroom if intimidation of the witness is feared (§ 247StPO).

In addition, the witness may be questioned during the trial at a different location via video-audio live broadcast if it is feared that the victim’s presence in the courtroom brings serious drawbacks for their welfare (§ 247 a StPO). To avoid multiple interrogations, including those conducted by police and prosecution, witness testimonials may also be recorded through video and audio media and be introduced and used as evidence in the criminal proceedings (§ 255 a StPO). This applies in particular to the protection of child and juvenile witnesses (§ 58 a I Nr. 1 StPO).

PROTECTION OF VICTIMS IN CIVIL LAW

Civil law also serves the protection of victims by allowing for claims between the victim and the perpetrator.

a) This includes claims for damages to compensate for intangible losses (medical/treatment costs, repair costs, etc.) and immaterial damage (compensation for pain and suffering). These claims are supported through other regulations. Contrary to the normal limitation of three years, compensation claims that are based on injury to life, body, health or freedom may be filed up to 30 years after the incident (§ 199 II BGB). The statute of limitations for claims of sexual offenses does not begin to start until the victim’s age of 21 (§ 208 BGB). In addition, in cases of an intentional crime a larger portion of the perpetrator’s earned income may be seized in order to pay back towards victim compensation (§ 850 f II ZPO).

b) Both the criminal law and the compensation for damages deal with crime of the past. The victim is often concerned that harm or harassment will not reoccur in the future. To combat violence, especially in the home, in 2002 the Violence Protection Act was enacted. The act provides for two things:

1. At the request of the injured person the civil court can take protection orders. A violation of the protection orders against the perpetrator constitutes a crime, even if his behaviour would not be punishable without the protection order. Such protection orders come into question if:

   • The offender has violated the body, health or liberty of the victim
   • The offender has made threats
   • The offender has entered the apartment of the victim
   • The offender has harassed the victim
In these cases, the court may order that the offender shall refrain:

- From entering the apartment of the victim
- To reside in a certain radius of the apartment
- From visiting specific places, where the victim often stays
- Contacting the victim (by phone, internet)
- Meeting the victim

2. In addition, the court may order the offender to temporarily leave the shared home of the injured person. This applies even if the perpetrator is the owner of the property.

PROTECTION OF VICTIM IN PUBLIC LAW

The public law contains claims of potential or actual victims against the state.

a) Security Measures

The emergency response law is used to combat possible dangers in advance, before they can come to an injury. The emergency response authorities (police and law enforcement authorities) can thus take measures so that actions do not result in the injury or harm of any persons. Practical significance here is the apartment cross reference (§ 201 a LVWG).

Then the police can refer a person for up to 14 days in an apartment and the surrounding area and forbid them from returning there if it results in an actual threat to body, life, or liberty of their roommates. As it comes to the protection of individual rights of the potential victim, the victim also has a legally enforceable right to have the police intervene when in particular risk.

b) Compensation Law

If a German citizen, despite all measures to prevent crime becomes a victim of crime, he is entitled to compensation against the state under certain conditions set forth by the Victims Compensation Act. When the state has failed to prevent a crime, the Victims Compensation Act requires the state to pay compensation to the injured party. It is required under the Act that the injured must be a victim of a deliberate, violent act. The victim then receives compensation from the State, due to health and economic consequences, in the form of reimbursement of the costs for medical treatment and if necessary a pension.
The legislature has to a great extent fulfilled its constitutional obligation to protect the victims of crime in Germany. It can be said that the legal protection of victims is well established, although it is still behind in some areas. This is especially the case with victim offender mediation. Despite its long-standing legal establishment, it is not practiced to the extent it should be. Perhaps more education is needed on VOM among relevant stakeholders. In order to strengthen VOM, it has been proposed in this article, providing perpetrators and victims the right for an option to take part in VOM. This may be better supported through referral of more appropriate cases to VOM so that one is not only dependent on the referral though court or the prosecution alone.
2.2 THAMES VALLEY

It is important to explain that the definition and terminology of restorative justice work in England and Wales is applied to many different interventions with victims and offenders as well as to activity in other settings such as schools and workplaces. The matrix below has been devised by practitioners working in the region of Thames Valley in the UK to give an overview of the RJ methods and procedures that are applied in the criminal justice system in that area where restorative justice is comparatively well developed. The following narrative is a guided tour, referenced through the accompanying Matrix table, of how restorative justice is arranged, delivered, controlled and experienced in the area of Thames Valley with references to the development of RJ in England and Wales as a whole.

2.2.1 DESCRIPTION OF METHOD AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Restorative Conferences/Specified Activity Victim-Offender-Mediation</th>
<th>Restorative Conferences Prison</th>
<th>Restorative Conferences/ Pre-sentence</th>
<th>YOS RJ Referral Order/ Police RJ/ Youth Restorative Disposals/ Community Resolution Order/ Youth Rehab. Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntary Process</td>
<td>Partial – consent at point of sentence</td>
<td>Yes</td>
<td>Consent required at point of deferment</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Stage</td>
<td>Post-sentencing</td>
<td>Post-sentencing and possibly post-release</td>
<td>Pre-sentence</td>
<td>Police investigation, Pre and Post-Sentencing</td>
</tr>
<tr>
<td>Referral</td>
<td>Pre-Sentence Report/ Offender Manager</td>
<td>Offender Manager/ sentence plan and self-referral</td>
<td>Court, prosecutor, witness care and via pre-sentencing Report</td>
<td>Police, Courts, Youth Referral Order Panels</td>
</tr>
<tr>
<td>Finances</td>
<td>State</td>
<td>State</td>
<td>State</td>
<td>Central + Local Gov.</td>
</tr>
<tr>
<td>Target Group</td>
<td>Adults – Violence and burglary</td>
<td>Adults – violence and burglary</td>
<td>Adults – violence and acquisitive crime</td>
<td>Juveniles</td>
</tr>
<tr>
<td>Type of Offences</td>
<td>Medium-Major</td>
<td>Medium-Major</td>
<td>Medium-Major</td>
<td>All</td>
</tr>
<tr>
<td>Exclusion Criteria</td>
<td>Yes, DV, Sex Off., ng pleas</td>
<td>Yes DV &amp; sex and ng pleas</td>
<td>Yes DV, sex and ng pleas</td>
<td>No</td>
</tr>
</tbody>
</table>

24 Offenders have to be willing to participate at the pre-sentence report stage, but once the sentence has been passed with a Specified Activity Requirement they may not withdraw without good reason.
<table>
<thead>
<tr>
<th>Mediator/Facilitator</th>
<th>Trained Facilitator</th>
<th>Trained Facilitator</th>
<th>Trained Facilitator</th>
<th>YOS staff, Panel members and Volunteers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency</td>
<td>GO</td>
<td>GO</td>
<td>GO</td>
<td>GO</td>
</tr>
<tr>
<td>Guidelines</td>
<td>National - RJC</td>
<td>National - RJC</td>
<td>National - RJC</td>
<td>National - YJB</td>
</tr>
<tr>
<td>Quality Control</td>
<td>Local</td>
<td>Local</td>
<td>Local</td>
<td>National Standards</td>
</tr>
<tr>
<td>Legal Base</td>
<td>Yes 2003 Act</td>
<td>Poss. via licence condition</td>
<td>Yes – pilot for new legislation</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**METHODS, PROCEDURES AND IMPLEMENTATION**

**HISTORICAL OVERVIEW OF RJ IN THAMES VALLEY**

The Home Office sponsored a number of pilot projects in the 1980s to test the potential for RJ methods to be used as part of the criminal justice process. Despite some success, they reported in the early 1990s at a time when more punishment based methods were seen to be required to tackle the growing level of crime. Whilst a small number of the projects continued in a limited way on a local basis, there was no Government support for the adoption of RJ methods at that time.

In the mid-1990s the Thames Valley Police adopted RJ as a way to improve the effectiveness of the cautioning process for young offenders. This approach was informed by work in Australia and New Zealand where RJ conferences had been used to deal with crime amongst young people. Australian research (Canberra Re-Integrative Shaming Experiment) had demonstrated that RJ conferences could reduce re-offending amongst young people who had committed violent offences (Strang et al., 1999).

The success of the RJ cautioning initiative and growing international evidence of the value of RJ led the Labour Government, which came to power in 1997, to introduce legislation (The Criminal Evidence Act 1999) into the youth justice system which facilitated Referral Order Panel meetings. The victim could be included as part of the Panel Meeting and the offender could be required to undertake activities which could include reparation and suitable activities to make amends. Subsequent legislation has introduced the Youth Rehabilitation Order and the Youth Restorative Disposal which have both increased the power of the Court to implement RJ as well as increase the flexibility with which the Police can deal with less serious youth crime.

On the basis of the effectiveness of the enhanced cautioning process in Thames Valley and the Australian research, the UK Government agreed to fund an extensive research project 25

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25 Ng pleas: cases where the offender has pleaded not guilty and there has been a trial are not usually suitable for RJ.
into the potential effectiveness of RJ in the UK. This research project was developed under the auspices of the Justice Research Consortium and independently evaluated by the University of Sheffield. It involved the RJ Conference model being delivered at three different sites in the UK. Two of those sites were operated by the Police and one was a multi-agency operation led by Thames Valley Probation. The research sites operated between 2001 and 2005 and were reported on by Joanna Shapland in 2008. In essence, the research demonstrated that RJ with adults and more serious offences of violence and burglary, had the potential to reduce re-offending and promote high levels of victim satisfaction, when compared with the traditional court based criminal justice process (Shapland et al., 2011).

Since 2008, RJ with adults has developed on a piecemeal basis. Whilst the Government gave its general support and facilitated the delivery of RJ with adults in the Criminal Justice Act of 2003, resources were not provided to deliver RJ to adults. Consequently two of the three Justice Research Consortium ceased to operate. The Thames Valley Probation led site has continued to operate at a reduced level of capacity within the 2003 Act legislation. A small number of other Probation areas have begun to deliver RJ, using a range of different methods and procedures, as part of Intensive Community Supervision programs.

At the same time, a growing number of police forces (35 out of 43) have developed the use of restorative methods to tackle low level crime and anti-social behaviour and local problems such as neighbour disputes. Most of this work does not involve scripted conferences and is sometimes described as `street RJ´ although in some instances conferences can be facilitated by the Police to deal with neighbourhood problems. The Police have also been involved in very limited use of the Conditional Caution for adults.

RJ has now become fully embedded within the youth justice process, although the nature and extent of implementation varies from one Youth Offending Team (multi-agency) to another. The new Youth Rehabilitation Order (Criminal Justice and Immigration Act 2008) provides an opportunity to deliver RJ as the highest level of the three tier sentencing approach to young people which starts with the Final Warning (superseding the old caution) and the Referral Order and ends with RJ being delivered as part of a Youth Community Sentence similar to the adult Community Order with a RJ Specified Activity Requirement as delivered by Thames Valley Probation. With the advent of the new Coalition Government a Green Paper `Breaking the Cycle´, on all sentencing matters (youth and adult as well as custodial and community sentences) has been published. This document envisages a much greater use of RJ, in a wide range of forms
and at different points in the UK Criminal Justice process, principally before sentence. Legislation is currently (November 2012) before Parliament which would give legal force to the delivery of RJ pre-sentence.

Over the past few decades England and Wales has developed a variety of methods of work which seek to bring victims and offenders together to address the harm caused by offending. Victim offender mediation schemes began through a number of Home Office pilots in 1982. Since then, particularly in the sphere of Youth Offending, multi-disciplinary teams have used restorative justice to divert young people from courts through community resolution work. In the adult world offenders supervised by the Probation Service have used sentence plans to develop victim awareness. These arrangements were formalised by the creation of the National Offender Management Service (NOMS) and the implementation of the Offender Management Model in 2005. Currently offenders attend group work programs delivered by probation staff using a trialed Victim Awareness work book. In 2005 restorative conferencing began to be delivered as part of a specified activity within a community sentence. Similar measures were introduced in 2008, allowing restorative work activities to be included in a menu of requirements within a sentence called an Intensive Community Control Program (ICCP). Family group conferencing, based on the RJ approaches and work in Australia and New Zealand, is also being piloted this year.

The change of government in the UK in 2010, has led to renewed interest in RJ for adults and there is a planned expansion programme of training for staff in NOMS (Probation and Prisons) being rolled out (2012/13) to Probation Trusts and prison establishments through the ‘NOMS RJ Capacity Building Programme. The Programme seeks to train one thousand prison and probation staff. The training and management support will equip staff to deliver face-to-face RJ Conferences in prison and probation settings. Where victims or offenders (because some probation areas will be offering RJ to victims through Victim Liaison Units) decline to meet other restorative processes will be implemented. RJ conferencing is the preferred model of delivery because the evidence base (Shapland, 2011) demonstrates that this method has the capacity to reduce rates of re-offending and improve victim satisfaction.

26 The NOMS Offender Management Model, Home Office 2006
In the UK there is a problem of definitions and terminology in relation to restorative justice. The term restorative justice can be applied a whole range of approaches including:

- Restorative conferences involving victim, offender, families, friends and other supporters
- Victim offender mediation (face-to-face/shuttle)
- Victim awareness programs (VAPs) with ‘proxy’ victims
- Victim empathy exercises
- Direct/indirect reparation
- Community Service by offenders

Restorative conferences are the preferred procedure in Thames Valley Probation, although other procedures are used where the victim does not wish to participate in a face-to-face meeting. To a greater or lesser extent all victims and offenders volunteer to take part in restorative work. This said young and adult offenders can be made subject to court and or diversion orders, instructing them to carry out remedial work.

Note: In all those cases where an offender is referred to RJ and the victim does not wish to meet face-to-face an alternative RJ process is undertaken which involves the preparation of a letter of apology in the majority of cases, although it may involve other victim empathy activities.
The majority of RJ work with adult offenders is undertaken at the post-sentence stage. As this discussion has previously mentioned, juveniles who find themselves in the youth justice system for the first time are given the opportunity to undertake RJ work as part of a preventative disposal strategy\(^28\). Thames Valley Probation is planning to introduce RJ as part of post-release license conditions when prison sentences are imposed. This approach will give victims, in suitable cases, 

the opportunity to choose to meet the offender before or after release from prison and for the offender to complete actions geared towards restitution after release. Pre-sentence RJ will become available in 2013.

Youth court services vary from area to area in the way in which RJ provision is delivered post-sentence. The national average for victim attendance at Referral order Panels is only 10%. Where post-sentence measures are part of a statutory sentence they are implemented effectively, although as already mentioned the Specified Activity Requirement is only used for RJ by a limited number of Probation Trusts. RJ in prisons for adults is very limited and cannot be ordered by the court. It is rarely provided as a service initiated by the victim, although this will change following the implementation of the NOMS Capacity Building Programme and the implementation of the government’s intention to offer RJ to victims at all key points in the CJ process. Thames Valley Probation will be exploring how best to offer this service to victims as part of a European funded collaboration to develop best practice in providing RJ services to victims.

Referrals for RJ work can be taken from a number of sources. These include police, courts and even the Crown Prosecution Service. Offenders or victims and probation or prison staff with a remit for managing cases can enquire about RJ work. The most common procedure for a RJ referral is through a pre-sentence report or a youth panel.

`Once guilt has been established, the Courts often request pre-sentencing reports to assist with sentencing. The reports consist of an analysis of the offence, relevant information pertaining to the offender’s risk of harm and re-offending. It should conclude with a clear and realistic proposal for sentence. The Probation Service supervises Community Orders which can contain up to twelve requirements including drug treatment, unpaid work, psychiatric treatment, residence restrictions, electronic monitoring, restorative justice etc.´ (Kalmthout, 2009).

More precisely, according to 158 Criminal Justice Act 2003, a pre-sentencing report deals

(a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by an appropriate officer, and
(b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

Furthermore, it says that `the court is required to obtain a Pre-Sentence Report (PSR), or a Specific Sentence Report (SSR) prepared by the Probation Service or the Youth Offending Team
before imposing a custodial or community sentence. The PSR should include an assessment of the nature and seriousness of the offence, and its impact on the victim (156 Criminal Justice Act 2003).

The cost of funding RJ work is mainly sourced from central and local government grants to Probation Trusts and Youth Offending Teams. Victim offender mediation schemes have predominately been self-funding; and resources (practitioner’s time and expertise) have been diverted from mainstream work. In future funding for RJ is likely to come by diverting resources from programmes which do not have an evidence base which demonstrates the power to reduce re-offending. ²⁹

TYPE OF OFFENCES AND EXCLUSION CRITERIA

Offenders excluded from RJ work are normally those who deny their offence, are likely to re-victimise their victims, or who express zero contrition. Those with severe or unstabilised mental health conditions would also be excluded from RJ work. Offenders who commit domestic violence, sexual, or extremist type of offences would not normally be considered suitable for RJ work ³⁰.

The typology of offences eligible and suitable for RJ work varies considerably depending on the methods used and the setting in which the process takes place. In victim offender mediation work all offences involving some form of personal harm are generally considered. To date restorative conferencing usually includes offences involving domestic burglary and violence against the person, whilst domestic violence and sexual offences tend to be excluded. Probation officers undertaking victim empathy/awareness work, either in a group work setting or with individuals, tend to accept people who are assessed generally as posing a low or medium risk of harm and, where possible, use material that identifies a direct or indirect victim of crime.

MEDIATOR, FACILITATOR AND AGENCIES

RJ practitioner titles vary. The most common description is mediator or facilitator. Those working for a Probation Trust are normally trained as social workers or probation officers and undergo up to an average of 30 hours RJ training or intermittent refresher courses. A move by the

²⁹ NOMS Commissioning Intentions Document 2013/14
³⁰ What Works with Domestic Violence Offenders, Ministry of Justice, National Offender Management Service May 2010
RJ Council in England and Wales has endorsed the creation of RJ Assessment centres to provide training and accreditation via the Skills for Justice Council and City and Guilds. The RJ Council has launched a register of qualified practitioners to provide an evolving badge of professional competence, also as a form of quality control. Those accredited have had to submit a portfolio of work which has been examined and assessed for quality and competence standards against the RJC Best Practice Guidance and Standards. Alongside the accreditation process the RJC have introduced a (Level 4) Vocational Qualification in RJ Practice which is aligned to the RJC Standards and Best Practice Guidance. Thames Valley Probation has been a pilot area for the assessment and delivery of this qualification, working with the RJC, Skills for Justice and the City and Guilds (awarding body). The qualification is for trained and experienced (one year of practice) staff. It is assessed by observation, examination of work products, interview and written work. The value of the qualification process is that it develops and maintains good professional practice and the experience of the pilot areas has been positive.

There are many agencies involved in the delivery of RJ work. Mainly these are governmental organisations, such as the Probation Service. The National Probation Service for England and Wales is a governmental Service, which falls under the authority of the Ministry of Justice. It is organised into Probation Trusts. In 2004 the National Offender Management Service (the NOMS) was created to enhance cooperation between the Prison Service and the Probation Service and because the Government wanted to encourage the private sector to be a major provider of probation work in the future. Since the creation of the Youth Justice Board (YJB) and the Youth Offending Teams (YOTs) in 1998, the Probation Service deals mainly with adults. Most YOTs, however, include members of staff from the Probation Service (Kalmthout, 2009).

Alongside local probation trusts, "a wide range of national and local organisations are involved in rehabilitative work with offenders. Offender Management remains the responsibility of probation staff although it is likely that the supervision of Unpaid Work will be done by a mixture of public, private and volunteer sector providers" (Kalmthout, 2009). The third sector cooperation with "Thames Valley Partnership" in Thames Valley is a model example of these evolving developments.

Furthermore, the Police is involved in RJ work in TV by carrying out "street RJ". This can be part of "common-sense policing", Youth Restorative Disposal, Youth Final Warning (as part of Youth Offending Teams) or Conditional Cautions for adults. Youth Offending Teams are multi-
agency teams including social workers, police, education, mental health workers who deliver a
range of services including restorative justice.

In terms of cooperation, partnerships are regarded as essential to effective RJ delivery in
Thames Valley because a great number of agencies deal with offenders and victims as they go
through the justice process. RJ delivery varies considerably from one area to another and is to
some extent a reflection of the quality of local partnerships. Some relevant partnerships are
required by statute namely:

- Local Criminal Justice Boards
- Crime and Disorder Reduction Partnerships
- Youth Offending Team Boards

GUIDELINES AND QUALITY CONTROL

There are no nationally enforced guidelines in England and Wales for carrying out restorative
justice work. Probation policy instruction 11/2008 section 9 details the expected standards for
work with victims. Also the Ministry of Justice NOMS Practice Framework National Standards
for the Management of Offenders (April 2011) provides a set of quality indicators for work with
victims. The Restorative Justice Council for England and Wales has issued (February 2011) its
‘Best Practice Guidance for Restorative Practice’\textsuperscript{31} and ´National Occupational Standards´. This
is not a mandatory policy but an evidence based approach to ensure RJ is delivered to the best
possible standards by public, private and voluntary providers. Also the former Youth Justice
Board, now part of the Ministry of Justice, and Local Authority Youth Offending Teams issue RJ
practice guidelines.

Quality control in RJ work is vital. No formal Quality Assessment (QA) structures exist in
victim offender mediation. Restorative conferencing and staff delivering RJ specified activity
programs undergo supervision and develop elements of their work through team meetings.
Victim awareness programs are evaluated by Probation Trust treatment managers and via the
review of sentence plans in OASys\textsuperscript{32} and thematic quality inspections. The Youth Justice Board

\textsuperscript{31} www.restorativejustice.org.uk
\textsuperscript{32} OASys is an electronic assessment tool pioneered by several psychologists working for the Home Office. The tool
underwent a number of controlled studies and was released for use by the Prison and Probation Services in 2001.
The original tool was paper based. An e-version was launched in 2006. It is important to know that the sections of
the tool contain 7 pathways which research shows that contribute to offenders either committing or avoiding the
occurrence of crime.
has also issued quality standards ratings for delivering RJ work. As a form of quality control, the RJ Council has launched a register of qualified practitioners to provide an evolving badge of professional competence. This is enhanced by the vocational qualification described above.

LEGAL BASE

LEGAL INSTRUMENTS FOR RJ WITH JUVENILES

The Criminal Evidence Act 1999 for Youth Panel Diversion schemes and the Criminal Justice and Immigration Act 2008 for Youth Rehabilitation Orders provide the legal basis for imposing RJ measures when dealing with Juveniles.

- The Final Warning
- The Referral Order
- The Youth Rehabilitation Order

Figure 8: Legal Instruments for RJ with Juveniles in TV

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Youth Justice Board Key Elements of Effective Practice; Source Document; Sherman, Strang and Newbury-Birch 2008
The Final Warning takes place at the police stage and can be a fully restorative measure but does not necessarily involve conferencing. It aims to divert juveniles from offending and prevent them entering the criminal justice system. As part of the Final Warning, the juvenile is referred to the Youth Offending Team (YOT) which then carries out an assessment usually followed by an intervention. There are two ways of using RJ as part of the Final Warning (Home Office, 2002: 19):

- a restorative warning involving the young person and his or her parents, wherever appropriate any other influential adults as necessary, with the views of the victim conveyed;
- a full restorative meeting/conference with the addition of the victim and victim supporter.

The Referral Order can be a fully restorative measure but does not include mediation. If the court makes a referral order, the juvenile is referred to the Youth Offender Panel. The initial panel meeting is attended by the offender and their parents. There, the offence and its consequences are reviewed. Furthermore, victims can attend this meeting or have their views represented. In the panel a plan is agreed upon which should include the following (Ministry of Justice, 2009: 8):

- reparation/restoration to the victim or wider community; and
- a programme of interventions/activities to address reoffending risk.

`Referral orders have led to greater involvement of local communities and businesses in the youth justice system and extended the collaboration between Youth Offending Teams and their partner agencies. Panel meetings should be held in community venues, where possible. At panel meetings, the discussion with the offender, victims and family members and the drawing up of the contract should be led by the community panel members, one of whom will chair. The community panel members will be encouraged to suggest interventions for inclusion in contracts that draw on community rather than just youth offending team resources´ (Ministry of Justice, 2009, 11).

Youth Rehabilitation Order is the standard community sentence which combines several sentences and thus creates flexibility. Restorative justice can be part of one requirement of the Youth Rehabilitation Order, namely the Intensive Supervision and Surveillance Order (ISSO). Here, RJ can mean a range of direct (conferences) and indirect reparative activities (e.g. Allotments, Conservation work, Reparation Centres, Cycle Projects, Charity Projects) and should embrace at least one session per week (Youth Justice Board, 2009).
Currently there are no specific legal statutes allowing adult courts to impose restorative sanctions, apart from financial compensation orders. The legal references for RJ adult sentences relate to the Criminal Justice Act 2003.

- The Conditional Caution – with RJ
- The Compensation Order (in its own right or in combination with another order)
- The Specified Activity Requirement – Community Order
- The Specified Activity Requirement – Suspended Sentence Order
- The Deferred Sentence

The Conditional Caution (Criminal Justice Act 2003, Sections 22-27) is an alternative to charge which allows offenders to receive a suitable disposal without the involvement of a court process. It is defined as “a caution which is given in respect of an offence committed by the offender and which has conditions attached to it”. ‘Restorative justice processes can be used as a condition of the caution (where the contact with the victim, direct or indirect, is itself the condition) if both victim and offender consent to this. Alternatively, they can be used as the decision-making process whereby conditions, such as compensation, rehabilitative activities, or other kinds of reparation, are agreed. It should be noted that in this second case, the outcome agreement arising from the process forms a basis for conditions to be approved or formulated by the prosecutor.
Notwithstanding the outcome agreement, the prosecutor retains a duty to ensure that the conditions are proportionate to the offending and meet the public interest requirements of the case. Taking account of the views of the victim, and any other conditions attached to the caution, the CPS/police will need to take a view as to which use of restorative justice is appropriate in a particular case (Criminal Justice Act 2003).

The Compensation Order can be made by the Magistrate when passing a sentence, either standing on its own or in combination with another order. The aim of this order is compensation to the victim of the crime made by the offender.

There are two forms of Specified Activity Requirements, either as part of the Community Order, in which case offenders who are sentenced serve their whole sentence in the community (not in prison) as long as they comply with the order or as part of the Suspended Sentence Order. According to this order, a suspended sentence of up to two years can be applied if the court has imposed a custodial sentence of between 14 days and one year. Instead of going to prison, the offender has to comply with one or more requirements out of a range of 12 requirements (Criminal Justice Act 2003, Section 190(1)). Generally these include doing unpaid work, being subject to a curfew, undertaking a treatment programme for alcohol or drugs or being subject to a supervision requirement. One of those requirements is an `Activity requirement´ as defined under section 201. As part of this Specified Activity Requirement, Thames Valley Probation currently offer six types as sentencing options to the courts for Community Orders or Suspended Sentence Orders. These include:

- Back on Track
- Control of Violence for Angry Impulsive Drinkers (COVAID)
- Employment, training and education
- Restorative Justice (conferences)
- Right with Money
- Thinking Ahead (women only)

The Deferred Sentence `enables the court to review the conduct of the defendant before passing sentence, having first prescribed certain requirements. It also provides several opportunities for an offender to have some influence as to the sentence passed (Sentencing Guidelines Council, 2004: 14):

a) it tests the commitment of the offender not to re-offend;

b) it gives the offender an opportunity to do something where progress can be shown within a short period;
c) it provides the offender with an opportunity to behave or refrain from behaving in a particular way that will be relevant to the sentence.’

CASE NUMBERS

Thames Valley has 2,180,200 inhabitants. The following restorative conference case numbers have been compiled by Thames Valley Probation. Each period goes from 1st of April until 31st of March.

<table>
<thead>
<tr>
<th></th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
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<tbody>
<tr>
<td>Conferences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adults</td>
<td>16</td>
<td>25</td>
<td>1734</td>
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</table>

2.2.2 GOALS AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Restorative Conferences/ Specified Activity Requirements</th>
<th>Restorative Conferences/ Prison</th>
<th>Restorative Conferences/ Pre-Sentence</th>
<th>YOS RJ Referral Order/ Police RJ/ Youth Restorative Disposals/ Community Resolution Order/ Youth Rehab. Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Interviews</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Legal Advice</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Agreement</td>
<td>Written</td>
<td>Written</td>
<td>Written</td>
<td>Written</td>
</tr>
<tr>
<td>Victim Fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

LEGAL AND SOCIAL GOALS

The legal goals within the adult RJ sentencing measures are to provide restoration to both victim and offender and to rehabilitate the offender. Further goals are to strengthen community sentences so as to divert offenders from short term sentences and provide better outcomes for victims. Youth RJ legal goals focus upon crime prevention and reparation. The social goals of RJ are more widely spread. These include restitution and reclaiming personal dignity for victims. Also with the advent of Crime and Disorder Partnerships, community safety and social cohesion feature prominently with the wider aims of RJ.

34 Note: In 2011/12 the 17 conferences arose from 84 successful completions of Specified Activity requirements in which the remaining 67 cases undertook indirect restorative processes, such as the completion of letters of apology, or where the victim could not be located, they took part in victim empathy work.
Phases of the Mediation Procedure

Phases of Restorative Conferences:

1. Introduction
2. What happened?
3. How have people been affected by what happened?
4. What can be done to repair the harm? Conference agreement is written up. Each item of the agreement should be SMARTS:
   - Specific
   - Measurable
   - Achievable
   - Realistic
   - Time-bound
   - Supported

5. Closure and Refreshments (Tea and Biscuits)

Preliminary RJ assessments are undertaken via separate interviews with offenders and victims. The interview with the offender normally occurs when the Courts request pre-sentence reports, and following the initial planning for an RJ conference. The extent of the contact with victims varies greatly and is dependent upon the needs of the victim and the role and remit of the agency commissioned to deliver the RJ work.

Legal advice on RJ procedures may be given to both parties. This normally concerns aspects of information disclosure regarding Data Protection Laws and the European Convention of Human Rights (Article 8)\(^\text{35}\). Offenders are given advice on the enforcement and sanctions pertaining to RJ court requirements. Offenders have to agree to take part in RJ, but enforcement action may be taken if they fail to comply after sentence.

Agreements for RJ work remain in their infancy. Oral agreements, supported by case records, are common in victim offender mediation work. RJ conferencing and Intensive Community Control reparation requirements have written agreements but are not legally binding either party to comply with the arrangement. Offender Assessment System (OASys) sentence plans and Community Payback agreements allow for the recording and evaluation of RJ work. Youth panels may also prepare community resolution agreements.

\(^{35}\) European Court of Human Rights – Convention for the Protection of Human Rights and Fundamental Freedoms, Registry of the European Court of Human Rights, June 2010
A victim compensation fund does not exist in England and Wales. Courts can require offenders to pay compensation to the victim as a sentence in its own right, or as part of other sentences, however these awards are dependent upon the offender’s ability to pay. The Criminal Injuries Compensation Authority (CICA) awards financial recompense to victims or their families following the reporting of crimes in more serious cases. This is a Government funded organisation that awards money to victims of crime who have been physically or mentally injured and are defined as blameless.\(^{36}\)

Information on the amount of money paid as part of financial compensations by offenders is not available.

**GENERAL ACCEPTANCE OF RJ AMONGST THE PUBLIC AND IN THE SYSTEM**

RJ is gradually coming into public consciousness, although the press is deeply sceptical and this has a powerful influence on both political and public acceptance. There is a view that RJ is suitable for young people and less serious crime, when the research evidence suggests the exact opposite. The criminal justice system and the Government are beginning to see RJ as being able to offer an improved service for victims, which is supported by a recent report by the national charity Victim Support. Criminal Justice agencies including Police, Probation, Crown Prosecution Service and Prisons are all supportive of RJ, but further widespread development is dependent on continuing Government support and financial resources from the reprioritisation of existing criminal justice activity. The response to the Green Paper `Breaking the Cycle´ from the coalition Government, suggests a wider use of RJ, both for young offenders and for adult offenders, the latter as diversion and pre-sentence (Ministry of Justice, 2011).

**VICTIM SUPPORT IN THE UK\(^{37}\)**

Victim Support (VS) is the independent national charity for people affected by crime. Our highly-trained staff and volunteers in the community give free and confidential help to victims of crime, their family, friends and other people affected. This takes the form of information, emotional support and practical help. Victims do not have to report a crime to the police to get our help and can ask for support at any time, regardless of when the crime has happened. We have a network of offices right across England and Wales running and co-ordinating our local services. We also

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\(^{36}\) [www.justice.gov.uk/guidance/compensation](http://www.justice.gov.uk/guidance/compensation)

\(^{37}\) Written by Linda Darrall.
run the Witness Service in every criminal court to help those called as witnesses and our Victim Supportline gives immediate help over the phone and puts people in touch with our local teams. We are not a government agency or part of the police. As well as providing services, we campaign for greater awareness of the effects of crime and to increase the rights of victims and witnesses. A few facts about Victim Support:

- Victim Support is the oldest and largest organisation dedicated to meeting the needs of victims and witnesses of crime in the world.
- Since Victim Support first began in 1974, we have helped over 25 million people affected by crime.
- Victim Support started helping witnesses in court in 1989 and now operates in every criminal court in England and Wales.
- HRH The Princess Royal has been a patron of Victim Support since 1989 and became the charity’s President in 2001.
- The UK Government has been a major funder of Victim Support since 1987. Victim Support remains an independent charity and is dependant of fundraising to achieve its work.
- The Victim Supportline was launched in 1998 and is our national telephone helpline which handles over 15,000 calls a year.
- Most of our front-line work with victims and witnesses is done by trained volunteers. We currently have over 6,000 people who give up their time for free to help others in their community affected by crime.
- Victim Support helps with all kinds of crime, including the most serious. This includes supporting over 1,000 people affected by homicide each year and over 20,000 victims of sexual offences.
- Our trained volunteers speak to almost 1.5 million victims of crime every year as well as 285,000 witnesses at court.
- During 2008 to 2009 we made almost 74,000 visits to see victims at home or somewhere else convenient.
- Between 2008 to 2009 our trained volunteers made more than 1,167,700 phone calls to talk to victims of crime.
- As a charity during 2008 to 2009, we sent 768,600 letters to victims – either with information they needed or because we had trouble reaching them by phone.
- In one year (2008 and 2009) we helped with over 21,000 claims for criminal injury compensation claims.
- Our trained volunteers organised 45,800 pre-trial and 124,034 on-the-day court visits to help witnesses prepare for giving evidence in the period of March 2008 to April 2009.
- During one year (2008 to 2009) we supported 26,700 witnesses who were vulnerable or intimidated witnesses and identified a further 15,600 people who we felt needed special help at court.
### 2.3 HUNGARY

#### 2.3.1 DESCRIPTION OF THE METHOD AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Victim-Offender-Mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Implementation</strong></td>
<td>2007</td>
</tr>
<tr>
<td><strong>Voluntary Process</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Stage</strong></td>
<td>Pre-sentencing, prosecutor, trial (only in first instance – suspended for up to 6 months)</td>
</tr>
<tr>
<td><strong>Referral</strong></td>
<td>Prosecutors or Judges</td>
</tr>
<tr>
<td><strong>Finances</strong></td>
<td>State</td>
</tr>
<tr>
<td><strong>Target Group</strong></td>
<td>Juveniles/Adults</td>
</tr>
<tr>
<td><strong>Type of Offences</strong></td>
<td>Medium – crimes against the person, against property + traffic-related offences</td>
</tr>
<tr>
<td><strong>Exclusion Criteria</strong></td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Mediator/Facilitator</strong></td>
<td>Probation officers + Specific mediator training</td>
</tr>
<tr>
<td><strong>Agency</strong></td>
<td>GO (Probation Service)</td>
</tr>
<tr>
<td><strong>Guidelines</strong></td>
<td>Institutional</td>
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<td><strong>Quality Control</strong></td>
<td>Collegial</td>
</tr>
<tr>
<td><strong>Legal Base</strong></td>
<td>Yes</td>
</tr>
</tbody>
</table>

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**METHODS, PROCEDURES AND IMPLEMENTATION**

**HISTORICAL OVERVIEW OF RJ IN HUNGARY**

Mediation as a method of conflict resolution is used in Hungary since 1992 in civil cases (e.g. in workplace, family, divorce disputes). Anyone who is registered on the roll of mediators may be a mediator for these purposes. During the mid-1990s a number of criminologists have argued for its extension to criminal cases and in 2003 this became a priority for the National Strategy for Community Crime Prevention (2003). However, steps towards the legal and institutional implementation of victim offender mediation were only taken in 2006.

**WHICH METHODS AND PROCEDURES OF RJ ARE BEING APPLIED?**

Mainly victim offender mediation is being applied in Hungary. Other restorative justice programs and projects include:

**Family Group Decision Making** – The Probation Service was piloting this restorative method to help inmates in the future reintegration. One of the key elements of successful reintegration and law-abiding life is the support from the family members. In this project, inmates and their relatives, friends or anybody who can be a supporter in the future have the possibility to meet on a facilitated dialogue before the date of release and discuss all the questions, fears, expectations they have in mind. This procedure helps the family to be prepared for the return of
the ex-offender and to give him/her the support needed. It also helps the inmate to know that he/she can rely on his supporters and knows the expectations towards him/her too. The speciality of the procedure itself is that after sitting in a circle together and raising the topics which have to be discussed, social workers, probation officers and other professionals give their view on the questions, but after that they leave the family alone, so they have their private time to make decisions together.

Mediation in Prisons – There was one running project in Hungary which aimed to pilot mediation between inmates and their victims or with other persons they are in conflict with. In this project the consortium had German members with the University Of Applied Sciences In Public Administration in Bremen and the Victim Offender Mediation Service Bremen. Faith based NGOs also run restorative justice programs in prisons, however, they usually do not involve victims.

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38 http://mereps.foresee.hu/en/about-mereps/
A case can only be referred to mediation if the criminal procedure has actually started. The prosecutor is the first person in the procedure who may order the suspension of the procedure and refer the case to mediation as a diversionary measure. Both the suspect and the victim (or their legal representatives) are entitled to initiate a mediation procedure, but the prosecutor also has the right to initiate it *ex officio* and to request the offender’s and the victim’s consent. If no referral was made for mediation in the prosecution phase of the procedure, the court of first instance may also decide to refer the case to mediation. However, no *ex officio* referral may be made in this
phase; the judge may only order mediation if one of the parties requests so, but consent from all parties involved is needed. More than 85% of the cases are referred to mediation by prosecutors; therefore the method has definitely become a measure of diversion.

The prosecutor or the judge must check:

- whether the offender has pleaded guilty during the investigation,
- whether the offender agreed to and is able to make amends or compensate the victim for the consequences caused by the crime,
- whether both the suspect and the victim have given their consent to the referral to mediation and
- whether it is possible to order mediation on the basis of the nature of the crime, the method of committing the crime and the person of the offender.

This last sentence of the law gives the prosecutor and the judge a wide-range of possibility of discretion to decide to refer or not a given case to mediation. As it can be seen, in this framework there is no possibility for mediation at post-sentence stage. Victim offender mediation is carried out with juveniles and adults by the probation service and is therefore financed by the State.

---

**TYPE OF OFFENCES AND EXCLUSION CRITERIA**

According to the applicable rules, the case can be referred to mediation if the crime is

- a crime against the person (*Criminal Code*, Chapter XII Titles I and III), or
- a traffic-related offence (*Criminal Code*, Chapter XIII), or
- a crime against property (*Criminal Code*, Chapter XVIII),

unless the particular crime is punishable by more than five years of imprisonment.

VOM is excluded by law in the following cases:

- if the offender is a recidivist offender committing a similar crime for the second time or committing a crime more than twice after having been sentenced to prison before;
- in case of organised crime;
- if the crime results in death;
- if the crime is committed intentionally
  - during the term of a suspended sentence;
  - after the offender has been sentenced to an unconditional term of imprisonment and before the unconditional term is served;
  - during probation; or
  - during the term of postponed accusation, or

- in case of crime committed intentionally within two years after successful victim offender mediation
MEDIATOR, FACILITATOR AND AGENCIES

`The National Probation Service is subordinated to the Justice Services of Ministry of Public Administration and Justice (ex Office of Justice). This Office has 20 County offices and several local offices. Each County Office has its own Probation Unit with two departments: the adult and the juvenile offender department´ (Kalmthout, 2009).

`The Probation Service has the following tasks: Expert work in court decision preparation; supervising assisting offenders; supervising community service; preparatory work in prisons prior to furlough or release, supervision during parole, voluntary aftercare and victim offender mediation´ (Kalmthout, 2009).

Since January 2007, mediation procedures in criminal cases have been carried out by probation officers providing mediation services at the Probation Service of the area the criminal court or the prosecutor has competence over.

Since 2008, attorneys who have received special training and have a contract in place with the Justice Service of Ministry of Public Administration and Justice for this purpose may also act as mediators. As it can be seen, in Hungary it is the government sector which is responsible for the operation of victim offender mediation. The mediators must attend at least two 30-hour courses in mediation, which include both theoretical and practical training, and then they must also complete an approximately 90-hour theoretical course on restorative justice. They must also participate in the mentoring programme, attend regular case discussions and meet with their supervisor. There are around 70 specially trained mediators now in Hungary who provide criminal mediation services. Around 58 of them are probation officers and 10 of them are attorneys.

GUIDELINES AND QUALITY CONTROL

The Hungarian professional standards/institutional guidelines regarding VOM consist of 71 pages and have the following main chapters:

1. Antecedents and reasons to introduce VOM
2. Laws regulating VOM
3. Preconditions to use VOM and rules when VOM is excluded/not applicable
4. Basic principles of VOM
5. General rules of VOM
6. VOM procedure – according to the scope of the authority which orders it (prosecutor or judge)
7. VOM procedure – according to the scope of the mediator
8. Result of VOM, guidance about how the criminal procedure continues
9. Stages/steps of VOM procedure (diagram of procedure)
10. Annex: List and samples of administration forms of VOM
11. Appendix on the costs of VOM (what, who, when and how to pay)

LEGAL BASE

Hungary has introduced VOM to fulfil its legislative duty under the European Union Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. The Code of Criminal Procedure and the Criminal Code have been amended adding a set of rules to regulate mediation in criminal procedure. Detailed rules on victim offender mediation can be found in the Act on Mediation in Criminal Cases (2006/123.) and in several decrees of the Minister of Justice.

CASE NUMBERS

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
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<tr>
<td>VOM</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Juveniles</td>
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<td>355</td>
<td>360</td>
<td>398</td>
<td>550</td>
</tr>
<tr>
<td>Adults</td>
<td>2152</td>
<td>2621</td>
<td>2798</td>
<td>3134</td>
<td>4244</td>
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<td>2451</td>
<td>2976</td>
<td>3158</td>
<td>3532</td>
<td>4794</td>
</tr>
</tbody>
</table>

Figure 11: VOM Case Numbers in Hungary
2.3.2 GOALS AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Victim-Offender-Mediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Interviews</td>
<td>No</td>
</tr>
<tr>
<td>Legal Advice</td>
<td>No</td>
</tr>
<tr>
<td>Agreement</td>
<td>Written – legally binding</td>
</tr>
<tr>
<td>Victim Fund</td>
<td>No</td>
</tr>
</tbody>
</table>

PHASES OF THE MEDIATION PROCEDURE

Phases of Victim Offender Mediation:

1. Mediator welcomes everyone present and informs about the phases of the procedure, the setting which allows for fair conversation, e.g. seating, rules, transparency, impartiality of the mediator
2. Each party gets the chance to outline their subjective experience of the occurred and related emotions
3. Look back at the occurred and reappraise related emotions
4. Find possible solutions and suggestions for restitution
5. Write down results in an agreement
6. Make sure agreement is realisable e.g. pay instalment
7. Feedback/Summary

Preliminary interviews are not carried out by mediators in Hungary. Participants are usually informed about the possibility of VOM by the police, by their lawyers or by probation officers providing a report during the investigation phase of the criminal procedure. After it has been checked whether the statutory conditions are met, and after a possible personal hearing of the parties where they give their consent, the prosecutor or the court makes a referral decision and suspends the criminal procedure for a maximum period of 6 months.

The mediator then contacts the parties following receipt of the decision on referral for mediation and summons them to the mediation session within a period of 15 days. The meeting, which usually takes about 2-3 hours, provides the parties with an opportunity to explain what effect the crime has had on them, the offenders may express that they take responsibility and apologise to the victim. Parties are also provided with an opportunity to come to an agreement on compensation for the damage or any other kind of restitution. If the parties reach consensus on the content of the agreement, the mediator puts this in writing, which is signed by each party.

For the principle of confidentiality, facts and information gained in the mediation procedure cannot be used as evidence in the criminal procedure and the mediator cannot be called to testify.
The amount of money paid as financial compensations by the offenders to the victims as a result of victim offender mediation, was 227,768,000 HUF (approximately 804,834 EUR) in 2010 and 285,163,000 HUF (approximately 1,007,643 EUR) in 2011 in Hungary altogether. However, there is no general statistics available on the rate of claims for material and non-material compensation in victim offender mediation cases.

VICTIM SUPPORT IN HUNGARY

HISTORY OF VICTIM SUPPORT IN HUNGARY BEFORE 2006

Victim support activities in Hungary started from 1989 and in the 1990s – firstly by non-governmental organisations – several steps were taken in order to help victims of crime. In 1989 the White Ring Non-profit Organisation was founded which has been providing services for victims since then. (The German Weisser Ring NGO was the model of this association.) There are other civil organisations working in this field, but most of them are specialised in victims of different types of crime, like NANE dealing with victims of domestic violence, or ESZTER Foundation offering services for victims of sexual violence.

Besides these non-governmental efforts, the Hungarian State also began taking actions for crime victims at the end of the 1990s. Between 2000 and 2005, the Public Foundation for a Secure Hungary dealt with the compensation of violent crimes’ victims, providing compensation for approximately 1700 victims from the Hungarian State during these years. The Police also have been taking part in victim protection since 1999. Currently there are victim protection police officers working within the Police’s crime prevention units in the whole country (however victim protection is not their primary duty).

The most important organisation today in victim support in Hungary is undoubtedly the Victim Support Service, a government institution, which was established in 2006 according to Act Nr. 135 of 2005 on Crime Victim Support and State Compensation (hereinafter Victim Support Act) under the supervision of the Ministry of Justice. The Victim Support Act was based on two EU regulations: Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings and Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

39 Written by Zsófia Tóth and Edit Törzs.
LEGAL AND INSTITUTIONAL FRAMEWORK

LEGAL FRAMEWORK - DEFINITION OF VICTIM, SCOPE OF THE VICTIM SUPPORT ACT
According to the Victim Support Act victim can be the injured party of a crime committed in the territory of Hungary or any natural person who has suffered injury as a direct consequence of a criminal act, in particular bodily or emotional harm, mental shock or economic loss. Victims not only can be Hungarian citizens, but also citizens of any EU Member State, citizens of any non-EU country residing lawfully in the territory of the European Union, stateless persons residing lawfully in Hungary, victims of trafficking in human beings or any other persons deemed eligible by virtue of international treaties or on the basis of reciprocity.

The essence of victim support is that on the basis of social solidarity and equity, the State provides services for those it had not been able to protect from crime. According to the Act, victim support aims at mitigating the social, moral and pecuniary injuries of victims whose quality of life has been endangered due to a criminal act.

INSTITUTIONAL FRAMEWORK - ORGANISATION, VICTIM SUPPORT ADVISORS
The Victim Support Service started its activity in 2006 as part of the Office of Justice (also covering other services such as Probation, victim offender mediation, Legal Aid, Restitution and Lobby Authority) under the supervision of the Ministry of Justice. The Office of Justice’s main body was the Central Office of Justice and there were 20 local offices at the county seats of Hungary and in the capital, Budapest. (Hungary consists of 19 counties and the capital, altogether 20 administrative units.)

In 2011 the institutional framework was amended and the Justice Service of Ministry of Public Administration and Justice was established as the successor of the Office of Justice. This is a central budgetary agency with nationwide competence which is responsible for the professional leadership and supervision of probation, legal aid and victim support in Hungary. Our task (at the Victim Support Department) is to provide methodological help and organise trainings for the local victim support services, consider appeals on the second instance and petitions under the principle of equity and also to deal with international cooperation matters. The local justice services - doing the practice of victim support (and also probation and legal aid) at the county seats and in the capital - became part of the Government Offices of each county of Hungary.
Since the ministerial structure was changed in 2010, the professional supervision of victim support now belongs to the Ministry of Interior, while the organisational background is supervised by the Ministry of Public Administration and Justice. The Victim Support Service has been operating with around 48 paid workers in the whole territory of Hungary. At most local justice services, Victim Support Departments employ 1 or 2 lawyers as victim support specialists.

FORMS OF VICTIM SUPPORT

Besides providing basic and general information to everyone turning to the Victim Support Service (regardless of their victim status), the Hungarian system consists of two main forms of help for victims of crimes. One is the system of victim support services and the other is the form of state compensation. Victim support services contain: facilitating the protection of the victim’s interests, granting instant monetary aid and providing legal aid (throughout the Legal Aid Service). The main difference is that while victim support services are available for victims of all types of crimes, only victims of violent intentional crimes may be eligible for state compensation. However, by both forms of help, the Victim Support Service needs a certificate issued by the police, the public prosecutor or the court verifying that the crime has been reported to the authorities. If the victim cannot provide the certificate, it must be obtained by the Service.

INFORMATION AND ADVICE

Everyone who turns to the Victim Support Service is entitled to information and advice free of charge. This means that not only victims, but anybody can get information from the Service on the following:

- the rights and obligations of victims in criminal proceedings,
- the forms of victim support available to him/her and the conditions for application therefore,
- any other available benefits, allowances and opportunities to assert his/her rights,
- the contact details of state, local government, civil and church organisations involved in helping victims of crime, and
- the opportunities to avoid secondary victimisation with a view to the type of the criminal act.

VICTIM SUPPORT SERVICES

a) Facilitate the protection of victims’ interests

The Victim Support Service helps victims, in a manner and to the extent they may require, through the enforcement of their fundamental rights and for having access to healthcare, health
insurance and social welfare services. Moreover, the Service provides legal advice and assistance to help the victim to get remedy for the injury. There is no deadline for submitting an application for this kind of service. This type of help is very similar to the work of social workers.

b) Instant monetary aid
This monetary aid may cover the victim’s extraordinary expenses in connection with housing, clothing, nutrition and travel, medical and funeral expenses if he/she is unable, as a consequence of being victimised by a crime, to cover such expenses. The application for this aid shall be submitted within 5 days after the crime was committed. The victim can be entitled to this aid irrespective of his/her general financial standing. Maximum amount of the aid changes every year (according to the nationwide gross monthly average income in Hungary). In 2011 the maximum amount is approximately 300 euro.

c) Legal aid
If the injury to a needy victim can only be remedied by means of legal aid and help defined in the Legal Aid Act, the Victim Support Service refers the case to the competent Legal Aid Service. Only indigent victims can get free legal aid. This means that their regular monthly income may not exceed a certain amount of money (approximately 600 euro in 2011). There is no deadline for submitting an application for this aid.

STATE COMPENSATION

Only those indigent victims are entitled to state compensation who have suffered a violent and intentional criminal act and as a direct consequence, their physical integrity or health has been seriously damaged. Furthermore, compensation can be provided to a natural person who is a next of kin, spouse or common-law spouse of the deceased or injured victim of a violent intentional crime or whom such a victim is or was obliged to maintain or who has arranged for the funeral of such a victim. The form of state compensation can be lump-sum cash payment or regular monthly instalments. The application form for state compensation has to be submitted within three months after the crime was committed.

State compensation has a special procedural system. The procedure – in harmonisation with the EU Council Directive relating to compensation to crime victims – consists of two phases: the assistance and the decision-making phase. The assisting authorities (in Hungary all of
the local victim support services) provide help for victims in connection with their compensation claim, whereas the deciding authority (the Budapest Victim Support Service) makes its decision on the merits upon the attached receipts and documents.

FINANCIAL BACKGROUND AND STATISTICS

Instant monetary aid and state compensation are paid from a separate budgetary fund. In the Budget Act a not maximised Appropriation Chapter is regulated under the name `Victim Support`. The Appropriation Chapter contains a certain amount of money every year which can be filled up by the Ministry of Interior during the year if it runs out.

The next table shows the growing number of clients and contacts of the Victim Support Service year by year:

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
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<tr>
<td>Information and advice</td>
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<td>4359</td>
<td>8546</td>
<td>8651</td>
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<tr>
<td>Victim Support Services</td>
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<td>8536</td>
<td>13904</td>
<td>12993</td>
</tr>
<tr>
<td>State Compensation</td>
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<td>411</td>
<td>359</td>
<td>501</td>
<td>425</td>
</tr>
<tr>
<td><strong>Altogether</strong></td>
<td><strong>8749</strong></td>
<td><strong>11501</strong></td>
<td><strong>13254</strong></td>
<td><strong>22951</strong></td>
<td><strong>22069</strong></td>
</tr>
</tbody>
</table>

According to the Criminal Statistics of 2010 there were around 248.000 registered natural person victims in Hungary. About 7,8% of these people were helped and supported by the Victim Support Service in 2010. (In 2006 when the Service started its activity, this rate was 4%, in 2007 it was 5%, in 2008 it was 5,7%, whilst in 2009 it rose to 9,24%). The rising case numbers are mainly due to the growing reputation of the Service. In this regard, the role of the Police has to be highlighted because the Police have an obligation to inform every victim about the Victim Support Service when they report the crime. Moreover, most (approximately 95%) of the victims turn to the Service during the police investigation, and as a result, effective cooperation between the Victim Support Service and the Police is essential.

LINKS TO VICTIM OFFENDER MEDIATION (VOM) AND RESTORATIVE JUSTICE (RJ)

In case of certain criminal offences (crimes against the person, traffic-related offences and crimes against property), since 2007 victims have had the possibility to require victim offender mediation during the criminal procedure and to ask for restitution from the known perpetrator of
the criminal offence. Since both services (victim support and victim offender mediation) are quite new in Hungary, there is no structured way of collaboration regarding VOM (RJ) cases. However, there are some contact points. The Victim Support Service can give information – either in a verbally or by handing over a leaflet on mediation – to the victim on the possibility of applying for victim offender mediation. Moreover, under facilitating the protection of the victim’s interests, the Victim Support Service can help the victim with initiating VOM at the criminal justice system (mostly at the prosecution phase of the criminal procedure).

CHANCES/POSSIBILITIES

As it can be seen from the abovementioned, victim support is rather law-oriented in Hungary, operating almost exclusively with legal professionals. However, the defaults of the victim support system have become visible during the first years of operation and steps were taken to supplement the system within a project called TÁMOP 5.6.2. (Social Renewal Operational Programme), which is co-financed by the European Union and the Hungarian Government. The project – running in three regions of the country between 2010 and 2012 – has three main developmental goals regarding victim support: to ensure instant help for victims provided by psychologists, to establish a free 24-hour helpline for crime victims and to create a volunteer-network for victims with volunteers available in rural areas outside the county seats. One of the newly-employed psychologists is an expert in family group conferencing in Hungary.

POSSIBLE RISKS

As the number of victim support advisors is limited (meaning 1 or 2 advisors per counties), growing case numbers might cause difficulties in the future. Since we cannot provide regular supervisions for the local victim support specialists due to financial reasons, the prevention or treatment of burnout might be the key issue for them in the long run. From the victims’ point of view, too much bureaucracy in the administrative procedure (e.g. paperwork, procedural deadlines) can be a problem.

RECOMMENDATIONS FOR FURTHER DEVELOPMENT

Providing instant psychological and emotional support, better accessibility of the existing services in space (not only at the county seats, but also in smaller towns and villages) and in time (beyond the official working hours) and finally, upon the request of the victim, better availability of restorative justice services might be the plans and strategies for the future. Organising RJ
trainings for victim support advisors and raising knowledge about victim support and restorative justice possibilities are also key issues in Hungary that need to be handled in order to reach further developments in these fields.
2.4 ESTONIA

2.4.1 DESCRIPTION OF THE METHOD AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Reconciliation in Criminal Cases 40</th>
<th>Mediation for Juveniles</th>
<th>‘The Way’ Victim Empathy Training</th>
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</thead>
<tbody>
<tr>
<td>Voluntary Process</td>
<td>Yes</td>
<td>Partly</td>
<td>Yes</td>
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<td>Stage</td>
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<td>Pre-sentencing</td>
<td>Post-sentencing/prison</td>
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<tr>
<td>Referral</td>
<td>Prosecutors/Court</td>
<td>Juvenile Committee</td>
<td>Chaplain/Self-referral</td>
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<tr>
<td>Finances</td>
<td>State</td>
<td>State/Local Government</td>
<td>State/Prison</td>
</tr>
<tr>
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<td>Juveniles/Adults</td>
<td>Juveniles</td>
<td>Juveniles/Adults</td>
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<td>Minor</td>
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<td>Yes</td>
<td>No</td>
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<td>Mediator/Facilitator</td>
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<td>Juveniles Committees</td>
<td>Chaplains + Training (24 h)</td>
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<td>GO</td>
<td>NGO</td>
<td>GO</td>
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<tr>
<td>Guidelines</td>
<td>National</td>
<td>Institutional</td>
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<td>Quality Control</td>
<td>Collegial</td>
<td>Collegial</td>
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<tr>
<td>Legal Base</td>
<td>Yes</td>
<td>Yes</td>
<td>Indirect</td>
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METHODS, PROCEDURES AND IMPLEMENTATION

HISTORICAL OVERVIEW

First documented signs of RJ in Estonia are from the year 1995, when the book ‘Convicted: New Hope for Ending Americas Crime Crises’ by Charles Colson and Daniel van Ness was translated. RJ reached Estonia through the contacts of Avo Üprus with Prison Fellowship International. Avo Üprus initiated the work of several NGOs, as the Centre of Criminal work of the Lutheran Church of Estonia, the Social Rehabilitation Centre and Victim Support. All those organisations are based on restorative principles. There were some ideas to implement RJ already at the soviet time. But RJ was first mentioned in the legislation in 2000, when the Victim Support Act was discussed. Settings of mediation came into force in 2007 in the Code Criminal Procedure. Since then, it is possible for prosecutors to refer the case to mediators and mediation has become more and more accepted by judges, prosecutors and by the public.

On the other hand there are still strong prejudices about mediation and RJ in general and it is often seen as a soft way of dealing with crime. There are no victim satisfactions or any other surveys made in Estonia, so it is hard to evaluate the effects of mediation, but a growing trend of cases referred to mediation allows assume that results have been rather satisfying.

40 Despite the terminology, the essence of the procedure is the same as victim offender mediation.
Beside reconciliation in criminal cases, which is based on the Code Criminal Procedure and carried out by state victim support workers, RJ is strongly represented in civic society. The Baltic Crime Prevention Institute has published three books on RJ and has initiated several projects, which are about RJ in prison, community and schools.

WHICH METHODS AND PROCEDURES OF RJ ARE BEING APPLIED?

For adult and juvenile offenders conciliation, which is basically the same procedure as victim offender mediation, is being applied. For juveniles there is also the possibility of mediation being carried out as part of the decision of a juvenile committee. In this case, the juvenile committee decides which kind of measure will be used. The juvenile can decide whether to participate, but the procedure is not absolutely voluntary because some kind of sanction will be applied anyhow.

The program `The Way´ is victim empathy training for prisoners. Prisoners are free to participate according to their individual plan of imprisonment and the chaplain’s recommendation. Religious beliefs are not required, but tolerance on other participant’s worldview is expected. Direct victims of any participating offender do not participate, but a surrogate victim takes part in one of the modules and this is absolutely voluntary.
Conciliation in criminal cases usually take place during the prosecutor’s investigation or after trial as part of the sentence or as a condition of probation. Juvenile cases are referred by a committee as one of the conditions of a sanction, which can be used when a juvenile commits a crime and the case would not be send to court. All programs are financed by the state. The program `The Way´ takes place after sentencing, in prison and cases are referred and carried out by prison chaplains.
TYPE OF OFFENCES AND EXCLUSION CRITERIA

The following exclusion criteria apply in conciliation in criminal cases:

- First degree crime
- Certain types of crimes, listed in Penal Code § 203 (1) 1.
- Offences committed by adults against children and juveniles
- Offences against humanity and international security, against state, occupational, general dangerous and crimes against administration of justice
- Second offense of the same type of crime
- Violation of probation order

In juvenile conciliation there are no exclusion criteria, but since it is just one of the sanctions that can be used, the Juvenile Committee needs to evaluate, whether mediation would be effective and it means, that there may occur quite a lot of subjectivism and the use of mediation depends more or less on Juvenile Committee’s subjective decision. There is no exclusion criteria in the program ‘The Way’.

Any types of crime can be referred to mediation, as long as they are not listed above. In practice 95% of mediations are carried out in cases of bodily mistreatment, from which 75% are cases of domestic violence (Mehide-Valtin, 2012).

MEDIATOR, FACILITATOR AND AGENCIES

Conciliation in criminal cases is carried out by Victim Support workers. This agency is part of the Office of Social Security and belongs to the domain of Ministry of Social Affairs. Mediators have passed 160 hours mediation training. There are 20 qualified mediators in Estonia in 2012. Mediation for Juveniles is carried out by Juveniles Committees mediator. There are not certain restrictions, who can be mediator according to the Juvenile Sanction Act, so they can be social workers, school staff etc. There are no described requirements for mediators and there is no available information about their preparation. The program ‘The Way’ is facilitated by prison chaplains, who have passed 24 hours RJ training. The probation system is neither involved in the mediation process at any point nor in the referral of cases in Estonia.

GUIDELINES AND QUALITY CONTROL

Guidelines are described in the Code of Criminal Procedure as well as the Government Act nr 188 from 13.07.2007 ‘The Order of execution of Mediation Procedure’ and two directives of the director of the Office of Social Security: nr 252 from 19.10.2007 ‘The Order of execution of
Mediation Procedure´ and nr 70 from 30.06.2009 ´The Standard of Mediation service´. For juvenile mediation, the guidelines are described in the Juvenile Sanction Act. In neither of the programs there is direct quality control, whether the victim or prosecutor has the right to lodge a complaint if the offender has not met the conditions of the agreement (e.g. has not compensated damages or has not participated in treatment etc.) between the offender and the victim.

In juvenile cases, the mediator (who may be a representative of school, Juvenile Committee, social worker etc.) of the procedure, which was chosen by the Juvenile Committee, has a duty to assure, that the sanction achieves its goals. The mediator reports to the Juvenile Committee quarterly.

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**LEGAL BASE**


Conciliation is regulated by two legal instruments:

I. Code of Criminal Procedure 2007

(1) If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal proceedings and the suspect or the accused has reconciled with the victim pursuant to the procedure provided for in § 203 of this Code, the Prosecutor’s Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim. Termination of criminal proceedings is not permitted:

1) in criminal offences specified in §§ 122, 133, 134, 136, 138, 139, 141–143, 214 and 263 of the Penal Code;

2) in criminal offences committed by an adult person against a victim who is a minor;

3) if the criminal offence resulted in the death of a person;

4) in crimes against humanity and international security, against the state, criminal official misconduct, crimes dangerous to the public and criminal offences directed against the administration of justice.

(2) A request of a Prosecutor’s Office shall be adjudicated by a ruling of a judge sitting alone. If necessary, the conciliator, the prosecutor, the victim, the suspect
or accused and, at the request of the suspect or accused, also the counsel shall be summoned to the judge for the adjudication of the request of the Prosecutor’s Office.

(3) In the event of termination of criminal proceedings, the court shall impose, at the request of the Prosecutor’s Office and with the consent of the suspect or the accused, the obligation to pay the expenses relating to the criminal proceedings and to meet some or all of the conditions of the conciliation agreement provided for in subsection 203² (3) of this Code on the suspect or accused. The term for the performance of the obligation shall not exceed six months. A copy of the ruling shall be sent to the conciliator.

(4) If the judge does not consent to the request submitted by the Prosecutor’s Office, he or she shall return the criminal matter on the basis of his or her ruling for the continuation of the proceedings.

(5) If a person with regard to whom criminal proceedings have been terminated pursuant to subsection (1) of this section fails to perform the obligations imposed on him or her, the court, at the request of the Prosecutor’s Office, shall resume the criminal proceedings by an order.

(6) If the object of criminal proceedings is a criminal offence in the second degree for which the minimum rate of imprisonment is not prescribed as punishment or only a pecuniary punishment is prescribed as punishment by the Special Part of the Penal Code, the Prosecutor’s Office may terminate the criminal proceedings and impose the obligations on the grounds specified in subsections (1) and (3) of this section. The Prosecutor’s Office may resume terminated criminal proceedings by an order on the grounds specified in subsection (5) of this section.

(7) A victim has the right to file an appeal against a ruling on termination of the criminal proceeding made on the basis of this section within ten days as of receipt of a copy of an order on termination of the criminal proceedings pursuant to the procedure provided for in §§ 228–232 or §§ 383–392 of this Code. (17.01.2007 entered into force 18.02.2007 – RT I 2007, 11, 51)

§ 203². Conciliation proceedings
(4) The Prosecutor’s Office or court may, on the bases provided for in subsection 203¹ (1) of this Code, send the suspect or accused and the victim to conciliation proceedings with the objective of achieving conciliation between the suspect or accused and the victim and remedying of the damage caused by the criminal offence. The consent of the suspect or accused and the victim is necessary for application of conciliation proceedings. In the case of a minor or a person suffering from a mental disorder, the consent of his or her parent or another legal representative or guardian is also required.

(5) The Prosecutor’s Office or court shall send the order or ruling on application of conciliation proceedings to the conciliator for organisation of conciliation.
The conciliator shall formalise the conciliation as a written conciliation agreement which shall be signed by the suspect or accused and the victim and the legal representative or guardian of a minor or a person suffering from a mental disorder. A conciliation agreement shall contain the procedure for and conditions of remedying of the damage caused by the criminal offence. A conciliation agreement may contain other conditions.

The conciliator shall send a report with a description of the course of conciliation to the Prosecutor’s Office. In event of conciliation, a copy of the conciliation agreement shall be annexed to the report.

After the termination of the criminal proceedings, the conciliator shall verify whether or not the conditions of the conciliation agreement approved as an obligation pursuant to the procedure provided for in subsection 203\(^1\) (3) of this Code are met. A conciliator has the right to request submission of information and documents for confirmation of the performance of the obligation. The conciliator shall notify the Prosecutor’s Office of performance of the obligation failure to perform the obligation.

The conciliator has the right, in performing his or her duties, to examine the materials of the criminal matter with the permission of and to the extent specified by the court. A conciliator shall maintain the confidentiality of facts which have become known to him or her in connection with the conciliation proceedings. A court or a Prosecutor’s Office may summon a conciliator for oral questioning in order to clarify the content of the agreement of the conciliation proceedings.

II. Victim Support Act 2003

§ 6\(^2\). Conciliation service
(7) For the purposes of this Act, conciliation service is a public service which consists of organisation of the conciliation procedure provided for in § 203\(^2\) of the Code of Criminal Procedure and monitoring of compliance with the requirements of a written agreement entered into as a result thereof.

Application of a sanction provided for in clause 3 (1) 4) of the Juvenile Sanctions Act is also deemed to be conciliation service. [RT I 2007, 11, 51 – entry into force 18.02.2007]

§ 6\(^4\). Provision of conciliation service
(1) The provision of conciliation service shall be ensured by the Social Insurance Board in accordance with the principle of regionality.
(2) The procedure for conducting conciliation service shall be established by the Government of the Republic.[RT I 2007, 11, 51 – entry into force 18.02.2007]
The first cases were referred to mediation in 2007. At the beginning, there were many suspicions about conciliation and because of that there were only few cases (35 in 2007) referred to mediators by prosecutors. After five years prosecutors and judges have got more used to the idea of conciliation and more and more cases were referred. In 2010 and 2011 there were approximately on 420-500 cases of Mediation (Mehide-Valtin, 2011).

<table>
<thead>
<tr>
<th>VOM</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults</td>
<td>32</td>
<td>91</td>
<td>221</td>
<td>417</td>
<td>231</td>
</tr>
</tbody>
</table>

Figure 13: VOM Case Numbers in Estonia

41 Only first six months of 2011 (January-June).
2.4.2 GOALS AND PROCEDURE

<table>
<thead>
<tr>
<th>Method</th>
<th>Reconciliation in Criminal Cases</th>
<th>Mediation for Juveniles</th>
<th>“The Way” Victim Empathy Training</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Interview</td>
<td>Yes</td>
<td>Depends</td>
<td>Yes</td>
</tr>
<tr>
<td>Legal Advice</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Agreement</td>
<td>Written – legally binding</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Victim Fund</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

LEGAL AND SOCIAL GOALS

In conciliation in criminal cases the legal goal is to reach an agreement of conciliation and compensation of damages caused by crime between suspected or accused person and the victim. The social goals are peace-making, repair harm and heal relationships. In mediation of juveniles the legal and social goals are to assist the juvenile in rehabilitation process and prevent reoffending.

PHASES OF THE MEDIATION PROCEDURE

Phases of Conciliation:

1. Mediator welcomes everyone present and informs about the phases of the procedure, the setting which allows for fair conversation, e.g. seating, rules, transparency, impartiality of the mediator
2. Each party gets the chance to outline their subjective experience of the occurred and related emotions
3. Look back at the occurred and reappraise related emotions
4. Find possible solutions and suggestions for restitution
5. Write down results in an agreement
6. Make sure agreement is realisable e.g. pay instalment
7. Feedback/Summary

Preliminary interviews are carried out by the prosecutor and the mediator separately with all involved parties. In mediation of juveniles, the procedure is quite flexible, so whether there will be preliminary interviews or not, depends on the particular mediator. There is no direct legal advice offered in preliminary interviews by the mediator. Victims are generally advised by the prosecutor.

Written agreements of conciliation and compensation of damages caused by crimes between suspected or accused person and the victim will be written and signed by everyone. The

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42 Despite the terminology, the essence of the procedure is the same as victim offender mediation.
agreement is legally binding and entails obligations for offenders (for example addiction treatment) and restitution.

There is no general statistics available on financial compensation amounts paid to victims by offenders as part of mediation. One mediator has however reported that 27% of cases include claims for material compensation. Around 5% of those claims are however not completed.

GENERAL ACCEPTANCE OF RJ AMONGST THE PUBLIC AND IN THE SYSTEM

There are still quite strong prejudices about mediation and RJ in general amongst the public as well as professionals. The general mind-set is rather punitive. This trend was clearly articulated by the chairman of the Estonian Supreme Court, who wrote that punishing has become Estonian national religion, because 51% of the Estonian population has a criminal record.

VICTIM SUPPORT IN ESTONIA

First ideas of victim support in Estonia arose about 20 years ago. First pioneers of victim support were Avo Üprus and his family, who formed the NGO ‘Estonian Crime Victim Support Society’. Unfortunately their work is not very well documented and because of many moves there is just little written material about this time. However Estonian Crime Victim Support Society published a `Victim Support handbook´ in 2002 (Kuriteoohvrite Toetamise Ühing, 2002) and initiated a debate about legislation dealing with victim support issues. Due to their hard lobby work, the Victim Support Act came into force in 2003 (Riigikantselei, 2010, Ohvriabiseadus). That was an important breakthrough at least in two senses. First of all the state showed the need and interest in caring for victims and the second, victims started to get much more attention and real practical and material help. It was also an important paradigmatic shift, which moved public opinion and state politics just a little from a strongly retributive mind-set towards a more restorative approach. There was not a revolution, but just a little impulse for evolution of restorative justice and little by little the Estonian state and society has adopted new restorative ideas and practices.

The Victim Support Act regulates the victim support service, the conciliation service and restitution of caused harm.

§ 1. (1) This Act provides the bases for state organisation of victim support, organisation of conciliation service, compensation for the cost of the

43 Written by Jaanus Kangur.
In 2005 state victim support was established, which is ran by the Office of Social Security under the Ministry of Social Affairs. In September 2012 there were 22 victim support workers all over Estonia (Sotsiaalkindlustusamet, 2012). They have passed 160 hours training and most of the victim support workers hold a degree in psychology or in social work.

The ´Estonian Crime Victim Support Society´ has about 100 volunteers and 4 offices in different parts of Estonia (Kuriteoohvrite Toetamise Ühing, 2010). The NGO is a member of Victim Support Europe. Because of the lack of state support and private donators, the capability to offer a service with high quality all around Estonia, has recently decreased. Even though the ´Estonian Crime Victim Support Society´ has a significant role in supporting the victims who do not qualify as clients for state victim support e.g. cases, which are not reported or which do not qualify as a subjects to police investigation. State victim support is more regulated and deals with certain types of offences with a fixed agenda, which makes the procedure very official and may feel uncomfortable for victims to participate.

**VICTIM SUPPORT AND RESTORATIVE JUSTICE**

State victim support officers operate also as mediators in criminal matters, mostly in the cases of domestic violence. Cases are addressed to mediators by prosecutors and are voluntary. The conciliation process is rather formal and ends with a written contract, which constitutes the requirements for perpetrator. The requirement may be some amendments, as working on behalf of the victim, paying restitution or may include requirements regarding behavioural changes of the offender, such as addiction treatment, apology etc. (Mehide-Valtin, 2011). Guidelines for the conciliation procedure are mainly described in the Code of Criminal Procedure, which describes when conciliation is applied, what the exclusion criteria are and how the procedure is carried out.

There are some lower level legal instruments, which regulate the conciliation procedure, as the Government Act Nr. 188 from 13.07.2007 ´The Order of execution of Mediation Procedure´ (Riigikantselei, 2010, Lepitusmenetluse läbiviimise kord) and two directives of the director of the Office of Social Security: Nr. 252 from 19.10.2007 ´The Order of execution of Mediation Procedure´ and Nr. 70 from 30.06.2009 ´The Standard of Mediation service´ (Justiitsministeerium, 2010).
There is a lack of information given to victims about the benefits of mediation, thus only very few are aware of alternatives to the official criminal procedure, which is expensive, longstanding and stressful. Many victims are secondary victimised by the criminal procedure, whether by police investigation or the court procedure. Conciliation and the restorative approach in general is quite poorly launched for Estonian public and because of that there are very strong retributive attitudes and even among victims, there are strong tendencies to expect tough punishment from the criminal case in the first place. This does not reflect actual needs of the victims, but rather characterises the information field in which ordinary people are living. This means that there is a need for better promotion of the essence and benefits of restorative justice.

Unfortunately there has never been an appropriate victim satisfaction survey made in Estonia, so we do not have empirical data about victims’ needs or their perspective on the conciliation process (Justiitsministeerium, 2010). One of the weaknesses of the victim support system is that it may not be wholly satisfactory to victim, because there may not emerge real and sincere apologies and remorse. So that emotional hardships may never lighten and even more, it is possible that material harm will never be compensated. There is a legal frame (Victim Support Act) for compensating the harms of the crime, but this is rather limited and covers the losses only in the cases of limited types of crime (violent crimes, that cause victims death or serious injuries) and just proportionate amounts of loss.

§ 7. Extent of compensation
(1) Compensation shall be paid to victims of crimes of violence committed in the territory of the Republic of Estonia and to their dependants and to persons specified in subsection 9 (4) of this Act.

§ 8. Crime of violence
(1) For the purposes of this Act, a crime of violence is an act committed against the life or health of a person which is punishable pursuant to criminal procedure and as a result of which the injured person:
1) dies;
2) sustains serious damage to his or her health;
3) sustains a health disorder lasting for at least six months
(Justiitsministeerium, 2011b).
The number of victims, who have got state compensation, is shown in the following table:

![Figure 14: Number of Victims that have received State Compensation](image)

According to the State Budget brief this number is expected to remain similar (Riigikantselei, 2010). In 2009, 273.800 people claimed that they have been victims of some kind of crime (Statistikaamet, 2001). This means, that only about 0.1% of victims receive state compensation for harms caused by crime.

Most victims can submit civil suit against the offender. After their action for damages is satisfied by court, there will be no control whether the action of damages is ever fulfilled. There is no official statistics of how many civil suits are ever paid, but testimonies of many victims rather say that most of the damages, caused by crime, will never be compensated. So it occurs that in criminal procedure, the victims are often secondary victimised and the damages are rarely compensated. That makes criminal procedure unsatisfying for victims.

**CHALLENGES FOR FUTURE**

Victims would need more direct support during the criminal case and possibilities to participate from the very early stage. Support must be emotional and informational, guaranteeing that as little damages will be caused by the procedure as possible. Victims would need more effective approaches for being compensating. In many cases there would be direct restitution from offender much more effective than civil suit, which are hardly compensated. Damages could be
compensated by offenders work on behalf of the victim. Other options would include that damages are compensated by the state and the state would deal with getting compensation from offenders. Restorative justice must be promoted more effectively in Estonia, so that victims are aware of the possibilities of this alternative. This would be mostly in the interest of victims and would more likely create satisfaction with the procedure, which is painful for the victims anyway.
3. BEST PRACTICE

3.1 COMPARISON OF RJ IN THE PARTNER COUNTRIES

Having described the status quo of restorative justice in the partner countries in the first part of this report, the findings shall now be compared and analysed based on the principles of Appreciative Inquiry, identifying best practices that will advance further development in terms of RJ-knowledge and allow conclusions as well as recommendations regarding the further implementation of RJ procedures. This chapter is divided into two parts, firstly concentrating on the overall processes of RJ and its framework in the criminal justice system, based along the structure of last chapter’s Matrix. Secondly, it will be looked at the procedures more closely, comparing phases of application and individually applied techniques. Here, it must be noted that the main focus lies on mediation procedures, as this is the only method that is being applied in all partner countries and therefore comparable. Difficulties in terms of comparability additionally arise with the dissimilar legal systems. Processes contrast considerably, as the UK has a common law system. Also, some limitations in comparable data arise, as observations of actual practice were only possible in Schleswig-Holstein and Thames Valley. In Estonia, observations could not be arranged due to the limited number of cases occurring in the particular week of exchange; in Hungary, observations were not part of the project plan from the start. Overall it must be said that observations have a great potential of gaining insight into daily practice and therefore delivered the greatest amount of data for the following analysis.

3.1.1 OVERALL RJ-PROCESS AND FRAMEWORK/DESCRIPTION OF METHODS

When comparing restorative justice in Thames Valley and the other partner countries, it soon becomes clear that restorative justice as it is originally defined comprises many different forms of interventions, as we term it, methods, procedures and techniques. In the UK, perhaps due to the fact that the original term is used, applied and implemented, a variety of methods are considered under the term restorative justice. Hence in the UK, RJ can mean a whole range of approaches, which becomes clear when looking at the UK Matrix in the previous chapter. Germany, Estonia and Hungary, on the other hand, are much narrower in their definition and application of
restorative justice, which may be a result of the historical development of the implementation of RJ in those countries. Rather than in the UK, there it has not come out of the theory/movement of RJ, but has initially started with the separate and individual application of mediation in form of victim offender mediation procedures. This is a major difference between Anglo Saxon and other countries, which must be pointed out at the beginning of any comparison of the different practices in the four countries.

As already indicated, in Germany, Hungary and Estonia, victim offender mediation is the dominant RJ-procedure. It is difficult to pinpoint an exact date of implementation as its development took and still takes years. Nevertheless, to allow an orientation, victim offender mediation in Schleswig-Holstein was officially integrated through a circular decree by the prosecutor general 1991 whereas legal and institutional regulations in Hungary and Estonia were made in in 2006 and 2007. In Thames Valley, restorative justice was firstly introduced, after a number of pilot projects in the 1980s, through the police in the mid-1990s. Between 2001 and 2005 the extensive research study of Shapland and colleagues (2011), financed by the government, caused the extension of RJ to the field of probation. When speaking of RJ in the UK a range of procedures, other than in Germany, Hungary and Estonia are included. Nonetheless, the most commonly applied mediation procedure at Thames Valley Probation is conferencing based on the Australian Wagga Wagga model of conferencing although it is not strictly following the original procedure. What has remained similar to the original procedure is the use of a script and the fact that there is no private time such as in the New Zealand model (see MacRae and Zehr, 2004). Conferences have been adapted at Thames Valley Probation in that they are not facilitated by a police officer.

GENERAL PROCESS, STAGE, REFERRAL, FINANCES AND TARGET GROUP

There are a number of different stages in the criminal justice system of when RJ can and is being carried out (see Fig. 15). Firstly, it can be applied at police level, as a means of police diversion. Under these circumstances, the case does not reach the prosecutors level. The second stage, the prosecutor’s level, before accusation, is often referred to as pre-sentencing level. This includes the phase when a case has already been accused but the main court hearing has not taken place. In that case, the criminal procedure is suspended and RJ is carried out as a diversionary measure. Furthermore RJ can be referred by the judge during the main court hearing or after the main court hearing, as a court order or conditional sentence. After this phase, the stage of application is
defined as post-sentencing level (Fig 15: Stages 5/6). If the offender has been given a prison sentence, RJ can be carried out in prison, often done as a form of release preparation. Sometimes it is also carried out after release. Certainly, RJ procedures can take place outside the criminal justice system at any point in time; this however is not in the focus of this study. Depending on the stage of application, the referring authority differs.

Theoretically, restorative justice can take place at any of the listed stages in the partner countries, as it is possible for everyone to refer cases to the relevant agency. But because RJ is still rather unknown, it is predominantly occurring in specific channels. Looking at the common practice in the individual countries, again, it becomes clear that the stage of application and therewith the referring authority follow similar processes in Germany, Hungary and Estonia. In these countries, restorative justice, in the form of victim offender mediation, is principally taking place at pre-sentencing/prosecutors level, as a diversionary measure before accusation. Therefore cases are referred to the mediation service by prosecutors. Some exceptions include referrals of judges during the court proceeding and self-referrals. In Estonia, a few cases are also carried out as a sentencing condition.

Regarding the general process of VOM in Hungary and Germany, some differences must be pointed out. In Hungary, the offender and victim are being asked by the prosecutor or the judge during the hearing, whether they would want to participate in a mediation procedure. In Germany, however, the prosecutor does refer the cases to the mediation service only on the basis of the file. Hence, preliminary interviews by the mediator are required to find out whether the parties are interested in a mediation procedure. In Hungary, preliminary interviews are not taking place, as the parties are already asked during the hearing by the prosecutor or judge. If their
consent is given, the prosecutor or judge decides on the suspension of the criminal procedure for
a maximum of six months. The date of the first meeting of the parties is set by the mediator
within 15 days after having received the decision of the prosecutor or judge. In Schleswig-
Holstein, based on an informal agreement, the mediators have around one month to find out
whether the parties are interested in a mediation procedure and if it takes longer, an extension can
be requested, although the deadlines vary considerably depending on the prosecution office or
court. Another difference can be identified at the end of the procedure. In Hungary, the mediation
procedure ends, when the agreement (or the first instalment of it) is fulfilled, hence again within
15 days the mediator has to write the report and send it (as well as the agreement) to the
prosecutor/judge. If the fulfilment of the agreement continues over six months, it must still be
monitored by the mediator. If the agreement is not fulfilled by the offender or the victim’s
behaviour hinders the fulfilment, this must be reported to the prosecutor/judge as well. Opposed
to this, the German mediator usually monitors the agreement and then sends back the report. If
this procedure takes too long, a preliminary report is sent to inform the prosecutor/judge.
Especially in cases involving juvenile offenders, this period shall not exceed six months, if
possible.

In the UK, the range of referral stages and the use of procedures are much broader. A
large number of restorative justice is carried out by the police and the probation service. When RJ
is done by the probation service, it can still take place at different stages, generally however at
post-sentencing level. Often, the pre-sentencing report, written by the probation service, states,
whether RJ could be an option. It is then either carried out as a court order, a conditional sentence
or during a prison sentence. Depending on the stage and on the target group, different legal
instruments define the use of RJ (see Status Quo). The main difference between the UK and
Germany in the application of RJ is the involvement of the probation system. Due to structural
differences, the probation system in Germany is differently involved, as restorative justice is at
the moment only applied at pre-sentencing level, amongst NGOs also carried out by the court
assistance, which is part of the probation system but separate from offender managers. In the UK,
offender managers are partly involved in RJ, either as referral authority or when RJ is part of a
requirement of their clients. The main differences between the systems will also be outlined when
referring to the executive agencies. More than in the other partner countries, self-referrals by
victims and offenders occur in the UK. This may be a result of good public relations of Thames
Valley Probation.
When discussing application stages and referral channels, it must be differentiated between target groups. In some areas, such as in Thames Valley, restorative justice for juveniles is much better implemented than for adults. Opposed to the UK however, in Schleswig-Holstein, Estonia and Hungary, the system for adults is much more extensive and numbers are higher than for juveniles.

Leaving aside all other RJ-methods that are being carried out (e.g. victim empathy training) and concentrating on mediation (VOM, conferencing and circles), the following stages can be summarised and an overview of the partner countries given.

<table>
<thead>
<tr>
<th></th>
<th>Pre-Sentencing</th>
<th>Pre-Trial</th>
<th>Post-Sentencing</th>
<th>Prison</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Police</td>
<td>Post-Trial</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>VOM</td>
<td>RC</td>
<td>PC</td>
<td>VOM</td>
</tr>
<tr>
<td>Germany</td>
<td>Pilot$^{44}$</td>
<td>v</td>
<td>Pilot$^{45}$</td>
<td>EU</td>
</tr>
<tr>
<td>UK</td>
<td>v</td>
<td>v</td>
<td>v</td>
<td>v</td>
</tr>
<tr>
<td>Estonia</td>
<td>v</td>
<td>EU</td>
<td>v</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td>v</td>
<td>EU</td>
<td>v</td>
<td>EU</td>
</tr>
</tbody>
</table>

This table represents a limited picture, since it does not take into account all RJ measures but only indicates major implementations of mediation procedures. The real status quo is much more complicated as demonstrated in the previous chapter. There are pilot projects and regional differences that cannot be considered. Also, often the use of terminology and the precise application of procedures are unclear and cannot be pinpointed to one procedure. Neither does it differentiate between adults and juveniles. In terms of the UK, it is difficult to summarise the implemented programs, as legal instruments and guidelines only refer to RJ in general, which can include the application of any RJ-method or procedure. Despite these limitations, the table shall give a broad overview of when in the system mediation procedures are being applied in the partner countries.

Regarding financial aspects of restorative justice programs, it must initially be said that it is very difficult to receive detailed information on specific numbers in any of the four partner countries. Certainly this is firstly due to the complexity of financing and secondly due to the unwillingness of the relevant authorities to become more precise on exact numbers. Overall, it can be stated that in all four countries, restorative justice programs are financed mainly by the state and/or municipalities. In Schleswig-Holstein, victim offender mediation for adults, carried

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$^{44}$ Pilot = pilot project with small case numbers.
$^{45}$ EU = Carried out as part of EU-Project, but not implemented.
out by the court assistance and NGOs, is fully financed by the Ministry of Justice. Juvenile VOM, on the other hand, which is carried out by the youth court assistance (part of the youth welfare office) is financed by municipalities. Only three projects across the country are financed by the Ministry of Justice in the juvenile sector. Additionally, there has been the Elmshorn conferencing project for juveniles from 2006 to 2012 which was funded partly by the `Kriminalpräventiven Rat´ (Council of Crime Prevention)\textsuperscript{46}, the `Stiftung Straffälligenhilfe´ (foundation on offender support)\textsuperscript{47} and the Ministry of Social Affairs (a program on strengthening the civil society).

In Thames Valley, youth offending teams are financed by three strands that are central government grants, local government funding and funding from partner agencies. Probation is financed by the central government and the police which also carry out a lot of RJ, in contrast to the other partner countries are also financed by central and local government funding. Also voluntary agencies receive money from the local government, police, probation, prisons as well as charities. Victim offender mediation schemes are mainly self-funded and resources are used from mainstream victim liaison work. Furthermore, funds from Probation Trusts have been used for RJ activities to divert offenders from short term prison sentences. In Hungary and Estonia, victim offender mediation is fully financed by the state, in Hungary solely through the probation service, in Estonia solely through victim support (Ministry of Social Affairs).

In the UK, the Restorative Justice Council (2012) and others (Gavrielides, 2012) advertise RJ with a slogan taken from Shapland’s et al. (2008) comparative study which claims that `RJ can deliver cost savings of up to £9 for every £1 spent´. Even though these are statements that trigger decision makers to implement RJ, they must be handled carefully. Firstly, the question arises of how this has been calculated, what is included, and secondly, statements such as those can hardly be transferred to other countries due to major systematic differences. This study cannot go beyond this level of analysis as cost calculations are extensive and must be made on a local level to supply concrete answers.

\textsuperscript{46}Local Councils of Crime Prevention are very common in SH – it is an informal association of community members, mostly from schools, social work and police, which can donate small amounts of money (up to ca. 2000 Euros) to local initiatives without much paperwork. The money is from the communal budget.

\textsuperscript{47}The foundation was set up in 1982 to help offenders dealing with debts; part of the money was given by the Government of SH, other parts are resulting from fines.
In terms of exclusion criteria, it can be generalised across the partner countries that a certain degree of responsibility must be taken by the offender for the offence in order to participate in a mediation procedure or in RJ methods that involve victims and/or the community. Denial of the offence could lead to secondary victimisation. Besides that, Hungary has defined a number of exclusion criteria by law, namely cases of organised crime, if the crime results in death or if the crime was committed intentionally during the term of a suspended sentence/probation/postponed accusation. If the offender is a recidivist committing a similar offence for the second time or an intentional offence within two years after taking part in successful victim offender mediation, he/she is excluded from RJ. These exclusion criteria are similar in Estonia. In Germany, in contrast, neither does a criminal record, nor the previous participation in a mediation procedure exclude from RJ.

In the UK, those with severe mental health problems and cases of domestic violence, sexual or extremist type are excluded. Germany does not exclude any specific offences according to the law. This does not mean that no exclusion exists in practice; rather, exclusion occurs on a personal level of selection through prosecutors, judges and mediators. In Germany, official documents state that minor cases which would otherwise be closed should not be referred to mediation; this however does not correlate with daily practice. Here, thus, the danger of net-widening arises, as cases can, through the process of mediation, be drawn into the criminal justice system, which would otherwise not have been due to their insignificance to prosecution (Cohen, 1985; Austin & Krisberg, 1982). Despite this, in terms of severity, it can be said that cases referred in Germany, Hungary and Estonia are rather minor offences. In Hungary, the law explicitly states that cases which are punishable with more than five years of imprisonment are to be excluded.

The severity of referred cases also largely correlates with the stage of referral, as certainly cases carried out at post-sentencing level are of higher severity than those at pre-sentencing

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48 To assess the severity of crime usually the threat of punishment by Criminal Law is used as an ‘objective’ indicator. However, seen from the perspective of a victim, the severity of victimisation is a subjective rating which can differ considerably from the outside perspective used here. Thus the statement refers to the discourse in law and penology and not to the discourse in victimology.
This indicates that the UK, primarily carrying out RJ at post-sentencing level, has more severe cases going through the mediation procedure. This again has an influence on the phases of the mediation procedure, as for instance more meetings may be required, which will be picked up again when comparing the different phases of the mediation procedure. Furthermore, here, it must be kept in mind that penal systems differ considerably across the individual countries which may have an influence on the severity of cases at pre- or post-sentencing level. Thus sentences in the UK and Estonia cannot be compared to those of Schleswig-Holstein, for instance.

The most common types of offences applied in conferencing procedures in the UK are usually burglaries and violence against the person. For victim offender mediation, all offences are being considered. Overall, it can be said that there is agreement across the partner countries and beyond, that crimes against the person are very well suitable. In SH, the most commonly referred offence types are bodily harm, aggravated assault, followed by threat, assault and insult. In Hungary, it is any crime against the person, traffic-related offences and crimes against property. There is disagreement on the suitability of domestic violence for mediation procedures. Mediation services in SH and Estonia commonly, even to a great extent, carry out mediation in cases of domestic violence (e.g. the NGO dealing with adult offenders in Flensburg). Some institutions in Germany have specialised in the mediation of domestic violence cases. Domestic violence cases are excluded from RJ interventions in the UK on the other hand. According to an observer, ‘the domestic violence VOM observed in Kiel provided a beneficial outcome for the participants (as reported subsequently) it was very helpful to the UK observers to watch the dynamics of this interaction. These dynamics indicated (to the UK observers) that whilst domestic violence may be suitable for victim offender mediation, there would be risks in domestic violence being addressed within RJ conferencing, which is a less mediated process and could lead to power imbalances going unchecked.’ Also, it is often argued, that the conflict is too large to be solved within the mediation procedure (Oberlies, 2000; Gregor, 1998). There is no overall agreement in the field on this discussion although a number of professionals have valid

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49 This is certainly not true for New Zealand where the juvenile law (Children, young persons and their families act of 1989) orders to deal with every serious incident by pre-sentencing FGC except in cases resulting in the death of the victim.

50 It was Winston Churchill who stated that the state of culture of a particular country could be measured by looking at the treatment of offenders. SH has a very low rate of incarceration (41 prisoners per 100.000 inhabitants in 2011, see Jahnke, 2012) compared to England & Wales (153 in 2011), Hungary (165 in 2010), Estonia (254 in 2011) and Germany as a whole (85 in 2010) – all figures except for SH from Walmsley 2012.
arguments for the inclusion of domestic violence cases in RJ (Bannenberg, 1993; Bals, 2010; Pelikan, 2002).

MEDIATOR, FACILITATOR AND AGENCIES

There is different terminology for those carrying out mediation procedures – in the UK, facilitators are those carrying out restorative conferences and mediators those who carry out victim offender mediation. In the other countries, the term mediator is used preferably for all mediation procedures. This may stem from the predominant use of restorative conferencing in the UK, since mediators are referred to those carrying out victim offender mediation only. The role of mediators in VOM and facilitators in RC vary in the UK (Zinsstag et al., 2011; Shapland et al., 2011). One difference is the degree of involvement, as mediators are more involved, whereas facilitators use a script to reduce their amount of speaking to a minimum and structure the conference. This certainly is a point of further discussion.

In the UK, training courses to become RJ facilitators in criminal matters approved by the Restorative Justice Council are on average 30 hours. Such courses include an introduction to RJ principles and values, skills development in relation to approaching and preparing victims, offenders and other participants, training in conference facilitation and guidance about risk assessment and follow-up processes. Training is also given in recording and evaluating the impact of the activity. Experienced facilitators may go on to be assessed for the vocational qualification in RJ which achieves accreditation as a practitioner as well as the award itself. In Germany, the majority of mediators in the criminal justice field were educated in the annual training course of the TOA-Servicebüro. The training is build-up of five modules, focusing on restorative justice theory, guidelines, the general process of VOM, victim perspective and civil law, legal base and cooperation, as well as methods, procedures and techniques. Alongside the training modules, two cases must be mediated and documented and further be discussed in small groups which meet up on a regular basis. In the last module, these case-documentations will be examined and a final presentation on a specific topic must be held. In total, the course embraces 120 hours but the individual modules can be booked independently and at any time they are offered. Therefore the course may take longer than the average year. Hungarian mediators receive a training of 60 hours, a theoretical course of 90 hours on restorative justice and a mentoring

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51 We will come back to this discussion when referring explicitly to terminology. This different use stems from explicit variations between conferencing and mediation. Here, conferencing is defined as a mediation procedure. 117
program, which involves meeting a supervisor and the discussion of cases regularly. In Estonia, the training to become a mediator is 160 hours long.

The background of Hungarian mediators is predominantly probation officers, which make up 58 in total and 10 attorneys who work for the mediation service. The involvement of volunteers in RJ is not yet introduced in Hungary. However, a recent national EU-funded project (Social Renewal Operational Program) was aiming at the widespread involvement of volunteers in victim support. Victim support is carried out by one office in each county of Hungary (situated at the county seats); in rural areas, however, it is difficult for citizens to reach those offices. Therefore, the project employed volunteer-organisers at a local level in nine counties, who were responsible for the recruitment of further volunteers. In total approx. 200 volunteers have been identified and trained as part of the project. Overall, outcomes are very promising because many people became active in the field. The future aim is to have volunteers throughout the whole country to inform victims about support services and probably also about their possibilities to participate in restorative justice.

In Schleswig-Holstein and Estonia volunteers are not involved in restorative justice whatsoever, neither are there any plans in getting them involved besides their regular victim support activities. Hence, all mediators in Schleswig-Holstein are paid and have a social service background, whereas in Estonia, most mediators are psychologists. Neither are volunteers used for back-up facilitation in those countries, which is very common at Thames Valley Probation. Other than their role as back-up or co-mediators TVP involves volunteers to inform victims of crime about their possibilities to participate in RJ. Facilitators in Thames Valley come from a range of backgrounds including probation officers, prison officers, mediators and commercial mediators. The professional background of mediators in the different countries is largely dependent on the agency responsible for the application of restorative justice procedures.

There is a discussion on where RJ in criminal matters is best located, within the criminal justice system or outside, as an autonomous service, to remain impartial and independent from prosecutors and judges. As a result of the `Mediation and Restorative Justice Project in Prison Settings´ Gavrielides (2011) points out:

“If restorative justice is to be mainstreamed, it will have to be implemented within the criminal/youth justice system and not in opposition. However, caution must be taken to maintain the restorative justice ethos which is at risk by entrenched
practices and mind-sets. The debate on standards and accreditation is therefore timely and necessary.

As opposed to that, its implementation within the system may impede access for self-referrers and the general public which is a central principle of restorative justice. This however is also dependent on many other factors, e.g. public relations. Furthermore, the implementation of restorative justice in the system depends on the stage of application. In Thames Valley for instance, restorative justice is largely anchored in the Youth Offending Service, the probation service with some work undertaken by the police and the prison service. Thames Valley Probation lead a multi-agency partnership under the umbrella of the Thames Valley Partnership and under the title of the Thames Valley Restorative Justice Service. Whilst the key agencies appear to be more offender-related Victim Support plays an increasing role in the multi-agency partnership. The probation service in the UK and Hungary largely differ to that of the partner countries Germany and Estonia, in that they embrace victim support, allowing access to RJ on that route. To gain a better picture of what probation is and accordingly compare the systems in the partner countries, the general definition as provided in the probation rules (2010) shall be quoted:

`Probation relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.´

A probation service is:

`any body designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.´

Thus, in the German probation system, the first task `providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions´ is mainly carried out by the youth court assistance in the juvenile field and often by the court assistance in the adult field at pre-sentencing stage, which is entirely independent to offender managers who are rather
responsible for the latter tasks at post-sentencing stage, namely providing guidance and support to offenders as well as their monitoring. Neither assistance to victims nor RJ are part of the work of offender managers. The court assistance on the other hand is partly also involved in victim assistance as they offer victim offender mediation. In the UK, only one agency, the probation service, carries out all those tasks. Some RJ is outsourced – carried out by NGOs – in the UK and in Germany, thus including both models.

Independent of the different probation systems, the probation service is a dependent entity due to its offender-focus. Most guidelines, however, mutually state that partial social work must ideally be separated from impartial work of mediators. More precisely it says in the UK guidelines: `practitioners should not be assigned a case where there is a conflict of interest, for example, where their professional role within an organisation, or in relation to the participant’s conflicts with the need for impartiality´. Despite overall agreement on this matter, mediation is in most countries, at least partly, implemented in the probation service. Although, restorative justice is mostly carried out by specifically trained mediators within those offender-focused institutions, a danger remains, that the process is one-sided or at least regarded as such by the participants.

Furthermore, the indirect impact of a different atmosphere is entailed carrying out mediation within probation agencies. Following the study visits, an observer stated that `the room in which we met the offender is very small, has no window, nothing personal, the atmosphere could be better in another room´. Another one said that small rooms spread a `bad atmosphere´ as well as the fact that another probation officer, the offender manager, was present during the preliminary interview with the offender. Here, it can be argued in both directions, the presence of the offender manager can be helpful in their further cooperation, getting to know each other in the process of identifying objectives. On the other hand, the presence of the probation officer can prevent an honest and thorough developmental process towards understanding and restoring the harm caused, as it may appear, which it may indeed be, to the offender as another penal measure. Overall, it becomes clear that formal structures can have an impact on the atmosphere. However, this is also largely dependent on the country and the level of security measures, which will be picked up again at a later stage.

From the perspective of the CEP, Tigges (2012) claims that restorative justice is largely underdeveloped in probation, but that the factual state of affairs is hardly known as systematic review is lacking. As part of the project, some contacts have been made to trigger exchange
between probation personnel. Even though, differing probation systems\textsuperscript{52} imply other obligations and structures, the involvement in and knowledge of restorative justice is vital, let it be for the referral of cases. For now, the possibility for participation in RJ is not systematically mentioned in German pre-sentencing reports as it is in Thames Valley.

Another major difference regarding the involvement of agencies is that of the police, for which the previous discussion on impartiality is just as relevant. In Thames Valley, the initial implementation and development of restorative justice has started out of the police whereas in the other partner countries, it has started at the prosecutor’s level. This largely affects the role of the police within the status and application of RJ. In the UK, a common form of RJ is the so called ‘street RJ’, which is carried out by police officers as a form of informal police diversion. None of the other partner countries carry out RJ at this stage systematically, although some individual police officers in Schleswig-Holstein have reported to use that procedure. Furthermore, the police in the UK are involved in Youth Offending Teams which can also apply RJ-procedures. In the SH restorative conferencing project in Elmshorn which is based on the New Zealand model of conferencing, one police officer represents the community and insists on moral values in every conference, if required. In Thames Valley, this role is also taken up by the police, it is however not a necessity but decided according to the circumstances of the case. Hence the involvement does not occur on a regular basis despite the fact that there is no legal obligation of the police officer to report new offences mentioned during a conference (Shapland, 2011) – due to the legalistic system this could, under circumstances, lead to problematic situations in German conferences (see Vanfraechem for a similar situation in Belgium). Usually this issue is addressed by the officer at the beginning of each conference in order to avoid legal conflict in this sense.

\textbf{GUIDELINES AND QUALITY CONTROL}

`Best Practice Guidance for Restorative Practice` is published by the Restorative Justice Council UK and made up of seven sections. Section A outlines core restorative practice, including core knowledge and skills, the preparation of a restorative process and its facilitation as well as the monitoring of the agreement, evaluation of the process by the participants and on-going support. Section B covers the facilitation of sensitive and complex cases, thus more serious crimes and those that have been identified as sensitive resulting initial risk assessment. Informal restorative

\textsuperscript{52} As explained in 2.1 `Status Quo’
processes are taken into account in section C, thus including the application of restorative approaches or practices in the classroom, at care homes, at the workplace, prison or community policing, for instance. Specific restorative procedures, such as peace circles, corridor conferencing and street RJ are considered here. In section D, the guidelines stress the importance of co-working strategies and list its main advantages. This includes:

- Additional specialist knowledge
- Possibility to address power imbalances
- Safety and emotional support
- Ability to reflect
- Role modelling for less experienced practitioners
- Practical reasons

Section E and F focus on guidance for case supervisor and line managers (case managers do not have to be RJ practitioners) setting out additional skills and knowledge needed for case management of restorative work. Section G is guidance for service providers, hence organisations which employ directly or contract individuals to provide restorative processes. This includes guidance regarding service protocols, quality assurance, complaints procedure, and accountability.

The Germany ‘Best Practice Guidance for Victim Offender Mediation’ by the TOA-Servicebüro is structured into five chapters. The first chapter describes conceptual requirements, including the description of the offer, basic requirements to carry out VOM, case selection criteria, primary goals and evaluation of the work done. In the next chapter, organisational requirements are outlined, directed at the provider and organisation, the infrastructure and accessibility. Furthermore, the importance of the public image and cooperation is sketched before specific requirements to the facilitator are listed, such as their qualification, reflection, methods/techniques, the understanding of one’s role and legal framework. At last, attention is drawn to performance requirements of the distinct phases of VOM procedure. Additionally, it must be mentioned that specific guidelines are published for the application of mediation in cases of domestic violence, which may be of interest to those countries that exclude domestic violence from the start.

The Hungarian professional standards/institutional guidelines for VOM consist of main chapters on the background and reasons to introduce VOM, laws regulating VOM, preconditions to use VOM, rules when VOM is excluded/not applicable, basic principles and general rules and
the VOM procedure. The procedure is outlined from three different perspectives, that of the prosecutor, the judge and the mediator. Furthermore, there is guidance on how the criminal procedure continues after the mediation result and the phases of the VOM procedure are sketched. In the annex, a list and samples of administration forms are provided as well as the costs of the procedure (what, who, when and how to pay) are delineated.

Some central aspects must be stressed in the comparison of the guidelines. First of all, as has already been mentioned in the introduction of this chapter, the guidelines clearly confirm the fact that the UK approaches restorative justice much broader whereas Germany, Estonia and Hungary focus strictly on one particular restorative justice procedure, namely victim offender mediation in criminal matters only. As the title suggests „Guidelines for Restorative Practices“ the UK guidelines do not mention one specific method or procedure of RJ but solely refer to „restorative meeting“ or „restorative process“. When referring to „restorative processes“ the guidelines define those as processes „that bring those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward“. At no point, specific restorative methods or procedures as restorative conferencing or victim offender mediation are mentioned, the most precise the guidelines become is „face-to-face meeting“ or „indirect processes“. This clarifies why it has been so difficult to pinpoint the methods and procedures used by the English system – rather restorative justice is a theory implying a process that can be applied in various different forms by many different actors in a number of different situations and locations.

Since the UK’s approach is much wider, the guidelines also refer to the application of „informal“ RJ, referring to processes in schools, care homes, workplaces, prisons and community policing. For informal use of RJ, examples of procedures to apply are given, including circles, corridor conferencing and street RJ.

When referring to informality, another essential best practice deserves attention, namely the considerable importance of unplanned moments or „tea and biscuits“ after the restorative procedure which is explicitly highlighted by the English guidelines. As informality is concerned Früchtel et al. (2007: 29) use the term „home game“ to indicate the importance of an atmosphere which suits the life world people in the centre of the problematic situation to be dealt with (see Hagemann’s (2010) concept of „ownership“ based on Christie’s (1977) conflicts as property).
New Zealand Ministry of Justice explicitly states that families may shape the procedure due to their individual ideas and may include karakia (singing), praying as well as eating together.

One of the central principles of restorative justice is voluntary participation, thus it is consistently mentioned in all guidelines. Nevertheless, voluntariness of offenders may be questioned at pre-sentencing level or if carried out as sentencing condition. Voluntary participation by offenders is a controversial topic. The Youth Justice legislation in the UK is built on elements of required participation by the offender and similarly the Thames Valley Probation model is built on a presumption in favour of offender participation. As a result of an observation of a youth RJ conference in Kiel and a number of victim offender mediations in which the offender had the opportunity to avoid criminal prosecution and court sentencing it became clear that there is no such thing as `pure´ voluntary participation. There appears to be an area between pure voluntarism and unreasonable coercion in which offender participation is enabled. As a result of this restorative conference in Kiel, an observer states `the victim and his mother in the Kiel conference, benefited from their encounter with the offender which would not have taken place, if the offender had been given a completely free choice.´

In Thames Valley, a certain amount of hours/days of restorative justice work, resulting the offenders consent, can be subject of a court or diversion order. In the UK guidelines it is stated: `as restorative processes become more widely available within the CJS, there are more situations where an offender, with their informed consent, is ordered by the court to participate in restorative justice, whereas the victim’s participation is entirely voluntary.´ Nevertheless, the same limitation of voluntariness applies to the original conferencing in New Zealand.

A study visit experience underpins this argument and makes particularly clear again how important individual assessment and preliminary interviews are, if RJ can be made a sentencing condition. A young man who had committed a burglary together with some friends was sentenced to take part in four days of restorative justice. In the preliminary interview it was soon clarified that responsibility for the offence was not taken as he insisted that it was the idea of his friends and he had just followed. The only mistake he admitted to was for the missing refusal to take part in the offence. Overall his personal problems, such as homelessness, drugs, issues with the family and girlfriend, were so dominant for him at the time that it was not possible to focus on repairing the harm caused and feeling empathy for the victim. The concluding thought of the observer were, in congruence with general RJ literature, that the offenders acute problematic life situation
should be solved, before an effective mediation procedure can be commenced and in particular before facing the needs of the victim (Watzke, 2008).

In this regard, the definition of voluntariness is vague, as certainly some sort of pressure to take part in restorative processes may exist if carried out before or during the sentence. Ideally the wish to apologise and make good the harm caused should arise out of some sort of regret, to satisfy the wishes of victims and avoid secondary victimisation. This is particularly important the more serious the victimisation has been. On the other hand, regret can also develop out of confrontation with the consequences of the crime and the effects this had on the victim. This is often referred to as turning point in a restorative meeting and solely requires some sort of responsibility taken by the offender in advance. This however can entail more dangers and should not be risked in very serious forms of victimisation/traumatisation. To encounter this risk and maintain the possibility to offer RJ at any point in time to every victim and offender interested, some measures can help to create the safest environment possible for all involved.

First of all, sufficient training of mediators is required in order to identify the degree of voluntariness and motivation of the offender in preliminary interviews and therewith avoid ineffective restorative processes or even secondary victimisation. Furthermore, Shapland et al. (2011) points out the following measures as important in creating safe environments: procedural justice, adequate risk assessment, safeguards: number of supporters (balance of power), break-out rooms for time-out, more than one facilitator, regular feedback and debriefing sessions. As the English guidelines and Shapland et al. particularly stress the significance of risk assessment, Thames Valley uses a conference risk assessment form, which is filled in before the conduction of a conference. It documents, for every individual person attending the conference, whether the facilitator has identified a risk. There is however no data available on the reliability of this instrument. Such forms are not used in any of the other partner countries.

Another important aspect, regularly appearing in the guidelines and scientific analyses, is that of regular feedback and debriefing sessions. According to Shapland et al. (2011) reflection allows good practice, prevents burn-out and enables facilitators how to deal with more serious cases. However, sufficient and regular debriefing is only possible if at least two facilitators work closely together which is in practice, at least in Schleswig-Holstein, an obstacle. In most regions there is only one mediator employed and the Schleswig-Holstein Consortium on VOM meets every three month, which does not provide enough time for detailed case discussions beyond organisational topics. Neither allow these circumstances for co-mediation, despite the fact that
co-mediation is an elementary mediation technique specified in all RJ-guidelines, especially since some mediation techniques can only be carried out in co-mediation (power imbalances e.g. Mixed Double\textsuperscript{53}). The RJ-Council UK assign this topic such high significance that it is being dedicated a whole chapter in the guidelines. Also in practice, Thames Valley has implemented this strategy fully as all conferences are carried out with two mediators. Often, one is a back-up facilitator, thus not directly involved in the conference but present throughout and able to ensure debriefing after the conference. Many times, the back-up facilitation is carried out by a volunteer, hence can be implemented with a minimum of costs. For this to occur also in the other partner countries, the discussion on the involvement, recruitment and training of volunteers would have to be proceeded.

When scrutinising the English guidelines it also becomes clear that the chapters specifically for case supervisors and line managers are, with current structures, less relevant for Schleswig-Holstein. As has been mentioned above, most mediators work on their own across the country which means that all tasks from the referral of the case onwards until the final report is supplied to the prosecution office or court are carried out by the mediator. Regarding this aspect, the different structure and organisation of the probation office, which usually carries out RJ-conferences in Thames Valley, is very different to the structures in Germany, Hungary or Estonia thus imply different procedural operations.

Several differences in terms of documentation, formalities and statistics are identified in the partner countries. The UK Best Practice Guidelines provide direction on issues such as service protocols, quality assurance, complaint procedure and accountability which is overall similar to the other countries’ guidelines. Even though, the German guidelines for instance do not refer to complaint procedures. Referring to the documentation of cases, Thames Valley has a particular TVRJS database and keeps a record of all contacts on ICMS (Integrated Case Management System). Furthermore, case information is stored in paper in the locked Office filing cabinet. It must be ensured by the RJ administrator that only minimal information is logged on ICMS (e.g. whether the victim wants to proceed) but the full detail shall only be retained in the RJ office files. When the case is closed, all papers must be returned to the TVRJS office and the record on ICMS and the TVRJS database are complete. Generally, information on the offender and the victim must always be kept and send separately in order to comply with Data Protection regulations. The German Guidelines on the other hand recommend the use of a particular

\textsuperscript{53} See Glossary for further information.
software program designed by the TOA-Servicebüro as a standardised national instrument, not least to implement the national statistics. Nevertheless, in practice, this tool is not used widely. Only one service in Schleswig-Holstein is currently using this software to document cases and feed statistics into the national system. The barrier for a more common use of the software lies in concrete fears of more work and complications with the statistical analysis for the individual annual reports. Thus NGOs and the court assistance use individual case files and statistics programs. Certainly, this reveals some room for improvement of the national software offered by the TOA-Servicebüro. These issues should be eliminated as soon as possible as a national software and statistics tool would mean a next step towards mainstreaming the offer. This is also pointed out by Shapland et al. (2011) when stating that the development of an overall national database template would be helpful in proceeding the implementation of RJ in the UK in both the adult and juvenile sphere. This database must be an ‘easily available, commercial software’ in order for it to be accepted and used by practitioners, which also seems to be the central obstacle in the widespread use of the German software (pg. 181). In Hungary, these problems are not existent, as there is an electronic documentation system where every mediator in the country registers every VOM case.

Another step in this direction are national Quality Marks for restorative justice/victim offender mediation services. The TOA-Servicebüro and the umbrella organization DBH have introduced a national Quality Mark that can be obtained if certain quality standards are met. In the UK, the Restorative Justice Council is currently working on the introduction of developments in this direction. Neither Hungary, nor Estonia has made initial steps in this direction yet.

Generally, formalities, monitoring and evaluation appears to be more common in the UK than in any of the other partner countries. As observations of and exchange on the common practice has revealed, the restorative justice procedure in Thames Valley is accompanied by a number of formal documents to be filled in. This includes a contract between the facilitator and the offender on whether they agree to participate in RJ, a victim empathy questionnaire, to be filled in before the process has started and afterwards, and a risk assessment form. Furthermore, a meeting with the offender is arranged regularly after a restorative conference has taken place, for its evaluation. This goes along with the Best Practice Guidelines in the UK, which state that if wanted, the opportunity to review the process should be given to participants.54 Nevertheless,

54 In the German ´Familienrat´ (FGC in care and protection cases according to the Social Security Code VIII) this reconvening of all participants after some months is mandatory. However, relating to ´Gemeinschaftskonferenzen´
Despite greater knowledge on the effectiveness of the procedures and the satisfaction of the participants, its costs are a more formal process which may distract the overall procedure.

The UK’s aim for formality also stands out in overall measures of security control in buildings and processes. Compared to Schleswig-Holstein, Hungary and Estonia this is a remarkable difference. Particularly CCTV surveillance and door locks in probation offices, where many restorative justice procedures are carried out, are much more common. As an observer points out that ‘in England and Wales, all Probation premises have waiting areas with closed circuit television monitoring, and electronically controlled access points to maintain the security of the building. Notwithstanding the merits of these technical health and safety measures, it is clear that the design of these arrangements place physical barriers between offenders and staff. In both of the Probation Offices that I visited in Schleswig-Holstein no such barriers existed. The office entry points did not have security controls and the waiting areas were similar to a medical centre. I queried this lack of technical security with a probation officer. I was told that there had never been a reported incident of probation staff being harmed by an offender. I wonder if security measures in UK Probation offices engender effective working relationships between offenders and staff. The UK arrangements seem to convey a message of a deep mistrust towards people we are trying to make trustworthy.’ Meetings are usually taking place in small interview rooms that must be booked and are used by all probation officers. Therefore those rooms have no personal character or atmosphere. This overall strong focus on security and risk assessment is also represented in the UK guidelines.

The German guidelines on VOM specifically pinpoint the importance of public relations and cooperation. In practice there is however some room for improvement in Schleswig-Holstein when looking into the county of Thames Valley. Promotion material such as leaflets, pens, rulers, banners, the website presentation and contacts to the press of Thames Valley Probation as well as the RJ consortium are an example of how this can be approached differently. A good sample for this advance is the involvement of victims and offenders who have participated in RJ processes and shared their experiences at the Oxford conference, which appears to have a more wide-reaching effect than solely theoretical presentations. Furthermore, Thames Valley involves victims – or survivors, how they want to be called instead – to inform other victims and support them in their decision making process. For instance, Thames Valley is intending to provide one

(FGC in crime cases according to Juvenile Criminal Law) it was thought that such a repetition for evaluative purpose may be too burdensome for the victim side.
of the survivors with a mobile phone to be reachable for victims, in case they have questions regarding the RJ process that can better be answered by a survivor. A theatre play showing the RJ process in a burglary case certainly also has great effect on public relations and acceptance. As a result, acceptance and knowledge of RJ among the general public seems to be more widespread in the UK in comparison to the other three partner countries, although, this does not imply that RJ is commonly known.

Regarding cooperation and networking, Schleswig-Holstein can be taken as a model. Several steering groups on the ministerial and the practical level are well implemented, leading to good structures and the successful exchange of information, as the guidelines suggest.

LEGAL BASE

The criminal law for adults and the juvenile law in all partner countries contains more or less distinct elements of restorative justice. From the range of possible RJ methods the wording of the law in Germany (Schleswig-Holstein) only refers to victim offender mediation. Practitioners and science however agree, that the text of the law does not limit to VOM. It is also possible to use other methods and procedures of restorative justice to deal with conflicts, although VOM is the most common procedure carried out in Germany. There are only small projects in Schleswig-Holstein which try to implement other procedures of RJ, for example restorative conferencing in Elmshorn. This lack of the use of the spectrum may have its cause in the German law which only touches on VOM. This leads to the problem, that other procedures beyond VOM are mostly unknown. In the UK, there are no limits to the use of RJ-methods whereas in Hungary explicitly only VOM is accepted.

Due to the stage of the criminal process in all partner countries, RJ can be used before and after charge. Efforts of the offender for RJ may lead in Germany to the conclusion that they are not charged if the offence is not too serious or the juvenile confesses. This is as England’s conditional cautioning. In Germany, the prosecutor and judge refer to RJ and as in England there are no exclusion criteria by the type of offence. In contrast to Hungary were by the law RJ is explicitly excluded in some cases.

CASE NUMBERS

In terms of the comparison of case numbers, challenges arise due to dissimilarities arising through the application of RJ methods and procedures as well as population sizes in the
concerning counties/countries. Regarding population, Schleswig-Holstein and Thames Valley are well comparable as both have a population size of around 2 million. Nevertheless, numbers cannot be compared due to the varying applied methods and procedures. Since Schleswig-Holstein only carries out victim offender mediation before sentencing, which is a rather fast procedure, numbers are relatively high with around 1000 cases a year (juveniles and adults). In Thames Valley on the other hand, a greater variety of methods are being applied by a number of different services and most frequently at post-sentencing level. The most common procedure carried out by Thames Valley Probation is conferencing at post-sentencing level of which between 16 and 25 take place each year. One reason for this low number is that conferences are more extensive in their organisational effort, require more preparation and thus take longer.

Although in Hungary and Estonia, the whole country was being looked at, rather than a specific county or federal state, they are not comparable as Hungary has a population of around 9 million and Estonia around 1 million inhabitants. In terms of the application of procedures, both countries are well comparable as both predominantly apply victim offender mediation at pre-sentencing level. Hungary has carried out around 4700 cases (juveniles and adults), Estonia around 460 cases (only adults) in 2011. Regarding the target group, it can be said that in all four countries, more procedures are carried out with adults than with juveniles. Concerning Thames Valley, this statement must be handled carefully as RJ with juveniles is mainly done by juvenile justice boards or panels from which we have no case numbers. The provided numbers only concern conferences carried out by TVP with adults at post-sentencing level. Overall, rising numbers are perceived in all four partner countries.
3.1.2 PROCEDURES AND TECHNIQUES/GOALS AND PROCEDURE

LEGAL AND SOCIAL GOALS

Goals, both legal and social, of restorative justice are similar in all partner countries. Formally, legal peace\(^{55}\), out-of-court resolution and to divert from further legal interventions, can be listed as major legal goals. Informally, financial aspects and time may also be considered reasons. As has been outlined above, Shapland et al. (2011) found that ‘RJ can deliver cost savings of up to £9 for every £1 spent´ in the UK. Nonetheless, it is difficult to offer detailed calculations for all partner countries or even apply this model to other countries, as procedural costs in criminal justice systems are hardly comparable. Precise cost calculations are furthermore challenging due to the large number of factors and their complexity that must be taken into consideration. Therefore, no accurate comparison or conclusion can be drawn on the cost effectiveness of restorative justice processes.

Central in all partner countries is the claim that healing and compensation may often be more in the interest of victims than punishment, although this must be differentiated further and depends on individual interests. The mutual observations in Schleswig-Holstein and Thames Valley have revealed that monetary/material compensation appear to play a greater role in agreements made between the parties in Schleswig-Holstein compared to TV. As a result of the study visits in Schleswig-Holstein, an observer claimed that ‘reparation usually involves the payment of financial compensation to the victim and may also involve work for the community, participation in therapeutic programs and possibly the payment of a fine or a sum to charity´. Furthermore it was noted that ‘the process is very focused on financial compensation and it produces solid financial results for the victim, which are immediately deliverable through the use of the victim fund´. Amongst the project partners, the victim compensation fund is unique to Schleswig-Holstein. An observer of applied practice in Thames Valley correspondingly states that meetings there last much longer and more time is taken to speak about emotions.

Certainly, the statements above are subjective perceptions, thus must be handled carefully. Formally, the social goals of restorative justice are mutually seen in the consideration of victim’s needs and their participation, restitution, reparation, rehabilitation and the prevention

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55 The term ‘legal peace´ (‘Rechtsfrieden´ in German) relating to the justice system only is used to differentiate this form of peace from social peace which denotes a broader concept of peace within a society. Alternatively it may be translated by ‘law and order´ although that term is often used for a specific conservative political concept. The German lawyer Hans Kelsen (1978: 38) has used ‘peace of law´ to translate this meaning.
of further crime, avoiding punishment, involving the community and improving informal control, overall leading to peace-making. Despite these congruent social goals, practical differences may still be existent. A possible reason for such compensation differences could be the stages of application. VOM at pre-sentencing level in Schleswig-Holstein can be associated with less serious crime cases whereas Thames Valley applies conferences solely at post-sentencing level with more serious crimes. Even though, victimization is subjective and must be regarded independent of formal categorisations of crime severity, there may, nevertheless, be a correlation of severity of crime and the degree of victimisation. This again can result in a greater need to speak about its affects and related emotions the more severe the crime has been. This debate is just as relevant when referring to the comparison of mediation agreements below.

PHASES OF THE MEDIATION PROCEDURE

PRELIMINARY INTERVIEWS AND INDIRECT MEDIATION/SHUTTLE MEDIATION

Some differences arise in the number and accomplishment of preliminary interviews in the four partner countries. In Hungary, preliminary interviews, as such, are not taking place as the prosecutor already asks the parties in the obligatory hearing whether they want to participate in mediation and informs them about this possibility. If both parties agree, the prosecutor decides on the referral of the case to the mediation service. This is similar in Estonia, as the parties are firstly asked by the prosecutor if they are willing to take part in mediation, then, the case is referred to the mediator who speaks to the parties separately again prior to a direct meeting.

In Schleswig-Holstein, at least one preliminary interview with each party takes place. Occasionally, there may be more than one interview with the parties; this however is rather an exception. Usually, the offender is invited first in order to avoid turning down possible expectations of the victim in case the offender has no interest in taking part or does not take responsibility for it. In cases of domestic violence on the other hand victims are invited first due to power imbalances and possible pressure at home. Nonetheless, the conduct of who is invited to the preliminary interview first however cannot be defined as fixed rule, as individual mediators and institutions may handle this independently. In the FGC project in Elmshorn, preliminary interviews are only carried out with the offender and the victim, whereas supporters are spoken to on the phone. If for instance ten persons are involved in a conference, it is not possible to speak to all of them separately, as it would be too time consuming.
The preparatory process in Thames Valley is much more extensive than in the other partner countries. On average, there are around three preliminary interviews with each party in one case. With offenders these occur when the Court requests a pre-sentencing report and in preparation to a conference. The amount of meetings can also be dependent on whether the offender has received RJ work as part of a conditional sentence. Another reason for several preliminary interviews with the offender is very careful preparation prior to a direct meeting with the victim, keeping in mind that Thames Valley carries out RJ with more serious offences at post-sentencing level, which may require a longer decision making process and more in-depth preparation. This may also be a reason for the frequent use of apology letters. These are worked on together with the mediator in a process, which may under circumstances require several meetings. If finalised and in previous agreement with the victim, the latter is being send to them as a form of indirect mediation or before a direct conference takes place. The amount and duration of preparatory meetings with victims greatly vary and are dependent on their specific needs.

Preliminary interviews are congruently used to inform participants about the option to take part in mediation, about the process, the procedure, the safe environment, the framework in which it will take place and to some extent about civil law issues. Legal advice is not given by mediators. Solely aspects concerning information disclosure regarding Data Protection Laws and laws on the right to refuse to give evidence of mediators are covered. On top of that, Thames Valley Probation informs the offender about regulations of the specific requirement and the enforcement of the sentence as RJ can be part of the sentence. Preliminary interviews at Thames Valley are furthermore more extensive in their duration and content as each offender has to firstly sign a contract between him and the mediator agreeing to partake in RJ, and secondly an empathy questionnaire which allows measuring their degree of empathy before and after the procedure. Thus also after a mediation, another meeting with the offender takes place to discuss possible developments made by the offender.

Based on the preliminary interviews, Thames Valley mediators fill in an initial risk assessment form to judge the dangerousness of conference participants and aid the preparation of the conference, thus possible security measures to be drawn. This step, which is not used in any other partner country, clearly demonstrates the level of security safeguards that stick out in several relations in the UK, as seen above in relation to the atmosphere at probation offices. Despite the fact that TV exclusively carries out RJ at post-sentencing level, this level of security
is noticeable not solely in this field of professional work but applicable to many other parts of English daily life e.g. amount of CCTV.

If either party does not agree to take part in a direct mediation, the possibility to carry out indirect mediation is offered by every country. In Thames Valley, as already mentioned above, the most common form of indirect mediation is a letter of apology, whereas the RJ guidelines moreover suggest video conferencing, telephone conferencing, a two-way screen as well as audio or video recordings. Overall, conferencing appears to be much better prepared as in the other countries, also commonly with restorative justice programs that focus on the offender only, as for instance victim empathy exercises, or victim awareness programs that involve `proxy´ victims. These usually take place in prison and can be a means to prepare offenders for a conference with their victim, if both parties agree to take part. As part of the observations in TV a case of a 20 year old boy demonstrated this very well. As part of his prison sentence, which he had received for abduction and torture together with some friends, he had participated in a victim empathy exercise. In the observed preliminary interview he appeared very remorseful and frequently mentioned that the courses he completed in prison have well prepared him to meet his victim and apologise.

In Estonia, a pilot project using video messaging as an indirect mediation tool for prisoners is run with success. This tool can act as a good preparation for direct mediation and is particularly useful for prisoners since direct contact can be rather difficult, also keeping in mind the bad atmosphere of prisons and the conquest for victims to meet in such a surrounding.

**DIRECT MEDIATION/FACE-TO-FACE MEETING**

If all parties are well prepared and have made the decision to participate in direct mediation, a meeting is arranged. Face-to-face mediation can take place in different settings with varying amounts of persons, thus perspectives, involved. In Hungary, Estonia and Schleswig-Holstein the predominant setting, as mentioned above, is VOM, generally involving three persons, the mediator, the victim and the offender. In Thames Valley, the most common setting is conferencing with victims, offenders, the police and if wanted supporters. In the preliminary interviews, the parties are asked if they want to have supporters with them during the conference, hence it does not always imply that supporters are brought, which means that a conference may also end up in a VOM setting with only three persons involved. Related, an observer stated: `It was intended to be a conference, but the police did not show up and both had refused to bring
supporters’. Nevertheless, one main difference to the other countries VOM is that the parties are always asked whether they want to bring supporters, which is only rarely the case in SH for instance. In the SH conferencing project Elmshorn however a conference does only take place, if parties do bring supporters, as it is part of the concept and in order to be able to evaluate the benefits supporters can have.

To differentiate further, Thames Valley carry out conferences with two mediators, whereas one sits in the circle facilitating the conference and the second person is a so called ‘back-up’ facilitator who remains in the back of the room in case some sort of assistance is required before, during and after the conference as well as to give feedback afterwards. Often, this person is a volunteer or a trainee. In Schleswig-Holstein, the conferences in Elmshorn are always carried out by two mediators who actively mediate. Victim offender mediation takes place with only one mediator although there are many techniques that can only be conducted with two mediators, e.g. reflecting team. Mediation services in SH are however too far away and caseloads too high for cooperation in this regard to take place.

As suggested in the UK guidelines, Thames Valley Probation uses a script in every conference to provide a structure and limit the mediators input. Scripts are not used in any of the other partner countries on a regular basis, neither is the use of a script mentioned in the guidelines. Nonetheless, in terms of the overall structure of the procedure, the three first broad steps appear to be identical in all four countries independent of whether it is a conference or victim offender mediation. These steps consist of:

1. Mediator welcomes everyone present and informs about the phases of the procedure, the setting and rules.
2. Each party gets the chance to outline their subjective experience, how they have been affected and related emotions.
3. Dialog about the occurred.

Two distinct routines can be identified in regard to conferences as conducted in Schleswig-Holstein. Firstly, after the mediator has welcomed everyone and introduced the procedure, the police officer who is present in every conference summarises the facts of the offense before, secondly, the offender, the victim and the mediator only move into a smaller circle in the middle to outline their subjective perspectives. This is done in order to give the directly involved a chance to speak first and avoid early interaction of supporters. After this phase, it is moved back into the larger circle and everyone gets a chance to speak. Further differentiations can be made.
when it comes to the private time. This is a break/a period where the offender leaves with his/her supporters to discuss a future plan including a compensation offer. Although breaks are allowed, if needed, a regular time out for the discussion of a solution is however not designated. An interesting assistance used in Thames Valley to aid with the process of finding a suitable and realisable agreement is SMARTS. Each item of the agreement should accordingly be:

- **Specific**
- **Measurable**
- **Achievable**
- **Realistic**
- **Time-bound**
- **Supported**

In Schleswig-Holstein practically every VOM is finalised with a written agreement, as this is a basic requirement requested by the prosecution office, together with the final report, if indirect or direct mediation has taken place. Only occasionally, in cases of domestic violence, agreements are not wanted or suitable, then solely a final report is send to the prosecution office. In the UK, as Shapland et al. (2011) points out as a result of her comparative study on three RJ-schemes, outcome agreements are more common in conferencing than in victim offender mediation. Oral agreements, supported by case records, are common in victim offender mediation work. RJ conferencing and Intensive Community Control reparation requirements have written agreements.

An observer in SH states: ‘VOM is described as being ‘future orientated’. There is little discussion about the offence itself and its impact upon the parties at the time, or afterwards. As a result it does not give much opportunity for the discussion of the emotional harm done, or the wider effect upon family members or other parties affected by the crime.’ Referring to the social aims of VOM, this may not be as sufficient, however, in comparison to conferencing in Thames Valley, as indicated above, which is rather characterised by emotional exchange, where letters of apology play a much greater role and agreements predominantly include symbolic reparation, this may appear as such. This is also supported by the UK guidelines, which promote that ‘research evidence shows that the great majority of victims taking part in restorative processes do not seek material reparation as the outcome’.

After the study visits in SH, another observer also commented: ‘The process is very focused on financial compensation and it produces solid financial results for the victims, which
are immediately deliverable through the use of the victim fund’, as already stated above. Thames Valley does not have this possibility of using a victim fund yet, even though, as a result of the project, the need for a victim fund is initially being mentioned in the paper `Breaking the Cycle’ by the Ministry of Justice (2011). Neither Hungary, nor Estonia has a victim compensation fund in that sense either. One reason for the difference in the use of financial compensation could be the stage of application and the type of offences. In Thames Valley, RJ is mainly carried out at post-sentencing level and often during the prison sentence where severity of crimes is higher and emotions can play a greater role. Here, judgment must be handled carefully, since the degree of victimisation cannot always be put into relation to the severity of a crime. The impact of victimisation is dependent on individual circumstances and coping strategies (see Hagemann 1993). However, a difference between the victimisation resulting out of minor crimes, which make up most of the cases worked on in Schleswig-Holstein before accusation, and the severity of those carried out at post-sentencing level in Thames Valley cannot be denied. Nevertheless, that does still not explain why those cases of more severe victimization in Thames Valley, less commonly result in financial compensation. One reason could be that prisoners do not have the financial resources for compensation in the first place and it therefore is not considered as an option by participants, neither being mentioned by facilitators. In response to the study visits in SH, an observer said that `the process was quite directed by the mediator, who was focused on an identifiable outcome, namely the achievement of an agreement related to the financial compensation of the victim and the discharge by the offender of his social obligations.’ In all four countries, the agreement is monitored by the mediator, in Estonia however only up to six months. In Schleswig-Holstein, Hungary and Estonia, all agreements are legally binding whereas in the Thames Valley the agreement does not legal bind either party to comply with the arrangement. Possibly, this could be another reason for lower rates of financial compensation occurring.

Although financial compensation amounts made as a result of the agreement in a restorative justice procedure cannot be compared properly due to the incomplete provision of numbers, they shall still be shortly referred to. It is believed that even the incomplete picture can contain a message. As perhaps this message could be that if numbers are not recorded

56 If this observation is correct it indicates a poor practice because mediators should be impartial; their responsibility focuses on supporting the process whereas the outcome should be part of the responsibility of the parties involved. See TOA-Standards.
whatever, they do not play a great role in the application of RJ in that country. In Schleswig-Holstein, the amount of compensation made by offenders as part of victim offender mediation has been between 32,000 and 45,000 Euros since 2007, whereas it is differentiated between compensation for suffering and compensation for material damage. Overall, compensation for suffering appears to be slightly more than for material damages, although the overall amount for compensation has been falling in recent years. The amount of money paid as financial compensation by offenders to victims as a result of VOM in Hungary has been around 800,000 Euros in 2010 and 1,000,000 Euros in 2011, thus compared to Schleswig-Holstein, the overall amount has risen. In Hungary, it is not being differentiated what the compensation is for specifically. There is no overall statistic available on the amount of money compensated to victims as a result of RJ in Estonia or Thames Valley.

In comparison to the other partner countries, conferences in TV do not end with the agreement made, but rather continue informally with tea and biscuits. This allows for another possibility for exchange between the parties. In the UK guidelines it says regarding this matter: ‘Practitioners reported that in practice the informal ‘tea and biscuits’ time after a formal restorative meeting has finished can be the time where the most restoration happens’. This was confirmed by the discussions at the third Oxford conference regarding this matter. Practice differs both within and between countries. There was however approval in the use of this practice, both as a means of emphasising the healing that has taken place and providing a symbolic social ritual of reconciliation, particularly with regard to Kangur’s (2011) presentation on social rituals within reconciliation. This led to the acknowledgement that more imagination in the ways in which communication can be facilitated between victim and offender can be valuable.

Overall, this chapter has shown how difficult it is to compare the complex practices of four countries, as, not only country’s structures and developmental processes have an impact on current practice, but also individual mediators and facilitators have their own handwriting in applying restorative justice practices. However, having thoroughly compared the different practices in the four partner countries and identified best practices, the following chapter will conclude from this knowledge and analyse how future implementation can be improved.
4. IMPLEMENTATION

On one hand, restorative justice becomes more and more popular; on the other hand this causes a great amount of knowledge and diversity, as seen in the last chapter, of applied practice so that it becomes challenging to overlook the whole range of projects, actors and methodological changes. Therefore, as a first step to improve future implementation of RJ, it appears reasonable to develop a common language and agree on certain terminology. We have tried to start this process by proposing a five level structure which hopefully encourages further discussion in this direction.

4.1 TERMINOLOGY

The last chapters have shown that the terminology used differs significantly and challenges the identification of best practices and therefore implementation of restorative justice. Not only are terms defined and used in different ways, also the application of procedures is not coherent even if termed the same. However, terminology is important as it has great influence on how people think of certain concepts and thus how it is acted accordingly. Often, terminology is not used precisely and definitions are vague in the field of restorative justice. Therefore, the development of a common language seems inevitable as a result of this project. This language shall facilitate further communication in the field and clarify the understanding regarding the application of certain methods and procedures. Hence, the aim is to differentiate between the theoretical and the methodological level, where the latter will reveal how something is actually being applied. Approaching this question is essential in regard to the training in the field of restorative justice, but also in terms of daily practice and its supervision. On the theoretical level, the question of comparison, the possibility to identify similarities and differences between methods and procedures is central, which is only possible if the actual practice under a specific label is identified.

As a result of the previous analysis and therewith arising difficulties with terminology, a heuristic model was developed in order to become clearer. Before elaborating on this model, the terms used in each country shall be summarised.
Schleswig-Holstein

- The term ‘restorative justice’ is hardly known amongst practitioners.
- Amongst practitioners the term victim offender mediation (Täter-Opfer-Ausgleich which has officially been translated into perpetrator victim mediation), is common, as this is the predominant procedure. In a one to one translation, however, mediation would have to be translated as ‘settlement’.
- Family group conferencing (FGC) or restorative conferencing (RC) is used for both, conferencing in the welfare sector (Familienrat) and in criminal matters (Gemeinschaftskonferenzen). Thus RC is translated with two different terms referring to two different laws which results from different agencies carrying out a similar procedure that originates from New Zealand, where only one agency is responsible for both strands.
- ‘Kieler Modell’ is used for conferences at police level, where the police takes up the role of facilitation.
- Victim empathy training is carried out in form of the Sycamore Tree Project (Täter-Opfer im Gespräch) only in Baden-Württemberg. Hagemann (2003b; 2004; 2005) has developed and implemented a victim awareness training (‘Opfer im Blickpunkt’) in a Hamburg prison. Furthermore, BPS involving a module on victim awareness, which is an adaptation of SOTP is delivered in several German prisons – also in Schleswig-Holstein (Wischka et al., 2005).

Thames Valley

- The term ‘restorative justice’ is well known amongst practitioners, although it describes a wide range of activities and processes.
- ‘Victim offender mediation’ is often also only termed mediation, as it is differentiated between mediation and conferencing.
- ‘Restorative conferencing’ is used for family group conferences in criminal matters.
- There are several projects that carry out victim awareness/victim empathy programs, namely for instance the Sycamore Tree Project and the SORI Program (Supporting Offenders through Restoration Inside).

Hungary

- ‘Victim offender mediation’ is the procedure predominantly used and therefore the term is most common.
- Also carry out family group decision making, a procedure used with offender’s families to prepare their release from prison.

Estonia

- Victim offender mediation is named ‘mediation procedure’ (Lepitus-Menetlus) or conciliation program.
- Victim empathy program for imprisoned offenders called ‘the way’.
The above overview clearly indicates the different use of terms in each country. The term restorative justice, first used by Eglash in 1977 for `creative restitution´, is established and commonly used in Anglo-Saxon countries. In other countries however, the use of English terms is unpopular, despite the fact that restorative justice is difficult to translate. Therefore each country uses its own set of vocabulary and it appears difficult to differentiate what exactly is meant by which term. Based on the listed terms, which will be referred to continuously, the following structure was identified and defined as most suitable to become clearer in the use of RJ-terminology. Each level (Fig. 16) is delineated and defended below.

![Figure 16: Levels of RJ Terminology](image)

**4.1.1 RESTORATIVE JUSTICE THEORY**

According to Wachtel (2003) restorative justice is a philosophy that can be applied to various aspects of life. Striving for justice is a virtue; justice is a condition of peace. Perhaps this condition can never be fully reached but the process to reach this condition can be put into practice. `To restore´ means that this process is healing aiming for reparation. The process comes into effect if we move away from the condition of peace and justice, which obviously occurs all the time. McCold and Wachtel (2002) define RJ `… as a process where those primarily affected by an incident of wrong-doing come together to share their feelings, describe how they were affected and develop a plan to repair the harm done or prevent reoccurrence.´

Restorative justice indicates a new paradigm (Zehr, 1990), which aims for a restorative society (Wright, 2010). Experts encounter each other on an equal level in less formalised procedures, hence dialogs occur in everyday language. On Restorative Justice Online (2012), it says `restorative justice is a theory of justice that emphasises repairing the harm caused or
revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders.´ But is restorative justice a theory? Krotz (2005: 11) defines theory `as a part of science…, with which [as a result of a specific, problem-related, systematic and data based research process] an initial question can be answered and out of which a viable solution for the initial problem derives.´ This definition, that is supported by various social scientific methodologies, applies to restorative justice as there have been numerous empirical research studies about RJ and its practical implication all over the world, since Eglash (1977) and Yantzi (1985), if not even before that under different terminology (Sherman & Strang, 2007).

The initial question was: how can social peace be brought back, including the integrity of the damaged persons, after a peaceful relationship has been destroyed, or rather an imbalance caused by certain actions of one or more persons responsible? For a long time one-sided efforts were made to influence offenders or since the 1960s also to support victims. Only restorative justice started to combine both perspectives and now offers viable solutions for the initial problems, even if those do not yet reach all cases and participants. In any case, those approaches and in particular the collection of extensive methodological knowledge concedes restorative justice the status of a theory. It is known about the importance of the life world `ownership´ (Christie, 1977), `procedural justice´ and the dangers of a `colonialisation through the system´. To those who are sceptical and take Merton’s `Grand Theory´ as a starting point, criticising that the existing knowledge is predominantly limited to the field of criminal law, can be offered the term restorative `approach´, which indicates that a theory is in progress. Some cornerstones are already firmly established: the forward-looking consensus-orientation and `democratisation´, as well as the dialogue between the conflict parties, offender, victim and community.

4.1.2 APPLIED FIELDS OF RESTORATIVE JUSTICE

Basically the supporters of restorative justice theory can be divided into two groups, firstly, those who reduce RJ to the criminal justice field and secondly, those who consider RJ to be applicable in all spheres of life and society. As it becomes clear from Figure 17 below, level 2, we identify with the second group. Hence, it is believed, that justice and its restoration can be applied widely, such as community matters, economy, ecology, generational conflicts, political questions, the health system, schools, families etc. In all those matters problematic situations (Hulsman, 1986) and conflicts (Christie, 1977) can be identified and they could even be framed by criminal law,
which is however not the goal. The RJ-philosophy of peace-making applies to all these fields, therefore claim this term restorative justice as theory/ethics for all conflicts and problematic situations.

![Figure 17: Heuristic of the Five Analytical Levels](image)

Hence, ‘restorative practice’ as umbrella term, used by English colleagues, seems to be controversial as it reduces restorative justice to criminal matters (Brookes & McDonough, 2006 vs. Hopkins 2012). In this argumentation, the term restorative justice is solely used for practices in criminal matters and for instance the term ‘empowerment’ for corresponding practices in social work or ‘organisational leadership’ in economy (Wachtel, 2011). This is not fulfilling as the term ‘practice’ is limited to one part only, because it does not comprise theory and practice. Here it is referred to Kurt Lewin’s (1951: 169) statement: ‘There is nothing so practical as a good theory’. Thus both dimensions shall be combined, so that theory is an abstraction of the practice and practice is applied theory. From the scientific point of view, RJ is certainly more than a criminal-policy movement or social ethics. At this point, the goal of a ‘restorative society’ must be mentioned, which is definitely a vision at the moment but may potentially reach the status of a concrete social utopia.
But why ‘restorative justice’ rather than ‘transformative justice’ or ‘social justice’? The prefix ‘re’ implies the danger of referring to ‘only’ restoring the situation prior to the social peace was destroyed. Often, this can be legitimate, but on many occasions this is not striven for, since structural imbalances and related violence/power relations (e.g. patriarchic structures, discrimination of migrants, the elderly or children etc.) would be consolidated, which would not lead to justice. Some authors therefore prefer the term-combination of ‘transformative’, in order to express that, after the successful process, there has not been a development backwards but forward (Maxwell and Morris, 2000). Others prefer ‘social’ to explicitly enclose the social-structural background. Occasionally, these terms are used for conflict resolutions at the meso- or macro level, for instance at broader societal conflicts, such as that in Apartheid-South Africa or Yugoslavia. Comparing those three possibilities, restorative justice seems to be the most common concept. Therefore, we will stick to this term comprising however the dimensions of transformation (both individual as learning process and societal as critical of unjust conditions) and social-structural backgrounds.

4.1.3 APPLICATION OF RESTORATIVE JUSTICE METHODOLOGY

Having discussed the theoretical basis and the possible range of applied fields of RJ on the second level, we will come to its application, hence the methods that can be applied in each of those fields under the theory of RJ. These include all RJ-methods that are future oriented, focus on dialog and consensus as for instance social group work, mediation or counselling. As this project concentrates on restorative justice in criminal matters, this domain will be in the focus and with it the most common methods used.

McCold and Wachtel (2002) have listed and assorted various methods and procedures in a Venn diagram (Fig. 18), differentiating between three parties in a restorative justice process in criminal matters: victims, offenders and the community. They claim that only the overlapping part in the diagram, thus when all three parties are involved, is a fully restorative process. If two perspectives are involved, it is mostly restorative and if only one party is involved it is a partly restorative process.
One of the most commonly applied RJ-methods is mediation. Mediation is a constructive, voluntary process to work on problematic situations and resolve conflicts, which assists the people affected to not only participation, but also to give them the possibility to make a decision on their own (ownership principle) and reach an agreement. The mediation process is carried out by one or more impartial mediators/facilitators, therefore it stands in between a thoroughly self-made conflict resolution and the other extreme of being fully taken away by the justice system (Christie, 1977; Messmer, 2001). Haynes et al. (2002) assume that firstly, people have, also in conflict situations, principally the ability to identify and formulate their own needs, take up personal responsibility and solve their problems rationally. Secondly, they claim that people who are taking part in mediation are at least to some degree willing to solve their problems and conflicts with the other party.

Another common method in the criminal justice field is social group work. Group work, as the name already indicates can be partly restorative as it focuses on healing either victims or offenders or relationships within a community. It can however also be mostly restorative as some procedures bring together the two groups. These procedures will be further explained below.
There are a range of RJ procedures used as part of community service, although community service is not often termed as such. A program may be chosen by an offender or with his consent or may be imposed on him. Also, it can have a restorative outcome (Walgrave, 2008) although some programs may according to Braithwaite (1989) also have stigmatising effects. Services can include work for the community as for instance restoring old buildings, parks etc. – others may involve benefits for certain underprivileged groups, e.g. repairing wheel chairs (Williams, 2005).

4.1.4 RESTORATIVE JUSTICE PROCEDURES

At first, we will concentrate on procedures that we classify under the method of mediation, namely victim offender mediation, conferencing etc. and then will get to procedures that are carried out as part of social group work methods.

One commonly known mediation procedure is victim offender mediation. This term has replaced the previously used ‘victim offender reconciliation program’ (VORP), since the procedure does not primarily aim for reconciliation but dialog and compensation, which will ideally lead to reconciliation but does not have to. There are a number of different ways in which victim offender mediation can be carried out, for instance, direct (face-to-face) or indirect (also called shuttle mediation). Watzke (1997) has described a form of direct mediation addressing gender issues, the so-called ‘mixed double’. A ‘mixed double’ is a type of VOM, which is usually carried out in cases of domestic violence. The mediation is done by two mediators of different gender, which may allow for better reflection of certain conflict patterns. Furthermore, he describes a VOM-procedure called ‘Staffelrad’ (relay wheel) which can be used in cases where a single victim was attacked by a bigger group, e.g. in bullying or mobbing cases or gang violence.

Normally, victim offender mediation is carried out in a setting made up of three participants, the offender, the victim and the mediator. Referring back to McCold and Wachtel, this would be a mostly restorative procedure not fully, as the community is left out. This difference of community involvement is indicated by different borderlines in Figure 18. Mediation procedures that do involve the community are for example restorative conferences and peace circles.

Often, conferencing is however not considered as mediation (Brookes & McDonough, 2006) procedure because the role of the facilitator differs to that in victim offender mediation, in
that it is less dominant\textsuperscript{57} and often a script is being used in a conference (Shapland et al., 2011). Nevertheless, based on the definition of mediation stated above, we classify conferencing as one of many mediation procedures. As Zinsstag et al. (2011) point out, it ‘is a generic term used to refer to many different types of models in criminal and non-criminal settings’. Overall, it only means that ‘all parties affected by an offence in the process of decision making about how best to respond to the offence’ (Morris, in Zinsstag et al., 2011). Thus, it is a constructive, voluntary process to work on problematic situations and resolve conflicts on their own, in order to reach an agreement. The intention in conferences and mediation is regarded as the same. Certainly however, differences in the application of the two mediation procedures do arise on the level of techniques. According to Brookes and McDonough (2006) mediation has different objectives than restorative justice/practice in that its primary motivation is the need to resolve a dispute or conflict and does not by definition address to repair harm or relationships, although this may be a by-product. As seen in Figure 17 and 20, this view is not shared since the objective of a specific procedure should be made dependent on the individual needs and wishes of the participants rather than on the procedure. Techniques of who speaks first, what the focus of agreements or reparation is, do already and shall vary accordingly.

These distinctions in the application of procedures, the specific techniques used, partly arise from the origin of the procedures. Some programs rely on conferencing models from New Zealand, others on Australian or Canadian. In Germany for instance, the development of conferencing models can be retraced as shown in Figure 19.

\textsuperscript{57} A mediator should not dominate the mediation. However, in a setting involving only three or four persons, the likelihood that the mediator has to do a lot of talking – questioning, motivating and summarising – is much higher as in a bigger group where many people might be willing to take active parts.
Figure 19: Developmental stages of the conferencing procedure in Germany

Restorative justice conferences and family group conferences are terms that originate from New Zealand. In contrast to New Zealand, the German system differentiates between conferences in criminal matters (Gemeinschaftskonferenzen) and conferences in youth welfare matters (Familienrat), as these are two different agencies. Both procedures have different German names, which sometimes leads to confusion.

The comparison between peace circles (also termed sentencing circles, community circles and healing circles) and conferences is more difficult, as both are carried out in a circle setting. One main difference is their origin, since peace circles have their roots in North America. Both procedures are based on indigenous practices by first nation people and Maoris, respectively. Based on their belief, Native American and Canadian First Nations focus on the ‘wheel of life´ as principal model for all kinds of circles. The Maoris have used the ‘hui´, a traditional formal meeting ceremony as a model for the New Zealand style of conferencing. Furthermore, the use of a ‘talking piece´ in circles and the practice of a systematic time-out (private time) for offenders and their supporters to develop a plan can be drawn as main differences.

As we have learned from the practical insight gained during the project and from the previous analytical comparison, applied procedures are not easily differentiated and clear to define. There are very many different types of conferencing (also often termed family group conferencing, community conferencing, family group decision making, restorative justice
conferencing etc.\textsuperscript{58}) as well as of victim offender mediation and circles (Zinsstag et al., 2011). Depending on their origin, their development, the circumstances and possibilities at a specific program, as well as the individually applied practice does not always allow a clear-cut between the terminology of settings. Usually there are no distinct lines between procedures; rather, it can be regarded as a continuum (Fig. 20). For instance, in practice, there are victim offender mediations with community involved and restorative conferences where participants do not want to bring supporters, ending up in a classical VOM setting with only two parties. In some conferences a script is being used, in others it is done without, even though it is still defined under the same term. There are plenty of examples which demonstrate that practical implementation is less likely to be that clear.

![Figure 20: Continuum of Mediation Procedures](image)

The mentioned procedures above are all mediation procedures. As shown in Fig. 17 however, there are also other RJ-methods, as for instance social group work, which are commonly applied. Procedures that can be subsumed under social group work are all kinds of victim support groups, offender support groups or ones which are fully restorative and bring together victims, offenders and the community. Well established group work programs are for example victim empathy

\textsuperscript{58} Conferences are applied in various different forms and may have been partly adapted in each particular program. Therefore many different terms are used for a variety of conference types (Zinsstag et al., 2011).
training courses for offenders often applied in prison. Some of them, such as the Sycamore Tree project and Sori bring together offenders and proxy victims.

4.1.5 RESTORATIVE JUSTICE TECHNIQUES

The last level on Figure 17 represents techniques which can be applied in each procedure, such as active listening, questioning techniques, the use of a script, rituals, private time etc. The figure only shows a selection of possible techniques that can be applied in the practical work of restorative justice procedures. The use of certain techniques is dependent on many factors and circumstances, for instance a reflecting team can only be done if there are two mediators available. Behind techniques there should be a certain spirit or attitude which can be captured by studying applied humanistic psychology (Rogers, 1984) and using the language of non-violent communication (Rosenberg, 2001) for example.

The aim of this foregoing suggestion for the use of terminology is regarded as one step towards a more structured and better implementation of restorative justice methods and procedures. Another important step towards improvement is to identify to what extend progress has already been made in the partner countries as a result of this project.
4.2 GOALS, IMPACT AND RECOMMENDATIONS

In the previous chapters, the four different systems in the partner countries as well as applied methods and procedures were compared and analysed. In regard to the project’s action research methodology, the overall objective was to aim for direct improvement in the field throughout the project period. Shortly, the specific project goals shall be outlined in order to find out how those were approached and to what extent they were reached during the project, thus clarifying what impact the project had in the partner countries according to the goals. Following this, concrete recommendations for further development and improvement based on these findings shall be made.

4.2.1 PROJECT GOALS AND IMPACT

One of the more specific goals was to improve knowledge by comparing practices in order to widen the variety of applied methods, procedures and techniques in the partner countries. Furthermore, the promotion of RJ was a central aim being reached through improved cooperation and networking in all fields, including practitioners, decision makers, the general media, civil society and individual citizens. The core idea was to raise numbers of restorative justice cases in the partner countries in the long term. To what extent these goals have been reached and what impact the project had in the individual countries is summarised below.

THE IMPACT OF THE EU-PROJECT IN SCHLESWIG-HOLSTEIN

Persons from different fields in SH, as for instance the Ministry of Justice, the University, the VOM Consortium and NGOs, were involved in the conferences and study visits, as well as the activities in between the three milestones of the project. The impact was as follows:

    Restorative Justice Steering Group – The steering group was initiated by the MoJ in cooperation with the Schleswig-Holstein Association and Kiel University of Applied Sciences around the same time of the project application in order to provide a platform for discussion on the further development of RJ in Schleswig-Holstein involving all relevant actors in the field. It has the status of an official working group implemented and supported by the Minister of Justice of SH. The goal of the steering group is to spread the ideas and principles of RJ into the relevant fields, create acceptance and improve its implementation. The RJ steering group meets every three months and has been largely interlinked with the project activities. Furthermore it allowed
continuous exchange between the German project partners. This exchange may have become a challenge without this group, due to structural changes in the Ministry resulting from regional elections. Overall the implementation of the steering group has been a great success and will continue after the project ends.

3rd Victim Protection Report for Schleswig-Holstein – This report was published by the state Ministry of Justice of Schleswig-Holstein in October 2011 and explicitly mentions the term restorative justice for the first time in an official document in Schleswig-Holstein as well as the EU-project itself. The main goals and activities of the project are summarised and it is stated, that VOM is only one of many RJ methods but currently the most common procedure in Schleswig-Holstein.

Coalition contract 2012-2017 – The coalition contract between the Social Democratic Party, the Green Party and the South Schleswig Voter Federation says that mediation and victim offender mediation, in particular offered for juveniles across the country, shall be supported in Schleswig-Holstein (page 54, lines 2302-3).

Network/Cooperation – Generally, the network and the cooperation within Schleswig-Holstein has improved between many relevant actors as for instance the VOM practitioners, the Ministry of Justice, Kiel University of Applied Sciences, the Probation service, the Youth Welfare Offices, Police, Prisons and the Church, Victim Support. All members are now familiar with the concept of RJ. Firstly, this is a result of regular group meetings such as that of the Consortium for VOM, the RJ Steering Group, and the ‘Landesbeirat für Bewährungs- und Straffälligenhilfe’.

Secondly, the various activities of the EU-Project, such as conferences, study visits, workshops, public presentations and project meetings and not to forget informal exchange, have created a feeling of togetherness. Generally, this has also lead to overall motivation amongst project participants and practitioners, a feeling of being taken seriously and being able to create change.

RJ Methods and Procedures – In Schleswig-Holstein, the most common RJ procedure applied is victim offender mediation. There is only one pilot project of restorative conferencing in Elmshorn. Through the EU-Project, the knowledge of other methods and procedures and with it the motivation to apply those has risen amongst practitioners. Negotiations with the Youth

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59 A body demanded by the law to give professional advice to the Ministry of Justice on issues of probation and social criminal justice, as well as victim and offender treatment. One of the authors became a member during the project.
Welfare Services in Kiel and Neumünster are going on in order to implement restorative conferencing in those districts. A project proposal to carry out extended VOM (involving supporters) in Elmshorn has already been put forward and is currently in the decision making process at the MoJ. The formal and informal exchange between practitioners, prosecutors and judges during the conferences can be seen as one influencing factor for the broader understanding of RJ in Schleswig-Holstein.

Publications and products – Several German publications and the film have certainly had an impact on the development in and the reputation of Schleswig-Holstein in terms of the application of RJ. This is especially true for the students of social work. Some of them have taken up the RJ approach, did internships and wrote their Bachelor-theses in this field. Thereby, this knowledge will become part of practice in several fields, not only in criminal justice.

Training – There is general agreement about further training of prosecutors and judges in restorative justice. This shall be done as part of the annual meeting of prosecutors, through the regular training of young prosecutors and through international exchange programs (the Association has proposed an initiative to organise such events in the frame of the EU Lifelong Learning Programme Leonardo da Vinci in the future). The observation of practice has been considered as a fruitful means to convince legal personnel. There was positive feedback on the handbook – lawyers begin to realise what RJ really means in detail and which methodological skills and elaborated techniques are used for what purpose.

Case numbers – According to the statistics of the MoJ which are based on the referral rates of the prosecution offices, the numbers of cases referred has been falling until 2010. Since 2011, however, referral numbers have been rising, particularly in the field of adult offenders. Internal feedback through practitioners in the regular meeting of the Consortium indicates particularly fast rising numbers for adults in 2012. In Flensburg for instance, the previously ¾ VOM position has been altered into a full position. Furthermore, the VOM form in Flensburg, where it is indicated whether a case is referred to mediation, has been changed so that the prosecutor now has to justify why a case is not being referred to mediation. The mediation service in Itzehoe has made a request for more human resources with the MoJ which has been approved. On the other hand, low numbers in the juvenile sector are obvious. There have been attempts to identify the status quo of VOM in the juvenile field, thus within Youth Welfare Offices which are responsible for the offer. The general prosecution office for instance has carried out a survey (2011) to find out case numbers and structural organisation in the juvenile
sector, the results, however, have not been published by the end of the project and can therefore not been taken into account.

Action Research Case Study – Sometimes wrong or misleading information is even coming from the highest level as on the 12th of January 2011 in the most popular German news broadcast `Tagesschau`. In the course of a cabinet-decision concerning a law on mediation it was stated that mediation is a promising method to solve conflicts for various aspects of life, but not suitable and not legally grounded for criminal matters. Hearing this message one of the project researchers was irritated and contacted the TV program explaining the actual legal situation referring to the laws. The author replied, justifying his report and rejecting this `mistake´ by interpreting the term mediation differently from the official translation used in the EU. The researcher then shared this matter with the practitioners of the VOM consortium and gained approval. Subsequently, the TOA-Servicebüro was asked for support by the consortium. Two days after the Kiel conference, where this matter was also mentioned, one of the delegates from another federal state asked for detailed information and turned to the chairman of the federal association of probation. On February 17th Prof. Dr. Kerner from the University of Tübingen contacted a high-rank civil servant in the German Ministry of Justice asking for clarification in this respect. Only four days later the ministry responded by fully confirming the initial position of our team member and apologising for the adverse impression constituted by the Minister Leuthäuser-Schnarrenberger herself. Soon after this, the ministry informed that a written public statement will be published in the TOA-Infodienst, providing clarification. However, despite the successful end, there is no reason for joy and some questions remain unanswered. Firstly, the general public does not read the TOA-Infodienst, thus, the false statement will remain in the consciousness of ordinary people. Secondly, it is doubtful whether the journalist ever drew the correct conclusions despite being informed exactly. Third, why did the minister make the false statement? Particularly, since on the European level, the framework decision entered into force in 2001 and was obligatory for every country from 2006. Therefore, the discussion on this matter and the new directive has been on-going.

Certainly, the sustainability of many of those impacts is dependent on the further handling and motivation after the EU-project has finished. Nevertheless, with the implemented groups, the new knowledge and the motivation raised throughout those two years, a view on further developments in the field appears optimistic. Two major visions remain, firstly, to extend restorative justice to the post-sentencing level. To approach this goal, a new EU-project proposal
`Restorative Justice at post-sentencing level; supporting and protecting victims´ will start in January 2013. Secondly, to eventually reach the status of the Belgian Youth Law system by having a legal obligation for prosecutors to consider RJ in every case, unless its unsuitability is explicitly explained.

THE IMPACT OF THE EU-PROJECT IN THAMES VALLEY

UK participation in this project has involved the following activities:

- the preparation and delivery of conference presentations on the state of RJ in the UK (Kiel April 2012) and how services are delivered to victims (Tallinn September 2012);
- attendance by staff from Thames Valley Probation and our partner agencies, at academic conferences in Kiel, Tallinn and Oxford as well as participation in working groups at those conferences;
- observation of RJ Practice in Kiel and Estonia;
- delivery of RJ Practice in Thames Valley (April 2012) for observation by our European colleagues;
- organising and delivering a major conference ‘Making Justice Systems More Restorative’ in Oxford in April 2012.

Through the events and activities described above, over two hundred people in the UK have been directly involved in learning about the processes of RJ delivery, within the criminal justice sphere, across Europe. A small number of colleagues have directly observed RJ taking place in settings in Kiel and Tallinn. Staff from the RJ unit operating within Thames Valley have been involved in discussions about what we have observed; what we have learned; and how our practice can be improved in the light of what we have learned. The feedback from those participating in the Oxford conference has been very positive and demonstrated extensive learning about RJ across Europe and in relation to practice within the participants’ own countries.

Perhaps the most important learning outcomes have arisen from the opportunities to see our work in a wider context. It is all too easy to develop a narrow view of practice which is set within the context of one’s own agency, culture, legislation and understanding of the way in which a particular justice system works. This leads both to a sense of isolation and an organisational mind-set which is closed to new approaches. As a result we fail to ask fundamental questions about how and why we do things to deliver RJ within criminal justice.

It has been important to realise that what we are doing in the UK is both backed by European directives and that these directives lay out what are the principles of best practice. As a

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60 Written by Geoff Emerson.
result of this educative process, we have been informed about the new directive in relation to victims and how it will impact on the role of RJ in extending the services available to victims. The awareness of a European framework of legislation and guidance has helped us in the UK to feel part of a wider community of practitioners, managers, policy makers and academics who are seeking to bring a restorative element to the criminal justice process. This inevitably makes one feel less isolated and has provided the experience to be part of a wider learning community exploring better ways to do RJ.

We have greatly benefited from being able to observe RJ practice directly which was particularly valuable in the Kiel conference. In particular the opportunities to observe many examples of victim offender mediation and an RJ conference were rich in evidence of both similarities and differences. We have had extensive discussions about issues of principle including:

- the use of ground-rules;
- the degree to which participation is truly voluntary for offenders in criminal justice settings;
- the inclusion or exclusion of domestic violence cases;
- the role of monetary compensation in victim offender mediation;
- the value of concluding an RJ conference with participants taking refreshments together.

Perhaps the greatest factor which has led to a sense of reduced isolation has been finding colleagues in different circumstances and jurisdictions struggling with the same issues that we struggle with in the UK. A key example is the issue of getting ‘case referrals’ from a largely retributive system to the restorative process of RJ. Low rates of referral from courts and prosecutors to restorative processes, such as RJ conferencing and victim offender mediation, are widespread amongst the jurisdictions represented within the collaboration. This finding has also led us to want to pioneer an approach using RJ pre-sentence which will require effective liaison with key partners including the Crown Prosecution Service.

We have been encouraged, by our experience in Kiel, to tackle the problem of low levels of awareness about RJ by using a more pro-active approach to policymakers and the media. To do this we are making better use of satisfied participants, who have undertaken RJ conferences (both victims and offenders) to promote RJ. The best example of this is our devoting a session at the Oxford Conference Program to two victims and an offender, who told their stories about the benefits of participating in an RJ conference to an audience of more than a hundred people. Feedback in relation to this presentation was overwhelmingly positive and all those who heard it
commented upon how powerful this personal approach is as a means of getting the message across.

These participants have subsequently told their stories to the media (press and breakfast TV) and policy makers (Government ministers and Senior Managers in Prisons and Probation). Whilst we had the intention to do this before the European co-operation, it was the stimulus and setting of the Oxford conference, as well as the commitment we made at the Kiel workshop, that gave us the impetus to put our plans into practice. As a result we now have a nucleus of victim and offender RJ `graduates´ who are prepared to advocate the process of RJ on our behalf. We know from feedback from Magistrates and victims of crime, to whom our `graduates´ have told their stories, that they are far more convincing advocates than any professional can be.

The presence of a UK Government minister to open the Oxford conference in April was of great importance to the UK participants. It not only demonstrated support for RJ from a senior level, it also mapped out a way forward for RJ within the criminal justice system based on best practice.

Having the opportunity to see the range of organisations involved in RJ in Germany and Estonia in particular we realised the extent to which we look to Government in the UK to provide solutions when NGOs can be the source of innovation and challenge to existing failed methods of delivering justice. As a result of this growing awareness we are confidently using the partnership between Thames Valley Probation and Thames Valley Partnership to promote RJ to Government, Probation Trusts, Prisons and partner agencies.

The Tallinn conference provided a focus on services to victims and helped us to acknowledge the extent to which Probation is primarily an offender focussed agency which can limit our capacity to deliver RJ with balanced victim and offender perspectives. To this end we have included an application for European funding to enable us to deliver victim initiated RJ via the Probation Victim Liaison Unit. This will enable us to provide a valuable service and to test service delivery methods and take-up rates.

The UK participants became even more aware of the problems of terminology both within the UK and across Europe. This bedevils both discussion and progress. We felt that in many ways the co-operation has scratched the surface of the issues related to RJ and that there is so much more to learn about a range of issues in terms of detailed processes for the delivery of RJ; the use of volunteers in RJ delivery; and access to excluded groups, such as ethnic minorities.
Our perspective on our work has changed. We now see it in a wider European context. This has led us to question our methods and assumptions and given us confidence to promote our work more effectively. We have made much better use of RJ graduates in promoting RJ to a wide range of audiences. We have participated enthusiastically in a Government consultation process and advocated a victim fund from which offenders can borrow to compensate victims. We look to a future in which we can deliver both pre-sentence RJ and victim initiated RJ informed by what we have learned through this cooperation. Our involvement in the European Project has put us in a position where we are likely to be successful in bidding to the UK Ministry of Justice to undertake a pilot delivering RJ at a pre-sentence level. It has also enabled us to consider approaching the Crown Prosecution Service to suggest that a diversion method called ‘conditional cautioning’ which is currently under-used, could be revitalised by the use of a victim offender mediation approach centred on agreements about financial compensation and restoration.

THE IMPACT OF THE EU-PROJECT IN HUNGARY

In the project Hungary was represented by the Justice Service of Ministry of Public Administration and Justice. In Kiel (Germany) two colleagues of the Probation Department (also dealing with victim offender mediation in Hungary) took part in the conference and study visits. In Tallinn (Estonia) and in Oxford (Great Britain) one advisor of the Probation Department and one advisor of the Victim Support Department from our Service participated in the program organised within the frame of the project. The main effects of the project in Hungary that can be put in relation to the activities carried out in the project are as follows:

Cooperation – Cooperation in connection with restorative justice has been strengthened both at international and national level. Firstly, at international level – taking into consideration that VOM has been introduced to Hungary only in 2007 – this project was the first one focusing directly on RJ in which our Service participated. This meant that we could gain information directly from the different stakeholders (e.g. researchers, practitioners, policy makers) involved in RJ in many countries (Germany, Great Britain, Estonia, Czech Republic, Russia). In Kiel (Germany) we could also acquire experience on how RJ (VOM) works in practice in a foreign country. We contributed to the 3 conferences in Kiel, Tallinn and Oxford by giving

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61 Written by Edit Törzs, Zoltán Bogschütz and Zsófia Tóth.
lectures/presentations about the legal framework and the practical situation of RJ and Victim Support in Hungary. We also lead workshops in Tallinn and in Oxford. Secondly, at national level - the cooperation between two different fields (RJ and Victim Support) has been firmed by giving common presentations and by summarising the contact points between RJ and Victim Support in Hungary.

Knowledge/exchange of best practices – After the conferences and study visits in Kiel, Tallinn and Oxford, we wrote detailed reports on the experiences and good practices about RJ and Victim Support in the foreign countries involved in this project. We mediated, communicated and sent these reports (experiences) both upwards, to the Ministry of Public Administration and Justice and also to the practitioners of RJ and Victim Support in the 19 counties and the capital of Hungary (namely to the 20 local justice services). It is also worth to mention that the legal system of Germany and Hungary are very similar, and also – as we have learned during the project – attitudes of legal practitioners towards restorative justice are mainly the same. This helped us to understand each other’s situation better and to think together which steps should be taken in the future to promote and use RJ more widely in our countries. It was also a good opportunity to give advice and examples to countries (e.g. Russia and Estonia) where RJ is not as well developed, and perhaps it has more credit for them to see developments in post-communist countries (like Hungary or part of Germany). From the UK we could learn impressive programs, cooperation between different services and between the private and the public sector.

Political or legal decisions – Based on the positive experiences of RJ methods within Hungary and also on the international experiences, e.g. this international project, the Ministry of Public Administration and Justice made several statements to promote the extension of these RJ techniques. This was presented in some media e.g. in the form of a radio interview.

Case numbers of RJ – The case numbers of VOM are continuously growing with the greatest increase since 2010.

Relating to the products of the Hungarian Probation Service, RJ approach appears not only in VOM, but several community service cases have RJ elements as well. Additionally, as part of the probation supervision, in the form of the so called `special behaviour rule´ which is a personalised task of the offender to fulfil, given by the prosecutor or judge, there is cooperation with some NGOs to provide individual or group programs with RJ approach – e.g. cleaning graffiti, reconstruction projects in the zoo, theatre performances to ill children etc.
Estonia was represented in the project by the Baltic Crime Prevention and Social Rehabilitation Institute (BCI). BCI is an NGO which aim it is to develop the practices of restorative justice. BCI experts participated in study visits and lead workshops at the conferences. State officials (mediators, police officers etc.) participated in the conference in Tallinn. The main effects of the project for Estonia are as follows:

Sharing best practices – The main benefit of the project was the possibility to share best practices of different countries. Differences between project partners make it possible to learn about practices that were presented in different countries. We acknowledged that the main practices are quite similar in all partner countries and the differences are rather in politics and the general mind-set of decision makers. We realised that the main development we would need in our country would be launching restorative justice. We were impressed by the legal frame for restorative justice in Germany and in England. From the Estonian side, we can offer our experience of restorative initiatives of civic society, especially for the countries where civic society is not yet well developed (e.g. Hungary and Russia).

Political discussion – The conference in Tallinn was a great opportunity to initiate a political debate of widening the range of use of restorative justice. The presence of the Minister of Interior of Estonia gave an opportunity to make the voice of restorative justice advocates more audible and put a slight pressure on policy makers to think further on how to use good examples from other European countries of applying a restorative approach. The project gave more credibility to the BCI as a partner for the state in political discussion concerning restorative initiatives.

Cooperation – The project was a great starting point to get new contacts and fresh ideas for further cooperation. There are several new project ideas launched during and right after the project. Estonia has historically been like a bridge between Europe and Asia, between the European Union and Russia and therefore we are especially interested in cooperation with our Russian colleagues. BCI members led several workshops in Kiel, Tallinn and Oxford and that also helped to build new links with other restorative justice agencies in Europe e.g. European Forum of Restorative Justice, so that BCI expert Jaanus Kangur was invited to lead a workshop at the European Forum conference in Helsinki.

62 Written by Jaanus Kangur.
From Archangelsk overall four practitioners from the Juvenile Court Assistance participated in all three project conferences and study visits. The conferences allowed closer insight into basic principles of RJ and its implementation. Since the beginning of the project the following changes and developments have occurred in Archangelsk:

Training – Norwegian colleagues assisted in mediation training for social workers from 20 different regions in Archangelsk.

Standards – A set of standards/regulations and a training curriculum for mediators were developed by the `Commission on Minors´ of the Governor.

Practice – RJ was implemented in cooperation with an association from Moscow (about 5 cases by April 2012).

Cooperation – Negotiations on the introduction of RJ with the administrative level/decision makers/prosecutors/judges.

Problems arising in relation to the implementation of RJ:

- difficult to raise awareness;
- law enforcement agencies are not prepared to cooperate with social services regarding mediation;
- further training and regular exchange of experiences required.

It becomes clear that the project has already had a great influence on all of the partner countries including the associate partner Archangelsk. Through this interactive exchange during the two year period a number of similarities and differences were identified and allow further pinpointing of best practices in order to continuously improve the development and implementation of restorative justice in the partner countries in the future. Based on these findings some more concrete recommendations for this improvement of practice shall be suggested in order to construct a vision and combine what has worked in the past with new ideas for the future according to an Appreciative Inquiry approach. Prior to concrete recommendations, the initial and central question of the project `which procedure is most suitable for which case´ shall shortly be addressed with the knowledge gained during the project.

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63 Written by Elena Eremina.
WHICH PROCEDURES FOR WHICH CASE?

Throughout the project, a number of RJ methods, procedures and techniques have been scrutinised and compared in the partner countries. It can be said that all partner countries have a monopoly in one procedure, which is mainly victim offender mediation in Schleswig-Holstein, Hungary and Estonia and conferencing in Thames Valley. Related, Emerson and Tartakover (2011) state:

'We have come to realise that the different RJ methods are like a bag of golf clubs. We have a range of clubs or methods, but we don’t know the best tool or club for each shot or case. In Thames Valley Probation we have tended to use the RJ conference for every situation and it is well suited to post-sentence work with more serious cases. The VOM approach is well suited to cases where speed and efficiency of process is important and financial compensation is a priority. Is VOM the best tool for pre-sentence work? Can the two approaches be linked or even combined?'

A central aim of this action research project was to identify which procedure is most suitable for which case and participant. Certainly, the answer to this question cannot be to allocate a particular procedure to a particular type of crime. Opposed to that, the answer is rather that there are plenty of variables in procedures and techniques that can be located along the continuum to be applied and that each individual case and with it individual participants’ needs require the choice and combination of those variables. Neither can there be a definite answer regarding the severity of crimes as each victimisation is experienced subjectively, thus only vague assumptions can be made in terms of that.

However, ‘if restorative facilitators, or a restorative whole service, have only been trained in formal, scripted restorative conferencing or formal victim offender mediation then every problem must fit the criteria for one of these responses. Situations which do not fall within the remit of the learned model may be rejected by the facilitator or the service. (...) When a case is deemed unsuitable for a restorative response all those potential beneficiaries – offenders, victims and the wider community of family, friends and neighbours miss an opportunity to have their needs met’ (Hopkins in Lummer et al., 2012: 170). Therefore, expecting mediators to be able to apply a range of procedures and techniques out of a tool bag presumes that they are trained in those and are provided with the required basic framework conditions to be able to apply such a choice. Which procedure and technique is applied depends on the complexity of the case, the need of support, on the participant’s communication abilities, on the number of persons affected
by the conflict, which impact and consequences it had, on the specific cultural background of the participants etc.

Certainly, some variables in procedures have advantages that can be linked to a certain type, severity or constellation of an individual case. It is however impossible to pinpoint all potential constellations. Some advantages and their variables can nevertheless be summarised of the three most common mediation procedures in the partner countries.

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<tr>
<th>Victim Offender Mediation</th>
<th>Restorative Conferencing</th>
<th>Peacemaking Circles</th>
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<td>Involvement of Community/Supporters</td>
<td>Involvement of legal professionals</td>
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<tr>
<td>Inexpensive</td>
<td>Support before, during and after (emotional)</td>
<td>Greatest amount of ideas/input/variety</td>
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<tr>
<td>Practical (organisational effort)</td>
<td>Many ideas</td>
<td>Community Control</td>
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<td>Privacy</td>
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Often, the question arises of whether the advantages of a particular procedure can be linked to a stage within the criminal justice system. Certainly, it can be argued that victim offender mediation is quick and efficient, and that financial compensation may be a priority in practice, which are characteristics that may suit a pre-sentencing setting as rather uncomplicated and quick. Also it can be claimed that conferencing may be a suitable setting for post-sentencing levels since the group of persons involved is larger which may allow for more serious forms of crime as more support is possible. It requires more organisational effort and at post-sentencing level there is generally less time-pressure. A conference can also be very useful as a form of release preparation referring to informal control and support through community members. For victims, involving supporters at post-sentencing level may be very essential as it allows for care before, during and after the conference, if needed. This can be of particular importance if conferences are carried out within prison settings. On the other hand, conferences as well as circles with more people involved are very difficult to organise in prison, due to security reasons which again would speak for the application of a more flexible procedure such as VOM. Nevertheless, most of these arguments depend on individual cases and if there is a need for a particular technique to be applied to make participants feel more comfortable with the procedure, then this should be done independent of the stage. All procedures and techniques along the continuum should be possible to be carried out at every stage in accordance with the individual case circumstances.
Furthermore, there is a debate on when victims are most satisfied with the application of RJ as referred to above. Here, it may be argued that the motivation of victims to participate could be higher at post-sentencing level because the offenders may appear more sincere. This however also depends on the justice system as likewise at this level, there may be certain improvements for the offender. Regarding this question, Shapland et al. (2011) states that the majority of victims are highly satisfied with the procedure independent of the stage at which it has been carried out. Therefore, ideally, restorative justice procedures should be offered to all victims and offenders at every stage of the system as long as victims’ needs are taken into consideration.

Thus, to answer the initial project question, it can be said that ‘the larger the range of options the better. The more processes a facilitator is able to offer the wider the choice for the potential beneficiaries’ (Hopkins in Lummer et al., 2012:176). Practitioners need to be trained in a wide range of procedures and techniques in order to be able to explain them to the participants so that each individual can make a choice of whether and if how they want to take part in the process. Hence, it cannot be said that for a specific case, a particular procedure is more suitable, more likely the mediator should pick certain variables out of a tool bag according to the needs of the participants. These answers are reflected in the following recommendations.
4.2.2 CONCRETE RECOMMENDATIONS FOR IMPROVEMENT

On the basis of the findings above, the following 20 recommendations are made:

1. Wider Variety of RJ Methods, Procedures and Techniques
2. The training of mediators should be broader so that a tool bag is available
3. Framework conditions to apply the tool bag of procedures/techniques should be supplied
4. RJ procedures should be carried out by independent services/mediators
5. Further Promotion of Quality Marks
6. Statistics – if possible, standardised national statistic software should be used
7. Restorative Justice procedures should be offered at every stage of the justice system
8. Restorative Justice procedures should be equally available for all target groups
9. The offer should not be dependent on the type or severity of a crime
10. Prosecutors should have to justify why a case is not referred to RJ
11. The participation in RJ should be fully voluntary
12. Referrals should be promoted further, particularly self-referrals
13. More Use of Public Relations
14. National and international partnerships/networks should be endorsed further
15. Cost calculations are required for individual areas
16. Systematising knowledge on the wishes of victims and identify reasons for refraining
17. Preliminary interviews and after care are an essential part of the mediation procedure
18. Atmosphere and framework conditions are important
19. Goals should be balanced
20. If possible, process should be fully restorative

1. Wider Variety of RJ Methods, Procedures and Techniques

The application of RJ methods, procedures and techniques should become broader in the field of criminal justice. Currently, the application of RJ procedures rather resembles a ‘monoculture’ in each of the partner countries. Even though the UK approaches RJ very broadly, predominantly using the term ‘practices’ as suggested by the guidelines of the Restorative Justice Council (2004), the most commonly applied mediation procedure is conferencing. In terms of methods, Thames Valley does furthermore carry out victim empathy training which is not the case systematically in any of the other partner countries. In Schleswig-Holstein, Hungary and Estonia, victim offender mediation is the major procedure applied. Neither do framework conditions in Schleswig-Holstein allow for the application of a variety of techniques for which many would require two mediators. Thus, the application of RJ shall be approached on a broader level considering all sorts of methods, procedures and techniques in order to meet the needs of all those involved in the conflict or problematic situation. The aim is to be able to give every person affected the chance to choose from a number of procedures or rather variables, such as for
instance whether supporters shall be included. Variables appear to be more suitable keeping in mind the previous argument of the continuum – there may not always be a clear cut between the individual procedures. Therefore there is no need for mediators to be trained specifically in all procedures, rather this approach requires flexibility and for them to be able to apply a number of variable techniques. Thus, it cannot be said that a particular procedure is more suitable to a particular case, more likely the mediator should pick certain variables out of a tool bag according to the individual needs of the participants, e.g. the involvement of supporters.

According to Liebmann (2007) the definition of which methods and procedures are restorative is still discussed. Nevertheless, the central principles of restorative justice theory are clearly outlined in many guidelines (e.g. UN, RJC, TOA-Servicebüro etc.). Thus, in order to work towards a greater variety of restorative practices in criminal matters – which can be applied in various forms, with many different variables, by many different actors, in a number of different situations, fully or partly restorative – these have to be promoted further. Despite this rather abstract objective, certainly structured routes are required to achieve this in many small steps. Well thought through working paths, precision in the cooperation channels and application, as well as clear outcome proof are necessary and helpful, as long as the broader objective is kept in mind.

2. *The training of mediators should be broader so that a tool bag is available*

`Restorative facilitators are often renowned for their creativity and flexibility. It is important that they do not feel hidebound by a single model of practice or a `script´. Every single situation is different and every participant is different. The key is to identify each person’s need and then be creative to adapt the restorative process to address these needs. RJ facilitators need to know about the full range of options´ so that `the decision must not be based on the fact that only one model is offered because it is the only one the available staff can facilitate´ (Hopkins, 2012: 188). If this full range of options in mediation procedures shall be carried out, mediators should be trained in a broader diversity of those, or rather in the application of different variables as the continuum above suggests because procedures cannot always be clearly separated. All procedures which somehow moderate between several parties with the presence of an impartial mediator are regarded as mediation procedures (see definition above), no matter of whether a script is used or how many individual persons are involved. Some best practice variables of the mediation procedure have been identified that differ in the partner countries. These include:
• The use of a script
• The listing of ground rules at the beginning of a mediation
• The moving into a smaller circle in a conference
• Taking a systematic break in conferences
• SMARTS
• Legally binding agreements
• The use of a victim fund
• The offer of Tea and Biscuits at the end of a conference

Whether a script is being used and how strictly it is followed should be made dependent on the individual circumstances of the case. Nevertheless, mediators should have the knowledge of and be training in using a script in order to be able to make a choice.

`Ground rules are a matter of some debate in the UK. Ground rules are rules for the behaviour and conduct of participants in RJ conferences. In the RJ conference observed in Kiel, ground rules were displayed on a flip chart and referred to in the opening remarks made by the facilitator. This is common practice in conferences in the Youth Justice System in the UK and in many adult conferences, but the Thames Valley Team describe the ground rules in preparation sessions with the participants, but do not make reference to them in the conference itself. The reason for this is to avoid making the conference seem like the `property´ of the facilitator and to ensure that the role of the facilitator is not that of a leader or chairperson. The experience from Kiel indicates that ground rules are necessary in youth conferences and may be necessary in conferences where it is unrealistic to expect the participants to `police´ themselves´ (Emerson, 2012). Thus the handling of ground rules should be discussed and mediators made more aware of their effect.

In youth conferences in Schleswig-Holstein, the offender, the victim and the mediator are moving into a smaller circle at the beginning of the conference in order to leave aside the opinions of their supporters at first, giving the directly involved the chance to express their perspectives first. This technique has had great effects as sometimes, in the larger circle, the supporters take up a too dominant role. This technique has not been reported from any of the other partner countries but does have some advantages. Furthermore, a systematic break is taken in each conference before the plan is being discussed. During this break, the offender plus supporters have the chance to think about restitution and a possible plan that can be offered when returning to the conference.

In terms of the agreement, a written document is generally advisable but should however also be made dependent on the individual case. In Thames Valley agreements are based on
SMARTS. Each item of the agreement should accordingly be specific, measurable, achievable, realistic, time-bound and supported. This is a good technique of reaching valuable and doable agreements. Generally, agreements should preferably be legally binding to reach greater liability.

The UK observers were extremely impressed with the Schleswig-Holstein victim compensation fund. This fund, which enabled the offender to borrow money from the state to compensate the victim⁶⁴, provides a solution to a problem in the UK, whereby courts order offenders to pay compensation to victims and the offender fails to pay, or does so over a very long period of time. This can leave the victim angry with the criminal justice system and out of pocket. UK participants have proposed this approach to the UK Government via consultation processes´ (Emerson, 2012). The victim compensation fund therefore is a best practice that may be considered for further implementation to improve the possibilities for financial compensations as part of the mediation procedure.

A technique which has been given a lot of attention during the third project conference in Oxford is the commonly applied informal gathering of conference participants after mediation has taken place with tea and biscuits. There was overall agreement that this can have great effect on the satisfaction of participants because they do not manage to say all they want to in the formal setting for which this additional option provides a good opportunity. Thus, this tool should also find a way into the other partner countries’ practice and be kept in mind by mediators.

3. Framework conditions to apply the tool bag of procedures/techniques should be supplied

Certain framework conditions are inevitable if the application of a tool bag of procedures and techniques shall be applicable. For instance, a number of techniques can only be carried out in co-mediation. In Schleswig-Holstein, conferences are always carried out by two mediators whereas victim offender mediation is only done by one mediator. Limited human resources, long distances and recently rising case numbers do not allow for co-mediation in SH. In Thames Valley on the other hand, conferences are actively facilitated by only one mediator, however, a back-up facilitator who is often a trainee or volunteer is always also present in the room. Co-mediation has many advantages, as for instance collegial support before, during and after mediation which allows for reflection and evaluation, as well as with simple organisational issues that are important for a smooth procedure. Particularly reflection allows for good practice for

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⁶⁴ More precisely, the money comes from a nongovernmental foundation that was founded and is basically financed by the MoJ.
which reason sufficient occasions and time for mediators to reflect should be provided. To involve volunteers, a recruitment system and financial support to train them must be implemented in those countries that do not have yet worked with volunteers in this field. Here, there is further room for development in Schleswig-Holstein, Hungary and Estonia.

Shapland et al. (2011) has identified some safeguards for mediation procedures that should be taken into account as framework decisions of good practice. These include procedural justice (complaint procedure), adequate risk assessment, safeguards, supporters, balance of power, breaks and break out rooms, more than one facilitator, regular feedback and debriefing sessions.

4. **RJ procedures should be carried out by independent services/mediators**

As stated in most restorative justice guidelines, procedures should be carried out by preferably independent services or at least independent mediators, who do not have other one-sided obligations or interests. The probation service generally is a dependent entity as it is mainly offender-focused, although, victim liaison work also partly lies in the responsibility of English Probation Services. Nevertheless, those agencies are perceived as partial by participants which is why independent NGOs or contracted mediators should preferably carry out restorative justice procedures. Despite this, involvement of those agencies is highly recommended, particularly of Offender Managers in Schleswig-Holstein, where until now no systematic cooperation has taken place. This would in particular be desired in terms of informing clients about the offer of RJ.

Throughout the project another theme dominated the discussion. This is whether RJ should be located inside or outside the criminal justice system. Winter (2011) states that victim offender mediation is currently too entrenched in the criminal justice system and should preferably be located outside the system, in the community. According to him, services should be directly on site in particular areas so that victims can where possible and if wanted refer straight to the mediation service. Gavrielides (2012) on the other hand points out that if the aim is to mainstream RJ, then it will have to be implemented in the system. Ideally, there would be an offer for RJ on both levels rather than a choice.
5. Further Promotion of Quality Marks

In Germany, a quality mark was introduced in 2001 to be given to mediation services by a commission of the TOA-Servicebüro. According to the TOA-Servicebüro the quality seal indicates for injured persons, perpetrators, justice administration and courts that there is professional mediation in criminal cases involving reciprocal protection of interests of the parties and complying with the VOM guidelines. However, the absence of the quality seal does not indicate a low service quality. Instead some organisations offering high quality RJ may be too small, financially not potent enough or simply challenged by the immense effort to undergo the process of certification. In the UK, the RJ Council provides a quality mark to mediators directly to accredit the training in restorative justice practices. Either form of securing the quality of RJ-service is supported and it should be examined whether an expansion of accredited RJ-services in the future will lead to more acceptance and use of RJ. Nevertheless, this aim must be balanced with rising bureaucracy. Quality marks are supported but should not take away room for development and individuality.

6. Statistics – if possible, standardised national statistics software should be used

Of the partner countries, Hungary is the only country that has a national database of VOM cases, which are collected through (standardised) software used by all mediators. In order to receive data on the practice of mediation and increase comparability of the processes, easily usable, software should be introduced to all countries. Germany for instance offers national VOM software which can be used on a voluntary level and is available free of charge. This software aids the documentation process of VOM cases from beginning to end and collects relevant data on the conducted cases. Despite these obvious advantages only a small number of services in Schleswig-Holstein use the software. VOM practitioners in Schleswig-Holstein have reported that it is difficult for them to extract some relevant data for their own annual reports out of the software which is the main reason for them not using this tool. As national standardised software may be another step towards the further implementation of restorative justice it is pleaded for revision of the existing software to easily enabling functions for individual administrative purposes in order to mainstream its use, which again is certainly dependent on monetary issues. In the UK and Estonia, software may as well be introduced. In the UK this could be built upon a
common database which is being used by all those Probation Trusts and Prisons involved in the NOMS RJ Capacity Building Program.

7. *Restorative Justice procedures should be offered at every stage of the justice system*

As Shapland’s et al. (2011) study has shown, there is no particular time at which RJ should be offered to victims, rather victims have reported their satisfaction at any time of intervention. Regarding offenders, it was found that refusal rates are higher after sentencing which may be related to the motivation of offenders receiving a mitigated sentence after having participated in RJ. Overall there is no wrong stage for RJ as long as participation is voluntary for all participants. Therefore, restorative justice procedures should be offered as an option at any stage of the system. More specifically this means that in Thames Valley, the use of RJ at pre-sentencing level should and has already been promoted, whereas in Schleswig-Holstein, Hungary and Estonia, post-sentencing methods and procedures should be offered more systematically.

Hence, Kershen’s (2012) vision of a restorative system is shared. According to him, there would be ‘restorative policing’, where street RJ would be part of every police officer’s tool bag. In that case, police officers would be peace officers and resolving conflicts one of their primary role in order to divert from further interventions. The system would have ‘restorative lawyers’ and ‘every magistrate trained as a restorative justice facilitator’ would primarily aim to solve conflicts through mediation (Blunt MP, 2012; Kershen, 2012). Furthermore, sentencing would be restorative in that restorative procedures such as sentencing circles are applied. At last, certainly post-sentencing methods should be offered as well.

8. *Restorative Justice procedures should be available for all target groups*

As has been found in the analysis of the status quo in the partner countries, there seem to be great discrepancies in the offer of RJ to adults and juveniles. Overall, the offer in the partner countries/counties is more widespread and consistent for adults. Certainly this is insufficient and should be tackled, so that all target groups have the chance to be offered and participate in restorative justice procedures.

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65 Certainly also outside the criminal justice system but this does not lie in the focus of this project.
9. **The offer should not be dependent on the type or severity of crime**

The vision is an offer of RJ for every victim and every offender independent of the type or severity of crime. Every person has a right to be offered RJ and to be informed about their possibilities thoroughly in order to make their own decision on whether to participate in a restorative justice procedure. In Thames Valley for instance, domestic violence is strictly excluded from any RJ measures. Certainly, it may particularly in these kinds of crimes often be the case that mediation is too brief an intervention to deal with power imbalances and long lasting conflicts. However, as Hopkins (2012: 187 f.) points out `the question is not whether to offer a restorative process to such people but how to do it. To refuse any of these people the opportunity of a restorative process, whether they are `victims´ or `perpetrators´ is to fail to give them an opportunity offered to others and is therefore an infringement on their human rights.´ Nevertheless, a certain degree of responsibility should be taken by the offender so that secondary victimisation is prevented. Here, it is questionable of who should ideally make that decision and what a `sufficient´ amount of responsibility means. Preferably, this decision should be taken by mediators on the basis of in-depth preliminary interviews. In terms of severity, the perception that victims wish to participate in RJ in minor crimes has been proven to be wrong (Shapland et al., 2011). Therefore, the aim is to also provide victims of more severe crimes with the offer to participate in RJ, particularly in Schleswig-Holstein, Hungary and Estonia, where currently most referred cases are of minor severity. One way of increasing this area-wide offer of RJ is to raise knowledge about the possibilities amongst the general public and advance self-referral routes.

10. **Prosecutors should have to justify why a case is not referred to RJ**

As to the Belgian example, the goal is to implement a procedure so that prosecutors will have to justify why they do not refer a case to mediation which would make referrals more likely. In Flensburg, the official forms have already been altered in the adult field accordingly. Nevertheless, Gavrielides (2012: 202) concludes as a result of the Mereps project that one of the main `strengths of RJ is the passion and commitment that exists among its practitioners´ and recommends that the `bottom up structure of restorative justice practice, its focus on locality and the underlying values that characterise its core ethos are maintained and respected by government, funders, policy makers and stakeholders.´ Gavrielides therefore doubts the effectiveness of top down approaches that are solely reached through legislative changes.
Nevertheless, we believe that implementing legislative and institutional changes whilst continuing to motivate individual practitioners is the best compromise to gain greatest effects.

11. The participation in RJ should be fully voluntary

According to restorative justice guidelines, the participation of all participants shall always be voluntary. In practice however, this does not always apply, as in some cases, the participation of offenders in RJ procedures is a sentencing condition. In this regard, voluntariness is questionable, as certainly some sort of pressure to take part in restorative processes may exist if carried out before or during the sentence as a condition. If RJ is made a sentencing condition, it should be clarified in preliminary interviews whether an offender is suitable and willing to take part fully voluntarily. For instance, if an offender is in an acute problematic life situation and the offender is unable to concentrate on the needs and live up to the expectations of the victim, RJ should not be carried out and rather postponed until their life situation has settled. Thus, RJ should be offered at any point in time for all offenders, preferably not as a condition, but mediators must be trained well in order to identify the degree of voluntariness and motivation of offenders in preliminary interviews. On the other hand, some offenders may not participate fully voluntary but experience a turning point during the mediation and then take responsibility. This is only fully legitimate, as long as no secondary victimisation occurs at any time of the process.

12. Referral should be promoted further, particularly self-referral

Although referral rates are continuously rising in most of the partner countries, only a minimal amount of cases are referred to restorative justice procedures. Therefore, it is agreed upon the fact that referral rates should be raised which again is related to the further promotion of RJ amongst legal professionals and amongst the public in order to rise the numbers of self-referrals. The objective is that it is commonly known about the possibility of participating in restorative justice and the principles of RJ which then allow an independent decision making process whether it could be an option for oneself and meet ones needs. Furthermore, this would allow some independence of referrals through prosecutors or judges. On the other hand, there are also procedural means by which referral rates can be raised systematically. In the UK, for instance, as Kershen (2012) points out at the Oxford conference, referral rate numbers rose as a result of counting each police diversion as successful investigation. In Flensburg, Schleswig-Holstein, the prosecutor’s form has been altered – based on the Belgian example – where it now has to be
justified why a case is not referred to mediation. In Schleswig-Holstein, further cooperation with offender managers could also have an impact on case numbers. Nevertheless, increasing numbers must be handled carefully, as long as human resources do not allow for further increase. Sending cases back due to overload may again have a negative effect on the working practice of mediation services. Thus, steps in this direction must be taken with care.

13. Promotion of RJ – More and More Effective Use of Public Relations

Greater public attention and therefore referrals can for instance be achieved through more effective public relations, activities and cooperation. Some practices of Thames Valley Probation must be highlighted. Firstly, the involvement of victims and offenders in the promotion of RJ by telling their story is highly convincing. The sharing of experiences and in particular emotions reached much more people than solely theoretical inputs. On top of that, victims in TV have been asked to share their thoughts with other victims in order to help them in their decision making process whether to take part in RJ. Secondly, a theatre play has been used in Thames Valley to promote restorative justice gaining widespread positive effects. Thirdly, in terms of public relations, Thames Valley Probation uses a number of different gadgets to reach the general public, such as for instance pens, rulers, posters, mouse pads etc. as well as a well-structured and colourful website. Study visits have been identified as very effective tool to reach legal professionals, judges and prosecutors, as it is a possibility to gain a closer insight into the process. Also, modern media approaches should be used more frequently e.g. social networks.

14. National and international partnerships/networks should be endorsed further

Besides the above mentioned ways of promoting RJ, cooperation has had a great effect within the last two years. Nationally as the steering group in Schleswig-Holstein has revealed as well as internationally as it underpins the importance of the subject matter. The international exchange with professionals of the field, mainly at the conferences and the study visits, has caused great motivation through learning by experiencing different practices of RJ practitioners, judges, prosecutors, decision makers and researchers, which again can greatly affect case numbers.

15. Cost calculations required for individual areas

While there is indication that RJ will save money compared with traditional criminal justice processes the project could not achieve any concrete results to compare costs. Cost calculations
are always very complex – the more so since one of the main factors is the lower recidivism rate following RJ compared with traditional court processes. However, it seems to be impossible to calculate the savings concerning offences which have been prevented! To test Australian and English findings in this regard (indicating different amounts of savings by practising RJ instead of court proceedings) would imply an experiment with assigning comparable cases at random to RJ or usual trial, respectively. This is problematic for ethical reasons and it would not comply with the RJ-principle of voluntariness especially seen from a victim’s point of view. Alternatively we rely on calculating precisely costs for RJ cases and face the critique that these cases are not really comparable with cases treated the traditional way. Nevertheless, it can be concluded that in order to advance the implementation of RJ further, more precise knowledge on cost efficiency in the individual regions are inevitable in the long term as of particular importance in the decision making process of Ministries. Thus, further research studies in this field should be supported to find out whether and to what extent costs can be saved in a particular area with the application of RJ. However, it should be kept in mind at any time that the main aim of RJ is to provide an option for dialogue and healing for those involved in conflicts.

16. Systematising knowledge on the wishes of victims and identify reasons for refraining

Although we know pretty well what victims want, more research is needed on the wishes of victims if restorative justice shall be promoted further and applied more widely. A specific aspect in this regard is the differentiation between superficial wishes and deeper needs which would satisfy healing purposes. A related question deals with the reasons for desistance and scepticism towards RJ. According to theories developed by experts in trauma research we can explain the gap or contradiction between the subjectively expressed wishes (among them a `need for revenge or punishment´) and the objective need for mourning and coming to terms with the impact of such a life event to overcome a serious victimization. Central in all partner countries is the claim that healing and compensation may often be more in the interest of victims than punishment, although this must be differentiated further and depends on individual interests; more knowledge on those interests is required. Thus a further EU-project has resulted out of this current project focusing specifically on `RJ at post-sentencing level; supporting and protecting victims´, which shall hopefully reveal some more information on the needs of victims of more serious crime.
17. Preliminary interviews and after care are an essential part of the mediation procedure

Preliminary interviews are an essential part of the RJ process and should always be carried out with each party individually prior to any form of mediation. If needed, there should also be the time taken for more than one preliminary interview in order to prepare the party for the mediation. A variety of procedures/techniques should be taken into account already at this stage, as for instance the letter of apology or video messages. If these are possible first steps, the necessary time should be taken. Certainly, more time for these techniques to be considered is available at post-sentencing level compared to pre-sentencing, when the prosecutor is waiting for results to be taken into consideration for the sentencing decision. Not only preliminary interviews but likewise advisable are meetings after the mediation has taken place to register change and development on all sides and evaluate the process.

18. Atmosphere and framework conditions were identified to be very important

As a result of the study visit, it was generally agreed upon the fact that atmosphere plays a large role in the daily practice of RJ procedures. The location, the room and the personal interaction are important factors for satisfied participants and good mediation sessions. Here, the informal gathering with tea and biscuits after a conference which is common practice in Thames Valley is of great value. On the other hand, high security measures, formal documents and a rather impersonal atmosphere in interview rooms were mentioned as limitations as it may cause mistrust.

19. Goals should be balanced

One of the results of the project is that VOM as carried out in Schleswig-Holstein was perceived to be more oriented towards the goal of financial compensation whereas conferences as carried out in Thames Valley focus more on emotional restitution, although theoretically both procedures follow the same goals. As discussed above, this may be explicable with the stage, the seriousness and therefore differing interests and needs of participants. Nonetheless, we are aware of the fact that this is also largely dependent on individual cases and practice of mediators/services. Despite that, we plead for the further attempt to balance those goals in that both emotional aspects are sufficiently discussed and compensation, financial or otherwise, gains enough space dependent
on victims’ needs, which is certainly already the case in most services but should be kept in mind as an important principle anyhow.

20. If possible, process should be fully restorative

Wherever possible, the aim should be to apply fully restorative procedures as to the model of McCold and Wachtel (2000). Therefore all three dimensions should be represented. Victims, offenders and the community should be involved in direct dialog. Involving the community, in whichever form, can be essential since generally the crime has not only had an effect on the victim and the offender but beyond and there can be needs of community members that should also be addressed in relation to the crime committed. Furthermore, members of the community and/or supporters of the two parties can be vital in the preparatory phase, participate actively in the conference with new ideas and have their say in the agreement. This again can become important when it comes to monitoring the agreement and future behaviour as well as facilitate the reintegration process. According to Shapland et al. (2011) the claim that in western societies it cannot be referred to ‘communities’, which again causes difficulties for fully restorative procedures to be effective, has proven to be false. This discussion undoubtedly deserves much more attention but cannot be delivered in this framework.
5. CONCLUSION

The objectives of this two year action research project were to improve knowledge, identify effective methods, procedures and techniques as well as improve the implementation of RJ. This report has summarised the activities carried out as part of this project, compared and analysed the findings in order to identify the impact that has taken place as a result of the action research and to pinpoint concrete recommendations that can further improve the implementation of RJ in the long term.

The first research question `what is the status quo of RJ in the partner countries´ focused on the objective to improve knowledge of restorative justice and has been achieved through many pathways. Mainly, however, with the exchange at the three project conferences and by having the possibility to gain insight into the countries’ practice as part of the study visits. Part of this knowledge has been published in the two project books. More concrete, knowledge on restorative justice methods, procedures and techniques carried out in the particular partner countries has been collected at the first conference, identifying the status quo and at the second conference, where the Matrix was completed in workshops. The Matrix collected data on specific categories mainly on two layers. At first rather broad knowledge on the methods applied and the overall process of procedures, and then going into more detail on the goals and the application of the procedures itself. During this description, it already became clear that main concentration will lie on the RJ method of mediation as it is predominantly used in all partner countries. The theoretical discussions and the insight gained through observations have allowed for better understanding of the reality of RJ in the regions involved. It gave a good overview of the practice which then formed the basis of the subsequent comparison and analysis to identify best practices.

The second research question `which methods, procedures and techniques of RJ are most effective´, has been approached through the comparison of knowledge gained previously and its analysis in order to identify best practices and new tools. Furthermore, knowledge gained through project activities of all sorts motivated and influenced RJ-practitioners in their daily practice as well as legal professionals and decision makers. With reference to the mentioned four core principles of AI, the identification of best practices is an appreciation of the system, hence it was the primary task of the research project to discover, describe, explain and analyse the already existing practices. This analyses and the direct impact through the project’s action research
approach, keeping in mind research question three `how can the implementation of RJ be improved’, have led to 20 concrete recommendations of what can then be turned into practice in the long term. The research aimed to be provocative by encouraging those involved to shape their own development and by designing the potential ideal future situation of restorative justice. This process however was aimed to occur collaboratively at all times, hence in cooperation with all those concerned. Thus it was tried to improve the implementation of restorative justice through the promotion of cooperation, contacts and information exchange. Cooperation with judicial agencies was strengthened mainly through steering groups and activities such as conferences and workshops.

As a result, the impact of the project in the partner countries was significant. Overall, the project was worthwhile for Schleswig-Holstein in that new and more attention could be gained for the subject matter as for instance in politics and administration through the specifically implemented steering group. At the University of Applied Sciences, attention was gained through agenda setting and students who participated in the project or wrote their Bachelor-Thesis on restorative justice. Those who have already been involved in the field (e.g. VOM consortium) received more support and appreciation of their work, it brought them new ideas and it triggered motivation as well as commitment. In this specific section of the population, the term restorative justice has become common to use whereas before, it was hardly known let alone used. The underlying thoughts of the philosophy have found new supporters. Some of those who were previously rather critical could be convinced. Also, some precise questions or future tasks were addressed. Firstly, these refer to the combinability of RJ with the current criminal justice system vs. a necessary change of the same. Secondly, questions regarding the involvement of the media and the general public were discussed with the conclusion that much more effort is required in this regard.

The original decision for partners from a region where RJ is more advanced (Thames Valley) and one where RJ is only applied to a limited extent (Estonia) appeared to be very productive. Furthermore, there was Hungary, a region where, within a short period of time, much advance has taken place and numbers of applied VOM are rising continuously. Overall, it appeared that also the already far developed RJ region of Thames Valley benefited from the practice of the other partner countries. This was the case particularly regarding the practice of VOM at pre-sentencing level and the use of a victim compensation fund in Schleswig-Holstein.
Additionally, it turned out that the relatively marginalised RJ country Estonia has given impulses particularly on the use of video conferencing in indirect mediation with prisoners.

In the context of a European project the primary aim however is not unilateral achievements and improvements, but central is the exchange and awareness-raising discussion processes between those involved. Actors involved had the chance to get closer and exchange detailed knowledge, ideas and worries. A common language could be developed and experiences exchanged that could further be transported into the regions.

To a limited extent, other regions such as Belgium, the Czech Republic, Austria but also some other German federal states and one other English county were reached. More critically, some occurring frictions should not be ignored. The cooperation between actors from regions with differing historical backgrounds, varying mentality and political developments, displayed, besides all positive aspects, also some challenges that appeared on personal but also on a structural level. However, the fact that a follow-up EU-project has developed out of this cooperation is another significant result.

An important aspect in the promotion of RJ in jurisdictions in Europe has appeared to be the international dimension as it largely increases the status of importance. This is not only the case in regard to media but, more interestingly, the overall prominence of a project is automatically increased if it is carried out on international playground. It appears that contributions of persons who have come from far away receive more attention and appreciation, based on the sociological principle that insight is generally more likely to be gained through distance and alienation.

Coming back to the report, are there limitation and inaccuracies, particularly in terms of numbers and missing data that must be concluded here? Certainly, this report, as any other, could be further optimised. In regard to the available resources at the time, the further improvement was not achievable. The authors have compiled a list of recommendations that allow for further optimisation. All those concerned are however aware that an ideal result is hardly achievable in the real world – the report shall rather indicate a guideline for further development. Therefore, we do not see a problem when it comes to case numbers that are hardly comparable. More problematic is the complete absence of data on RJ cases in regions involved or indistinct descriptions of procedures and applied practice. In terms of that, it is essential to allow critical questioning to all readers particularly with the focus on the action research approach, as also the readers can take responsibility to improve and identify hidden mistakes and search for solutions.
In our understanding, research does not provide the definite answer, rather it systematises, is critical; a snapshot which encourages the further development of the concerned subject matter. Neither is it the purpose of science to make declarations for or against RJ. It has however become clear that the potential of RJ has not even nearly been explored and that urgently, particularly with respect to victims and the community, RJ procedures shall be approved as alternative or complementary to the existing practices of the criminal justice system. Existing knowledge shows that RJ has significantly enhanced the life of offenders, victims and the community, possibly more cost-effective and that it is an important missing element which can contribute to legal as well as social peace.


Emerson, G. and Tartakover, J. (2011) ´Learning about RJ from our partners in Europe and telling them what we do´, unpublished.


<table>
<thead>
<tr>
<th>Glossary Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Abatement/abandonment of the criminal proceedings</td>
<td>Means that the criminal proceedings against the defendant are to be closed.</td>
</tr>
<tr>
<td>Accused</td>
<td>In an early stage of criminal prosecution the accused person is regarded as innocent; by putting charge s/he converts into a defendant, although retains the presumption of innocence until proven guilty.</td>
</tr>
<tr>
<td>Accusation, charge</td>
<td>Instrument of criminal prosecution, which is used against a defendant by the Public Prosecutor after investigation is finished in order to get a decision by the Court.</td>
</tr>
<tr>
<td>Active listening</td>
<td>Is a technique of communication, where understanding of messages is improved by taking into account non-verbal signs and body language.</td>
</tr>
<tr>
<td>Adults</td>
<td>In Germany by the 18th birthday every person is considered an adult implying principally that the general Criminal Law has to be applied except a person younger than 21 years commits a typical juvenile offense or is retarded in the personal development (see § 105 JGG). In the UK there is a concept of a vulnerable adult who has a right to representation and protection.</td>
</tr>
<tr>
<td>Agreement</td>
<td>As a result of mediation there can be an agreement or a plan (solution) which will usually be fixed in written form and is legally binding as a private contract in Germany. In UK outcome agreements from RJ conferences are not legally binding, although this could change with the introduction of pre-sentence RJ.</td>
</tr>
<tr>
<td>All-partisanship</td>
<td>All-partisanship means that a third person (mediator) tries to understand all perspectives of all parties equally well. This means that a mediator has to have empathy/understanding with all parties rather than neutrality (toward the parties). The Mediator does not take any position on its own and is responsible for the process and helping the parties to get into a constructive dialogue.</td>
</tr>
<tr>
<td>Anti-violence/aggression-program/training</td>
<td>A form of social group work addressing the problem of violence/aggression of the participants. Mostly a course over a period of several weeks consisting of several modules with a stable group because the modules build upon each other.</td>
</tr>
<tr>
<td>Apology</td>
<td>From politics and other social fields we are familiar with an expression like: “I apologize for ...”. This is indeed questionable as the concept of guilt implies that one can only ask the aggrieved person for accepting an apology. Thus, in RJ it must be genuine, an authentic act which will usually be accompanied by efforts to make good to serve its purpose and allows the victim to react in the requested way.</td>
</tr>
<tr>
<td>Arbiter, arbitrator, intermediary, mediator, conciliator</td>
<td>There are many different labels for the person mediating between the parties. Sometimes they can be used synonymously; sometimes they refer to slightly different procedures.</td>
</tr>
<tr>
<td>Arbitration, arbitration procedure</td>
<td>Out-of-court settlement which is similar to mediation concerning its flexibility and the informal setting but will end with a decision of the arbitrator if the parties could not reach an agreement.</td>
</tr>
<tr>
<td>Balance</td>
<td>Refers to power imbalances between conflict parties. In mediation all parties should be empowered to have the same weight and opportunity to participate in the process and to influence the outcome.</td>
</tr>
<tr>
<td>Balance of power</td>
<td>Balance of power refers to power imbalances</td>
</tr>
<tr>
<td>(fair) Balance</td>
<td>Characteristic of a fair procedure, simultaneously a leading dictum for mediation. NB Impartial process is fair/balanced which recognizes that offender has caused harm.</td>
</tr>
<tr>
<td>Break, private time, family-only time, timeout</td>
<td>In “conferencing” normally will be a break/private time, family-only time, the offender and his supporters are asked to develop a plan to address the problem. Can also be used during conference to give break in emotionally demanding process.</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<td>------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Brief interventions</td>
<td>A method used in social work and counseling to achieve relatively quick problem solutions. The focus is on successful life situations, not so much on the causes of the problem. People try to transfer structures or acting to the new challenge. (See de Shazar)</td>
</tr>
<tr>
<td>Charitable work, not-for-profit work</td>
<td>Community work, in UK now known as Community Payback or Unpaid Work, can be imposed as a non-residential sanction according to § 10 JGG in Germany. The young person has to work a certain amount of hours on an unpaid basis. This can be converted into monetary value to compensate the victim.</td>
</tr>
<tr>
<td>Check-up/verification</td>
<td>Monitoring of the plan/agreement as the results of a RJ procedure.</td>
</tr>
<tr>
<td>Circle keeper</td>
<td>→ Mediator (Facilitator) in a → peace circle</td>
</tr>
<tr>
<td>Classical singles</td>
<td>A form of VOM in which mostly 3 persons participate (a Mediator, a victim and an offender). (see Watzke, 1997)</td>
</tr>
<tr>
<td>Coffee, tea, biscuits (refreshments)</td>
<td>In some RJ-Programs procedures end with an informal meeting offering ‘Tea and Biscuits’. Advantage: victim and offender can use the informal atmosphere out of protocol for further exchange and (re-)rapprochement.</td>
</tr>
<tr>
<td>Community</td>
<td>According to the sociologist Tönnies community refers to a specific form of relationship which is characterized by proximity, personal knowledge and grounded in traditions and certain roles. Thus he claims that this form that is found in the family, neighborhood, among friends and in smaller settlements contrasts with societal forms of social relationship based on contract typical found in cities, enterprises or more anonymous settlements.</td>
</tr>
<tr>
<td>Community Order</td>
<td>Non-custodial sentence in UK made up of a range of 12 possible requirements including: unpaid work, supervision, drug rehabilitation, alcohol treatment, mental health treatment, specified activity (which may include RJ), residence requirement, etc.</td>
</tr>
<tr>
<td>Compensation Order</td>
<td>Court ordered compensation to be paid by offender in relation to financial loss, or harm caused.</td>
</tr>
<tr>
<td>Compliance with condition/requirement</td>
<td>Means process to check whether the person did comply with imposed sanctions or not.</td>
</tr>
<tr>
<td>Conciliation, reconciliation</td>
<td>Reconciliation or forgiveness are not necessary requirements of successful RJ-procedures. A constructive dialogue and agreeing upon a plan might be sufficient for participants to end the conflict and overcome the consequences. Nevertheless, reconciliation is welcomed as an important step to social peace, → VORP.</td>
</tr>
<tr>
<td>Condition</td>
<td>German § 10 JGG provides the imposition of conditions as a court sanction. Conditions (e.g. place of residence, undertaking a therapy or repairing the damage) can also be imposed in other contexts (e.g. → diversion or → probation, parole). Synonymous with requirement in UK law.</td>
</tr>
<tr>
<td>Conditional Caution</td>
<td>Caution given by police (diversion from prosecution) on condition that offender undertakes certain activities which could be determined by RJ process. Offender is prosecuted if they fail to comply with conditions.</td>
</tr>
<tr>
<td>Conferencing</td>
<td>The term covers all RJ-procedures (except peace circles) which involve the community (FGC, community conference, restorative conference and the like).</td>
</tr>
<tr>
<td>Confidentiality, privacy</td>
<td>Confidentiality, privacy is an important presumption for a successful RJ-procedure (especially conferencing) because it is about emotions and openness of all participants. In cases with juveniles, which are principally non-public, a limited number of the public will be involved and must sign a confidentiality agreement.</td>
</tr>
<tr>
<td>Conflict</td>
<td>A term to denote neutrally a phenomenon which is also labeled a crime/offense, victimization or a problematic situation. While many people understand conflicts being two-sided they can also be unidirectional, e.g. a burglary.</td>
</tr>
<tr>
<td>Consequences of an offense/a victimization</td>
<td>The effects of an offense upon the person harmed.</td>
</tr>
<tr>
<td><strong>Convenor</strong></td>
<td>Another term for → Mediator (Facilitator, Coordinator)</td>
</tr>
<tr>
<td><strong>Conversation, conversation technique, (techniques of) psychotherapeutic talks</strong></td>
<td>Refers to the more technical aspects of how to communicate, how to phrase questions, how to structure a dialogue and so on. It seems that in English language the practical application is much closer intertwined with clinical experience of counseling or psychotherapy.</td>
</tr>
<tr>
<td><strong>Coordinator</strong></td>
<td>Sometimes the mediator will be named coordinator; sometimes this refers to a person who acts primarily as organizer and moderator of a restorative meeting.</td>
</tr>
<tr>
<td><strong>Counseling, advisory service</strong></td>
<td>Is a method to work on a problem with the help of a counselor. It is focused on the social system and clients with their needs and aims to solve problems and address questions.</td>
</tr>
<tr>
<td><strong>Court assistance</strong></td>
<td>In Germany court assistance is a service of the → public prosecution office. Tasks are among others to help the court investigating the personal situation of offenders and victims but also to carry out VOM in adult cases.</td>
</tr>
<tr>
<td><strong>CPS</strong></td>
<td>Crown Prosecution Service who give advice to police about charges and prosecute all cases on behalf of the state.</td>
</tr>
<tr>
<td><strong>Criminal Evidence Act 1999</strong></td>
<td>Key UK legislation giving legal basis to RJ with juveniles.</td>
</tr>
<tr>
<td><strong>Criminal Injuries Compensation Authority (CICA)</strong></td>
<td>UK Government agency which provides financial compensation to victims of violent and sexual offenses on a fixed scale irrespective of whether offender is brought to justice.</td>
</tr>
<tr>
<td><strong>Criminal Justice Act 2003</strong></td>
<td>Key UK legislation giving legal basis for RJ as part of Community orders, Suspended sentence orders and deferred sentences, although never backed with resources. Thames Valley is one of few Probation Trusts offering RJ under this legislation.</td>
</tr>
<tr>
<td><strong>Criminal Justice and Immigration Act 2008</strong></td>
<td>UK Legislation which introduced Youth Rehabilitation Order.</td>
</tr>
<tr>
<td><strong>Data protection</strong></td>
<td>The term covers all rules and regulations to protect the privacy of participating individuals in this context aiming at the prevention of misuse of confidential information for other purposes than the reduction of crime/re-offending and peace-making by RJ.</td>
</tr>
<tr>
<td><strong>Deadlines, appropriate time-limit</strong></td>
<td>See rigid time frames in New Zealand where a conference should be convened within two weeks if the defendant has been incarcerated and within four weeks in other circumstances.</td>
</tr>
<tr>
<td><strong>De-briefing (and briefing)</strong></td>
<td>Brief introduction or after, including analysis of mediators and other professionals’ practice involved or connected with an important event, thus the face-to-face meeting of the participants in the RJ-procedure.</td>
</tr>
<tr>
<td><strong>Deduction of punishment, sanctioning deduction/reduction</strong></td>
<td>Lessening of punishment, often the result of an appeal</td>
</tr>
<tr>
<td><strong>Deferred sentence</strong></td>
<td>Provision in UK to defer sentence while process takes place which could lead judge/magistrate to impose a lighter penalty e.g. save for compensation, hold down a job, undertake RJ and make amends. Usually, at end of deferred period if offender has completed requirements of a deferment, a non-custodial penalty will follow.</td>
</tr>
<tr>
<td><strong>Deontology</strong></td>
<td>The study of duty.</td>
</tr>
<tr>
<td><strong>Dialog</strong></td>
<td>Refers to the direct (face-to-face) exchange/communication/the talk between the individuals involved.</td>
</tr>
<tr>
<td><strong>Directive (EU-law)</strong></td>
<td>Addresses the legal regulation on EU level → a directive is legally binding although not prescribing a specific way to achieve what its content proclaims.</td>
</tr>
<tr>
<td><strong>Dismissal of a case/non-continuation</strong></td>
<td>Dismissal = non-continuation of proceedings</td>
</tr>
<tr>
<td><strong>Diversion</strong></td>
<td>Is a strategy to avoid or `divert´ cases from the system of formal social control, meaning to prevent criminal justice prosecution by closing the case, non-enforcement or administrating informal measures.</td>
</tr>
<tr>
<td><strong>(to) double</strong></td>
<td>A technique of communication used by a mediator who will be kneeling temporarily next to the person to be doubled and speaking from that person’s perspective addressed both at others and the person himself. It is important that the mediator gets explicitly assured by the doubled person that the statement is correct and exact. This technique is used in situations of power imbalance - when someone is not self-confident enough to make this statement on his own - or when someone has other difficulties to express himself understandably.</td>
</tr>
<tr>
<td>Duration</td>
<td>Most RJ-procedures can be conducted in a quite short time period between case referral and finalizing because often only one preliminary contact with each participant and a direct meeting of some hours is needed. In New Zealand there are legally binding time-spans. → Deadline</td>
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<tr>
<td>Echt recht (Dutch) “Real Justice”</td>
<td>Former name of a Dutch organization, delivering RJ-procedures, especially “Eigen kracht conferenties” (modeled after FGC)</td>
</tr>
<tr>
<td>Education/training of mediators</td>
<td>Mediators are trained by specific mediation organizations.</td>
</tr>
<tr>
<td>Eigen kracht (Dutch) “Self-confidence”</td>
<td>Dutch organization, delivering RJ-procedures.</td>
</tr>
<tr>
<td>Emotion</td>
<td>Most RJ-procedures are based on emotional expressions while in court there is no opportunity to show fear, mourning, disappointment, pain, but also joy and relief. The expression of feelings often promotes the understanding of the problem of the other party and may lead to insight and remorse. Especially for victims it is important to be able to bring together the factual and the emotional level. Emotions are what usually trigger the transformation moments when the conflict begins a process of resolution.</td>
</tr>
<tr>
<td>Empathy</td>
<td>The openness and ability to share other people’s situation or to experience things from their viewpoint and convey that understanding to others.</td>
</tr>
<tr>
<td>Empowerment</td>
<td>Is a concept of social work which aims explicitly to strengthen individuals and communities. In RJ-procedures the systematic separation between the appreciated person and the condemnable action on the part of the offender and the support for the sufferer of the wrongdoing form steps to achieve this.</td>
</tr>
<tr>
<td>Establishing contacts, approach</td>
<td>Especially in the context of victimization and offending RJ-procedures depend on a sensitive, trustable approach. This can be initiated by an invitation letter, via telephone or even directly depending among others on data protection regulations.</td>
</tr>
<tr>
<td>Evaluation</td>
<td>Various evaluation studies worldwide have demonstrated the benefits and advantages of RJ (see Maxwell &amp; Morris 2001; McCold &amp; Wachtel 2002; Shapland et al. 2011; Sherman &amp; Strang 2007; Vanfraechem &amp; Walgrave 2005). New RJ Projects should include provision to evaluate outcomes in order to demonstrate effectiveness in terms of achieving objectives.</td>
</tr>
<tr>
<td>Facilitator</td>
<td>→ Mediator, Facilitator tends to be used in UK to describe a person who facilitates a conference process, whereas a mediator is more likely to seek a resolution of a one-on-one process.</td>
</tr>
<tr>
<td>Failure</td>
<td>Possible but rare outcome of RJ-procedure. Normally these will lead to a successful result when the participants are prepared to meet on a voluntary basis. Thus the problem of failure refers to motivation of the offender and the victim to take this step.</td>
</tr>
<tr>
<td>Fairness</td>
<td>Fairness refers to a perception of (not legally expressed) individual → justice (justness). Fairness tends to equate to impartiality i.e. not favoring one party over another. Neutrality suggests disinterestedness which may lead to unfairness.</td>
</tr>
<tr>
<td>Family only-phase</td>
<td>Refers to a phase in the RJ-procedure FGC where professionals, victims and their supporters allow the young person and supporters to develop their own plan of → solutions for the → problematic situation.</td>
</tr>
<tr>
<td>Feelings</td>
<td>→ Emotion</td>
</tr>
<tr>
<td>Felony, indictable offense</td>
<td>Offense of a certain seriousness compared to misdemeanor</td>
</tr>
<tr>
<td>Fields of application</td>
<td>Restorative Justice is a theory/philosophy/movement, which can be applied in several areas of life.</td>
</tr>
<tr>
<td>Final Warning</td>
<td>A measure, usually involving a restorative process which is the final sanction before a court based process is initiated.</td>
</tr>
<tr>
<td>Forgiveness</td>
<td>Forgiveness (biblical translation = letting go) Generally unhelpful for RJ facilitator to introduce forgiveness as a reason for undertaking RJ.</td>
</tr>
<tr>
<td>Fulfilment of the plan, undertakings</td>
<td>Plan. Someone has to make sure that the agreement has been implemented. In RJ-procedures this is almost every time true (99% according to VOM statistics in Germany, see Kerner et al. 2008).</td>
</tr>
<tr>
<td>Green Paper</td>
<td>Consultation Paper issued by Government prior to preparation of legislation.</td>
</tr>
<tr>
<td>Guidelines for restorative justice</td>
<td>UK – Best Practice Guidance for Restorative Practice – Restorative Justice Council</td>
</tr>
<tr>
<td>Guilt</td>
<td>„Objective“ moral category which is acquired by an offender by committing an offense. It can be overcome by serving a sentence (expiation) which must be differentiated from taking „responsibility“, which will remain despite being punished and can only be balanced by restitution.</td>
</tr>
<tr>
<td>Healing</td>
<td>Refers to both the intended outcome of a process and the way this process deals with participants and the problem. Often used synonymously with restoration.</td>
</tr>
<tr>
<td>Hergo (Dutch) Community Conferencing/FGC</td>
<td>Herstelgericht Groepsoverleg (Hergo) is the official Dutch name for → family-group conferences in Belgium. Since 2006 determined in → Juvenile law.</td>
</tr>
<tr>
<td>Home game</td>
<td>Informal characteristic of RJ-procedures, where the participants might arrange the setting contrary to formal procedures of the criminal justice system which are determined by the code of Criminal procedure. Analogy with having a significant advantage in the world of sports.</td>
</tr>
<tr>
<td>Imbalance of power</td>
<td>As mediation procedures leave the solution of a problem to the parties involved it is necessary to balance power differences. This can be achieved by acting of the mediators or prior to the meeting by involving suitable supporters.</td>
</tr>
<tr>
<td>Indirect mediation, shuttle mediation</td>
<td>A form of → VOM where the participating parties do not meet face-to-face. Instead a → Mediator delivers messages from one party to the other and reverse.</td>
</tr>
<tr>
<td>Instruction to supervision and support</td>
<td>Under German law this is a condition of intensive and longer lasting educational one-to-one intervention for criminal → juveniles and → young adults up to 21 years. It aims at supporting the client in conflict situations and in all kind of social difficulties and challenges including the family. In UK the equivalent is a supervision requirement in a Community or Suspended sentence Order which can run in conjunction with other requirements.</td>
</tr>
<tr>
<td>Intensive Community Control Program (ICCP)</td>
<td><code>Heavy end</code>, onerous form of community sentence made up of a number of elements and containing a severe restriction of liberty which is seen as an alternative to a prison sentence.</td>
</tr>
<tr>
<td>Invitation</td>
<td>Taking the notion of ownership into account the main participants should decide who shall be invited to a restorative meeting, → home-game.</td>
</tr>
<tr>
<td>Just desert</td>
<td>See proportionality which is a core concept of modern criminal law.</td>
</tr>
<tr>
<td>Justice, justness</td>
<td>German language differentiates between justice as justness and justice as the ensemble of all laws in a society. English terms „fairness“ and „equity“ seem to cover only aspects of the concept! Justice can be described as an ideal condition of social live with an adequate, impartial but claimable balance of interests, allocation of goods and opportunities between all individuals and groups in a society.</td>
</tr>
<tr>
<td>Juvenile court assistance Youth welfare service</td>
<td>Youth welfare service which literally would be translated as Juvenile court assistance is a local service in each communal district (Schleswig-Holstein) dealing with all kinds of problems concerning minors (also below the age of criminal liability) and their families. Juvenile court assistance investigates the background of a young offender, participates principally in trial and is often consulted by the judge concerning the appropriate reaction.</td>
</tr>
<tr>
<td>Juvenile, youth</td>
<td>Juveniles are all persons from their 14\textsuperscript{th} to their 18\textsuperscript{th} anniversary. These persons are treated differently by the law as adults and children.</td>
</tr>
<tr>
<td>Labeling</td>
<td>Central term in a criminological theory which emphasizes the stigmatizing effects of criminal proceedings and warns against using labels which might cause self-fulfilling prophecies.</td>
</tr>
<tr>
<td><strong>Leading</strong></td>
<td>The term refers to the dynamics in RJ-procedures. Leading through the process falls always into the responsibility of the mediators although sometimes participants might try to take the lead.</td>
</tr>
<tr>
<td><strong>Learning, learning theories</strong></td>
<td>Currently lifelong learning is a popular notion. According to Learning theory positive reinforcement and a supportive environment lead to better results than punishment and a disapproving one’s own actions strictly condemning environment. Thus, RJ-procedures offer better chances to learn for offenders than court.</td>
</tr>
<tr>
<td><strong>Legal aid</strong></td>
<td>‘Legal aid’ means free (or reduced-price) legal services for poor people, sometimes from volunteer lawyers doing the work pro bono, in other cases paid by the state.</td>
</tr>
<tr>
<td><strong>Legal base</strong></td>
<td>RJ-procedures are based on certain national laws; furthermore the EU-level, human right and certain quality standards should be observed (see Braithwaite 2002a)</td>
</tr>
<tr>
<td><strong>Legal guardian</strong></td>
<td>→ Parents</td>
</tr>
<tr>
<td><strong>Liability according to civil law</strong></td>
<td>Offenders are obliged to compensate for damages and injuries independently of criminal punishment. For the victims civil law suits can be costly, time-consuming and risky; therefore RJ procedures may include resolving civil law aspects.</td>
</tr>
<tr>
<td><strong>Life world</strong></td>
<td>This term going back to the sociologist Alfred Schütz is used for a leading concept in current German social work. It refers to everyday knowledge, common sense and private life opposing the system (see Habermas) which is dominated by a different rationality and by experts.</td>
</tr>
<tr>
<td><strong>Mediation</strong></td>
<td>A method which is used in social work to conciliate between parties. We can differentiate between the process for which the mediator is responsible and the outcome, which lies in the hands of the participants. (We use it in a broad meaning for all kinds of procedures including VOM, conferencing and circles)</td>
</tr>
<tr>
<td><strong>Mediator</strong></td>
<td>The person carrying out → mediation.</td>
</tr>
<tr>
<td><strong>(to) mirror</strong></td>
<td>A technique of communication where the content of a statement of a sender is mirrored by the → mediator often by using other wording, but without changing or valuing the content.</td>
</tr>
<tr>
<td><strong>Mixed double</strong></td>
<td>A form of VOM proposed by Watzke (1997) which is usually used in partnership conflicts. A male and a female → mediator work the two persons of different sexes on mediation where gender roles seem to be crucial for the conflict.</td>
</tr>
<tr>
<td><strong>Moderation</strong></td>
<td>A term from communication science referring to leading of group talks which can be applied to the acting of a mediator dealing with more than two participants. It is not always clear to draw a line between a moderator and a mediator.</td>
</tr>
<tr>
<td><strong>Monitoring</strong></td>
<td>If conflict parties have agreed to a plan, it must be monitored. Often the relevant dates and the responsible people for this task are mentioned in the plan. If the offender does not comply with the plan, people might reconvene or breach of conditions might be sanctioned by the court.</td>
</tr>
<tr>
<td><strong>Moral, ethics, morality</strong></td>
<td>Rules and principles of conduct which seek to ensure a harmonious society.</td>
</tr>
<tr>
<td><strong>National Offender Management Service (NOMS)</strong></td>
<td>UK Government department responsible for probation and prisons and the integration of their activities.</td>
</tr>
<tr>
<td><strong>Needs</strong></td>
<td>Especially as a consequence of a → conflict certain needs may evolve. These can be related to the material, physical or psychological dimension.</td>
</tr>
<tr>
<td><strong>Net-widening</strong></td>
<td>The discourse of net-widening in criminology refers to formal social control by the authorities; all innovations in criminal justice should be assessed, whether they contribute to widening state control on citizens. In UK has specific reference to drawing juveniles into the criminal justice process without good reason which risks labeling the young person and accelerating them on to a criminal career.</td>
</tr>
<tr>
<td><strong>Neutrality, impartiality</strong></td>
<td>Neutrality characterizes the role of a mediator, who should be impartial. In mediation theory the term all-partisanship is preferred because it is expressed more clearly that the mediator must support everyone not take a distant role.</td>
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<tr>
<td><strong>Non-governmental agency (NGO)</strong></td>
<td>In Germany there is a category of non-governmental organizations (some employing only 2 or 3 persons, some are big and operate nation-wide) operating on contract base to fulfill the tasks of the state or local authorities (principle of subsidiarity). Some RJ- Programs are offered by these organizations. The UK government is currently seeking to re-allocate 50% of the activities of the Probation Service to NGOs not including reporting to courts or working with high risk offenders.</td>
</tr>
<tr>
<td><strong>Non-custodial or community sanction</strong></td>
<td>Differs from residential sanction, i.e. the person affected by it is allowed to move around. Non-custodial sanctions should be preferred especially in the juvenile field, e.g. anti-violence-trainings, supervision orders, community work or RJ-measures.</td>
</tr>
<tr>
<td><strong>Non-violent communication</strong></td>
<td>A concept of communication developed by Marshall Rosenberg, based on appreciation of the dialogue partner on acknowledging needs and expressing wishes (so-called giraffe language contrary to wolves' language).</td>
</tr>
<tr>
<td><strong>OASys</strong></td>
<td>Electronic assessment tool launched in 2006 electronically (before in 2001 paper version) to assess the risk and need profile of an offender thereby identify appropriate sanctions and interventions to avoid re-offending.</td>
</tr>
<tr>
<td><strong>Offense, criminal act</strong></td>
<td>Act in contravention of a country’s criminal law.</td>
</tr>
<tr>
<td><strong>Offender</strong></td>
<td>Problematic notion because of stigmatizing character/partly morally devaluting connotations of irresponsibility and evilness. People prefer the notions accused or responsible person.</td>
</tr>
<tr>
<td><strong>Out of court</strong></td>
<td>A solution for a conflict is searched without involvement of the court but instead supported by an all-partisan mediator/ RJ-organisation.</td>
</tr>
<tr>
<td><strong>Out of court settlement</strong></td>
<td>The (former) Austrian name for VOM</td>
</tr>
<tr>
<td><strong>Ownership</strong></td>
<td>An extended form of participation implying that the people mostly affected by a problem should decide within the limits of human rights how to deal with a problem. Prior to this decision they may decide who is to be invited, where the meeting takes place and how it will be administered.</td>
</tr>
<tr>
<td><strong>Pacing</strong></td>
<td>The term refers to the dynamics in RJ-procedures. Especially in early phases the prevalence of emotions can lead to accelerating exchange of statements which trouble listening; the mediator might decide to calm down for enabling to think about one’s contributions before expression.</td>
</tr>
<tr>
<td><strong>(to) paraphrase</strong></td>
<td>Refers to a communication technique to express the same content with different words or by a different person to allow for better understanding.</td>
</tr>
<tr>
<td><strong>Parents, caretakers</strong></td>
<td>In RJ-procedures with juvenile offenders it makes sense to involve at least one parent. This is on one hand due to parental rights of education (under German constitution), on the other hand a contract may result (e.g. paying compensation) which needs the consent of the caretaker.</td>
</tr>
<tr>
<td><strong>Participation</strong></td>
<td>a core concept in modern social work expressing to work with clients and not letting experts dominate a process.</td>
</tr>
<tr>
<td><strong>Peace circle</strong></td>
<td>→ RJ procedure originally from native people in North America where all members of a community who are related to the problem (e.g. victim, offender, supporters and other community members, professionals from the justice system) sit in a circle and pass around a talking piece to indicate who can make a statement in a process of solving a conflict peacefully.</td>
</tr>
<tr>
<td><strong>Phase of wishes and expectations in FGC</strong></td>
<td>The session/phase of wishes and expectations is part of FGC; all participants are asked about their wishes and expectations.</td>
</tr>
<tr>
<td><strong>Phases of mediation</strong></td>
<td>A mediation process is structured into certain steps. As structuring a process into separate phases is always somewhat arbitrary, Besemer (2003) distinguishes 5 phases while Haynes (1994) uses 9 phases to give just two examples.</td>
</tr>
<tr>
<td><strong>Placement, line-up, array</strong></td>
<td>A procedure/specific tool of systemic work which goes back to Moreno and Satir where members of a group choose a relational position in the room to understand better their relationship with others. Instead of physical exercise people can also simulate/model such an order by using playing figures.</td>
</tr>
<tr>
<td><strong>Plan or outcome agreement</strong></td>
<td>Refers to an often detailed written outcome of a successful RJ-procedure between the conflict parties. It is important to write down exactly and in understandable language who has to do what in which time. Thus the plan is a tool to solve a given problem.</td>
</tr>
<tr>
<td><strong>Police</strong></td>
<td>The police is often involved in → conferencing to clarify norms and bring in the perspective of the community. In some countries the police offers/runs RJ-procedures.</td>
</tr>
<tr>
<td><strong>Post-sentencing</strong></td>
<td>Post-sentencing means that RJ-procedures are carried out after trial, or after the sentencing decision, respectively.</td>
</tr>
<tr>
<td><strong>Power</strong></td>
<td>Sociological term to describe a relationship in which one actor is able to enforce his will regardless of any resistance of other actors.</td>
</tr>
<tr>
<td><strong>Preliminarily interview/talk</strong></td>
<td>Prior to a face to face meeting separate preliminarily interviews with the offender and the victim are carried out to learn about the problem from subjective perspectives.</td>
</tr>
<tr>
<td><strong>Preliminary proceedings, preliminary investigation by public prosecution</strong></td>
<td>Phase of criminal prosecution where the police and Public Prosecution Office collect facts to decide whether to put charge on someone or to abandon the case.</td>
</tr>
<tr>
<td><strong>Pre-sentencing</strong></td>
<td>Pre-sentencing means that RJ-procedures are carried out prior to trial and a sentencing decision.</td>
</tr>
<tr>
<td><strong>Pre-sentence report (PSR)</strong></td>
<td>Report prepared by Probation staff member to advise a court as to the background of the offender, their criminogenic needs, risk of re-offending and risk of serious harm and the penalty most likely to reduce re-offending and protect the public from harm. Based on an OASys assessment in more serious cases.</td>
</tr>
<tr>
<td><strong>Principle of legality (see inquisitorial Continental civil law as opposed to adversarial Anglo-Saxon common law)</strong></td>
<td>The Legality principle is set down in § 152 of the Strafprozessordnung ([German Federal Code of Criminal Procedure]): (1) The office of the state’s attorney has the authority to raise public charges. (2) Except as otherwise provided by law, the office of the state’s attorney is obligated to take action against all prosecutable criminal acts, provided there is sufficient factual evidence. The Legality principle imposes not only an obligation to prosecute, but an obligation to open an investigation in every case for which there is a suspicion of criminal circumstances. The Legality principle, as a basic rule, ensures “uniformity in the application of the law” and “equality before the law”, without which the prosecutor’s monopoly over the indictment process would be unjust. A number of exceptions to the Legality principle exist, however, providing the flexibility needed to manage the administration of justice on a large scale. These exceptions (known as the principle of opportunity [the principle that the prosecution has the opportunity to refrain from bringing some charges]), which normally require the approval of a judge (and therefore still fall well short of the unchecked prosecutorial discretion enjoyed by American prosecutors) are outlined in §§ 153a through 153e of the StPO. See also the principle of opportunity</td>
</tr>
<tr>
<td><strong>Principle of opportunity, discretionary powers principle</strong></td>
<td>The principle of opportunity allows legal enforcement agencies to execute discretionary powers meaning that not every offense has to be charged, → principle of legality.</td>
</tr>
<tr>
<td><strong>Probation, parole, community order, suspended sentence order, post-release license/supervision.</strong></td>
<td>Non-custodial sentence as a surrogate for a prison sentence less than 2 years or in case of early release for the rest of it after at least half (mostly two thirds) of a prison sentence has been served.</td>
</tr>
<tr>
<td>Probation Service</td>
<td>The National Probation Service is a governmental Service, which falls under the authority of the Ministry of Justice and is organized into → Probation Trusts. During the pre-trial phase, the Probation Service ensures that defendants who have been remanded on conditional bail in an Approved Premise comply with their requirements. Prior to conviction, the Probation Service can provide verified information to the → Crown Prosecution Service and Courts to assist in decision making; Once guilt has been established, the Courts often request → pre-sentence reports to assist with sentencing. The Probation Service supervises Community Orders which can contain up to twelve requirements (Kalmthout, 2009).</td>
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<tr>
<td>Probation trust</td>
<td>Body delivering Probation services in UK</td>
</tr>
<tr>
<td>Problematic situation</td>
<td>Notion invented by L. Hulsman (1986) as a neutral term for a phenomenon which others call an offense, a victimisation or a conflict.</td>
</tr>
<tr>
<td>Procedure</td>
<td>Are specific models of delivering RJ-methods.</td>
</tr>
<tr>
<td>Proportionality</td>
<td>An indicator of achieved justice by the CJS. Sanctions must be strictly comparable with other offenses, offenders and situational characteristics.</td>
</tr>
<tr>
<td>Public prosecution</td>
<td>Institution within the CJS which in the inquisitorial system charges a suspect but also looks for exculatory or relieving evidence. In Germany the public prosecution office has limited discretionary power (section 5 JGG and section 153a Criminal Code).</td>
</tr>
<tr>
<td>(the) Public Sphere</td>
<td>To protect the young person trials against juveniles are not held in public. Due to this reason the public is not informed about the offender’s motives or the juridical reasons for a specific solution. Some RJ-procedures, however, rely on the participation of a limited amount of persons from the life world/community.</td>
</tr>
<tr>
<td>Reconciliation</td>
<td>In the 1970s many American RJ programs → VORP emphasised reconciliation. Currently this is regarded as a very welcome side-effect but not necessarily achieved.</td>
</tr>
<tr>
<td>Redress, reparation, compensation</td>
<td>Redress, reparation, compensation of a/making right the wrong by addressing and compensating the consequences of a victimisation.</td>
</tr>
<tr>
<td>Referral order</td>
<td>First stage court sanction for juveniles in UK based on RJ model of intervention.</td>
</tr>
<tr>
<td>Referral Order Panel</td>
<td>Panel of lay people who facilitate a process involving the victim and the juvenile offender coming to an agreement as to how the harm caused by the offense can be repaired.</td>
</tr>
<tr>
<td>Reflecting team</td>
<td>A technique of communication used by a team of mediators to address statements concerning the clients and their relationship at each other (see Watzke, 1997), Overhearing this communication the clients may get new insights in their conflict. Therefore, the comments are made in the form of questions or hypotheses not to harm the clients or instigate defense.</td>
</tr>
<tr>
<td>Refusal to give evidence/right to remain silent/give 'no comment' interview to police</td>
<td>Right of a defendant and of the relatives of that person to refuse to give evidence to police, prosecution and court. Cannot be applied in RJ-procedures which can only be conducted successfully if all participants choose to act constructively.</td>
</tr>
<tr>
<td>Re-integrative shaming</td>
<td>Concept developed by J. Braithwaite (1989) who links the social effect of shaming on the part of the offender with Reintegration ceremonies by the other participants to allow for cathartic learning effects which promote a wish for restitution and social peace. It is important to avoid stigmatizing shame, which will have the opposite effect</td>
</tr>
<tr>
<td>Re-Integrative Shaming Experiment (RISE)</td>
<td>Research undertaken in Australia by Sherman and Strang et al. (1999) using Random Controlled Trials to evaluate the effectiveness of Restorative Justice Conferences. It showed that dramatic reductions in re-offending when RJ Conferences are used with violent offenses although not in the case of property offenders and drunk drivers. This work underpinned the Justice Research Consortium trials funded by the UK Government and reported on by Shapland (2011).</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>Remorse</td>
<td>Deeply regretting one’s own acting after it has happened because of the harm caused and because it is evaluated as morally wrong by the perpetrator.</td>
</tr>
<tr>
<td>Restoration</td>
<td>Process of repairing harm done</td>
</tr>
<tr>
<td>Restorative Approach</td>
<td>A term used to describe a range of methods which can be used to deal with conflicts, harm and law breaking within schools communities and other settings which focus on repairing harm, healing and building confidence amongst those affected.</td>
</tr>
<tr>
<td>Restorative Justice</td>
<td>Term used in UK to describe a range of processes and approaches whereby the harm caused by an offense and how to repair it is the focus of attention rather than punishment and retribution.</td>
</tr>
<tr>
<td>Restorative Process</td>
<td>A way of dealing with conflict, usually involving a series of stages which seek to achieve resolution and healing, according to the principles of Restorative Justice theory.</td>
</tr>
<tr>
<td>Restorative Society</td>
<td>A society based on restorative principles.</td>
</tr>
<tr>
<td>Retribution, retaliation, revenge</td>
<td>Retribution, retaliation, revenge means to act on a paying-back-basis towards the guilty person. It refers to reciprocity and talion.</td>
</tr>
<tr>
<td>Ritual</td>
<td>A procedure regularly followed, often used in relation to ceremonies or social functions.</td>
</tr>
<tr>
<td>Safe setting</td>
<td>Both for the „offender“ and for the „victim“ the aspect of a safe setting for a face-to-face meeting is crucial. RJ-procedures stress that all persons have to be treated with respect. Such a procedure can only take place when the safety of all participants can be guaranteed.</td>
</tr>
<tr>
<td>Sanction</td>
<td>A response to rule or law-breaking</td>
</tr>
<tr>
<td>Script</td>
<td>Refers to a kind of questionnaire for running a → VOM/conference. Invented in Australian → family-group-conference and further developed by REAL Justice.</td>
</tr>
<tr>
<td>Schedule a Meeting</td>
<td>More complex RJ procedures like family-group-conferences or peace circles require more coordination effort as VOM.</td>
</tr>
<tr>
<td>Seating order</td>
<td>While the seating order in a court room is strictly determined in the informal RJ-procedures it can be handled as it suits the participants best. Often they sit in a circle and it is cared for a safe seating order which allows everyone to feel at ease as much as possible.</td>
</tr>
<tr>
<td>Self-administered justice, vigilantism</td>
<td>(legally not allowed) → retribution for suffering which is imposed by an affected person herself. → Vigilantism</td>
</tr>
<tr>
<td>Setting</td>
<td>Aspects of the setting of mediation are type and number of participants, the sitting order, the sequences of the procedures etc.</td>
</tr>
<tr>
<td>SFO</td>
<td>Serious Further Offense committed by an offender whilst on Probation supervision which will lead to an investigation as to whether the supervision process was being conducted properly and whether lessons can be learned for the future.</td>
</tr>
<tr>
<td>Shuttle mediation</td>
<td>→ Indirect Mediation</td>
</tr>
<tr>
<td>Social peace</td>
<td>A state of harmony in social relations.</td>
</tr>
<tr>
<td>Specified Activity Requirement</td>
<td>A requirement forming part of a (UK) community or suspended sentence which delivers a specific intervention such as basic skills or (as in Thames Valley) Restorative Justice.</td>
</tr>
<tr>
<td>Street-RJ</td>
<td>RJ, usually undertaken by a police officer, or a community support officer which seeks a restorative solution to a conflict or problem encountered on the street. The process is usually to bring the parties together and achieve a speedy resolution which restores peace and meets the needs of all parties. This approach contrasts with an approach which seeks to criminalise all minor law infractions and bring them before the courts.</td>
</tr>
<tr>
<td>Story-telling</td>
<td>In an early phase of a RJ-procedure people are asked to tell their story of the conflict from their subjective point of view.</td>
</tr>
<tr>
<td><strong>Suitability, criteria of</strong></td>
<td>To form a suitable case for → restorative justice beside voluntary participation a certain degree of motivation and ability to engage in a constructive dialogue and willingness to accept responsibility for one’s own contribution in “righting the wrong” is needed. Depending on the procedure used there may be other criteria to be met which have to be assessed for each case. Suitability criteria can usually be assessed through a face to face interview with a subject. Suitability can also apply to victims.</td>
</tr>
<tr>
<td><strong>Supporter</strong></td>
<td>Supporter of victim or offender who will give confidence to enable the person to participate in an RJ process.</td>
</tr>
<tr>
<td><strong>Suspended Sentence Order</strong></td>
<td>An order made up of a number of requirements (see community order above) which is applied to the most serious offending which does not require immediate imprisonment.</td>
</tr>
<tr>
<td><strong>Talion</strong></td>
<td>„An eye for an eye, a tooth for a tooth“, is written in the old testament. This means a limitation for revenge/retribution – punishment should not be disproportionately but maybe less than the maximum.</td>
</tr>
<tr>
<td><strong>Talking piece</strong></td>
<td>Talking Piece is a device which is used specifically in peace circles. Only the person holding the peace is allowed to speak.</td>
</tr>
<tr>
<td><strong>Tea &amp; coffee</strong></td>
<td>While in the courtroom it is not allowed to eat and drink informal RJ procedures may allow this. It has been proven to be supportive to offer drinks and snacks after the RJ meeting because the participants feel invited for a chat across parties afterwards.</td>
</tr>
<tr>
<td><strong>Timing and duration of the process</strong></td>
<td>RJ procedures especially in dealing with juveniles should take place as soon as possible after the offense/victimisation to cope with the consequences of the deed and to achieve learning effects. Duration of RJ procedures can vary significantly sometimes it may be useful to meet multiple times.</td>
</tr>
<tr>
<td><strong>Thinking Ahead</strong></td>
<td>Treatment Program for women</td>
</tr>
<tr>
<td><strong>Third Sector</strong></td>
<td>Voluntary sector or NGO</td>
</tr>
<tr>
<td><strong>Trial, main hearing</strong></td>
<td>In the inquisitorial system of law this refers to an oral hearing of the judge inquiring about the facts collected by the prosecution.</td>
</tr>
<tr>
<td><strong>Truth</strong></td>
<td>In mediation one has to rely on subjective truth(s) whereas in court it is only about finding out the objective truth.</td>
</tr>
<tr>
<td><strong>Victim</strong></td>
<td>Sufferer of wrongdoing problematic notion because of stigmatizing character/partly morally devaluing connotations of weakness and being a loser. People prefer the notions injured party or harmed person.</td>
</tr>
<tr>
<td><strong>Victim-awareness work book</strong></td>
<td>Book of exercises used to develop victim awareness which can be used to prepare offenders for RJ or with offenders whose victims do not opt for an RJ process.</td>
</tr>
<tr>
<td><strong>Victim counseling</strong></td>
<td>A counseling method of social work specifically for victims of crime. It focuses on psychosocial consequences of victimisation and is usually accompanied by practical hints and legal advice.</td>
</tr>
<tr>
<td><strong>Victim-empathy-training</strong></td>
<td>Victim-empathy-training describes programs for offenders who should learn about impact/consequences of their behavior on victims.</td>
</tr>
<tr>
<td><strong>Victimless crime</strong></td>
<td>Topic that is subject of much debate, suggested examples of such crimes are the possession of drugs for own use, parking infringements or speeding on an empty road.</td>
</tr>
<tr>
<td><strong>Victim offender groups</strong></td>
<td>A meeting of two groups within a safe, moderated setting one composed of offenders the other composed of victims (who are not necessarily linked with each other) to exchanged experiences of victimization and offending.</td>
</tr>
<tr>
<td><strong>Victim Offender Mediation (VOM)</strong></td>
<td>Victim-Offender-Mediation (VOM)/out of court settlement. Usually three people setting, sometimes carried out with two mediators or including a support person for the victim and/or the offender. Usually all participants engage in a face-to-face dialog but indirect VOM (Shuttle mediation) without direct contact between victim and offender is also possible.</td>
</tr>
<tr>
<td><strong>Victim-Offender Reconciliation Program (VORP)</strong></td>
<td>In the 1970s in north America this name was used for VOM – emphasis on reconciliation which today is viewed as a welcomed as a non-intended side effect.</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<tr>
<td>Victim’s advocate/attorney</td>
<td>Attorney on the side of the victim, specifically in cases of accessory prosecution or “Adhäsionsverfahren” (a criminal law procedure where civil claims are also treated). According to victim protection law some victims have a right to get an attorney which is paid for by the state.</td>
</tr>
<tr>
<td>Victim Support (VS)</td>
<td>UK organization to which police refer victims of crime for help, support and advice.</td>
</tr>
<tr>
<td>Vigilantism</td>
<td>Critics of RJ warn against the danger of increased vigilantism because the monopoly of power by the state is questioned.</td>
</tr>
<tr>
<td>Voluntariness</td>
<td>Voluntariness is one of the core features of RJ. Participation in all RJ-procedures shall be voluntary. This is compromised by some of the procedures in the UK youth and adult justice process whereby offenders who have agreed to participate to RJ do not have the right to withdraw without good reason.</td>
</tr>
<tr>
<td>VOM Consortium</td>
<td>In Germany, the VOM consortium is an association of all mediators in nearly every federal state which deliver VOM (or other RJ-procedures). It helps to keep quality at a high level.</td>
</tr>
<tr>
<td>VOM service office/`TOA-Servicebüro´</td>
<td>Is a central organization for the promotion of VOM (since 1992 established by the entry decision) an institution of DBH e.V. – Fachverband für Soziale Arbeit, Strafrecht und Kriminalpolitik.</td>
</tr>
<tr>
<td>VOM Guidelines</td>
<td>VOM guidelines have been developed by the `TOA Servicebüro´ to ensure quality of delivery – currently 6th revision 2009.</td>
</tr>
<tr>
<td>VOM Statistics</td>
<td>Database on VOM compiled by the University of Tübingen in Germany.</td>
</tr>
<tr>
<td>Wheel-relay</td>
<td>A specific form of VOM for cases where one party consists of a group while the other is a single person or couple. To achieve a balance the members of the group participate in the face-to-face dialogue in a sequential order but have to decide within the whole group (see Watzke, 1997).</td>
</tr>
<tr>
<td>White Ring</td>
<td>A non-profit organization in Germany and Hungary providing services for victims of crime.</td>
</tr>
<tr>
<td>Youth Offending Team (YOT)</td>
<td>Multi-agency team in UK which seeks to prevent juvenile crime, provides reports to juvenile courts, supervises young offenders, and offers services to young people through a largely restorative framework.</td>
</tr>
<tr>
<td>Youth Rehabilitation Order</td>
<td>An order of the court based on restorative principles which requires the young person to make amends within the framework of the law.</td>
</tr>
<tr>
<td>Youth welfare (service)</td>
<td>Youth welfare denotes the total of all services and benefits for juveniles to support education and development. The basis is volume VIII of the Social Security Code (SGB VIII) following a dictum that each young person has a right to be promoted in growing up and personal development aiming at a self-responsible and socialized personality.</td>
</tr>
</tbody>
</table>