



TREP

PROFESSIONAL TRAINING IN RESTORATIVE PRACTICES

# TReP REGIONAL REPORT

## **Restorative Practice:**

an overview of its adoption in Bulgaria,  
Ireland, Germany, Malta and Spain



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## Section 1 - Overview

### I. Aims

This report aims to provide background research into restorative practices, as the first element within the TReP – Professional Training in Restorative Practices, a project whose goal is to create a course that will be conducted entirely online in restorative practice for a Level 5 Undergraduate Certificate and recognized throughout Europe via the Bologna Process. The aim of the course is to train the relevant professional in the theory and the use of restorative practices.

### II. Methodology

The report has aimed to establish working definitions of restorative practice (RP) and restorative justice (RJ), as well as other related terms such as Alternative Dispute Resolution and Mediation (ADRM).

It has sought to include a complete summary of the history and use of restorative practice and restorative justice in Malta, Ireland, Bulgaria, Germany and Spain. Whilst focusing on these respective countries, the report has also aimed to include information on practices established throughout Europe and beyond. In so doing, it has outlined institutions already making use of restorative practices whilst identifying gaps in which more information and training would be needed, and further contexts in which restorative practices would be beneficial. This is followed by recommendations as strategy for further development of RP in wider society.

### III. Limitations of Report

One of initial aims of this report was to standardize a definition of RJ/P and an anthology of its methods, terminology, instruments and tools as a reference for European countries and their practitioners. However, due to the fact that the real split in understanding RJ, as highlighted by Hopkins, is that interpretation of it differs across the world and according to the jurisdiction in which such a process takes place, and in light of its dubious complexity, this report has decided that to standardize its definition would be to dislocate its distinct history from each regional specific context.<sup>1</sup> This would serve only to further amplify misunderstandings of the extent to which societies and legal system have been impacted, as well as to widen existing gaps. In acknowledging these challenges, this report will keep regional specific definitions within their historical and geographic context.

RP differs from RJ, as shall be further examined, in that it is a mechanism to also prevent conflict not just to solve conflict. Indeed, it includes a distinct set of skills that aim to build relationships and prevent the occurrence and escalation of conflict, as well as resolve conflict and repair harm caused by them. It is these skills that this report has aimed to highlight by examining its adoption in partner countries. However, information regarding such skills in some countries has proved difficult to obtain and therefore limited, especially as RP has still been little understood by many grassroots organisation, even though they have perhaps intuitively adopted them to address a variety of societal problems, but without acknowledging that they fall under the remit of RP. Consequently, they have not been flagged as such. A further development of this report, if time had permitted, would have been to conduct a

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<sup>1</sup> M. Aquillina, Changing Perspectives from a Punitive Penal system to Restorative Justice, 2004.

series of interviews with different organisation and government bodies to get a clear indication of which skills they have adopted to address their specific areas of focus.

## Section 2 - Restorative justice vs. restorative practice

This section will first deal with the concepts of restorative justice and restorative practice and more specifically the related link between these two notions. Then, we will focus on the emergence of the restorative justice and the four main programme offered by the restorative justice practices. Finally, a brief summary of the restorative practice's history in Europe will be addressed.

### I. RJ and RP: an alternative way of dealing with crime

Over the past few decades, criminal justice authors have been gradually shifting their attention toward new concepts: the restorative justice and the restorative practices, which offer an *alternative* to the punishment-oriented justice system of today.

Restorative practices can be considered as an umbrella term for the vast body of restorative justice theory and programs that exists.<sup>2</sup> The notion of restorative practices evolved in part from the concept and practices of restorative justice, which is an approach in criminal justice whose focus is to repair the harm done to people and relationships, rather than only punishing offenders. Some mistakenly believe that restorative justice is a specific programme. It is, in fact a *theory* of justice that calls all parties namely victims, offenders, communities and the Government to recognise the importance of repairing the harm caused by crime.<sup>3</sup> However, beyond being merely a theory, restorative justice can be considered as both an 'idea' as well as a 'movement' which has expanded beyond the justice system. As an idea, it carries many different understandings and as a movement it brings together groups who hold widely differing aims.<sup>4</sup> As such it is an ambiguous concept that demands further clarity, an issue that will be examined in this report.

Restorative practices can be described as a *social science* that studies how to improve and repair relationships between people and communities.<sup>5</sup> It is being developed and applied in different fields, with origins within the criminal justice, and increased application in education - school and classroom level - to social and community work, and even organisational management. These practices introduce new principles but also new processes, both of which are showing evidence of having great impact in wider society.<sup>6</sup>

Restorative practices are alternative methods for justice, that differ from the penal process in that the parties themselves may decide on the punishment.<sup>7</sup> Consent of all parties included is essential. In some cases, the restorative practices and the punishment can be applied simultaneously.<sup>8</sup>

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<sup>2</sup> International Institute for Restorative Practice, available on its website [www.iirp.edu/](http://www.iirp.edu/)

<sup>3</sup> M. Cassar, *An Analysis of Restorative Justice under the Restorative Justice Act*, 2017.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> European Forum for Restorative Justice, available on [www.euforumrj.org](http://www.euforumrj.org); M. Dimech, *Restorative Justice: the balance between parole and Victims of Crime*, 2017.

<sup>7</sup> M. Aquillina, *Changing Perspectives from a Punitive Penal system to Restorative Justice*, 2014.

<sup>8</sup> *Ibid.*

Restorative justice can be viewed as largely *reactive*, consisting of formal and informal response to crime and other wrongdoing after it occurs.<sup>9</sup> Despite having its roots in restorative justice, restorative practices, includes the use of informal and formal processes that precede wrongdoing to prevent conflict.<sup>10</sup> Therefore, RP can be considered to not only be a theory or a movement as RJ has been, but also a *set of skills* that aim to build relationships and prevent the occurrence and escalation of conflict, as well as resolve conflict and repair harm caused by them. These formal restorative practice processes include victim-offender mediation, family group conferencing, community conferencing, restorative circles (*peace-making circles*), restorative cautioning, restorative conferencing and truth and reconciliation commissions<sup>11</sup>. For these processes to become truly restorative, the learning of distinct set skills by relevant stakeholders in the appropriate use of restorative language, discussion and mediation is needed.

## II. The emergence of the restorative justice

### Criminal justice and the five 'R'

The traditional destination in criminal justice was often aimed at the so-called three 'Rs': Revenge, Retaliation and Retribution. Throughout the 1960s and 1970s, however, a fourth 'R' was gradually introduced in the form of 'Rehabilitation'. In the final decades of the twentieth century the contemporary criminal justice map was completed with the fifth 'R', namely 'Restorative' justice.<sup>12</sup> Restorative justice differs completely from the retributive (traditional) model.<sup>13</sup> Viewed through a restorative justice lens, *crime is a violation of people and relationships*. It creates obligations to make *things right*. Justice involves the victim, the offender and the community in a search for solutions, which promote repair, reconciliation and reassurance.<sup>14</sup>

### Approach to definitions

Restorative justice is perceived most often as a collection of various (restorative) practices.<sup>15</sup> Restorative justice, however, is a deeply contested concept. Due to the sheer number of constructs that fit in its umbrella term, producing a single definition of restorative justice is a highly complex task. In fact, there is **no universally acknowledged definition of the term restorative justice**. Notwithstanding this, there exists vast and varied literature tackling the concept of restorative justice that has invariably sought to establish a working definition.

Six primary reasons have been identified as to why it is an impossible task to accumulate the different strands of restorative justice into one definition (Daly).<sup>16</sup> Of them, this report will highlight the two most significant:

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<sup>9</sup> International Institute for Restorative Practice, available on [www.iirp.edu/](http://www.iirp.edu/)

<sup>10</sup> European Forum for Restorative Justice, available on [www.euforumrj.org](http://www.euforumrj.org)

<sup>11</sup> D. Anzona, D. Chankova, M. Klecherova, I. Mladenova, Restorative justice- an instrument for improved protection of crime victims, pp. 3-6, [www.lpajournal.com](http://www.lpajournal.com); D.Chankova, Restorative justice – new instrument for protection of the rights of crime victims, [www.csd.bg/](http://www.csd.bg/)

<sup>12</sup> M. Dimech, Restorative Justice: the balance between parole and Victims of Crime, 2017.

<sup>13</sup> For more details, see Appendix 1.

<sup>14</sup> M. Dimech, Restorative Justice: the balance between parole and Victims of Crime, 2017.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

- 1) Researchers differ on what is restorative justice and what its practices are.
- 2) Knowledge is restricted in a geographical way. One can speak with authority only about the jurisdiction one is in, beyond that knowledge is not as expansive.<sup>17</sup>

Within the scholarly domain definitions of restorative justice have been split into two distinct factions: either “process” driven or else “outcome” driven.<sup>18</sup> What must be highlighted however is a unification of the definitions belonging to each camp concerning the recognition of the meeting of three primary stakeholders of an offence, namely the victim, the offender and the community. For the sake of this report, a definition that includes these three aspects (process, outcomes and stakeholders) has been deemed the best definition for standardization. In other words, restorative justice can be definite as ***a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders.***<sup>19</sup>

Further consensus and agreement between scholars has been found in their agreement of the foundation principles and the values practices which encompass restorative justice, with their focus on the relationship between the victim, the offender and the community.<sup>20</sup> It is thus, that we focus our understanding of restorative justice and restorative practice on how to *repair* the relationship between these three foundation pillars, which lie at the heart of the principles of restorative justice.

### **Programme areas of restorative justice practices**

Throughout restorative justice literature and different legislative jurisdictions, the main areas of restorative justice practices have been classified. It is of near consensus that there are four main programme areas of restorative justice practices,<sup>21</sup> these being:

1. The victim-Offender mediation
2. The family group conferences
3. The healing and sentencing circles
4. The community restorative boards

In an attempt to clarify different restorative justice programmes, these practices can be further divided into three distinct categories:<sup>22</sup>

1. Fully restorative,
2. Mostly restorative
3. Partly restorative

The operative principles of restorative justice programs are equal treatment, equal access to restorative justice services and the individualization of the facilitator’s style.<sup>23</sup>

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<sup>17</sup> *Ibid.*

<sup>18</sup> M. Cassar, *An Analysis of Restorative Justice under the Restorative Justice Act, 2017.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> International Institute for Restorative Practice, available on [www.iirp.edu/](http://www.iirp.edu/)

<sup>23</sup> V. Genova, “Премахване на криминогенните последици от пресъплението и полицейска дейност”, *Общество и право*, 2/2013, p.3.

In conclusion, restorative practice can be considered as a *broad term* that encompasses a growing social movement to institutionalize peaceful and non-punitive approaches for addressing harm, responding to violations of legal and human rights, as well as a *method* to solve and prevent conflict and problems within communities and between individuals. This report seeks to illustrate the extent to which programmes of restorative practice have been adopted and implemented in the following five European countries namely Bulgaria, Germany, Ireland, Malta and Spain.

### III. History of restorative practice in Europe

Restorative justice theory and programs have emerged since the 1970s as an increasingly influential world-wide alternative to criminal justice practice and continues to challenge assumptions about how the criminal justice system should function.<sup>24</sup> It echoes ancient and indigenous practices employed in all cultures across the world, from Native American and the First Nations, to African, Asian, Celtic, Hebrew and Arab, amongst many others.

However, in its modern context, it can be said to have grown out of a number of reform movements: the informal justice movement, the victim rights movement and the restitution/diversion movement which, in particular, was designed to alleviate the burden put on the judicial system.<sup>25</sup>

The first experiments with victim-offender mediation were set up in Canada and the U.S. in the late sixties. These first North-American initiatives had been influenced by the early debates and theoretical works of European scholars which were examining how the consequences of an offence could be faced and resolved by those immediately involved i.e. the victim and the offender. Concrete proposals for innovative projects were formulated in various European countries at around the same time but it wasn't until the 1980s that the present form of victim-offender mediation came into existence in Europe. However, victim-offender mediation initially showed slow development and did not receive widespread support. But was the early phase, small-scale experiments that provided conclusive evidence for restorative practice as being a strong, innovative method of responding to crime, which helped it later spread to national level programmes.<sup>26</sup>

The first pilot project was in Norway in 1981, followed two years later by a project in Finland. In Austria the model was called '*out-of-court offence resolution*' and was introduced nationwide, first in the juvenile courts (1988) and then as part of the Criminal Procedural Law, in early 2000. In England, the Home office funded and researched four projects from 1985-87, following on from small-scale experiments that had been implemented since 1979. Such developments can be considered limited compared to Germany, who initiated project in the same era but now has over 400 services. In France too, from the outset in the mid-1980s, restorative programmes have been mostly linked and limited to victim support.<sup>27</sup>

During the 1990s, the number of mediation programmes and cases which adopted restorative practices steadily increased on an annual basis in many countries. The result being that victim-offender mediation is now considered a well-founded practice in most European countries.

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<sup>24</sup> European Forum for Restorative Justice, available on [www.euforumrj.org](http://www.euforumrj.org).

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

Although the focus of victim-offender mediation in most European countries is still, predominantly on juveniles, its application is gaining greater acceptance within wider criminal law.<sup>28</sup> Mediation in the successive stages of the criminal justice process, after sentencing, is also growing. The latter refers to the increasing trend of promoting *restitution* and *redress* as eminent principles of criminal justice in general.<sup>29</sup> In this sense, victim-offender mediation is just one model of restorative justice. The family group conferencing approach brought a new wave of restorative justice, following evolutions in New Zealand, Australia, Canada and the U.S..<sup>30</sup>

The end of the 1990s marked a new phase in the development of victim-offender mediation in Europe. Whilst countries like Germany, Norway, France, Austria and Belgium already had legislation at their disposal at the beginning of the 1990s, by the end of the decade, a legal framework had been developed in several other countries too as U.K., Finland, Czech Republic, Poland and Slovenia. Furthermore the field of practice was enlarged and legally refined in France, Germany and Austria.<sup>31</sup> It was, however, clear at this stage that there was still little cross-border communication between countries, and that practitioners, academics and policy makers would benefit from increased mutual support and more regular exchanges.<sup>32</sup>

## Section 3 - Historical and regional context of the RP

This section will examine the historical context of RP within each of the participating countries namely Bulgaria, Ireland, Germany, Malta and Spain. It will do so by first outlining how RP/RJ has been defined in each country and then cover a brief history of how it has been implemented. This will be followed by a mapping of each country's policy and their legal framework on restorative practice.

### I. Bulgaria

#### Definitions

The concept of *restorative practices* in Bulgaria is used mainly in the broader concept of **restorative justice**. There is still not sufficient research on restorative practices as a preventative measure for prevention of wrongdoing.

There is a distinctive **theoretical background of restorative justice**, significant efforts of putting it into practice within the Bulgarian legal system and academic study of international experience with it. For example, according to Dobrinka Chankova, who contributed significantly<sup>33</sup> to building the theoretical background of restorative justice in Bulgaria *'the widely accepted definition of restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively*

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<sup>28</sup> *Ibid.*

<sup>29</sup> Restorative Justice Council, available on <https://restorativejustice.org.uk>

<sup>30</sup> *Ibid.*

<sup>31</sup> European Forum for Restorative Justice, available on [www.euforumrj.org](http://www.euforumrj.org)

<sup>32</sup> *Ibid.*

<sup>33</sup> The list of publications by prof. Dobrinka Chankova is available at the website of the Institute of Conflict Resolution, [www.icr-bg.org/Publications.htm](http://www.icr-bg.org/Publications.htm), (accessed 17 January 2019).

*how to deal with the aftermath of the offence and its implications in the future*'.<sup>34</sup> The restorative justice is believed to be a more humane paradigm of criminal justice in which heart stands the idea of restoring the damage to the victim by offender, providing balance and security in society, and diminishing the punitive approach.<sup>35</sup>

**Restorative justice** is determined as a **value-based model**, putting the needs of the victim in the centre (as opposed to *retributive justice* which considers crime a violation of the state, not of the person) and giving the offenders the opportunity to take full responsibility for their actions through the experience of guilt and shame, the acts of apology and restoration, with the facilitation of a neutral mediator. The great importance of community is highlighted along with the opportunity of the offender to correct himself.<sup>36</sup> The application of a **rehabilitation plan with the support of the community** is the next step in this process, and restorative justice relies on the principles of participation and consensus, healing and accountability.

D. Chankova points that often the term “**restorative practices**” is used as synonym of restorative processes and restorative models and it embodies the ideals of communicativeness, sociability and reconciliation. These restorative practice processes include victim-offender mediation, family group conferencing, community conferencing, restorative circles (*peacemaking circles*), restorative cautioning, restorative conferencing and truth and reconciliation commissions<sup>37</sup>. Victim-offender mediation is pointed out as a universal model.

There is a wide acceptance of and agreement about the **basic principles** of restorative justice. There are as follow:

- voluntary participation based on informed consent;
- neutrality and impartiality of restorative justice practitioners;
- confidentiality;
- respect for the rights and dignity of persons;
- promotion of community safety and social harmony.<sup>38</sup>

According to Vesela Genova, restorative justice is perceived most often as a collection of various (restorative) practices. Restorative practices are alternative methods for justice, which eliminate the penal process, because in the process, the parties themselves may decide on the punishment. Consent of all parties included is essential. In some cases, the restorative practices and the punishment can be

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<sup>34</sup> D.Chankova et al., ‘Restorative justice – an instrument for improved protection of crime victims’, *Law, Politics, Administration*, vol. 3, no. 4, 2016, p.3, [www.lpajournal.com/wp-content/uploads/2016/12/D-Chankova-full-text.pdf](http://www.lpajournal.com/wp-content/uploads/2016/12/D-Chankova-full-text.pdf), (accessed 17 January 2019).

<sup>35</sup> D.Chankova, ‘Hard Times for Restorative Justice in Bulgaria’, in C. Spinelis et al., (eds.), *Europe in Crisis: Crime, Criminal Justice and the Way Forward, Essays in Honour of Nestor Courakis*, vol.2, Athens, Ant. N. Sakkoulas Publishers L.P., 2017, p.1767, <http://crime-in-crisis.com/en/wp-content/uploads/2017/06/essays-nestor-courakis.pdf>, (accessed 17 January 2019).

<sup>36</sup> D.Chankova et al., ‘Restorative justice – an instrument for improved protection of crime victims’, pp. 3-6; D.Chankova, *Restorative justice – new instrument for protection of the rights of crime victims*, [presentation], ‘Round table ‘Adoption of Long-Term Policies for the Improvement of Status of Victims of Crime’, Centre for the Study of Democracy in Sofia, 6 June 2014, [www.csd.bg/fileSrc.php?id=21829](http://www.csd.bg/fileSrc.php?id=21829) (accessed 18 January 2019).

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

applied simultaneously. Restorative practices are divided into two groups: on one side, there are the group discussions within the family or in the community, on the other side, there are the restorative discussions and discussions in structured groups.<sup>39</sup>

Kremena Lazarova and Anelia Kotseva, senior experts from the Ministry of Justice, define restorative justice as a new model of criminal justice, tailored to restoration of the situation, relationships and life as it was before the commitment of the crime. The victim and the perpetrator decide how to cope with the situation in the best interest of each of them.<sup>40</sup> As it is victim-oriented, the restorative justice aims at victim recovering from the harm.

Based on Howard Zehr's *Little Book of Restorative Justice*, the Bulgarian blog for restorative justice<sup>41</sup>, define the restorative justice as "*a process of inclusion (to the extent possible) of the affected of a concrete crime*". It seeks identification of victims' needs, looks at the result of the harms/damages done, and who is responsible for these. It focuses on the means of healing and reparation of the situation and the relationships to the extent possible. Restorative justice concentrates on meeting the needs of information, telling the truth, empowerment and compensation (restoration/rehabilitation) of the victim, and the need of justice of the offender and the community<sup>42</sup>. Restorative practices are described as *victim-offender conferences* led by a facilitator and possibly with the participation of the families of the two parties, *family group conferences*, and *peace making circles* (restorative circles) that are used in general by communities, organizations, etc<sup>43</sup>.

Based on Daniel Van Ness publications, there are three different conceptions of restorative justice:

1. the conception putting in the centre **the meeting of the affected** and thus fitting the restorative practices concept of victim-offender mediation, restorative dialogue;
2. the conception putting in the centre **the correction/reparation**, using also the restorative circles, victim-offender conferences and family-group conferences;
3. and the conception putting in the centre **transformation** of offender's personality<sup>44</sup>.

In Bulgaria the concepts of restorative justice and restorative practices are often closely **associated with mediation** (while Zehr, on the opposite, underlines the difference of mediation<sup>45</sup>). For example, article 2 of the Bulgarian Mediation Act states that "*mediation is a voluntary and confidential procedure for out-of-court resolution of disputes*, whereby a third party mediator assists the disputants in reaching a

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<sup>39</sup> V. Genova, 'Премахване на криминогенните последици от пресъплението и полицейска дейност', *Law and Society*, no. 2, 2013, pp. 42-43.

<sup>40</sup> A.Kotseva and K.Lazarova, 'Възстановително правосъдие в Европейското съдебно пространство – практически аспекти и укрепване на мрежата за сътрудничество', *European Integration and Law*, no. 4, 2006, pp.61-62, [https://kenarova.com/cms\\_img/br4\\_2006.pdf](https://kenarova.com/cms_img/br4_2006.pdf) (accessed 18 January 2019).

<sup>41</sup> Restorativejustice.bg

<sup>42</sup> E. Evstatieva, 'Възстановителното правосъдие (ВП / RJ) е пряко свързано с нуждите и ролите...', *Restorative Justice in Bulgaria*, [web blog], 28 November 2016, <https://restorativejusticebg.com/2016/11/28/>

<sup>43</sup> E. Evstatieva, 'Practices of RJ', *Restorative Justice in Bulgaria*, available on [restorativejusticebg.org](http://restorativejusticebg.org), (accessed 18 January 2019).

<sup>44</sup> E. Evstatieva, 'Restorative Justice in Prisons', pp. 45-46, *Law, Politics, Administration*, vol.4, no.4, 2017, [www.lpajournal.com/wp-content/uploads/2017/11/E-Evstatieva-full-text.pdf](http://www.lpajournal.com/wp-content/uploads/2017/11/E-Evstatieva-full-text.pdf) (accessed 18 January 2019)

<sup>45</sup> H.Zehr and A.Gohar, *The Little Book of Restorative Justice*, revised edition, Uni-Graphics Peshawar, 2003, p. 7, [www.unicef.org/tdad/littlebookrjpakaf.pdf](http://www.unicef.org/tdad/littlebookrjpakaf.pdf), (accessed 18 January 2019).

settlement.”<sup>46</sup> This definition is used by the mediators and often extended beyond the civil, commercial and cross-border disputes and applied to cases related to the Criminal Procedure Code. The core meaning of mediation is parties to take responsibility for solutions, as it was stated by the Hague Conference for International Private Law: *‘mediation can be defined as a voluntary, structured process whereby a “mediator” facilitates communication between the parties to a conflict, enabling them to take responsibility for finding a solution to their conflict’*<sup>47</sup>.

Mediation is one of the alternative dispute resolution methods focused on empowerment of parties involved in the conflict. The term *alternative dispute resolution* unifies processes and techniques for dispute resolution in the means of coming to an agreement outside of the court, with or without the help of a third person<sup>48</sup>. Other alternative dispute resolution methods in Bulgaria are negotiation/direct agreement and arbitration<sup>49</sup>. Regulation of these is under the Civil Processing Code. Other forms include negotiation, reconciliation, evaluation of the case, ombudsman, and others<sup>50</sup>. Unlike the court procedure and the arbitration, mediation, conciliation, negotiation and restorative practices are means of empowering citizens to keep control over their matters and personally negotiate decisions acceptable for all parties involved.

In conclusion, it can be said that in Bulgaria restorative practices have evolved from restorative justice. The concept of restorative practices, however, has expanded beyond the justice system and can be seen within the wider context of organisations, educational system and social work. The restorative practices methodology aims at repairing and developing the relationships between members of the community as well as strengthening the entire community, group and organisation<sup>51</sup>.

## Brief history of RP and RJ

While the concept of restorative justice is not new anymore, the research and the understanding of restorative practices are quite limited. There are a very few scientific articles on the implementation of restorative practices in schools<sup>52</sup>.

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<sup>46</sup> Mediation Act 2004 (website of the Ministry of Justice of Bulgaria) ch.1, [www.justice.government.bg/Files/ZAKON\\_za\\_mediaciqta.rtf](http://www.justice.government.bg/Files/ZAKON_za_mediaciqta.rtf), (accessed 18 January 2019).

<sup>47</sup> Permanent Bureau, Hague Conference on Private International Law, Guide to Good Practice under the Hague Child Abduction Convention, Part V - Mediation, revised draft, 2012, p.6, [https://assets.hcch.net/upload/wop/abdguide5\\_mediation\\_en.pdf](https://assets.hcch.net/upload/wop/abdguide5_mediation_en.pdf), (accessed 19 January 2019).

<sup>48</sup> European Network of Councils for the Judiciary, ‘Alternative Dispute Resolution and the Judicial Domain, Report for 2016-2017’, Bulgarian translation, p.9, [www.vss.justice.bg/root/f/upload/17/Final-report-ENCJ-PT-ADR\\_BG.pdf](http://www.vss.justice.bg/root/f/upload/17/Final-report-ENCJ-PT-ADR_BG.pdf) (accessed 19 January 2019).

<sup>49</sup> ‘Alternative Dispute Resolution – Bulgaria’, European Judicial Network in Civil and Commercial Matters, 2009, available on [http://ec.europa.eu/civiljustice/adr/adr\\_bul\\_bg.htm](http://ec.europa.eu/civiljustice/adr/adr_bul_bg.htm), (accessed 19 January 2019).

<sup>50</sup> European Network of Councils for the Judiciary, ‘Alternative Dispute Resolution and the Judicial Domain, Report for 2016-2017’, p.12.

<sup>51</sup> E. Evstatieva, ‘Как определяме дали и до колко една практика е възстановителна’, Restorative Justice in Bulgaria, 18.01.2017, available on <https://restorativejusticebg.com/tag/>

<sup>52</sup> Among these are: D.Chankova, E.Popova and N.Tsankov, ‘Restorative approaches in schools as a possibility for preventative, social, educational and correctional resocialization’, Romanian Journal of School Psychology, vol.8, no.15, 2015: 7-15.; D.Anzova, ‘Restorative Justice in Schools – A Real Possibility’, Law, Society, Administration, vol.3, no. 3, 2016; D. Chankova, N. Tsankov and E. Popova, ‘Mediation in Resolving Conflicts between Chimeric School Groups - A Restorative Practice in School’, Bulgarian Journal of Science Education, vol. 25, no. 2(2016).

The analyses of publications have shown that restorative practices are often understood as means of mediation in the broader meaning of it. There are traditions in using the alternative dispute resolution methods of arbitration and other out-of-court settlements like mediation<sup>53</sup>.

V. Genova points to the restorative potential of some activities under certain conditions in the **work of the police** in Bulgaria, which have informational and educational character, e.g. during hearing and police work in the community when legitimate methods are needed for settling relationships between the parties affected. According to Genova's study, policemen rarely give instructions for formal mediation<sup>54</sup> but can employ procedures close to it.

Restorative practices are considered when working with **juvenile offenders** or those placed on probation (similar to other European countries). Restorative practices are realized through different forms of mediation and/or social services before or after penalty or during the probation period<sup>55</sup>. Some restorative elements can be seen during the probation period as well (launched in 2005)<sup>56</sup>.

There are a few measures claiming to have restorative character, in the Juvenile Delinquency Act (1958), for example, an apology to the victim, making reparation for the damage through work if possible, participation in educational programmes, taking part in counselling process for rehabilitative purposes and community service. These measures lack, however, the basic idea of voluntarily participation, because they are ordered by the municipal Local Juvenile Delinquency Commissions.<sup>57</sup>

The ideas of restorative justice were disseminated at first by **Bulgarian academics and NGOs**. This was a result of the shift to more democratic public policies and practices, the influence of pro-Western tendencies in the 90's, the development of civil society which insists for more people's friendly justice. It is also a result of the complete inability of the legal system to cope with the raise of criminality in the 90's and later. Although there was significant scepticism and resistance during the transition period, the concept of restorative justice found its way to and gained supporters among legal professionals and policy makers.

A solid theoretical background of restorative justice was developed by Bulgarian authors such as Dobrinka Chankova and Rumen Petrov. R. Petrov contradicts Chankova's defining of restorative justice and develops a different view on it based on the conception of the following authors, Nils Christie, Paolo Freire and Ivan Ilić<sup>58</sup>, claiming that 'restorative justice' is a term misleading and loaded and '(...)

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<sup>53</sup> D. Chankova, '3E –RJ-MODEL .The 3E Model for a Restorative Justice Strategy in Europe', Final national report for Bulgaria, 3E –RJ-MODEL, 2013, p. 5, available on [http://3e-rj-model.web.auth.gr/files/national\\_reports/Bulgaria.pdf](http://3e-rj-model.web.auth.gr/files/national_reports/Bulgaria.pdf), (accessed 19 January 2019).

<sup>54</sup> V. Genova, 'Премахване на криминогенните последици от пресъплението и полицейска дейност', pp.50-51.

<sup>55</sup> E. Evstatieva, 'Restorative Justice in Prisons', pp. 46-47.

<sup>56</sup> D. Chankova, '3E –RJ-MODEL .The 3E Model for a Restorative Justice Strategy in Europe', p. 7.

<sup>57</sup> S. Demkova, '5 Key Findings about the Practices of Restorative Juvenile Justice in Eastern and Central EU Countries: Bulgaria, Croatia, Hungary, Romania, Slovenia', a report, Child Protection Hub for South East Europe, 2016, p.2, [https://childhub.org/fr/system/tdf/library/attachments/5\\_key\\_findings\\_about\\_the\\_restorative\\_justice.pdf?file=1&type=node&id=21279](https://childhub.org/fr/system/tdf/library/attachments/5_key_findings_about_the_restorative_justice.pdf?file=1&type=node&id=21279), (accessed 19 January 2019).

<sup>58</sup> R. Petrov, *Объркани в болката. Социална травма и социална отговорност*. [Confused in pain. Social Trauma and Social Responsibility], Paradox, Sofia, 2018; R.Petrov, 'Restorative Justice in Bulgaria – Limitations of the Environment', NBU, 2016, pp. 232-243, available on <http://ebox.nbu.bg/lawofright/index4.php?id=31#t>, (accessed 19 January 2019).

reconciliation commissions can be viewed as councils working with conflicts<sup>59</sup>. Elena Evstatieva, Vesela Genova<sup>60</sup>, Desislava Anzova and others also contribute to the theoretical study of the concept. Desislava Anzova proposed a draft paper on Juvenile Offenders Act that legitimates the definitions of restorative justice and restorative practices and associates them with measures such as victim-offender mediation, family group conferences, reconciliation circles, restorative trial, the public controlling and monitoring body, and so on<sup>61</sup>.

**A variety of initiatives have promoted restorative justice** and facilitated formation of positive attitudes towards it through the years:

- **a workshop and national round table** “Perspectives of Mediation in Criminal Matters” (2007); a project aiming at **promoting amendments of the Penal Code** and the Penal Processing Code. It was an effort of a working group led by the Professional Association of Mediators in Bulgaria (PAMB) and gained support at the Bulgarian-German Mediation Conference (2008) attended by representatives of the parliament, the judiciary and academic circles;
- a **blog** for restorative justice in Bulgaria, maintained by Elena Evstatieva (2016);
- a **Restorative Justice Week** in Bulgaria (20-23.11.2018). The program included meetings with students, judges, school psychologists and pedagogical councillors, NGOs and other experts working on restorative justice. A round table “Restorative justice on criminal proceedings” with the participation of representatives of the legal circles was conducted<sup>62</sup>;
- the Nils Christie’s visit, lectures and meetings with students and professionals in Bulgaria;
- a **National Conference on restorative justice** “Reconsideration of Crime and Punishment” (21.04.2018)<sup>63</sup>. At the conference, Dr. Belinda Hopkins, the director of *The Transforming Conflict*, pointed out that the term “restorative practices/restorative approaches” is mostly used in schools. She related restorative practices to “school-wide philosophy about how to build, maintain and repair relationships and how to foster a sense of social responsibility and shared accountability”<sup>64</sup>. The conference was followed by a declaration supported by academics, representatives of the judiciary, legal professionals, representatives of the NGO sector and mediators. The declaration appealed to establishing a platform for restorative justice and its promotion and to development of restorative practices in a broad context of education, social services, penitentiary and other institutions and communities. It insisted on the necessary

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<sup>59</sup> R.Petrov, ‘Restorative Justice in Bulgaria – Limitations of the Environment’, p.238, citing as well Nils Christie.

<sup>60</sup> Police and social conflicts, Research Institute of Criminalism and Criminology, Center for Police Studies to the Ministry of Interior, Sofia, 2012.

<sup>61</sup> D. Anzova, ‘Restorative Justice – Needed Reform’, Law, Politics, Administration, vol.2, no. 1, 2015, pp. 77-89, available on [www.lpajournal.com/wp-content/uploads/2015/02/D.Anzova-full-text1.pdf](http://www.lpajournal.com/wp-content/uploads/2015/02/D.Anzova-full-text1.pdf), (accessed 20 January 2019).

<sup>62</sup> E. Evstatieva, ‘Calendar of the events within the International Week of Restorative Justice in Sofia’, Restorative Justice in Bulgaria, 20 November 2018, <https://restorativejusticebg.com/2018/11/20/>

<sup>63</sup> Key speakers and program available at the website of the National Network for Children, National Network for Children, <http://nmd.bg/>

<sup>64</sup> B. Hopkins, A brief introduction on the topic ‘An introduction to restorative approaches in schools’, ‘Materials and Resources from the National Conference on Restorative Justice ‘Reconsideration of Crime and Punishment’ (21 April 2018, Sofia), Restorative Justice in Bulgaria, 4 May 2018, p.3, available on <https://restorativejusticebg.com/2018/05/04/>

- amendments to Bulgarian legislation and encouraged wider engagement of Bulgarian academics and university students with restorative justice<sup>65</sup>;
- the publishing and the promotion of **books of Nils Christie and Howard Zehr**;
  - restorative justice was included in the **university curricula** of the New Bulgarian University and the South-West University *Neofit Rilski*;
  - popular **media** discussed the concept of restorative justice, such as the e-versions of the newspapers *Capital* and *Kultura*, the national television channel *Bulgaria ON AIR* and the famous blog *Gorichka*.

## The Policy and Legal Framework

The ideas of restorative justice were brought to the attention of the Parliament, especially because of the necessity to bring the Bulgarian legislation in accordance with the European legal system<sup>66</sup> and the constant criticism of the European Council and the European commission for the delay of the reforms in the judiciary system.

The final adoption of the Mediation Act in 2004 was preceded by the updated Strategy for Reforming of the Bulgarian Judiciary System (setting the use of alternative dispute resolution as a priority) and the National Conception for Reforming of Criminal Justice (mediation was highlighted as a main instrument of restorative justice) for the period 2010-2014<sup>67</sup>.

The **Mediation Act** (2004) contains in itself the basis of suggesting victim-offender mediation at a court level.<sup>68</sup> The Penal Procedure Code (2006) did not include the necessary amendments for the successful application of mediation. There were no references to application of mediation in the proposed changes in the last **Penal Procedure Code** from 2006, however. Still, there are some restorative elements in the Bulgarian Penal Procedure Code, such as providing opportunities for settling the case by agreement between the prosecutor and the defence attorney under certain conditions; recognising the necessity for restorative measures for juvenile offenders; recognising the need of applying less repressive measures for minor crimes; defining cases where special measures should be applied, such as educational or correctional orders (especially for juvenile offenders); providing the victim with the opportunity to decide if the offender will be prosecuted in cases of “complainant crimes” and discontinuing proceedings if reconciliation is reached (except under certain conditions); providing an opportunity and a room for mediation or out-of-court methods<sup>69</sup>.

Other relevant instruments include the National Strategy for Support and Compensation to Victims of Crime (2006), the Strategy for Continuation of the reform of the judicial system (2010), the National Strategy on the Child (2008-2018) and the Conception of Justice for Children (2011). In the Updated Strategy for the Reform of the Criminal Justice System, adopted by the government in December 2014,

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<sup>65</sup> E. Evstatieva, ‘Едно финално действие и първа стъпка към един нов процес’, Restorative Justice in Bulgaria,, 12 June 2018, available on <https://restorativejusticebg.com/2018/06/12/>

<sup>66</sup> Directive 2012/29/EU of the European Parliament and of the Council of Europe.

<sup>67</sup> D. Chankova, ‘Who Is Still Afraid of Restorative Justice in Bulgaria?’, Law, Politics, Administration, vol.1, no.1, 2014, pp. 5-7, available on [www.lpajournal.com/wp-content/uploads/2013/12/DChankova-palentekest-Koi-vse-oshte-....pdf](http://www.lpajournal.com/wp-content/uploads/2013/12/DChankova-palentekest-Koi-vse-oshte-....pdf)

<sup>68</sup> S. Demkova, ‘5 Key Findings about the Practices of Restorative Juvenile Justice in Eastern and Central EU Countries: Bulgaria, Croatia, Hungary, Romania, Slovenia’, p.2.

<sup>69</sup> D. Chankova, ‘3E –RJ-MODEL .The 3E Model for a Restorative Justice Strategy in Europe’, pp. 5-7.

restorative justice is set as a priority, especially in the cases of juveniles. A consulting committee to the Minister of Justice developed proposals for promoting restorative practices, especially victim-offender mediation and family-group conferences in cases of juvenile offenders<sup>70</sup>. A draft paper representing the Act on Deviating from Criminal Proceedings and Imposing Educational Measures on Juveniles was published in the very beginning of 2018 and opened for public consultations<sup>71</sup>.

Besides the Mediation Act (2004), amended and supplemented in 2006, there are a number of other law texts related to the regulation of mediation: the Training Standards for Mediators, the Procedural and Ethical Rules of Conduct for Mediators and the Rules Pertaining to the Unified Register of Mediators (2005). They regulate the use and context of application of mediation, including in penal context (the existing Penal Processing Code). Other related are Ordinance No 2 of 15 March 2007 on the Conditions and Procedure for Approval of Organizations Providing Training for Mediators, on the Training Requirements for Mediators, on the Procedure for Entry, Removal and Striking off Mediators from the Unified Register of Mediators and on the Procedural and Ethical Rules of Conducts for Mediators, issued by the Ministry of Justice<sup>72</sup>.

In 2018, as the Council for Implementation of the Updated Strategy for Continuing the Judicial Reform to the Ministry of Justice delayed the changes in legislation concerning mediation, the Professional Association of Bulgarian Mediators introduced a position insisting on mediation becoming obligatory in certain cases and the necessary amendment to the Mediation Act, the Civil Processing Code and the Penal Processing Code<sup>73</sup>.

The Act on Execution of Penalties and Detention in Prison (2009) does not include measures for restorative practices in the prisons<sup>74</sup>.

The schools are dependent on the Pre-school and School Education Act<sup>75</sup>(2016) and the Ordinance on Inclusive Education (2016).<sup>76</sup> Although “punishment” is replaced with “sanctions” and the Mechanism for Combating of Bullying and Violence in School and Pre-School Education<sup>77</sup> outlines hearing and meetings as the first option, the other instruments remain punitive – notice, notice for exclusion and removal to another school, etc.

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<sup>70</sup> D. Chankova, ‘Hard Times Restorative Justice in Bulgaria’, p.1774; D.Chankova, Restorative justice – new instrument for protection of the rights of crime victims.

<sup>71</sup> ‘Consultation document on the draft Act on Deviating from Criminal Proceedings and Imposing Educational Measures on Juveniles’, Portal for Public Consultations [website], 9 January 2018, available on <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=3202>,(accessed 22 January 2019).

<sup>72</sup> D. Chankova, ‘3E –RJ-MODEL .The 3E Model for a Restorative Justice Strategy in Europe’, p. 8.

<sup>73</sup> ‘BCC проучва възможностите за задължителна медиация и арбитраж по дела’, Lex News, 08 October 2018, available on <https://news.lex.bg/>

<sup>74</sup> D. Chankova, ‘Who Is Still Afraid of Restorative Justice in Bulgaria?’, p.6.

<sup>75</sup> Pre-school and School Education Act (website of Ministry of Science and Education of Bulgaria), available on [http://ill.mon.bg/uploaded\\_files/ZAKON\\_za\\_preducilisnoto\\_i\\_ucilisnoto\\_obrazovanie\\_EN.pdf](http://ill.mon.bg/uploaded_files/ZAKON_za_preducilisnoto_i_ucilisnoto_obrazovanie_EN.pdf)

<sup>76</sup> Ordinance on Inclusive Education 2016 (Bulgarian Justice Portal), [www.lex.bg/bg/laws/ldoc/2136927891](http://www.lex.bg/bg/laws/ldoc/2136927891)

<sup>77</sup> Mechanism for Combating of Bullying and Violence in School and Pre-School Education website of Ministry of Science and Education of Bulgaria), pp. 25-28, [https://mon.bg/upload/14362/Mehzm\\_protivodejstvie\\_tormoz\\_281217.pdf](https://mon.bg/upload/14362/Mehzm_protivodejstvie_tormoz_281217.pdf), (accessed 22 January 2019).

Currently, the Juvenile Delinquency Act (1958) regulates the cases of juveniles, not imposing sufficient restorative measures. The Act on Deviating from Criminal proceedings and Imposing Educational Measures on Juveniles will replace it, hopefully making steps to restorative justice.

It can be said that, currently, the Bulgarian legislation still does not provide a clear framework for efficient implementation of restorative practices. Besides the efforts of experts, academics and practitioners, there is a delay and a lack of clarity on the necessary policy changes. It is a common knowledge that the Bulgarian criminal justice system remains prevalently punitive (some authors alarmed in last years that Bulgarian legal system was becoming more repressive).<sup>78</sup>

## II. Ireland

### Definitions

#### The link between RJ and RP

It is generally acknowledged that restorative practice (RP) has emerged as a development of restorative justice (RJ). There is a growing consensus that RJ now forms part of a 'suite' of restorative practices or restorative approaches.

The International Institute of Restorative Practice (IIRP) distinguishes between RP and RJ, suggesting RJ is '*a subset of restorative practices. Restorative justice is reactive, consisting of formal or informal responses to crime and other wrongdoing after it occurs*'.

Restorative Practices Ireland (RPI) defines restorative practice as:

*'An approach to building and maintaining interpersonal relationships, resolving conflict and repairing damaged relationships. The approach is based on a set of key values and principles and underpinned by a set of skills and techniques. It is applied in a variety of settings, including school, workplace, community, family and criminal justice, and in a variety of informal and formal formats.'*<sup>79</sup>

Limerick Restorative Practice Project defines RP as:

*"An approach that helps people to strengthen relationships, build community, and prevent conflict. When things go wrong, restorative communities work together to try to repair the harm caused and collaboratively find ways to make things right. (...) RP is based on principles of fairness, respect, honesty and community problem solving."*<sup>80</sup>

The Childhood Development Initiative (CDI) has the following definition of RP:

*"Restorative Practices (RP) are an evidence-based approach that help develop and sustain strong and happy organisations and communities, by actively developing good relationships, preventing the escalation of conflict and handling conflict in a creative and healthy manner. RP*

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<sup>78</sup> D. Chankova, 'Hard Times for Restorative Justice in Bulgaria', p.1769.

<sup>79</sup> K. O'Dwyer, Towards Excellence in Restorative Practice: A Quality Assurance Framework for Organisations and Practitioners, Dublin, 2014.

<sup>80</sup> Retrieved from the following website : [www.restorativepracticeslimerick.ie/](http://www.restorativepracticeslimerick.ie/)

*is both a philosophy and a set of skills that have the core aim of building strong relationships and resolving conflict in a simple and emotionally healthy manner.”<sup>81</sup>*

Finally, the Dublin Docklands Restorative Practices project (hosted by the National College of Ireland), defines RP as *“an approach to building and maintaining interpersonal relationships, resolving conflict and repairing damaged relationships.”<sup>82</sup>*

Essentially there are two key elements to the majority of definitions of RP within an Irish context. The first is the *pro-active element*, i.e. consciously working to support the development of ‘community’ (in any number of settings), by building the necessary social capital to promote positive, healthier and better relationships between people in every-day situations and by establishing the necessary skills required for people to do that. By so-doing, RP equips people to handle potential conflict or harm situations in a creative and sensitive manner, helps prevent the escalation of further conflict or harm and allows for the principles of fairness, inclusivity, engagement, accountability, collaboration and respect to become embedded within organisational, social and family structures. The second is the *reactive element* i.e. a set of RP skills and techniques for creating a safe, non-adversarial environment, conducive to supporting people to resolve conflict and repair harm when it has already occurred.

In both respects the restorative practitioner, facilitating the process, acts as a conduit between participants or as an attuned guide, ensuring all participants (including wrong-doers, those harmed and those affected by the harming) have the opportunity to have their say and be heard, without the apportioning of blame, and in-so-doing, encouraging individual accountability.

It is the combination of this ‘dual-element,’ that essentially differentiates RP from RJ, as the majority of RJ interventions occur after the perpetration of a crime. Whilst RJ may also aim to strengthen ‘community’ during the process of addressing the harm caused by a crime, or criminal activity, it does so, on the whole, only after that crime/criminal activity has been committed. RP does not require a crime or criminal activity to have taken place, to act as its ‘raison d’être’.

### Irish Definitions of restorative justice

Restorative justice (RJ) has evolved exponentially since its 1970’s “restitutory” beginnings, as an alternative to the kind of long established ‘retributive justice’ that operates within the Criminal Justice system worldwide. Restorative Justice Services Ireland (RJSI) was established in 1999 to work in partnership with the Probation Service, An Garda Síochána (the Irish police service), victim advocate organisations and the community sector, to develop and provide restorative justice programmes for young people (i.e. Offender Reparation and Victim/Offender Mediation). RJSI defines RJ as:

*“Working with people who have been affected by crime in a way that focuses more on the harm done to the victim than the law that was broken. It seeks to repair that harm by providing a forum for the victim and/or the community to address their issues with offenders in a safe and non-threatening way. The objectives are to meet the needs of victims of crime, challenge offenders to put right the harm they have caused and desist from further offending behaviour so that they make take their place again as law abiding members of the community.”<sup>83</sup>*

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<sup>81</sup> C. Casey, A Community-wide Restorative Practices Programme: Implementation Guide, 2014.

<sup>82</sup> For more information: [www.ncirl.ie/](http://www.ncirl.ie/)

<sup>83</sup> This definition comes from the following website : <https://rjs.ie/what-is-restorative-justice/>

The National Commission on Restorative Justice was established in 2007 to examine restorative justice practices in Ireland and to consider their effectiveness as a response within the criminal justice system to offending behaviour. The Commission's report in 2009 defined restorative justice as:

*"A victim-sensitive response to criminal offending, which, through engagement with those affected by a crime, aims to make amends for the harm that has been caused to victims and communities and which facilitates offender rehabilitation and integration into society."*<sup>84</sup>

The Irish Probation Service asserts that the aim of RJ is to:

*"(...) help offenders to realise that their activities hurt others -and that they are responsible for, and can be held accountable for their choices and actions. Ultimately, it enables people to think about how they behave with others and work out how best to prevent harm and conflict."*<sup>85</sup>

### Mediation and other forms of Alternative Dispute Resolution (ADR)

The two most common forms of ADR in use in Ireland are *Mediation* and *Arbitration*.

The Law Society of Ireland defines Mediation as:

*"(...) a confidential dispute resolution process in which an independent third party (the mediator) seeks to assist the parties in reaching a mutually acceptable settlement. It is a voluntary and non-binding process that only becomes binding on the parties if a settlement is reached."*<sup>86</sup> There are various forms of mediation - Civil/Commercial, Workplace/Employer, Family, Wills and Succession and Sports – and various styles of mediating, including, Facilitative, Evaluative and Transformative. There are also numerous Mediation courses available in Ireland, up to 3rd level and beyond, with perhaps the MII (Mediators Institute of Ireland) being the most well-renowned. The MMI also offers a course in Restorative Practices Mediation.

Whilst it could be acknowledged that RP and Mediation share some of the same lyrics, the song is not the same. Richard Cohen, is both a mediator and a restorative practitioner in Massachusetts, USA and puts it simply and succinctly in terms of "mediators help people resolve conflict, Restorative Practitioners on the other hand repair harm."<sup>87</sup>

The Law Society of Ireland explains arbitration as follows:

*"Arbitration is a means of dispute resolution whereby two disputing parties agree to submit their dispute to a neutral third party for determination.*

*An agreement of the parties to submit their disputes to arbitration is most commonly found in the form of an arbitration clause incorporated into a contract between the parties. In arbitration, an independent arbitrator will hear details of a disagreement from the parties*

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<sup>84</sup> National commission on Restorative justice, final rapport, p. 34, available on [www.justice.ie](http://www.justice.ie).

<sup>85</sup> For more information: <http://probation.ie>

<sup>86</sup> For more information : [www.lawsociety.ie/Public/Legal-guides/Dispute-resolution/Mediation/](http://www.lawsociety.ie/Public/Legal-guides/Dispute-resolution/Mediation/)

<sup>87</sup> R. Cohen, Taking responsibility: One Difference Between Mediation and Restorative Conferencing, AC Resolution magazine, p. 14, available on [www.acresolution-digital.org/](http://www.acresolution-digital.org/)

*involved, consider all the facts involved, and give a final decision on the issue. An arbitration is very similar to a court case and solicitors are usually engaged by the parties.*<sup>88</sup>

There are three other forms of ADR in the Law Society of Ireland.

- **Adjudication.** *This process involves an adjudicator, who reviews the facts and legal arguments set forth by the parties in a dispute to reach a decision.*
- **Conciliation:** *This is similar to mediation. However, in Ireland, construction conciliation is a unique form of ADR: when a conciliator is unable to facilitate a settlement between the parties, he or she will then issue a recommendation that will be binding upon the parties unless it is rejected by either of them within a prescribed time.*
- **Expert determination:** *This arises where the parties appoint an independent expert to investigate the matter in dispute and to make a decision on the merits of the dispute. The parties usually agree that the expert's finding will be finding and binding upon them.*<sup>89</sup>

### **Brief history of RP and RJ**

The genesis of a pre-cursive form of restorative practice in Ireland, can be traced back to pre-Christian times, when ancient, indigenous social traditions and ways formed part of a system of early government. Indigenous ways and traditions stemming from age-old Maori culture have also informed the modern (and restorative) Family Group Conferencing mode, developed in New Zealand and Australia in the late 1960's and early '70s. In the same way, Native American and New Nations traditions have preceded notions of 'reintegration' within restorative approaches in North America.

In Ireland, indigenous practices included the Brehon Laws which scholars argue were more progressive than modern criminal justice. For example, Consedine (1999) asserts that:

*"For 1500 years, up to the time of the first Tudor conquest, the Irish had their own criminal justice system. The Brehon Laws were based on a philosophy of restorative justice."*<sup>90</sup>

The Courts Service of Ireland agrees that:

*"In many respects Brehon law was quite progressive. It recognised divorce and equal rights between the genders and also showed concern for the environment. In criminal law, offences and penalties were defined in great detail. Restitution rather than punishment was prescribed for wrongdoing (our emphasis)."*<sup>91</sup>

Familiarisation with, and the development and expansion of, Restorative Practices (RP) on the island of Ireland, has been gathering momentum since the mid 1990's. One of the initial examples of its use as a modern-day restorative approach was as part of the Peace and Reconciliation Process, prior to and following the Good Friday Agreement in 1998, which ended more than 30 years of violent inter-community conflict. Local community restorative justice initiatives evolved into the Northern Ireland Youth Conferencing Service (NIYCS) and restorative justice has had a statutory footing in Part 4 of the

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<sup>88</sup> For more information: [www.lawsociety.ie/Public/Legal-guides/Dispute-resolution/Arbitration/](http://www.lawsociety.ie/Public/Legal-guides/Dispute-resolution/Arbitration/)

<sup>89</sup> *Ibid.*

<sup>90</sup> J. Consedine, Restorative Justice: Could Ireland Lead the Way? Studies: An Irish Quarterly Review, p. 133, retrieved from [www.jstor.org/stable/30096101](http://www.jstor.org/stable/30096101).

<sup>91</sup> For more information: [www.courts.ie](http://www.courts.ie).

Justice (Northern Ireland) Act since 2002. The NIYCS service itself commenced in 2003 in the Belfast area and was made available for all 10-16-year olds who had committed crimes. Since its inception the service has been rolled-out to other parts of Northern Ireland. In addition, in the late 1990s in Northern Ireland, Family Group Conferencing was also introduced with social work services and became the practice-norm for social workers by the mid-2000s, spreading to become the norm for social work practice in the Republic of Ireland by 2010.

Meanwhile, in 1999 in the Irish Republic, the Probation Service began a pilot Restorative Project with young people in two community-based projects in Tallaght (Dublin) and Nenagh (Co. Tipperary). The learning from these projects led directly to the inclusion of restorative justice interventions for young people referred to the National Garda Youth Diversion Programme, being included in the Children Act of 2001. Most relevant staff within the Garda were trained by 2003. The Best Practice Unit of the Garda Youth Diversion Programme are currently working with Ulster University to develop an RP Training Manual for the Youth Justice Workers employed by the 106 Garda Youth Diversion Projects all across the country.

An Garda Síochána undertook a comprehensive evaluation<sup>92</sup> of the effectiveness of RJ interventions by the Garda Diversion Projects and this evaluation led to the establishment of a National Restorative Justice Commission, as referred to above.

The introduction of RP into Irish schools began in the early 2000's with a European-funded project to introduce the practices in schools and Youthreach Centres (alternative schools) in County Donegal in the north-West of Ireland. Two schools in Dublin that were headed by visionary Principals, also began to introduce RP as a way of working in the early 2000's. Towards the end of the decade, the Children's Act Advisory Board (a statutory body established to manage the implementation of key elements of the 2001 Children Act), funded the training of twenty restorative practices trainers from a range of sectors (education, health, youth work, family support and justice). At the same time, restorative justice training was getting underway within the Probation Service and the Irish Prison Service, and a number of community initiatives in Limerick and Dublin were established.

In 2010, CDI (a key non-governmental organisation with substantial funding from the Department of Children and Youth Affairs and Atlantic Philanthropies) began an RP training programme aimed at developing a 'Restorative Community'. This community encompassed a range of front-line services, parents, young people and volunteers who availed of RP training and supports thereby promoting a consistency of approach in Tallaght West, a Dublin suburb of 30,000 inhabitants. Initially utilising the services of trainers from the IIRP (UK), CDI co-ordinated the training of almost 800 professionals, across schools and multi-agency teams, along with volunteers, parents and young people, over a two-year period.

An in-depth independent evaluation report of the CDI's RP programme in Tallaght between 2010 and 2012 was conducted by Galway University<sup>93</sup> and found widespread improvements in participants' ability

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<sup>92</sup> K. O'Dwyer, A program of restorative cautioning by the police in the Republic of Ireland. In Restorative Justice and its Relation to the Criminal Justice System: Papers from the second conference of the European Forum for Victim-Offender Mediation and Restorative Justice, Belgium, pp. 14-24.

<sup>93</sup> A. Fives, C. Keenaghan, J. Canavan, L. Moran, L. Coen, Evaluation of the Restorative Practice Programme of the Childhood Development Initiative. Dublin: Childhood Development Initiative (CDI), 2013, p. 2.

to deal with conflict, across agencies and greater inter-agency co-operation in relation to conflict management.<sup>94</sup>

On foot of recommendations from this evaluation report, and since 2013, CDI's RP training has been redesigned, developed and facilitated by CDI itself and is updated each year in line with both feedback from training participants, and developments in RP practice, literature and research. Between 2013 and January 2019, CDI trained over 3,000 adults and 250 young people from all across the country in RP. It has also trained over 120 people as RP trainers. CDI continues to offer training and supports today and has now extended its brief well beyond Tallaght, to incorporate many other areas in the country. It has for example recently received funding to deliver training and supports to schools across the Munster region (2018 - 2021).

In 2011, the first meeting of Restorative Practices Ireland, an all-Island network of restorative practitioners and organisations, took place. The Steering Committee agreed an overall vision for the organisation and agreed that RPI would work to:

*"(...) promotes and supports the use of restorative approaches spanning all sectors of the community in Ireland both locally, regionally and nationally through the development of strategies designed to embed these practices across society including schools, neighbourhoods and services in the context of a life cycle approach."<sup>95</sup>*

RPI has grown as an origination and now has a membership of over 400 people across the country. To date it has operated a purely voluntary group, with seed finance and administrative support from CDI. Its launch as a legally independent entity with a national RP Coordinator is planned for June 2019.

Since 2010, the adoption of RP as a way of working has been spreading across the country. Local and regional inter-agency networks of people interested in supporting the development of RP are now established on a mostly voluntary basis in Waterford (South East), Wexford and Dublin (East), Cork (South), Limerick (South West) and Donegal (North-West).

The majority of the initial training delivered in Ireland in the 2000s and up to 2013, was delivered by four key organisations:

1. Ulster University
2. The Corrymeela Community (Ireland's oldest Peace and Reconciliation organisation)
3. Netcare
4. The International Institute of Restorative Practice (Europe)

Training was delivered to practitioners working in the Community, Voluntary and Statutory (particularly Juvenile Liaison Officers - JLOs within the An Garda Síochána) sectors. Much of this training was delivered in Dublin, but training also took place in Waterford, Limerick, Donegal and Sligo.

Some of the earliest multi-agency RP training was undertaken by the Donegal Education Training Board (ETB) in the north-west of Ireland. As mentioned above, Donegal ETB had earlier been involved in a 2004 initiative collaboration with the University of Ulster, schools, youth services and 'Youthreach' (Second

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<sup>94</sup> *Ibid.*

<sup>95</sup> For more information: [www.restorativepracticesireland.ie/vision-objectives/](http://www.restorativepracticesireland.ie/vision-objectives/)

Chance education centres). With the assistance of PEACE Programme funding from the EU Programme for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland, the Donegal initiative engaged restoratively with nearly 5,000 staff, learners, volunteers and parents in a ten-year period (2004 – 2014).<sup>96</sup>

As outlined above, other, smaller-scale, organisations and networks overseeing RP training and activity, exist in other parts of Ireland. In the South-east of Ireland, the Waterford Restorative Practice Network (WRPN) has delivered training to over 700 professionals and volunteers in the county since 2011, with 12 accredited trainers. Also in the South-east, the Wexford Restorative Practice Partnership (WRPP) launched its service in 2016, whilst in Limerick, in the south-west of the country, the Limerick Restorative Practice Project, with support from Limerick County Childcare Committee and Probation Service has trained, mentored and supported over 1,000 people and 52 organisations across Limerick City to use restorative approaches since 2013.

Following the initial tranche of training and supports, and from around 2013, a number of Irish organisations and individual trainers began to develop RP training courses and implementation processes, to reflect a more Irish approach and context to training materials. New training has also incorporated national and international developments around RP, e.g. CDI's use of Dorothy Vaandering's 'Relationship Window'<sup>97</sup> and the use of the 'Balanced Model of Conferencing'<sup>98</sup> developed in Northern Ireland and Restorative Language (incorporating some of the work of Marshall Rosenberg and the Centre for Non-violent Communication). Such evolution reflects the advancement of RP in Ireland and the felt need to tailor training and supports to an ever-widening cohort of practitioners, across the country.

Further to the developments in the North and the Republic of Ireland, during the 2000s and into the 2010s, RP has evolved into what many working in the community, voluntary and statutory sector in Ireland would acknowledge, as an effective, alternative, non-adversarial way of facilitating services and operating at an organisational, social, pedagogical and criminal justice level. The success of RP has begun to percolate down through a multitude of services, to the extent that increasing numbers of schools and colleges, Youth, Family and Health related services, Police (An Garda Síochána) and Probation services and a host of other agencies and organisations right across the State, are now making RP training and its subsequent follow-up implementation and embedding, part of working practice, organisational policy and culture.

## The Policy and Legal Framework

Restorative practice and restorative justice are referenced or included within the following key Irish pieces of legislation:

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<sup>96</sup> For more information: [www.donegaletb.ie/learner-development/education-initiatives/restorative-practice/](http://www.donegaletb.ie/learner-development/education-initiatives/restorative-practice/)

<sup>97</sup> D. Vaandering, A window on relationships: enlarging the social discipline window for a broader perspective, 2010, p. 8, available on [www.iirp.edu/pdf/Hull-2010/Hull-2010-Vaandering.pdf](http://www.iirp.edu/pdf/Hull-2010/Hull-2010-Vaandering.pdf).

<sup>98</sup> E. Zinsstag, T. Chapman, Conferencing in Northern Ireland: Implementing Restorative Justice at the Core of the Criminal Justice System, 2012, p.6.

1. *The 2001 Children Act*, which gave responsibility to An Garda Síochána to incorporate and action restorative justice, restorative cautioning and Family Group Conferencing with young offenders under the age of 18 and as part of the Garda Youth Diversion Programme.
2. *Criminal Justice (Community Sanctions) Bill 2014*, which includes provisions for restorative interventions to be undertaken with adults. This has yet to be enacted but is expected to be so by the end of 2019.
3. *Criminal Justice (Victims of Crime) Act 2017*, which legislates for victims of crimes to be offered a restorative justice meeting with perpetrators of certain offences and where offenders have pleaded guilty to their crimes and are willing to make amends.
4. *The Mediation Act 2017*, which came into force on 1st January 2018. The Act provides a statutory framework to promote the resolution of disputes through mediation as an alternative to court proceedings. The objective of the Act is to promote mediation as a viable, effective and efficient alternative to court proceedings, thereby reducing legal costs, speeding up the resolution of disputes and reducing the disadvantages of court proceedings.

On a policy level, RP and RJ have been incorporated within a plethora of organisational structures on a micro and macro basis. From Codes of Behaviour in primary and post-primary schools throughout the state, to statutory Departmental Strategic Plans, restorative approaches are increasingly visible and central to an overarching suite of supports for young people and adults across Ireland. Some key policy developments have included:

- The Department of Education and Skills inclusion of Restorative Practices training for all primary and post-primary teachers as part of its National Action Plan for 2017.<sup>99</sup> A pilot project to train teachers and incorporate restorative practices in 25 schools began in September 2018, with a view to offering training to all teachers over the coming five to eight years.
- An Garda Síochána, building on their use of RP and RJ over many years (restorative cautioning and group conferences, particularly in the JLO service) are currently working on a National Policy for the use of RP throughout the Gardaí. As mentioned above, the Gardaí are also working with Ulster University to devise and develop a RP Training Manual for Youth Justice Workers and to develop a team of Youth Justice RP Trainers.
- The Probation Service Strategic Plan 2018-2020 has, as one of its strategic objectives to:<sup>100</sup>  
*"(...) further develop our services to victims by establishing a dedicated Victim Service, incorporating restorative justice principles, while continuing to ensure the victim perspective informs our assessments and interventions with offenders."*

In addition, the Probation Service has recently established a dedicated Restorative Justice Unit with Head Office that is tasked with developing the Services RJ activities.

- A number of 3<sup>rd</sup> Level institutions, including Ulster University, National University (NU) Maynooth and Carlow IT offer degree, Masters and PhD courses on RP. Numerous other training

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<sup>99</sup> Department of education and skills, Action plan for education, 2017, p.17, available on [www.education.ie](http://www.education.ie)

<sup>100</sup> The Probation Service, Strategic Plan 2018-2020, One Vision, One Team, One Standard, p. 6, available on [www.probation.ie](http://www.probation.ie)

organisations and agencies offer practitioner training in RP, including the Mediators Institute of Ireland, across Ireland, whilst also at NU Maynooth, RP is a module within Degrees in Education (teacher-training).

### III. Germany

#### Definitions

The term “restorative practices” (or a translation thereof) is not directly used in German speaking countries and is substituted by the term “**mediation**”. **Mediation is a structured, voluntarily process for a constructive settlement of conflicts, which is moderated (mediated) by an independent multi-partiality (neutral and impartial) individual.** This individual, called a mediator, helps conflicting parties to find mutual agreements to settle a conflict. The mediator is not ruling any decision concerning the conflict, but rather structures the whole process, as well as the communication between the parties. The term mediation can be seen as an umbrella term including the penological (see restorative justice) and non-penological mediation.

**The English term “restorative justice” is directly used in German speaking countries. Restorative justice is a comprehensive justice paradigm overcoming traditional criminal and disciplinary jurisdiction, with the goal to compensate perceived suffering by mediating a solution between victim and perpetrator.** Restorative justice is specifically used for conflict transformation, where penological relevant cases are given back to the conflicting parties to settle the conflict employing a multi-partiality individual called a “mediator”. However, the jurisdictional path for conflict settlement is still available in the case of a failing mediation process.

**“Alternative Dispute Resolution” is the umbrella term for all measures to resolve a conflict besides jurisdictional trials.** It includes a whole spectrum of measures from structured mediation (see restorative justice) to legally binding arbitration tribunals (“Schiedsgericht”) for conflict settlement.

#### Brief history of RP and RJ

Although, compensation focused trials were also part of the jurisdiction of Germanic and Franconian tribes, this form of conflict settlement was replaced by retaliation-focused jurisdiction during the Middle Ages. Instead of compensating the victim of a crime for the suffering they experienced, the jurisdiction was built on punishing perpetrators with the goal to deter further criminal activities.

Just recently, in the 1970s and 80s, a paradigm shift took place in Austria and Germany. Scientific investigations were the origin of this shift. These surveys were focused on asking the question, where does criminal behaviour of teenagers come from and why are convicted teenagers more likely to commit even more crimes? Although, a broad range of explanations for the origin of crime were developed, there was a consensus about the moral obligation to minimise suffering of victim and perpetrator.

First model experiments in the realm of juvenile law (specifically for low-level violations like criminal property damage) were executed between 1985-1989 in Austria and 1985-1994 in Germany, respectively. The focus of the content concept was the activation of the affected youth, the valorisation of the injured and the effort to move the criminal justice system towards the image of a social peace-building institution. In addition, the voluntary nature of the cooperation of those affected was emphasised. The results of the pilot project showed an expansion of treatable offenses, such as offenses of light bodily injury. Offenses where no concrete persons were present as injured, for example

companies, proved to be less suitable. In 1989, a legal anchorage in the juvenile criminal law was created, and the extrajudicial compensation for juveniles was offered throughout Austria. Until the opening of a main trial, the juvenile prosecutor's office or the judges were now able to assign suitable cases to extrajudicial compensation. Due to the positive experiences with young people, a model experiment for adults ran from 1992 to 1999. In 1999, as part of a comprehensive anchoring of diversion in criminal law, the out-of-court settlement for adults was regulated and has since been offered throughout Austria.

In contrast, Germany legally anchored the results of the pilot project of the 1980s directly in 1994 for juvenile and adult law under the term "Täter-Opfer-Ausgleich (TOA)" (German, "Perpetrator-Victim-Compensation").<sup>101</sup>

Conflict resolution by restorative practice is restricted to disputes outside the court, but can be a formal procedure. The courts and prosecutors now need to consider whether a conflict can be solved through restorative justice in every phase of a trial. Both can suggest to the conflicting parties to resolve the conflict via a mediator.

In addition to the national laws, the European Union formulated the directive "Richtlinie 2008/52/EG über bestimmte Aspekte der Mediation in Zivil- und Handelssachen" (German, "directive on certain aspects of mediation in civil and commercial matters"), which was transferred into national law of European countries in 2011. In Germany this was called "Mediationsgesetz" (German, "mediation law"), which determines the rights and duties, as well as demands, for the certification of mediators. Until now more than 350 TOA institutions are certified as mediators in Germany.<sup>102</sup>

Although, restorative justice is relatively young in the German speaking countries, it is considered a great success with about 7,000-8,000 cases in Austria and 25,000-30,000 cases in Germany.

## The Policy and Legal Framework

The legal framework in Germany is set on one hand by the mediation law ("Mediationsgesetz", short "MediationsG")<sup>103</sup>, as well as directives for the training of mediators and on the other hand the restorative justice regulations ("Täter-Opfer-Ausgleich")<sup>104</sup>. However, both are connected, because only certified mediators are allowed in restorative justice and they define trainings for mediators. Therefore, the mediation law has relevance for all mediators in Germany.

Mediation law (MediationG)<sup>105</sup> sets the basics of certified mediation in Germany. It defines mediation as confidential, structured process for resolving conflicts in a voluntary and consensual way, as well as the mediator as an independent and neutral person, without decision making power, guiding the conflict

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<sup>101</sup> S. I. Schmidt, 'Die Entwicklung des zweiten Opferrechtsreformgesetz', Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung, [https://www.toa-servicebuero.de/sites/default/files/bibliothek/11-08\\_schmidt\\_opferreformgesetz.pdf](https://www.toa-servicebuero.de/sites/default/files/bibliothek/11-08_schmidt_opferreformgesetz.pdf), (accessed 12 December 2018).

<sup>102</sup> H. J. Kerner, 'Bundesweites Anschriftenverzeichnis von Einrichtungen, die Gelegenheit zur Durchführung von Täter-Opfer-Ausgleich bzw. Konfliktmittlung bzw. Schadenwiedergutmachung anbieten', Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung, [www.toaservicebuero.de/sites/default/files/bibliothek/toaeinrichtungen\\_in\\_deutschland\\_adressverzeichnis\\_broschuere\\_fassung\\_2015-1.pdf](http://www.toaservicebuero.de/sites/default/files/bibliothek/toaeinrichtungen_in_deutschland_adressverzeichnis_broschuere_fassung_2015-1.pdf), (accessed 11 December 2018).

<sup>103</sup> Mediationsgesetz vom 21. Juli 2012 (BGBl. I S. 1577).

<sup>104</sup> Strafprozeßordnung § 155a Täter-Opfer-Ausgleich.

<sup>105</sup> Mediationsgesetz vom 21. Juli 2012 (BGBl. I S. 1577).

parties. The mediation process is further explained in paragraph two naming the phases of mediation and defines the tasks of the mediator:

1. the conflict parties choose a mediator;
2. the mediator ensures the understanding of the participants about mediation;
3. the mediator is neutral and acts as a guide;
4. the third parties are only allowed when all participants agree;
5. the participants can stop the mediation process at any given time;
6. the mediator ensures the understanding of all results and consequences.

The third paragraph of the mediation law declares that mediators need to reveal all aspects that could be an impairment for his or her role. Moreover, a person cannot mediate when he or she was active in the same case for one party, has the same vocation or works in the same office environment, or is in any other way related to at least one of the participants (conflict of interest). Only the conflicts parties can overrule this by an explicit agreement. He or she must also be inclined to reveal his or her certification and vocational background. The next paragraph of the law includes the non-disclosure terms about everything the mediator hears during the mediation process. Exceptions are cases concerning public order, endangerment of small children or physically and mentally impaired persons. Moreover, the mediation law regulates training and certification of mediators. Besides giving broad baselines for trainings, it links to the directive for the training of mediators prepared by the ministry of justice, which will be topic of the next section. Lastly, the mediation law also regulates funding scientific research in this field and has determined that the government needs to evaluate the results of this law on a regular basis.

As mentioned in the last part, the ministry of justice prepared the directives for the training of mentors (“Rechtsverordnung zur Ausbildung von Mediatoren”)<sup>106</sup>. The document gives a detailed timetable for the 120-hour training necessary to become a certified mediator. It includes the following main topics (definitions for basic terms, phases of mediation, negotiation and communication techniques, conflict competences, legal framework in Germany as personal competences and the role as a mediator). Those topics must be presented in an interactive way including role-play games and realistic case studies. After finishing this initial course, the starting mediator needs to show his or her abilities in a real case under supervision. Only after finishing this, he or she can become a certified mediator. However, the training needs to be continued: four more supervised mediation sessions need to be done in the following two years. Moreover, all mediators need to refresh their knowledge at least every four years in other 40-hour refresher courses.

The directive also defines the requirements of training facilities and teachers, as well as trainings obtained in other countries. To be accepted, a mediator with training in another country must have taken a course of at least 90 hour and needs to have mediated in four separate cases.

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<sup>106</sup> Verordnung über die Aus- und Fortbildung von zertifizierten Mediatoren (Zertifizierte-Mediatoren-Ausbildungsverordnung – ZMediatAusbV) Vom 21. August 2016, Bundesgesetzblatt Jahrgang 2016 Teil | Nr. 42, ausgegeben zu Bonn am 31. August 2016, [www.bmev.de/fileadmin/downloads/mediationsgesetz/Rechtsverordnung\\_in\\_Kraft\\_2016\\_09\\_01.pdf](http://www.bmev.de/fileadmin/downloads/mediationsgesetz/Rechtsverordnung_in_Kraft_2016_09_01.pdf), (accessed 5 December 2018).

The regulative basis for restorative justice is given by the “Täter-Opfer-Ausgleich”. It is defined in 155a<sup>107</sup>, 155b<sup>108</sup> StPO “Strafprozessordnung” (German, “criminal”) and 46a StGB<sup>109</sup> “Strafgesetzbuch” (German, “criminal code”). It claims in the paragraph 155a, that the court or prosecution should contemplate every phase of a trial, if compensation between victim and perpetrator is a possible option to resolve a conflict. They should work towards this kind of solution, as long it is not against the will of the victim. The paragraph 155b defines the details of the process phases and regulates the terms for the data transfer to the delegated restorative justice authority, which can be a governmental or a non-governmental institution. The paragraph 46a of the “Täter-Opfer-Ausgleich” is concerned with defining the results of the compensation. When the perpetrator showed strong effort to compensate the victim fully or largely, or the performed compensation includes large personal obligations and sacrifices, the court can reduce or even desist from any punishment, if the punishment would be less than one year of prison or the appropriate financial penalty.

## IV. Malta

### Definitions

#### Restorative system vs. reformatory system

The history of restorative justice in Malta is one that maps the justice system’s slow transition from a retributive model to a reformatory one under the British penal system and to then a more restorative one, post-independence. However, RJ in Malta is a comparatively new concept. In the four years since the introduction of the Restorative Justice Act, restorative justice has largely been limited in its application and use. Yet, since the Maltese legal system currently offers opportunity both for the offender to rehabilitate back into society, as well as for the victim to apply for services to restore harm suffered, Malta today can largely be considered as an incorporation of both reformatory and restorative justice systems, but whose penal policy and practice paradoxically still oscillate mostly between retribution and rehabilitation as effective means to respond to crime.<sup>110</sup>

As such it is important to distinguish the difference between *restorative* and *reformatory* systems before detailing their history of adoption in Malta. On one side, a *reformatory system* aims to reform the offender; on the other, a *restorative system* focuses on the victim, where different procedures aim to restore the harm that has been caused as well as heal the relationships of those involved. These two terms may be interlinked and used simultaneously, as they are in Malta.

With restorative practices being a relatively new concept in Malta, the volume of literature regarding it is significantly limited to the domain of restorative justice. It is also difficult to locate such information, with it being mostly scattered between legal and university libraries’ ‘special collections’, which are unobtainable online and to the general public; academic papers that do not reach beyond BA and MA level qualification; pamphlets produced by NGOs and newspaper articles, which often have not

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<sup>107</sup> Strafprozeßordnung § 155a Täter-Opfer-Ausgleich.

<sup>108</sup> Strafprozeßordnung § 155b Durchführung des Täter-Opfer-Ausgleich.

<sup>109</sup> Strafgesetzbuch § 46a Täter-Opfer-Ausgleich, Schadenswiedergutmachung.

<sup>110</sup> M. Piscopo, Offender Rehabilitation: an overview of some effective programmes and initiatives used within prisons.

understood the full implications of RJ. Thus insights that have sought to measure the impact of such practices within the penal system are also limited.

Another difficulty encountered, has been to gauge the level of indigenisation of such terms by Maltese lawyers and academics, and whether it was started as a movement driven primarily by academics and NGOs, focusing on issues of bullying or social integration, or through the Justice system itself. It would seem that adoption in Malta seems primarily to have been driven by a desire to change the penal system, in particular in regards to Juvenile sentencing. This differs from countries like Bulgaria, where restorative practices stemmed from a civic and academic movement in the late 1990s. In Malta, the vast body of local organisations and academics addressing such issues has only occurred since the Restorative Justice Act in 2012. This mirrors other European countries where the shift began first in the juvenile courts, yet it could also possibly be said to be emblematic of Malta being a more hierarchical society, where real societal transformations occur through centralised systems of power, such as the Judiciary and government. It could, therefore, perhaps be said that it is they who set the trend for wider civic movement.

### **Brief history of RP and RJ**

This section will be divided into examining the historical evolution of restorative justice in Malta before and after independence.

#### Pre-independence

Prison reform to Malta was first introduced by the British with the prison reform regulation in 1850. At the time, Malta was a British military colony and the Criminal Code (1854), despite being deemed considerably progressive for its time was still punitive. It was Professor Nicola Zammit who first insisted that the whole system of punishment should be reviewed, believing that the punishment should be tailored to fit the offender and not the crime. In 1888 he proposed visionary alternatives in line with restorative justice.<sup>111</sup> Here Zammit suggested that the criminal justice system would probably be better to achieve its objectives, if 'rewards' (*recompensa*) were introduced in some cases, instead of coercion and punishment.<sup>112</sup> Although far-reaching, practically none of Zammit's proposals were adopted at the time.<sup>113</sup>

In 1990, Article 21 was introduced. This amendment to Criminal Code gave the courts the powers to sentence first-time offenders to imprisonment with the provision of releasing on personal guarantee, and not to re-offend within the specific period.<sup>114</sup> This could be considered to be the precursor to *conditional discharge*.

In 1919, the first real attempt at prison reform came when Colonel Harry William Bamford recommended that the *Salvatore Barracks* be converted into a reformatory where juvenile offenders sentenced to jail could be detained instead. The aim of the reformatory was primarily reform rather than punishment, and to separate youths from directly associating with criminals. Bamford also took the initiative to exercise a system of parole where prisoners were conditionally released during their

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<sup>111</sup> M. Aquillina, *Changing Perspectives from a Punitive Penal system to Restorative Justice*, 2014.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

incarceration on the basis of good conduct and had demonstrated reform sufficient for employment.<sup>115</sup> However the system of parole was discontinued when Bamford was substituted as Commissioner in 1922.<sup>116</sup>

Alongside this in March 1920, magistrates made recommendations to the governor suggesting the introduction of the probation system for young offenders. The probation system however was not acted upon and had to wait another thirty-seven years before adoption.<sup>117</sup>

In 1944, the system of parole (or release on licence) was proposed by HM Commissioner of Prisons for England and Malta, Sir Alexander Paterson. He also proposed that the Probation Service should be established and that first-time offenders be given probation instead of prison sentences.<sup>118</sup> He recommended that the courts adopt the modern and more scientific principle of dealing with each person as a separate educational and social problem and to seek to prescribe the right treatment for each particular condition, rather than be content to weigh out a punishment appropriate to the gravity of his offence. Patterson was the first prison consultant to recommend the Prisoners' Welfare Society, which would cooperate with the director of prisons in helping prisoners and their families, both during their sentence and on discharge.<sup>119</sup>

In 1955, Judge Joseph Flores was the first to introduce the policy of criminal probation in Malta. He adopted the proposals developed by Sir Paterson who had suggested using the social system already in place, which in the case of Malta, was through the use of the police force and the priesthood.<sup>120</sup> In 1956, Assistant Attorney-General Cremona recommended the introduction of the Borstal institute for young offenders and the probation system.<sup>121</sup>

### Post-Independence

Research has shown that prior to the establishment of the Act, already attempts were made to encompass restorative justice principles, in a move to distinguish Maltese justice from its retributive embodiment.<sup>122</sup> It did not reach public prominence, however, until 1993. The first time that we officially hear of restorative justice in Malta was in the case *Pulizija vs. Stephen Spiteri* (COA 1993). The court came to the conclusion that the system of justice present in Malta should no longer be considered retributive but is one that it is, instead, restorative in nature, striving to bring about reconciliation between the offender and the victim and aiming to put the offender on the right road. This was a significant step by the court to pronounce itself in this way, especially since it came at a time before the introduction of the Restorative Justice Act and the introduction of restorative justice practices.

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<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> M. Cassar, *An analysis of Restorative Justice under the Restorative Justice Act, 2017.*

## The Policy and Legal Framework

The enactment of the Restorative Justice Act brought for the first-time restorative justice within the Maltese justice sphere. The long process was hailed as a huge landmark in the slow and arduous transformation of the country from a retributive to a restorative justice system.

### Victims of Crime Act, Chapter 539 of the Laws of Malta

The restorative justice is defined by the article 2 as *“any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party”*.

The article 9 states that *“restorative justice measures provided for under the Restorative Justice Act or under any other law shall be exercised subject to the following conditions:*

*(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim’s free and informed consent, which may be withdrawn at any time;*

*(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;*

*(c) the offender has acknowledged the basic facts of the case;*

*(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;*

*(e) discussions in restorative justice processes that are not conducted in public are confidential and shall not be subsequently disclosed, except with the agreement of the parties or as may be required by law due to an overriding public interest.”*

### Restorative Justice Act, Chapter 516 of the Laws of Malta

The point of the Restorative Justice Act, Chapter 516 of the Laws of Malta is *“to make provision for granting parole to prisoners and to provide other restorative justice measures at every stage of the criminal justice process and to provide for such matters ancillary or incidental thereto or connected therewith and to make amendments to other laws.”*

This Chapter of the Laws of Malta sets up the Offender Assessment Board (1), the Parole Unit (2), Parole Board (3), the Remission Board (4), the Victim Support Unit (5), and the Victim-Offender Mediation Committee (6).

#### (1) The Offender Assessment Board

The Offender Assessment Board’s functions are defined in article 4 (1), Chapter 516 of the Laws of Malta. These functions include:

(a) analysing and examining reports prepared in respect of each prisoner;

(b) and reviewing documented results related to care plan adherence in relation to each prisoner who has submitted an application for parole.

Subsequently, the Offender Assessment Board shall prepare a draft report<sup>123</sup>, forward to the Parole Clerk all relevant documents referred to above which shall then be included in the parole dossier for the purposes of assisting the Parole Board to take a parole decision.<sup>124</sup>

What is “*parole*”? It is the authorisation that is granted by the Parole Board to a prisoner serving one or more sentences of imprisonment to be released on parole, during a part of his term of imprisonment upon reaching the parole eligibility date, under the supervision of the parole officer and subject to the parole conditions as may be specified in the parole licence.<sup>125</sup>

## (2) The Parole Unit

The Parole Unit shall be headed by the Director<sup>126</sup> who shall have the following duties:

- (a) to assign parole officers to prisoners applying for parole and to prepare reports regarding the reintegration of prisoners;
- (b) to assign parole officers to parolees and to prepare reports;
- (c) to assign mediators for victim-offender mediation processes;
- (d) to manage and direct the Parole Unit and to organise and supervise parole services;
- (e) to give direction to parole officers;
- (f) to give direction on record keeping and time management;
- (g) to supervise parole officers and periodically receive verbal or written reports on parolees from the parole officers;
- (h) to keep a register of parolees;
- (i) and such other duties as may be assigned by the Minister from time to time.<sup>127</sup>

## (3) The Parole Board

The main functions of the Parole Board include:

- (a) evaluating the applications for parole, taking into consideration victims’ interests;
- (b) administering sentences of all prisoners being considered for parole;
- (c) having exclusive discretion to take a parole decision and to grant, amend, suspend or revoke, a parole licence;
- (d) imposing the necessary conditions referred to in article 14, after taking into consideration all the relevant information contained in the parole dossier;
- (e) making recommendations as may be required in relation to petitions under article 93 of the Constitution of Malta;

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<sup>123</sup> Article 4(1)(b), Chapter 516 of the Laws of Malta.

<sup>124</sup> Article 4(2), Chapter 516 of the Laws of Malta. It seems that Subsidiary Legislation 516.01 regulates the proceedings of the Offender Assessment Board.

<sup>125</sup> Article 2, Chapter 516 of the Laws of Malta.

<sup>126</sup> Article 5(1), Chapter 516 of the Laws of Malta.

<sup>127</sup> Article 5(2), Chapter 516 of the Laws of Malta.

(f) liaising with the Offender Assessment Board and the relevant departments and units, as may be deemed necessary;

(g) issuing certificates of good conduct to mark successful completion of the prisoner's parole period; and

(h) any other function as may be prescribed by the Minister from time to time.<sup>128</sup>

When granting parole to a prisoner, the Parole Board may impose any conditions as may be deemed necessary.<sup>129</sup>

#### (4) The Remission Board

The Remission Board shall be responsible for deciding on the awarding, forfeiture and awarding back of remission days forfeited.<sup>130</sup> Offenders awarded remission may be required to fulfil conditions as may be specified by the Remission Board. Such conditions may include:

(a) following rehabilitative and, or restorative justice programmes as may be specified by the Remission Board;

(b) and conducting community work.<sup>131</sup>

#### (5) The Victim Support Unit

The functions of the Victim Support Unit shall include:

(a) the establishment of a Victims of Crime Charter, to be approved by the Minister, to regulate the coordination of services to satisfy the needs of victims of crime including all the necessary procedures to be followed in accordance with the provisions of the Victims of Crime Act and any other applicable law or policy;

(b) the provision and management of a victims' register in accordance with article 28;

(c) the drawing up of a list of mediators to assist in victim-offender mediation;

(d) the drawing up of, in collaboration with the Malta Mediation Centre, a code of ethics to be followed by mediators during victim-offender mediation proceedings;

(e) the drawing up of the criteria for the appointment of mediators;

(f) the facilitation of better access to victim-offender mediation through the publication of information, guidelines and related documentation;

(g) the promotion of victim-offender mediation as a means of reparation for both the victim and the offender at any stage of the criminal justice process;

(h) the drawing up and publication of an annual report on the progress of the Victim Support Unit, which shall include:

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<sup>128</sup> Article 9(1), Chapter 516 of the Laws of Malta.

<sup>129</sup> Article 14(1), Chapter 516 of the Laws of Malta.

<sup>130</sup> Article 20(2), Chapter 516 of the Laws of Malta.

<sup>131</sup> Article 24, Chapter 516 of the Laws of Malta.

1. the number of victim-offender mediation processes made and the results thereof during that year;
2. and any other matter, which may be deemed appropriate for inclusion in the report, excluding any administrative issues;

(i) the collaboration with any victim support voluntary organisation as the Victim Support Unit may deem necessary;

(j) and the performance of such other functions as may be assigned to the Victim Support Unit by this Act or by any other law or by any regulations which may, from time to time, be prescribed by the Minister.<sup>132</sup>

#### (6) The Victim-Offender Mediation Committee

The Committee's principal duties shall include:

- (a) to determine the victim's, the offender's and the offence's suitability for victim-offender mediation;
- (b) to determine the victim's and offender's eligibility for victim-offender mediation;
- (c) to supervise mediators and periodically receive verbal or written reports on the victim-offender mediation processes taking place;
- (d) to determine the location where victim-offender mediation is to take place;
- (e) the responsibility to make recommendations to the Minister and in consultation with the Malta Mediation Centre regarding:
  1. the drawing up of a list of mediators to assist in victim offender mediation;
  2. the drawing up of the criteria for the appointment of mediators;
- (f) and such other duties that may be assigned to it by the Minister.<sup>133</sup>

It is important to point out that according to article 8, *"there is no obligation on a victim or on an offender to:*

- (a) take part in the victim-offender mediation process;*
- (b) and continue to take part in victim-offender mediation after commencement of the proceedings".*<sup>134</sup>

#### Probation Act, Chapter 446 of the Laws of Malta

The aim of Chapter 446 of the Laws of Malta is *"to provide for the Probation of Offenders, Community Service Orders and Combination Orders."*

##### (1) Probation Order

According to article 7(1) the court may instead of sentencing the offender, make a probation order, that is to say, an order requiring the offender to be under the supervision of a probation officer for a period to be specified in the order of not less than one (1) year and not more than three (3) years.<sup>135</sup>

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<sup>132</sup> Article 27, Chapter 516 of the Laws of Malta.

<sup>133</sup> Article 30(1), Chapter 516 of the Laws of Malta.

<sup>134</sup> Article 8, Chapter 516 of the Laws of Malta.

<sup>135</sup> Article 7(1), Chapter 446 of the Laws of Malta.

## (2) Community Service Order

A community service order may be given to an offender aged sixteen (16) years and over, convicted of an offence for which, in the opinion of the Court, the appropriate sentence would, except for the provisions of this article, be one of imprisonment.<sup>136</sup> Such an offence must not be punishable only by a fine (*multa* or *ammenda*) and cannot be an offence, which apart from any increase in punishment in view of the continuity or of previous convictions, is punishable with imprisonment exceeding seven years and the provisions of article 7(2) shall apply *mutatis mutandis* to this subarticle.<sup>137</sup> The court may, instead of sentencing the offender to imprisonment, order the offender to be placed on a community service order.<sup>138</sup> A community service order requires the offender to perform unpaid work or unpaid work and training, if such would be recommended in the reports referred to in article 11(3)(a), for a number of hours as specified in the order.<sup>139</sup> In any such case no order shall require the offender to perform less than forty (40) hours of work or more than four hundred and eighty hours (480).<sup>140</sup>

## (3) Combination Order

Instead of sentencing the offender to imprisonment, the court may order the offender to be placed on a combination order.<sup>141</sup> A combination order shall require the offender to be placed under probation supervision as specified in article 7 and perform a community service order, as specified in article 11.<sup>142</sup> Nevertheless, such order shall not require the offender to perform less than forty (40) hours of work or more than one hundred (100) hours in addition to any number of hours of work still to be performed under any previous community service order.<sup>143</sup>

### Absolute or Conditional Discharge

Where a court by which a person is convicted of an offence (not being an offence punishable only by a fine and not being an offence which apart from an increase of punishment in view of continuity or previous convictions, is punishable with imprisonment for a term exceeding seven (7) years) is of opinion that, having regard to the circumstances of the case, including the *nature* of the offence and the *character* of the offender, it is inexpedient to inflict punishment and that a probation order, a community service order or a combination order are not appropriate, the court may make an order discharging the offender absolutely, or, if the court thinks fit, discharging the offender subject to the condition that he commits no offence during such period, not exceeding three (3) years from the date of the order, as may be specified therein.<sup>144</sup>

### Prisons Regulations, Subsidiary Legislation 260.03

According to Regulation 116A(1), the Prison Addiction Rehabilitation Management Board shall be established and it shall, in compliance with the care plan drafted in respect of each inmate in accordance

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<sup>136</sup> Article 11(1), Chapter 446 of the Laws of Malta.

<sup>137</sup> Article 11(1), Chapter 446 of the Laws of Malta.

<sup>138</sup> Article 11(2), Chapter 446 of the Laws of Malta.

<sup>139</sup> Article 11(2), Chapter 446 of the Laws of Malta.

<sup>140</sup> Article 11(2), Chapter 446 of the Laws of Malta.

<sup>141</sup> Article 18, Chapter 446 of the Laws of Malta.

<sup>142</sup> Article 18, Chapter 446 of the Laws of Malta.

<sup>143</sup> Article 18, Chapter 446 of the Laws of Malta.

<sup>144</sup> Article 22(1), Chapter 446 of the Laws of Malta.

with the Restorative Justice Act, as well as in due consideration of the inmate's needs and circumstances, allocate each inmate requiring treatment for substance abuse and other dependencies within a specific rehabilitation programme.

### Limitations

Despite the Act providing restorative justice measures at every stage of the criminal justice process, whereby the court may at any stage refer a case to victim-offender mediation,<sup>145</sup> as a whole restorative practices have left very little impact on the Maltese justice system.<sup>146</sup> This is notwithstanding the setting up of the Victim-Offender committee tasked with the promoting and overseeing of victim-offender mediation and the numerous safeguards set up by the Act, in line with Council of Europe and United Nations recommendations, to ensure victim-offender mediation results in restoration of both parties.<sup>147</sup>

Despite that the Act being termed the Restorative Justice Act, there is an imbalance between the provisions actually providing restorative justice measures and those dealing with parole and remission. This is emblematic in the fact that Parts I – V (articles 1 to 25) of the Restorative Justice Act provide for the establishment of the Offender Assessment Board, the Parole Unit and Parole Board, Remission and the Remission Board. However restorative justice practices, in the form of victim-offender mediation only, are relegated to Part VI. This means that rather than the Restorative Justice Act dealing solely with *restorative justice practices*, it does in fact share its place with parole and remission i.e. with a *reformatory justice system*. For a real transition into a more restorative system to occur the two should be recognised and kept as separate systems, and the Restorative Justice Act should deal solely with restorative practices.<sup>148</sup> There are three main reasons identified for the lack of adoption of restorative practices within the Maltese legal sphere. The first is that within the legal spheres, victim-offender mediation is the only restorative practice that is referred to. As we can see from the diagram in the appendix, such a process is only partial rather than fully restorative and therefore does not involve the whole community.<sup>149</sup> This means other restorative processes should be both promoted and made available.

The second reason is that restorative justice is a new system and there is therefore a distinct lack of enough professionals properly trained to provide it.<sup>150</sup> Although there is no primary evidence of a direct correlation between the general lack of knowledge regarding victim-offender mediation and its use within the justice sphere, it has been highlighted that better preparation with regards to the members of the judiciary would have significant impact on its appreciation and thereby its use.<sup>151</sup> It has also been suggested that Malta should follow the example set by other countries, such as Belgium and the United Kingdom which have a better development of restorative practices within their legal systems.<sup>152</sup>

The most critical reason, however, for a perceived lack of implementation of restorative practices is that of the unwillingness of the victim to meet the offender. In spite of the numerous safeguards set up by

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<sup>145</sup> M.Cassar, *An Analysis of Restorative Justice under the Restorative Justice*, 2017.

<sup>146</sup> *Ibid.*

<sup>147</sup> J. Damato, *Restorative Justice for the Juvenile Justice System in Malta*, 2013.

<sup>148</sup> M.Cassar, *An Analysis of Restorative Justice under the Restorative Justice*, 2017.

<sup>149</sup> J. Damato, *Restorative Justice for the Juvenile Justice System in Malta*, 2013.

<sup>150</sup> M.Cassar, *An Analysis of Restorative Justice under the Restorative Justice*, 2017.

<sup>151</sup> *Ibid.*

<sup>152</sup> M. Dimech, *Restorative Justice: the balance between parole and Victims of Crime*, 2017.

the Act to ensure that the meeting of the victim and the offender is one that would truly render reconciliation between these stakeholders, research has found that there is clear unwillingness by the victim to meet his offender.<sup>153</sup> This highlights a wider cultural gap of understanding in Maltese society of the implications of a restorative justice system, and perhaps a wider belief in a more retributive model as being a better method for enforcing justice.

## V. Spain

### Definitions

Restorative Practices in Spain, finds its origins in restorative justice. As opposed to traditional retributive justice in which, when a crime is committed the offender is judged and if found guilty is punished, restorative justice as Zehr explains(1990)<sup>154</sup>, corresponds to a way of seeing criminal justice that emphasises repairing the harm done to people and re-establishing relationships, rather than merely punishing the offenders.

Restorative Practice in Spain is defined as ‘proposals for action aimed at strengthening the community, preventing conflicts and tackling them, in such a way that the person who offends, to assume responsibility and the person who has been offended against can be heard and feel repaired’.<sup>155</sup>

Restorative practices in Spain are mechanisms for conflict prevention, through which interpersonal and/or group dynamics are dealt with in a way to guarantee the rights of all those involved in a given matter. Their fundamental objective is to foster strong social networks, with healthy links that, whatever the context, allow the development of enriching, productive and satisfactory relationships, as well as secure containment when inevitable differences and conflict arise.

This is why restorative practices make sense in the context of human interaction between equal peers (colleagues, siblings, friends, etc.), and especially in contexts where interactions have some degree of hierarchy (companies, schools, families, police, courts, etc.).

Restorative practices, maintain the spirit of the involvement of all people and restoration as key to the process, emphasise the development of the community, strengthening its links, and when there is conflict and tension it seeks to repair the damage by assuming responsibilities and thereby strengthening relationships. One of the main objectives of restorative practices in Spain is to strengthen the affective bonds between the members of the community through the prevention and appropriate management of conflicts, leaving aside the punitive model, a resource traditionally used in the educational community.<sup>156</sup>

The management of conflicts with the help of restorative practices implies conceiving conflict as an opportunity for learning, assuming responsibility and the necessary reparation of damages to the victims. The approach requires a change of perspective, the withdrawal of primitive and obsolete parameters of control of coexistence, and a special focus on the necessary humanisation of

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<sup>153</sup> *Ibid.*

<sup>154</sup> H. Zehr, ‘Changing Lenses. A New Focus for Crime and Justice’, 1990.

<sup>155</sup> For more information: [www.universidadviu.es/algunas-ideas-practicas-restaurativas/](http://www.universidadviu.es/algunas-ideas-practicas-restaurativas/)

<sup>156</sup> For more information : [www.redalyc.org/pdf/274/27430137006.pdf](http://www.redalyc.org/pdf/274/27430137006.pdf)

relationships, where, as we have already noted, the other person is not someone to control but someone with whom we relate.

According to the Associació de Justícia i Pràctiques Restauratives from the Balearic, restorative practices form a range of formal to informal proposals: listening, affective expressions, restorative conversations, small informal meetings, restorative circles and formal meetings.<sup>157</sup> The Associació de Justícia i Pràctiques Restauratives de Balears (Association of Justice and Restorative Practices of the Balearic Islands) was created in Palma in 2013 to promote the application and training of restorative practices in different areas of the community (centres, social organisations, etc.).

**Alternative Dispute Resolution (ADR) is a term generally used to define a set of methods and techniques aimed at resolution of conflicts without confrontation and including mediation, negotiation and arbitration.** While judicial decisions produce results in which some lose, and others win, the adoption of ADR methods can result in win-win solutions that allow for long-term benefits.<sup>158</sup> ADR is made up of all those processes and skills necessary for conflict resolution that lead to a mutually satisfactory cooperative solution between the parties, where there is no need for a jurisdictional body to intervene. In other words, the ADR is "a set of procedures that allow conflicts to be resolved without resorting to force and without being resolved by a judge". This provides the disputing parties with alternative ways of resolving their disagreements without having to go to court. The alternative means of conflict resolution, to which we wish to give notoriety on this occasion, are "procedures outside the state judicial apparatus (i.e. extrajudicial procedures) that allow two or more parties involved in a conflict to overcome it, usually by means of a voluntary agreement".<sup>159</sup>

### **Brief history of RP and RJ**

Restorative practices are a relatively new concept in Spain, which during the first two decades of the 21st century has been implemented to a lesser or greater extent by educational centres and mediation collectives as a method of conflict prevention related to such sensitive issues as bullying or social integration.

Although this type of practice has been integrated into centres across many areas of the country, there are many projects that, on a smaller scale, have been germinating throughout Spain. It should be noted that all of these small initiatives have been flourishing exponentially thanks to the individual initiatives of communities, schools, and associations, which have been seeking alternative solutions. These initiatives have mostly been humble proposals, but with a great impact at the local level.

### **The Policy and Legal Framework**

Currently, the only article of Spanish criminal law that opens doors to the use of restorative justice is article 21.5 of the Criminal Code, which states among one of the mitigating circumstances the fact of "having proceeded to repair the damage caused to the victim, or diminish its effects, **at any time during the procedure and prior to the holding of the oral trial act**".

The existence of this single precept for referring to restorative mechanisms, in itself, limits the effectiveness of the use of restorative techniques. This is because the same article only specifies the use

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<sup>157</sup> For more information : [www.universidadviu.es/algunas-ideas-practicas-restaurativas/](http://www.universidadviu.es/algunas-ideas-practicas-restaurativas/)

<sup>158</sup> For more information: <https://es.slideshare.net/alisharon/modulo4-sharon-ali>

<sup>159</sup> For more information: <https://es.scribd.com/document/325998342/Metodos-RAC>

of repair **prior** to the holding of the oral trial, while restorative techniques can be employed, if appropriate, **before, during and after** the trial.

The use of reparative techniques is very limited and in a state of a-legality, since article 66.2 at no time refers to the term "restorative justice" as such, and reforms such as LO 1/2004, of 28 December, of Integral Protection Measures against Gender Violence, have meant an even greater limitation in the application of the said techniques, preventing the use of any reparation mechanism in these cases. This is due to the petition of the victims of gender based violence, which has pushed the Powers of the State into a hardening of penalties (Alonso, Castillejo & Torrado, 2011).

Therefore, it does not empower the victim to decide whether they wish to initiate a restorative process with their aggressor, remaining marginalised and awaiting the decision of whoever caused the damage. This is paradoxical when one of the main purposes of restorative justice is more to compensate the victim rather than to punish the offender.

To make this a reality, a number of changes need to be implemented at different levels – regulatory and legislative changes, cultural and ethical changes, and social and structural changes.

Here are some measures that could be implemented:

- rethinking the order of some ethical values. There is no single morality ;
- the need for individual and flexible responses, that both look for the best possible option for each person;
- the dignity of all stakeholders is insisted upon;
- to be aware that there are territorial inequalities when it comes to welcoming, dealing with, relying on resources and responding to the needs detected.

## Section 4 - Implementation and case studies

This section seeks how restorative practice has been adopted in wider civic society. This will be highlighted in the example of two case studies which will examine how government institutions have adapted to the idea of restorative justice and adopted its practices within their disciplinary systems, focusing in particular on what tools and methods they have chosen to achieve this, whilst identifying gaps for further implementation.

It also seeks to highlight challenges and gaps whilst highlighting potential avenues for further development.

### I. Bulgaria

#### Case Study 1 - The restorative practice program of Prison Fellowship Bulgaria

Prison Fellowship Bulgaria has been implementing restorative practices since 2003. It is a sustainable long-term work which continues nowadays.

The first Community of Restoration was founded in the Sofia prison, OZT Kremikovtsi, within the correctional, orthodox programme "Adaptation Environment" and the centre named after the project. Total of 72 convicted have passed through the whole program.

The programme was realized in the prison in Vratsa in the period 2006-2012 and 140 convicted have passed through it. The continuation of the programme was managed through the ECOR project (2013-2016). “Adaptation Environment” is the only long-term and sustainable (ran for more than 10 years) programme in Bulgarian prisons. A good practices manual was developed to disseminate the model<sup>160</sup>.

In 2011-2012, Prison Fellowship Bulgaria (now named Society for Religious and Social Support of the Deprived of Freedom) and Caritas - Ruse implemented a project “Active communities for prevention of institutionalization of juveniles”. Twenty-six facilitators (13 in Ruse and 13 in Vratsa) were trained how to conduct restorative conferences and a network of 16 organisations and individuals was established. The project applied various practices such as mentoring, support groups for parents of at-risk children, counselling, and restorative conferencing. The model applied victim-offender conferences. It addressed family problems and used the family group conferences. Professionals from the local Departments of Child Protection, the police, the Prosecutor’s Office, Regional Courts, and others were trained in restorative justice and its principles, values and practices. More than 600 children were supported in short- and long-term perspective. The Center for Work with Children with Deviant and Delinquent Behavior and Their Families, named “Community in Care”, however, was later closed. Cases continue to get support thanks to the established civil network and the trained facilitators.<sup>161</sup>

## Case study 2- Primary school prevention initiative

A group for prevention of aggression by forming emotional and social skills was established in the primary school “Bratia Miladinovi” in Sliven by the school psychologist and the speech therapist in January 2018. The group, named “Be next to me” after Jorge Bucay’s novel *Letters for Claudia*, follows the principles and values of restorative practices. It aims at supporting students to formulate problematic areas for them, empowering them to seek solutions independently and enhancing their conflict resolution skills. The group work allows to view separately the offender and his act and to focus on taking responsibility of the consequences. The school psychologist Raya Popova finds that the impact of this work on students is substantial: students come on time, organize themselves in a working circle, watch closely to avoid interrupting each other, formulate the problem when it is at a class level and suggest appropriate solutions. Students sit in the circle, passing to each other a lantern (instead of a microphone) as light is related to something nice and the feeling of warmth is the opposite of aggression. R.Popova says that being part of the circle makes children feel equal to each other and in this way they can go through the emotions of the others. The speech therapist Svetlana Veleva follows if everybody speaks correctly. R.Popova stresses on the important role of teachers. She has conducted training for teachers in restorative practices and their application for children in pre-school age.<sup>162</sup>

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<sup>160</sup> Prison Fellowship Bulgaria , ‘A Guide to Good Practises – European Communities for Restoration, available on <http://pfbulgaria.org/>

<sup>161</sup> *Ibid.* ; E.Evstatieva, ‘Family Group Conferences’, Restorative Justice in Bulgaria, 7 December 2016, available on <https://restorativejusticebg.com/2016/12/07/>

<sup>162</sup> A.Ivanova, ‘В ОУ „Братя Миладинови” създадох група за превенция на агресията чрез формираненасоциалниумения’, available on <http://new.sliven.net/sys/news/index.php?id=253329>

## II. Ireland

Two examples of case studies looking at different applications of RP have been published by the *Irish Community Development Law Journal* at Northside Community Law Centre, and by the *Journal of Mediation and Applied Conflict Analysis* at Maynooth University.

### Case study 1- Restorative conference with young people

The first looks at an example of the use of formal restorative conferencing to resolve a serious dispute between the staff of a community centre and some young people who had caused criminal damage to the community centres property.<sup>163</sup> The conference succeeded in diverting the young people from the criminal justice system and supporting them to be included in ongoing youth programmes at the community centre. The main challenge in this case was securing the participation of community centre staff who originally wanted the incident to be dealt with by the Gardaí. Some centre staff were concerned that a restorative conference would be letting the young people off the hook. In the event, the centre staff recognised that the remorse and apologies of the young people were genuine and they worked with the young people to enable them to make amends by assisting with the repairs to the community centre.

### Case study 2 - Restorative practices within a post-primary school

The second case looks at the experience of a restorative practices “professional learning community” (PLC) within a post-primary school.<sup>164</sup> The intention for this PLC was to:

*“(...) establish, explore, evaluate and maximise the use of Restorative Practice in participants’ classrooms. [The PLC Facilitator]... wanted to investigate the impact of such engagement on relationships, teaching practices and approaches, and how it could offer a stimulus for whole school change.”<sup>165</sup>*

This initiative employed all of the informal relationship-building restorative skills. One of the objectives for the PLC was for members to try to use RP consistently with their most difficult student and evaluate whether it would change either their relationship with that student or the behaviour of that student. The main challenge for a number of the teachers involved was becoming comfortable with talking about themselves personally in any way with their students. Over the course of the first year, they overcame this difficulty with a lot of support from their fellow members of the PLC.

### Limitations

There are undoubtedly gaps within multi-agency services in Ireland, in terms of;

- a universal understanding and awareness of RP principles and their effectiveness ;
- a lack of consistency in regards to RP training, facilitation and implementation at the coal-face;

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<sup>163</sup> C. Casey, S. McNally, M. Quinn, A. O’Keeffe, ‘Restorative Practices in Action: Tallaght West - A Case Study’, *The Irish Review of Community Economic Development Law and Policy*, 2013, pp. 63-70.

<sup>164</sup> M. Stowe, *A Restorative Trail: Restorative Practice – opening up new capacities of hearts and minds on school communities*, *Journal of Mediation & Applied Conflict Analysis*, 2016, pp. 368-381.

<sup>165</sup> *Ibid.*

- a dearth of more formalised levels of competency available, (particularly at EQF - European Qualifications Framework<sup>166</sup> Levels 4,5 and 6) for RP accreditation.

Even where there is evidence of RP being utilised in social, criminal justice, youth, educational and health settings, it is still seen by many as solely an alternative to more adversarial forms of conflict resolution, rather than, in addition to that, an opportunity to build Social Capital and for all involved to be and act restoratively.

Some of the biggest gaps in Ireland include the lack of any meaningful RP presence at City and Local Authority level and within certain statutory organisations. At Private Sector level, there is little or no evidence of RP being incorporated at any level of working culture.

### **Key recommendations**

- 1° Development of Restorative Practices Ireland (RPI) to incorporate all counties in Ireland, on a regional basis - with a minimum of 4 regions. Such a development would promote areas where there is little or no training/awareness/implementation of RP and deliver a more consistent and quality-controlled suite of services. This would necessitate the funding of regional co-ordinators and auxiliary staff.
- 2° National dissemination of literature on RP within all agencies and organisations working in communities.
- 3° Promotion of more formalised and accessible RP training, in line with EQF and as either, modules within existing 3rd level institutions, or as separate and stand-alone qualifications or awards.
- 4° Development of RP training modules within Induction Training for work with all young people, within the community, voluntary and statutory sectors and as part of CPD (Continuing Professional Development).
- 5° Development of relevant national post-training supports, in the form of advisory, mentoring and coaching services to institutions and organisations which have availed of initial training to ensure the effective embedding of RP at the coal-face.

## **III. Germany**

Restorative Practice is offered by many different types of professionals. Social workers, for example, are especially trained to mediate conflicts – specifically in the realm of youth welfare aid and family issues. These social workers are typically employed by NGO youth welfare services or official child protective offices, as well as religious organisations. In addition, school teachers are also sometimes trained mediators and, thus, are the first contact point for solving conflicts between students, but can also offer help by mediating personally or by connecting conflict parties to more specialised institutions. However, more often teachers train students as mediators in order to have a conflict guide at a peer level.

Mediators can also be found in fields of economy and work related issues. While the amount of mediation between companies is negligible, mediators specialised in economy help to resolve workplace related conflicts like bullying between employees, difficulties with managers and alike. In addition,

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<sup>166</sup> For more information : [www.nfq-qqi.com/qualifications-frameworks.html](http://www.nfq-qqi.com/qualifications-frameworks.html)

mediation is also employed in the public area to mediate in the areas of conflict environment-economy-politics-social coexisting.

Of course, the settling of conflicts is also important for professionals facing strong conflicts everyday: police officers. Although, training in restorative practice is not mandatory in police apprenticeships, training in mediation and nonviolent communication is offered to police officers in the form of further education. These mediators are organised in numerous groups and associations, a list of which can be found in the Appendix.

These mediations are organised in numerous groups and associations. One of the biggest NGOs is the “Bundesverband Mediation”<sup>167</sup> (German, “Federal Association of Mediation”) with the goals to promote restorative practice and ensure quality of mediation in Germany. For example, this is done through organising trainings, conferences and meetings. Other NGO institutions are more specialised for example “Bundes-Arbeitsgemeinschaft für Familien-Mediation (BAFM)”<sup>168</sup> (German, “Federal Working Group for Family Mediation”) or “Bundesverband Mediation in Wirtschaft und Arbeitswelt (BMWA)”<sup>169</sup> (German, “Federal Association for Mediation in the Economy and the World of Employment”).

As mentioned before, also Christian organisations are very active in this field. Examples are the “Diakonie” and “Weißes Kreuz” (Evangelical organisations), as well as “Caritas” and the “Katholische Jugendfürsorge” (Roman Catholic organisations). Their focus is specifically to support victims in critical times and offer non-jurisdictional mediation. Similar non-religious organisations called “Konfliktberatungsstellen” (German, “conflict resolving services”) focus on supporting victims, consulting in the case of conflicts and offering mediation.

In addition to non-government organisations, governmental organisations also offer mediation through some of their institutions. For example, the “Jugendgerichtshilfe” (German, “juvenile legal support agency”) is the link between the family ministerium and prosecution, which offers mediation in cases of juvenile criminality and conflicts in family. Moreover, nearly all regional government departments offer mediation especially restorative justice services.

In general, all mentioned organisations, government or non-government, can also act for restorative justice, if the mediator is trained and certified in accordance to the mediation law.<sup>170171</sup> With more than 350 individual organisations<sup>172</sup> certified for restorative justice and even more organisations active in

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<sup>167</sup> Bundesverband Mediation, available on [www.bmev.de/](http://www.bmev.de/), (accessed 4 December 2018).

<sup>168</sup> Bundesverband Mediation in Wirtschaft und Arbeitswelt, available on [www.bmwa-deutschland.de/](http://www.bmwa-deutschland.de/), (accessed 4 December 2018).

<sup>169</sup> Bundesverband Mediation in Wirtschaft und Arbeitswelt, available on [www.bmwa-deutschland.de/](http://www.bmwa-deutschland.de/), (accessed 4 December 2018).

<sup>170</sup> Verordnung über die Aus- und Fortbildung von zertifizierten Mediatoren (Zertifizierte-Mediatoren-Ausbildungsverordnung – ZMediatAusbV) Vom 21. August 2016, Bundesgesetzblatt Jahrgang 2016 Teil | Nr. 42, ausgegeben zu Bonn am 31. August 2016, available on [www.bmev.de/fileadmin/downloads/mediationsgesetz/Rechtsverordnung\\_in\\_Kraft\\_2016\\_09\\_01.pdf](http://www.bmev.de/fileadmin/downloads/mediationsgesetz/Rechtsverordnung_in_Kraft_2016_09_01.pdf), (accessed 5 December 2018).

<sup>171</sup> Mediationsgesetz vom 21. Juli 2012 (BGBl. I S. 1577).

<sup>172</sup> H. J. Kerner, ‘Bundesweites Anschriftenverzeichnis von Einrichtungen, die Gelegenheit zur Durchführung von Täter-Opfer-Ausgleich bzw. Konfliktmittlung bzw. Schadenwiedergutmachung anbieten’, Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung, available on [www.toa-servicebuero.de/sites/default/files/bibliothek/toa-](http://www.toa-servicebuero.de/sites/default/files/bibliothek/toa-)

restorative practice, this short summary can only briefly name large entities active in this field. Please consult the long lists of institutions given in the sources and the appendix list of orgs too. In addition, this list<sup>173</sup> contains all institutions that are certified to train mediators for restorative justice.

### **Case Study 1 – High School: Student vs. Teacher<sup>174</sup>**

During the implementation phase of a high school mediation program, a conflict appeared between the teacher (T.) and the student mediator-in-training (S.). Teacher T. was always against implementing mediation in his school. He considered this approach too soft and without sustainable results.

When he observed a fight between students in S.'s class, T. shouted at S. "You are a mediator. Why don't you stop this conflict?" Emotionalised by the teacher attack, the student replied, "I'm not the school police and if you don't understand, read the "mediation directives" in the teachers' room." Enraged by the answer, T. left the room and complained to the principal. However, the principal decided to use this conflict as the first mediation case in this school. Together with an experienced adult mediator from another school, S. and T. discussed the situation, exchanged their perspectives and eventually defined their roles in potential similar situations in the future.

Starting from this agreement about how T. and S. would work together, mediation became well-implemented in the school, solving conflicts between students, teachers and parents. The number of conflicts was not reduced, but the conflict resolution process became more relaxed and goal-oriented. The teacher-student mediator collaboration became more effective by clearly defining everyone's responsibilities. Teacher T. is now responsible for the student mediation program in his school.

### **Case Study 2 – Primary School: Student vs. Student<sup>175</sup>**

10-year-old F. beats his classmate L. without apparent reason. After a teacher intervenes, F. leaves the room. After a short cool down, F. came back and willingly followed a mediation-trained teacher away from the class. The teacher encouraged F. to explain his emotional spiral leading to this situation. F. explained that L. repeatedly took LEGO blocks he had already reserved for his planned building. L. ignored F.'s remarks and continued taking LEGO blocks. F. saw his only chance in shouting at L.. However, the teacher blamed F. and sent him out of the room for a few minutes. Already having been punished, F. snapped when L. took one of his pens. After explaining this emotional escalation to L., she admitted that she was not aware of F.'s perspective. In future, F. should explain this earlier before letting the situation escalate.

Using the "emotional spiral" as a tool, the mediator helped F. find words and learn about escalation. In order to transfer this learning experience to the class, the teacher developed a current events section

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einrichtungen\_in\_deutschland\_adressverzeichnis\_broschuere\_fassung\_2015-1.pdf, (accessed 11 December 2018).

<sup>173</sup> Liste der Ausbildungseinrichtungen für Mediatorinnen und Mediatoren, Mediation in Zivilrechtssachen, available on <https://mediatoren.justiz.gv.at/mediatoren/mediatorenliste.nsf/contentByKey/VSTR-7DYGZV-DE-p>, (accessed 5 December 2018).

<sup>174</sup> B. Herzog, *Unsere Schule streitet mit Gewinn. Alltagskonflikte und ihre Mediation*, Göttingen: Vandenhoeck & Ruprecht, 2007.

<sup>175</sup> Bundesverband Mediation e.V. (BM), *Fachverband zur Förderung der Verständigung in Konflikten, Mediation in der Schule: Streitschlichtung zwischen Schülern und Schülern und Lehrern*, available on [www.bmev.de/fileadmin/\\_migrated/content\\_uploads/mediation-schule.pdf](http://www.bmev.de/fileadmin/_migrated/content_uploads/mediation-schule.pdf), (accessed 20 December 2018).

in her class with the title “If looks could kill – say what you mean” in which students learn to express their feelings verbally.

### **Key recommendations**

The involvement of students as mediators to resolve conflicts in schools is a concept that could be transferred to other constellations of conflicting parties. Following this train of thought, the establishment of dedicated mediators in (larger) companies makes sense in resolving conflicts between co-workers. Moreover, in order to resolve conflicts with customers, companies could also deputise a representative equipped with decision-making ability. This would enable the resolution of conflicts between customers and companies, or companies and companies to be done through restorative practice.

In addition, restorative practice training is typically not mandatory for professions, which are often facing conflicts ideal for restorative practice, for example teachers and policemen. Implementation of mediation training should be a natural part of the education for these professions.

In general, the methodology of restorative practice is known in German speaking countries, but is hardly thought of in actual cases of conflicts. Creating the reputation of a reliable method of conflict resolution in the public eye is a must, considering it is still focused on punishment of the perpetrator, rather than redemption of the victim. This is even more prominent in the justice system, where restorative justice is often looked upon as a soft alternative or not applicable for most conflicts.<sup>176</sup>

## **IV. Malta**

### **Case study 1- The Compensation Order under the Probation Act 12, 2002**

One of the main sanctions reflecting the principles of restorative justice in Malta is the Compensation Order. The Compensation Order was primarily introduced into the Maltese penal system under the Probation of Offenders Act 11 in 1957. The Act was substituted by the Probation Act 12 in 2002, which retained and enhanced the Compensation Order. This Act mainly dealt with the establishment of the probation order and the orders for a conditional and unconditional discharge within the Maltese penal system.<sup>177</sup> This was a time in which the rehabilitation of offenders was being prioritized, as the need for alternatives to imprisonment increased. The new Act introduced two new sanctions namely the Community Service Order and the Combination Order.

Article 11 of the Probation Act establishes that a Community Service Order requires the offender of a crime to perform unpaid work or unpaid work and training in the community for a period of not less than forty hours and not more than four hundred and eighty hours<sup>178</sup> Article 18 of the Act establishes that a Combination Order requires the offender to be placed under probation supervision and also under a community service order.<sup>179</sup> Thus it is a combination of the Probation Order as provided under article 7 of the Act and a Community Service Order as stipulated under the above mention article 11 of the Act.

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<sup>176</sup> T. Trenczek, ‘Restorative Justice in der Praxis: Täter-Opfer-Ausgleich und Mediation in Deutschland’, in Restorative Justice - Der Versuch, das Unübersetzbare in Worte zu fassen, DBH-Fachverband, DBH, TOA-Serevicebüro, 2013, pp.92 - 106.

<sup>177</sup> P. Massa, Compensaion of Victims in Criminal Proceedings, 2016.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

It must be highlighted that the community service order is a sanction, which is also based on the above discussed principles of restorative justice since it emphasizes the role of the community in the process of reparation of the harm caused by the offence. It is an illustration of how the Maltese penal system has evolved through the adoption of such sanctions based on restorative justice.

It was initially in 1990 that the role of the compensation order was extended with the introduction of the suspended sentence into the Maltese penal system. This was in addition to its function under the Probation of Offenders Act.<sup>180</sup> Presently, the Compensation Order may be utilised by the Courts as an attachment to a suspended sentence.<sup>181</sup> Thus when the Court sentences an offender to a suspended sentence in accordance with Article 28A26 of the Criminal Code, it may also direct the offender to pay compensation to the victim. This is stipulated in Article 28H27 of Criminal Code which was enacted as an amendment to the Code through Act XXIX28 which introduced the suspended sentence to our penal system.<sup>182</sup>

It has, however, been argued that the beneficial effects of this sanction, both with regard to the crime and to victims, as well as to the justice system in general, are still largely restricted when compared to other jurisdictions.<sup>183</sup> This is mainly because Maltese law does not provide a comprehensive legal framework regarding compensation for victims in criminal proceedings and leaves the use of the compensation order completely in the Courts' discretion. Consequently, in most cases, victims of crime have to, at their own expense, go through civil proceedings to recover the damages they suffered as a result of the crime.<sup>184</sup> Its limitations compared to other jurisdictions, could be due to the fact that the sanction is an exception to the general procedural rule, and the extension and enhancement of its role in the Maltese penal system, therefore, is not as straightforward as it should be.

## **Case study 2- Student Services: Restorative Practice in a School Setting**

Within civic society, the adoption of restorative practice was most widely experienced in the development of a national strategy to address and directly tackle anti-social behaviour within schools such as bullying, aggression and other forms of violence. The 'Addressing Bullying Behaviour in School' policy sets the theoretical background and complements the national intervention service's work by promoting the top-down approach, whilst promoting a whole school approach in terms of implementation.<sup>185</sup> It is a service that is available to all schools and aims to help both victims of bullying as well as their perpetrators. It aims to support and guide students to face problems such as stigmatisation, scapegoating and other such scenarios related directly to bullying. The programme primarily aims at raising awareness and prevention, and aims to empower all involved, which means including parents, students and staff in the process.

In Malta, there are different levels of intervention to tackle the targeted behaviour and to ensure an all-inclusive education for everyone. As such, a national strategy was created to promote the framework

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<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> M. Dimech, *Restorative Justice: the balance between parole and Victims of Crime*, 2017.

<sup>184</sup> *Ibid.*

<sup>185</sup> R. Colacel, *ASAP - National Report, Tackling bullying, aggression and violence in Maltese State Schools*, 2016.

for schools to deal with such behaviour, in a ‘whole school’ approach<sup>186</sup>. The top-down initiative is managed by the Ministry for Education and Employment, through the national intervention service (Anti-Bullying Service) which has been in place for over 17 years as part of the Safe Schools Programme under the Student Services Department (SSD) and the national policy (‘addressing bullying behaviour in schools’ policy, strategy and procedures). The action was specifically led and overseen by the Directorate for Educational Services, which among others, is responsible for the ‘provision of services required to deal effectively with issues of good conduct and discipline, of child abuse, of bullying and of drug abuse’<sup>187</sup> as stated in the Education Act, Chapter 327 of the Laws of Malta.<sup>188</sup>

The implementation of the policy is undertaken by the Student Services Department, Education for All from the Directorate for Educational Services, College principals and Heads of School.<sup>189</sup> The Student Services Department includes Education Psycho- Social Services, Special Education and Inclusive Education. All services offered by this department are aimed at students who are following their compulsory education in State Schools. The SSD was created in 2007 and it serves all 11 State Colleges which include a total of 82 schools, both primary and secondary, while also assisting Church Schools and Independent Schools upon referral.<sup>190</sup>

The first step of implementation of the ‘Addressing Bullying Behaviour in School’ policy was to create a tailor-made anti-bullying policy for each State School, where all stakeholders were involved. This would take the form of collaboration between the students, parents and the school and is to be seen as a way to combine efforts in order to promote pro-social behaviour and to tackle any bullying behaviour and its negative impacts both inside and outside the school. Such a model allows the possibility for all stakeholders to take ownership of the regulations without it being imposed upon them.<sup>191</sup> It also allows stakeholders to contribute to tackle specific problems themselves. In other words, it is a top and bottom up approach that utilizes a variety of informal and formal, as well as partial and fully restorative methods of justice.

## Limitations

One of the main problems that has been highlighted by a model that utilizes different levels of intervention to tackle the targeted behaviour, is that there is no clear delimitation of which actor bears responsibility for what type of action, especially when it comes to policy implementation which uses a whole school approach, and which aims for long-term solution.<sup>192</sup> It was suggested that this was due to an evident gap between the practices that are to be used and the actual knowledge available or persons trained on how to use the practices in a safe and suitable way.<sup>193</sup> While some respondents said that they were familiar with practices such as mediation, peer mediation, restorative justice, conflict resolution, no blame approach and aggression replacement, many of them admitted that not enough training on

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<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> ASAP - Model Programme: Community based complex school program for effective prevention and treatment of aggression and bullying - intersectoral approach from best practices to policy making, 2016.

<sup>189</sup> *Ibid.*

<sup>190</sup> R. Colacel, ASAP - National Report, Tackling bullying, aggression and violence in Maltese State Schools, 2016.

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

how and when to use them, was provided to the Heads of Schools or to the school staff.<sup>194</sup> This leads to the biggest challenge faced, which is how to implement restorative practices in a way that will see long-term solution to such problems.

Since the implementation of the ASAP project, most schools have ceased training teachers, parents and pupils in such practices and have resorted to more traditional forms of punishment. It has been suggested that is perhaps a reflection of a cultural that is not yet ready to adopt the idea of restorative practice in favour of more punitive system, despite the negative impact it has on Maltese culture, long-term.<sup>195</sup>

This is also evident in the fact that there is no provision in the Education Act regulating young people who manifest challenging behaviour ending in prison. The only legislation that makes a remote reference is the Children and Young Persons Care Orders Act. The Educational Psycho-Social Services within the Student Services Department provides services that deal only with situations related to bullying, anti-substance and caters for the provision of services related to guidance and counselling. There is also the Personal, Social and Career Development curriculum (PSCD), which is fully implemented already in the Education System and deals with the personal, social and behavioural development of students, but not for juveniles who are in prison.<sup>196</sup>

Within wider civic society there are numerous project-based initiatives led by independent entities, civil society and even various governmental agencies, which either tackle directly social problems or their root cause and effect. Such small-scale initiatives quietly employ informal and formal methods of restorative practices, such as circles or mediation sessions, to address issues of integration and inter-cultural conflict, as well as substance abuse.<sup>197</sup> The greatest inhibitor to examining the impact of such practices within Maltese society has been the extent to which organisation and institutions have neither shared, co-ordinated nor promoted these practices with the wider public, nor indeed with each other. The long-term impact of restorative practice thus cannot be measured nor supported or even promoted to the extent that it deserves. As a result the necessary cultural change in attitude within Malta towards restorative justice will take more time to shift than it perhaps has done in neighbouring European countries.

## Key recommendations

Consequently, for a better application and adoption of restorative practices, it is essential that there is a wider campaign that aims to better illustrate and educate both practitioners and the general public in what restorative practice entails and how it may have a long lasting beneficial impact on the victim, offender and the community at large. Within Malta, there is an urgent need for clarification on, and subsequent training in the distinct skill-set required to implement restorative practices, whether it is the correct use of restorative language or correct methods in which to hold restorative conversations within

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<sup>194</sup> ASAP - Model Programme: Community based complex school program for effective prevention and treatment of aggression and bullying - intersectoral approach from best practices to policy making, 2016.

<sup>195</sup> R. Colacel, ASAP - National Report, Tackling bullying, aggression and violence in Maltese State Schools, 2016.

<sup>196</sup> J. Damato, Restorative Justice for the Juvenile Justice System in Malta, 2013.

<sup>197</sup> For the full list, see appendix.

the mediation sessions, conferencing and circles, in order to allow for a genuine restorative process to occur.

This may be done through a number of information sessions for the public together with relevant training sessions for targeted stakeholders in the necessary skills required to implement restorative practice. This would ensure that future practitioners are well versed about this tool of justice and its vast potential to act not only as a solution to conflict but also as a preventative to it too. Most importantly, however, is the urgent first step to make available to the general public all information concerning restorative justice and practice occurring in Malta. This could be achieved through a specific website dedicated to the cause. Until this occurs, restorative justice and its practices will remain a widely misunderstood concept that is difficult to navigate both at the research phase and especially at the level of implementation.

## V. Spain

### **Son Gotleu project**

Restorative practices are a relatively new concept in Spain, which during the first two decades of the 21st century has been implemented to a lesser or greater extent by educational centres and mediation collectives as a method of conflict prevention related to such sensitive issues as bullying or social integration.

Although this type of practice has been integrated into centres across many parts of the national geography, it is in the Balearic Islands where one of the greatest activities in this regard has been concentrated, such as the Project for the Mallorcan district of Son Gotleu. This is a working-class neighbourhood created in the 1960s as a result of tourism growth on the island, and which, due to demographic change, has been affected by problems such as vulnerability or lack of social interaction, creating a breeding ground for conflicts that have sometimes ended in violence. In order to tackle this problem, and following the model applied in Hull (England), the Institut per a la Convivència i l'Èxit Escolar (Institute for Co-Existence and School Success), together with the Palma de Mallorca City Council, with funding from the European Fund, through the Comeniu Regio project created the "Project of Pere Garau - Son Gotleu Community Development (2008-2011), which has become a symbol of restorative practices in Spain.

One of its architects and pioneers in the implementation of these practices in Spain is Vicenc Rullán, a graduate in Psychology and Master in Conflict Resolution and Mediation, who has worked as a psychologist and as a teacher at all non-university educational levels. He is a member of the Associació de Justícia i Pràctica Restaurativa de les Illes Balears (UIB) and a member of Convives.

The objective of the Son Gotleu project was to delve into a framework of criteria that will help improve the quality of relationships in the daily lives of people and their community. Of course, it was also intended to deal with those cases in which conflict is already present, not only with the aim of acting in this sense, but rather with that of laying a foundation that will favour coexistence and the interiorisation of a new language, of a different form of communication. The aim was to promote the exchange of experiences, specifically with the city of Hull from England, using as a theoretical and practical model the proposal of the Institute for Restorative Practices. The interactions between both cities included visits to both countries – the English to the centres of Palma, and the people of the Balearics to the centres of Hull.

The action of the centres in Son Gotleu was modelled on four pillars: general organisation of the centre, actions with the teaching staff, actions with the students and, finally, actions with the families. Each of these areas incorporates a series of activities decided by each school. This area included actions such as: integrating restorative practices into the different administrative documents of the centre; revising the coexistence plan to integrate this new way of acting; generating working groups of teachers to link restorative practices with other initiatives such as cooperative learning or mediation; the elaboration of posters, murals with photographs, panels, etc. in which questions or restorative slogans were visualised.<sup>198</sup>

### **Case study 1- Performances with Students**

Distinction was made between diffusion activities, activities with a preventive character and other activities to be applied in the case of diverse conflicts. The first aimed to involve students in the new proposal and its incorporation into the life of the centre. The latter aimed at building the community, enhancing the improvement of relations and social cohesion. With respect to the latter, those related to conflict resolution, as the name indicates, were proposed as a tool that facilitated the migration of social relations towards spaces of balance between the parties.

Among the programming of proactive activities were: the use of affective statements, both in teacher-student communication and between students and various other circles, some aimed at promoting mutual knowledge of the people who made up the class group and others incorporated into the treatment of the curricular content.

Conflict resolution was considered an area of great interest for the application of this methodology. In short, what the different centres proposed was to use it in post-conflict intervention, whether this was to be between the members of the group or as a response to the behaviours affecting other people in the educational community. The strategy to be followed was determined depending on how serious the case was, meaning there were different degrees of formalisation (from spontaneous meetings to formal meetings), the participation of the involved parties, including family members or others if the situation required it.

### **Case study 2- Performances with Families**

The work with families consolidated the action in the school, thus completing the work in the educational community. For years, the centres have been carrying out different actions to work jointly with families and the education of the students. In this case, we can also distinguish two lines: one *informative* and the other *proactive*. The first can be seen from the perspective of informing families of the project to be implemented in the centres and its progress. The second, proactive, proposes the realisation of work in circles in some of the meetings that are carried out, with the purpose of building the educational community.

In addition to the Project of Pere Garau - Son Gotleu Community Development, there are many other projects that, on a smaller scale, have been germinating throughout Spain. It should be noted that all of

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<sup>198</sup> For more details:

[www.researchgate.net/publication/267029341\\_Practicas\\_restaurativas\\_Construyendo\\_la\\_comunidad\\_desde\\_los\\_centros\\_de\\_ensenanza](http://www.researchgate.net/publication/267029341_Practicas_restaurativas_Construyendo_la_comunidad_desde_los_centros_de_ensenanza)

these small initiatives have been flourishing exponentially thanks to the individual initiatives of communities, schools, and associations, who have been seeking alternative solutions. These initiatives have mostly been humble proposals, but with a great impact at the local level. To mention some of these initiatives:

- "Restorative Practices" at CEIP Gabriel Vallseca in Palma de Mallorca
- "Restorative Practices" at IES Neira Vilas in A Coruña
- "Restorative Practices" at IES Miguel Catalán in Madrid
- "Restorative Practices Applied to Education" at the Master Misericordiae Special Education Centre in Palma de Mallorca
- " Restorative Practices in Children and Teenager’s Protection Centres" by Lola Montejo and Ferran Erra
- "Restorative Practices in Es Fusteret" at the Fundació S´Estel in Palma de Mallorca
- "Restorative Practices in the School Canteen" carried out by Oscar Prat Vallés in Ibiza
- "Reparative Mediation in the Case of Bullying" carried out by the Technical Team of the Community Media Service of Sabadell Town Council
- "Surrounding Bullying: The Experience of a Peace Circle in an Institute" by Sheila Mas Vallvé de Dialoga Associació de Barcelona
- "Castilla y León School Co-Existence Model and Restorative Practices” by the General Directorate of Educational Policy from Castilla y León

## **Key recommendations**

The most common tool used to implement restorative practices is restorative meetings, in which two or more parties involved in the process present their points of view. In this way, everyone is involved, fostering empathy and understanding between them.

In Spain, those centres which have educational agents (teachers, monitors, families) who have been trained in restorative practices, start from a situation of advantage over others that are unaware of such tools as:

- Active listening
- Affective statements
- Affective questions
- Restorative dialogue
- The circle
- The restorative meeting

In order to make this effectiveness real, it is utterly important to bear in mind that:

- The involvement and responsibility of family members is necessary and essential.
- It needs to be carried out in the context of the centre itself.
- It required a high level of participation from the educational team.
- Involvement of the management team is essential.
- They must have strategies that enhance the participation of the educational community.

## Section 5 - Analysis

### Stakeholders

According to the three pillar principles, the primary aim of restorative practice is to repair relationship between the three stakeholders namely the victim, the offender and the community. These have been further categorised into two main groups:

- **Indirect Target Groups:** the victims, perpetrators and their immediate communities.
- **Direct Target Groups:** Practitioners and institutions already making use of restorative practices.

### Indirect Target Groups

Indirect target groups are vulnerable groups. Although not a conclusive list, these were the ones that were highlighted by partner countries:

- **Victims of gender based violence**, in both Spain and Germany was highlighted as being a problem that needs to be further addressed in their societies, with numbers of victims on the increase; <sup>199</sup>
- **Migrant Communities;**
- **LGBTIQ groups;**
- **People with disabilities** and their families;
- **Individuals suffering with substance use disorder;**
- **Workers who suffer work harassment and people who are at psychosocial risk.**

It was identified that such groups can take advantage of restorative practices to make better heard as well as to defend themselves. Restorative practice in these cases could be used as a preventative tool to conflict situations and situations of violence. Resolution of conflict as well as methods to increase integration of minority groups, are seen as a long-term preventative strategy.

### Direct Target Group

There is an extensive list of potential stakeholders who can implement restorative practices: teachers, educators and other school staff, conflict mediators at all levels, lawyers, advisors, people related to prevention and tackling gender based violence, psychologists, state security forces and bodies, personal or professional advisors, people related to immigration, social affairs, volunteering, human resource managers, child protection professionals, LGBTIQ community rights associations, professionals working with people with any type of disability (both physical and intellectual), people working with individuals or groups at risk of social exclusion, neighbourhood associations, non-profit organisations, health staff and people who wish to do so from their own initiative<sup>200</sup>.

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<sup>199</sup> For more information: [http://miguelcatalan.org/wp/wp-content/uploads/2018/03/21\\_CONVIVES\\_15-marzo-2018-1.pdf](http://miguelcatalan.org/wp/wp-content/uploads/2018/03/21_CONVIVES_15-marzo-2018-1.pdf)

<sup>200</sup> We have categorised such stakeholders into broad camps below but for more extensive lists for each country, please refer to the Appendices.

### **International and local experts**

Experts, trained in restorative justice and restorative practice are key stakeholders, who actively promote and apply them.<sup>201</sup> **Mediators** can also be found in the work environment dealing with conflicts like disagreements between employees, difficulties between managers and subordinates, and financial conflicts. In addition, mediation is also employed in the public arena to mediate issues of conflict between environment-economy-politics-social coexistence.

### **Academic community, universities and research centres**

As mentioned above, the universities and researchers have been among the first to introduce the restorative justice and the restorative practice concepts and provided theoretical background and numerous legislative initiatives.

### **Social services**

Social services, especially those governed by NGOs and their experts, are in the front line of introducing restorative practices and organising information campaigns to promote it. **Social workers** are especially trained to mediate conflicts – specifically in the realm of youth welfare aid and family issues. These social workers are typically employed by NGO youth welfare services, or official child protective offices, as well as religious organisations.

### **Public bodies and institutions**

Key stakeholders are the experts in Ministry of Justice, Ministry of Interiors, Ministry of Education and Science, Ministry of the Labour and Social Policy, the State Agency for Child Protection, the Agency for Social Support, Local Departments for Child Protection, Children's Pedagogical Rooms, and Local Commissions for Combating Juvenile Delinquency. Other important institutions are the prisons and the local police stations.

### **The Ministry of Justice**

The Ministry of Justice supports various initiatives related to reforming the system towards a more citizen's oriented services. For example, a training on restorative justice and juveniles in conflict with law was organized in Bulgaria in 2017 by the Ministry of Justice.<sup>202</sup>

### **Local municipalities**

In Bulgaria, it was suggested that restorative practices can be applied in small towns and villages where people know each other and there is a stronger sense of belonging to a community. Whereas in Germany, it was highlighted that Governmental organisations offer mediation in some of their

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<sup>201</sup> Some **internationally recognized experts** in the field of restorative justice and restorative practices have shared their experience with Bulgarian professionals. Lynette Parker who works with Fellowship International, Belinda Hopkins who is a pioneer in the application of the restorative practices in schools in UK, Dr. Borbála Fellegi, conference and peacemaking circle facilitator to the IIRP, Rob van Pagée, and others Bulgarian experts, trained in restorative justice and restorative practice are key stakeholders, who actively promote and apply them.

<sup>202</sup> K. Klyavkova, 'Special training on restorative justice', Mediation on Tea, <http://mediationtea.com/news/restorative-mediation-training-2017/>, (accessed 20 January 2019).

institutions, especially in examples of Juvenile criminality and domestic violence. Moreover, nearly all-regional **government departments** offer mediation especially restorative justice services.

### **Police Officers**

Although training in restorative practice in all host countries, practices is not mandatory in police apprenticeships in Germany, training in mediation and nonviolent communication is offered to police officers in the form of further education.

### **Schools**

Schools are a significant stakeholder as their system for conflict resolution remains highly formal and retributive, although conflict resolution measures contain restorative elements as well such as conversations and meetings which precede the application of sanctions. Therefore, schools are a key institution that can benefit from restorative practices. School teachers are sometimes trained as mediators. Students can also be trained by teachers to become mediators in more informal forms of restorative practice.<sup>203</sup>

### **Staff and juveniles in the residential care schools**

Educational boarding schools (EBS) and social-pedagogical boarding schools (SEN) include children and youth in conflict with the law.

### **Media / Blogs**

This can be a powerful resource and disseminating tools and knowledge about restorative Justice and practices.<sup>204</sup>

### **Courts**

Courts are in an influential position to suggest mediation or reconciliation.

### **Consulting companies**

There are many companies where professionals provide consulting, mediation, family counselling and psychotherapy. For example, La Conference Sarl or Lets Meet Up are publishing and promoting books on restorative justice and practices. They offer training and services for facilitators of restorative practices in schools, organizations and communities. They organized a workshop “The circle – reconciliation in communities, teams and organizations”.<sup>205</sup>

### **NGOs and their good practices**

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<sup>203</sup> There are mediation programs in some Bulgarian schools. Other schools introduce restorative practices, (e.g. the primary school “Bratia Miladinovi in Sliven, please see above). Schools in Bulgaria are a significant stakeholder as their system for conflict resolution remains highly formal and retributive to some extent, although conflict resolution measures contain restorative elements as hearing is the first measure applied and conversations and meetings precede the sanctions.

<sup>204</sup> A major resource is the blog for restorative justice in Bulgaria, created by Elena Evstatieva (this blog serves as an informal platform – [www.restorativejusticebg.org](http://www.restorativejusticebg.org)) and the facebook group Practices of Restorative Justice in Bulgaria.

<sup>205</sup> La Conférence Sarl [website], <http://laconference.eu>, (accessed 20 January 2019); La Conférence Sarl, ‘Уъркшоп ‘Кръгът – омиротворяващ общности, организации и екипи’, EventsPr. BG [website], <http://eventspro.bg/sabitie/kragat-omirotvoryavasht-obshtnosti-organizatsii-i-ekipi/>

NGOs are the main actors in promoting restorative justice/restorative practices and there are numerous projects and tools developed by them. They often provide social services and apply information and prevention programmes.

## VI. Limitations

Although it is evident that restorative practice has come a long way over the past four decades in each of our partner countries included in this report, conflict and problems of inequality still exist and continue to be unsolved using traditional methods. This can be especially noted amongst disadvantaged groups. As such, it is essential to continue to look for new and alternative solutions, and to provide the necessary tools to the many professionals capable of being trained in the field, as well as to those affected by these disputes. Below we identify limitations in the existing infrastructure of restorative practices available for all stakeholders.

### Social Hierarchies

Restorative practice is a great methodology for resolving all kinds of conflicts. However, an essential element of the methodology is that both conflict parties take responsibility for their role in the conflict. However, in many cases where hierarchies exist within internal disputes, be they cases of domestic violence or domestic issues concerning children, property or finances, heightened emotion as well as inequality between stakeholders often limits the success of restorative practice<sup>206</sup>. Such heightened dependencies and the disequilibrium in power, means that a “real” mutual result is often hard to obtain. This is especially true in cases within minority groups, among which one could find individuals with little (perceived) power that face conflicts with people of (perceived) higher status belonging to the majority group. In these cases, the mediator needs to insist on equality in the process.<sup>207</sup> It also must be highlighted that for restorative practice to work, all stakeholders must be willing to engage in the process. This can add another dimension of difficulty to the process.

### Individuals and State conflicts

A related field of conflicts exists between individuals and the state or extensions of the state. Besides the lack of personal responsibility of state workers, a restrictive network of regulations and directives limit their decision-making abilities. Thus, political incentive is needed to make restorative practice more available as a conflict resolving methodology in these situations. As was highlighted by Germany in their report, for restorative practice to become reality at a higher level, it also requires the deeper involvement of public institutions and large companies.

### Conflicts between Customer and Service Provider

This area includes a large field of conflicts: from parent and day care provider/school to consumer and producer of services and goods. In general, the methodology of restorative practice is known in German speaking countries but is hardly thought of in actual cases of conflicts. Creating the reputation of a reliable method of conflict resolution in the public eye is a must, considering it is still focused on

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<sup>206</sup> For more details:

[www.fernuni-hagen.de/rechtundgender/downloads/Beitrag\\_Mediation\\_Beziehungsgewalt.pdf](http://www.fernuni-hagen.de/rechtundgender/downloads/Beitrag_Mediation_Beziehungsgewalt.pdf)

<sup>207</sup> On this subject: C.S. Thomsen, ‘Abbruchkriterien in der Mediation von Familienkonflikten, Praxis der Rechtspsychologie’, 2011, available on [www.mediatio.de](http://www.mediatio.de)

punishment of the perpetrator, rather than redemption of the victim. This is even more prominent in the justice system, where restorative justice is often looked upon as a soft alternative or not applicable for most conflicts. This reveals that a change of culture is needed.

## VII. Recommendations

In order for restorative practices to permeate society as a whole, a change of culture would be needed. This report identifies three main target areas where transformation still needs to occur, followed by six suggestions as to further implement change.

### Civil Society

The greatest place for a change of culture to occur would be within families, schools, businesses and the grassroots of society. However, as we have seen from the German example, restorative practice training is typically not mandatory for professions who often face conflicts that could be tackled through restorative practice, for example teachers and policemen. Implementation of mediation training should be a natural part of the education for these professions and a norm for professionals in all sectors of society.

### Government

As was highlighted by partners in Spain, for restorative practice to become reality at a higher level, it requires the deeper involvement of public institutions. Governments could do more to place even more emphasis on these practices through any of its agencies that deal with vulnerable groups, universities and educational centres (from the public or private sphere), political forces, the Directorate General of the Police, the Courts of Justice and all those actors in the private sector, in order to develop a fairer and more equitable community.

### Private Sector

Following this train of thought, the establishment of dedicated mediators in (larger) companies makes sense in resolving conflicts between co-workers. Moreover, in order to resolve conflicts with customers, companies could also deputise a representative equipped with decision-making ability. This would enable the resolution of conflicts between customers and companies or companies with other companies, to be done through restorative practice.

### Strategy for way forward

1. *Restorative practice* is a new concept. Restorative justice and restorative practices should be introduced to students and practitioners and be included in the universities curricula, not only in the law programs but also in social policy, anthropology, psychology, criminology, cultural studies, philosophy, and others. This will enhance the relevant practice and will create a substantial national experience.
2. Further mapping of good practices locally and internationally would enrich the knowledge in this area. It is important to study the effect of successful projects, measure and analyse their impact in order to inform the relevant policy changes.
3. Efforts towards the development of community of practice, identification and recruitment of facilitators. It is important to conduct training sessions for professional groups such as police, youth workers, juvenile delinquency pedagogues, social workers from the Directorates for Child Protection,

and others, as well to identify situations and cases where restorative practices can be used as prevention.

4. Information campaigns to the general public, including media campaigns, meetings with schools, municipalities, service centres, juvenile detention centres etc.

5. Introducing the restorative practice in schools as a conflict resolution methodology and an instrument to deal with school aggression and bullying. The current centralized and authoritarian governance system of state schools is not favourable for introducing restorative practices. There is a lack of knowledge among school directors, psychologists, councillors and teachers about restorative practice. At the same time schools are lacking skills to work with different conflict situations. A special campaign should target schools and adequate trainings for teaching and non-teaching staff should be provided.

6. Engaging institutions and attracting them as social partners in promoting restorative practice. Engaging institutions and relevant professionals in restorative practice discussions, conferences and initiatives will elevate the profile of the practitioners working in the field and will prepare the context for policy changes. It is especially important to promote the restorative practices among the judiciary.

## Conclusion

The notion of restorative practices evolved in part from the concept and practices of restorative justice, which is an approach in criminal justice whose focus is to repair the harm done to people and relationships, rather than only punishing offenders. The concept of restorative practices, however, expands beyond the justice system and can be seen in the organisational, educational, social work context.<sup>208</sup> Restorative practices, therefore has also been termed as a *social science* that studies how to improve and repair relationships between people and communities.<sup>209</sup>

Despite having its roots in restorative justice, from the emergent point of view of restorative practices, restorative justice can be viewed as largely *reactive*, consisting of formal and informal response to crime and other wrongdoing after it occurs.<sup>210</sup> Restorative practices, however, also includes the use of informal and formal processes that precede wrongdoing to prevent conflict.<sup>211</sup> Therefore, RP can be considered to not only be a theory or a movement as RJ has been, but also a set of skills that aim to build relationships and prevent the occurrence and escalation of conflict, as well as resolve conflict and repair harm caused by them.

Since the 1990s, restorative practices such as mediation, conciliation, group therapy, conferences and family counselling have been popular among the public and have continued to receive more attention and followers. Today, professionals of different fields like social workers, mediators in companies, policemen, teachers and especially students are applying restorative practice. Moreover, many governmental and non-governmental institutions offer services in this field.

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<sup>208</sup> M. Dimech, *Restorative Justice; the balance between parole and Victims of Crime*, 2017.

<sup>209</sup> *Ibid.*

<sup>210</sup> International Institute for Restorative Practice: [www.iirp.edu/](http://www.iirp.edu/)

<sup>211</sup> European Forum for Restorative Justice [www.euforumrj.org](http://www.euforumrj.org)

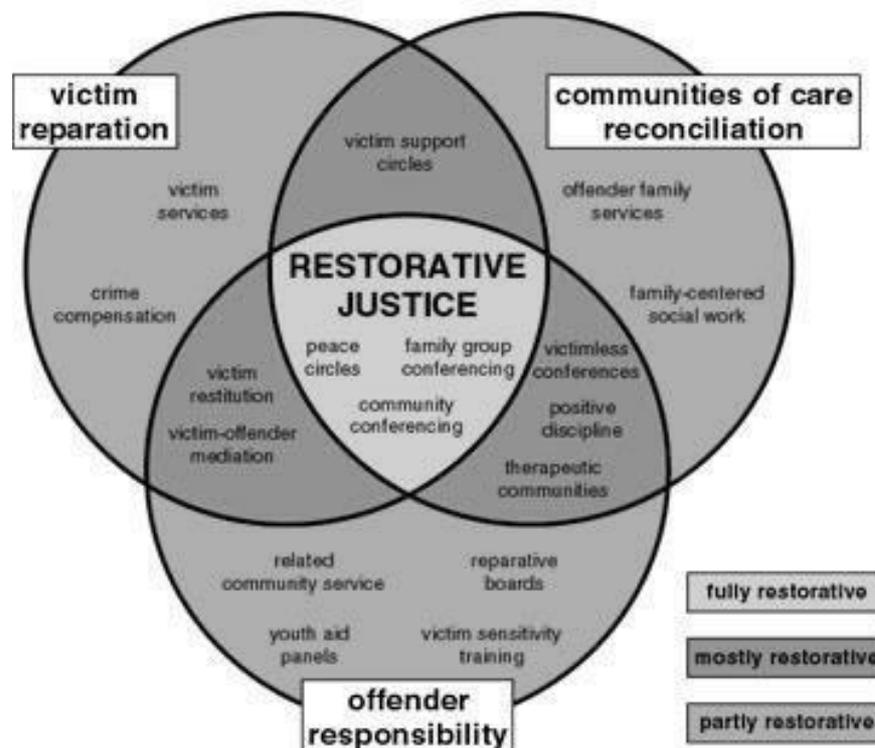
What should be highlighted is that given its sufficiently broad, yet stable framework, restorative practice has an agility that allows it to be applied to a rich variety of nuanced contexts, both formal and informal: from companies to leisure groups, sports teams, music schools, theatre groups, choirs, and any context in which there is a community concerned about coexistence and the improvement of the (working) environment. However, despite the application of restorative practice to a broad number of conflicts, it appears to still be primarily used in conflicts between individuals. A further development of it would be for organisations to incorporate and institutionalized it within the ethos of their organisation.

A primary problem encountered in each of the participating countries, is the extent to which their societies are still sceptical of the concept of restorative justice. As highlighted by Bulgaria, this is partly because of the high crime rates and the common perception that the system of justice is “too soft” and favourable for the offenders. The concept is discussed quite formally, in relation to the judicial reform, but trust within the judicial system and institutions is still low. Whilst the legislative framework provides some opportunities for restorative practice, in most of the participating countries, there is no direct legislation and reference to it. The objective should be for courts and prosecutors to consider restorative justice as a conflict resolving methodology in every phase of a lawsuit.

Cultural distrust within society is further amplified by the little public awareness about the positive effects of restorative justice measures, when implemented. As such, good practices developed by NGOs need greater dissemination and a closer monitoring and evaluation of their impact. However, many of these efforts are project based and not always sustainable. Further support would be needed.

So whilst restorative practice can be seen as a social-wide movement that aims to make the world a little more restorative, it is still a movement that is in its infancy phase. Dissemination of knowledge of the distinct set of skills required to implement restorative practices, both as a preventative to conflict as well as a reaction to it, is still widely needed. It is therefore necessary to continue to generate new methods to make restorative practice available to the greatest number of interested people, even to those who do not have the availability that this requires. Creating an online training course that can be further integrated into continuous training programs, whilst being available to a large number of users, is one such step.

## Appendix 1: McCold's Diagram: Typology of restorative practices



## Appendix 2: List of Organisations working with RJ/RP

### Bulgaria – RJ/ RP Organisations

A variety of initiatives have promoted restorative justice and facilitated formation of positive attitudes towards it through the years:

1. **Workshop and national round table** “Perspectives of Mediation in Criminal Matters” (2007);
2. A project aiming at **promoting amendments of the Penal Code** and the Penal Processing Code. It was an effort of a working group led by the Professional Association of Mediators in Bulgaria /PAMB/ and gained support at the Bulgarian-German Mediation Conference (2008) attended by representatives of the parliament, the judiciary and academic circles;
3. A **blog** for restorative justice in Bulgaria, maintained by Elena Evstatieva /2016/;
4. A **Restorative Justice Week** in Bulgaria (20-23.11.2018). The program included meetings with students, judges, school psychologists and pedagogical councillors, NGOs, and other experts working on restorative justice. A round table “Restorative justice on criminal proceedings” with the participation of representatives of the legal circles was conducted <sup>212</sup>;
5. Nils Christie’s visit, lectures and meetings with students and professionals in Bulgaria;
6. A **National Conference on Restorative Justice** “Reconsideration of Crime and Punishment” (21.04.2018)<sup>213</sup>. At the conference, Dr. Belinda Hopkins, the director of “The Transforming Conflict”, pointed out that the term “restorative practices/restorative approaches” is mostly used in schools. She related restorative practices to ‘school-wide philosophy about how to build, maintain and repair relationships and how to foster a sense of social responsibility and shared accountability’<sup>214</sup>. The conference was followed by a **declaration** supported by academics, representatives of the judiciary, legal professionals, representatives of the NGO sector and mediators. The declaration appealed to establishing a platform for restorative justice and its promotion and to development of restorative practices in a broad context of education, social services, penitentiary and other institutions and communities. It insisted on the necessary amendments to Bulgarian legislation, and encouraged wider engagement of Bulgarian academics and university students with restorative justice.<sup>215</sup>;
7. Publishing and the promotion of **books of Nils Christie and Howard Zehr**;
8. Restorative justice was included in the **university curricula** of the New Bulgarian University and the South-West University “Neofit Rilski”;

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<sup>212</sup> E. Evstatieva, ‘Calendar of the events within the International Week of Restorative Justice in Sofia’, Restorative Justice in Bulgaria, [web blog], 20 November 2018, <https://restorativejusticebg.com/2018/11/20/>

<sup>213</sup> Key speakers and program available at the website of the National Network for Children, National Network for Children [website], <http://nmd.bg/>

<sup>214</sup> B. Hopkins, A brief introduction on the topic ‘An introduction to restorative approaches in schools, ‘Materials and Resources from the National Conference on Restorative Justice ‘Reconsideration of Crime and Punishment’ (21 April 2018, Sofia), Restorative Justice in Bulgaria, [web blog], 4 May 2018, p.3, <https://restorativejusticebg.com/2018/05/04/>

<sup>215</sup> E. Evstatieva, ‘Едно финално действие и първа стъпка към един нов процес’, Restorative Justice in Bulgaria, [web blog], 12 June 2018, <https://restorativejusticebg.com/2018/06/12/>

9. Popular **media** discussed the concept of restorative justice, such as the e-versions of the newspapers “Capital” and “Kultura”, the national television channel “Bulgaria ON AIR”, and the famous blog “Gorichka”.

**NGOs:** NGOs are the main actors in promoting restorative justice/restorative practices in Bulgaria and there are numerous projects and tools developed by them.

1. Prisons Fellowship Bulgaria (see the case study of Vratza above).
2. Institute for Conflict Resolution, Sofia. It promotes the concept of restorative justice and good practices in Bulgaria, publishes books and articles, develops legislative proposals for the integration of restorative justice in the judiciary system of Bulgaria. Some of their projects are as follows.
  - a. Violence in School Training Action-VISTA Project 2003-2006; developing a training package for teachers, parents and students, translated in Bulgarian;
  - b. Tools in Network: An E-Net Approach to Share Mediation Competences (TIN Project) 2007-2009;
  - c. Restorative Justice in Europe: Safeguarding Victims & Empowering Professionals (RJE) 2012-2014. Within this project a literature review and a study on the attitudes to application of restorative justice, protocols and guidelines for victims' guarantees, training programs for professionals and a directory for the good inter institutional practices cooperation were elaborated<sup>216</sup>;
3. Justice and Reconciliation Society. This organisation provides translation and publication of books of Nils Christie. It is engaged in lobbying for the application and integration of restorative justice and restorative practice in Bulgaria. It also does organization of meetings between Bulgarian and foreign academics<sup>217</sup>.
4. The Tulip Foundation, Sofia launched the basics of family group conferences with the “Trust in the Family” programme through which the promotion and the application of family group conferences and their development in some Bulgarian municipalities was supported significantly. A number of facilitators and NGOs have been trained, some of them in the cities of Haskovo, Varna, Targovishte, Pazardjik, Gorna Oryahovitsa. Training for trainers was organized as well in 2011 with trainer Rob Van Pagee. A short document on restorative practices was produced<sup>218</sup>. The Tulip Foundation is also included in the “European Exchanges on Family Group Conferencing” project<sup>219</sup>.
5. Social Activities and Practice Institute in Sofia (SAPI). Some of SAPI’s projects are related to implementing restorative justice with child victims (DAPHNE JUST/2015/SPOB/AG/VICT). In this specific project mutual learning between six countries was encouraged. Three of these countries were already using restorative justice with children successfully (the “mentor” partners), and the other three (including Bulgaria) were „mentees”. Partners produced a Handbook *Applying Restorative Practices to Children* that provided successful experience and

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<sup>216</sup> D. Chankova, ‘3E –RJ-MODEL .The 3E Model for a Restorative Justice Strategy in Europe’, pp. 12-16; D. Chankova, Restorative justice – new instrument for protection of the rights of crime victims.

<sup>217</sup> Justice and Reconciliation Society, Facebook Page, <https://www.facebook.com/RJBulgaria/>

<sup>218</sup> E. Evstatieva, ‘Family Group Conferences’; Tulip Foundation, Family Group Conferences. Principles and Practical guidance.

<sup>219</sup> Tulip Foundation, for more information : [www.tulipfoundation.net](http://www.tulipfoundation.net)

specific examples from Ireland, Finland and Belgium. A training on victim - offender mediation with Rob Van Pagee was conducted<sup>220</sup>. Another training "Empowering the child's strengths for violence prevention" was provided for facilitators by Dr. Belinda Hopkins<sup>221</sup>. SAPI also runs the Child Centre for Advocacy and Support, so called „Protection Zone –Zona Zakrila" in Montana, where some instruments of restorative practices have been piloted: victim-offender mediation, family/juvenile group conference, mediation between parents in cases of violence or alienation. SAPI has previous experience with the application of family group conferences and mediation in social services. Family group conferences have been piloted in the Centre for Child Rights "Pravodatel"<sup>222</sup>;

6. Association "Shans i Zakrila", Haskovo. This organisation provides social services and application of family group conferences. In 2018 they reported 87 family group conferences held with 76 Roma families, 18 Bulgarian families and 7 Turkish families<sup>223</sup>;
7. IGA – Crime Prevention Fund- Pazardjik. IGA applies a project named "RATES" – System for Risk, Assessment and Treatment of Sexual Offenders". Their focus is on community education<sup>224</sup>. The model provides 4 circles for support and responsibility with the participation of coordinators, volunteers, representatives of institutions and offenders. 15 volunteers have been trained and 6 representatives of institutions have been engaged outside the circles. The organisation plans a detailed assessment of the effectiveness of the model<sup>225</sup>. IGA manages a Centre for Child Rights in Pazardjik that organized training on Family group conferences<sup>226</sup>;
8. Bulgarian - Romanian Trans Border Mediation Institute implements a project *The new European standards for the implementation of alternatives to prison* which offered a 3-module training of trainers including representatives of the judiciary. The organisation opened the first Center for Restorative Justice for Children (2015) in Ruse in collaboration with SACP and implemented program for social impact. They do preparation for hearing and representation in court, provide

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<sup>220</sup> International Juvenile Justice Observatory (ed.), Handbook Applying Restorative Justice to Children, International Juvenile Justice Observatory, Belgium, 2018, <https://sapibg.org/en/book/prilagane-na-vzstanovitelno-pravosdie-pri-deca>; Social Activities and Practices Institute [website], <https://sapibg.org/en>

<sup>221</sup> E. Evstatieva, 'Interview with Belinda Hopkins - One of the European Voices of RP in Education', E. Evstatieva, Restorative Justice in Bulgaria, [web blog], 26 November 2018, <https://restorativejusticebg.com/2018/11/26/>

<sup>222</sup> N. Petrova, Prof., Victim Offender Mediation in a Social Service [presentation], 'Materials and Resources from the National Conference on Restorative Justice 'Reconsideration of Crime and Punishment' (21 April 2018, Sofia), Restorative Justice in Bulgaria, [web blog], 4 May 2018, <https://restorativejusticebg.com/>

<sup>223</sup> M. Slavova, Dr. Family group conferences – the power of the family and the community to solve their own problems [presentation], 'Materials and Resources from the National Conference on Restorative Justice 'Reconsideration of Crime and Punishment'.

<sup>224</sup> G. Kirilov, 'Work within community with juveniles who have committed sexual crime', IGA Crime Prevention Fund, pp.9-19, [www.iga-bg.org/proekti/rates/Programs/O\\_REPORT\\_Sex\\_juvenal\\_offenders.pdf](http://www.iga-bg.org/proekti/rates/Programs/O_REPORT_Sex_juvenal_offenders.pdf)

<sup>225</sup> A. Momchilov, Circles for Support and Responsibility in Working with Sexual Offenders Against Children - An Innovative Practice for Bulgaria, [presentation], 'Materials and Resources from the National Conference on Restorative Justice 'Reconsideration of Crime and Punishment'.

<sup>226</sup> IGA – Crime Prevention Fund [website], [www.iga-bg.org/index.php?option=com\\_content&view=article&id=396%3A2017-05-02-11-11-08&catid=29%3A2011-10-18-08-19-37&Itemid=7&lang=bg&limitstart=1](http://www.iga-bg.org/index.php?option=com_content&view=article&id=396%3A2017-05-02-11-11-08&catid=29%3A2011-10-18-08-19-37&Itemid=7&lang=bg&limitstart=1) [website], (accessed 21 January 2019).

social services and apply information and prevention program. At the moment it is not very clear is the center has funding and if it still operates<sup>227</sup> ;

9. European Centre for Mediation and Arbitration, Ruse. It maintains Centres for Restorative Practices in Ruse and Vetovo (the last one opened in 2017). A program for friends and families was established, including family group conferences. The centre offers a mediation programme addressing families with very low income, named "SOS Parents" programme. They conduct training courses to building capacity of professionals<sup>228</sup>.
10. H&D Gender Perspectives Foundation, Haskovo. This organisation issued a report, based on in-depth interviews with experts from the judicial district of Haskovo, on the attitudes towards and the real use of restorative justice and mediation services. This work was in the framework of "Civil Participation for a Better Judicial System" Project. In addition, information campaign on restorative justice and the use of mediation in schools in Haskovo was conducted.<sup>229</sup>
11. UNICEF – Bulgaria. UNICEF launched a public campaign Together Against School Bullying in the autumn of 2018. According to their plans, a programme applying restorative practices will be developed.<sup>230</sup>
12. National Network for Children implements a project "Child Rights Hubs for Children in Conflict with the Law in Bulgaria". Four centres for child rights started working within this project (in Sofia, Ruse, Pazardjik and Vratza) and a campaign "For more Humane Juvenile Justice" was launched<sup>231</sup>.
13. Partners Bulgaria Foundation. The organisation is a pioneer of mediation in Bulgaria and promotes mediation services since 90s. It is actively disseminating inclusive restorative methodologies such as conciliation, multiparty conferences, restorative circles, family support groups and others. As a member of various European partnerships Partners Bulgaria has implemented programs against school aggression and bullying, introducing mediation in Bulgarian prisons, promoting of a child rights approach to juvenile justice, developing university curriculum for alternative dispute resolution, maintain a family mediation center and many other.<sup>232</sup>

## Spain – RJ/ RP Organisations

1. "Restorative Practices" at CEIP Gabriel Vallseca in Palma de Mallorca
2. "Restorative Practices" at IES Neira Vilas in A Coruña
3. "Restorative Practices" at IES Miguel Catalán in Madrid

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<sup>227</sup> Bulgarian - Romanian Trans Border Mediation Institute [website], [www.brtim.com/en/](http://www.brtim.com/en/), (accessed 21 January 2019).

<sup>228</sup> European Center for Mediation and Arbitration, 'Център за възстановителни практики отвори врати и в гр. Ветово', 17 October 2013, Web Portal of the Bulgarian NGOs [website], [www.ngobg.info/bg/news/](http://www.ngobg.info/bg/news/); European Center for Mediation and Arbitration [website], <https://ecmbg.alle.bg/>

<sup>229</sup> K. Yordanova and A. Ivanova, 'Report of in-depth interviews with experts from a judicial district– Haskovo', H&D Gender Perspectives Foundation, 2018, pp.19-20, <http://hdgender.eu/wp-content/uploads/2018/12/doklad-dalbochinni-intervyuta-haskovo.pdf>, (accessed 21 January 2019) ; H&D Gender Perspectives Foundation [website], <http://hdgender.eu>

<sup>230</sup> UNICEF-Bulgaria [website] [www.unicef.org/bulgaria/](http://www.unicef.org/bulgaria/)

<sup>231</sup> National Network for Children [website], <http://nmd.bg/en/projects-and-campaigns/>, (accessed 22 January 2019).

<sup>232</sup> <https://partnersbg.org/en/child-rights-and-child-protection/>

4. "Restorative Practices Applied to Education" at the Master Misericordiae Special Education Centre in Palma de Mallorca
5. " Restorative Practices in Children and Teenager’s Protection Centres" by Lola Montejo and Ferran Erra
6. "Restorative Practices in Es Fusteret" at the Fundació S´Estel in Palma de Mallorca
7. "Restorative Practices in the School Canteen" carried out by Oscar Prat Vallés in Ibiza
8. "Reparative Mediation in the Case of Bullying" carried out by the Technical Team of the Community Media Service of Sabadell Town Council
9. "Surrounding Bullying: The Experience of a Peace Circle in an Institute" by Sheila Mas Vallvé de Dialoga Associació de Barcelona "Castilla y León School Co-Existence Model and Restorative Practices”

### Germany – RJ/ RP Organisations

1. Ambulante Soziale Dienste der Justiz NRW bei dem Landgericht Aachen, Fachbereich Gerichtshilfe, <http://www.lg-aachen.nrw.de/>
2. NEUSTART GmbH, [www.neustart.org](http://www.neustart.org)
3. Landratsamt Aschaffenburg - Amt für Kinder, Jugend und Familie, <https://www.landkreis-aschaffenburg.de/>
4. Diakonisches Werk e. V. Augsburg, <http://www.diakonie-augsburg.de/>
5. Brücke e.V., <http://www.bruecke-ev-bautzen.de/>
6. EJF gAG, Integrationshilfe Täter-Opfer-Ausgleich, <http://www.toa-berlin.ejf.de/>
7. Soziale Dienste der Justiz, <http://www.berlin.de/sen/justiz/sozialesdienste>
8. Bund Deutscher Schiedsmänner und Schiedsfrauen (BDS) e. V., <http://www.bdsev.de/>
9. Ambulanter Sozialer Dienst der Justiz NRW bei dem Landgericht Bonn, Fachbereich Bewährungshilfe und Führungsaufsicht
10. Arbeiterwohlfahrt, Kreisverband Chemnitz und Umgebung e. V., Schlichtungsstelle Täter-Opfer-Ausgleich, <http://www.awo-chemnitz.de/>
11. Brücke Dortmund e. V., Büro für Täter-Opfer-Ausgleich, <http://www.toadortmund.de/>
12. Interventions- und Präventionsprogramm (IPP) der JGH Dresden, <http://jugendgerichtshilfe.dresden.de/>
13. Ambulanter Sozialer Dienst der Justiz NRW bei dem Landgericht Düsseldorf, <http://www.lg-duesseldorf.nrw.de/>
14. Brücke Erding e. V., Arbeitsbereich TOA, <http://www.bruecke-erding.de/>
15. Ambulanter Sozialer Dienst der Justiz beim Landgericht Essen, <http://www.lg-essen.nrw.de/>
16. Evangelischer Regionalverband Frankfurt am Main / Täter-OpferAusgleich, <http://www.toa-ffm.de/>
17. Jugendhilfswerk Freiburg e. V., <http://www.jugendhilfswerk.de/>
18. Integrationsgesellschaft Sachsen gGmbH, Landkreis Sächsische Schweiz Osterzgebirge (Arbeitsort Pirna), <http://www.igssachsen.de/>
19. Ambulanter Justizsozialdienst Niedersachsen – Bezirk Hannover, <http://www.ajsd.niedersachsen.de/>
20. Dialog e. V. Heidelberg
21. Bewährungshilfe, <http://www.bewaehrungshilfe-ingolstadt.de/>
22. Caritasverband für das Dekanat Magdeburg e. V., <http://www.caritas-magdeburg-stadt.de/>
23. Ausgleich e. V., <http://www.ausgleich.de/>

24. Kontakt Regensburg e. V., <http://www.kontakt-regensburg.de/>
25. Balance of Power e. V., <http://www.boprostock.de/>

### **A Selection of RJ/RP Organisations in Austria<sup>233</sup>**

1. Akademie der Wirtschaftstrehänder GmbH, <http://www.wt-akademie.at/>
2. Akademie für Mediation und Persönlichkeitsbildung GesbR, <http://www.akademie-für-mediation.at/>
3. Akademie für Salutogenese & Mesoziation (ASM), <http://www.salutogenese.or.at/>
4. Berufsförderungsinstitut Wien - bfi Wien, <http://www.bfi-wien.at/>
5. Europäische Akademie für Logotherapie und Psychologie, <http://www.ögl-akademie.at/>
6. factor happiness Training & Beratung GmbH, <http://www.kepos.at/>
7. Institut für angewandte Gruppendynamik (IFAG), <http://www.ifag.at/>
8. Institut für Mediation und Konfliktmanagement, <http://www.mediation-update.com/>
9. KLIMT - beratung & impulse GmbH, <http://www.klimtberatung.com/>
10. Konfliktkultur GmbH, <http://www.konfliktkultur.com/>
11. Österreichischer Arbeitskreis für Gruppentherapie und Gruppendynamik (ÖAGG), <http://www.oeagg.at/>
12. Österreichischer Bundesverband für Psychotherapie (ÖBVP), <http://www.psychotherapie.at/oebvp>
13. TheFairWay-Mediation Dr. Ernst Feistauer Dr. Marcella Zauner-Grois, <http://www.thefairway-mediation.com/>
14. Wirtschaftsförderungsinstitut WIFI Niederösterreich, <http://www.wifi.at/>
15. Zentrum für Soziale Kompetenz der Universität Graz (ZSK), <http://www.uni-graz.at/cscwww>

### **Ireland – RJ/ RP Organisations**

#### **Identification of Stakeholders: Practitioners and Institutions**

Restorative Practices Ireland is representative of all the key institutions and stakeholders making use of restorative practices and restorative justice in Ireland. The members of the Steering Committee and the RPI Working Groups represent the following key agencies and sectors:

1. An Garda Síochána
2. The Probation Service
3. The Department of Education and Science
4. The Department of Children and Youth Affairs
5. The Department of Rural and Community Development
6. Tusla, the Child and Family Agency
7. NGOs from:
  - Youth Sector
  - Community Sector
  - Early Years Sector

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<sup>233</sup> Liste der Ausbildungseinrichtungen für Mediatorinnen und Mediatoren, Mediation in Zivilrechtssachen, <https://mediatoren.justiz.gv.at/mediatoren/mediatorenliste.nsf/contentByKey/VSTR-7DYGZV-DE-p>, (accessed 5 December 2018).

The organisations and practitioners that have affiliated to RPI and are listed on the RPI Links Page are:

1. Alternatives to Violence Project Ireland
2. Childhood Development Initiative
3. Circles of Support and Accountability Ireland
4. Community Restorative Justice Ireland
5. Cultivating Community- Breathing life into Restorative Practice
6. Facing Forward
7. Glencree Centre for Peace and Reconciliation
8. Le Chéile Mentoring & Youth Justice Support Services
9. Limerick Restorative Practices Project
10. Netcare
11. Nenagh Community Reparation Project
12. The Mediators Institute of Ireland
13. The Probation Service
14. Restorative Justice Online (Ireland)
15. Restorative Justice Services
16. Restorative Practices Forum (N.I.)
17. Waterford Restorative Practices Network
18. Wexford Restorative Practices Partnership

## **Malta – RJ/ RP Organisations**

### **Government Officials**

1. Malta Police Force
2. Ministry for Home Affairs and National Security
3. Department of Correction Services
4. Department of Probation and Parole

### **NGOs**

1. RISE
2. SOS Malta
3. MWAM - Migrant Women Association Malta
4. Kellimni.com
5. Victim Support Malta
6. Mid-Dlam għad-Dwal
7. OASI Foundation, Gozo
8. Anti-Bullying Activities Service
9. Fondazzjoni Suret il-Bniedem

## **Appendix 3: The Principles of restorative justice**

### **Principles**

**Restorative justice** is based on principles that establish a voice for victims, offenders, and community in order to address offender accountability for the harm caused, rather than the act itself, with the aim to develop a plan to repair and restore relationships. The three main pillars of restorative justice, therefore, are those of the victim of the harm done, the offender who perpetrated this harm, and finally the community, which plays an indirect role within the causation of this harm.<sup>234</sup>

**The First Principle** is the central aim of RJ which is to work to strives to heal victims, offenders and communities that have been injured by a crime committed.<sup>235</sup>

**The Second Principle** of restorative justice deals with the notion that the involvement and concern towards the offender must carry an equal weight as that of the victim as they play a role in the process of justice.<sup>236</sup> Van Ness expands on this by saying that restorative justice ensures that the stakeholders of the crime are not “passive participants”. Johnstone shows that the wise road would be to understand and to care about the offender.<sup>237</sup>

**The Final Principle** deals with the preparation of the community (and possibly the government) in its role to become involved in the process of achieving justice for the harm created by the offender towards the victim.<sup>238</sup> Critically, what must be kept in mind is that dealing with criminal offences should not be solely dependent on the state and professionally appointed people but lay people within society must bear the responsibility to aid in the “settlement of a conflict.”<sup>239</sup>

### Values

Another way to define if a practice is restorative or not, is to outline four fundamental values critical for restorative justice: *personalism, participation, reparation and reintegration*.<sup>240</sup>

What is essential to understand is that these principles are the core foundational rock of restorative justice and should be adhered to if the practices are to be truly restorative.<sup>241</sup> Whilst restorative justice practices have undergone a process of evolution throughout their use, what must also be highlighted is that they all have one principle backbone underpinning them: that is the, **“handing over of a part of decision making power from authorities to the actual victims and offenders, the people related to them and members of the community.”**<sup>242</sup> This can be done in a formal or informal way: the first is through restorative discussions in structured groups, the second is via group discussions within the family or in the community.<sup>243</sup>

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<sup>234</sup> M. Cassar, An Analysis of Restorative Justice under the Restorative Justice Act, 2017, Faculty of Law, University of Malta.

<sup>235</sup> *Ibid.*

<sup>236</sup> Restorative Justice Council: <https://restorativejustice.org.uk>

<sup>237</sup> M. Cassar, An Analysis of Restorative Justice under the Restorative Justice Act, 2017, Faculty of Law, University of Malta

<sup>238</sup> *Ibid.*

<sup>239</sup> J. Ashley, K. Burke, Implementing restorative justice: A guide for schools.

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

<sup>243</sup> V. Genova, “Премахване на криминогенните последици от пресъплението и полицейска дейност”, “Общество и право”, 2/2013 , p.42-43.

There is a wide acceptance of and agreement about the basic principles and values of restorative justice which can be distilled in another form: as voluntary participation, based on informed consent; neutrality and impartiality of restorative justice practitioners; confidentiality; respect for the rights and dignity of persons; promotion of community safety and social harmony.<sup>244</sup>

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<sup>244</sup> International Institute for Restorative Practice: <https://www.iirp.edu/>

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