

Restorative Justice in Criminal Matters in Europe –

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¹ *This interim report is a compilation of the European volume of the International Encyclopaedia of Restorative Justice. It is intended for internal use of the Council of Europe only and should not be published.*

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1. Aims, context and history of the European volume of the encyclopaedia of restorative justice

1.1 Aims and history of the project

There is an apparent consensus in Europe that restorative justice can be a desirable alternative or addition to ordinary criminal justice approaches. Restorative justice focuses more on the needs of victims and the community, and research has repeatedly highlighted its reintegrative potential for both victims and offenders, and the promising preventive effects such interventions can have on recidivism² (although preventing recidivism and re-victimisation is not the main objective of restorative measures).

Accordingly, throughout Europe, a growing number of countries have introduced restorative justice interventions into the criminal justice context over the past 4 decades. Research into the field has increased the knowledge and evidence (see Laxminarayan, 2014; Vanfraechem, Bolivar & Aertsen, 2015; Dünkel & Păroşanu, 2020; 2022; Dünkel, Păroşanu, Pruin & Lehmkuhl, 2023; Lehmkuhl & Pruin, 2024), and international standards and instruments from the European Union, the Council of Europe and the United Nations have increasingly been devoted to restorative justice over the last 25 years.³ The consensus reaches its limits, however, when one regards the ways in which restorative justice has been legislated for and put into action ‘on the ground’, the reasons underlying its introduction, and its role in the practice of the criminal justice system. While in some countries, restorative justice is firmly established and plays a prominent role in the criminal justice procedure, other jurisdictions have struggled (or not even sought) to move restorative justice from the margins of the criminal justice system.

² See e.g. the meta-analyses of Latimer, Dowden & Muise, 2005; Sherman & Strang, 2007; Shapland et al., 2008; for an updated evaluation of research on restorative justice see Dünkel, Lehmkuhl, Păroşanu and Pruin in chapter 50 of the European volume with further references and in this report under 4.4 below.

³ For instance Committee of Ministers Recommendation Rec (99) 19 concerning mediation in penal matters (Council of Europe, 1999); Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (Council of Europe, 2001); Resolution 2002/12 of the Economic and Social Council of the United Nations on basic principles on the use of restorative justice programmes in criminal matters (United Nations Economic and Social Council, 2002); Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; Council of Europe Recommendation No. R. (2003) 20 concerning new ways of dealing with juvenile offenders and the role of juvenile justice (Council of Europe, 2003); Council of Europe Recommendation No. R. (2008) 11 on European Rules for Juvenile Offenders Subject to Sanctions or Measures (Council of Europe, 2008); Council of Europe Recommendation No. R. (2006) 2 concerning the European Prison Rules (Council of Europe, 2006-rev2020); United Nations Vienna Declaration on Crime and Justice (Vienna Declaration on Crime and Justice: Meeting the Challenges of the 21st Century, UN Doc A/CONF.187/4) and the European Parliament Victims’ Rights Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; the Council of Europe CM/Rec (2018) 8 on Restorative Justice in Criminal Matters, the Council of Europe Declaration on the Role of Restorative Justice in Criminal Matters 2021 (Venice Declaration), the Council of Europe CM/Rec (2023) 2 on rights, services and support for victims of crime and, just recently, the Council of Europe Recommendation CM/Rec (2024) 4 of the Committee of Ministers to member States on combating hate crime Recommendation (Council of Europe, 2024).

There is, however, no clear-cut definition of what restorative justice actually is.⁴ Simplifying somewhat, restorative justice (in the context of criminal law) is the term that has come to be used to describe processes and practices that seek to employ a needs-based, dialogical approach to resolving conflicts. It regards the criminal justice system as an inappropriate forum for resolving criminal offences, as it does little to actually settle the conflict between the victim and the offender, and the offender and the community whose laws have been trespassed.⁵ Rather than regarding crimes as conflicts between offenders and the state, restorative justice seeks to give the conflict back to the true stakeholders (Christie, 1977). The aim is to repair the harm that has been caused, ideally by means of an informal process in which victims and offenders, and other participants affected, voluntarily and actively participate in reflecting on the offence, and come to an agreement on how the harm that has been caused can be repaired and prevented from reoccurring in the future (van Ness & Strong, 2010: 43). The best-known examples are victim-offender mediation, and forms of conferencing and circles (which involve a larger range of participants). From a wider perspective, in practice restorative justice is understood by some to cover practices that seek to affect the delivery of reparation, regardless of whether victim and offender have actually met, or a special process was involved. This would include forms of community service (in which reparation is made to society at large, see Wright, 1991: 44; Wood & Suzuki, 2024: 11), but also reparation panels or reparation orders.⁶

Besides their application in criminal justice, restorative processes and practices have come into more frequent use in community, neighbourhood, school, workplace and civil disputes (Roche, 2006; Daly & Hayes, 2001: 2). Restorative practices have also moved to the socio-political sphere, dealing with complex themes such as political violence, human rights violations, hate crime, racial discrimination and historical injustices (Marshall, 2014: 6; Carpenter Emling, 2025). They also include environmental restorative justice approaches looking at the threats and harms facing the environment today: the exploitation of nature, flora and fauna, and, more

⁴ For a more in-depth look at the conceptual background of restorative justice, see 2. below and the comparative analysis in Chapter 50 of the European volume under 1.2.

⁵ O'Mahony & Doak, 2009: 165 f.; Doak & O'Mahony, 2011: 1717; Strickland, 2004: 3.

⁶ Some authors of the present volume understand restorative justice in an even broader sense including victim protection (*Armenia*), prevention or even victims' rights in general (*Montenegro, Serbia*). Some authors see plea bargaining or comparable consensual court procedures (negotiations) as kind of restorative justice (*Armenia, Montenegro, Serbia*). This is insofar in line with the Council of Europe CM/Rec (2018) 8, as these aspects as well as therapeutic or rehabilitative programmes inside prisons are named as restorative elements, which could be seen as restorative in a wider sense, see Rule 59.

generally the earth as a living place for future generations (see Pali, Forsyth & Tepper, 2022; Hamilton, 2021). They pave the way for the development of the concept or approach of transformative justice (Llewelyn & Morrison, 2018).

Why should one compare and what are the aims of comparative research in the area of restorative justice? One stimulus is to find commonalities and to explain differences between different countries, jurisdictions, and legal cultures while considering contextual factors (Jung, 2017; Nelken, 2019). Another aim – which can be found in international human rights-based research similar to this – is to find best practices or to explore possibilities of harmonisation, an interest to be seen in Council of Europe or European Union publications and initiatives.

The concept of best (or ‘good’) practices underlying the publication is ambivalent, often fraught with challenges when transferring models across legal and cultural contexts without accounting for differences. Issues arise in adapting practices to ‘traditional’ justice systems, as seen with restorative justice, and in establishing shared criteria for judging practices. . If the Council of Europe’s CM/Rec. No. (2018) 8 on restorative justice in criminal matters demands that member states establish restorative justice as ‘a generally available service’ (Rule 18), it is rather simple to evaluate to what extent such services have been implemented. A next question of ‘best practice’ would be, how effective restorative schemes are working in terms of victim satisfaction and offender reintegration (see 4.4 below and in detail chapter 50 of the European volume).

From 1 July 2011 to 30 June 2013 the Department of Criminology at the University of Greifswald, Germany, chaired by *Frieder Dünkel*, conducted an international comparative study titled ‘Restorative Justice and Mediation in Penal Matters in Europe – a stock-taking of legal issues, implementation strategies and outcomes in 36 European countries’. The study was initiated by an application to the European Union that was subsequently approved for funding under the ‘Specific Programme Criminal Justice 2007-2013’. Additional funding was provided by the University of Greifswald/Mecklenburg-Western Pomerania, Germany.

The project had to be set against the backdrop of an unprecedented growth in the availability and application of processes and practices in Europe (and indeed the rest of the world) over the last few decades that seek to employ an alternative approach to resolving conflicts that has come to be termed ‘restorative justice’.

The overall objective of the first European study (Dünkel, Grzywa-Holten & Horsfield, 2015) was to compile a comprehensive overview of the European landscape by taking a closer look

at the situation in a total of 36 European jurisdictions. The aim was to find out what interventions existed in Europe at that time in terms of restorative justice in criminal matters, what the driving forces were for introducing restorative justice, how it was implemented in legislation and on the ground, and what role it played (central or peripheral) in criminal justice practice. Likewise, acting on the assumption that restorative justice is a desirable alternative or addition to the criminal justice system, it was important to identify key factors that have proven to be beneficial or a hindrance to putting restorative justice on a stable, sustainable footing and attributing it a more than peripheral role in criminal justice practice, as well as solutions for overcoming these obstacles based on experience from other European countries.

Five years after the first edition of the European volumes on ‘Restorative Justice and Mediation in Penal Matters’ (Dünkel, Grzywa-Holten & Horsfield, 2015) the idea was born to expand a second edition on the European landscape to all European jurisdictions and to integrate it into a worldwide encyclopaedia on restorative justice. In cooperation with Ivo Aertsen (KU Leuven) and Jennifer Llewelyn (Restorative Research, Innovation & Education Lab, Halifax, Canada) as general editors of the 6 volumes covering all continents (Africa, Asia, Europe, Latin America, North America, Oceania, including Australia and New Zealand, and a summary report of the general editors), we as the regional editors for Europe developed a draft content for the European volume by the end of 2020. The process of identifying national experts for the 48 countries or jurisdictions and acquiring the national reports proved to be time-consuming, spanning altogether more than three years (from the beginning of 2021 until March 2024).

In the beginning we had to draw up and finalise the list of authors. Most of those involved in the first edition of the European volume were ready to continue working on the project. It was more difficult to find experts in the 12 additional countries compared to the first edition (Dünkel, Grzywa-Holten & Horsfield, 2015) and we needed almost a year to complete the list of authors. The list of experts is a mixture of academics specialising in restorative justice from the fields of criminal law, criminology, youth justice, and also of practitioners working in the criminal justice system, some experienced mediators with considerable experience as facilitators and diverse other professional backgrounds. It proved particularly challenging to find experienced and reliable experts (see also Nelken, 2017: 430 f.) in some countries which had only recently begun to implement law reforms related to restorative justice.

Furthermore, we would like to acknowledge the difficult conditions that some of our contributors (e.g., Ukraine, Israel, and beyond) have faced and continue to face in all the countries and regions affected by war and conflict.

The further process involved editing, including proofreading by a native speaker, sending clarification requests to the authors etc. and actively engaging with their responses. This took us about two years, as some of the reports were only submitted by September/October 2023. From March to June 2024, we sent the final edited chapters for a last check to the authors as some of the reports risked becoming outdated, since the first chapters were submitted in March 2022. We received the last revised chapters by the end of August 2024. The present volume is now updated to about mid-2024.

The comparative analysis based on national reports needed another couple of months as again we had to contact some authors to verify the evidence we found in their reports.

From a methodological point of view comparative studies relying on national experts are somehow problematic as the editors have only limited access to control the literature and to understand specific law reform characteristics as well as the socio-political background which is necessary to appreciate reform developments, their successes and failures (see in general for the problems of comprehensive comparative research of numerous countries, Nelken, 2017; 2019 and above).

1.2 Definition of restorative justice

As mentioned above, there is no clear and consensually agreed definition of what restorative justice entails. In fact, a debate has recently emerged regarding the development of restorative justice, which also has an impact on the definition of the concept. Lode Walgrave (Walgrave, 2023), for example, warns that the increasing expansion of the term ‘restorative justice’ from its original criminal context to conflict resolution approaches in schools, workplaces and for changing social structures (‘transformative justice’) would lead to uncertainties regarding the definition and limits of restorative justice. He fears that broadening the term and concept would weaken the original strength and credibility of restorative justice, ultimately turning it into an intangible and vague ideology. On the other hand, he sees the danger of a narrow definition of restorative justice, which refers to doing justice after the occurrence of an offence, in that restorative justice could be co-opted by the criminal justice system, as just another variation of a conflict resolution approach that does not provide for equality between the parties involved (Walgrave, 2023: 353 ff.). He also emphasises the difference between (financial) reparation of damages and restoration, which, in contrast to reparation, is not intended to restore a previous state of affairs, but to resolve the conflict as a whole (Walgrave, 2023: 360 f.). Walgrave points out that an overly broad and imprecise definition of restorative justice makes the urgently

needed research on it more difficult. The article has sparked a wide-ranging debate that indicates that many restorative justice scholars favour a broader, context-related and process-oriented view of restorative justice, one that takes greater account of the social context and is reflected in a broad definition of restorative justice (e.g. Chapman, 2023; Braithwaite, 2023; Gonzalez & Schiff, 2023; Llewellyn, 2023). According to Llewellyn (2023: 472) for example, restorative justice offers a theory and approach that reshapes people's understanding of justice. Its foundation in a relational theory of justice, focused on the nature of relationships at various levels, requires it to be considered beyond the confines of the legal systems.

Another theoretical consideration is to link restorative justice values to theories of empowerment, as explained by O'Mahony & Doak (2017):

Recent theoretical developments have provided a coherent framework, rooted in the underpinning values of restorative justice and how these can then be translated into meaningful and effective engagements and outcomes (O'Mahony & Doak, 2017). O'Mahony and Doak's (2017) theoretical work has at its core empowerment theory, which crystallises the aim of restorative justice as fundamentally seeking to empower those who participate in its processes. It is an enabling theory, promoting an active and participatory role, including the interests of civil society and the participants. In essence, this theoretical work shows how the values and norms of restorative justice can be consolidated and clarified through an 'agency-accountability' framework. Agency is evidenced by the individual and collective autonomy of participants to make free and informed choices and to play an active role in decision making, which in turn bolsters levels of legitimacy and fairness in terms of both the process and outcomes. Accountability, on the other hand, is the willingness to be held to account and to hold others to account, witnessed through participants rendering themselves accountable in a positive and empowering sense, taking active responsibility and seeking to put things right (Butler & O'Mahony in chapter 33 of the European volume of the encyclopaedia).

Since the concept for the European volume of the encyclopaedia is linked to the previous study, it was clear to us editors from the outset that we wanted to focus on the role of restorative justice in criminal law and criminal procedural law. In this respect, it is not necessary for us to position ourselves in the current debate about the definition. Nevertheless, we agree with all those involved in the current discussion, that the core values and principles that guide the practice of restorative justice define restorative justice in itself. In this reading, restorative justice (in

criminal matters and beyond) are all forms of processes that observe the core values and principles. These include aspects such as truthful and respectful communication, accountability, equal concern, and voluntary participation (see Marshall, 2020: 104).

In order to have a clear perspective for our comparative work, we have followed the definitions developed in international standards of the Council of Europe, the UN and the European Union mentioned above (see 1.1, footnote 3). In the outline structure given to the authors we therefore proposed the following conceptual and terminological framework for ‘restorative justice’, according to authoritative European and international standards:

‘Restorative justice’ means 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 (Directive 2012/29/EU, Art. 2.1.d). Almost identically the Council of Europe Recommendation CM/Rec (2018) 8, Rule 3 reads as follows: ‘Restorative justice refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the ‘facilitator’).

The European Forum for Restorative Justice also emphasises the communicative process of restorative measures and outcomes: ‘Restorative Justice is an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved’ (European Forum for Restorative Justice, 2018: 3-4; 2021: 11).

And finally, the United Nations defines restorative justice as follows: ‘Restorative justice is an approach that offers offenders, victims and the community an alternative pathway to justice. It promotes the safe participation of victims in resolving the situation and offers people who accept responsibility for the harm caused by their actions an opportunity to make themselves accountable to those they have harmed. It is based on the recognition that criminal behaviour not only violates the law, but also harms victims and the community.’ ‘The term ‘restorative justice programmes’ is given the same broad definition as that found in the Basic Principles, that is: ‘any programme that uses restorative processes and seeks to achieve restorative outcomes’. The emphasis in this definition is clearly on a participatory process defined as ‘any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator’ (United Nations Office on Drugs and Crime, 2020: 4-5).

The *CM/Rec (2018) 8 concerning restorative justice in criminal matters* in Rules 3-8 entails definitions of restorative justice focusing on the process and dialogue in restorative procedures (Rule 3 and 4), giving examples of restorative measures and stating that restorative justice measures may be used at any stage of the criminal procedure and also in the post-sentencing stage (Rule 6).⁷ The basic principles of restorative justice in Rules 13-17 emphasise the core issues of voluntariness, deliberative, respectful dialogue, equal concern for the needs and interests of those involved, procedural fairness etc. (see Rule 13 and 14), and the principle of confidentiality (Rule 17).⁸

As noted, for the scope of our project and in keeping with the definitions mentioned above, we focus specifically on restorative justice within the context of criminal justice. However, some country reports also highlighted the emergence of restorative practices in other areas, such as

⁷ The relevant Rules 4-8 read as follows:

4. *Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals and members or representatives of affected communities. ...*

5. *Depending on the country in which it is being used and the manner in which it is administered, restorative justice may be referred to as victim-offender mediation, penal mediation, restorative conferencing, family group conferencing, sentencing circles or peacemaking circles, inter alia.*

6. *Restorative justice may be used at any stage of the criminal justice process. For example, it may be associated with diversion from arrest, charge or prosecution, used in conjunction with a police or judicial disposal, occur before or parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after a sentence has been passed or completed. Referrals to restorative justice may be made by criminal justice agencies and judicial authorities or may be requested by the parties themselves.*

7. *The need for judicial supervision is greater if restorative justice will have an impact on judicial decisions, as when the discontinuation of prosecution depends on an acceptable settlement, or when the agreement is put to court as a recommended order or sentence.*

8. *Practices which do not involve a dialogue between victims and offenders may still be designed and delivered in a manner which adheres closely to the basic principles of restorative justice.*⁹

⁸ Rules 13-17 read as follows:

13. *The core principles of restorative justice are that the parties should be enabled to participate actively in the resolution of crime (the principle of stakeholder participation), and that these responses should be primarily oriented towards addressing and repairing the harm which crime causes to individuals, relationships and wider society (the principle of repairing harm).*

14. *Other key restorative justice principles include: voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; collective, consensus-based agreement; a focus on reparation, reintegration and achieving mutual understanding; and avoiding domination. These principles may be used as a framework with which to underpin broader reforms to criminal justice.*

15. *Restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of the other. Rather, it provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible.*

16. *Restorative justice is voluntary and shall only take place if the parties freely consent, having been fully informed in advance about the nature of the process and its possible outcomes and implications, including what impact, if any, the restorative justice process will have on future criminal proceedings. The parties shall be able to withdraw their consent at any time during the process.*

17. *Restorative justice should be performed in a confidential manner. The discussions in restorative justice should remain confidential and may not be used subsequently, except with the agreement of the parties concerned (see Rule 53).*

school settings or applications related to environmental issues (see in particular the national reports of *Belgium* [Aertsen in chapter 6 of the European volume] and the *Netherlands* [Claessen, Wolthuis & Slump in chapter 32 of the European volume]). These examples were included to illustrate some innovative practices in the wider field of restorative justice practice. Regarding the terms ‘victim’ and ‘offender’: research, practice and international standards have increasingly adopted more humanising and less stigmatising language, using ‘persons harmed’ and ‘responsible persons’ or similar terms. In this introduction and in the summarising analysis, we use these terms interchangeably.

To sum up, we differentiate and define restorative justice in a continuum of *fully, mostly* and *partly* restorative justice measures and practices.

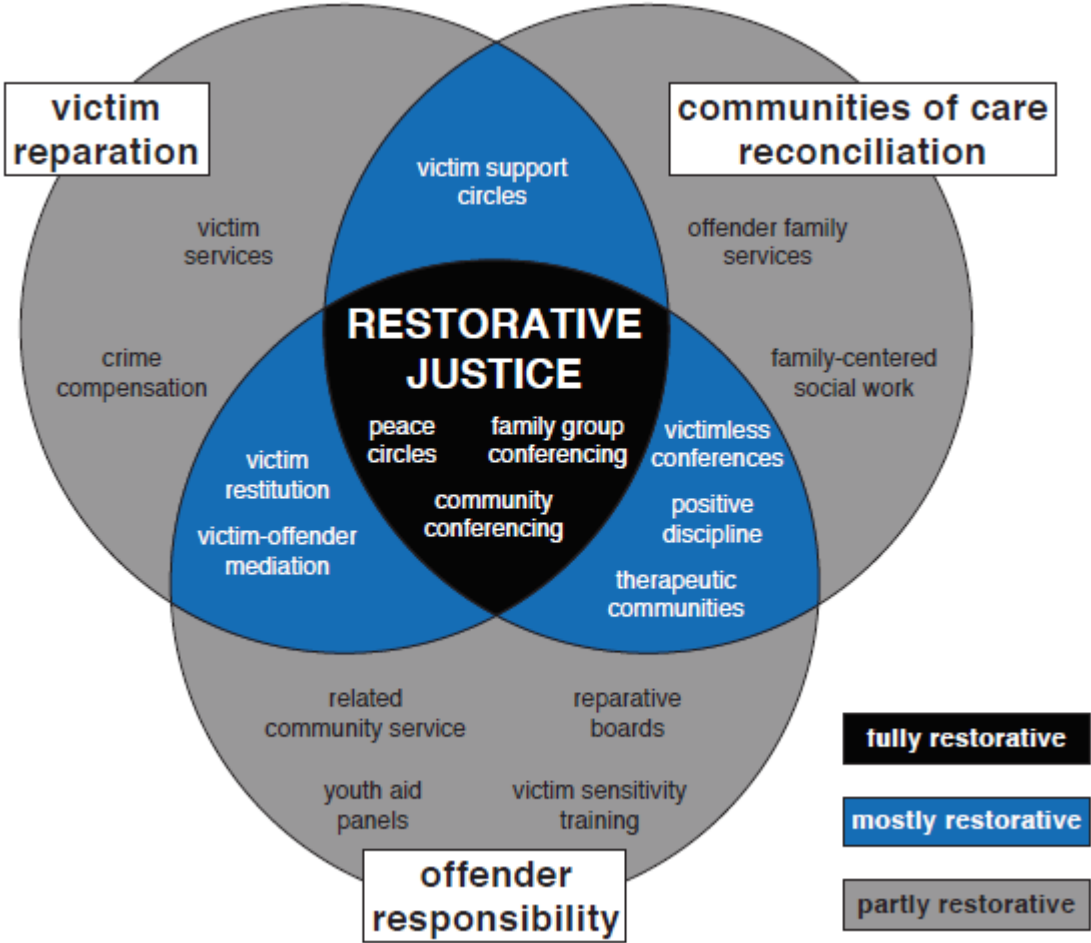


Figure 1: Restorative Justice Typology (Source: Wachtel, 2016: 4)

In accordance with Wachtel (2016: 3) restorative justice may be seen as ‘a process involving the primary stakeholders in determining how best to repair the harm done by an offense. The three primary stakeholders in restorative justice are victims, offenders and their communities

of care, whose needs are, respectively, obtaining reparation, taking responsibility and achieving reconciliation.’ Different forms of conferencing and circles are fully, mediation is mostly restorative (in particular, if practised by a direct exchange of victims and offenders, in contrary of forms of indirect ‘shuttle mediation’), whereas crime compensation, community service or victim sensitivity training under certain circumstances are partly restorative. They are characterised by the Council of Europe recommendation (2018)⁸ as ‘restorative elements’, which should be supported. ‘Innovative approaches to reparation, victim recovery and offender reintegration’ may ‘closely adhere to restorative justice principles’ (see Rule 59) and therefore are included in our study (see e.g. section 2. below).

1.3 Structure and outline of national reports

In order to take stock, the regional editors commissioned national reports from authors (practitioners, academics, representatives of NGOs and relevant Ministries) in each of the participating countries that cover a wide range of topics and issues. To facilitate comparability, the authors were requested to adhere to a predetermined report structure comprising 5 sections that were structured as presented in Table 1 below.

The structure of the national reports follows a wide definition of restorative justice as described, referring to the definitions and basic principles mentioned above under section 2. This concept of restorative justice implies restorative justice measures in a narrow definition on the one hand (in particular mediation, restorative conferencing etc.), as well as forms of restoring the damage caused by offenders through not always consensual agreements between victims and offenders, which may be ‘ordered’ by justice agencies (police, prosecutors or courts) in order to repair harm and satisfy the needs of victims (reparation, restitution orders etc.). Restorative measures in a wider sense may include rehabilitative victim-oriented measures while executing prison and other sentences as explicitly enumerated in the Council of Europe Recommendation CM/Rec (2018) 8, Rules 59-62. In this context Rule 59 states that ‘while restorative justice is typically characterised by a dialogue between the parties, many interventions which do not involve dialogue between the victim and offender may be designed and delivered in a manner which adheres closely to restorative justice principles (see further on this topic Rosenblatt & Adamson, 2023). This includes innovative approaches to reparation, victim recovery and offender reintegration.’ Restorative principles may be applied in a wide range of organising the

criminal justice system (see CM/Rec (2018) 8, Rule 61).⁹ Therefore the structure of national reports gives special emphasis on new developments to address conflict resolution in prisons and probation settings (see below section 2.3 of the outline structure).

Table 1: Outline of the national reports

<p><i>Section 1: Origins, aims and theoretical background of restorative justice</i></p>
<p><i>1.1 Overview on forms of restorative justice in the criminal justice system</i> What kinds of restorative justice interventions are available (victim-offender mediation; restorative group conferencing; restorative circles; police restorative cautioning; court initiated restorative sanctions like reparation orders; community reparation boards; restorative justice interventions in prisons etc; stand-alone measures/interventions or ancillary interventions (e.g. combined with probationary supervision) in general)?</p>
<p><i>1.2 Reform developments</i> Outline of the relevant (historical) reform developments that led to the introduction of restorative justice (theoretical foundations for restorative initiatives and developments; top-down or bottom-up reform, introduction through localised pilots or nationwide implementation through the law etc.).</p>
<p><i>1.3 Contextual factors and aims of the reforms</i> An account of the contextual factors/circumstances underpinning the reforms (presence of a political will? What was the overall criminal and penal context and the political backdrop at the time of the reforms? Victims’ rights movement, offender-oriented strategies for developing community sanctions?) What were the aims that were being followed by introducing restorative justice into the criminal justice system? (failing of traditional CJS in meeting needs of stakeholders; diversion; reducing workload of formal justice system; general developments towards awareness and/or better and clearer communication ...)</p>
<p><i>1.4 Influence of international standards</i> What role (if any) did international instruments play in bringing the reforms about and in shaping the reforms (e. g. the Council of Europe’s Recommendation on Mediation in Penal Matters, Rec(1999)19) and more recently the Recommendation on Restorative Justice in Criminal Matters, CM/Rec(2018)8; the EU Framework Decision of 2001 and later the Directive 2012/29/EU, both on victims of crime; the jurisdiction of the European Court of Human Rights? Were restorative measures introduced in order to harmonise domestic law to international standards/recommendations etc.? Do you have (evaluative) data on the transposition of (European) regulations in your country (related to restorative justice)?</p>

⁹ Rule 61 reads as follows: *Restorative principles and approaches may be used proactively by judicial authorities and criminal justice agencies. For example, they could be utilised to build and maintain relationships: among staff within the criminal justice system; between police officers and members of the community; among prisoners; between prisoners and their families; or between prisoners and prison officers. This can help to build trust, respect and social capital between or within these groups. Restorative principles and approaches may also be applied proactively by judicial authorities and criminal justice agencies when making managerial decisions and consulting staff, and in other areas of staff management and organisational decision-making. This can help to build a restorative culture within these organisations.*

Section 2: Legislative basis for restorative justice at different stages of the criminal procedure

The purpose of this section of the report is to describe at which stages of the criminal procedure restorative justice processes can be initiated, what the preconditions are, etc., see the questions below. The content and organisation of restorative justice interventions themselves and the processes and outcomes they entail shall be covered in sections 3. and 4. Section 2 should be structured so that each stage of the criminal procedure (pre-court/pre-charge level, court level (trial and sentencing stage), post-sentencing level) at which restorative justice processes can be initiated is dealt with in a separate sub-section. If the same type of restorative justice process or intervention can be applied throughout the whole criminal justice procedure (possibly including post-sentence), then it suffices to repeat in a summarising way what is already explained for that type of intervention in the previous phase, indicating the specific legal context if needed. If there are different legislative provisions governing the application of restorative justice for adults and juveniles, these should be dealt with separately from each other and contrasted. The structure would then look like as follows:

2.1 Pre-court/Pre-charge level (police and prosecution service)

2.1.1 Adult criminal justice

2.1.2 Youth/juvenile justice

2.2 Court (Trial and sentencing) level (Restorative processes as independent or ancillary court-ordered sanctions)

2.2.1 Adult criminal justice

2.2.2 Youth/juvenile justice

2.3 Restorative Justice elements in the post-sentencing stage while serving prison or other sentences (restorative conflict resolution in prisons, victim awareness programmes, empathy-training programmes, victims-meet-offenders programmes, restorative interventions/programmes as conditions of early release, restorative interventions/programmes as part of probation, home confinement or as part of other community sanctions or measures)

2.3.1 Adult criminal justice

2.3.2 Youth/juvenile justice

Each subsection should cover the following issues (both for juvenile and adult criminal justice insofar as there are differences):

Who is responsible for making the decision to initiate restorative justice processes? Are there non-criminal justice related agencies who can refer cases to restorative justice services, and under which conditions? Can restorative justice processes be initiated also by the victim and/or the offender themselves, or by their support persons or representatives? Which persons are the processes applicable to, and what are the preconditions for such interventions? (*target group in terms of age of offender and victim, offence type/severity, criminal history of offender, evidential requirements, consent and/or admission of guilt; only possible if victim participates?; mandatory or discretionary application of restorative justice processes, etc.*);

What are the consequences/effects of (un)successful restorative justice interventions on sentencing/outcomes/procedure/sentence length (*no effects, sentence mitigation, restorative justice as sole intervention, early release etc.*)?

Are, for victims and offenders, rights to appeal/legal representation/translation and other procedural/due process safeguards in place, both regarding the issuance of restorative justice processes, and regarding the consequences thereof? Are there complaint procedures and authorities available?

Do special conditions apply for particular categories of vulnerable participants (e.g. children, victim-survivors in cases of sexual/family violence, older persons)?

Section 3: Organisational structures, restorative procedures and delivery

Having established the reform developments that led to the introduction of restorative justice into the CJS in section 1, and the stages of the procedure at which restorative processes are applicable in section 2, the third section is dedicated to a closer examination of the different interventions themselves once they have been initiated.

Please **structure** this section 3 so that each measure is dealt with in a separate sub-section, for example:

- 3.1** *Victim-offender mediation*
- 3.2** *Restorative conferencing*
- 3.3** *Restorative circles*
- 3.4** *Reparation, restitution orders etc.*
- 3.4** *Restorative interventions in prison or (closed) youth institutions*
- 3.5** *Others*

Please give a descriptive account for each restorative justice intervention available in your country, covering the following issues:

Please provide a descriptive overview of the restorative process involved once it has been initiated (*the procedure of the intervention itself*)

Who are the participants/stakeholders in restorative justice processes/interventions and how is participation secured? (*victims, offenders, family members, mediators/facilitators, police officers, social workers, legal representation etc.*)

Who are the central coordinating and funding agencies/ministries/bodies and how is the delivery/execution of restorative processes and interventions organised in terms of inter-agency collaboration and communication strategies? Are there time limits in place for the duration between the intervention being initiated and completed?

Are there – besides the law – official standards on restorative justice available in your country (values, principles, ethical rules or codes), who is issuing these standards, and who is responsible for implementing/controlling them?

Who is responsible and authorised for the actual delivery of restorative services (conducting mediation/conferences etc.) (public/private/voluntary sector/organisations; private mediators)?

What qualifications are required for persons responsible for mediation and/or other forms of restorative justice?

What forms of relevant staff training – both of judicial staff (including public prosecutors, judges and lawyers) and of mediators/facilitators/specialist restorative justice staff – are provided, and who delivers this training?

Who bears the costs arising from the restorative justice intervention (*the State? The offender? Others?*)?

If there are differences according to different stages of the criminal procedure at which the intervention is ordered (pre-court mediation vs. court-initiated mediation, prosecutorial conferences vs. court-initiated conferences etc.), please describe them. The same applies if the interventions are organised differently for juveniles and adults (this could be realised by a sub-structure 3.1.1, 3.1.2 etc.).

Section 4: Research, evaluation and experiences with restorative justice

4.1 Theoretical studies

4.2 Statistical data on the use of restorative justice processes

4.3 Findings from implementation research and evaluation

4.4 Other critical (non-evaluative) research

Please provide information the following questions, where available:

Have there been theoretical studies (from various disciplines) on the foundation or development of restorative justice in your country? What may have been the most important theoretical streams in this respect?

Are there statistical data on the use of restorative justice interventions and the (possible) effects of restorative justice on court sentencing / diversion / post-sentencing level? Is there a uniform data recording system available for restorative justice processes? Can you present the most important figures for the respective restorative justice types of programmes on an annual basis (indicating how cases have been counted)?

Are restorative justice practices such as mediation nationwide or only in parts of the country implemented? Are there regional/geographical variations in the use of RJ measures?

Are there research evaluations/studies on restorative justice programmes and processes of which key findings could be briefly presented or referred to? (*studies on the implementation of restorative justice services; comparative recidivism analyses; victim participation levels; satisfaction levels among stakeholders; stakeholders' perceptions of the procedure and the intervention; (economic) cost-benefit analyses; staffing and funding levels etc.*); *research according to quantitative and/or qualitative methodologies; was there a cooperation with European or international (research or other) projects?*

When is a restorative intervention/process deemed successful/What are the indicators for a successful restorative process?

What have been the positive experiences with restorative justice, and which factors can be identified as being central to these positive experiences?

What are problems that the restorative justice programmes have faced, both in theory and in practical delivery? (*limited number of cases; selectivity in cases; net-widening; proportionality issues; undermining of procedural and human rights safeguards; infrastructural issues due to lack of funding; Why is there a lack of funding? Are there bureaucratic obstacles? Conflicts in professional cultures? Resistance or a lack of knowledge from the side of judicial actors? Role of public opinion and the media? How have these issues been responded to in your country?*) Could any factors be identified that are central to these problems?

Section 5: Summarising analysis and perspectives

Summary of key insights in terms of factors – theoretically and/or practically – that are/have been beneficial or a hindrance to the successful initiation, implementation, organisation and delivery of restorative justice processes and interventions? Was (is) there a coordinated policy approach or a pre-dominant or leading influence from another factor? What are the main achievements and the main challenges?

What has been (or is) the position and the role of restorative justice in relation to juvenile or criminal law reform? How was (a concept of) restorative justice translated into legislation and how did legal frameworks shape the developing ideas and practices of restorative justice? How has restorative justice been received by criminal justice practitioners and policy makers in your country? Which role did restorative justice play in judicial and/or governmental policymaking?

How is the relationship of restorative justice programmes to the field of 'restorative practices' in other sectors of society (schools, neighbourhoods, workplaces, ...)? Is there a legal, organisational or factual link between these fields at the local and or national (policy) level?

Are there other types of programmes or partnerships developing, that relate to, or support restorative justice without being formally part of criminal justice procedures? Examples can be: restorative justice inspired programmes for sexual harassment within universities or other institutions, or initiatives such as restorative cities to create societal and public support for restorative justice.

Along the same line: can you say that restorative justice in your country is part of a wider societal-participatory-democratic movement, and are there relevant initiatives, structures or networks functioning in this respect?

Are there any reforms in restorative justice (in criminal matters or broader) in planning?

What is the current climate in public debate, politics and rhetoric, both directly related to restorative justice and to criminal justice and security policies in general?

What does the future of restorative justice in your country look like?

The second step was to create a snapshot of what forms of restorative justice exist in Europe, how widespread they are, how they tie into the formal criminal procedure (if at all), how exactly they have been strategically and organisationally implemented, the role they play in criminal justice practice, and what factors have been decisive in attaining that role. What is there in Europe today? What role does restorative justice play in criminal justice practice in Europe? What have been recurring problems that countries have faced in introducing sustainable restorative justice initiatives that are not limited to the outermost margins of criminal justice practice, or rather that are used closer to their full quantitative potential? What have these obstacles been? And what can be (and what has been) done in order to overcome those obstacles? The study at hand sought to make a contribution to answering these questions.

Indeed, a range of previous studies¹⁰ have been conducted using a similar methodological approach and with similar objectives in mind – to create a snapshot of restorative justice in Europe,¹¹ and to subsequently draw conclusions from comparisons of approaches, problems and solutions so as to be able to inform best practices for future (research) endeavours, be they legislative, practical or both. The Greifswald study of 2015 was the first attempt for a comparative analysis to cover Europe completely. The expansion from 36 to 48 jurisdictions in the present European volume reflects the growing developments in the field, as exemplified by the studies referenced above. It was deemed more likely than not that, since the publication of these previous studies, significant developments in theory and practice will have taken place. New laws have come into force, the catchment area of local practice initiatives might have been

¹⁰ For instance, Miers & Willemsens, 2004; Mestitz & Ghetti 2005; Pelikan & Trenczek, 2008; Gönczöl, 2010; Mastropasqua et. al., 2010; Miers & Aertsen, 2012; Lummer, Hagemann & Tein, 2011; Pitsela & Symeonidou-Kastanidou, 2013, or Vanfraechem, Bolivar & Aertsen, 2015)

¹¹ Other international comparative compilations represent only some countries or jurisdictions as an example of the reform development concerning restorative justice, see Wolhuis & Chapman, 2022 (from a children's rights perspective) or on certain issues such as restorative conferencing, see Zinsstag & Vanfraechem, 2012.

expanded (potentially to a nationwide provision) since the past studies, or alternatively such initiatives might in the meantime have entirely ceased to exist as a result of changed economic, political, cultural or social contexts.

Likewise, such contextual factors might well have affected the role that restorative justice plays in practice, the quality of services and the problems that countries have been facing in their attempts to put restorative justice schemes on stable and sustainable foundations. In other words, the lack of rigidity in the field of restorative justice, as in the precise definition of the concept in general, makes continuous updates of the picture that we have of the landscape equally as important as more in-depth evaluation and action research that seeks to identify and implement best practices in a particular context (Vanfraechem & Aertsen, 2010). In light of Rule 34 of Council of Europe Recommendation R (99) 19 and Rule 66 of CM/Rec (2018) 8, which calls for Member States to promote research on and evaluation of restorative justice (schemes),¹² it was likely that, in the meantime, appropriate statistical data and research results had become available, thus providing more material on which to base assessments of effectiveness, desirability and potential than had previously been the case.

There are always new lessons to be learned, even if those lessons were to serve ‘merely’ as confirmation that the problems countries are facing had remained virtually the same. That would be an important finding in itself, as it could serve as an indication that previous strategies to address these problems had either not worked, had been misunderstood or implemented inadequately or not been tried at all. So, in brief: there is nothing to lose in reassessing the situation. The fact that the European Commission shared this view by promoting the project of the University of Greifswald in the early 2010s serves only to support this perception.

A particular characteristic of the present study that makes it different from past studies is that it covers a wider scope. First and foremost, it seeks to compile information on restorative justice in the context of criminal matters from a very large pool of countries to provide as complete a picture as possible. A total of 48 European countries are represented in the study.

Further, the scope is wider because, unlike in the majority of other comparable studies, the focus of investigation was not restricted to narrow definitions or conceptualisations of what should fall under the term ‘restorative justice’ in the context of the study. The previous study was based on a conceptual framework that incorporated both ‘encounter’ and ‘outcome’ oriented definitions of restorative justice. The definitions of ‘restorative processes’ and

¹² Rule 66 of the CM/Rec (2018)8 reads as follows: ‘Member States should promote, assist and enable research on restorative justice, and facilitate the evaluation of any schemes or projects which they implement or fund. Restorative justice services of all kinds should allow and assist in the independent evaluation of their service.’

‘restorative outcomes’ as provided in Articles 2 and 3 to Resolution 2002/12 of the United Nations Economic and Social Council (2002) on basic principles on the use of restorative justice programmes in criminal matters provided the starting point. According to Article 2 of the resolution, a restorative process is *‘any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.’* Article 3 reads *‘Restorative outcomes are agreements reached as a result of a restorative process. [They] include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.’* These definitions enabled us in the previous study to cover restorative practices like victim-offender-mediation and restorative conferencing that involve a facilitated encounter between victim and offender, in which the parties to the offence voluntarily and actively work together to mutually agree an approach to resolving it, for instance through reparation. However, using such a definition excludes many initiatives that imply the delivery or making of reparation or restitution without a preceding restorative process having taken place – practices that are in fact widespread in Europe today, in the form, for instance, of reparation orders, community service orders, or legal provisions allowing prosecutorial or court diversion on the grounds that amends have been made, harm has been repaired. We therefore decided to widen the scope of what should be covered in the project so as to include pathways through which making reparation is facilitated in and has an effect on the criminal justice process. Nonetheless, in order to be included, they have to be performed voluntarily, implemented in a manner that is neither stigmatising nor repressive, and should not be classed as forms of punishment, but rather as interventions that serve to foster offender responsibility and reintegration through the experience of making amends. Therefore, the restorative character of community service orders by prosecutors or courts is to be questioned (see also chapter 50 of the European volume).

Applying this wide conceptual framework for what should be regarded as ‘restorative’ was not without its pitfalls. However, at the same time, it was envisaged that this scope would allow for a more complete picture of the situation in Europe today that does not exclude a certain understanding of the concept right from the outset.

1.4 Participating countries

The present volume covers all European jurisdictions apart from very small countries such as Andorra, Faeroe Islands, Monaco, Liechtenstein, or San Marino, which internationally are represented by their neighbouring states like Denmark, Italy or Austria. Compared to the first edition of the European compilation in 2015 (Dünkel, Grzywa-Holten & Horsfield, 2015) 12 jurisdictions could be added, which are highlighted in the table and are shaded in gray.

Table 2: Countries covered in the study

1. Albania	17. Georgia	33. Northern Ireland
2. Armenia	18. Germany	34. North Macedonia
3. Austria	19. Greece	35. Norway
4. Azerbaijan	20. Hungary	36. Poland
5. Belarus	21. Iceland	37. Portugal
6. Belgium	22. Ireland	38. Romania
7. Bosnia & Herzegovina	23. Israel ¹³	39. Russia
8. Bulgaria	24. Italy	40. Scotland
9. Croatia	25. Kosovo	41. Serbia
10. Cyprus	26. Latvia	42. Slovakia
11. Czech Republic	27. Lithuania	43. Slovenia
12. Denmark	28. Luxembourg	44. Spain
13. England & Wales	29. Malta	45. Sweden
14. Estonia	30. Moldova	46. Switzerland
15. Finland	31. Montenegro	47. Turkey
16. France	32. Netherlands	48. Ukraine

¹³ Israel geographically does not belong to Europe. However, the Israeli authors within the framework of the Encyclopaedia preferred to be part of the European and not the Asian volume of the encyclopaedia. This may for cultural and historical reasons be reasonable and we gladly complied with this suggestion.

- 2. Overview on forms of restorative justice in the criminal justice system, reform history and legal basis for restorative justice in the pre-court, court- and post-sentencing stage**
- 2.1 Overview on forms of restorative justice in the criminal justice system**

This section of the report offers an overview of the restorative justice landscape. It examines the kind of interventions available across the countries and jurisdictions included in this study. Later in the report, we provide more detailed information about the legal preconditions for applying restorative measures (see 2.1 und 2.2 below) and on the extent of their coverage (see 4.2).

Table 3: Restorative measures in the criminal justice system – pre-trial stage (diversionary measures, out of court conflict resolution etc.)

Country	Victim-offender mediation/ reconciliation*		Conferencing		Restorative circles		Reparation, restitution orders (by police or prosecutor)		Others/Remarks
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Albania	X	X	X	No	No	No	X	X	
Armenia	X not practiced	X not practiced	No	No	No	No	X	X	
Austria	X	X	X	X	X	X	X	X	
Azerbaijan	(X) not practiced	No	No	No	No	No	X	X	
Belarus	X	X	No	No	No	No	No	No	
Belgium	X	X	No* ¹⁴	No*	No*	No*	X	X	
Bosnia-Herzegovina	X	No	No	No	No	No	X	X	
Bulgaria	X	No	No	No	No	No	X	No	
Croatia	X	X	No	No	No	No	X	X	
Cyprus	X	(X) only in domestic violence cases	No	No	No	No	X	No	
Czech Republic	X	X	X	X	No	No	X	X	
Denmark	X	X	(X) pilot project	No	No	No	X	X	
England & Wales	X	X	X	No	No	No	X	X	

¹⁴ Conferencing and circles can be applied occasionally, but are not explicitly regulated by law and are certainly not regular practice in Belgium.

Country	Victim-offender mediation/ reconciliation*		Conferencing		Restorative circles		Reparation, restitution orders (by police or prosecutor)		Others/Remarks
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Estonia	X	X	No	No	No	No	X	X	
Finland	X	X	No	No	No	No	X	X	
France	X	X	X	No	No	No	X	X	
Georgia	X (up to the age of under 21)	No	No	No	No	No	X	X	
Germany	X	X	X	No	No	No	X	X	
Greece	X	X	No	No	No	No	X	X	
Hungary	X	X	No	No	No	No	X	X	
Iceland	X	X	X	No	No	No	No	No	
Ireland	X	(X)*	X	X	No	No	No	No	* only theoretically possible, but no referral path-ways and no practice
Israel	X*	X*	X	X	X (Parents circles)	X ¹⁵ (Palestinian-Israeli community circles)	X	X	* VOM defined as VO-confer.
Italy	X	X	X	X	X	X	X	X	
Kosovo	X	X	No	No	No	No	X	X	
Latvia	X	X	X	No	No	No	X	X	
Lithuania	X	X	No	No	No	No	X	X	
Luxembourg	(X)	X	No	No	No	No	X	X	
Malta	No	No	No	No	No	No	No	No	
Moldova	X	X	No	No	No	No	X	X	

¹⁵ Further Voluntary Conferencing: Israeli -Palestinian 'Parents' Forum' & 'Combatants for Peace'

Country	Victim-offender mediation/ reconciliation*		Conferencing		Restorative circles		Reparation, restitution orders (by police or prosecutor)		Others/Remarks
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Montenegro	X	X	No	No	No	No	X	X	
Netherlands	X	X	X	X	X	X	X	X	
Northern Ireland	X	No	X	(X) ¹⁶	No	No	X	X	
North Macedonia	X	X	No	No	No	No	X	X	
Norway	X	X	X	X	X	X	X	X	
Poland	X	X	(X) pilot experiments	No	No	No	X	X	
Portugal	X	X	No	No	No	No	X	X	
Romania	X	X	No	No	No	No	X	X	
Russia	X	No	(X) only except. individual Cases of FGC.	No	No	No	No	No	
Scotland	X	(X)	X	(X) ¹⁷	No	No	X	X	
Serbia	X	X	No	No	No	No	X	X	
Slovakia	X	X	No	No	No	No	X	X	
Slovenia	X	X	No	No	No	No	X	X	
Spain	X	X	No	No	No	X	X	X	
Sweden	X (up to the age of 20)	X	No	No	No	No	X	X	

¹⁶ Not legally provided, but theoretically possible if victims and offenders require it.

¹⁷ In general not in criminal proceedings at pre-trial stage, but services for victims of hate crimes planned to expand to adult victims.

Country	Victim-offender mediation/ reconciliation*		Conferencing		Restorative circles		Reparation, restitution orders (by police or prosecutor)		Others/Remarks
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Switzerland	X	(X) ¹⁸	No	No	No	No ¹⁹	X	X	
Turkey	X	X	No	No	No	No	X ²⁰	X	
Ukraine	X	X	No	No	No	No	X	X	

* Mediation includes cases where, after a successful mediation procedure and settlement or the reparation of the damages, paying reparation/restitution, making an excuse to the victim etc. the prosecutor/investigating judge dismisses the case according to the principle of opportunity with or without obligations. In some countries/jurisdictions a successful mediation procedure may lead to a decision to exempt the offender from criminal responsibility (see in particular Eastern European countries).

Some of these forms of ‘mediation’ (e.g. the conditional dismissal of the case, if an *obligation* ordered by the prosecutor to pay reparation of the damages caused is fulfilled) do not qualify as being ‘restorative’ as there is no principle of voluntary participation and if the offender participates only so that the case may be dismissed (discharge).

¹⁸ There is no legal basis on the federal level, however practised in some cantons.

¹⁹ It should be noted that circles are used at post-sentencing stage in several detention centres.

²⁰ Reparation or restitution is one of the conditions for postponing the filing of a public claim.

Table 4: Restorative measures in the criminal justice system – court stage (RJ measures as criminal sanctions; mitigating factor in sentencing etc.)

Country	Victim-offender mediation*/ reconciliation		Conferencing		Restorative circles		Reparation, restitution orders (by court)		Reparation/restitution as a mitigating factor in sentencing
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Albania	X	X	X	No	No	No	X	No	X
Armenia	X not practiced	X not practiced	No	No	No	No	X	X	X
Austria	X	X	X	X	No	No	X	X	X
Azerbaijan	No	No	No	No	No	No	X	X	X
Belarus	X	X	No	No	No	No	No	No	X
Belgium	X	X	X	No	No	No	X	X	X
Bosnia-Herzegovina	X	X	No	No	No	No	X	X Victim may submit civil claim for restitution	X
Bulgaria	X	X	No	No	No	No	X	X	
Croatia	X	X	No	No	No	No	X	X	X
Cyprus	X	No	No	No	No	No	X	X	X
Czech Republic	X	X	X	X	No	No	X	X	X
Denmark	X	X	No	No	No	No	X	X	X
England & Wales	X	X	X	No	No	No	X	X	X
Estonia	X	X	No	No	No	No	X	X	X
Finland	X	X	No	No	No	No	X	X	X
France	X	X	X	No	No	No	X	X	X
Georgia	X (up to the age of 21)	No	No	No	No	No	X	X	X
Germany	X	X	X	No	No	No	X	X	X
Greece	X	X	No	No	No	No	X	X	X
Hungary	No	No	No	No	No	No	X	X	X

Country	Victim-offender mediation*/ reconciliation		Conferencing		Restorative circles		Reparation, restitution orders (by court)		Reparation/restitution as a mitigating factor in sentencing
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Iceland	No	No	No	No	No	No	No	No	X
Ireland	X	X	X	X	No	No	No	X (compensation order)	X
Israel	X	X	X (VOM defined as Conf.)	X (VOM defined as Conf.)	No	No	X	X	X
Italy	X	X	X	X	X	X	X	X	X
Kosovo	No	No	No	No	No	No	No	No	No
Latvia	X	X	No	No	X	X (sex off.)	X	X	X
Lithuania	X	X	No	No	No	No	X	X	X
Luxembourg	Draft proposal	X	No	No	No	No	X	X	X (not necessarily, but if information is given to the criminal justice agencies)
Malta	X	X	No	No	No	No	X	X	X
Moldova	X	X	No	No	No	No	X	X	X
Montenegro	X	X	No	No	No	No	X	X	X
Netherlands	X	X	X	X	No	No	X	X	X
Northern Ireland	X	No	X	X	No	No	X	X	X
North Macedonia	X	X	No	No	No	No	X	X	X (theoretically)
Norway	X	X	X	X	X	X	X	X	X
Poland	X	No	No	No	No	No	X	X	X
Portugal	X	X	No	No	No	No	X	X	X
Romania	X	X	No	No	No	No	X	X	X

Country	Victim-offender mediation*/ reconciliation		Conferencing		Restorative circles		Reparation, restitution orders (by court)		Reparation/restitution as a mitigating factor in sentencing
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Russia	X ²¹	No	(X)	No	(X)	No	No	No	X
Scotland	(X)	No	X	No	No	No	X	X	X
Serbia	X	X	No	No	No	No	X	X	X
Slovakia	X	X	No	No	No	No	X	X	X
Slovenia	X	X	No	No	No	No	X	X	X
Spain	X	X	No	No	No	No	X	X	X
Sweden	No	No	No	No	No	No	No	No	X
Switzerland	X	(X) ²²	No	No	No	No	X	X	X
Turkey	X	X	No	No	No	No	X ²³	X ³	X
Ukraine	X	X	No	No	No	No	X	X	X

* Mediation includes cases where, after a mediation procedure has led to a settlement the judge/court dismisses the case, defers a sentence or takes any other sentencing option such as probation/suspended sentence instead of a harsher penalty, in particular imprisonment. Some of these forms of ‘mediation’ may not qualify as being ‘restorative’ as the principle of voluntary participation is doubtful, if the offender participates only for the case to be dismissed or to receive a milder sentence at the trial stage.

²¹ Restorative mediation is used (not dispute resolution, but for repairing harm, healing of the participants and providing for their future). Conferences and circles are sometimes used, but less often than restorative mediation. As a result, the judge can terminate the case or mitigate sentence. The law provides for the termination of a case due to reconciliation but does not envisage its procedure. However, restorative mediation in juvenile cases is taken into account by courts.

²² There is no legal basis on the federal level, however practised in some cantons.

²³ Reparation or restitution is one of the conditions for postponing the pronouncement of the sentence or for postponing a prison sentence, or it is an alternative sanction for short-term prison sentences.

To summarise, victim-offender mediation schemes remain the most widespread manifestation of restorative justice in Europe. In recent years, conferencing approaches, particularly for young persons in conflict with the law, have been increasingly implemented in several countries. In contrast, circle processes have not gained much prominence across the European landscape beyond the pilot stage.

Tables 3 and 4 offer an initial overview of restorative justice options at different stages of the criminal justice process: pre-trial, court and post-sentence, including a distinction between their applicability in youth and adult criminal justice. As a summary overview, the tables refer both to measures provided for by law and/or implemented in practice, as in some countries there are practices without (explicit) legal provisions for them, for example within the general regulations of diversion and the discretionary power of prosecutors or judges to dismiss a case because of a successful mediation procedure or reparation made by the offender. The tables show that *victim-offender mediation* or reconciliation is available in 47 out of the 48 countries included in the study.²⁴

Conferencing schemes are less widespread but have been gaining increasing importance in several countries in recent years. Restorative conferences, mainly for young people, are reported to be available (at least at an experimental stage) in 18 of the 48 countries.

Regarding *circle processes*, 8 country reports refer to the existence of such practices at certain stages of the criminal proceedings. Some countries, such as *Albania* and *Russia* refer to the use of restorative circles in school settings to address offending behaviour.²⁵

Regarding terminology, we refer to the Introduction of the European volume and section 1.2 above with the notion that similar processes may be named differently.

Almost all countries (46 out of 48) provide for *reparation schemes* that include some form of restorative elements.

At the *pre-trial stage*, victim-offender mediation for juveniles is available in 47 countries, and for adults in 41 countries. Conferencing can be applied in 18 countries for juveniles (including *Denmark*, *Poland* and *Russia*, where only small pilot projects exist), and 9 countries for adults

²⁴ In Azerbaijan, victim-offender mediation has been piloted for young persons.

²⁵ We did not focus on restorative practices in civil society settings such as schools or other community-based institutions. We assume that there are more widespread experiences of conflict settlements, which may also concern criminal offences, although they are not mentioned in the national reports presented in this volume (see e.g. Germany, the Netherlands and a few other countries).

(including *Northern Ireland* and *Scotland*, where only exceptionally conferences may take place).²⁶

5 countries provide for *circle processes* at the pre-trial stage for both juveniles and adults.

At the *court stage*, *victim-offender mediation* can be used in 43 countries for young people (including *Armenia*, where no practice exists yet, and *Luxembourg*, where it is provided in the draft youth justice law to be enacted probably in 2025) and in 38 countries for adults. *Conferencing* is provided for in 14 countries for young people included *Israel*, where victim-offender mediation (VOM) is defined as conferencing, and included *Russia*, where some traditional forms of conferencing exist in rural, peripheric areas) and in 8 countries for adults (including *Israel*).

Some form of circle process in the context of offending behaviour can be applied in 3 countries, for young people as well as for adults, at the court level, in addition the authors of the *Russian* chapter report some cases in the field of youth justice.

²⁶ The legal terminology varies sometimes: In *Albania*, family and group conferencing are referred to as ‘family mediation’ and ‘group mediation’ in the law (Code of Criminal Justice for Children).

2.2 Reform developments: The emergence of restorative justice in criminal justice systems – Contextual factors and aims of reforms

The project and its objectives must be set against the backdrop of an unprecedented growth in the availability and application of processes and practices in Europe (and indeed the rest of the world) over the last few decades that seek an alternative approach to resolving conflicts: it has come to be termed ‘restorative justice’. The values reflected in restorative thinking are indeed not entirely new (Strickland 2004: 2), they can be traced back to various traditions around the world.

The gradual spreading of restorative justice in responding to criminal offences has been part of a general ‘rediscovery of traditional dispute resolution approaches’, with restorative processes and practices becoming more often used in community, neighbourhood, school, business and civil disputes.²⁷

The modern concept of restorative justice was originally formulated in a theory by Nils Christie (1977: ‘conflicts as property’), and builds on the view that the traditional criminal justice process is an inadequate forum for resolving conflicts between victims and offenders and for meeting both their needs and those of the wider community in which their conflict is set.²⁸ ‘Policymakers have become more concerned about the capacity of traditional criminal systems to deliver participatory processes and fair outcomes that are capable of benefiting victims, offenders and society at large.’ (Doak & O’Mahony, 2011: 1717).

The same applies to traditional state responses to offending, which tend to focus chiefly on punishment, deterrence and retribution as reactions to breaches of the criminal law. While in juvenile justice the focus and purpose of intervention may well lie in educational, rehabilitative or reintegrative interventions rather than punishment,²⁹ in the end, the conflict caused by an offence is principally viewed as being between the offender and the state and its laws,³⁰ and the process for resolving it is structured and conducted accordingly. Walgrave speaks of the ‘state monopoly over the reaction to crime’ (Christie, 1977: 1; Walgrave, 2008: 5).

‘Many expectations have been placed upon the criminal justice system and in recent years a new one has been added: it should focus more on victims.’ (Aertsen et al. 2004). Victims can

²⁷ For a look at the various ‘dimensions of restorative justice’ in this regard, see for instance Roche, 2006; see also Daly & Hayes, 2001: 2; Willemsens, 2008: 9; Wachtel, 2016.

²⁸ O’Mahony & Doak, 2009: 165 f.; Doak & O’Mahony, 2011: 1717; Strickland, 2004: 3.

²⁹ For a comprehensive overview of the juvenile justice landscape in Europe today, see *Dünkel et al.* 2011; *Muncie/Goldson* 2006; *Dünkel*, 2015; 2016; 2022; *Goldson*, 2019.

³⁰ *Doak/O’Mahony* 2011: 1,717; *Zehr* 1990; *Strickland* 2004: 2.

often feel abandoned by the system by not being involved in the resolution of the conflict to which they are a key party. Steps have been taken in the past to improve the standing of the victim in criminal proceedings in some countries, often as a result of growing victims' movements and research in the field of victimology, for example the possibility in *Germany* of attaching a civil suit to the criminal case in order to receive compensation (the so-called *Adhäsionsverfahren*), the 'Compensation Order' in *England and Wales* or the *partie civile* in *France* and *Belgium*.³¹ Such or similar compensation schemes can indeed be found in large parts of Europe today. While these approaches have improved victims' prospects of being compensated, they do very little to change the position of the victim in the resolution of the conflict. The conflict continues to be defined as a dispute between the offender and the state whose laws the offender has breached. Furthermore, by being subjected to the formal criminal process, the victim runs the risk of secondary victimisation.

Likewise, one may dispute whether the traditional criminal justice processes and interventions for offenders are adequate if a resolution of the conflict arising from the offence is the desired outcome. Beyond the general notion that criminal justice responses to crime should be designed so as to promote the reintegration of offenders into the community rather than merely punishing them (for instance through imprisonment), the criminal justice *process* in many countries does very little to promote the notion of the offenders' responsibility for their behaviour and the consequences for victims and the community.

Restorative justice, on the other hand, aims to give the conflict back to those persons most affected by offending, by actively involving them in the procedures that respond to offending behaviour, rather than placing them on the side-lines in an almost entirely passive role (Willemsens, 2008: 8). According to Christie's theory of the re-appropriation of conflicts, restorative justice aims to restrict the role of the State to the provision of a less formal forum in which parties to an offence can deliberate on and actively resolve the crime and its aftermath (O'Mahony/Doak, 2009: 166). The aim is to reintegrate offenders by confronting them with the negative consequences of their behaviour, and so to bring them to assume responsibility for their actions and to provide some form of redress to the victim or the community. In this conceptual approach, participation and involvement are key: victims are given a chance to state how they have been affected and what they expect from the offender, while offenders can explain themselves and feel that they have been able to express their position. This is likely to

³¹ See the reports by *Dünkel/Păroşanu*, *Doak*, *Cario* and *Aertsen* in this volume.

improve satisfaction among all stakeholders (see e.g. Liebmann, 2007). Restorative procedures are usually highly informal and are geared to avoiding negative stigmatising or labelling effects. Restorative justice aims rather to distinguish offenders from their bad behaviour, and to support all parties to leave the offence behind and thus be 'restored'. Restoration thus refers not only to the damage that has been caused.

This overall conceptualisation places the *process* at the centre of importance (Zehr, 1990). Braithwaite's theory of 'reintegrative shaming', that regards processes of involvement, personal confrontation, voluntary active participation, family and community involvement and a focus on the harm that the offence has caused to the victim and the community, as promising strategies for fostering a sense of personal responsibility, maturation and reintegration (Braithwaite, 1989). Accordingly, in such a 'narrow' definition of restorative justice, the primary strategies involve forms of mediation, conferencing and circles that have a focus on participation, impartially facilitated exchange, active involvement and voluntariness. Braithwaite's theoretical approach of reintegrative shaming implies that the key factor is the *process* of reaching a mutual agreement, rather than the agreement and its fulfilment per se.

However, not all in the field adopt an 'encounter' or 'process'-based definition (also termed the *minimalist* or *purist approach*). Others see the primary aim of restorative practices more in facilitating the delivery of reparation, the making of amends for the *harm* caused ('outcome' or 'reparation' oriented definitions, *maximalist approach*). Liebmann for instance defines restorative justice as '[aiming] to resolve conflict and to repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and gives them an opportunity to make reparation.' (Liebmann 2008: 301). Some argue for including any action that 'repairs the harm caused by crime' (Daly & Hayes 2001: 2; see also Willemsens 2008: 9). Therefore, schemes that provide for the making of reparation to the victim or even the community at large (like reparation orders, community service or diversion schemes) can be regarded as restorative. However, this will depend on how these practices are organised and implemented. 'As an alternative to associating the concept with a specific archetypal process, the term [restorative justice] should be instead thought of as encapsulating a body of core practices which aim to maximize the role of those most affected by crime: the victim, the offender and potentially the wider community' (O'Mahony/Doak 2009: 166; see also United Nations Office on Drugs and Crime, 2006). Therefore, for instance community service should only be regarded as restorative practice if it fulfils key restorative justice values like voluntary active participation, the aim of reintegration, fostering offender responsibility and the making of amends (in this case to the community through *meaningful* work).

Van Ness & Strong seek to unite the encounter and the outcome orientations in a hybrid definition, describing restorative justice 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’ (Van Ness & Strong, 2010: 43). They feel that the best outcomes can be achieved where the delivery of reparation is facilitated through encounter, however an encounter is not absolutely necessary.

This flexibility (or room for personal preference) in defining the concept ‘has led to a raft of divergent practices and a lack of consensus on how they should be implemented. As a result, victim-offender mediation and restorative justice approaches worldwide vary considerably in terms of what they do and how they seek to achieve their outcomes’ (Doak & O’Mahony, 2011: 1718). The UN Office of Drugs and Crime refers to restorative justice as ‘an evolving concept that has given rise to different interpretations in different countries, one around which there is not always a perfect consensus’ (United Nations Office on Drugs and Crime, 2006: 6). The driving forces for their introduction vary from country to country – were they introduced primarily with the aim of improving the standing of victims by providing opportunities to receive reparation or emotional healing through involvement in the process of resolving the case? Or have the developments been more focused on providing alternative processes and outcomes for (young) offenders in the context of expanding systems of diversion and a shift in the focus of criminal justice intervention from retributive to rehabilitative, reintegrative strategies, with victimological considerations being an ‘added bonus’? Or both? Such considerations as well as the social, penal, political, cultural and economic climate/context will have had an effect on how restorative justice has been implemented, how it is linked to the criminal justice system (if at all) and the role it plays in the practices of criminal justice decision-makers.

What has become clear, however, is that the outcomes achieved through restorative practices have indeed been very promising. Numerous research studies all over Europe have measured significantly elevated satisfaction rates among victims and offenders who have participated in restorative justice measures compared to control groups (see in detail *section 4.4* below).³² While such levels of satisfaction are no doubt greatly dependent on the way the specific programme in question has been implemented, they nonetheless indicate that it is indeed possible to better meet the needs of victims through restorative justice. At the same time,

³² See for instance Campbell et al., 2006 on experiences in *Northern Ireland*.

restorative justice has repeatedly and continuously been associated with promising recidivism rates,³³ making them viable alternatives to traditional criminal justice interventions (see in detail also section 4.4 below).

The clearest point of European consensus lies in the fact that the perceived expansion in the provision of restorative justice has been a real one, and that more and more people are coming to regard it as an attractive alternative or addition to the criminal justice system, regardless of the role it plays, or the outcomes aimed for. This consensus is reflected in the continued growth in the degree to which restorative justice is the subject of international conferences as well as of international instruments from the Council of Europe, the European Union and the United Nations, for instance, see the Introductory chapter of the Encyclopaedia and 1.1 above:

- Committee of Ministers Recommendation Rec (99) 19 concerning mediation in penal matters (Council of Europe, 1999).
- United Nations Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century (United Nations, 2020)³⁴
- Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (Council of Europe, 2001).
- Resolution 2002/12 of the Economic and Social Council of the United Nations on basic principles on the use of restorative justice programmes in criminal matters (United Nations Economic and Social Council, 2002).
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (replacing Council Framework Decision 2001/220/JHA).

³³ See for instance Latimer, Dowden & Muise, 2005; Bergseth & Bouffard, 2007; Sherman & Strang, 2007; Shapland et al., 2008; Shapland, Robinson & Sorsby, 2012.

³⁴ At the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders the UN recommended on 15 April 2000: '27. We decide to introduce, where appropriate, national, regional and international action plans in support of victims of crime, such as mechanisms for mediation and restorative justice, and we establish 2002 as a target date for States to review their relevant practices, to develop further victim support services and awareness campaigns on the rights of victims and to consider the establishment of funds for victims, in addition to developing and implementing witness protection policies. 28. We encourage the development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.' (A/CONF.187/4/Rev.3).

- Council of Europe Recommendation No. R. (2003) 20 concerning new ways of dealing with juvenile offenders and the role of juvenile justice (Council of Europe, 2003).
- Council of Europe Recommendation No. R. (2008) 11 on European Rules for Juvenile Offenders Subject to Sanctions or Measures (Council of Europe, 2008)
- Council of Europe Recommendation No. R. (2006) 2-rev2020 concerning the European Prison Rules (Council of Europe, 2006-rev 2020).
- CM/Rec (2017)3 on the European Rules on community sanctions and measures
- Council of Europe CM/Rec (2018) 8 concerning restorative justice in criminal matters (Council of Europe, 2018).
- Council of Europe Declaration on the Role of Restorative Justice in Criminal Matters at the Conference of the Ministers of Justice of the Council of Europe ‘Crime and Criminal Justice – the role of restorative justice in Europe’ (13 and 14 December 2021, Venice, Italy) (Venice Declaration on the Role of Restorative Justice in Criminal Matters), 2021 (Council of Europe, 2021)
- Council of Europe CM/Rec (2023) 2 on rights, services and support for victims of crime.
- Council of Europe CM/Rec (2024)4 on combating hate crime (Council of Europe, 2024).

Growth in the number of research projects and publications relating to the issue has been on the verge of exponential. As Daly observes, ‘no other justice practice has commanded so much scholarly attention in such a short period of time’ (Daly 2004: 500). There is therefore agreement that such research is desirable. It is not least reflected in the fact that the European Commission, as well as the Council of Europe’s initiative resulting in the Venice Declaration of December 2021 (see Council of Europe, 2021), specifically sought to fund research into the matter, as was the case with the study on which the publication at hand is based.

2.2.1 Reform developments since the 1980s

If one looks at the timetable of restorative justice-oriented legislation (see Table 5) one can differentiate countries that were *forerunners* introducing mediation in the 1980s and early 1990s, i.e. before the first Recommendation of the Council of Europe, the Recommendation (99)19 concerning Mediation in Penal Matters was issued, countries introducing *mediation* in

the aftermath of the 1999-Recommendation and countries that introduced restorative justice reforms during the 2010s and in particular after the second Council of Europe Recommendation concerning Restorative Justice in Criminal Matters (see CM/Rec (2018)8). This recommendation explicitly widened the scope of restorative measures to different forms of conferencing and to the post-sentencing stage (see above under 1.1 and the introductory chapter of the encyclopaedia).

The forerunners of the 1980s and 1990s were *Austria* with its youth justice reform law of 1988 and *Belgium* with its introduction of mediation in its welfare-oriented youth law of 1965. In *England and Wales*, first restorative initiatives emerged in the early 1980s, followed by an orientation at police-led family group conferences from the mid-1990s. The reform laws of 1998 and 1999 were more in line with a getting tough approach, restorative measures were not in the centre of the reform, however a major shift towards restorative justice followed with the new government in 2010 and even more strongly with the actual Police, Crime, Sentencing and Courts Act in 2022.

France with strongly victim-oriented initiatives in the 1980s and the implementation of mediation in the Criminal Procedure Act in 1993, *Germany* with the development of mediation in practice since the mid-1980s and implementing it into the youth justice reform 1990, as well as *Finland*, *Norway* and *Sweden* with their first municipally initiated mediation projects since the early 1980s, belong to the forerunners in Europe as well. The common strategy of reforms of these countries was to develop mediation by the practice in youth justice and to introduce legislative changes on the basis of positive evidence or encouraging experiences through these practical innovations. This all took place in the field of youth justice as forerunners for adult criminal law and procedure reforms (see in particular *Austria*, *Belgium*, *Germany* with adult criminal law reforms in the 1990s). Some reforms were not explicitly focused on restorative justice but opened the door to restorative measures by introducing or widening the scope for diversion and thus extra-judicial restorative measures (see Italy's youth justice reform of 1988).³⁵ The restorative justice policy and practice in *France* was much influenced by victim support associations and therefore victim-oriented, whereas in *Germany* an offender-oriented

³⁵ In *Italy*, restorative justice measures became important only through justice reforms of 2000, 2014 and 2017; that is why we count *Italy* among the second generation countries to introduce restorative justice measures, see below.

policy (mediation as an educational youth justice or special preventive adult criminal law measure) dominated.

Some of these ‘forerunner’ countries were involved in drafting the Council of Europe Rec(99)19 mentioned above (for example Christa Pelikan from *Austria*, see chapter 3 of the European volume).

A *second wave* of reform laws took place after the Recommendation of 1999 and therefore were influenced by international human rights standards (see below). Again, the two pillars of law reform concerning youth justice and victim-oriented law predominate.

Amongst those *second generation countries* we find law reforms in *Bulgaria* (2004), *Croatia* (2001), the *Czech Republic* (2000, 2003), *Estonia* (1998, 2004, 2007, 2018), *Greece* (2001, 2003), *Hungary* (2006, 2007), *Iceland* (2006), *Ireland* (2001), *Italy* (1988, 2002, 2021), *Latvia* (2003, 2005), *Lithuania* (2003), *Luxembourg* (1999, 2017), the *Netherlands* (2007, 2009), *Northern Ireland* (2002, 2003-2005), *North Macedonia* (2006, 2007, 2010), *Poland* (2000 with pilots in youth justice already in the mid-1990s), *Portugal* (1999, 2007 ff.), *Romania* (2002 ff.), *Scotland* (2004, 2006), *Serbia* (Youth Justice Act 2005, Law on Mediation, 2006, 2009), *Slovakia* (2004, Act on Probation and Mediation), *Slovenia* (1999), *Spain* (youth justice reform 2000, Organisational Framework for mediation of the National Council for Crime Prevention 2003), *Sweden* (2002), *Switzerland* (2007, 2011), and *Turkey* (2005, 2016, 2019).

Russia is a special case insofar as theoretically the reforms of the criminal code and the criminal procedure code in 1997 already allowed the application of mediation in juvenile cases; but restorative measures have never played an important role in Russian crime policy. Standards for mediation were nevertheless established by the Russian Association of Restorative Mediation, which did, however, not have a greater impact on the Russian crime policy agenda.

A *third wave* of legislative reforms is characterised by countries introducing restorative measures recently in the time shortly before or in the aftermath of passing the CM/Rec (2018)8.)

In *Albania* restorative justice emerged in the context of the youth justice legislation of 2017.

In *Armenia* peaceful mass demonstrations contributed to a shift of the government from a punitive policy to one that is oriented to mediation and rehabilitation. The 2022 law reform

expanded diversion and restorative measures. However, victim-offender mediation has not been implemented in practice.

In *Azerbaijan*, first steps for law reforms towards widening the scope for alternatives to imprisonment can be seen in 2019. After signing the Venice Declaration in 2021, the Ministry of Justice engaged in an international cooperation project supported by UNICEF, which may also support the implementation of restorative measures in youth justice.

Belarus introduced mediation in the Criminal procedure Code in 2021.

Bosnia-Herzegovina was somehow between the second and third period with its youth justice legislation of 2010 and 2014 expanding the possibilities of diversion and thus opening the door to restorative measures (in contrast to the adult criminal procedure where the principle of legality still demands an obligatory prosecution in criminal cases).

In *Cyprus* restorative justice measures were put on the agenda following the implementation of the EU Directive 2016/800 on improving children's and juveniles' rights in criminal procedures, which was reflected in the new youth justice legislation of 2021.

Similarly in *England and Wales* in the early 2010s restorative justice projects emerged at the local level, although the roots of restorative justice measures can be identified in earlier initiatives since the early 1980s (see above).

Georgia started with restorative justice initiatives in youth justice in 2010, with an expansion by the new youth justice law in 2015. In 2016 pilot projects of mediation started for adults and the scope of youth justice legislation was expanded to 18-20-year-old young adults.

Kosovo had passed a first law on mediation already in 2008, but a major impact on implementing restorative practices is visible only since the amendment of the Law on Mediation in 2018. Cases of criminal offences punishable by imprisonment up to three years obligatorily must be checked for finding a solution in a mediation procedure. In 2021, amendments of the Criminal Procedure Act improved the possibilities for victims to receive compensation or go to a mediation procedure.

Malta passed the Restorative Justice Act in 2013; mediation is the only restorative measure provided by this law.

Moldova had introduced some elements of restorative measures in the general law reform of the criminal code of 2003, but only in 2015 the scope of mediation was addressed by restricting it to minor or ‘less serious’ crimes punishable with imprisonment of up to two or 5 years.

Montenegro had a criminal law reform in 2003, which extended the possibilities to divert cases with explicitly mentioning mediation as a condition for such dismissals of cases. But only in 2005 specific mediation legislation was passed; this was replaced by the Law on Alternative Settlement of Disputes in 2012.

In the *Ukraine*, first pilot projects were organised by NGOs since 2003, but a real impact for implementing restorative justice measures is visible only 2019 with a Decree of the General Prosecutor and the Law on mediation covering criminal cases too in 2021.

For an overview of the development of restorative justice according to bottom-up initiatives and legislative reform projects see in detail the following Table 5.

Table 5: Recent reform developments and law reform in the context of restorative justice

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
Albania	2000 ff.	X		Information and awareness campaign about the concept, theory and practice of restorative justice resulting in 2016 in government initiative for youth justice reform
	2017	X		Juvenile Justice Code: Diversion and restorative justice for juveniles comprise the two main pillars of legislative change
Armenia	2012	(X)	X	Legal and judicial reform strategy paper for the period of 2012-2016 exploring the possibility of using victim offender mediation
	2018	(X)	X	Policy document concerning a penal reform strategy for 2019-2023 after peaceful mass demonstrations: the government explicitly referred to a shift from a punitive penal policy to one that is restorative and rehabilitative (in theory, no restorative practice yet).
	2022	(X) no special youth justice act exists	X	CCP reform expanding diversion beyond private complaints offences to general (minor) crimes, excluding domestic violence. Mediation obligatorily leads to dismissal of the case
Austria	1988	X		Youth justice reform introducing mediation and expanding diversion
	1991, 1999, 2023		X	Mediation also in adult criminal law (pilot projects) Reform of the Criminal Procedure Law; parallel reform of the Probation Law regulating tasks of PO’s related to mediation
	2004			Reform CPL improving victims’ rights
Azerbaijan	2019	(X) no special JJA	X	Decree of the president ‘On Deepening the Reforms in the Judicial-Legal System’ opens the door to new alternatives such as mediation.

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2021		X	After signing the Venice Declaration, the Ministry of Justice engaged in an 'International Cooperation' project supported by UNICEF.
Belarus	2018	X		International cooperation promoted by UNICEF to initiate juvenile justice reforms; introduction of mediation for under 18-year-old juveniles
	2021	X	X	Introduction of mediation in the Criminal Procedure Code
Belgium	End of 1980s	X		Mediation in juvenile justice, Law of 1965
	1990s		X	Mediation in Adult Criminal Law: Penal mediation for minor crimes (legal base in 1994); restorative mediation for serious crimes (KU Leuven initiative 1993)
	2000	X		KU Leuven initiative for family group conferencing, pilot projects
	1998, 2000		X	Action research on restorative mediation in prisons; 2000: Ministry of justice decides to implement restorative justice in each prison; full-time restorative justice advisor in prisons, however, abolished in 2008, and modified to general advisor.
	2005		X	Legal base for restorative mediation in each judicial district, includes also the post-sentencing stage of executing prison sentences
Bosnia-Herzegovina	2010, 2014	X		New possibilities for diversion, expanding mediation (only in youth justice, whereas in adult criminal procedure the strict principle of legality prohibits restorative approaches as diversionary measures)
Bulgaria	Since 2000	X	X	Discussions about implementing RJ-measures, first projects; 2005 National Association of Mediators
	2004	X	X	Mediation Act provides for a nationwide implementation of mediation; several amendments, latest in 2023
	2008	X	X	Bills of reform of Penal Code and Penal Procedure Code not passing the Parliament
	2010, 2014, 2020			Strategy papers to continue the judicial reform in the conditions of full EU Membership; National Concept of Penal Policy for 2020-2025 contains the explicit aim to increase the participation of victims in criminal proceedings and to promote restorative justice.
	2024			Restorative Justice Association - Bulgaria established a new NGO for the promotion of restorative justice and restorative practices.
Croatia	2001	X		First mediation projects under the 1997 Juvenile Justice Act and the Criminal Procedure Act based on the principle of opportunity and the discretionary power of the prosecutor
	2013-2014	X		Training programmes for mediators; expanding mediation practice
Cyprus	1994, 2000		X	Domestic Violence (Prevention and Protection of Victims) Laws
	2021	X		The Law on Children in Conflict with the Law (reflecting EU Directive 2016/800) widened the possibilities for RJ-measures
Czech Republic	2000	X	X	Establishing Probation Service, 2001 Probation and Mediation service
	2003	X		Juvenile Justice Act promoting RJ-measures and diversion
Denmark	2010	X	X	Code on VOM: Introduction of victim-offender mediation as a national programme, organised by the police.

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
England and Wales	1980s	X	X	Local victim-offender mediation projects and community justice programmes.
	Mid-1990s-early 2000s	X	X	Family group conferencing provided by the police forces on an ad-hoc and discretionary basis
	1998, 1999	X	X	Diversory and court-based restorative measures, some of them later abolished, but the referral order remained as the primary statutory disposal of a court-based restorative measure for first time offenders who plead guilty.
	2010	X	X	Consultation paper 'Breaking the Cycle'; follow up Action Plan (2012), extending restorative justice projects; 2013: competence of the Police and Crime Commissioners for making RJ available for all victims; cooperation with local level providers of RJ-measures
	2022		X	Police, Crime, Sentencing and Courts Act (not yet in force) will harmonise local cautioning practices including RJ-measures in this context
Estonia	1998	X		Juvenile Justice Act providing mediation for young offenders
	2004, 2007		X	Reforms of the Criminal Procedure Code providing for Diversion in combination with RJ-measures, 2007 further expansion
	2018	X		Youth justice reform: Extending alternatives and new focus on RJ-measures
Finland	1980s-1990s	X	X	First victim-offender mediation projects Mediation as a national practice, since 2006 nationwide
	1991		X	New diversion rules naming mediation as ground for non-prosecution
	2004		X	Reform of general part of the Criminal Code: mediation as a mitigating factor in sentencing
	2006	X	X	Mediation Act
France	1980s	X	X	First restorative initiatives, strongly victim-oriented.
	1993		X	Mediation and reparation incorporated into the Code of Criminal Procedure
	2006		X	Victim's associations presented proposals for improvements of the rights of the victims including access to RJ measures, in particular mediation
	Since 2010	X	X	Victim-offender encounters are organised in prisons
	2014		X	Reform of the Code of Criminal Procedure (Art. 10-1) addresses mediation and RJ measures at all stages including the execution of prison sentences
	2017	X	X	Integrated training of facilitators was set up for 2,500 social workers and staff members in the Probation and Prison Service and volunteers in NGO's etc., also for 400 civil society members who are involved in victim-offenders encounters in prisons
	2019	X		Amendment of the Juvenile Justice Ordinance of 1945 leads to an expansion of RJ measures
	2022	X	X	Penitentiary Code contains regulations for victim-offender encounters and other RJ measures
Georgia	2010	X		Amendments of the Criminal Procedure Code: Diversion and mediation mechanism introduced for juveniles in conflict with the law, 2014 the scope was widened also to more serious crimes

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2015	X		Juvenile Justice Code, expanding diversion and mediation
	2016		X	Pilot projects of mediation for adults
	2016	X		Widening the scope of RJ-measures in the JJC for up to the age below 21
Germany	1990	X		Juvenile Justice Act, providing for mediation as a special ground for diversion at pre-trial and as a disposition at the court stage
	1994		X	Introduction of mediation in adult criminal law (§ 46a Penal Code), possibility to dismiss a case or to mitigate the sentence after successful mediation and compensation of the victim
	1999		X	Dismissal of the case (principle of opportunity), if ‘the offender makes serious efforts to reconcile with the injured person (victim-offender mediation) and thereby delivers partial or full reparation or seeks to do so’, § 153a Code of Criminal Procedure; Mediation and RJ measures shall be provided at all stages of the criminal procedure, §§ 155, 155a
	2007-2016	X	X	Prison legislation: all youth prison acts and most of the prison acts for adult prisoners provide for victim awareness programmes and rule to avoid disciplinary measures by mediation/reconciliation
Greece	2001	X		Amendments within the PC to widen the scope of mediation for 12–18-year-olds
	2003	X		Youth justice reform law, introduced diversion, increased non-custodial measures and promoted due process rights, mediation as one of the educational measures
	2006		X	Penal Mediation in cases of domestic violence misdemeanours
	2022		X	Extended reconciliation possibilities on the prosecutorial level
Hungary	2006	X	X	Mediation in Criminal Matters Act
	2007	X	X	Active repentance and mediation (Criminal Code)
	2012		X	Criminal Code reform extended mediation
	2017	X	X	Mediation also outside active repentance cases (only in the pre-trial stage, by the public prosecutor on request of the parties); court ordered referrals to mediation abolished
Iceland	2001			First pilot project on mediation
	2006-2008	X		Nationwide pilot project for 15–21-year-old offenders on mediation
	2008	X	X	Criminal Code enables diversion in cases of successful mediation without explicitly naming mediation
	2017, 2021	X	X	Directives of the General Prosecutor enlarge the scope of application of mediation (pre-trial stage)
Ireland	2001	X		Children Act provides mediation (after some pilot experiences)
	2009			National Commission on Restorative Justice
	2012-2015	X	X	Irish Prison Service (IPS) established two pilot projects for conflict resolution between prisoners and prisoners and staff member; project discontinued, but 2019-2021 new initiative of the IPS to explore restorative practices in prisons; introduction of restorative practices training for newly recruited prison officers. This training is embedded across the recruit officers’ training programme since 2023.
	2014			Irish Strategic Review of Penal Policy putting RJ on the agenda
	2017			Criminal Justice (Victims of Crime) Act 2017
	2018	X	X	Probation Service establishes a ‘Restorative Justice and Victim Services Unit’

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2019-2023			Diverse government initiatives supporting the wider use of RJ measures: Action Plan for the Joint Management of Offenders 2019-2021, Supporting a Victim's Journey 2020, the Youth Justice Strategy 2021-2027, the Department of Justice Action Plan 2021-2023 and the Criminal Justice Sectoral Strategy 2022-2024
	2023	X	X	Irish Prison Service (IPS) initiatives to introduce restorative practices in prisons, 2019-2021 strategy, see above; plans to introduce Sycamore programmes in adult prisons; restorative anti-violence programme in Oberstown youth detention
	2023		X	First projects/pilot initiatives to establish restorative justice measures in the adult criminal justice system
Israel	1992/2011	X		Saray Graply, a probation officer handled first cases considering restorative justice principles, resulting in 2011 in an amendment of the Youth Law introducing an 'alternative procedure' (diversion and mediation) for juveniles.
	1998	X	X	Parents Circle – Families Forum (PCFF), a joint Israeli-Palestinian organisation of over 600 families who have lost an immediate family member in the ongoing conflicts in Gaza and Israel
	1999	X		Shoshan prison re-entry initiative based on the Prison Law of 1983, contains restorative elements, but discontinued; at present new discussions about establishing restorative elements in prison settings
	2001	X		Mediation programme for juveniles (aged 12- below 18), KEDEM
	2004	X	X	Mediation and family-group conferencing programmes by MOSAICA
	2012	X	X	Community courts: 2012 on an experimental base, in the meantime 6 courts who may refer suitable cases to mediation programmes
	2013		X	Restructuring diversion programmes for misdemeanour offences: one of three options is participating in a mediation programme (called GEFEN), organised by the Probation Service for adult offenders
Italy	1988	X		Youth justice reform, weakening obligatory prosecution of crimes opened the floor for probationary diversion and restorative measures in the practice of most Juvenile Court
	2000		X	In force since 2002: Possibility for the JoP (Justice of Peace) to apply restorative justice measures and also victim-offender mediation for less serious crimes within his jurisdiction.
	2014		X	Introduction of probation (not diversion) in Criminal Code including victim-offender mediation as possible part of the related duties
	2017		X	Extinction of all offences prosecutable on complaint in case of reparation of damages
	2021-2022	X	X	Introduction of an organic system of restorative justice, including victim-offender mediation for all types of crime through specialised centres
Kosovo	2008	X	X	Law on Mediation
	2010	X		Youth justice law for 14–21-year-old young offenders, providing for personal apologies and compensation of damages as 'educational' measures (mediation not explicitly enumerated).

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2012	X	X	Due to the request to the national legislator to ‘embed appropriate decisions of the European Union in legislation’, a reform of the Law on Criminal Procedure was passed, however, weak regulations concerning mediation and restorative justice measures.
	2018	X	X	Amendment of Law on mediation, making mediation to be checked obligatorily in certain cases. Mediation provided for offences punishable up to 3 years of imprisonment. Judges can oblige parties to find a solution by mediation in family related cases. However, mediation is excluded in cases of domestic and sexual violence.
	2021	X	X	Amendments of the Law on Criminal Procedure improving the rights of victims in criminal procedure (to compensation, mediation etc.)
Latvia	2003	X	X	Criminal Procedure Law and State Probation Law of 2003 provide for RJ settlements under the lead of the Probation Service. Only victims may apply for it; domestic violence cases are excluded.
	2005	X	X	Mediation practice of Probation Service starts
	2012		X	Circles of accountability for sexual offenders
Lithuania	1993		X	Reform of the Soviet Criminal Code: Article 53 ¹ provides for the release of an offender from criminal liability where she/he has reconciled with the victim
	2003		X	National Programme on Crime Prevention and Control of 2003 promoting the idea of RJ; new Penal Code and Code of Criminal Procedure contain some elements of RJ, however, punitive approach dominates
	2003	X		Juvenile Justice Act contains elements of RJ
	2005-2011	X	X	Several plans for programmes ‘Implementing Measures for National Crime Prevention and Control’ resulting in an initiative for further developing RJ in the youth justice system.
	2014-2016	X	X	With funding from the Norwegian government, the project ‘The Implementation of Mediation in Probation Services’ by Vilnius Regional Probation Service was implemented
	2016 ff.	X	X	In spite of intensive debates how to further develop and implement RJ measures no legal reform passed on that issue
Luxembourg	1999		X	Law on Penal Mediation, penal mediation at pre-trial stage
	2017		X	Code of Criminal Procedure provides for restorative justice measures. The Victim-offender Dialogue programme (VOD) can be used at all stages of the criminal procedure, also in the post-conviction stage.
Malta	2013		X	Restorative Justice Act establishing a Victim Support Unit. Later amendments excluded domestic and gender-based violence cases from mediation procedures
	2018		X	Victims of Crime Act, main aim: protection and support for victims of crime (no restorative measures in the focus)
Moldova	2003		X	Criminal Code, widening the scope of alternative sanctions (probation, community service), reconciliation excluded for sexual crimes and for offenders with a prior record with a mediation procedure during the last 5 years (for under 18-year-old offenders no such exclusion). Criminal Procedure Code, mediation as a condition of diversion

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2015		X	Law on Mediation, mediation restricted to minor crimes (up to 2 years prison sentence) or less serious crimes (up to 5 years prison sentence)
Montenegro	2001		X	Criminal Procedure Law introducing the principle of opportunity diversion
	2003	X	X	Criminal Code law reform: Extended possibilities to divert cases and to use alternative sanctions; mediation explicitly promoted; wider use of educational sanctions in Juvenile Justice, Art. 79 ff. CC, also for 18–20-year-old young adults (Art. 111)
	2009		X	CPC amendments introducing plea bargaining and strengthening the position of the victim (no restorative justice approach in a strict sense).
			X	Conditional dismissal of the case, if the maximum punishment is up to 5 years.
Netherlands	1990s			Start of first pilot projects
	1995	X		The diversionary model of HALT established in youth justice. Since 2010 the restorative approach within HALT was expanded by victim-offender conversations
	2007, 2009	X	X	Since 2007 victim-offender mediation with minors and with adults since 2009 (pre-trial stage, police-level, mediation outside the criminal procedure); since 2007 governmental funding of this form of mediation outside criminal cases
	Since 2008, 2015	X	X	Mediation inside youth prisons, since 2015 nation-wide. In adult prisons projects for emotional and relational recovery; mediation may have impact on transfer decisions, leave of absence, the penitentiary programme and conditional release.
	2011	X	X	Criminal procedure code legally anchoring mediation; 2010-2011: pilots for mediation inside the criminal procedure
	2013	X	X	Mediation projects in the police, the prosecution, the trial and enforcement phases
	2015	X	X	Foundation of the Dutch Association of Mediators in Criminal Matters
	2017	X	X	Mediation legally provided in pre-trial, court and enforcing phase concerning the execution of sentences, establishing mediation agencies in all lower court and court of appeal districts
	2019	X		New policy plan to widen the application of restorative justice measures in youth justice cases
	2020			Policy Framework on restorative justice provisions during criminal proceedings further addresses special attention to conferencing and includes provisions on qualifications for mediators (preparing the Innovation Act 2022, see below).
	2022	X	X	Governmental funding: 300,000 euros per year for mediation in youth (12-23 years of age) and one million euros for mediation in adult criminal cases; 2023 further funding provided: 300,000 euros extra for mediation in criminal cases for the increase in the number of cases and 700,000 euros on increasing the fees for mediators who conduct mediations in criminal cases. Also 1.5 million euros is allocated to achieve a single register for mediators.

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2022	X	X	Innovation Act on Criminal Procedure, reinforcing restorative measures; giving the court the competence to dismiss a case after successful mediation during the court phase.
Northern Ireland	Late 1990s	X		Police-led diversion schemes for minor offences of juvenile offenders combined with restorative elements
	2002	X		Justice (Northern Ireland) Act 2002 encouraging the use of reparation orders, community responsibility orders, as well as diversionary and court-ordered youth conferences.
	2003-2005	X		Youth Conference Rules (Northern Ireland) 2003, providing youth conferences, since 2005 as nationwide procedure covering youth offenders aged 10-17. Youth conferences are routinely used in cases at the court level.
	2011		X	Justice (Northern Ireland) Act 2011: adults can be given a conditional caution with conditions attached to facilitate reparation and/or rehabilitation; compensation orders and other restorative interventions.
	2022-2027		X	Restorative justice strategy for Northern Ireland 2022-2027 indicating an intention to extend the use of restorative interventions available to adults; practice remains very limited.
North Macedonia	2006	X	X	Law on Mediation of 2006, with amendments in 2009, 2013 and 2021, dealing also with the procedures in criminal cases
	2007, 2010	X		Law on Juvenile Justice 2007, enacted 2009 introducing mediation, Law on Juvenile Justice 2010, enacted 2013, widening the scope of restorative justice measures on the pre-trial and court stage
	2010		X	Law on Criminal procedure providing mediation to a very limited extent: offences punishable with up to 5 years of imprisonment, restricted to cases which are prosecuted by means of a private criminal lawsuit. The regulation is applicable at the pre-trial and court stage.
Norway	1977-1978	X		Ministry of Justice's White Paper looks for new alternative reactions for offenders under the age of criminal responsibility after increasing the minimum age from 14 to 15
	1981	X	X	First municipally initiated mediation pilot projects
	1991	X	X	First National Mediation Service (NMS) Act establishing mediation as a nationwide service (1992-1994) without age limits
	2005-2008	X		Government's action plan for joint initiatives against child and juvenile offences included restorative justice pilots for more serious offences and the development of new methods.
	2010-2011, 2014	X	X	Proposals for new penal legislation and second NMS Act 2014, introducing new sanctions (youth punishment, i.e. up to 3 years deprivation of liberty, replacing more strict penalties) with some restorative elements also in the follow-up period of the sentence after release.
Poland	1995	X		Pilot mediation projects in juvenile justice
	1997		X	Criminal Procedure Code provides for mediation in adult cases
	2000	X		Amendments to the Juvenile Justice Act (of 1982) by introducing mediation
	2001, 2013		X	Code of Procedure in misdemeanour cases of 2001 amended in 2013, allowing referrals to mediation schemes in misdemeanour cases

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2015		X	In court proceedings, the case can be referred to mediation at the preparatory stage of the trial. The conditions and principles of carrying out mediation are fixed by an Ordinance from 7 May 2015.
	2012, 2017		X	The power/possibility of the police to refer cases to mediation was abolished; mediation since then is a matter at the prosecutorial level.
	2022	X		Act on Supporting and Rehabilitating Juveniles (ASRJ, welfare law) for 10-16-year-old juveniles provides for educational measures including restorative justice elements (Family Court as responsible actor)
Portugal	1999	X		Mediation as an alternative reaction in youth justice for 12–15-year-old juveniles ('Educational Guardianship Law')
	2007, 2009, 2015	X	X	Code of Criminal Procedure: Penal mediation in the pre-trial stage, first initiatives 2004 (by Oporto University), since 2008 4 pilot projects, 2009 widened to other districts. Mediation is restricted to offences punishable on the complaints of the victim by a maximum prison sentence of up to 5 years. The 2009 law reform made restorative meetings in cases of domestic violence after a conviction available, which was excluded in the 2007 law reform. In reaction to the Istanbul declaration (2015) in 2015 the possibility of (mandatory) mediation in domestic violence cases was abolished, with consent of the partners it is still possible.
	2009	X		Code of the Execution of Sentences provides for offender-victim meetings in prisons and restorative justice programmes in general
Romania	2002	X		First pilot projects in juvenile justice for 14–21-year-old offenders; projects were discontinued in 2004
	2003		X	Law to Prevent and Combat Domestic Violence
	2006	X	X	Law on Mediation, providing mediation at the pre-trial and court stage, amended in 2009, 2010, 2012, 2019
	2009	X		Criminal Code provides educational measures for juveniles aged 14-21, allowing restorative approaches, although not explicitly mentioning mediation
Russia	1997	X		Reforms of the Criminal Code and Criminal Procedure Code providing for mediation in juvenile cases
	2009			Standards for mediation adopted by the Russian Association of Restorative Mediation
Scotland	1971	X		Children's Hearing system (welfare approach in youth justice), allowing for restorative measures as educational reactions.
	2004, 2006	X		Police Restorative Warnings for 8- (since 2010 12-)17-year-old offenders under the Children's Hearing system.
	2011	X		Police-led restorative meetings for victims of juvenile hate crime
Serbia	2005	X		Juvenile Justice Act. Diversion for offences punishable with up to 5 years of imprisonment (Art. 58 JJA). Art. 7 JJA: Settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be alleviated either in full or partly (for 14–17-year-old offenders). For young adults (18-20 years of age) alternative educational sanctions such as apology or compensation orders are possible

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2006, 2009	X	X	Law on Mediation, also covers mediation in criminal matters
	2006	X	X	Criminal Code provides for mediation, but only for private claim offences, i.e. minor crimes, which are not in the range of the legality principle (opportunity principle, i.e. no duty to prosecution)
	2009, 2011		X	Code of criminal procedure with some restorative elements (plea-bargaining, strengthening the position of the victim); 2011 the position of the victim was weakened by reducing its competence to join prosecution
Slovakia	1994, 2002, 2005	X	X	Reforms of the Code of Criminal Procedure introducing and widening the scope of diversion, which allows for dismissal of the case after mediation or other restorative measures to compensate victims
	2004	X	X	Act on Probation and Mediation Officers regulates the practice of mediation in criminal matters
	2005			Criminal Code, in force 2006, introduces community service, and for juveniles the sanction of conditional immunity from punishment, e.g. in cases of mediation or reparation/compensation of the victim's damages.
Slovenia	1991 ff.	X	X	Relaxation of the principle of legality in prosecution, in the strengthening of the elements of the adversarial model and in the introduction of diversion and other alternative forms of dealing with criminal cases
	1994	X		Reform of youth justice legislation for 14–18-year-old offenders (within the Criminal Code) expanding alternative 'educational' sanctions including apologies to the victim, mediation, community service etc. Imprisonment as extreme ultima ratio (only one case in the period 2018-2020)
	1999/2008/2022	X	X	Guidelines of the General Prosecutor: Expanding diversion (pre-trial stage), mediation and alternatives to imprisonment in order to counteract getting tough-policies and reduce prison overcrowding. Practice of mediation started in 1999.
	2019	X	X	Amendments of the Criminal Procedure Act to widen the scope of mediation and diversionary measures of petty offences (punishable with up to 3 years (in youth justice cases 5 years) of imprisonment
Spain	2000	X		Youth justice reform promoting restorative justice through mediation
	2004	X	X	Law on gender-based violence, prohibiting mediation in these cases
	2015		X	Standing of Victims Law, promoting mediation and referring to special mitigation rules of the CC (Art. 21.5), if an agreement and compensation of the victim has taken place
Sweden	1965 ff.	X	X	Criminal Code provides for mitigation of sentences for offenders aged under 21 (Chapter 29, Section 7); mediation not explicitly mentioned as mitigating circumstance. Chapter 32 on special youth care orders; youth contract with the social welfare committee. Restorative measures not named
	1987	X		First pilot projects of mediation

Country	Year	Youth justice	Adult crim. justice	Main contents and aims of the reform
	2002	X		Act on Mediation in Crime covering mediation for 15–20-year-old juveniles and young adults; mediation is a police-led sanction in the pre-trial stage
	2003	X		National Council for Crime Prevention responsible for organising mediation
Switzerland	2007	X		Mediation introduced in Juvenile Criminal Law (juveniles aged 10-17)
	2007		X	Reparation order as stand-alone sanction in Adult Criminal Law
	2011	X	X	Criminal Procedure Law reform provides for VOM for juvenile offenders at the pre-trial stage, whereas for adults no such regulation was introduced
	2018, 2019		X	Tightening the CC, restrictions for restitution orders
	2021 ff.		X	Efforts to implement VOM in the Criminal Procedure law still ongoing
Turkey	2005		X	Mediation implemented in the Penal Code (waiver of prosecution)
	2005	X		Child Protection Act provides for mediation for under 18 years old delinquents; the scope of offences included is wider than in adult cases (see below)
	2006, 2019		X	Regulations for mediation moved to the Criminal Procedure Code; 2019: mediation only in cases of offences punishable up to 3 years of imprisonment (very minor crimes)
	2016		X	Mediation institutionalised in independent mediation offices in the pre-trial stage; nationwide implementation
Ukraine	2003	X	X	First pilot projects organised by civil society (NGO's)
	2019	X		Decree of the General Prosecutor to implement RJ in youth justice cases
	2021	X	X	Law on Mediation also covers mediation in criminal matters

2.2.2 Motors for restorative justice reform in Europe

An analysis of the 48 reports shows that, just as conceptual understandings of what restorative justice actually implies show a great deal of variation, so too do the factors that have been central driving forces in its development in the countries of Europe and indeed worldwide. There is not one reason only why restorative justice has come to be regarded as a promising approach to resolving conflicts between victims and offenders. Rather, there are a whole handful of factors that have been decisive in the evolution of restorative justice to a ‘worldwide movement’ (Aertsen et al., 2004: 16) over the last four decades, and to its entry into the realm of the criminal procedure.)

As mentioned above, the idea of resolving conflicts through encounters and mutual decision-making and focusing on the harm caused by the offence and the resulting imbalance of rights and needs is not entirely new and can be traced back to indigenous cultures and traditions all over the world. The *modern* roots of restorative justice in criminal matters are said

to be found in abolitionist thinking (e.g. Christie, 1977). Europe's earliest bottom-up VOM initiatives in *Austria*, *Norway* and *Finland* in the early 1980s had their roots in this notion of the 're-appropriation of conflicts' which, as described in Section 1.1 above, regards the formal criminal justice system as an inadequate forum for resolving conflict, and which instead endorses 'giving the conflict back' to those persons who have inflicted or suffered harm so as to better meet their needs and restore their rights (Willemsens, 2008: 11). The authors from the *Netherlands*, *Spain*, *Belgium*, *Croatia* and recently *Albania* argued that developments in their countries were also driven by the notion that traditional criminal justice processes are in fact inadequate for truly resolving conflicts.

In reality, abolitionist thinking will have played a significant role in all countries that provide for restorative processes like VOM or conferencing, albeit not expressly, as the concept of providing an informal forum for stakeholders in an offence to resolve their conflicts themselves is intrinsic to restorative processes. Essentially, choosing to implement restorative processes can be seen as an implicit confirmation that abolitionism is the ideal to be applied to achieve whatever goals have been set in the countries' given social, cultural, political, legal, historical, penal and economic decision-making contexts.

2.2.3 Changing paradigms of criminal justice and youth justice

The early developments in *Finland* also served the purpose of providing an alternative to the use of imprisonment with juvenile offenders. The reports from *Estonia*, *Hungary*, *Ireland*, *Northern Ireland*, *Norway*, *Poland*, *Romania*, *Russia*, *Scotland*, *Slovakia*, *Slovenia*, *Turkey* and the *Ukraine* all echoed that the introduction of restorative justice into their systems was driven at least in part by the aim of decarceration. The aim of reducing the use of imprisonment was tied to developments in many countries in Europe that sought to effect an overall shift in criminal justice thinking, away from a purely retributive strategy of inflicting punishment for breaches of the law, towards a rehabilitative, reintegrative approach, in particular in the field of youth justice as a forerunner for general penal law reforms (*Austria*, *Belgium*, *Bosnia-Herzegovina*, *Croatia*, *France*, *Georgia*, *Germany*, *Hungary*, *Ireland*, *Italy*, *Luxembourg*, the *Netherlands*, *Northern Ireland*, *Portugal*, *Romania*, *Russia*, *Scotland*, *Serbia*, *Slovenia*, *Spain*, *Switzerland* and the *Ukraine*, see, e.g. Cavadino & Dignan, 2006; 2007). Such general criminal justice reforms were characterised overall by an increased focus on expanding discretionary decision-making among key 'gatekeepers' to the criminal justice system and introducing alternative responses to crime that seek to rehabilitate and reintegrate offenders. The 'principle

of opportunity’ at the level of the police or prosecution services and the powers of courts to drop cases in certain circumstances have been widely expanded over the past few decades, thus providing access points to the system for the implementation of diversionary measures and practices, including such that reflect restorative values (see Table 3 above). Widespread legislative provision has been made for ‘reconciliation’ between victim and offender and/or the making of amends (effective repentance) to be regarded as grounds for dropping the case or for mitigating sentences, which in turn opens the door for the use of restorative processes and/or for victim and offender to achieve restorative outcomes, or for reparation to be taken into consideration.

In many countries in Europe, these developments towards diversion and decarceration were particularly reflected in youth justice, or rather, within the context of reforming the response to offending by young people, be it through the youth justice system or youth welfare/youth assistance services. The reports from *Austria, Belgium, Bosnia-Herzegovina, Cyprus, England and Wales, Estonia, Georgia, Germany, Ireland, Italy, Luxembourg, Northern Ireland, Norway, Portugal, Romania, Russia, Spain and Switzerland* indicated that such reform movements were key contextual factors for the introduction of restorative justice. Systems for responding to juvenile delinquency have increasingly sought to employ a more educational approach with a focus on providing alternative processes (so as to avoid stigmatisation) and alternative measures (to seek to positively influence the offender with the aim of reintegration).³⁶ In the context of juvenile justice reform, the reintegrative, educational prospects of restorative outcomes and the alternative processes they can entail came to be regarded as promising means for achieving this.

2.2.4 Developments in the field of victimology and victims’ rights

Another key driving factor for the development and expansion of restorative justice initiatives in Europe in the last few decades has lain in developments in the field of victimology and victims’ rights.³⁷ The reports from *Croatia, Cyprus, Denmark, England and Wales, France,*

³⁶ See for instance Dünkel, van Kalmthout & Schüler-Springorum, 1997; Albrecht & Kilchling, 2002; Doob & Tonry, 2004; Cavadino & Dignan, 2006; Muncie & Goldson, 2006; Bailleau & Cartuyfels, 2007; Hazel, 2008; Junger-Tas & Dünkel, 2009; Dünkel et al., 2011; Zimring, Langer & Tanenhaus, 2015; Beloff & Langer, 2015 (for Latin America), Dünkel, 2015; 2016; 2022 (for Europe); Decker & Marteache, 2017; Goldson, 2019; McAra & McVie, 2019; Lappi-Seppälä, 2019 (for the Nordic countries).

³⁷ See for instance Dignan, 2004; Miers & Aertsen, 2012a: 530; Willemsens, 2008: 11.

Germany, Greece, Montenegro, the Netherlands, Norway, Poland, Romania, Russia, Scotland, Serbia, Slovakia, Spain, Sweden and Switzerland indicated that the introduction of restorative thinking into their systems was also driven by parallel attempts to strengthen the role of victims in the criminal procedure – so the deficiencies of traditional criminal justice in meeting the needs of victims³⁸ was one of the primary driving factors. *Whilst initially victims' rights movements were focused on promoting victims' interests to the detriment of offenders' interests* (Willemsens, 2008: 8), today *most victims' advocates are oriented towards a broader scope of social, personal, and juridical needs of those victimised by crime* (Walgrave, 2008a: 618). Accordingly, legislative provisions have been increasingly introduced that seek to involve victims through restorative processes, or that seek to facilitate the making of reparation and the alleviation of harm, to which the restorative ideal, regardless of whether an encounter or outcome-oriented definition is applied, can cater very well.

2.2.5 The influence of international human rights standards and European harmonisation

A more recent driving force that is closely connected to the aforementioned factors has been the influence of international human rights standards and recommendations from the Council of Europe, the European Union and the United Nations. These have recently come to focus increasingly on mediation, restorative justice and the role and rights of victims in responding to crimes (see section 1.1 above).³⁹

International instruments governing responses to juvenile offending have also made increased reference to mediation and restorative justice as being desirable practices, for instance in § 8 of Council of Europe Recommendation No. R. (2003) 20 concerning new ways of dealing with juvenile offenders and the role of juvenile justice (Council of Europe, 2003.), and Basic Principle 12 of the European Rules for Juvenile Offenders Subject to Sanctions or Measures (Council of Europe Recommendation No. R. (2008) 11) (Council of Europe, 2009). Rule 56.2 of the European Prison Rules states that 'whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners' (Council of Europe, 2006-rev2020).

³⁸ See Aertsen et al., 2004; van Ness & Strong, 2010: 42.

³⁹ See in particular Willemsens, 2008 for an investigation into the role of such standards in Europe. See also Miers & Aertsen, 2012a: 538 ff.

Within the study, the reports from *Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Macedonia, Montenegro, the Netherlands, Poland, Portugal, Romania, Slovenia, Serbia, Turkey* and *Ukraine* all indicated that the developments in the field of restorative justice in their countries needed to be understood in the context of international standards. On the one hand, the standards have provided guidance on the ways in which restorative strategies have been implemented in law and practice, as they are regarded as depicting best practice in the field. But more importantly, these instruments have also been central driving forces for introducing restorative justice and the access points through which it can enter the (juvenile) justice system *per se*.

This latter issue needs to be understood within the context of European harmonisation and EU accession (Liebmann 2007: 49). Particularly Eastern European countries (for instance *Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Romania, Slovenia* and *Ukraine*) stated that their motivation or impetus for introducing restorative justice schemes had come from the desire to harmonise their legislation and practices to western states. Other countries point to the obligations arising from certain international instruments as being pivotal in the passing of legislation so as to provide a statutory framework for victim-offender mediation or other restorative processes and practices that had in fact already been provided on the ground for quite some time. The role of Art. 10 of Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings that obliged member states to make legislative provision for mediation by 22 March 2006, is of particular relevance in this regard. Legislative reforms in *Hungary* and *Finland* in 2006, and in the *Netherlands, Estonia* and *Portugal* one year later, were said to have been motivated by this Framework Decision. In *Finland*, doing so had a positive effect on the use of restorative justice in practice, as it provided clearer guidance for a tested nationwide system of non-statutory mediation that had existed for quite some time. However, in *Hungary*, pressure to implement the requirement from the Framework Decision in fact resulted in a hurried, untested and thus greatly flawed top-down reform.⁴⁰

A major impact on national legislation had the Recommendation on Restorative Justice in Criminal Matters of 2018 (see CM Rec(2018)8, Council of Europe, 2018) in many European countries (e.g. *Albania, Bulgaria, Cyprus, Estonia, France, Ireland, Italy, Kosovo, Malta, the Netherlands, Northern Ireland, Poland, Slovenia, Turkey* and *Ukraine*) as well as the Council

⁴⁰ See the reports by Lappi-Seppälä on Finland in chapter 15 and Csúri & Neparáczki on Hungary in chapter 20 [of the European volume](#).

of Europe Declaration on the Role of Restorative Justice in Criminal Matters of 2021 (Venice Declaration), which emphasised the importance of implementing the rules of the 2018-recommendations (see e.g. *Azerbaijan*, where the Venice Declaration seems to have had a special impact for the government to develop restorative justice measures).

The Council of Europe CM/Rec (2023) 2 on rights, services and support for victims of crime (Council of Europe, 2023) and, just recently, the Council of Europe Recommendation CM/Rec (2024) 4 on combating hate crime (Council of Europe, 2024) are too recent to be able measuring their impact, but they clarify that the Council of Europe (and also the EU) continue to support the restorative justice movement. Altogether it can be said that the European ‘soft law’ had a major influence on the development of restorative justice.⁴¹

2.2.6 Summary concerning the history of reform developments

As has been illustrated above, the driving forces behind the introduction of restorative justice including mediation into the context of responding to criminal offences are rather diverse. Naturally, it was seldom the case that developments in a country were driven only by one of these different factors, as can be taken from Table 6. On the contrary, there has indeed been a certain degree of overlap, as the different issues are also interrelated to a certain degree.

These factors are not exhaustive, as the local political, economic, social, historical, cultural backgrounds and contexts are vital as well. For instance *Bulgaria, Croatia, Hungary, Ireland, Portugal, Romania, Slovenia* and *Turkey* noted that a primary concern had been a reduction of the caseloads of overburdened court systems, while *Bulgaria, the Czech Republic, Macedonia* and *Northern Ireland* indicated that the introduction and implementation of restorative justice in their countries had been facilitated by (and needed to be placed before the contextual background of) a perceived lack of trust in the justice system due to a phase of societal transition and conflict.⁴²

⁴¹ See Jorge Ollero Perán under <https://www.euforumrj.org/venice-pamplona-how-european-soft-law-can-influence-development-restorative-justice>, last accessed 21 December 2024.

⁴² For an elaborate look at the role and potentials of transitional contexts, see Clamp, 2014. See also O’Mahony, Doak & Clamp, 2012.

Table 6: Factors influencing the introduction and implementation of restorative justice in criminal matters in Europe

Abolitionist thinking; traditional criminal justice system deemed inappropriate forum for resolving conflicts	<i>Albania, Austria; Belgium; Croatia; Finland; Latvia; the Netherlands; Norway; Spain</i>
Strengthening victims' rights; victim's movements	<i>Croatia; Cyprus; Denmark; England and Wales; France; Germany; Greece; Malta, Montenegro; the Netherlands; Norway; Poland; Russia; Scotland; Serbia; Slovakia; Spain; Sweden; Switzerland</i>
Inefficient/overburdened criminal justice system	<i>Bosnia-Herzegovina; Bulgaria; Croatia; Greece; Hungary; Ireland; Latvia; Macedonia; Portugal; Romania; Slovakia; Slovenia; Turkey</i>
Rehabilitation and reintegration over retribution and punishment; expanding diversion and community sanctions	<i>Albania, Armenia, Austria; Belgium; Bosnia-Herzegovina; Croatia; France; Georgia; Germany; Hungary; Iceland, Ireland; Italy; the Netherlands; Northern Ireland; Portugal; Romania; Russia; Scotland; Serbia; Slovenia; Spain; Switzerland; Ukraine</i>
Reforms in particular in the field of Youth Justice or Youth Assistance and Welfare	<i>Albania, Austria; Belgium; Bosnia-Herzegovina; Cyprus; England and Wales; Estonia; Georgia; Germany; Ireland; Italy; Northern Ireland; Norway; Portugal; Romania; Russia; Spain; Switzerland</i>
Curbing custody rates	<i>Estonia; Hungary; Ireland; Northern Ireland; Norway; Poland; Romania; Russia; Scotland; Slovakia; Slovenia; Turkey; Ukraine</i>
Compliance with international standards, EU harmonisation	<i>Azerbaijan, Bosnia-Herzegovina; Bulgaria; Croatia; Czech Republic; Estonia; Georgia; Hungary; North Macedonia; Montenegro;</i>

	<i>Netherlands; Poland; Portugal; Romania; Slovenia; Serbia; Turkey; Ukraine</i>
Lack of trust in the judiciary following period of transition	<i>Bulgaria; Czech Republic; Georgia; North Macedonia; Northern Ireland</i>

The ways in which these motors or aims combined with each other as well as with the overall penal, social and economic climate and the criminal justice system of a given country, will have had effects on the ways in which restorative processes and practices have been legislated for (if at all) and implemented in practice, how they are tied into the criminal procedure and on the quantitative role that it plays in a country's criminal justice practice. Accordingly, there is a great degree of variation in Europe in these regards, to which we now turn our attention.

2.3 Legislative basis for restorative justice at pre-trial and court level of the criminal procedure

One of the objectives of the study was to collect information on national *legislation* concerning restorative justice in the criminal justice context in 48 European countries. In the following some key observations and conclusions will be summarised.

From an overall perspective, also the last decade has seen a development towards the legal integration of more and more restorative elements across Europe, even though at different speeds and with different emphases. Thus, by 2025 the idea of restorative justice has gained access to the criminal procedure of all countries in Europe albeit still in a heterogenous way, meaning at different stages, under different preconditions and to a quite differing extent, not only when it comes to practice but starting with the *legal* basis. What seems to be true for most European countries, however, is that (the implementation of elements of) restorative justice has generally not led to major changes in criminal justice systems, but remains 'at the margins of criminal justice', as the report on *Germany* states (chapter 18 of the European volume).

The following considerations focus on legislation concerning measures that can be considered as restorative justice in the sense of the Council of Europe Recommendation CM/Rec[2018]8), in particular victim-offender *mediation* or *reconciliation*, but also conferencing and circles as far as such practices are legally implemented. One third of the countries does have some experience with *conferencing* (see 2.1 above), the majority of these countries, however, does not provide for a specific legal basis but applies conferencing as a kind of extended mediation based on the rules for mediation. When it comes to *restorative circles*, we cannot even find two handfuls of countries that apply this form of restorative justice, let alone provide a legal basis for it. Due to the very specialised nature of these restorative circles, they are discussed in the context of restorative justice outside the criminal justice system (see chapter 50 of the European volume under 2.3).

According to our wide conceptual framework for what should be regarded as 'restorative' (especially including reparation by the offender without a preceding restorative process, see the Introduction of the European volume under 2. and above under 1.2) and to complete the picture about all the efforts to implement restorative justice within the national criminal justice systems in Europe, we will start with a brief look at measures that can be considered restorative, at least in part.

2.3.1 Partly restorative measures (restorative justice in a wider sense)

In most European countries there (traditionally) exist legal provisions with regard to measures one can call restorative to a certain extent as they focus on reparation, restitution or compensation for damage, maybe even on (re)conciliation. What distinguishes them from (true) restorative justice, however, usually is either the fact that they are *ordered*, thus missing the key criteria of voluntariness and/or that they are limited to compensation for damage without necessarily requiring a personal encounter between offender and victim.

These partly restorative measures often may be applied during the pre-trial phase by the *public prosecutor* (esp. in the context of *diversion*). Some countries also allow for diversion by the *police* (for instance *England and Wales, Northern Ireland, Ireland* or the *Netherlands*). Thus, where an offender has alleviated (or in some cases sought to alleviate) the harm or the material damage caused by the offence, either on his own initiative or fulfilling a requirement made by the prosecuting authorities, he can be *released from criminal liability*⁴³ or at least he is not found guilty in the strict sense and avoids punishment.

Likewise, while not as widespread as prosecutorial diversion, in about 26 of the countries covered in this study, the *courts have powers to refrain from convicting or sentencing an offender* on similar grounds. Courts can either postpone the procedure so as to enable reparation to be made, or reconciliation to be achieved, or can close the case due to the fact that, in the run-up to the trial, the offender has made reparation and/or reconciled with the victim, or has at least undertaken efforts to do so (as is the case in *Germany*, for example).

In 42 reports it is indicated that their national courts are equipped with further *special sentencing options* (special sanctions or measures) that reflect restorative justice thinking, including court-ordered reparation like '*reparation orders*'.

All jurisdictions in Europe also allow for taking into account reparation or reconciliation that has taken place between offender and victim on their *own initiative* in their final decision in the case as *mitigating circumstance* (see Table 4 under 2.1 above). Some countries even provide for specific regulations that allow so-called 'effective' or manifested 'repentance' (like *Poland, Portugal, Russia, Spain, Turkey, Ukraine* for example; *Austria* has also had such a provision since

⁴³ This terminology is characteristic for Eastern European countries under the legal influence of the former Soviet Union, and still used amongst others in Bulgaria, Estonia, Lithuania, Montenegro, Russia, Serbia, see the respective chapters of the European volume.

1787, but it is limited to property offences). For restorative justice measures while executing sentences see 2.4 below].

It is obvious that these legal instruments do not constitute a comprehensive legal basis institutionalising restorative justice within the criminal justice system. Nevertheless, one should not downplay the relevance of such (just) partly restorative measures as they still might have some preventive effect on the offender's side by fostering offender responsibility and reintegration through the experience of making amends and at the same time satisfy the victim's need for reparation in a much quicker and easier way than in (additional) civil proceedings (at the same time not excluding the possibility to file a civil claim with regard to the rest of the damage that has not been compensated).

Most probably these advantages will be bigger the more these measures approximate (true) restorative justice measures. This, e.g., is the case with '(re)conciliation conversations' led by public prosecutors or judges (see *Greece, Lithuania, Montenegro, Serbia, Slovakia, Turkey* and numerous other Eastern European countries, but also *Switzerland* where the law provides for a '*Vergleich*' or 'conciliation hearings to reach a mutual agreement', or Austria where the law explicitly allows for VOM facilitated by the prosecutor). Such '(re)conciliation conversations' or VOM facilitated by public prosecutors or judges are in some way transitional forms towards restorative justice in its true sense which we will be focussed on in the following subchapter. It needs to be noted, though, that such practices based on laws that foresee 'reconciliation processes' in which victim and offender are summoned before a prosecutor or judge who in turn seeks to help the parties reach an informal solution to the offence should not be confused with actual VOM, as they lack an important hallmark of VOM – the impartiality of the facilitator. This is true even if a prosecutor is specially trained, as his/her role as a prosecutor (leading the actual criminal proceedings) is at odds with the role as an impartial mediator in the same case. Similar concerns can be voiced regarding the use of (albeit specially trained) police officers in the context of restorative police cautioning in *Ireland, Northern Ireland and England & Wales*.

What is important to understand at this point is that, while there is wide consensus in the laws that achieving reconciliation or making reparation can be taken into consideration in the criminal procedure, *how* such reconciliation is to be achieved, *how* reparation should be determined and/or *how* it should be delivered is mostly not clearly defined. Rather, the legal regulations governing prosecutorial and court diversion as well as sentence mitigation serve as the most central 'access points' through which restorative processes like VOM and

conferencing can enter into the criminal procedure as ‘tools’ for achieving reparation or reconciliation. However, in the legal sense, reparation and reconciliation, as outcomes, can also be achieved without there necessarily having been a restorative process (like VOM or conferencing) involved, as the law makes no such requirements in the majority of cases. Thus, while reparation/reconciliation as grounds for diversion or mitigation of sentence are legally prescribed and thus valid nationwide, VOM and conferencing as means of achieving them not always are. Mention of ‘reconciliation’ in the legislation should be taken as implying a measurable legal fact or outcome rather than a particular process. Therefore, just because the term ‘reconciliation between victim and offender’ is used, it does not mean that an impartially facilitated encounter between the two actually took place.

When it comes to partly restorative measures also *community service* is frequently mentioned (like, e.g., in the reports of *Albania; Austria; Bosnia and Herzegovina; Bulgaria; Croatia; Czech Republic; Denmark; England and Wales; Estonia; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Macedonia; Montenegro; the Netherlands; Norway; Poland; Portugal; Romania; Russia; Serbia; Slovakia; Slovenia; Spain; Switzerland; Turkey; Ukraine*). As it is stated in the report on Slovenia (see Filipčič & Hafner in chapter 43 of the European volume): Community service is deeply rooted in restorative justice principles. One of its main ideas is for the offenders to reconcile with the community they harmed by contributing to it through their work as a form of symbolic restitution (Wood & Suzuki, 2024: 11). Rather than punishing the offender, the central aim is to restore the relationship between the offender and the community. Nevertheless, community service regularly cannot be defined as a restorative justice measure in the strict sense. However, in line with the report on the *Netherlands* (Claessen, Wolthuis & Slump in chapter 32 of the European volume), the restorative nature of community service can be enhanced ‘by connecting [...] the content of the unpaid restorative activities to the crime which has been committed and/or its victim’ (Claessen, 2020; 2023; McCold & Wachtel, 2003)‘.

Finally, some country reports also see *victims’ rights* as essential part of restorative justice (like *Montenegro* or *Serbia*). And, indeed, it seems to be important to state that every right strengthening the victim’s position *within (ordinary) criminal proceedings* contributes to a fair trial also for the person especially affected by the crime. Somehow this leads to an approximation of criminal proceedings as such and restorative proceedings. Especially if one

recognises the fact that at the same time victims⁴⁴ (and of course also offenders) need protection and legal safeguards within *restorative procedures* as well (so there also seems to be a kind of approximation in the other direction).

2.3.2 Restorative justice within the criminal justice system (VOM, reconciliation, conferencing)

According to the definition of ('true') restorative justice, the following subchapter focuses on legislation concerning *victim-offender-mediation* and – as far as it is existing – *restorative conferencing* that involve a facilitated encounter between victim and offender, in which the parties to the offence voluntarily and actively work together to mutually agree an approach to resolving it, for instance through reparation.

As already mentioned above, the most widespread manifestation of restorative justice in Europe – also with regard to *legal* implementation – still is victim-offender mediation. Almost all European countries provide for it (see 2.1 above). Conferencing might play a certain 'under cover' role as kind of *extended mediation*, thus *not* having a *specific* legal basis but being allowed and following the rules of VOM (e.g. in *Austria; Germany*: especially in youth justice; *Slovakia*), or – like restorative circles – have the status of (pilot) projects only rather than being legally implemented, and often are limited to juvenile offenders. But there are also a few countries having a legal basis for conferencing (see chapter 50 of the European volume).

Even if focusing on VOM only, it quickly becomes clear that even there we find different models and designations. Furthermore, one significant aspect lies in the fact that even if a country provides for nationwide legislation on VOM this does not necessarily mean that VOM services are available all over the country (see chapter 50 of the European volume under section 3.).

In most of Europe, VOM is implemented *within* the criminal justice system. Thus, access to VOM is determined through the discretionary decision-making of prosecutors, courts or other criminal justice agencies who refer cases in the context of their diversionary and sentencing powers, or who take previous VOM into consideration in the context of those powers. Thus, in the interest of proportionality, in the majority of European countries there are usually statutory limits on the kinds of offences that can be referred to VOM. However, not all countries in Europe condition access to VOM on the fulfilment of certain legal requirements/conditions (offence

⁴⁴ See Art. 12 of the Directive 2012/29/EU.

types, offence severity, offending history etc.) at certain stages of the process (see chapter 50 of the European volume).

In practice, VOM comes to be used in the context of resolving minor forms of criminality through diversion – only rarely are no legal limitations on eligible offences or offenders in place, and is predominantly used more in cases of young offenders, though provision for adults further on appears to be on the increase.

Usually, only provisions on the conditions of referral and the legal consequences of mediation are found in criminal law. Provisions on the mediation process itself and its principles, as well as on the role and training of mediators, are more likely to be found in guidelines or specific laws on mediation, which often also (or sometimes only, like in *Germany*) apply to mediation in civil, family, educational, commercial, environmental or other matters. In Romania, however, the 2006 Law on Mediation even contains specific provisions on the preconditions and consequences of mediation in criminal cases. On the other hand, Luxembourg's Code of Criminal Procedure contains provisions on the accreditation of mediators.

There are not many countries that provide a legal definition of restorative justice in criminal law like, e.g., the *Netherlands* or *Luxembourg*. In *Switzerland*, a draft provision on 'justice restaurative', (to be implemented in the Code of Criminal Procedure and effectively reducing the meaning of restorative justice to penal mediation only) has been discussed but not enacted. *Luxembourg* introduced a legal definition of restorative justice in its Code of Criminal Procedure in 2017 (revised in 2023), but – in contrast to the Swiss draft – it takes a maximalist approach, considering restorative justice as independent and complementary to criminal proceedings. As this example shows, this may be an important symbolic step, but of course it needs to be followed by action and further concrete legal provisions.

2.3.3 Decision to initiate restorative justice processes (referrals)

Most European countries have implemented VOM *within* the criminal justice system, mainly at the pre-trial stage under the legal responsibility of the *public prosecutor*, but many also as a back-up at the trial stage leaving the decision to the *court* (often) under the same legal conditions (e.g. *Austria*). Therefore, the referring authorities usually are public prosecutors (on their own or with the consent of the court) or the courts. In a few countries, only the courts may refer cases to VOM (e.g. *Malta*: When either the prosecution, the lawyer representing either of the parties or the supervising officer consider that there is a possibility that the case may benefit from victim-offender mediation, they will inform the court accordingly).

In some countries, the law explicitly mentions mediation as a means of diversion or as a court measure. In *Austria*, for example, mediation (*'Tatausgleich'*) is one of several options within a pre-court and court diversion scheme for offenders of all ages (the other options being a fine, community service or probation, all of which have to be combined with reparation). There, VOM can be applied in cases of offences for which the maximum penalty does not exceed five years, the offender has assumed responsibility for the offence and both parties voluntarily consent to the mediation process. Successful participation in VOM results in the case being closed. In other countries, VOM can enter into the criminal justice system as a means of achieving 'settlement', 'agreement' or 'reconciliation' in the context of legislative provisions governing diversion. For instance, in *Finland*, achieving reconciliation through mediation can be grounds for non-prosecution, court diversion or a mitigation of sentence.

In a large number of countries there exists no legal basis for the *police* to initiate restorative justice measures. Often this emanates from a (strict) principle of legality in criminal proceedings that allows for exceptions only according to a decision of the public prosecutor (e.g. *Austria, Switzerland, Germany, Montenegro, Serbia, Slovakia*). In some countries, however, VOM outside criminal cases or outside the criminal justice system is available (see chapter 50, subchapter 2.4 of the European volume). In *England & Wales* as well as in other Anglo-Saxon jurisdictions, but also in the Netherlands or in Norway, the police may use restorative approaches in cases of less serious offences or of antisocial behaviour. The police may refer cases to community-based volunteer organisations offering VOM schemes at the local level (in some regions) outside the criminal justice process. If the restorative justice procedure fails, the case will be referred back to the criminal justice system.

As a rule, in all jurisdictions public prosecutors and courts have control over the criminal proceedings and especially also over their outcome. The implementation of restorative measures within many criminal justice systems, however, have not only enriched the law and sanctioning system, but even have influenced *the role* of public prosecutors and judges being now supporting and facilitating more than is the case in traditional criminal justice systems. Therefore, the whole criminal justice system is slowly being changed and drawn closer to a restorative justice system. On the one hand this development seems to be a very gratifying one, yet: In some countries public prosecutors or judges even may act as 'facilitators' in VOM themselves, thus remaining within the traditional proceedings and neglecting a fundamental principle of restorative justice according to the Council of Europe's Recommendation, even if prosecutors are trained as facilitators. In *Austria*, e.g., the Code of Criminal Procedure allows for this (which only may be explained by the 'objective' role Austrian prosecutors have to

assume), stating that the public prosecutor *may* request a facilitator to guide and support the victim and the offender in their efforts to achieve reconciliation. In practice, though, a professional mediator is almost always involved.

The *mediation process* as such generally takes place *outside* the formal criminal proceedings. As far as mediation (as a reaction to crime within the criminal justice system) necessarily is embedded in the legal structures of criminal proceedings there has to be a criminal justice authority who decides on the referral and who is actually *referring* the case to the mediation service. This is also true for countries like *Malta*, where there exists a specific ‘Victim-Offender Mediation Committee’ being legally responsible to determine whether a case referred by the court definitely is eligible and suitable for victim-offender mediation. This process entails that the Committee receives from the court all relevant documentation related to the case. The Restorative Justice Act lists those factors which the Committee is bound to consider when deciding (see in general about the organisational structure of mediation providers section 3. below).

In the report on *France* (see Cario in chapter 16 of the European volume), however, it is argued that ‘penal mediation’ (in the sense of the Council of Europe Rec(99)20, CM/Rec (2018)8) should be seen as a measure which does not qualify as restorative justice in the true sense, because it is ‘ordered by a judicial authority and, in case of refusal or failure, the offence can be prosecuted. The consent of the parties is thus largely biased as they have to comply with a quasi-obligation imposed by the prosecutor. Therefore, such measures are the opposite of joining a restorative programme on a completely voluntary basis.’ This argument leads to the traditional criminal justice system and restorative justice being mutually exclusive. This would mean that restorative justice is not possible at all under criminal law as it currently stands in European countries. To a certain extent this cannot be denied and is part of the fundamental discussion about restorative justice (see the Introduction of the European volume under 2. and above under 1.2). However, a closer look at the logic of restorative justice in the context of the CJS reveals that, in essence, the referral is not an order in the strict sense, but an offer to the offender and the victim that must be accepted by both parties, otherwise (the attempt of a) mediation which is 100% dependent on the parties will not take place at all. This is also true if the referral by the public prosecutor or the court is called a referral *order* by the law (see e.g. England & Wales,). It does not mean (and simply is not possible) that the participation in the restorative justice process or the restorative outcome as such are being ordered and therefore obligatory (even the report on *France* only talks about ‘quasi’-obligation). The decision (to try)

to *initiate* a restorative process can be made by judicial authorities without compromising the – then following – restorative part of dealing with the offence by the parties themselves with the help of a facilitator. The competence to refer cases does not touch the voluntariness within the restorative justice process (mediation process) as such (for voluntariness as a precondition see chapter 50 of the European volume under 2.2.2.3). A ‘mediation order’ (as in *Germany*) has more to do with making (successful) mediation a condition for the termination of criminal proceedings than with using the power of the state to enforce it. What is true, however: Voluntariness on the offender’s side is always limited in criminal proceedings (more than it is limited anyway, which leads to another fundamental discussion), always under threat of continuation of criminal proceedings. This is due to the fact that we are talking about a reaction to *crime*. But this cannot qualify as argument for not providing for restorative justice in criminal proceedings. What counts in this context is, the absence of external pressure or coercion” (see report on *Germany*). The report on *Belgium* makes a conceptual distinction between ‘penal mediation’ (diversion) and ‘restorative mediation’ (process parallel to criminal proceedings with non-binding links), thus emphasizing the truly restorative character of the latter without explicitly denying the restorative approach of the former.

Even if the criminal justice authorities are required by law to examine the possibility of mediation at all stages of the procedure (see chapter 18 on *Germany* in the European volume), there always remains considerable room for discretion for the decision in favour or against mediation (e.g. when assessing the legal and social requirements and suitability criteria as well as the preventive necessity of a punishment). Even if the margin of discretion can and should never be completely ruled out, the right of the victim and the offender to initiate mediation is of great importance. On the question of whether mediation can also be initiated by the victim or the offender themselves, or by their supporters or representatives, a distinction has to be made between the mere possibility of suggesting VOM, which is obviously possible in any system, and an enforceable *right* to initiate mediation, which obliges the criminal justice authorities to make a reasoned decision, against which an appeal may even be lodged. As in many other countries, victims and offenders in *Germany*, have no formal right to initiate mediation, which has led to calls for its introduction (see Dünkkel & Willms, 2023 and Dünkkel et al. in chapter 18 of the European volume). In *Romania* victims and offenders may initiate a mediation process but they also have to arrange it privately and bear the costs.

2.3.4 Preconditions – Offences admitted to mediation (and legal restrictions)

In the following we will look at the legal requirements and restrictions for the use of mediation. What are the target groups in terms of the age of the offender and the victim, what types of offences and what levels of seriousness are covered by mediation, what are the requirements in terms of the offender's criminal record, what are the requirements in terms of evidence, consent or admission of guilt on the part of the offender? (see chapter 50, section 2.2.2 of the European volume).

As mentioned above, mediation is often legally linked to the framework of diversionary measures, which offer the possibility of an early termination of criminal proceedings without a trial. Usually, the public prosecutor is bound by a list of (general) legal requirements when deciding whether or not to divert a case from regular criminal proceedings. In the specific context of mediation, there may be additional requirements, which may be legal in the strict sense, but are more often contextual (such as whether or not domestic violence cases are suitable for mediation).

On the question of mandatory or discretionary use of restorative justice procedures, in particular mediation, the laws seem to favour discretion (as e.g. in *Austria*). Even if a law requires the prosecutor to refer cases to mediation services, this often leads to comparable results, as the conditions for referral usually leave considerable room for discretion (such as the consideration of individual and general aspects of prevention or other legal criteria defining suitable cases). Moreover, a distinction must be made between discretionary or mandatory referral to mediation and mandatory referral combined with discretionary dismissal (as in *Belgium* for juvenile VOM cases).

The majority of countries provide for *legal restrictions* on the severity or nature of the offence, whether in terms of the threat of punishment or the specific punishment to be expected (like in *Germany*, if exemption – and not only mitigation – from punishment is at stake) or requested by the prosecutor (*Belgium*), the consequences of the offence (e.g. exclusion in the case of death, see *Austria*) or the context of the offence (domestic violence, see below). These restrictions are often linked to or mostly identical with the conditions for diversion in general.

Often, we find restrictions such as: offences punishable by up to three or 5 years' imprisonment, often referred to as 'minor offences'. It is obvious that a look only at the penalties defined by the national legislators does not allow a serious comparison, but only gives a superficial impression of the seriousness of the offences allowed to be mediated (unlike in Serbia, Austria

or Switzerland, offences punishable by 5 years imprisonment would no longer be considered as minor). Even the concept of 'minor' crime may not be comparable in a satisfactory way, but at least it tells us that the vast majority of countries limit mediation to offences that are considered minor nationally.

Even if the law does *not restrict* the type of offence, practice or even courts may (legally) exclude certain offences from the scope of mediation. The requirement of an *individual victim* (who has suffered harm) also leads to the exclusion of various offences from mediation (see *German Federal Court* or practice in the *Netherlands* where a 'concrete identifiable victim' is required). In Norway the Director of Public Prosecutions has issued a Circular Letter defining the relevant criteria for referral of cases to VOM requiring that a person must be the victim. This obviously touches on a fundamental question concerning the nature of mediation (do legal persons qualify as victims or offenders in a mediation process, as is the case e.g. in *Romania*?). Furthermore, this requirement relates to the question of how individual persons have to be affected by a crime in order to be considered (directly) as individual victims. In countries that follow the German doctrine, this touches on the (unsolved) question of the extent to which so-called '*Kollektivrechtsgüter*' (collective values) can also directly protect the interests of single individuals. In *Norway*, so-called 'victimless crimes' are typically excluded from VOM. The Norwegian report states that there may, however, be cases where there is no victim in the legal sense, but where there are clearly persons who have been affected by the offence and who may need a restorative process. In such cases, VOM may still be an option as a criminal sanction, but any agreements must not include economic compensation. According to this line of argument, there is a category of victims who are not victims in the legal sense. In fact, this is just another way of dealing with the same problem: Who is to be seen as the victim by law? It becomes evident that even the term 'victimless crime' is not clear.

Incidentally, even in countries where all offences are basically eligible for mediation (*Denmark, Finland, France, Belgium* [with regard to so-called restorative mediation, see Aertsen in chapter 6 of the European volume]), there are restrictions regarding the specific circumstances of the offence (method of commission, consequences, relationship of victim and offender etc.).

Domestic violence

With regard to *domestic violence*, we find diametrically opposed approaches. Some countries generally exclude cases of domestic violence from (penal) mediation. Some countries allow for penal mediation (in suitable cases) or even promote it (see e.g. *Austria, Cyprus*).

In *Portugal* domestic violence cases are *excluded* from diversionary penal mediation because of their public nature, which means that they are to be prosecuted *ex officio*. After a provisional suspension of the proceedings or a conviction, however, restorative meetings may take place. Often the exclusion of domestic violence cases is not an explicit decision by national *law*. In *Malta* recently, the legislator included in the Restorative Justice Act the provision that ‘no gender-based violence and/or domestic violence cases are to be considered for victim-offender mediation’ (Restorative Justice Act, Chapter 516, Art. 30(2), Laws of Malta). Similar regulations to *exclude* mediation in cases of domestic violence exist in *Armenia, France, Kosovo, North Macedonia* and in *Spain*. Also in *Finland*, there is a tendency to restrict it again. On the other hand: The motor for law reforms concerning mediation in *Cyprus* and *Greece* were initiatives to *promote* mediation for partnership violence or other forms of *domestic violence*. In *Estonia* a large part of mediation cases are domestic violence cases (14 per cent, see Ginter & Markina in Chapter 14 of the European volume).

In *Norway*, according to the Criminal Procedure Act, ‘prosecutors can also decide on a ‘follow-up’-sanction issued by the National Mediation Scheme, which is another pre-trial penal sanction for persons who were older than 18 years at the time of the offence. This sanction implies VOM and a period of follow-up of the offender that may last up to a maximum of one year. The follow-up sanction requires consent from both offender and victim similar to VOM and otherwise follows largely the same criteria as described for mediation. This sanction also requires an assessment that the offender needs a follow-up supervision to prevent new offences. The follow-up period consists of carrying out an action plan developed and decided in dialogue between the NMS and the offender. The sanction was implemented from 2014, and so far is not much used. Areas of use are intended for more severe offences than those qualified for VOM, such as cases of *violence in close relationships* (Law proposal: Prop. L. 57 2013-2014. Chapter 10.3).’ (Paus in chapter 35 of the European volume)

In *Russia* recently ‘facilitators have started working with cases of *domestic violence* against children from the side of adults. Such situations are even more complex as a parent, instead of being responsible for a child, turns into an offender against them. Working on such complex situations requires a combination of the victim-offender mediation and restorative programmes in one programme. School conflicts where the reason for committing a crime or an offence is where the victim insults the offender or bullying (here ‘victim-offender’ exchange of roles takes place as well) also refer to this category of situations.’ (Kiseleva & Karnozova in chapter 39 of the European volume).

As mentioned above, in many countries this is not a specific legal issue, as domestic violence is sometimes not considered a specific offence, but rather bodily harm or threats in a specific context. From a purely *legal* perspective, it is therefore often automatically included in the potential scope of mediation.

Complainant's offences

Some countries allow mediation only in cases where the prosecution depends on the initiative of the victim or where the offence can only be prosecuted by the victim himself/herself (so-called 'complainant's crimes, or 'private (prosecution) crimes' (see *Albania, Bulgaria, Italy, Montenegro, Portugal, Romania, Serbia, Spain, Turkey*, etc.). Here, too, there is a specific connection with the (strict) principle of legality: Unlike the prosecutor, the victim is free to act. In theory, therefore, mediation is always possible in private prosecutions, even in countries where there is no legal basis for mediation in criminal cases at all. *Austria* is a special case: Although there is a comprehensive regulation on diversionary mediation, it only applies to so-called official offences (offences to be prosecuted by the public prosecutor). However, this does not mean that private offences are excluded from the possibility of mediation. As a rule, however, in these cases the mediation or reconciliation process is left to the offender and the victim, who may or may not contact a mediator on their own initiative. Another absolute peculiarity can be found in *German* criminal procedure law: Here, the victim of a private prosecution must first make a 'reconciliation attempt' (so-called 'Sühneversuch'), i.e. apply to the settlement authority (arbitration office) for a reconciliation hearing. If no agreement is reached between the victim and the offender, or if the offender fails to appear, the victim can file a complaint with the criminal court. The purpose of the reconciliation procedure is, on the one hand, to relieve the courts of the burden of hasty private complaints and, on the other hand, to maintain or achieve peace within a community by reconciling fellow citizens without resorting to the criminal courts.

2.4 Restorative justice while executing prison and other sentences

2.4.1 Overview on restorative justice measures in the post-sentencing stage

The term ‘restorative justice’ is complex and not clearly defined (see Wachtel, 2016 and section 1.2 above). According to a definition suitable for this section, ‘restorative justice (...) aims to (re)establish social peace’ and it creates ‘space for understanding and strengthening relationships - between those responsible for the offence and those affected by the offence and, where appropriate, the social environment of those involved.’.⁴⁵ Recommendation Rec(2018)8 of the Council of Europe on ‘Restorative Justice in Criminal Matters’ calls for ‘restorative justice ... to be available at every stage of proceedings in juvenile and adult criminal law’, i.e. also in the post-sentencing stage and in particular while serving prison sentences. On the one hand, this includes (direct) victim-offender encounters, mediation efforts to make amends to the victim and victim-oriented approaches (dealing with the offence, reparation/restitution and promoting mutual understanding.). On the other hand, it encompasses conflict resolution procedures within the prison system, addressing conflicts between offenders, whether serving a non-custodial or prison sentence, and the staff members involved in probation or prison services.⁴⁶

Table 7 below gives an overview about (possible) elements in the post-sentencing stage. First, mediation may be practised while serving a suspended or probation sentence (see Table 7, columns 2 and 3). Restorative measures in particular have developed for offenders serving a prison sentence (see Table 1, columns 4 and 5), and in this context they may be of importance in the preparation for release, in particular in the decision-making for an early/conditional release (Table 1, columns 6 and 7). Finally, even after a (conditional) release from prison, mediation and other restorative measures may be applied in the post-release stage as a condition of the probationary term, or as a voluntary measure of rehabilitation with the consent of victims and offenders.

⁴⁵ See the definitions given in the introductory chapter of the European volume under section 2 and above under 1.2.

⁴⁶ See in this respect Rule 60 of Rec(2018)8: ‘Restorative principles and approaches may also be used within the criminal justice system, but outside of the criminal procedure. For example, they may be applied where there is a conflict between citizens and police officers, between prisoners and prison officers, between prisoners, or between probation workers and the offenders they supervise. They may also be applied where there is a conflict between staff within judicial authorities or criminal justice agencies.’ Rule 61 expands on this approach as follows: ‘Restorative principles and approaches may be used proactively by judicial authorities and criminal justice agencies. For example, they could be utilised to build and maintain relationships: ... among prisoners; between prisoners and their families; or between prisoners and prison officers. This can help to build trust, respect and social capital between or within these groups.’

2.4.2 Restorative measures in the post-sentencing stage while executing community (non-custodial) sanctions

In 32 countries/jurisdictions (= 66.7 per cent) restorative measures/approaches are provided by law as an ancillary part of a probation sentence or in the framework of a suspended prison sentence with supervision by the probation service.⁴⁷ In these cases the probation services are often preparing and sometimes delivering victim-offender mediation if the parties request it. This may seem problematic as the Probation Services traditionally support the rehabilitation of offenders and their neutral role as facilitators of restorative measures can be questioned.

In 16 countries/jurisdictions (= 33.3 per cent) there is no provision for restorative measures during the execution of non-custodial sanctions. The respective jurisdictions are Armenia, Belarus, Bosnia & Hercegovina, Bulgaria, Greece, Hungary, Israel, Kosovo, Lithuania, Moldova, Montenegro, Russia, Scotland, Serbia, Sweden, and Turkey.⁴⁸

Restorative measures and outcomes can be considered in the decision-making procedure of early (conditional) release (see for the prognostic criteria in general Dünkel & Weber, 2019: 403 ff., 407 ff.). In some countries there are legal provisions that mediation or repairing the harm to the victims must or should be considered by the court or agency responsible for granting early release/parole, in some other jurisdictions it is not provided or challenged by law, but it certainly has some impact on the decision-making procedure.

In none of the countries reporting some legal options and/or practice of restorative measures on the level of the execution of sentences, concrete figures were communicated. Apparently, the practice is restricted to individual cases and specific constellations.

⁴⁷ Following our definition that community service regularly cannot be defined as a restorative justice measure (although theoretically some restorative potential is underlined by some scholars and also some authors of this volume, see Dünkel et al. in the introductory chapter of the European volume as well as under 1.1 and 2.3.1 above), we do not consider community service in this section.

⁴⁸ The table lists countries with an X only, if there are corresponding legislative requirements or projects. In *Bulgaria* and *Greece* we marked an (X), as the authors mentioned that there are no legal provisions, but there were some cases of providing support for victim-offender mediation in the context of probationary supervision, although there is apparently (almost) no practice yet. Both countries are counted under the 18 countries having no legal provision and practice.

In 12 other countries, restorative justice approaches only exist in the context of conditional release as a prerequisite or condition of conditional release, which are also not included in the table here: Austria, Azerbaijan, Bosnia & Herzegovina, Cyprus, Georgia, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Turkey and Ukraine.

Table 7: Restorative measures at the post-sentencing stage in the probation and prison system – (RJ measures as probationary orders, RJ-measures as condition for early release; victim-orientation as part of the sentencing plan in prisons, victim-offender meetings in prisons.)

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InnMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Albania	X	X	No	No	X	X	No	No	
Armenia	No	No	No	No	X	X	X	X	
Austria	X	X	No	No	X	X	No	No	
Azerbaijan	X	X	No	No	X	X	No	No	
Belarus	No	No	No	No	No	No	No	No	
Belgium	X	X	SP, Mediation, Rep/comp possible as part of the educational work of closed youth welfare facilities in individual cases	SP, VAP, VOE, VOM, InnMed nationwide across all prison facilities	X	X	X	X	
Bosnia & Herzegovina	No	No	No	No	(X)	(X)	No	No	
Bulgaria	(X) no legal provisions, but some	(X) no legal provisions, but some	VOM, conflict resolution training programmes	VOM (pilots, practice in individual cases)	No	X (not legally provided,	No	No	

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InmMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
	individual cases	individual cases				but some practice)			
Croatia	X	X	In accordance with Art. 14 Para. 2 of the Prison Act, prisons should encourage prisoners to repair the damage and undergo VOM	In accordance with Art. 14 Para. 2 of the Prison Act, prisons should encourage prisoners to repair the damage and undergo VOM; VAP/VOE with traffic offenders	X	X	X	X	
Cyprus	X	-	No	No	(X)	(X)	No	No	
Czech Republic	X	X	No inf.	VOE (Prison Fellowship, 'Building Bridges') (pilots VAP)	X	X	No	No	
Denmark	No	No	No	No	No	No	No	No	

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InnMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
England & Wales	X	X	(X) no national strategy and legal base, but local initiatives of VOE, VAP, InnMed	X 2000-2005: Restorative. prisons project*; VAP still available in some prisons	X	X	No	No	* involvement in the community
Estonia	X	X	SP, VOE, InnMed legally provided, practice in development	SP, VOE, InnMed legally provided, practice in development	X	X	-	-	
Finland	X	X	VOE, VOM in individual cases, no systematic orientation towards RJ	VOE, VOM in individual cases (since 2015 two small scale programmes for serious and violent off.)	X	X	-	-	
France	X	X	VOE, VOM in individual cases	VOE widely practised; SP, VOM in	X	X	X	X	

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InnMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
				individual cases					
Georgia	X	X	SP, VOM	SP, VOM (also for very serious off., but few cases)	X	X ⁴⁹	No	No	
Germany	X	X	SP, VAP, InnMed	SP, VAP, InnMed	X	X	No	No	
Greece	(X) Theoretically as element of supervision	No	No	No ⁵⁰	No	No	No	No	
Hungary	No	No	InnMed.	Prison Act 2013: Inn. Med., theoretically enlarged to mediation with original	No	No	No	No	

⁴⁹ It can be considered and in practice is considered, though it is not explicitly stipulated in the adult penal law.

⁵⁰ Resocialisation programmes in 9-12 prisons (one third of Greek prisons) 2016-2020 contained conflict resolution techniques for prisoners, due to the Covid pandemic and lack of funding they were stopped and continued only on a small scale by the Programme 'Prison of Peace', which supports prisoners in improving family relationships and other reintegrative measures. Both initiatives were and are oriented not primarily to victims, but to reintegrating offenders. Therefore we classified Greece with a 'No' concerning victim oriented rehabilitative programmes.

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InmMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
				victim; Project 'Prison for the city' ⁵¹					
Iceland	No	No	No	No	No	No	No	No	
Ireland	X	X (Sycamore progr. in preparation)	SP, VOE, VOM (rest. anti-violence programme)	(X) Not legally provided, but PS promotes VOM in individual cases	No	No	No	No	
Israel	X	X	SP, VOM	No	X	No	X	X	
Italy	X	X ⁵²	SP, (VOE, theoretically), VOM, Rep/comp ⁵³	SP, (VOE, theoretically), VOM, Rep/comp	X	X	X	X	

⁵¹ Encourages prisoners to look after cemeteries and playgrounds; similar to the idea of Restorative Prisons in E/W

⁵² Law No. 354 of 1975, partially amended by Law No. 663 of 1986 provides for the guilty party to be remitted to the social services (a probation measure), but the availability of the measure is subordinated to the condition that the offender should 'take steps as far as possible to benefit the victim of his crime' (Art. 47 Par. 7). The positive result of the probation period extinguishes the prison sentence.

⁵³ According to the Legislative Decree No. 121/2018, the juvenile penitentiary system is now autonomous. The Decree No. 121/2018 has increased the importance of restorative measures while serving sentence: the promotion of restorative as well as mediation programmes with the victim are seen as the main goal of the execution of youth prison sentences (Art. 1)

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InnMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Kosovo	No	No	No	No	No	X ⁵⁴	No	No	
Latvia	X	X	SP, VOM, provided by Prison Act of 2013 within the tool of rehabilitative measures	SP, VOM, provided by Prison Act of 2013 within the tool of rehabilitative measures	X	X	-	X /circles*	* for sex off. by Probation Service
Lithuania	No	No	No	No	X	X	X	X	
Luxembourg	(X)	X	No	No	X	X	X	X	
Malta	X	X	VOM	VOM ⁵⁵	X	X	X	X	
Moldova	No	No	No	No	No	No	No	No	
Montenegro	No	No	No	No	No	No	No	No	
Netherlands	X	X	SP, VAP, VOE, VOM, Rep/comp ⁵⁶	SP, VAP, VOE, VOM, Rep/comp	No	No	X	X	

⁵⁴ The ‘attitude towards criminal offence, the victim and its family’ is to be considered at the decision on a conditional release, Art. 116 No. 6.2 Law NO. 08/L-132 on the Execution of Criminal Sanctions of 14 July 2022.

⁵⁵ Victim-offender mediation may take place whilst the offender is serving a prison sentence. The legal structure allows three boards which work with inmates, to consider a case for victim-offender mediation and effectively refer such case to the Victim-Offender Mediation Committee. The three boards are the Offenders’ Assessment Board, the Remission Board and the Parole Board.

⁵⁶ ‘In youth prisons (forensic youth justice institutions) restorative justice is regarded as one of the (mostly underlying) treatment goals.’ Attention to restoration is more integrated into the full programme, treatment and courses of youth prisons, including DAPPER. DAPPER (meaning BRAVE) is part of the basic YOUTURN methodology. It consists of 8 meetings of one hour and has been implemented since 2015 in most youth prisons in the Netherlands.

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InmMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
				(almost nationwide)					
Northern Ireland	X	X	VOM (shuttle mediation), VAP, InmMed,	VOM (direct and shuttle mediation), VAP, InmMed,	No	No	No	No	
North Macedonia	X	X	No	No	No	No	No	No	
Norway	X	X	SP, VOM	SP, VOM ⁵⁷	No	No	No	No	
Poland	X	X	VOM, Rep/comp as part of the rehabilitative programme in youth facilities	(VOM) pilot project in the district of Lublin	X	X	(X) pilot, after cond. release	(X) pilot, after cond. release	
Portugal	X	X	VOM, VAP	VOM, VAP ⁵⁸	No	No	No	No	
Romania	X	X	VOM, VAP	VOM, VAP ⁵⁹	X	X	No	No	

⁵⁷ § 2 Execution of Sentencing Act (2001) states that '[t]here must be an offer to undergo a restorative process while the sentence is being served'.

⁵⁸ Law no. 115/2009 introduced a general possibility of post-sentencing restorative practices. Hence, no. 4 of Article 47 of this Law establishes that 'the prisoner may participate, with his consent, in restorative justice programmes, in particular via mediation sessions with the aggrieved party'.

⁵⁹ 1. Educational programme called 'Educating to repair' focuses on building conflict resolution skills, developing empathy and understanding the consequences of one's actions (30 sessions). 2. Psychological programme called 'Intervention targeting lack of empathy, duplicity and immorality'. It was developed to support offenders that struggle to show understanding towards others, to express emotions and to respect and care for others' vulnerabilities (3-6 months), see Păroşanu & Szabo in chapter 38 [of the European volume](#), under 3.2.

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InmMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Russia	No	No	InmMed; Apology letters to victims ⁶⁰	(X) ⁶¹ ; preparatory stage for Family Group Conf. in female prisons in one region	X	X	No	X; FGCs with women offenders released from prison (in one region)	
Scotland	No	No	VAP, VOE (Sycamore Tree Programmes)	VAP, VOE (Sycamore Tree Programmes)	No	No	No	No ⁶²	
Serbia	No	No	SP, VAP as rehabilitative measure	No	No	No	No	No	
Slovakia	X	X	No	No	X	X	No	No	
Slovenia	X	X	No	No	X	X	No	No	

⁶⁰ Since 2003 apology-letters are legally provided. They are used in the whole Russian penitentiary system as condition for early release, but they cannot be classified as ‘restorative’. However, in a small number of institutions for juveniles there is a practice of exchanging letters as part of rehabilitative programmes.

⁶¹ Apology-letters as condition for early release are not restorative in a strict sense.

⁶² Some cases and restorative processes have been implemented, but there is no coherent or consistent ‘national approach’ within the Scottish Prison Service. Practice is delivered ‘ad hoc’.

Country	Probationary order; RJ while executing community sanctions		Victim-oriented rehabilitative measures in prisons (SP, VAP, VOE, VOM, Rep/comp, InnMed.)*		RJ as condition/can be considered in decision of early release/parole		Post-release measures		Others
	Youth justice	Adult criminal justice	Youth prisons	Adult prisons	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	
Spain	X	X	No	VOM, Rep/comp for economic crimes; VOE in cases of terrorist crimes ⁶³	X	X	No	No	
Sweden	No	No	VOM ⁶⁴	VOM	X	X	No	No	
Switzerland	X	X	No	SP, VOE, VOM	X (Conduct orders incl. reparation etc.)	X	No	No	
Turkey	No	No	No	No	No	No	No	No	
Ukraine	X	X	No	No	X	X	No	No	

⁶³ The programme ‘Reconexión’ for persons deprived of liberty and their families was conceived in 2018 in the prison of Burgos; it is designed to improve the relationships between offenders to be released and their families and insofar corresponds to Rule 61 of the CM/rec(2018)8 proposing ‘... to build and maintain relationships ... between prisoners and their families...’. The Programa de intervención penitenciaria en delitos económicos (Prison intervention in economic offences programme, PIDECO) since the end of 2021 (‘In this specific treatment programme, restorative justice is understood as a necessary complement to repair the damage caused, and to have the opportunity to apologise for the loss caused.’ In the context of terrorist victimisation, restorative meetings took place in 2011 in the prison of Nanclares de la Oca, see Giménez-Salinas & Rodríguez in chapter 44.

⁶⁴ Some prisons, together with the municipal mediation service, arrange mediation meetings, it mainly applies to young people. An NGO called ‘The reconciliation group’, offers mediation in prison.

* RJ as part of Sentencing Plan (**SP**), Empathy Training programmes/Victim Awareness Programmes (**VAP**); Victim-Offender Encounters/meetings (**VOE**); Restorative Conferences/Mediation of offenders with their victims (**VOM**); Reparation/compensation efforts of the offender without (necessary) direct contact with the victim (**Rep/comp**); Inmate Conflict Resolution instead of disciplinary punishments (**InmMed**);
PS = Probation Service

2.4.3 Restorative justice in prisons

Restorative Justice in prison settings has become one of the dynamic and rapidly expanding fields of restorative justice in the last two decades. In our review of restorative justice in Europe based on 36 countries/jurisdictions in 2015, 18 of 36 countries reported some restorative practices (Dünkel, Grzywa-Holten & Horsfield, 2015: 1072 ff.), often only pilot projects which were still in their infancy with little or no evaluation and published materials. The present comparative analysis of restorative justice approaches in the prison system revealed that 28 of the 48 countries (= 58.3 per cent) had legal requirements or corresponding projects which may be characterised as ‘restorative’ in the framework of resocialisation measures, victim-offender encounters, restorative services or dispute resolution within the prison system as enumerated in Table 1 above in columns 4 and 5.

Restorative justice measures are in place in the following 28 countries/jurisdictions: Belgium (see Aertsen, 2005; 2012), Bulgaria, Croatia, the Czech Republic, Georgia, Germany, England & Wales, Estonia, Finland, France, Hungary, Ireland, Israel, Italy, Latvia, Malta, the Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Russia, Scotland, Serbia, Spain, Sweden and Switzerland. In Israel and Serbia, the projects are exclusively in juvenile detention, in the Czech Republic, Switzerland and Spain exclusively in adult detention. In Estonia, the legal requirements for restorative justice in prison were created in 2018, but there are only isolated practical approaches or corresponding plans.

In many cases, these are pilot projects limited to individual prisons only. However, in Belgium, the Netherlands and Northern Ireland, and in France and Switzerland in relation to general victim-offender encounters, there is a focus on restorative justice in the prison system.

Restorative measures in prisons are often explicitly enumerated in the regulations for establishing a *sentence plan* (SP).⁶⁵ This is the case in the Prison Laws of Belgium, Estonia, Georgia, Germany, Ireland, Israel (in youth prison facilities), Latvia, Malta, the Netherlands, Norway, Serbia and Switzerland (adult prison system). The consequence is that the prison

⁶⁵ The European Prison Rules demand from the prison authorities to establish a sentence plan for each prisoner which – on the basis of reports about the prisoners’ personal situation – should develop a strategy for preparation for release (see Rule 103.2 EPR). Such sentence plans should contain concrete rehabilitative measures such as work, education, other activities and preparation for release as well as social work, medical and psychological care (see Rules 103.4 and 103.5 EPR). Concerning the preparation for release, Rule 103.6 states: ‘There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.’

authorities have to check if and in case which victim-oriented measures could be addressed during the rehabilitation procedure and further resettlement planning.

Victim awareness programmes (VAP) occasionally play a role in therapeutic or ‘educational’ approaches (e.g. ‘social therapy’ facilities in Germany or in some juvenile detention facilities), with varying degrees of restorative focus. In several programmes, direct victim participation or contact is not part of the process. The term victim awareness ‘training’ can be somewhat problematic, as it suggests that those responsible for the offence need to be ‘educated’ or trained to show or develop empathy with victims, which may not fully align with the philosophy of restorative justice. In some cases, the distinction to victim-offender encounters is blurred, as victim awareness programmes can also provide for meetings with individual or abstract victims in the final phase.⁶⁶

Victim-offender encounters/meetings (VOE) contain talks of a group of prisoners with victims of crime similar to those they have committed (typically sexual or other violent offences), regularly not the ‘own’ victims, but victims as symbolic representatives of victimisation. The aim is similar to that in VAP, to sensitise offenders to the harm they have caused and to develop a deeper understanding of their wrongdoing with the hope of increasing their threshold for re-offending. Such programmes as well as victim awareness programmes have been developed particularly under the framework of the *Sycamore Tree Project*⁶⁷ and are widely implemented in France for example (see also 2.4.5 below).

Furthermore, there here are programmes or statutory regulations for *conflict mediation within prisons* (in the event of conflicts between prisoners or staff and prisoners, InmMed in Table 7) in Belgium, Germany (see 2.4.3.1 below), England & Wales, Estonia, Northern Ireland, Russia and Hungary. However, it can be assumed that consensual dispute resolution in many therapeutically oriented institutions (e.g. social therapy in Germany) regularly represents a milieu-therapeutic design element that was not fully recorded in our survey. In the regulations governing the execution of juvenile sentences in Germany, educational discussions/measures

⁶⁶ For example, the Victim-awareness-programme in the federal state of Schleswig-Holstein, see Hagenmeier, 2021: 52 f.

⁶⁷ Developed by Prison fellowship International, <https://pfi.org/what-we-do/prisoners/sycamore-tree-project-justice-and-peace/>.

are given priority over formal disciplinary measures in practically all federal states; in some cases, conflict resolution is also explicitly mentioned.⁶⁸

2.4.3.1 Examples of legal bases for restorative approaches to the treatment of offenders in the prison system

The legal basis for the introduction or implementation of restorative measures in the prison system is often more recent, e.g. the penitentiary laws in Germany (2007-2016), the guidelines of the Ministry of Justice from 2015 in the Netherlands, or the penitentiary law from 2022 in France.

Since the constitutional reform of legislative competences of 2006 (so-called federalism reform) with the transfer of legislative competence to the federal states, the legal basis in Germany has been anchored in 16 state laws on the penitentiary system, and in some cases also in corresponding juvenile prison laws.

In numerous prison laws, the prison authorities are ‘required’ to support prisoners in making amends to the injured parties (Bavaria, Brandenburg, Bremen, Hesse, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt). In Hamburg, victim-offender mediation is also explicitly mentioned, in North Rhine-Westphalia ‘victim-related treatment measures and measures to compensate for the consequences of the offence’ (§ 10 Prison Law, StVollzG, of North-Rhine Westfalia), and finally there are formulations such as that prisoners ‘should be encouraged and enabled’ to achieve compensation for the consequences of the offence or a VOM. This kind of legal formulation clarifies that such efforts of the offender to come to terms with the consequences of the crime are meant as an offer to the offender, which can never be enforced.⁶⁹ In Baden-Württemberg, Section 2 (5) of the Prison Code Book III stipulates the following requirement in the so-called treatment principles: ‘In order to achieve the objective of the prison sentence, insight into the consequences of the offence inflicted on the victim should be awakened and suitable measures for compensation should be sought.’ From the point of view of restorative justice, this should also only be about motivation and encouragement, not

⁶⁸ For example, in Baden-Württemberg, Hesse and North Rhine-Westphalia, see *Ostendorf-Rose*, 2020, Section 10, para. 1 ff.; however, the educational measures can be regarded as informal disciplinary sanctions and are therefore questionable in terms of their restorative potential.

⁶⁹ See in summary *Schwind, Böhm, Jehle, Laubenthal-Best*, 2020, Chapter 7, C. para. 6; *Feest, Lesting, Lindemann-Bahl & Pollähne*, 2022, Part II § 5 para. 70 with further references. The non-compliance of the offender to deal with the consequences of the crime therefore cannot be sanctioned by disciplinary measures. However, it may play a role in the decision-making of granting early release, because it may indicate a negative prognosis.

coercion.⁷⁰ In any case, the fundamental restorative justice principle of voluntary participation by those responsible for the offence and the victim must be observed.

The same applies if reintegration-oriented treatment measures are provided, for example in the context of coming to terms with the offence, taking into account the victim's perspective, or if VOM is provided as a 'social learning field' in terms of assuming social responsibility.⁷¹

In contrast, the *conflict resolution mechanisms* provided for in 12 out of 16 state prison laws in the event of *problems between prisoners* and *between prisoners and staff* are to be welcomed in order to avoid formal disciplinary measures (see 2.4.3.2 below on the application practice).⁷² Only in Baden-Württemberg, Bavaria, Hesse and Lower Saxony is such communicative conflict resolution not required by law.

The *Resocialisation and Victim Assistance Acts* in Hamburg (2020) and *Schleswig-Holstein* (2022) are also important for the transition from prison to freedom and aftercare/release assistance with regard to restorative justice measures. In this context, the 'ResoG' in Schleswig-Holstein has enshrined in law in Sections 21 and 22 in accordance with Rule 18 of the (Rec(2018)8 a countrywide range of VOM specialist offices and at the same time the possibility of initiating a VOM by the victims themselves.⁷³

In *Belgium*, restorative justice measures were already established in prisons in the early 1990s. In 2000, the Ministry of Justice issued a circular letter (Circular Letter of 4 October 2000), which created a full-time position for a restorative justice advisor in every prison. This 'National Programme for Restorative Justice in the Prison System' was placed on a legal footing with the Prison Act of 12 January 2005, in which the reintegration of prisoners and reparation to the injured/damaged were defined as the goals of the prison system.⁷⁴

⁷⁰ As far as can be seen, Baden-Württemberg is the only federal state that has attempted to evaluate this target provision. The successes remained relatively limited because in many cases enforcement failed to obtain the victims' contact addresses. Where contact was successfully established, most victims were willing to participate in a compensation procedure (only 11 per cent refused), which both sides later assessed as positive, see Kilchling, 2017: 49; Dünkel & Păroşanu, 2020: 324.

⁷¹ See Schwind, Böhm, Jehle, Laubenthal-*Best* 2020, Chapter 7, C. para. 6.

⁷² See Feest, Lesting, Lindemann-*Walter & Lindemann* 2022, Part II, Section 89 LandesR, para. 6; Schwind, Böhm, Jehle, Laubenthal-*Laubenthal* 2020, Chapter 11, para. 60.

⁷³ See Dünkel & Willms, 2023: 177, who propose a general right of initiative for those responsible for and affected by the offence as an extension of § 155a German Criminal Procedure Code (p. 182 f.). In many countries victims and offenders have a right to initiate a mediation procedure (see also Hartmann et al. in chapter 49 of the European Volume) and a duty of the criminal justice agencies to deal with such applications.

⁷⁴ See Aertsen in chapter 6 of this volume.

The Prison Act, which came into force in *France* on 1 May 2022, makes explicit reference to restorative justice (see Art. L1 sentence 3: Le service pénitentiaire ‘concourt à la mise en œuvre de mesures de justice restaurative’ (‘the prison administration is involved in implementing restorative measures’).

Section 2 of the *Norwegian* Execution of Sentencing Act (2001) states: ‘While the sentence is being served, there must be an offer to participate in restorative justice proceedings.’⁷⁵

The examples of these countries could be seen as a model for prison law regulations in other countries: As a rule, the statutory provisions encourage restorative justice in the prison system without setting specific requirements. On the one hand, this enables the development of a variety of restorative justice services, on the other hand, the naming of specific measures or programmes (e.g. VOM) in the law would be advantageous insofar as it would create an obligation for the prison administration to finance such services.

2.4.3.2 Conflict resolution in the prison system between prisoners and staff

As mentioned under 2.4.2 and 2.4.3, most federal states in *Germany* also provide for consensual mediation as a restorative measure for conflicts within the prison system. Such consensual mediation to avoid formal disciplinary measures was recorded statistically for the first time from 2019. In 2019, however, there were significant numbers of cases only in Baden-Württemberg (270 cases, i.e. 4.5 per cent of the total number of disciplinary measures and dispute settlements)⁷⁵ in North Rhine-Westphalia (1,083 cases, i.e. 8.1 per cent of all disciplinary cases) and in Saxony (124 cases, i.e. 4.7 per cent), while the national average was only 3.6 per cent (n=1,478) of all disciplinary cases. This was due to 5 federal states that stated that they had not had any dispute settlement.

In 2021, the overall figure of 3.4 per cent dispute settlements in relation to all relevant disciplinary cases remained at a comparably low level. However, the figures for Rhineland-Palatinate, which were reported for the first time, are noteworthy, as they indicate an almost ‘restorative-justice oriented conflict resolution management’ with 21.7 per cent dispute resolutions in relation to all disciplinary incidents. Incidentally, only Brandenburg (7.3 per cent) and North Rhine-Westphalia (5.2 per cent) reported significant proportions of restorative dispute resolution, with all other states reporting only isolated cases in statistical terms.

⁷⁵ The figures for Baden-Württemberg are surprising insofar as there is no corresponding legal requirement in the Prison Act (see 2.4.3 above).

2.4.3.3 Victim-offender encounters: Sycamore Tree programmes, restorative dialogues (*Switzerland*), Réunions victimes-délinquants (*France*), etc.

A gradual expansion of restorative approaches such as victim-offender encounters, often in programmatic discussion groups such as the Sycamore Tree programme, can be observed in a number of countries (partly on an experimental level).

In *Belgium*, mediation in criminal cases has gained in importance in recent years, particularly in the adult sector. In addition to restorative justice institutions/specialist agencies, this can now be carried out by the social services of the justice system, which are also involved in the implementation of victim-offender discussion groups.⁷⁶ *Belgium*, together with the *Netherlands*, occupies a prominent position in that restorative measures are also offered throughout the penal system. In the *Netherlands*, victim-offender meetings are in principle possible throughout the prison system. In 5 (youth) correctional facilities, so-called ‘restorative counsellors’ are responsible for victim-offender meetings (in district proceedings or as part of victim-offender mediation (VOM), see Claessen, Wolthuis & Slump in chapter 32 of the European volume).

Remarkable developments in *France* since 2017 point to an increasing number of victim-offender encounters in the prison system. Here, victims and offenders of similar crimes meet in small groups during a restorative dialogue process lasting several weeks. In recent years, a large number of mediators and volunteers from civil society have been trained for such encounters. In total, around 300 such programmes have already been carried out across the country, in which more than 1,200 victims and perpetrators have participated (Cario in chapter 16 of the European volume).

In *Switzerland*, innovative local approaches such as mediation between victims and those responsible for the offence and restorative dialogues after serious crimes have been increasingly used in certain penal institutions. The restorative dialogues, based on the Sycamore Tree programme, take place over a period of 8 weeks as circle proceedings (Domenig, 2023: 210 and in chapter 46 of the European volume).⁷⁷

⁷⁶ Aertsen in chapter 6 of this volume. The restorative justice advisors, who were supposed to advise the prison administration on the creation of restorative justice-oriented prison structures, were abolished in 2008 in this specific orientation and converted into general advisors to the prison administrations.

⁷⁷ See also <http://www.prisonfellowship-rj.ch/> (last accessed 20 September 2024).

In countries/jurisdictions such as the UK (*England & Wales, Northern Ireland and Scotland*) and the *Czech Republic*, circle proceedings based on the Sycamore Tree programme are also offered in adult prisons, in some cases nationwide.

An interesting *particularity* can be found in Croatia and Spain with regards to specific offender groups beyond the traditional focus of VOE-programmes on sexual and violent offences. In *Croatia* victim-offender encounters since 2005, and in particular since 2009, have been established for *traffic offenders*. Sometimes relatives of persons killed by a traffic offence participated on the side of the victims (see Carrington-Dye et al., 2015: 46 ff.).

In Spain the programme ‘PIDECO’ focuses on offenders of economic crimes; another special group addressed by a VOE-Programme were members of the incarcerated Basque ETA (separatist group) (see in detail Giménez-Salinas & Rodriguez in chapter 44 and above under 2.4.2, Table 7).

2.4.4 Summary and outlook concerning restorative measures in the post-sentencing stage

Restorative justice-oriented measures have become considerably more important in the prison systems in Europe. Fortunately, the range of restorative justice options is increasing. In addition to the ‘classic’ VOM, many countries are facilitating victim-offender encounters (with ‘symbolic’ victims, not the victims of their own offences) with the aim of promoting mutual understanding and sensitising those responsible for the offence to the suffering of the victims and, in the best cases, supporting healing processes. This can in turn enable the perpetrators to incorporate these experiences into their efforts to make amends to ‘their’ victims. These initiatives appear to be positive⁷⁸ in principle as long as they are voluntary, in accordance with the restorative justice principles, and no indirect coercion is exerted through benefits in the context of decisions on measures for release (transfers to open prisons, prison leaves, and/or early release). If the victim’s reappraisal of the offence, apology or reparation are rewarded with facilitation of the prison regime or conditional release, this is justifiable in the context of prognostic assessments, but if they are made a legal requirement for the granting of relaxed

⁷⁸ See already Rössner & Wulff, 1984; also the articles in Höffler, Jesse & Bliesener, 2019; Dünkel & Păroşanu 2020: 317.

sentences or conditional release, this ultimately leads to a (punitive, i.e. punishment-oriented) tightening of the prison regime, which cannot be justified under the guise of restorative justice.⁷⁹

⁷⁹ In the same direction see the arguments of Schwind, Böhm, Jehle, Laubenthal-*Best*, 2020, Chapter 7, C. para. 6; Feest, Lesting, Lindemann-*Bahl* & *Pollähne*, 2022, Part II § 5 para. 74.

3. Organisational structure and providers of restorative justice/mediation

In most countries, restorative justice – primarily in the form of victim-offender mediation – is provided by state-funded, community-based organisations (e.g., *Albania, Finland, Italy*), a mix of community-based organisations and public agencies (e.g., *Belgium, the Netherlands, Turkey*), or a central mediation service with regional offices across the country (e.g., *Norway*). In several countries, restorative justice is facilitated by probation services (e.g., *Czech Republic, Hungary, Latvia, Slovakia*), social services (e.g., *Sweden*), or victim support services (e.g., *Estonia*).

In other countries, services are delivered by private mediation centres and/or individual mediators (e.g., *Bulgaria, Cyprus, Moldova, Montenegro, North Macedonia, Poland, Romania*). *Denmark* offers a victim-offender mediation service staffed by certified mediators within the police force. In *Iceland* - and for example in *Ireland* for cases involving young people - trained police officers conduct restorative justice conferencing.

Several countries offer various services for young persons (including young adults) and adults. For instance, in *Bosnia and Herzegovina* and *Croatia*, social services provide victim-offender mediation or related interventions for young people. In *Georgia*, restorative justice is implemented by facilitators as part of a specific Diversion and Mediation Programme for young persons. In *Northern Ireland* and *Germany* for example, specialised youth justice agencies or the Youth Court Aid provide restorative justice.

In most countries, mediators are specially trained professionals. In some, like in *Norway* and *Finland*, trained volunteers supported by professionals, or a combination of both approaches is used, as seen for example in *Belgium, England and Wales, Estonia* and *Sweden*. The approach in *Norway* and *Finland*, which emphasises trained volunteers with professional oversight, highlights the community-based philosophy and grassroots participation.

Table 8: Restorative justice providers

RJ Service Provider	Countries	
	Young persons (and young adults)	Adults
Community-based mediation/restorative justice organisations/ NGOs (state funded)	<i>Albania, Finland,⁸⁰ Italy, Kosovo,⁸¹ Luxembourg, Ukraine</i>	<i>Albania, England and Wales, Finland, Italy, Kosovo, Luxembourg, Ukraine</i>
Non-profit association/association of mediators/central mediation service	<i>Austria,⁸² Norway</i>	<i>Austria, Bosnia-Herzegovina, Norway</i>

⁸⁰ Services are provided by mediation offices. These are coordinated by the municipal social welfare authorities.

⁸¹ Mediation centres have been supported by international organisations.

⁸² The association NEUSTART is the sole victim-offender mediation provider across the country. It is an autonomous body subsidised by the Ministry of Justice. NEUSTART offers various services, such as probation assistance, victim support, community service and mediation for youth and adults.

RJ Service Provider	Countries	
	Young persons (and young adults)	Adults
mediation centres (private) and/or individual mediators ⁸³	<i>Belarus,⁸⁴ Bulgaria, Cyprus, Moldova, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovenia⁸⁵</i>	<i>Belarus, Bulgaria, Croatia, Moldova, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovenia</i>
community-based organisations/NGOs and public agencies	<i>Belgium,⁸⁶ Israel,⁸⁷ The Netherlands, Russia, Turkey⁸⁸</i>	<i>Belgium, the Netherlands, Turkey</i>
Probation Services/Probation and Mediation Service	<i>Czech Republic, Georgia (Diversion and Mediation Department),⁸⁹ Hungary, Latvia, Malta, Portugal,⁹⁰ Slovakia</i>	<i>Czech Republic, Hungary, Israel, Latvia, Malta, Northern Ireland,⁹¹ Portugal, Slovakia</i>
Social welfare centres/social services	<i>Bosnia-Herzegovina, Croatia, Sweden</i>	<i>Sweden</i>
Victim support services	<i>Estonia</i>	<i>Estonia</i>
Youth justice agencies/youth court aid	<i>Germany, Greece, Northern Ireland</i>	
Police (trained officers)/Mediation (impartial) service within the Police	<i>Denmark (impartial service), Iceland (trained officers)</i>	<i>Denmark (impartial service), Iceland (trained officers)</i>
Mixture of services	<i>England and Wales, France,⁹² Ireland,⁹³ Scotland, Spain, Switzerland</i>	<i>England and Wales, France, Germany,⁹⁴ Ireland, Scotland, Spain, Switzerland</i>

⁸³ Mediators are typically certified by the Ministry of Justice, or a body supervised by the Ministry of Justice.

⁸⁴ For young people, specific counselling centres also provide restorative justice services.

⁸⁵ Educational measures for youth aimed at settlement with the victim or apologies are carried out by Centres for Social Work.

⁸⁶ Houses of Justice (funded at community level) are responsible for the provision of penal mediation, a diversionary measure carried out under the authority of the public prosecutor.

⁸⁷ These comprise social welfare agencies and local non-profit organisations.

⁸⁸ Victim-offender mediation for all age groups is typically conducted by trained mediators in specialised, independent offices within the prosecutorial system across the country.

⁸⁹ This department is part of the National Agency for Crime Prevention, Probation and Enforcement of Non-Custodial Sentences.

⁹⁰ The Directorate General for Social Reinsertion selects and employs mediators specialised in criminal matters to offer restorative justice services for both young people and adults.

⁹¹ Restorative conferencing for adults is facilitated by the Probation Board and/or the Northern Ireland Prison Service (NIPS).

⁹² In France, several organisations provide restorative justice services for youth and adults, including the Institut Français pour la Justice Restaurative (IFJR) and several associations (e.g. Citoyens & Justice).

⁹³ Restorative justice is provided by trained police officers (youth), probation services or community-based organisations.

⁹⁴ Service providers include community-based organisations (adults), social services of justice (adults), and the Youth Court Aid (young persons).

It should be noted that victim-offender mediation and other restorative interventions are not available in practice across all the countries included in the study (e.g. *Armenia, Azerbaijan, Lithuania*). Additionally, some country reports offer limited information on restorative justice providers.

4. Research, evaluation and experiences with restorative justice

As already described in *section 2.2* above, in some countries, restorative initiatives and/or legislation were introduced primarily as a means of providing alternative procedures and measures in the context of general criminal justice and particularly juvenile justice reform. In others, strengthening the role of victims and reinforcing their rights was the primary driving force. Therefore, the theoretical, ideological role that restorative justice plays is largely defined by the driving factors behind its introduction, which in turn – despite clear signs of overlap throughout Europe – are dependent on the national context. Accordingly, as we have seen, the forms of restorative justice that are available, the ways they have been implemented, how they are connected to the criminal procedure (if at all) and their effects on that process (if any) vary significantly throughout Europe. The same degree of variation can also be observed regarding the extent to which restorative justice initiatives or measures play a quantitative role in the context of criminal justice practice.

4.1 Problems with measuring the role of restorative justice in criminal justice practice

Measuring the role that restorative processes, practices and outcomes play in the context of criminal justice practice (in terms of case numbers, and the share they make up of all recorded responses to offending) is not a straightforward task.⁹⁵ First and foremost, many authors in the study reported that in their countries official statistical data sources were fragmented (in 23 countries/jurisdictions: *Albania, Belarus, Croatia, Czech Republic, England & Wales, France, Georgia,*⁹⁶ *Germany, Greece, Iceland, Ireland, Latvia, Lithuania, the Netherlands, Northern Ireland, North Macedonia, Portugal, Russia, Scotland, Slovakia, Spain, Switzerland, Ukraine*) or entirely lacking (in 16 countries: *Armenia, Azerbaijan, Bosnia-Herzegovina, Cyprus,*

⁹⁵ See already Miers & Willemsens, 2004: 155 ff.; Willemsens, 2008: 22 ff. for some challenges in ‘measuring’ restorative measures and procedures in practice; see also Hartmann et al. in chapter 49 about their approach to collect data on restorative justice statistics in the participating countries/jurisdictions of the European volume of the Encyclopaedia.

⁹⁶ *Georgia* is a good example for fragmented statistical data, as statistics are compounding diversion and mediation and therefore the proportion of mediation cases is not exactly disclosed, see Chochua & Javakhishvili in chapter 17.

Bulgaria, Denmark, Israel, Italy, Kosovo, Luxembourg, Malta, Moldova, Montenegro, Romania, Serbia, and Sweden).

Comprehensive statistics with for certain periods complete data on mediation cases exist only in 9 countries/jurisdictions: *Austria, Belgium, Estonia, Finland, Hungary, Poland, Norway, Slovenia* and *Turkey* (in *Turkey* only for the pre-court stage). The *Polish* data in particular give valid information on the use of mediation with respect to the total number of cases handled by the criminal justice system. One could mention *Catalonia* (Spain) in this context as. in contrast to the rest of Spain, there is quite detailed statistical evidence available.

Hartmann, Ridder & Schmidt in chapter 49 of the European volume found that only 16 (out of 37) countries included in their survey disposed of statistics on restorative practices (mostly on mediation), which are organised by a national authority, 14 of them on a regular basis. With their ‘mixed approach’ of a written questionnaire (which had a response rate of only 16 out of 46 countries) and additional information gathered by online research, they cover 37 jurisdictions. The evidence of only a fragmented data base for a comprehensive statistical understanding of restorative practices and interventions is similar to the knowledge we gathered from the national reports (chapters 1-48 of the European volume). *Germany* is a good example for only limited access to somewhat comprehensive statistics: The Federal Ministry of Justice has funded the statistics on victim-offender mediation since 1993. The problem, however, is that the stakeholders, who offer mediation (private non-profit organisations, or state-run youth welfare or probation services), are not obliged to report their annual data. The Federal Statistical Bureau reports additional data on mediation and on reparation of damages by the offender, if these measures are ordered by the court or the prosecutor during the court stage, leaving out the (probably) statistically much more important case of mediation in the pre-court stage on the initiative of the public prosecutor. Under these conditions, it is difficult to estimate to what extent restorative practices play a role in the general sentencing practice and if mediation has gained real importance. For *Germany* some of the available statistics indicate that the percentage of mediation cases has declined slightly since the early 2010s. This may be explained by the restrictions of state funding of private non-profit organisations because of the financial crises of the communal sector (see Dünkel et al. in chapter 18 of the European volume).

Where official statistical sources are available, the role of restorative justice can be reflected in such data sources only with difficulty. Sometimes all that is registered in official justice statistics is the legal provision that is applied (forms of diversion from prosecution, court or sentencing that can have restorative elements attached as conditions), while the conditions that

were attached to that decision (for instance, that reparation be made, community service be rendered, or VOM be undertaken) are not. Equally, statistics do not record the mitigating factors that courts take into account in sentencing. This issue is particularly pronounced when the definition of restorative justice is drawn widely to include the making of reparation or the delivery of restitution to victims without the involvement of a restorative process, as in such cases – unless reparation is made in the context of a statutory intervention or there are special reparation schemes in place whose performance is monitored – reparation as a means of achieving reconciliation often occurs in an entirely unregulated and informal fashion that cannot be measured. Or rather: how reconciliation or mediation was achieved, whether reparation was made, is rarely statistically discernible.

In interpreting the available data, the degree of ‘coverage’ always has to be borne in mind. For instance, in many countries the legal ‘access point’ (for instance prosecutorial discretion to drop the case in certain circumstances) is available nationwide, but providers of restorative justice measures, procedures or services (e.g. mediation) have only been established in certain regions of the country (for instance in *Bulgaria, Croatia, Ireland, Montenegro, Serbia, Russia* and the *Ukraine*). An example for a need for caution in interpreting data is *Lithuania*, where the report states that the kind of reconciliation practices by prosecutors and courts has nothing to do with restorative justice. It is based on the attempt to make the offender pay reparation to the victim in a rather coercive way, ‘an independent and well-trained third party (mediator) is not involved in the process’ (see Sakalauskas in chapter 27 of the European volume under section 2.1). In practice, however, victim-offender mediation or other processes employing impartial facilitators are used only very rarely as their availability is limited to certain geographical or administrative regions.

In practice, unless provided by a monitored state service, the task of counting the frequency in which *restorative processes* like victim-offender mediation played a role in a case would come down to the service providers of the respective processes in the context of monitoring their own performance (in this regard, see Vanfraechem & Aertsen 2010: 273) or by NGOs which try to monitor restorative justice practices in the country (for instance the *Albanian Foundation for Conflict Resolution and Reconciliation of Disputes [AFCR]* or the *German TOA-Service Bureau*). However, in their data they do not always differentiate between the authority or body making the referral or the legislative basis of the referral. Where there are different providers involved, it becomes less likely that the picture is precise or complete or even comparable in itself as they may count in different ways (number of referrals, number of sessions, number of offenders, number of victims etc.). In *Belgium* for instance, depending on

the programme, ‘cases’ are counted on the basis of the number of offenders involved, the number of victim-offender relations, or the number of judicial files. Keeping elaborate statistics is a costly undertaking that many smaller victim-offender initiatives/programmes might have difficulties affording in the long term.

In some countries, all that is available in terms of data are results from accompanying research or studies linked to individual pilot projects or the like, often dating back a number of years to the beginnings of restorative justice in the country (see e.g. the report on *Iceland* in chapter 21 of the European volume). For example, in *Denmark* a study providing some insight noted that from 1998 to 2002 there were on average only 40 cases of victim-offender mediation each year. Later evaluation studies of the 2010s produced more qualitative research results on the suitability, the selection procedure of cases for a referral to mediation schemes, but no representative statistical data on the use of restorative justice measures are available through this research. Information on the research on recidivism after victim-offender mediation in *Denmark* is given under 4.3 below.

Finally, the figures provided – whatever the source – do little to give a sense of the true extent to which restorative justice is used – they are seldom refined to take into account the total population of the country, the total number of offenders brought to justice etc. Therefore, just because an absolute number is high in international comparison, it need not be an indicator for restorative justice being used closer to its full potential.

4.2 Data on the quantitative use of restorative justice in practice

The data base for the following description are mainly the national reports delivered by the authors of this volume. As Hartmann et al. also indicate in chapter 49 of the European volume, data collection is not at all satisfactory and in many countries only fragmentary and incomplete. Nevertheless, we tried to find information elsewhere too, e.g. in the international data base of the European Sourcebook of Crime and Criminal Justice Statistics (Aebi et al., 2021) or the Annual Penal Statistics published by the Council of Europe under the framework of SPACE II (see for the most recent one concerning the year 2023 Aebi & Molnar, 2024).

The European Sourcebook does not contain detailed statistical information about restorative measures or procedures. Mediation is only mentioned in the context of the prosecutorial discretion in some countries allowing to drop a case if successful mediation has taken place. In a few countries such a discharge of the case is also possible for the police (*Armenia, Anglo-*

Saxon countries and the *Netherlands*), in others it is restricted to the prosecutor or even the court (see above section 2.1 and 2.2). In the section on probation statistics, the sourcebook mentions that mediation is part of the probationary work, in particular where the probation services are named ‘Probation and Mediation Services’ as is the case e.g. in the *Czech Republic*, *Latvia* or *Norway*, where the (state) probation service is responsible also for participating in mediation processes. In *Austria*, the private probation service *Neustart* (funded by the Ministry of Justice) provides specialised staff for mediation in criminal matters (see Glaeser & Pelikan in chapter 3 of the European volume). This organisational structure with distinct branches of probation officers working with victims *and* offenders on the one hand and probation officers handling the ‘normal’ probation work of reintegrating offenders on the other, prevents role conflicts with regard to the neutral position mediators must take in their aims of achieving restorative justice.

The European Sourcebook in parts is based on the Council of Europe’s annual statistics SPACE-I and SPACE-II. In SPACE-II, which delivers statistical data on those under supervision of the probation services. There are a few data on mediation, if it takes place in the context of the work of these supervision agencies.

However, an interested researcher or user must again be rather disappointed when looking at the statistics on forms of supervision and related data on mediation. Only for the pre-trial stage, a few countries report the number of persons under supervision who have had a mediation procedure (organised by the probation service). Out of the 51 countries or jurisdictions collected in SPACE-II only 8 reported some stock data (see Table 9), 10 on the flow of entries to probation with a mediation procedure within the scope of probationary work (see Table 10). As to the stock data, we analysed the data for 2015, 2022 and 2023. Apart from Belgium, no country reported full data for the respective three years observed in Table 9.

The highest number of mediation cases was reported for *Belgium*, where mediation cases covered about one third of the persons under supervision at the pre-trial stage. The numbers of *Latvia* and *Spain (Catalonia)* for 2015 and 2022 must be interpreted cautiously as apparently only mediation cases are registered in the statistics of the pre-trial stage and therefore – although small in absolute figures – cover 100 per cent of the probationers. The Latvian data are very inconsistent in comparison of the years observed and therefore of doubtful validity.

The numbers of *Belgium* coincide with the national report of Aertsen in chapter 6 of the European volume and seem to be more trustworthy.

High numbers for mediation are further shown for *Hungary* (stock and flow data) and *Slovakia* (flow of entries), which is confirmed by the analysis based on the national reports as well (see below). *Slovenia* reported only the flow of entry numbers for 2023. The proportion of 44 per cent mediation cases related to all pre-trial entries to the probation service corresponds to the total annual cases of the national report of Filipčič & Hafner in chapter 43 of the European volume (although the absolute numbers are small), see further below.

Table 9: Persons under the supervision of the Probation Service at pre-trial stage – victim-offender mediation (Stock dates, 31 December 2015, 31 January 2022 and 2023)

Country	2015 total persons abs.	VOM abs.	VOM %	2022 total persons abs.	VOM abs.	VOM %	2023 total persons abs.	VOM abs.	VOM %
Belgium	15,498	5,988	38.6	23,330	7,833	33.6	23,592	7,581	32.1
France	No inf.	No inf.	No inf.	No inf.	No inf.	No inf.	7,228	21	0.3
Greece	5,432	287	5.3	No inf.	No inf.	No inf.	54	3	5.6
Hungary	5,389	1,553	28.8	11,408	1,938	17.0	No inf.	No inf.	No inf.
Latvia	94	94	(100.0)	61	61	(100.0)	208	79	38.0
Slovakia	1,261	983	78.0	1,835	14	0.8	1,340	144	10.8
Spain (Catalonia)	246	246	(100.0)	282	282	(100.0)	No inf.	No inf.	No inf.
Turkey	81,346	1,284	1.6	No inf.	No inf.	No inf.	No inf.	No inf.	No inf.

Source: Aebi & Chopin, 2016: 18 f.; Aebi & Hashimoto, 2023: 33 f.; Aebi & Molnar, 2024: 31 f.

Table 10: Flow of entries of probationers at pre-trial stage with a VOM-procedure, 2021 and 2022

Country	2021, total numbers of entries	VOM abs.	VOM %	2022, total numbers of entries	VOM abs.	VOM %
Belgium	19,799	6,832	34.5	20,604	No inf.	No inf.
Czech Republic	6,114	349	5.7	7,430	6,990	94.1
Greece	No inf.	No inf.	No inf.	53	12	22.6
Hungary	8,041	3,894	48.4	No inf.	No inf.	No inf.
Latvia	838	838	(100.0)	1,043	17	1.6
Liechtenstein	No inf.	No inf.	No inf.	41	17	41.5
Serbia	No inf.	No inf.	No inf.	632	10	1.6
Slovakia	1,703	892	52.4	2,694	874	32.4
Slovenia	No inf.	No inf.	No inf.	218	96	44.0
Spain (Catalonia)	2,016	2,016	(100.0)	No inf.	No inf.	No inf.

Source: Aebi & Hashimoto, 2023: 61 f.; Aebi & Molnar, 2024: 50 f.

With these shortcomings in mind, overall it can be said that restorative justice plays a major role in the criminal justice practice of only a small handful of countries. In terms of restorative measures that seek the making of reparation to the victim or the community (an ‘outcome’-oriented definition of restorative justice), the statistical situation is bleak (as already explained above). Where data are available, they predominantly cover statutory interventions, most frequently community service. Due to this and the conceptual reservations towards community service noted in the Introduction as well as in section 1.2 above, the number of reports in which data on the use of community service in practice were provided was very small. What can be said, based on the data available, is that in many countries it is used predominantly in the context of youth justice. In some, it is the primary form of intervention used for responding to the delinquency of juvenile offenders. For instance, in *Germany* in 2022, 31.2 per cent of all court sanctions and measures handed down against juveniles and young adults (14-20-years of age)

were community service orders. At the same time, in Germany (in contrast to most European jurisdictions), its availability for adults is limited to being an alternative sanction for fine defaulters in order to avoid imprisonment as substitute sanction (see Dünkel & Heinz, 2024).

4.3 Trends in the use of restorative justice in practice

4.3.1 Mediation

Based solely on the data provided, there often is no clear-cut trend in the development of the quantitative role of restorative practice in the context of criminal justice practice.

We tried to give an empirically based estimation of the share of percentages of mediation, conferencing etc. cases with regard to the total number of cases handled at the pre-trial as well as at the court stage. In Table 11 we differentiated the use of mediation etc. according to the following ranking: (X) means that mediation theoretically (legally) is provided/possible, but that practically no cases are reported; X means a very low practice (only individual cases), XX a low practice (some statistical importance of less than 3 per cent of cases), XXX a more extended, ‘medium’ practice (up to 6 per cent of cases), XXXX an extended practice (i.e. restorative justice measures as a regular daily practice, more than 6 per cent of cases). We further tried to indicate the longitudinal perspective of increasing numbers of cases (‘Incr.’), declining (Decl.) or stable numbers of cases (‘Stable’ in Table 11). The results sometimes are estimations rather than clear empirical evidence, but we asked all authors to confirm our judgements.

Countries with a very low and low level of mediation

In general, the national reports revealed clusters of countries/jurisdictions with a *highly underdeveloped practice of mediation* [i.e. (X) or X in the scale of ranking] *in 16 countries* (i.e. one third of the 48 countries covered by our survey): *Armenia, Azerbaijan* (almost no cases at all), *Belarus* (with an evenly declining trend), *Bulgaria, Cyprus, Denmark, Greece, Iceland, Kosovo, Luxembourg*,⁹⁷ *Moldova, Montenegro, North Macedonia, Romania, Serbia* and *Ukraine*.

⁹⁷ *Luxembourg* has low rates of mediation in adult criminal cases (XX) and even smaller numbers in youth justice (X), in both areas the numbers are declining. There is, however, the hope that the *new youth justice legislation*, which currently is under *discussion* (see the draft bill of 2024), will expand diversionary measures, in particular restorative justice measures such as mediation, see Schroeder & Luisi in chapter 28.

A low level (XX in Table 11), but statistically significant use of mediation procedures (less than three per cent of total cases) can be observed in *Albania, Bosnia-Herzegovina, France, Georgia, Ireland, Israel, Portugal, Russia, Spain, Sweden* and *Switzerland* in youth justice, whereas in *adult criminal procedures* the numbers of mediation are still only marginal, in *Russia, Spain* and *Sweden* non-existing, because mediation *de facto* was not implemented in adult criminal law and procedure. The *Czech Republic, Italy, Malta, Poland,* and *Slovenia* show low numbers of mediation both in youth justice and adult criminal procedures.

Interestingly, some of the 16 low level countries such as *Ireland* show an even *decreasing* development (in youth justice with, however, slightly increasing numbers in adult cases). The same holds for *Portugal* with declining numbers and rates in youth and adult criminal justice and in *Russia* in youth justice cases since 2019. *Slovenia* reveals a declining trend in youth justice since 2004 and in adult criminal justice since 2006. In youth justice cases, the proportion of cases prosecutors referred to mediation schemes dropped from 5.5 to one per cent, in adult criminal justice from 4.4 to 1.9 per cent. The authors emphasise a great variability in the share of cases referred to mediation between prosecution offices, which demonstrates a geographically unequal treatment not only of suspects, but also of victims in *Slovenia*. This unequal practice developed ‘despite the Guidelines adopted by the State Prosecutor General aiming at achieving just the opposite’ (see Filipčič & Hafner in chapter 43 of the European volume).

Sweden has low rates of mediation cases with a declining trend as well.

Fewer low level countries show an increasing trend: *Israel* in youth justice and *Hungary* (which is low level in youth justice, see Table 11 below), until 2017, since then a declining trend is observable, which is the result partly of the reform of the criminal procedure law which abolishes the possibility to refer cases to mediation at the court stage (see Csúri & Neparáczi in chapter 20 of the European volume).

Countries with a medium level of mediation

The *third group* of countries (8 out of the 48 countries in our survey, without *Austria* and *Spain*) characterised as *medium* level countries (up to 6 per cent of the total cases are referred to mediation or reconciliation schemes) consists of *Austria* (only adult criminal justice, in youth justice it is under the top 8, see below), *Croatia* (only in youth justice, whereas in adult criminal cases numbers remain at a marginal level), *England & Wales, Germany* (youth justice),

Hungary (adult criminal justice), *Latvia*, *Lithuania*, *Slovakia*, *Spain* (*Catalonia*, only youth justice), and *Switzerland* (youth justice in some of the Federal cantons).

Again, one can observe a declining trend of numbers and rates in *Austria*, whereas in *Lithuania* referrals to reconciliation are increasing. Reconciliation in Lithuania is not the same as mediation, as there is no independent third party guiding the process of finding an agreement between victims and offenders, but the prosecutor or even the judge may be involved to mediate a case, which then is followed by a dismissal of the case (see Sakalauskas in chapter 27 of the European volume).

In *Germany*, the absolute number of offenders referred to VOM by the courts rose from 1,134 in 2004 to 3,594 in 2010 (+317 per cent), but since then dropped to 2,858 cases in 2013 and to 1,851 in 2022 (-35 per cent since 2013, see Dünkel et al. in chapter 18 of the European volume). Although one has to realise that the main field of mediation is the pre-trial stage (restorative justice as a diversionary strategy, in particular in youth justice), where no comprehensive statistics exist, the fragmented German data indicate a decrease of mediation cases which would conform to reports of practitioners and experts who point to the financial crises in the communal sector and to funding problems concerning youth and adult welfare agencies since about 2005.

In *Hungary* the figures of referrals to mediation increased from 2,451 in 2007 to 4,794 in 2011 and even 6,410 in 2012 (i. e. figures have more than doubled, +162 per cent). Since then, figures were rather stable on a case load level of around 6,000 annual cases. Since the entry into force of the Code of Criminal Procedure 2017, the number of mediation cases dropped, because referrals by the court at the sentencing stage were legally excluded and mediation is now only available at the pre-trial stage. The new law, however, offers other possibilities of cooperation to the defendants (see Csúri & Neparáczki in chapter 20 of the European volume). The referrals at the pre-trial stage remained rather stable between 4,631 in 2019 and 5,067 in 2022.

In *Latvia*, the figures of annual cases, where a mediation procedure was initiated, almost quadrupled between 2010 (440) and 2019 (1,665), but then – because of the restrictions related to the COVID-19 pandemic – dropped to 988 cases in 2021. By 2023 the figures increased again (1,239) without reaching the pre-COVID-19 level yet.

The top 8 countries with a high level of mediation cases

The top 8 countries of the *fourth group* with a high level of mediation cases (more than 6 per cent of total cases) consist of *Austria* (youth justice), *Belgium*, *Estonia*, *Finland*, the *Netherlands*, *Northern Ireland* (only youth justice), *Norway* (youth justice), and *Turkey* (youth justice).

Austria (since 2005) and *Norway* show declining trends in referrals to mediation schemes, whereas in *Belgium* and *Estonia* increasing numbers are visible.

The history of VOM in *Austria* started in the mid-1980s with a few cases (1985: 116, exclusively in youth justice). By 1992 the number of referrals increased to 2,553 cases, including 699 cases in adult criminal justice. The peak was in 1999 (9,424), from then a steady decline could be observed to 5,489 in 2022, in the last years certainly partially caused by the COVID-19 pandemic, and in general by declining crime rates and a decrease of criminal charges and convictions in *Austria* that have dropped consistently since 2005. One reason for the decline of mediation cases could be that with the expansion of diversion in adult criminal justice since 2000 the prosecutors dispose of a wider scope for alternative sanctions. These can possibly be applied in less cost intensive (e.g. simple warnings) and time-consuming procedures.

Belgium can be characterised as a country where mediation and restorative justice have become a mainstream part of crime policy during the last 20 years. In the framework of municipal administrative sanctions (GAS/SAC) 76 per cent of municipalities provide mediation for resolving minor serious problems or crimes. The figures rose from 800 cases in 2008 to 8,426 cases in 2019, most cases (40 per cent) were related to pollution of public spaces followed by material damage, disturbances during the night and forms of minor violence (see Aertsen in chapter 6 of the European volume). In youth justice the number of cases referred to mediation in the Flemish community more than doubled between 2005 (1,620) and 2017 (4,027). The decline in 2020 and 2021 is related to the general restrictions caused by the COVID-19 pandemic. For the French community about 1,500 cases annually are reported, which means about 5,500 annual cases for the whole of Belgium. More and more conferencing procedures are provided, and also certain forms of circles.

The numbers of referrals to victim-offender mediation on the pre-court level rose in *Estonia* from 0.2 per cent in 2007 to 7.5 percent in 2020 (2021: 6.2 percent). The percentages of cases solved by mediation since 2014 remained stable, slightly over 6 per cent of all cases (see Ginter & Markina, chapter 14 of the European volume, under 1.2 and 4.1). Interestingly most mediation cases concerned physical violence (bodily injury, between 2007 and 2010 92 per cent, of those 58 per cent domestic violence), whereas property and other crimes were of minor importance.

Since the enactment of the Mediation Act in 2006 *Finland* has witnessed a 36 per cent increase of referrals to mediation from 2007-2011, after a decline to 8,472 referrals in 2012 (see Lappi-Seppälä in Dünkel et al. 2015: 254) the numbers seem to have stabilised: 2021 9,780 referral initiatives were registered (see Lappi-Seppälä in chapter 15 of the European volume).

The *Netherlands* has a comparable mainstream focus on restorative justice measures to *Belgium*, not only restricted to criminal matters, but to developing a restorative culture of dealing with conflicts on the municipal level. ‘Restorative practices within Dutch civil society (neighbourhoods, schools, youth care etc.) are increasingly flourishing’ (so-called peaceful school, neighbourhood and youth care projects). ‘In almost 300 cities in the country, neighbourhood mediation is now being delivered as a voluntary service by trained volunteers’ (see Claessen, Wolthuis & Slump in chapter 32 of the European volume under section 3.5). As to criminal matters, it is impressive how the state crime policy supports mediation projects, and funding and training of mediators. After a positive evaluation of mediation projects within the criminal justice system, in 2017 mediation bureaus were introduced at all lower courts and courts of appeal. The political will to expand restorative justice, in particular in youth justice matters, is best explained by the parliamentary decision to provide 300,000 euros annually for youth and one million euros for adult justice cases. In 2023, the government announced a further 300,000 euros for increasing the case numbers of mediation, a further 700,000 euros for better salaries for mediators and 1.5 million euros for establishing a single register for mediators. In this way it will be made easier for interested parties to access mediators (see Claessen, Wolthuis & Slump in chapter 32 of the European volume under section 1.3). The difficulty in addressing statistical evidence about the use of mediation and other restorative measures is related to the fact that in parts mediation cases are dealt with outside the criminal justice system at the request of the parties involved. In addition, mediation and/or reparation is practised on all levels of the criminal procedure. Referrals are initiated by the police, prosecutor and the courts. Research on

the figures in youth justice in the pre-trial phase (Halt-measures, i.e. diversion including a restorative approach) demonstrates that 2016-2020 between 13,000 and 17,000 cases, i.e. more than 50 up to 64 percent of all police registered youth justice cases were diverted (Berger & Wolthuis, 2022: 255). It is not totally clear what the ‘restorative approach’ in the framework of diversion implies, but one of the major aims is to repair or compensate for damage from the crime. Outside criminal justice (emotional recovery when parties are ready) about 1,000 cases have gone to mediation schemes, another 1,100 cases of mediation took place inside the criminal justice system (Wolthuis, 2022, reporting of a total of more than 40,000 mediation cases during 2021, including school and neighbourhood mediation, including cases handled within prisons). The data available indicate that in the Netherlands mediation is quantitatively well developed as a regular practice.

In *Northern Ireland* the most commonly used restorative justice measure is *restorative conferencing*, introduced by the youth justice reform in 2002/2003. The diversionary youth conference, to a lesser extent also court-ordered youth conferences, are organised by the Youth Justice Agency. In the framework of out-of-court disposals 40 per cent of the cases are handled by a diversionary youth conference. ‘Receiving an informed warning was the next most common outcome (21 per cent), followed by a restorative caution (17 per cent), while no further action was taken in approximately 8 per cent of cases’ (see Butler & O’Mahony in chapter 34 of the European volume). The authors emphasise that the strong focus on diversionary (restorative) measures in youth justice has led to a considerable decline of young persons held in the 4 (closed) training schools: from around 200 per day in the 1980s to fewer than 40 in the 2010s.

In *Norway*, the most recent data available are from 2023. The statistics of the National Mediation Service (NMS) for 2014-2023 revealed 3,325 new referral cases in 2014 and 1,879 in 2023 (-43 per cent). The percentage of all new VOM-referrals dropped from 49 per cent to 23 per cent in 2023, the total of cases arriving at the NMS increased from 6,734 to 8,034 (+19 per cent), mainly due to increasing civil cases and youth follow-up sanctions (post-sentencing stage). The author expresses her concern about the decreasing percentages of VOM in *Norway*, although the decrease is in part also due to generally declining crime rates.

In *Turkey*, mediation was introduced in 2005 only. It is provided mainly at the pre-trial stage in youth justice. Unfortunately, the statistical data do not differentiate between mediation cases in

youth and adult criminal procedure. But there are grounded estimations, that in youth justice mediation is much more common than in adult criminal justice. The total figures of 586,958 cases in 2023, where mediation was initiated (corresponding to 11 per cent of all 5,180,473 cases handled by the prosecutorial services), looks very impressive. The same is true for the success rate of 46 per cent related to all terminated mediation cases (see Sokullu-Akıncı, Dursun & Erbaş in chapter 47 of the European volume).

The absolute figures as presented in most national reports do not reflect changes in the overall caseloads of the justice system or demographic developments and thus need to be taken more as an indicator than as hard evidence. While these countertrends balance each other out to a certain degree, taking into account the significant number of countries that were unable to provide data but that have nonetheless witnessed growth in the number of practice initiatives ‘on the ground’ over the past few years, and taking into consideration that many of the countries that have witnessed declines indicated that they were affected especially by temporary economic constraints, it would be fair to conclude that the absolute number of cases in which decision-makers deem restorative justice appropriate – whatever the reasons – has been on the increase in the majority of countries in Europe, but has yet to find its way into mainstream practice in most of the continent.

Finally, it needs to be stressed that a minor *quantitative* role does not automatically imply that restorative justice measures are not being used to their full potential, or that the desired outcomes are not being achieved. Rather, the quality of services, the satisfaction of participants, the reparation of harm and a positive reintegrative effect on the offender should be the primary benchmarks for such an assessment, rather than impressive numbers. Quality of services should not be compromised to increase caseloads.

Table 11: Statistical data of the use of restorative measures in the criminal justice system and post-sentencing stage (RJ measures as criminal sanctions; mitigating factor in sentencing etc.)

Country	Mediation (& reconciliation)		Conferencing		Restorative circles		Reparation, restitution orders (by police, prosecutor or court)		Restorative justice measures in prisons	
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth prisons	Adult prisons
Albania	XX	X	XX	No	No	No	X	X	No	No
Austria	XXXX decl. 1999-2009, since then stable ⁹⁸	XXX decl. 2005-2015, since then stable	X	X	No	No	X	X	No	No
Armenia	X	X	No	No	No	No	X	X	No	No
Azerbaijan	(X)	No	No	No	No	No	X Release from criminal liability after compensating the vict.		(X)	No
Belarus	X decl.	X decl.	No	No	No	No	(X) ⁹⁹	(X), see note 2	No	No
Belgium	XXXX stable	XXXX stable	XX stable	No	No	No	XXX	XXX	XXX	XXX
Bosnia-Herzegovina	XX	X	No	No	No	No	No inf.	No inf.	No	No
Bulgaria	X	X	No	No	No	No	X	No	No (earlier pilots stopped)	

⁹⁸ The decline of diversion and VOM referrals is parallel to a general decline of cases entering the criminal justice system. The proportion of VOM of all diversion cases was slightly, but constantly rising (from 18 per cent in 2000 to 22 per cent in 2019), see Glaeser & Pelikan, chapter 2.

⁹⁹ Reparation/restitution/compensation not as judicial orders but can be considered as mitigating factor in sentencing.

Country	Mediation (& reconciliation)		Conferencing		Restorative circles		Reparation, restitution orders (by police, prosecutor or court)		Restorative justice measures in prisons	
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth prisons	Adult prisons
Croatia	XXX	X	No	No	No	No	X	X	X	X
Cyprus	X	No inf.	No	No	No	No	XX	X	No	No
Czech Republic	XX decl. since 2006	XX	X	(X)	No	No	X	X	(X)	X
Denmark	X (less than 1% of cases)	X	No	No	No	No	X	X	No	No
England & Wales	XXX stable	XXX stable	XX	No	No	No	XX	XX	X	X
Estonia	XXXX incr.	XXXX	No	No	No	No	XX	X	No	No
Finland	XXXX	XXXX	No	No	No	No	XXX	XXX	No	XX
France	XX	X	X	No	No	No	X	X	XX	XXX
Georgia	XXXX	X	No	No	No	No	XX	No	X	No
Germany	XXX	XX	X	No	No	No	XX	XX	XX	XX
Greece	X	X	No	No	No	No	X	X	X	X
Hungary	XX incr. - 2017; decl. after 2017	XXX	No	No	No	No	X	X	XX	XX
Iceland	X decl.	No	X	No	No	No	No	No	No	No
Ireland	XX decl.	X incr.	XX	X	No	No	No	No	X	(X) see table 3
Israel	XX incr.	X	XX incr.	XX	X	X	X	X	X	X

Country	Mediation (& reconciliation)		Conferencing		Restorative circles		Reparation, restitution orders (by police, prosecutor or court)		Restorative justice measures in prisons	
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth prisons	Adult prisons
Italy	XX	XX	X	X	(X)	(X)	XX	XX	XX	X
Kosovo	X	X	No	No	No	No	X	X	No	No
Latvia	XXX	XXX by PS: incr. 2010-2019, decl. after	X	X	No	No	X	X	No	XX
Lithuania	XXX incr.	XXX incr.	No	No	No	No	X	X	XX compens. for	XX payment damages
Luxembourg	X decl.	XX decl.	No	No	No	No	X	XX	No	No
Malta	XX	XX	No	No	No	No	XX	XX	X	X
Moldova	X	X	No	No	No	No	X	X	No	No
Montenegro	X	X	No	No	No	No	X	X	No	No
Netherlands	XXXX incr.	XXXX incr.	X	X	No	No	XX incr.	XX incr.	XXX incr.	XXX incr.
Northern Ireland	XXXX	No	XXXX	No	No	No	XX	XX	XXX	XXX
North Macedonia	X	(X)	No	No	No	No	X	(X)	No	No
Norway	XXXX decl. ¹⁰⁰	XXX	XXX	No	X	X	XX	XX	XX	XX

¹⁰⁰ Youth punishment and youth follow-up sanctions (organised by the National Mediation Service and the Probation Service, including also family members and members of the community) are increasing from a low level, see Paus, chapter 36.

Country	Mediation (& reconciliation)		Conferencing		Restorative circles		Reparation, restitution orders (by police, prosecutor or court)		Restorative justice measures in prisons	
	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth justice	Adult criminal justice	Youth prisons	Adult prisons
Poland	XX incr.	XX decl.	(X)	No	No	No	XX	XX	XX	XX
Portugal	XX decl.	X decl.	No	No	No	No	XX	XX	X	X
Romania	X	X	No	No	No	No	XX	XX	No inf.	X
Russia	XX decl. since 2019	No	X	(X)	(X)	(X)	No	No	X	(X)
Scotland	XXX	No	XX	No	No	No	XX stable	XX stable	X	X
Serbia	X	X	No	No	No	No	XXX	XX	X	X
Slovakia	XXX	XXX	No	No	No	No	XXX	XXX	No	No
Slovenia	XX decl. since 2004	XX decl. since 2006	No	No	No	No	XX	XX	No	No
Spain	XX decl. (Catalonia: XXX)	X decl.	No	No	No	X	XX	XX	No	X
Sweden	XX decl.	No	No	No	No	No	X	X	No	No
Switzerland	XX resp. XXX ¹⁰¹	X	No	No	No	No	XX	XX	No inf.	XX
Turkey	XXXX	XXX ¹⁰²	No	No	No	No	No	No	No	No
Ukraine	X incr. (-2021, before war)	X	No	No	No	No	No	No	No	No

¹⁰¹ Strong variations between the cantons (regional entities, federal states), see Domenig, chapter 46.

¹⁰² The statistics do not differentiate between juveniles and adults.

No = measure not available; **No inf.** = no information; **(X)** practically no cases; **X** very low (only individual cases); **XX** low (some statistical importance of less than 3 per cent of cases); **XXX** medium (up 6 per cent of cases); **XXXX** high (i.e. restorative justice measures as a regular daily practice, more than 6 per cent of cases); **Decl.** = declining numbers of cases; **Incr.** = increasing numbers of cases; **Stable** = stable numbers of cases

4.3.2 Conferencing

Conferencing is a kind of ‘extended mediation’ with supporters on the side of victims and offenders. It exists in 18 out of 48 countries/jurisdictions (37.5 per cent), mostly in the form of family group conferencing in *youth justice*.¹⁰³ Only 6 countries provide conferencing also in adult criminal justice (*Austria, Belgium, Ireland, Israel, Italy, Latvia, and the Netherlands*).

The numbers regularly are much lower than the traditional forms of mediation, because organising such extended processes, sometimes with many more participants than those directly responsible for the crime and those harmed by it, is usually more time-consuming and can be challenging for facilitators.

In most countries, conferencing statistically remains on a very low level scored with an X for only individual cases. The exceptions with a score XX (i.e. low level, but some statistical importance of less than three percent of cases) are *Belgium* (in youth *and* adult criminal justice), *England & Wales, Ireland* (youth justice), *Israel* and the *Netherlands* (both in youth *and* adult criminal justice). Norway reaches a medium size level (XXX) and Northern Ireland a high level (score XXXX in Table 11), both in youth justice. The law reform of 2002 in Northern Ireland (see Butler & O’Mahony in chapter 34 of the European volume) establishing family group conferencing as the mainstream restorative justice measure only recently had a remarkable impact on law reform movements in the other UK-jurisdictions in England & Wales and Scotland as well as in Ireland.

4.3.3 Restorative circles

Restorative circles have gained even less importance. They are dedicated to solving greater societal conflicts (see sections 1.2 and 2.1 above). The national reports in our survey detail some more or less individual experiences in *Israel, Italy, the Netherlands, Russia* (youth justice) and *Scotland*. In this section we do not deal with victim-offender encounters in prisons, which may have some similarities with restorative circles. They are dealt with in section 2.4 above.

¹⁰³ The respective countries/jurisdictions are *Albania, Austria, Belgium, Czech Republic, England & Wales, France, Germany, Iceland, Ireland, Israel, Italy, Latvia, the Netherlands, Northern Ireland, Norway, Poland, Russia, and Scotland*, see Tables 3 and 4 above.

4.3.4 Reparation/restitution/compensation orders by the police, prosecutors or courts

Reparation, restitution or compensation orders are much more widely implemented in youth and adult criminal justice systems. Although their restorative character is doubtful, as the element of voluntariness is often not given, their restorative potential is emphasised in the Council of Europe Rec. (2018)⁸ as ‘elements’ of restorative justice (see Rule 59).

Iceland, Ireland and the Ukraine (in general) and *Georgia* (for adult criminal law) *denied the existence of reparation or compensation orders* as criminal sanctions or as conditions of a suspended sentence (probation). *Bosnia-Herzegovina* and *Bulgaria*, however, did not give information on that issue. *All other 43 countries confirmed that reparation/restitution or compensation orders are available.* Most countries emphasised that these sanctions in the youth justice system are regularly possible as an independent sanction as well as an ancillary sanction in combination with other educational measures or a probationary sanction, whereas in adult criminal law reparation or compensation regularly exists as a condition in the framework of suspended sentences/probation and not as independent (in case stand-alone) sanction. Often reparation or compensation of the victim by the offender is a condition of a dismissal of the case by the prosecutor, in the *Anglo-Saxon* jurisdictions and the *Netherlands* also by the police (in the scope of diversionary measures, see Table 2 above on restorative justice in the pre-trial stage).

The practice, as far as data are available, seems to be rather reluctant, in most countries it scores at the level X (very low) or XX (low), only *Belgium, Finland, Slovakia* and *Serbia* as well as *Turkey* (both only for the practice in youth justice) report a medium level practice (XXX). As there are no concrete statistical data, the quantitative dimension is based on the experience and/or estimation of the authors of the national reports.

4.4 Evaluation of the effects of restorative justice

The question of the ‘effectiveness’ of restorative justice interventions plays a role in the national criminal policy discussions on the introduction or expansion of restorative justice. In the 1990s and 2000s, questions about the effectiveness of treatment measures in the justice system were discussed mainly in terms of their recidivism-reducing effects, in response to the ‘what works’ debate. In the past 10 to 15 years, there has been a change in perspective in this context, which can be traced back to the progress in research into recidivism. This makes it clear that recidivism after criminal offences must be considered in a differentiated way and that individual, minor recidivism on the way to ending criminal careers is normal and not proof that a treatment measure has failed. Consequently, treatment programmes are now also measured by whether they increase the chances of exiting crime and whether they achieve their primary goals (e.g. the primary goal of drug treatment programmes is to end addiction).

4.4.1 Effects of restorative justice on offenders

4.4.1.1. Effects of restorative justice on recidivism

Nevertheless, politicians and the general public are naturally interested in whether participation in restorative justice measures can reduce the rate of reoffending.

Even more than with other criminal justice measures or programmes, evaluation of the effect of restorative justice interventions on recidivism is subject to the risk of bias. This applies particularly to restorative justice programmes in prison, since here the participants are particularly strongly selected according to criteria that largely correspond to those for a good legal prognosis and it cannot be said that an absence of recidivism can be causally attributed to participation in a restorative justice programme, but rather to a sum of the combined factors associated with it (prison programmes, personal and social resilience, desistance). But even otherwise, the ‘gold standard’ of evaluation research, which is based on randomised control group designs, cannot be adhered to in the field of restorative justice if the restorative justice standards (in particular the aspect of voluntariness) are to be adhered to at the same time. This may be the reason why the state of studies that aim to measure the effectiveness of restorative justice measures on the basis of recidivism is quite limited in our country reports: Only 9 countries report on evaluation of the effect of restorative justice on recidivism rates.

In view of these limitations, the following conclusion can be drawn: the results are not clear-cut, but overall, a positive conclusion seems justified, and it can be considered a proven fact

that participation in restorative justice programmes at least does not increase the probability of reoffending.

The existing evaluations on the recidivism-reducing effect of restorative justice measures can be divided into those without a control group and those with a quasi-experimental control group. A truly randomised control group design is not possible for the reasons mentioned above.

The report from *Estonia* refers to a recidivism study according to which the recidivism rate after one year from the termination of criminal proceedings on the ground of reconciliation was 12 per cent, while the recidivism rate of persons whose criminal cases were terminated on the grounds of the opportunity principle in general was 18 per cent (Klopets & Tamm, 2010: 30). This is therefore an evaluation study without a control group design, and the Estonian authors point out that no control of risk factors took place. The lower recidivism rates after reconciliation could therefore be a result of the fact that offenders and offences suitable for reconciliation generally show a lower recidivism risk. The authors conclude, however, that at least there is apparently no independent (criminogenic) effect of reconciliation that increases recidivism. *France* also suggests in its national report that recidivism rates after restorative justice are lower than the general recidivism rates after other interventions, but that there are no controlled studies that would take into account possible bias factors. The same applies to *Norway*.

Other national reports refer to studies with a quasi-experimental setting.

The *German* national report refers to a study (Busse 2001) in which the offence type (bodily injury) and age (the study concentrated on juveniles) were controlled. The recidivism rate of those who participated in mediation for having committed a bodily injury offence was, at 56 per cent, significantly lower than the recidivism rate of those who had received a formal sanction (86 per cent). However, this study did not appear to take into account distorting factors such as voluntariness, previous criminality and other risk factors. Another German study (Keudel, 2000) calculated the rates of reoffending after participation in mediation proceedings according to age and came to the conclusion, which is hardly surprising in the light of research into reoffending, that with increasing age, the rates of reoffending also fall significantly (adult offenders: 9 per cent; young adults: 27 per cent, juveniles: 42 per cent), and that age can

therefore be a significant confounding factor in evaluation studies on restorative justice, which needs to be controlled for.

The *Finnish* report refers to an early study by Mielityinen (1999) who examined reoffending rates in a quasi-experimental setting, controlling for offence type and prior criminality, which, according to the findings of research into recidivism, represent significant risk factors. The results indicate that reoffending was generally lower in the mediation-group (56 per cent against 62 per cent in the control group). Lappi-Seppälä points out that the study design did not control for the voluntary aspect, which could be a factor of distortion because ‘those willingly participating in mediation have already shown signs of pro-social attitudes’.

In connection with this bias factor of voluntariness, the *English* country report refers to the 2008 study by Shapland et al. (Shapland et al. 2008), which uses a randomised controlled quasi-experimental design that also attempts to control for the voluntariness factor. Shapland et al examined the effect of three restorative justice schemes for adult offenders and moderate offences on reconviction rates after two and 4 years. In one of these restorative justice schemes, a randomised control group was formed in which the procedure was stopped (after a random selection) after both parties had agreed to the restorative justice measure. The authors conclude that ‘even when offenders’ pre-existing risk of re-offending is controlled, there is some positive effect of restorative justice and no significant criminogenic effect (Shapland et al. 2008: 26). The offenders who participated in restorative justice committed statistically significantly fewer offences (Shapland et al. 2008: 66). The probability of recidivism was also lower for the participants of restorative justice schemes, but not significantly so (Shapland et al. 2008: 67). In this context, however, the authors point out that, due to the small size of the group, a significant result could only have been achieved if the relapse rate had fallen by at least 10 per cent, which, in view of the effectiveness of treatment programmes for offenders, can almost be considered illusory (Shapland et al. 2008: 66).

An evaluation from Denmark also tried to create a control group that was not distorted by the factor of voluntariness on the part of the offender as a significant motivational factor. Kvysgaard (2016) compared recidivism rates among prisoners who attended VOM, with those who wanted VOM but did not attend VOM because the victims did not want to. The result was sobering with regard to recidivism rates: Several statistical models as well as different criteria for recidivism, different follow-up periods and subgroups of the population have been tested.

Not one single analysis proves a decrease in recidivism after VOM, nor does any of them indicate a tendency of a decrease. On the other hand, there was no evidence that participation in VOM significantly increased recidivism rates. With regard to the result, it should also be noted that ultimately only one bias factor (i.e. voluntariness) could be taken into account by the chosen control group design. As far as can be seen, it is not known what the alternative sanctions/measures/programmes were for the prisoners who refused to participate in a VOM. These could theoretically have had an effect on reducing the risk of reoffending as well. A lack of effect of VOM could only be proven by a control group design if the control group had not received any measures at all. Nevertheless, Kvysgaard's attempt should be highlighted as a good example of how to set up a control group design under the given circumstances, and at least proves that, among the available alternatives, VOM does not play a significantly 'better' role in terms of its effect on recidivism.

Evaluation results from *Austria* point in a positive direction: Schütz (1999) compared the recidivism rates of prisoners who participated in a VOM programme for minor assaults (slight bodily harm) with those who were sentenced by the court to a fine for this offence. These groups were observed over a period of three years. In total, the study covered 361 VOM cases and 7,952 court cases. The comparison of all cases pointed to a recidivism rate of 14 per cent for the VOM cases and 33 per cent for cases that had resulted in the imposition of a fine. This result seems overwhelming at first glance. As a possible factor of distortion, the author identified and tested the circumstance that there may have been more first-time offenders (with lower risk factors for recidivism) among the VOM participants than in the control group (sentenced by court). Testing this hypothesis showed that when focusing on offenders with a previous conviction, the difference became somewhat less pronounced: 30 per cent for the VOM cases versus 47 per cent for the court cases (compared to 10 per cent for those without a previous conviction who had been to VOM and 22 per cent for those having received a fine).

The study was partially replicated by Hofinger and Peschak (Hofinger & Peschak, 2018a). With regard to the above study results on minor assaults, the study found that for the period under investigation between 2013 and 2016, the reconviction rate for offenders with no previous convictions was 7 per cent for those who attended a VOM, whereas for those sentenced by court for this offence the reconviction rate was 18 per cent. Hofinger & Peschak, 2018a: 59.).

At first glance, these results are very encouraging with regard to the use of VOM to reduce the risk of reoffending. However, bias factors cannot be ruled out here either; in particular, the factor of voluntary participation or other risk factors for reoffending were not systematically controlled in this study, as far as can be seen.

In this context, further results of the 2018 study by Hofinger and Peschak (Hofinger & Peschak, 2018a) are interesting. The authors examined the effect of various interventions (VOM, community service and probation assistance) of the probation service (NEUSTART) on recidivism (documented on the basis of NEUSTART's records or official criminal records) over a period of 2.5-3.5 years. The results proved quite remarkable: of all VOM clients/offenders, regardless of whether or not mediation was deemed successful, only 13 per cent were reconvicted during the observation period (Hofinger & Peschak 2018a: 57). Among the reactions examined, the recidivism rate after VOM was thus the lowest. However, here too, the recidivism rate cannot be causally attributed to VOM. The probation service's clientele belongs to very different risk groups (Hofinger & Peschak, 2018a: 58) and the various risk factors for relapse could not be controlled in this study either.

The *Dutch* country report points out, on the one hand, a generally lower rate of reoffending among offenders who have participated in mediation compared to those who have not participated in a mediation procedure. This cannot be explained by differences in sex, age, country of birth, crime type and history; the aspect of voluntariness has apparently not been controlled. However, a comparison of the actual recidivism rates with the predicted recidivism rates, which are based on a model from the WODC's Recidivism Monitor (Claessen, Zeles, Zebel & Nelen 2015a; 2015b) demonstrated that both in the mediation and control groups, the actual recidivism rates were lower than the predicted ones. However, the difference was significantly higher in the mediation group than in the control group that did not participate in mediation procedures. (Claessen, Zeles, Zebel & Nelen (2015a; 2015b). A more recent Dutch study (Jonas-van Dijk, Zebel, Claessen & Nelen (2020)) attempts to include the bias factor of voluntariness in the analysis. A total of three groups were formed: offenders who participated in VOM (mediation group), offenders who were not willing to participate in VOM (court group), and offenders who were willing to participate in VOM, but were not able to because the victim declined the option (control group) (total N = 1275). Overall, the offenders who participated in VOM had a significantly lower risk of reoffending compared to offenders who did not participate in VOM. However, there was no significant difference in the recidivism

rates between those who participated in VOM and those who did not participate but would have liked to.

There is at least no evidence that participation in VOM increases recidivism rates, but there are some indications that where offenders participate, recidivism rates are very low compared to general recidivism rates. There is also evidence from some countries that the aspect of voluntary participation is very important, and that even among those who do not participate in a VOM procedure, although they would have liked to, recidivism rates are lower than in control groups.

Whether or not the recidivism rate is lower after VOM than it would have been if no measures had been taken, i.e. whether participation in VOM per se lowers the probability of recidivism, cannot be determined with the available evaluations. Only the English design indicates that the probability of recidivism is lower after participating in VOM, even for those for whom participation was voluntary. One conclusion is certain, however: if you ‘have to’ do something, then restorative justice is at least not dangerous. There is no evidence that restorative justice could be an independent risk factor, but there are indications that people who are willing to participate in restorative justice procedures are not particularly ‘dangerous’, so that no ‘harsh’ or ‘securing’ sanctions are ‘necessary’.

4.4.1.2. Other effects of restorative justice on offenders

Eleven countries in our study refer to evaluation results on further effects of restorative justice on offenders. It is often reported that the compliance of offenders to the agreements made in the procedure is very high (e.g. *Denmark, Iceland*). Another frequently mentioned effect is that offenders rate the procedural justice in restorative justice procedures highly and generally rate the role of mediators or facilitators as good (e.g. *Germany*). According to a Danish study by Henriksen (2003), 70-80 per cent of the offenders who participated in a VOM emphasised that it gave them the opportunity to prove that they regretted what they had done and to apologise, and that this was good for them. 70-80 per cent answered that they now, to a large or to some degree, understood the victim better.

A study from *England* Rees and Hobson (2021) examined the effects of a ‘Restorative Reasoning’ programme with 13 women in a UK women’s prison. They concluded that the scheme had a range of positive impacts on the women in relation to changes in their attitudes,

including being more open for discussion around the harm they may have caused and being more willing to consider the repair needed in their personal relationships.

The *Dutch* study by Jonas-van Dijk, Zebel, Claessen & Nelen (2022) uses a quasi-experimental design to compare offenders who have participated in victim-offender mediations with those who have not participated (usually because the victim refused participation in the proceedings). In the results, the offenders from the participation group took more responsibility for the offence and showed high levels of guilt and shame, which were not reduced by participating in the VOM, while these feelings had decreased in those who had not participated in a VOM in the second wave of questioning 6 to 8 weeks after the first interview. Participation in VOM does not appear to reduce feelings of guilt and shame, but it may help to deal with them in a responsible way. Among those who participated in VOM, the degree of victim empathy increased.)

A *Swiss* study also showed (slightly increased) levels of readiness to take personal responsibility by the offenders (Oswald et al., 2002: 21 ff.; Imhof et al., 2003: 29).

4.4.2 Effects of restorative justice on victims

International research into the effects of victims' participation in restorative justice procedures generally shows that victims are highly motivated to participate in restorative justice proceedings and are highly satisfied after participating (Shapland et al. 2007; Strang 2002; Umbreit et al. 2004). Victims apparently particularly appreciate the opportunity to participate actively in the (well-prepared) discussions and to ask the offender personal questions. Victims view it negatively if the proceedings are not conducted professionally and they are unable to participate sufficiently, and also if they feel left alone after the proceedings with regard to the implementation of the agreements (Hartmann, 2019: 98; Strang, 2002; Bolivar, Aertsen & Vanfraechem, 2009; Daly & Curtis-Fawley, 2006).

With regard to positive effects, there is a growing body of evidence from well-designed reviews that positive changes (e.g. in relation to post-traumatic stress disorder, sense of security or positive changes in emotional state) can be demonstrated in victims after participating in restorative justice procedures (Gustafson, 2018: 1 ff.; Angel et al., 2014: 291 f.; Beven et al., 2005: 194; Bruce & Bolitho, 2019: 389; Liebmann, 2007: 28; Lloyd & Borrill, 2020: 77 ff.; summarised in Lehmkuhl & Pruin 2024: 15).

The research findings described in our national reports support the international findings.

In contrast to the few studies on the effect of restorative justice on the probability of reoffending, there are a relatively large number of evaluations in Europe on the effect of restorative justice on victims. Twenty countries in our study report that such studies exist in their country. These can also be distinguished from one another in terms of evaluation design and research questions: while some studies also use quantitative methods to determine satisfaction, other studies work purely qualitatively.

Where victim satisfaction is measured using questionnaires, it is very high. The national reports from *Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Scotland* and *Switzerland* point to studies that have found very high satisfaction rates for victims (usually over 75%-90%) after participating in restorative justice.

Qualitative studies report in more detail on the positive effects that participation in a restorative justice procedure has on victims and on supporting their coping processes. A study from *Croatia* (see chapter 9 of the European volume with reference to Mirosavljević, 2015) describes how, after the conclusion of the restorative justice process, participating victims report positive emotions of happiness, relief, and satisfaction and say that they have received answers to the question of why this act had been committed with them as victims. Together with the apologies of the offenders, these answers helped the victims to trust that the offender would not commit such an offence again.

Austrian studies show that victims of domestic violence feel empowered after participating in restorative justice and find it easier to separate (see chapter 2 of the European volume with reference to Pelikan, 2010a; Pelikan, 2010b; Pelikan, 2012).

In a *Danish* study on VOM (Hansen, 2012), victims describe that they had enough time to express what they had on their mind, according to another Danish study on VOM (Scharling, 2021), more than half of the victims found that they had had the opportunity to express to the offender what the crime did to them. More than half of the victims also said that participating in VOM helped them to reduce their feelings of anxiety related to the offence.

English research (Shapland 2007 with interviews of 259 victims) also supports the finding that victims can better process the offence by participating in VOM and are given a space to talk about offence-related problems. In the interviews, the victims emphasised that the offender's attempt to address the harm they had caused helped them to better process the offence.

A *Finnish* study (Honkatukia, 2015) shows that the motivation for victims to participate in VOM is strongest when it comes to giving the offender the opportunity to tell the victim about their feelings or to make the offender understand what they had done. Only then does the hope for financial compensation follow. Summarising observations from France and Israel point in the same direction.

In some cases, victims are sceptical about the offender's motivation: in a *Czech* study (Rozum, 2009; 2010), although about two-thirds of the victims felt that the offender genuinely regretted the offence, at the same time they saw the motivation for participation predominantly in an attempt to mitigate the sentence. Almost all victims rated the work of the mediators as very good or quite good and were retrospectively satisfied with their participation.

A *Finnish* evaluation (Honkatukia 2015) also showed that less than half of the victims felt that the offender really wanted to compensate for the wrong, and only 41 per cent were of the opinion that the offender fully understood the consequences of the offence to the victim

Both an evaluation from *England* (Shapland 2007) and from *Germany* (Bals, Hilgartner & Bannenberg, 2005; see also Gutsche & Rössner, 2000) suggest that direct face-to-face encounters between perpetrators and victims evoke better reactions from participants than those providing indirect (not face-to-face) mediation.

4.4.3 Evaluation of opinions and attitudes towards restorative justice

22 countries in our study write something about the attitudes of stakeholders towards restorative justice and the influence on the implementation of restorative justice. What is striking is the generally positive attitude of stakeholders towards restorative justice. Restorative justice is often seen as a valuable addition to the existing justice system. Most stakeholders recognise the value of restorative justice, particularly in terms of improving victim-offender relations, promoting accountability and reducing recidivism.

The reports from *Finland*, *Georgia*, *Germany* and *Ireland* explicitly report positive attitudes among judges towards mediation programmes. Switzerland, Serbia and Slovakia mention uncertainties among the courts. In Switzerland, it is reported that courts rarely refer cases to mediation services because they perceive mediation as too lenient and external mediators are

not structurally integrated into the justice system. *Serbia* reports that the limited judicial control over restorative justice procedures leads to uncertainty and a lack of trust among judges. *Slovakia* describes how courts (and the public) favour retributive approaches over restorative justice approaches, especially for serious crimes.

Positive attitudes on the part of the police are reported in *England & Wales*, *Finland* and *Ireland*. In *Finland*, the police are increasingly referring cases to the mediation services, even for more serious offences. In *England*, studies show that restorative justice practices are regularly applied and positively perceived in many regions (Clamp & O'Mahony, 2019). *England & Wales*, *Iceland* and *Norway* report specific challenges in relation to the police. In *Norway*, the police are the central authority for referring cases to the restorative justice system. The declining use of restorative justice is therefore interpreted as an indication of a lack of institutional support from the police. *Iceland* reports that there is confusion about the role in restorative justice procedures in cases where police officers are victims. Research in *England* suggests that in some regions, police support for VOM is complicated by work pressure, cultural barriers and a lack of systematic guidelines (Banwell-Moore, 2022).

Regarding the attitudes of public prosecutors, *Finland* reports that they are increasingly considering VOM as an alternative to prosecution, especially for non-indictable offences. *Serbia* reports that prosecutors often approve of VOM in connection with conditional suspensions of proceedings for minor offences. *Germany* reports positive attitudes among public prosecutors.

Critical voices from the prosecution, which presumably also apply to other countries, are captured in the report from *Switzerland*: public prosecutors here apparently often view mediation as inefficient and therefore hesitate to refer cases. *Hungary* reports that the prosecution is apparently very reluctant to use restorative justice in cases of domestic violence because they doubt the voluntariness or seriousness of the victim's decision.

Three countries (*Belgium*, *Germany* and *Switzerland*) refer to research on the implementation of restorative justice programmes in prisons. They point out that in the prison context, the careful preparation of restorative justice programmes and the involvement of external third parties (e.g. support persons for victims and offenders) are crucial to building trust in restorative justice processes (Hartmann et al., 2012; Christen-Schneider, 2020; Stamatakis, 2013 and *section 2.4* above). According to the study by Stamakis (2013), prisoners' mistrust of the prison institution and their uncertainty about the actual advantages of restorative justice for their individual situation are the strongest reasons preventing them from participating in

restorative justice programmes. According to these studies, the institutional framework and the support of staff and prison management are crucial to the successful implementation of restorative justice in prisons (Hartmann et al., 2012; Dubois, 2011; Claes, 2012). A survey conducted in Hungary, England, Germany and Belgium (as part of the MEREPS project) showed that although 78 per cent of prison staff support the principle of implementing restorative justice in prisons, more than half of the respondents are sceptical about its practical feasibility in their own prisons. The reservations concerned in particular logistical challenges (especially the admission of external individuals and organisations to the closed penal system) and the handling of serious cases. (Hartmann et al., 2012). The MEREPS project concludes that shuttle mediation could be a good idea in the context of the prison system, to allow restorative justice ideas to flow into the closed system of the prison with its own assumptions, values and policies.

Where the national reports discuss the attitudes of social services or NGOs, these are consistently positive towards restorative justice. For example, *Scotland*, *Malta* and *Georgia* report that social services and NGOs are well acquainted with the principles of restorative justice and should be seen as key players in its implementation. *Scotland* and *Malta* emphasise that a lack of resources is the reason why social services and NGOs do not offer more restorative justice options.

Overall, our country reports show that restorative justice is seen as having great potential, but that it needs to be more firmly anchored in institutions and supported with resources to ensure broader acceptance and application by all stakeholders.

Some country reports also discuss the attitudes of the population towards restorative justice. The authors predominantly see a low level of awareness of restorative justice among the population. At first glance, the desire for retributive justice (punishment) is often more pronounced than the understanding or support of restorative justice approaches. The authors associate this with a general lack of awareness of restorative justice, which leads to prejudice and misunderstandings. A representative population survey from *Slovakia* in 2016 shows that less than half of the respondents were even aware of alternatives to punishment such as restorative justice, and that attitudes towards the use of restorative justice for serious crimes are negative (for murder and rape, around 84 per cent of respondents rejected the use of restorative justice, Strémy & Klátik 2018). *Scottish* (Maglione et al., 2020; Nascimento, 2021)

and *Norwegian* (Eide & Gjertsen, 2009) studies show that the majority of the population knows little about restorative justice. In *Serbia*, it is reported that restorative justice is perceived by the general public as a 'privilege of the rich' because the most common measures associated with restorative justice are related to financial payments (e.g. to charitable organisations). The authors are unanimous in emphasising the need for systematic dissemination of information and awareness-raising regarding the advantages of restorative justice, and they see indications that the population has a positive view of restorative justice when they understand the principles and potential benefits (e.g. *Ireland* and *Norway*), particularly in terms of healing victims and making reparation for harm. This leads to the appeal to communicate with the public about restorative justice in order to explain its advantages and how it works. The fact that restorative justice is much more accepted for less serious offences could be used as an entry point. *Ireland* shows that restorative justice gains greater acceptance when victims are actively involved in communication processes.

5. Conclusion and outlook

The present preliminary report on restorative justice in 48 European countries/jurisdictions, which has only been partially completed to date, has shown that the term ‘restorative justice’ mainly refers to victim-offender mediation. More recently, conferencing approaches involving the supporters of victims and offenders have also been incorporated into criminal legal practices (e.g., *Belgium* and *Northern Ireland* in particular), and forms of restorative interventions between offenders and victims in prisons have also been developed. However, the practice of the latter forms of restorative justice remains still in its infancy internationally. For this reason, the Council of Europe’s 2018 recommendation (Rec. (2018)8), which aims to anchor the idea of restorative justice more firmly, particularly in the prison system as well as in suspended sentences and probation services, appears to be of great importance.

Although VOM is now widespread, and in several countries, it is used more broadly, its application remains restrictive, mostly limited to less serious offenses or first-time offenders. This indicates that the theoretical potential emphasized in research is far from exhausted. Moreover, restorative measures and sanctions often do not include the ‘restorative’ process that is ‘qua definitionem’ attributed to restorative justice (see above under 1.2). The legalisation and institutionalisation of restorative concepts carry the risk that the original goals of the restorative justice movement may become subordinated to the traditional purposes of punishment or even lost. The example of community service can be a good illustration of this concern (see above under 2.). Umbreit (1999) already spoke of the risk of a ‘McDonaldization’ of restorative justice more than 20 years ago. Related to this is the fact that occasionally extensions and intensifications of sanctions can be observed under the seemingly progressive label of ‘restorative’, a phenomenon, which can be characterized as an undesired and disproportionate ‘net-widening’. This can be observed both with forms of police diversion (e.g. England & Wales and Northern Ireland) and of youth conferencing systems (as e.g. introduced nationwide in Northern Ireland in 2001, see O’Mahony, Chapman & Doak, 2002; O’Mahony & Doak, 2004).

A persistent challenge is the lack of acceptance and information among practitioners in the justice system, who often rely more on familiar sanctions such as community service than on VOM, whose benefits do not always seem to be communicable. Overcoming these reservations will be difficult if the advantages of restorative justice cannot be convincingly communicated to the public, policymakers and, most importantly, to legal professionals.

Above all, further empirical evaluation studies are necessary to demonstrate that restorative justice is not just a humane, superficial modification to an otherwise largely unchanged, rather

repressive criminal justice system, which merely has an alibi function, but rather what Rössner (1989: 39 ff.), among others, has repeatedly called for: The replacement of retributive criminal law with practicable forms of restorative conflict resolution that improve legal probation in the interests of victims, offenders and society.

However, our contemporary societies are facing significant obstacles. Right-wing populism is on the rise in many European countries, challenging restorative values such as listening to different perspectives and fostering a culture of respectful conflict resolution. As democratic values come under threat, restorative justice approaches are also put on the defensive.

Nevertheless, there is room for cautious optimism, supported by the underlying country reports. Strong movements in civil societies are emerging, creating restorative neighbourhoods, schools, and cities, particularly in parts of *Belgium*, the *Netherlands*, *Finland*, *Norway*, *Italy* and the *UK*. These initiatives provide grounds for hope and optimism, particularly if countries succeed in incorporating the idea of restorative justice into the academic curricula of law, psychology, social work and related fields, as well as promoting restorative conflict resolution and prevention in daily life.

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