

ACCESSIBILITY AND INITIATION OF RESTORATIVE JUSTICE

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Colophon

This publication is the result of the research project “Accessibility and Initiation of Restorative Justice”, co-financed by the European Commission DG Justice under grant JUST/2011/JPEN/AG/2968 and conducted by the European Forum for Restorative Justice (EFRJ) from 1 January 2013 to 31 August 2014.

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Executive Summary

The project Accessibility and Initiation of Restorative Justice developed in response to the understanding that while restorative justice mechanisms provide a positive means of dealing with crime, both for the victim and the offender, such procedures are not often being utilised. Both international and national legislation on restorative justice has emerged in the past years, providing countries with a framework to look to as a guide for the implementation of restorative justice. Yet accessibility issues have existed for the past 20 years, hindering a greater number of cases from being dealt with through restorative justice approaches. This project aims to identify these barriers and investigate how to best deal with them, from a comparative perspective.

The report answers two primary questions. First, when and under what conditions are restorative justice processes accessible to citizens? Factors related to accessibility include those that impede or assist parties in getting to a restorative procedure (i.e. those that can increase or prevent referrals). Therefore, important topics include the referral procedure, namely at what moment in time a referral is made and by whom parties are referred. A framework is designed based on international legislation, access to justice literature and existing empirical research on the topic. Subsequently, 10 factors are determined to conceptualise accessibility and are the focus of the empirical research: availability, legislation, exclusion criteria, awareness, attitudes, cooperation, trust, institutionalisation, good practices and costs.

Second, how are restorative justice processes initiated under different jurisdictions and in different models? Factors related to initiation include those that stimulate or discourage beginning a restorative procedure by the parties, and are related to the moment a victim or offender is invited or informed about restorative justice. There are several important elements to consider when informing parties about the option to participate in a restorative justice programme. These include the level of influence and authority of the initiator, the information provided, the mode of the offer, the language of the offer and the frequency of the offer.

To answer these questions, empirical research was conducted comprising several methods. A questionnaire was disseminated to both referral bodies and restorative justice practitioners to better understand barriers in their own countries. It was observed that numbers of cases are limited, ranging most often between a few hundred to roughly 10,000 per country. Exceptions included countries such as Austria, Germany and Finland (representing countries with higher cases). Perhaps unsurprisingly, all participants from the 17 countries who completed the questionnaire appeared to report similar issues. Most often mentioned was the lack of awareness and punitive attitudes that limited a greater number of referrals to restorative justice.

Qualitative interviews were also conducted to examine the different initiation models that could be found in each of the five countries: Croatia, Ireland, the Netherlands, Poland and Romania. Interviews with ‘initiators,’ namely those who had some type of role in informing

or inviting victims and/or offenders to participate in restorative justice illustrated the diverse methods used and the issues that arose during the initiation phase. Approaches included initiation through letters, phone calls, and face-to-face conversations. It may be the case, for example, that the judge adjourns a case while a probation officer informs the offender about the possibility for restorative justice (e.g., Ireland); employees of the prosecution service invite the juvenile offender to discuss how they will deal with his or her case, where one possible scenario is that he will be offered to participate in victim-offender mediation (e.g., Croatia); a selection table will filter out cases and send a letter to the parties that qualify, who may then get in touch with the mediator (e.g., the Netherlands); or police, prosecutors and judges may inform parties where they can go to get more information from the mediation service, often through information points in courts or leaflets (e.g., Romania).

Interviews with victims and offenders were conducted to examine their perspective on the way the offer was made. Information was gathered on coercion, authority, manner of the offer, awareness, language of the offer, dealing with concerns and timing. It was found that, in some instances, offenders felt they had little choice about participating; the positive approach of the initiator had a direct influence on their decision to participate; parties were often unaware of restorative justice before they were provided with such information; support and flexibility when dealing with the parties' concerns was influential in the decision to participate in restorative justice programmes.

The letter that is sent to victims and offenders was also given attention in the empirical research. Several aspects were identified as important in the letter: making the language easy to understand; avoiding certain terms (e.g., mediation); personalising the benefits of restorative justice; recognising the victim's harm; being authoritative; making the letter interactive; providing examples of successful relevant mediations. Furthermore, a small-scale experiment with Criminology students examined whether two aspects in particular – authority and social norming – were associated with one's decision to participate. The findings concluded that social norming, or the belief that similar others are involved in some type of behaviour (i.e., participating in mediation), does impact the likelihood of participating in mediation.

The comparative nature of the project allowed for an assessment of different models, in addition to an examination of good practices. It is evident that countries adopt different approaches in their procedures surrounding restorative justice. Despite these differences, all countries face issues and aim to increase their referral procedures. Without making both the public and referral bodies aware of restorative justice, however, accessibility will remain limited. Attitudes also must change, where a restorative philosophy can be adopted in the best case scenario, and at the least legal authorities must begin to believe in the advantages of restorative justice. Undeniably, these two factors – attitudes and awareness – are largely intertwined. Greater awareness is likely to lead to more positive attitudes towards restorative justice. Furthermore, other elements such as cooperation, costs, legislation, and exclusion criteria must be given consideration.

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INTRODUCTION

1. Accessibility and Initiation

While within the field of restorative justice there are numerous on-going debates regarding its use and theoretical basis, certain underlying features can be decided upon (United Nations Office on Drugs and Crime, 2006). Whether considered a procedure or a paradigm, the goal is to repair the harm that has resulted from a criminal offence. Restorative justice allows for those affected by crime to express their needs, emotions and experiences. Offenders may accept responsibility for their actions and help in the process of empowering the victim and providing security. By including all stakeholders in a cooperative process, it is believed that restoration and reparation can be achieved, often to a much greater extent and in a more comprehensive way than is possible within the traditional justice system.

The research results examining restorative justice procedures are often very positive, emphasising numerous benefits (Bolivar et al., 2013; Braithwaite, 1999; Shapland, Robinson & Sorsby, 2011; Sherman & Strang, 2007; Strang, 2002; Umbreit, 1994; Umbreit, Coates & Vos, 2002; Vanfraechem, Aertsen & Willemsens, 2010; Wemmers, 2002). Victims are more satisfied, offender recidivism is reduced, victims are less fearful and angry, and the process allows for more feelings of involvement and empowerment.

Despite these findings, the use of restorative justice processes in practice is lacking. Small numbers of referrals are being reported in countries across Europe suggesting that the potential of restorative justice is not being reached (Shapland et al., 2004). Research suggests that many victims would like to attend restorative justice processes, even when they are not provided with access to such procedures (Bolivar, 2013; Morris, Maxwell & Robertson, 1993; Tufts, 2000) and that the number of people who refuse restorative justice procedures is limited (Bachinger & Pelikan, 2013). Moreover, research has suggested that an offer itself may have empowering benefits, and when the victim refuses or cannot continue because the offender refuses, secondary victimisation is not found to occur (Bolivar, 2013).

The limited numbers of victims and offenders reaching restorative justice procedures is due to a variety of factors. The past years have seen a plethora of research examining the factors that limit greater accessibility (Shechory, David & Jakob, 2012; Umbreit, 1993; Van Burik, Hoogeveen, De Jong, Slump, Vogelvang, 2010; Wemmers & Van Camp, 2011). Legal professionals often do not support a system that is foreign and sometimes considered to be a 'soft' alternative to a necessary punitive response. Referral bodies are not always informed about restorative justice, nor its benefits, resulting in missing or inaccurate information being communicated to parties about their options. The public is generally unaware of the existence of restorative justice measures and the benefits, limiting self-referrals. Indeed, at the legislative level, much attention has been given to the *quality* of restorative justice, though concrete legislation guiding *access to* restorative justice is still lacking (Lauwaert, 2013).

Moreover, a more structured understanding of accessibility and the current situation in Europe does not exist.

While we will see that much attention has been given to accessibility – at least from a more theoretical perspective - the same cannot be said for the initiation phase. The initiation phase encompasses the moment when the offender or victim is told about or invited to a restorative justice procedure. Important considerations during this stage related to the information provided include the mode of delivery of the information, the level of authority of the information provider and the content and language of the information (Andries, 2005; Umbreit, 2001; Umbreit, 1993; Van Burik et al., 2010; Vanfraechem, 2007; Wemmers & Cyr, 2005). Largely dependent on the legal procedure, countries diverge in their methods used for initiating restorative justice. *Initiators* may also take a number of forms, including the referral bodies themselves in addition to restorative justice practitioners.

2. Methodology

There is a need for a greater focus on improving the accessibility and initiation of restorative justice processes. The current research will focus on the following two questions: (1) When and under what conditions are restorative justice processes accessible to citizens? and (2) How are restorative justice processes initiated under different jurisdictions and in different models? The results will provide insights into understanding how victims and offenders are informed and in which ways their understanding of the procedures may be enhanced (also leading to a greater likelihood of acceptance). Taking a comparative approach will allow for an assessment of good practices in 17 European countries, in addition to a closer look at the initiation models used in 5 countries: Croatia, Ireland, the Netherlands, Poland and Romania.

If we review the two questions from a more conceptual perspective, we must ask what we mean by access to restorative justice and the process of initiation in order to concretely define these concepts. For the purpose of this research we recognise a distinction must be made. Briefly stated, **factors related to accessibility include those that impede or assist parties in getting to a restorative procedure (i.e. those that can increase or prevent referrals). Factors related to initiation include those that stimulate or discourage beginning a restorative procedure by the parties, and are related to the moment a victim or offender is invited or informed about restorative justice.** We can speak of initiation factors once the referral has been made to the restorative justice organisation or information is provided to the parties, or the organisation has obtained contact information of the parties and may further approach them with the offer. In simplest terms, initiation explores how we can ensure that people will attend a restorative procedure.

Recent research has found that it is important for policymakers and referring institutions to become aware of the importance of accessibility of restorative justice procedures (Bolivar et al., 2013). Therefore, it is essential to know not only how these procedures are accessed, but which factors are benefiting or hindering such access. In order to understand the dynamics behind accessibility and initiation, we will develop a more structured framework to guide

further empirical analyses. We propose a framework based on three primary sources. First, existing access to justice literature offers a very basic starting point for elements that are relevant when looking into access to (restorative) justice procedures. Second, existing legislation, both at the national and international level, lays down the importance of accessibility and provides (though somewhat vague) recommendations for its implementation and the referral process. Third, empirical research within the area of restorative justice may provide insights into the referral process, serving as a means of verifying the proposed factors based on legislation and access to justice literature, and possibly introducing new aspects. Consequently, the following literature review will examine these three elements when discussing accessibility and initiation.

The factors that will be extracted will then provide for the accessibility and initiation framework guiding the empirical investigation that looks into the different models. The empirical analysis is comprised of several data collection techniques. First, a questionnaire was sent out to practitioners in the field of restorative justice to all European member states. Both referral bodies (e.g., prosecutors, police, victim support) and restorative justice organisations were included. The main goal was to better understand the existing barriers to greater accessibility, in addition to the referral procedures in the countries. In total, respondents from 17 countries completed the questionnaire. Second, qualitative interviews were conducted with a similar group, but restricted to the partner countries of the project (i.e., Croatia, Ireland, the Netherlands, Poland and Romania). Here the focus was on initiation, with the aim to illustrate the different approaches taken in each country. Third, a small-scale experiment was conducted with students at the Catholic University of Leuven, to more closely examine initiation through a letter inviting victims to participate in victim-offender mediation. The main goal was to understand if certain factors (i.e., authority and informing respondents that mediation is the ‘norm’) would influence one’s likelihood of participation.

3. Structure of the report

The goal of the research project, ‘Accessibility and Initiation of Restorative Justice’ is to answer those questions noted above. To do so, this report will be structured as follows: Chapter 2 provides an introduction into restorative justice theory and practice in order to provide the reader with general knowledge on the concept of restorative justice. Chapter 3 outlines the sources of the framework for the project: access to justice theory, international legislation and existing research findings on the topic. Chapter 4 presents the framework guiding accessibility. The factors that will be examined include availability, legal basis, exclusion criteria, attitudes, trust, awareness, cooperation, costs and standardised procedures. Chapter 5 investigates the factors necessary during the initiation phase: level of influence, delivering the offer, increasing legitimacy and psychological effects of the offer. Chapter 6 summarises the methodology adopted for the empirical analyses. Chapter 7 (accessibility) presents the findings of the questionnaire and Chapter 8 (initiation) presents the qualitative data in the 5 countries. Chapter 9, also focusing on initiation, reviews the interviews with

victims and offender and additionally explores a small-scale experiment. Chapter 10 presents the conclusions and several recommendations in the area of accessibility and initiation.

CHAPTER 2

RESTORATIVE JUSTICE THEORY AND PRACTICE

1. Theory and definition

Since the 1970's, the restorative justice movement has undoubtedly been gaining momentum. Though its origins may largely be associated with a response to offending, there is now support from victim rights' advocates, researchers and policy makers that restorative justice is an effective means of dealing with the harm caused by an offence. Indeed, restorative justice has arisen from 'sites of activism, academia, and justice system workplaces,' currently situated within social movements, academic theorising and countless practices throughout the world (Daly & Immarigeon, 1998: 21). While the roots of restorative justice have been disputed (for example, see Daly, 2001; 2002), there is no doubt that there is some link with 'traditional' dispute resolution processes and recent practices of victim-offender mediation and family group conferencing (Shapland, Robinson & Sorsby, 2011).

From a theoretical perspective, the concept has evolved and has consistently been debated. There is an abundance of perspectives within restorative justice, ranging from different paradigms (primarily beginning in the 1970s) to more pragmatic approaches, for example as an approach meant to run complementary to the traditional criminal justice system (Gavrielides, 2008). Restorative Justice has been referred to as an alternative to criminal justice, a means of sanctioning, or a new model of criminal justice (Daly & Immarigeon, 1998). Moreover, restorative justice has been conceptualised as a theory of social justice, as a lifestyle, or as a set of distinctive values (Johnstone, 2003). Though definitions often diverge, and several models can be found, it is undeniable that this area aims to meet the needs of parties that the traditional criminal justice system cannot: repairing the harm that resulted from the offence. While other models – for example that of criminal justice or rehabilitation – may be able to partially tend to victim and offender needs, the restorative justice paradigm's focus on restoration and reparation takes an even more inclusive and humane approach.

Though restorative justice may be considered a paradigm (Zehr, 1990), a theory of justice (Van Ness & Strong, 2006), or a set of processes, outcomes and values (Dignan, 2002), there currently are several further underlying assumptions that have generally been accepted among restorative justice scholars. These include that crime has its origins in social conditions and relationships; crime prevention is dependent on communities taking responsibility for remedying the conditions that lead to crime; resolving the effects of the crime requires the involvement of the parties; no single objective may dominate; justice measures must be flexible in responding to individual cases and justice agencies must share common objectives (Marshall, 1999).

Restorative justice takes a forward looking perspective, one that involves a participatory process among those involved in the offence, often including the community. Putting things right is of prime importance (Marshall 1999; Van Ness & Strong, 2006). To achieve this,

several conditions should be attained, including the offender experiencing and expressing repentance, reintegrating into society, taking responsibility, promoting healing, and allowing a medium for a communicative process that may lead to feelings of empowerment (Johnstone, 2003). Like criminal law, restorative justice maintains that after a crime has occurred, there is a social dimension that must be considered. This harm to society, however, might be secondary to the harm that has been caused to the victim and may be addressed in a less abstract and more concrete way.

As can be seen, there remains a great deal of discussion regarding the definition of restorative justice; the definition of restorative justice is debated at the beginning of a substantial number of articles and chapters on restorative justice (Braithwaite, 1999; Daly, 2002; Gavrielides, 2008; Johnstone & Van Ness, 2007; Vanfraechem, 2007). The current study, as has been mentioned, hopes to provide valuable insights into the accessibility of restorative justice procedures within Europe, thereby leading to useful tips regarding practice. For this reason, we do not wish to dwell on the definition.

What is important here, however, is to define the scope of restorative justice for the purpose of understanding accessibility. This includes three parts: (1) the moment in time, with regard to the process, that will be relevant to accessibility and initiation, (2) deciding who may contribute to making restorative justice accessible and (3) determining what we will recognise as restorative justice practices. With regard to the timing, we will begin with the examination of which programmes are available in a given country (e.g., not concerned with the formation and implementation of programmes phase) and follow through until the moment an offer has been refused or accepted. For which individuals and institutions should be included, we will make a distinction between the societal level and the individual level. With regard to deciding what we will consider as restorative justice practices, we first turn to one debate in the theoretical literature, namely the ‘maximalist’ versus ‘purist’ perspectives.

First, the starting point is rather clear with regard to accessibility. Though to varying degrees, programmes already exist in all of the countries under study. Therefore, we are not interested in examining which factors will help to implement new programmes or start new initiatives. Instead, as noted, we argue that there are programmes existing, yet they simply are not being sufficiently accessed. Accessibility factors continue through until the moment that party contact information reaches the restorative justice organisation. Initiation then occurs when the victim or offender has accepted the offer. Understandably, these are only guidelines meant to help the reader understand the definitions used in the current research. Generally speaking, this ‘timeline’ allows for a broad understanding of the difference between accessibility and initiation.

Second, we could include a number of actors in our analysis of accessibility and initiation. To provide some structure, however, there will be a focus on the individual level and at the societal level. First, at the individual level, the most obvious actors to include are the referring bodies and the restorative justice organisations. At the same time, the victim and the offender

must also be included, particularly for their role in self-referrals. Also at the individual level is the mediation organisation, who plays a prominent role, particularly in the initiation phase. Second, at the societal level, we include the society, the media and government organisations that may promote or hinder restorative justice. Society can also play a role in self-referrals, for example if we examine accessibility through awareness. Similarly, the media can have an impact on both awareness and attitudes.

Third, a theme resonating in the restorative justice literature and important in the current analysis is process definitions versus outcome definitions. In the former, restorative justice is perceived as a decision-making process and includes values such as consensual participation, mutual respect, balance of interests, non-coerciveness and a problem-solving orientation (Dignan, 2002). In essence, because focusing on truly restorative processes requires victim consent, there has been a strict limitation on such a definition. This 'purist' model emphasises process, often through face-to-face meetings, and as some may argue does not give enough attention to repairing the harm caused by the crime (Walgrave, 2000). There is no element of coerciveness, as this would shift restorative justice to a more punitive approach (McCold & Wachtel, 2002). The outcome-oriented view, also referred to as the maximalist approach, defines restorative justice as, "every action that is primarily oriented towards doing justice by repairing the harm that has been caused by crime" (Bazemore & Walgrave, 1999: 48). This perspective allows for more extensive use of the term restorative justice, and therefore does not limit eligible cases to the same extent as process definitions. Reparative sanctions are included, for example compensation to the victim, to a victim fund or community service. These sanctions are considered restorative justice and not punishment because there is no intention to make the offender suffer, even if this is a secondary consequence (Walgrave, 2001). Procedures focused on the outcome are also significant, for example when the victim is absent. Moreover, the actions encompassed by restorative justice may be voluntary but also coercive (Walgrave, 2001). Such coerciveness prevents restorative justice from being relegated to the margins of the criminal justice system.

If we are to abide by the process definition, we may only include procedures that meet all ethical standards including non-domination, empowerment, and respectful listening in a process where all stakeholders may tell their stories and express the harm they have experienced as a result of the crime (Braithwaite, 2003). Where the victim is absent, however, alternatives exist that stress an outcome orientation. Examples of this form of restorative justice include using police facilitators to convey the victim's perspective or involving a victim from another case (Dignan, 2002).

While we will not offer our opinion on the discussions surrounding this debate, we do recognise that we must decide upon a definition that would most greatly benefit accessibility and initiation. Therefore, it seems important to utilise a more inclusive conceptualisation, as is the case in the outcome-based definition. At the same time, the maximalist approach is somewhat radical, and including all possible forms of restoration may prove difficult. Indeed, it has consistently been recognized that restorative justice has most often been understood as

victim-offender mediation and, to a somewhat lesser extent, family group conferencing. These approaches undoubtedly follow a commonly used definition of restorative justice as, “a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future” (Marshall, 1999: 5). Moreover, legislation defining restorative justice most often utilises the process definition.

Based on this logic, we refer to restorative justice processes as victim-offender mediation. Though family group conferencing is also a common procedure fitting this definition, the local context of the countries included in the project tend not to focus on such procedures. Furthermore, we are interested in other procedures that may be considered to be fully or mostly restorative (McCold & Wachtel, 2003). Indeed, before generalising certain models as the ‘prototypical’ restorative justice practices, it is vital to acknowledge that in some countries other models prevail. Particularly when examining accessibility, the scope of restorative justice should not be limited to victim-offender mediation and family group conferencing. Access to these procedures may be limited because other procedures are more often used. For example, we must ask, when procedures *allow for* both victim and offender to be present, but do not *require* it, what must be considered in terms of accessibility. For this reason, we choose to include a third model, reparation panels, which though offender oriented, do in theory provide for restorative aspects for the victim. Therefore, the primary focus will be on victim-offender mediation, but there will also be a secondary focus on other restorative practices (i.e., conferencing and reparation panels), as these form the prevailing model in Ireland. We will further be able to understand what options exist when one of the parties (i.e. the victim) is not willing to participate in restorative measures.

2. Development in Europe

Different regions in the world attribute the emergence and growth of restorative justice to different authors and practices. In fact, these differences are also the cause of some of the discrepancies in definitions as discussed above. Though it has been argued that countries such as New Zealand and Canada may be the ‘birthplace’ of restorative justice, it is undeniable that this movement has advanced in Europe in the 1980s. Decades before in the 1960s, there was already a debate on how best to allow offenders and victims to solve their own conflicts (Willemsens & Walgrave, 2007). Later years witnessed an emphasis on the counterproductive effects of the criminal justice system, demanding a need for a more deliberative model of conflict resolution.

In Europe, the influence of Nils Christie’s famous argument of ‘conflict as property’ has impacted the spread of victim-offender mediation (Dignan, 2005). This ideology examined the way communities should respond to unwanted conflicts. In Norway, his inspiration led to a diversionary project for young offenders in 1981, which was later followed by encouragement from the Ministry of Social Affairs for local governments to set up such programmes (Willemsens, 2008). Moreover, impetus emerged from the ideologies of handling youth conflict, both in Europe and abroad. Restorative justice was seen as a means of

providing meaningful consequences for crime, confronting offenders and denouncing criminal behaviour without a punitive nature (Bazemore & Umbreit, 1995).

Many countries followed the patterns found in Norway, with pilot projects and legislation being established throughout Europe. Developments, however, did initially face some tension (Willemsens, 2008). Evaluations proved to be positive, yet support was lacking to ensure its wider application. This was largely a result of resistance from criminal justice authorities, and others who were sceptical about its benefits. Though legislation was being enacted to initiate the use of referrals to programmes, numbers remained very low. The 1990s witnessed a new phase of restorative justice development, where many countries adopted a legislative framework and were busy refining their programmes. Understandably, while this project aims to gain more insights into the reasons preventing accessibility of restorative justice, this issue existed to an even greater extent in the early years.

While now many European countries are rather developed in their availability of restorative justice programmes, there are still countries who are in the early stages of implementing restorative justice. Support for restorative justice may be lacking in Central and Eastern European countries, where nations more recently experiencing a democratic transition involve a lack of legitimacy in informal systems (Fellegi, 2005). This is in line with Barker's (2007) finding that the political context of a given country would impact the level of restorative approaches. More specifically, a high level of democracy combined with intensive social polarisation would lead to a greater need for vengeance whereas intensive civic engagement combined with social trust would lead to a mix of restorative and restrictive approaches.

The body guiding the implementation of restorative justice projects is also dependent on the country. In some countries, it was offender oriented organisations, such as probation, that drove restorative justice programmes (e.g., Austria and Germany). In other countries, victim support organisations have played a more prominent role, though this body has also been hesitant in providing complete support for restorative justice. Victim support has also been responsible for lobbying efforts aimed at establishing services (e.g., in France and Portugal). In other cases, however, mediation may not be linked to either victim services or offender programmes. In Finland, for example, mediation grew with the support and guidance of the social work and child welfare sectors.

Support for restorative justice also arose out of negative perceptions of the criminal justice system and other societal reasons. For example, in Northern Ireland and France, the use of mediation was largely a response to a lack of trust of the criminal justice system. This led to a vigilante response by many citizens in order to 'make justice happen.' Consequently, community mediation centres were established to provide a non-violent form of conflict resolution. In France, mediation services were developed in response to fear of victimisation and feelings of insecurity.

An association has also been drawn between the development of restorative justice and the presence of victim support organisations in a given country (Weitekamp, 2001). Countries

with strong victim support systems often have less developed restorative justice schemes. In order to take care of victim needs by a variety of different services, countries with poor victim support systems co-exist with more extensive and developed restorative justice programmes. Furthermore, the existence of a given policy perspective (i.e., victim support services) may impede the progress of newer viewpoints (i.e., restorative justice schemes).

Restorative practices

We have already noted that restorative justice procedures contain similar aims and methods, namely to address the harm caused by an offence through dialogue-driven conflict resolution. Restorative justice procedures take a number of forms and may be referred to in various typologies. Due to the focus on victim-offender mediation in this project, and common references to it as one of the ‘prototypical models’ (Raye & Roberts, 2007: 212), we will elaborate on this approach. Furthermore, we will also introduce other options that exist, which have varying levels of ‘restorativeness.’

Restorative justice is often associated with victim-offender mediation, as this is – at least in Europe - the most common form of a truly restorative procedure. It refers to an intervention that uses a third party to help parties resolve their differences. During this intervention, victims and offenders are able to discuss the crime, its consequences and ideas for reparation of the harm caused (Umbreit, 1994; 2001). The communication found in direct mediation allows for expression of emotions in addition to the asking and answering of questions the parties may have. The role of the facilitator is to create safety and to guide the process, in addition to offering proper preparation for the meeting (Raye & Roberts, 2007). Often, a report and/or a contract will result from the meeting. Any agreement reached may then be forwarded to the criminal justice authorities, such as the police or the prosecutor. Mediation may also take the form of indirect communication. This, for example, can include shuttle mediation (or diplomacy), where the mediators facilitates contact but there is no face-to-face meeting. This contact will be done through letters, videos or verbal comments. In these programmes, the settlement is sometimes of greater importance than the process itself.

We focus on victim-offender mediation; however, it should briefly be repeated that there are many other forms of restorative justice. Family-group conferencing, with its roots in child welfare and youth justice in New Zealand, was designed to help families of the victims and offenders work together to find necessary solutions (Raye & Roberts, 2007; Van Ness & Strong, 2006). The goals and much of the methods are comparable to victim-offender mediation practices, with the additional element of dialogue among family members and offer support persons . By including families, particularly that of the offender, the offender is helped to move past inappropriate behaviour and discard the offender label (Braithwaite, 1989). Sentencing or peacemaking circles, whose roots are argued to be in the tradition of North American aboriginal populations, aim to include family and other community members in the decision making process (Raye & Roberts, 2007; Van Ness & Strong, 2006). Communication is managed through a ‘talking stick,’ allowing participants to express

themselves for an unlimited amount of time. In cases where there is no victim willing to participate, there may be an opportunity for a surrogate procedure to allow for others to play the role of the victim. Offenders then are still faced with consequences of an offence and victims have the opportunity to express themselves. Reparation panels hold the offender accountable and support reintegration and reparation. They generally consist of representatives of criminal justice agencies and the local community, meeting face-to-face with the offender to discuss his or her wrongdoing. It is possible that, in some cases, the victim attends these panels. Other practices include video-letters, victim-support circles, restitution and victim awareness programmes, though these methods are considered to sometimes be only 'partly' or 'mostly' restorative (McCold & Wachtel, 2002).

As noted above, restorative justice may be considered an alternative to the traditional justice system, complementary to the traditional justice system or as a sentencing option (Gavrielides, 2007). An accepted typology is that of Gavrielides (2007) which distinguishes between independent, relatively dependent and dependent systems. In independent systems, the main goal is to meet the needs of the participants and the outcome has no repercussions on the legal disposition. Self-referrals are common in these systems. The agreement of the restorative procedure in 'relatively dependent' systems may have an effect on the criminal procedure, but does not necessarily replace the sentence. Referrals are mostly done by the courts, parties and attorneys. Dependent systems find restorative procedures as alternatives to the criminal procedure. The former is a diversionary measure that allows the criminal case to be dismissed when a successful agreement is reached. Cases are mostly referred by the police, prosecutors, parties and attorneys.

4. The referral procedure

Referring bodies may include prosecutors, police, victim support agencies, probation officers, defence attorneys, social services, judges and the parties themselves (Umbreit, 2001). While each country differs to an extent in its referral process, general similarities can be seen. Most notable is the large role of public prosecutors in the referral process (Aertsen, Mackay, Pelikan, Willemsens & Wright, 2004, Miers and Aertsen 2012). Some countries, for example Finland, do have the majority of referrals being carried out by other bodies, namely the police (Honkatukia, 2013). While prosecutors appear to play a large role in referrals, it has been proposed that prosecutors should not be the main decision makers in diversion activities. This suggestion is due to the argument that they may refer fewer cases when compared to a social worker, for example, as prosecutors represent victims' rights and may be deciding on behalf of the victim (Skelton, 1995). They are not unbiased officials, whereas other bodies may be more impartial in who they refer to restorative justice processes.

A referral should be distinguished from solely providing information about mediation. Very often the latter occurs, for example face to face, through phone calls, informative pamphlets, or public campaigns to inform citizens. Referrals, however, suggest a more **proactive action of sending contact details to the mediation service or informing the party their case will**

be dealt through mediation (following consent). Information is important in its relation to self-referrals. The referral procedure is rather direct in some cases, with different referral bodies sending party information to the mediation service, or the parties themselves contacting the mediation organisation. Furthermore, representatives (e.g., family members or lawyers) of the parties may approach legal authorities to request mediation. The referral bodies may assess the suitability of the case themselves, or the mediation service may conduct this task. At the same time, the referral procedure is sometimes more complicated, with more than one authority being involved, for example a combination of the police assessing the victim and another person assessing the offender at a different moment in time, before the case is further referred to the restorative justice programme. There is also variation in who is contacted first and the method used to contact the party (e.g., telephone, letter, in-person), as will be seen in the discussion surrounding initiation. In some cases, the mediators contact the other party themselves only after one party appears before them.

Referrals and information, in theory, have the same goal, namely to lead to the use of restorative programmes. Information may be necessary to facilitate self-referrals while direct referrals to the restorative justice organisation may also occur. The latter is largely in the form of providing the organisation with contact information so that they can ‘initiate’ the procedure. Another scenario may arise, namely that the referral consists of informing the party of the possibility for a restorative justice intervention, and upon consent, forwards the contact information. In practice, such a referral is unlikely to contain much information about the actual procedure. There is undoubtedly a large overlap with the actual invitation to participate. Providing sufficient information, furthermore, should already be seen as a form of initiation, where this encourages or discourages parties to participate. Undeniably, this is a blurry distinction that will benefit from a closer inspection of different models (Chapter 5).

Conclusion

The rise of restorative justice practices worldwide clearly calls for more attention to the issues surrounding accessibility and initiation. The rapid growth in Europe can be illustrated by the upsurge in restorative justice programmes. There still remains a need for greater referrals and understanding of the initiation phase of the procedure. The current report will generally focus on victim-offender mediation and examine in which ways accessibility and initiation may improve. Factors related to accessibility include those that impede or assist parties in getting to a restorative procedure (i.e. those that can increase or prevent referrals). Factors related to initiation include those that stimulate or discourage beginning a restorative procedure by the parties, and are related to the moment a victim or offender is invited or informed about restorative justice.

CHAPTER 3

FRAMEWORK SURROUNDING ACCESSIBILITY

1. Access to justice

Measuring accessibility can largely benefit from examining existing conceptualisations of ‘access to justice’ more generally. Such a framework may provide a starting point that can later be adjusted to apply strictly to restorative justice. There is an abundance of literature and debate regarding the definition of this concept. A short review suggests that though many aspects factor into the definition, there do seem to be several underlying themes that many scholars or organisations agree upon. The UNDP Justice System Programme asserts that there are three themes that must be given consideration. First, rights need to be guaranteed in the national legal framework (legislation). Second, sufficient institutions must exist that will uphold these rights (availability). Third, knowledge should be increased and a cultural attitude that provides for a demand of the rights and institutions should be encouraged (awareness and attitudes).

The United States Institute of Peace asserts that one necessary condition to achieve rule of law is access to justice. They define access to justice as, “a condition in which people are able to seek and obtain a remedy for grievances through formal or informal institutions of justice that conform with international human rights standards, and a system exists to ensure equal and effective application of the law, procedural fairness, and transparency.” The first part of the definition is applicable to the current study, where the goal is to help individuals seek and obtain a remedy. Access to justice also involves legal awareness and financially accessible procedures. Twenty-three conditions for access to justice are outlined. When applying these conditions to access to restorative justice and the current research questions, six of these elements are relevant, namely, promoting legal awareness, increasing (public) confidence in the (restorative) justice system, understanding informal systems, using informal systems in combination with the formal system, ensuring equal application of the law and increasing the knowledge and professionalisation of justice personnel.

The access to justice movement is also linked to the notion of alternative dispute resolution and diversion (Cappelletti & Garth, 1978). A third ‘wave’ in the access to justice progression is the ‘access to justice approach,’ which followed the legal aid wave and the legal representation for ‘diffuse interests’ wave. The access to justice movement aimed to provide justice for those who were long denied such rights and to reduce costs for the parties. Within this wave, there was a call to devise alternative methods to resolve legal disputes. These alternative methods included submitting disputes to arbitration instead of adjudication and encouraging fair settlements through party conciliation, also recognising the importance of diverting cases. While at the time this discussion began, there was little or no application to criminal cases, we can see a clear association between access to justice and attention for restorative justice.

2. International legislation

Accessibility may begin with the existence of a legal basis. We will now discuss some of the legal mechanisms that have implications for the accessibility of restorative justice processes (for a more comprehensive overview, see e.g., the report of Willemsens, 2006¹). As early as 1985, though not binding, the U.N Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power addressed the need for restorative justice mechanisms. It states, “informal mechanisms for the resolution of disputes, mediation, arbitration and customary justice or indigenous practices, should be utilised where appropriate to facilitate conciliation and redress for victims.” Such attention has also been given in other legislation, including the Council of Europe Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters, Recommendation (2006) 8 on assistance to crime victims and the most recent EU Directive establishing minimum standards on the rights, support and protection of victims of crime². At the national level, many European member states have a legal basis for mediation in their legislation, often guided by the international scope, which will be reviewed at a later stage.

Recommendation No. R (99) 19 refers to mediation as “any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator).” It sets out that mediation should be an available service at all stages of the criminal justice process and that guidelines should exist that address the conditions necessary for the referral of cases. Furthermore, these decisions to refer should be limited to the criminal justice authorities and conducted within a reasonable time limit. Parties must be informed of the process and its consequences. When considering whether or not a case is suitable for mediation, several factors must be taken into account, for example age and intellectual capacity. Regarding national legislation, the explanatory memorandum of the Recommendation No. R (99) 19 states, “with a view to avoid over-regulating mediation and considering the various approaches to mediation in member States, the Recommendation does not explicitly require that mediation programmes should be laid down in law. Legislation should, however, as a minimum rule, make mediation possible and even facilitate its use.”

An evaluation conducted by the Council of Europe Working Group on Mediation (CEPEJ-GE-MED) uncovered numerous obstacles to the implementation of Recommendation No. R (99) 19, including a lack of awareness, lack of availability, limited power to refer parties to mediation, high costs and insufficient training. Guidelines³ were then formulated for States to

¹ This report provides a very inclusive summary of all mechanisms that support or promote the use of mediation. These mechanisms have been put forth by the Council of Europe, the United Nations and the European Union. What follows is only a fraction of what is included in the summary of Willemsens (2008), which includes other sources such as Resolutions, Communications, Green papers, initiatives and numerous other Recommendations.

² Right to safeguards in the context of mediation and other restorative justice services (Article 12), giving attention to referrals.

³ European Commission for the Efficiency of Justice. Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters. CEPEJ (2007) 13.

adhere to, encompassing three themes: availability, accessibility and awareness. First, availability largely refers to the setting up of mediation schemes, but also covers aspects such as the role of the different authorities regarding mediation and confidentiality. Second, accessibility refers to the rights of the parties, costs and limitation terms. Third, awareness of restorative justice procedures is necessary for the public, the parties, the police, lawyers, social workers and the judiciary in order to promote its use.

The Council of Europe Recommendation Rec (2006) 8 on assistance to crime victims also addresses the point of mediation. Though it is not as extensive as Recommendation No. R (99) 19, it does request that agencies consider the possibilities offered for mediation. It further expresses the need for the parties' wishes to be taken into account, in addition to benefits and risks of a mediation procedure. Furthermore, States should create guidelines that will ensure free consent, confidentiality, access to independent advice, competence of mediators and the possibility to withdraw from mediation.

The most recent EU Directive establishing minimum standards on the rights, support and protection of victims of crime⁴ directly addresses restorative justice. Under the right to receive information from the first contact with a competent authority, member states should guarantee that information is provided on available restorative justice services (4.1j). The Directive further states that while taking into account the needs of the victim first and foremost, factors need to be considered such as power imbalances, age and level of trauma before deciding whether or not a case will be referred. Moreover, in order to safeguard the victim, several guidelines should be followed, including providing safe and competent services that must be in the interest of the victim showing informed consent. Unbiased information about the process and outcomes must be provided (12.1). Finally, most relevant to the current research, member states are required to facilitate referrals to restorative justice procedures, and procedures and guidelines directing the referrals must be established (12.2). While much of this mirrors what is stipulated in earlier documents, having replaced the earlier 2001 EU Framework Decision on victims, the Directive holds a firmer legal basis and therefore is considered an important opportunity for promoting restorative justice. The previous documents, though soft law, have also provided States with stimulation to progress in the area of restorative justice.

An analysis of the Directive also concludes that though there is a right to quality service, there is no right to equal access for victims of crime to restorative justice programmes (Lauwaert, 2013). Lauwaert refers to several factors to be considered for equal access: information about restorative justice, costs of services, availability, self-referrals and eligibility for restorative justice. The author states (pg. 314), "If the EU had taken its statement seriously that RJ can be of great benefit to victims of crime (recital 46), one would expect more measures in the text to increase the accessibility of RJ services for victims of crime. This is especially the case since this lack of accessibility is impeding the further development of RJ in most European

⁴ 2012/29/EU

countries.” The Directive, however, does address the issue of accessibility to an extent, though indirectly. First, there is a right to receive information about restorative justice from the first contact with a competent authority. Second, exclusion criteria regarding guilt has been made less stringent, where it is stated that recognition of the basic facts by the offender is sufficient. Consequently, more offenders are eligible for restorative justice. Third, the Directive refers to training for legal professionals, providing an opportunity to educate these individuals on the benefits of restorative justice. Despite these positive strides, a framework referring to free services, access for all types of victims and offenders, implementation of more programmes and self-referrals is lacking.

While these international mechanisms described above are targeted at improving the position of the victim, the role of the offender in restorative justice has also played a role in promoting mediation. This is evidenced in several legislative texts. Council of Europe Recommendation No. R (87) on social reactions to juvenile delinquency recommends that governments should review their existing legislation and practice with a view to mediation. Mediation and diversion should be encouraged at both the police and prosecutorial level to prevent juveniles from coming into contact with the criminal justice system. Preference should also be given to alternative measures that allow for social integration and help to repair the harm that was caused by the criminal act. Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice states that innovative and effective community sanctions and measures must be adopted to address serious and persistent juvenile offending, in addition to the needs of the offender. If possible, such measures should include mediation and reparation for the victim, and include the offender’s parents where it may be beneficial.

In addition to legislation aimed at the victim and the offender, there are statutes aimed at influencing the functioning of the legal system itself. These may also have a relevant role in implementing restorative justice programmes. Recommendation No. R (92) 17 concerning consistency in sentencing underlines that sentencing rationale in member States should be in line with humane crime policies, including utilising measures of diversion such as mediation. Similarly, Recommendation No. R (87) 18 concerning the simplification of criminal justice requests that States review their legislation in an effort to promote out-of-court-settlements. In order to address difficulties such as increases in workloads and financial restraints, Recommendation No. R (95) 12 on the management of criminal justice claims that crime policies such as mediation would be beneficial. Recommendation Rec (2000) 22 on improving the implementation of the European Rules on community sanctions and measures names victim-offender mediation as an example of a measure for which a provision could be made in legislation.

3. Research findings on accessibility

Access to justice literature and legislation concerning restorative justice, both national and international, tend to take a normative perspective. To supplement this, it is important to turn

to the restorative justice literature and research that provides a more accurate picture of what is occurring in practice. ‘Hard law’ alone may not be sufficient in obtaining greater accessibility. Indeed, research assessing the first binding victims’ rights document, the 2001 EU Framework Decision on the standing of victims in criminal proceedings, illustrates this point (Groenhuijsen & Pemberton, 2009). Member states were lacking in some way regarding the implementation of the mechanism, including areas such as victim support, training of legal authorities and information provisions for victims. Similarly, the European Commission report evaluating Article 18 of the Framework Decision concluded similar findings, asserting that most States did not do a sufficient job in meeting the requirements set out by the document⁵.

In the field of criminal justice, we can refer to this gap between law and practice as ‘the implementation failure’ (Newburn, 2007). This notion encompasses the failure of practical initiatives to be implemented correctly, often due to a lack of cooperation or research regarding its evaluation. Reviewing the restorative justice literature, we also uncover obstacles that have been reported in the initiation and accessibility phases. Two factors in particular may be causing this failure, despite legislation and normative theory implemented to benefit practices such as victim-offender mediation: negative attitudes by referring bodies (Wemmers & Van Camp, 2011) and poor cooperation among partners involved (Casado-Coronas, 2006).

Much research examines the accessibility of restorative justice. For example, Bolivar (2013) conceptualised access to restorative justice largely as referral institutions and the offer of mediation. Casado-Coronas (2006) looked at the implementation of restorative justice more generally, though concluded several needs and priorities for policy development that were relevant to the accessibility stage. These included raising awareness, creating an explicit legal base, and developing partnerships with key actors in restorative justice schemes. Willemsens (2008) also addressed access to restorative justice more concretely, arguing that several factors are relevant including laws that limit eligibility and the stages restorative justice may be applied to. The author further examined access at a more macro-level, including aspects such as networking among countries, developing communication strategies, funding, education and policy development. These latter elements were also echoed in research examining the implementation of restorative justice in Central and Eastern European countries (Fellegi, 2005).

Conclusion

Existing access to justice framework, international legislation and previous research on restorative justice provide an outline for assessing current practices of accessibility and initiation of restorative justice. While each of these significantly adds to the body of literature on the subject, we proposed a more systematic means of defining accessibility and initiation.

⁵ Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings {SEC(2004)102}

As was noted earlier, accessibility refers to factors that help or hinder parties in accessing restorative procedures. These aspects in turn impact the initiation of procedures. Based on the above review, we argue that the following accessibility elements will impact the referral process: availability, legal basis, attitudes, criminal justice resources, awareness, coordination and costs. Furthermore, trust and exclusion criteria impact some of these relationships (e.g., attitudes affect referrals due to exclusion criteria while cooperation affects referrals due to trust in organisations). Finally, the referrals will lead to a rejection or acceptance of the offer, as moderated by the quality of the offer.

ACCESSIBILITY

1. Availability

First and foremost, accessibility requires availability, and as the guidelines on Recommendation R (99) state, “measures should be taken to promote and set up workable mediation schemes.” Moreover, referral bodies must be identified, and either in addition to or in place of police and judicial authorities, these can be social authorities, non-governmental bodies, and lawyers. Referrals should be made at all stages of the criminal proceedings, though such a wide application is absent in most European countries.

Our starting point is that research into accessibility and initiation of restorative justice procedures is vital because such processes are being largely underused in many countries. There is also the possibility, however, that there is no demand for such services, and this must also be taken into account. Time and financial resources may restrict broader application, but also organisations simply believing that they are doing enough could be a reason they do not request more cases to be referred. Therefore, a first step is to investigate if there are sufficient suitable cases from a given court (Shapland et al., 2004). Furthermore, restorative justice may not be the most appropriate response. It is also important for referrers to adequately understand the nature of the underlying cause of the conflict (Felstiner & Williams, 1978), as in some cases, other options (e.g., counselling) may be more suitable. Moreover, we must not forget that restorative justice practices are voluntary and simply may not be appealing to parties, no matter what the true benefits may be. In some instances, people prefer a more retributive response rather than experiencing an apology in a more informal setting. There is a lot of support, however, for high numbers of victims and offenders showing interest in restorative practices (see Aertsen & Peters, 1998).

Though the necessary resources to establishing new programmes are not considered in this report, the resources needed to keep a programme successfully functioning may be a barrier to accessibility as we understand it. If a programme exists but does not have enough means to accept more cases, there will be a need for further allocation of resources and we must ask how this may be possible (e.g., through the use of volunteers). For example, in England, it was found in one restorative justice programme that the time it took to prepare people was more intensive than was expected, and the organisation had to cut down on the caseload (Shapland et al., 2004). Similarly, individuals from the referring agencies (e.g., a prison or probation officer) should be able to dedicate their time to referral processes, preferably in a consistent way that will make the programme more accessible.

1.1 Criminal justice resources

Criminal justice personnel make up a significant proportion of all referring bodies. The time it would take a prosecutor or a judge to evaluate suitability for restorative justice may simply

be too much considering their other duties and the overload of cases in the criminal justice system. Victim consultation opposes the goals of speedy processing, as is sometimes the case (Holdaway, Davidson, Dignan, Hammersley, Hine, & Marsh, 2001). Due to fast-track initiatives, judges and other authorities are keen to speed up court proceedings, which makes it difficult for them to meet victim needs.

Ironically, a measure implemented in part to show the potential to relieve criminal justice authorities of their workload⁶ (for example see Recommendation No. R (95)12 on the management of criminal justice) is not being used for exactly that reason. Therefore, greater awareness and more positive attitudes towards restorative justice may help these authorities to understand the benefits for themselves of such programmes.

1.2 Equal access

There is a debate regarding the perception of restorative justice as a ‘right’ or a ‘favour’ (Willemsens, 2008). Arguments in support of the rights based approach include the notion that States should only exercise their *ius puniendi* as a last resort, also known as the subsidiarity principle. When there are other less punitive measures available, these should first be utilised, including for example, restorative justice practices. This principle would be largely limited if restorative justice were only applied to certain cases, allowing a lot of leeway for exclusionary criteria (e.g., type of offence) and biased application. Moreover, some advocates claim that restorative justice is a means of adhering to the principle of democracy, as it allows for greater active involvement of citizens. Indeed, when empirically examining the perceptions of practitioners and researchers involved in restorative justice, it was found that more than four-fifths of respondents believed there was a need to formulate restorative justice as a right. When conceived as a favour, many cases will be excluded based on criteria formulated by the law and referral bodies themselves (discussed in more detail later). Moreover, the favour applies to the offender, not the victim. In essence, as a right, every victim and offender would be able to access restorative justice, at least in terms of receiving information and proposing mediation to the other party.

Restorative justice as a right, therefore, has implications for equal access to restorative justice. Unfortunately, there is research suggesting that restorative justice is not equally accessible for all groups. Such a finding is not surprising given the well-known notion that the criminal justice system is highly biased in its application (Buzawa & Hotaling, 2000; Cappelletti & Garth, 1978; Cole, 1999; Gregory, 1998; Robinson, 2010). Concerning restorative justice, certain ethnic and cultural groups may be excluded from programmes or be less likely to be accepted (Bonta, Wallace-Capretta, Rooney & Mcanoy, 2010; Richards, 2010). Moreover, unequal access may be a result of geographical location, where restorative justice is only offered in certain regions of a country (Willemsens, 2008). At the same time, it may be the

⁶ Though Pearson (1982) for example found that alternative methods of adjudication were not decreasing court overload and costs.

case that restorative justice programmes can expand their services to include other geographical areas, either because they are not reaching enough cases or there are areas which do not have their own restorative programmes (Shapland et al., 2004). Differences among jurisdictions, possibly due to a lack of a national policy, will also influence practice and subsequently result in differences in referral and selection procedures (Kools, 2005). Even within one country there may be differences which result in an inequality for parties to access restorative procedures (Suggnomè, 2011). The issue of equal access is strongly linked to attitudes and exclusion criteria, as these further limit one's likelihood of reaching a restorative justice procedure.

2. Legal basis at the national level

The legislation introduced earlier provides recommendations or obligations for member States to incorporate into their national legal systems. The countries under study have each done so, yet to varying degrees. Despite a majority of European countries implementing some type of legislation, it remains important to assess the quality of that legislation. For example, it is necessary to have explicit laws which are not ambiguous but rather provide clarity of the legal provisions. Where this cannot be done, guidelines or other forms of direction should exist that lead legal authorities in their duties regarding restorative justice procedures. Furthermore, the existence of legislation does not necessarily imply that criteria for the referral procedure are laid down. In fact, it may be the case that countries deliberately do not set criteria for referring cases (Wojcik, 2004).

Several types of legislation related to restorative justice have been identified (Aertsen et al., 2004) which consists of both primary and secondary legislation (Miers & Aertsen, 2012). Juvenile justice acts often include the option for diversion, namely by the public prosecutor or the judge. The code of criminal procedure or the criminal code may contain provisions guiding the use of mediation. Mediation laws, which are found increasingly often in European countries, stipulate the process of mediation in addition to the role of the mediating organisation in more detail. Countries may adopt one or more of these types of legislation. Moreover, formal law is not the only means of regulating restorative justice. Other subordinate legislation includes decrees, ministerial circulars, advice of a public authority and very often good practice standards devised by mediation organisations (Aertsen et al., 2004; Miers & Aertsen, 2012). Finally, NGOs and other non-statutory bodies develop codes of practice that may be relevant to restorative justice.

Legislation may take two forms, permissive or mandatory, and will have an impact on the referral process (Miers & Aertsen, 2012). In permissive legislation, the police or public prosecutor is provided with the option to divert the case. If the referring body does not consider such a diversion, there is no formal judicial review. In mandatory legislation, the referring body may either be obliged to consider a restorative intervention before continuing (process coercive), or they may be obliged to apply a restorative intervention (outcome coercive). Where referring bodies do not comply, they may be subject to formal judicial

review. A legal inducement for referrals to restorative justice is beneficial, as decision-makers are then encouraged and even forced to consider this option (Van Ness & Nolan, 1998). Unfortunately, it appears that in most countries, there are no consequences when statutory agencies and the courts do not provide restorative justice services (Shapland et al., 2004). This lack of consequences is echoed in much victims' rights legislation that calls for stricter sanctions when certain rights or options (i.e., restorative justice) are not met.

The structure of the legal system may also have an impact on the acceptance and applicability of restorative justice legislation. Casado Coronas (2006) identifies two characteristics in particular resulting from a formalistic legal culture, namely positivism and the principle of mandatory prosecution. These aspects could be influencing attitudes of the judiciary regarding restorative justice, as will be elaborated upon later. First, strict adherence to laws, acts and established procedures, as is the case in positivist systems, results in the hesitance of legal authorities to apply new ideas that are not supported by a legal basis. In this option, decisions must be made as according to the law, and not overruled by personal preferences (Coleman, 1982). Even despite new legislation in many European countries, it may still take time before individuals become more willing to use alternative modes of conflict resolution procedures, or even know about their existence. Second, where countries follow the principle of mandatory prosecution or legality, discretionary powers of the judiciary become limited and will affect referrals through diversion⁷ (Casado Coronas, 2006). In these countries, having a legal basis would be vital to help legal professionals have grounds to utilise restorative justice methods as diversion (Aertsen et al., 2004). In addition to these aspects, reluctance of legal authorities has also been reported to be further heightened due to legal principles such as the presumption of innocence, due process, burden of proof or proportionality. The general climate of the criminal justice system in terms of "informal or community oriented, the presence of multi-agency approaches or a closed, strictly legalistic and vertically functioning system" (Miers & Aertsen, 2012: 9) may also play a role in the accessibility of restorative justice practices.

Where countries do implement restorative justice legislation, there are clear benefits (Willemsens, 2008). In a study examining practitioners' views on the legislative, organisational and institutional framework of restorative justice, several advantages related to accessibility were named (Bolivar, 2013). Respondents believed that legislation would provide mediation with more legitimacy, guarantee a wider and more consistent application of mediation, ensure equal access to justice, establish restorative practices as mandatory measures and urge members of the judiciary to always check for suitability of restorative justice methods. Similarly, Aertsen et al. (2004) asserted that one reason a legal framework is

⁷ This is not to say that these countries have no leeway. For example, Austria and Germany formally adhere to the principle of legality, yet options exist so that they can dismiss cases. Common law systems are considered to be even more adaptable, as judges work on a case by case basis in their reasoning. Though this topic will not be elaborated upon further, it is important to note the significance of the legal systems structure in accessibility to restorative justice mechanisms and the flexibility that systems do in essence have. For further information on this subject, see the report of Casado Coronas (2008).

required is to encourage the broader, more systemic application of restorative justice. Particularly in countries only recently beginning to implement restorative justice programmes, there is a general lack of legitimacy of informal approaches that could gain credibility through formal legislation (Fellegi, 2005; Van Ness & Nolan, 1998). Legislation may also provide legal officials such as the police and prosecutors with certainty that they have the authority to endorse restorative justice programmes (Van Ness & Nolan, 1998). Where restorative justice has a statutory basis, as is the case for referral orders, use may become much more widespread (Newburn et al., 2002).

In addition to greater legitimacy and standardising mediation guidelines, Groenhuisen (2000) has also cited another reason that legislation is important for facilitating mediation. Related to the notions of legal certainty, predictability and equality, he provides a clear example of a benefit of such legislation. When it is not clear to offenders (lack of predictability) what impact their restorative efforts may have on sentencing, they may be more likely to take their chances with the formal system. On the other hand, it may be argued that offenders in this case may only participate to receive a lighter sentence.

Clear disadvantages of restorative justice legislation have also been cited by respondents, including a dependency on judges' criteria when making referrals, the risk of a more outcome-oriented process and a reduction of the scope of restorative justice (e.g., only to minor crimes) (Bolivar, 2013). Still, a common theme remains that a legal basis for restorative justice would encourage its use. In another study including practitioners and researchers in the field of restorative justice, one-third of the respondents believed there was a need to alter the legal force of provisions regarding restorative justice (Willemsens, 2008).

Another issue that may arise in the case of restorative justice procedures is limitation terms regarding prosecution. Again, states must ensure that provisions are in place to suspend such limitations where they may hinder access. More general mediation legislation in civil law considers this issue, and addresses it in various ways. This may include suspending the limitation period when mediation is conducted by a registered mediator⁸ or automatically suspending limitation periods when 'negotiations' are taking place⁹.

3. Exclusion criteria in law and factors influencing diversion or referrals

As has been noted, the restorative process is guided by established principles. One underlying assumption, as laid out in the U.N Handbook of Restorative Justice Programmes (2006), is that the offender must accept responsibility for his or her actions. By acknowledging the harm caused and accepting personal responsibility, the first step to undergoing a cognitive and emotional transformation may be ignited and relationships may be improved with the community and/or the victim. The acceptance of responsibility is also necessary to assist

⁸ For example in Austria, Section 22 of ZivMediatG, 2004

⁹ In Germany, Section 203 of the Civil Code.

victims in properly dealing with the harm and to keep them from feeling ignored, to provide for meaningful subject matter and to ensure that the judge does not abuse the opportunity by using the mediation procedure to get further information (Aertsen & Peters, 1998). This principle is reflected in one of the primary exclusion criteria in international legislation (e.g., see the 2012 EU Directive that the offender must accept responsibility or Recommendation R (99) 19 that the parties should acknowledge the basic facts of the case).

This criterion may very well be a barrier to accessibility from the perspective of the offender. There is no doubt that the presumption of innocence remains a contested issue within restorative justice (Groenhuijsen, 2000). While Recommendation R (99) 19 asserts that if the offender accepts at least some responsibility for what has happened, then his or her right to the presumption of innocence will not be violated, legal scholars do not believe this to be the case. From the offender's perspective, however, this lack of innocence may be a reason not to participate in proceedings. Differences in national legislation can be found that may increase the likelihood that an offender may be suitable. For example, in Norway, offenders only need to admit to the facts of the case and not necessarily their involvement.

Also encompassed in legislation (e.g., see Recommendation R (99) 19 – 'freely consent' and no inducing by unfair means to accept), are two other primary values: voluntary participation by the victim and non-coercion of the offender (United Nations Office on Drugs and Crime, 2006). Though normally abided to in practice, more coercive methods have been supported by some restorative justice scholars as necessary (Walgrave, 2010). When voluntariness cannot be achieved, coercion may be appropriate as a means of obtaining more outcome-oriented solutions that seek reparation (Dignan, 2002). Withholding from offenders the right to access to justice would be considered unjust and therefore there is support for mandatory referrals (Morris & Maxwell, 2001). As one of the principles of restorative justice, however, voluntariness must be ensured to provide for the most favourable results. Indeed, the voluntariness of restorative justice provides a safeguard from negative effects of restorative justice (Bolivar, 2013).

While the offender should not seek to cause further harm during the restorative process, he or she may show some resistance, yet still be eligible for restorative justice (Donnelly, Emerson, Fishbourne, Leney, Rogers, Wickham & Coles, 2013). Where motivation may not be particularly high, it is believed that motivation may change throughout the encounter with the victim. This notion is referred to as 'presumption in favour of offender participation' and attempts to reach as many offenders as possible. The approach conveys to the offender the duty he or she has to face the victim. Of course there remain issues with suitability, and proper assessments must be made to minimise further harm to the victim. The goal is a shift in culture where viewing participation as part of a community sentence is the norm.

Accessing restorative justice will also depend on exclusion criteria within national legislation (Aertsen et al., 2004; LHuiller, 2007). Countries have implemented their own criteria in their national legislation surrounding restorative justice and often include factors such as the type

of crime and characteristics of the offender (e.g., previous offending). Additionally, other factors may play a role, for example whether the offender committed the crime shortly after a previous restorative justice procedure or when an adult commits a crime against a juvenile. Exclusion criteria like these have been found in research to lead to small caseloads (Shapland et al., 2004).

In addition to the legal basis for exclusion criteria, research also shows that referring bodies may develop their own criteria (Bonta, Wallace-Capretta, Rooney & McAnoy, 2002; Donnelly, et al., 2013; Parosanu & Balica, 2012; Willemsens, 2008). This is due to a lack of quality standards in addition to variability in referral protocols (Casado-Coronas, 2006). For example, research found that the decision to divert by prosecutors was made after consideration of a number of factors including age of the offender, offense seriousness, pre-meditation, opinion of how cooperative the parents may be, mitigating personal and family circumstances, victim's preference to discontinue prosecution, show of remorse and cooperative attitude of offender and gang involvement (Muntingh, 1998). An overview of police referrals also found that a range of factors influence the decision to refer in Australia. These included for example, offending history and offence type (Richards, 2010).

These self-developed criteria may be the result of beliefs held by the referring bodies. For example, while some people support the use of restorative justice in serious cases, there are also many who believe it should be limited to less severe instances (Bolívar, 2013; Parosanu & Balica, 2012). In these cases, victims of minor crimes may be more encouraged to participate by referral authorities (Bolívar et al., 2013; Dignan, 2002). It was also found that Child Protection Services did not refer because they thought it was pointless if the youths involved would also have a session conducted by the school (Van Burik et al., 2010). Moreover, Victim Support employees made their own judgments about the victim's condition, arguing that they would not refer if they believed the victim was not stable enough, was not able to handle the encounter or was still in an important phase of the coping process. Referring bodies furthermore would not refer if there was still an on-going court case, though nowhere is this outlined as a guideline restricting referrals. The mediators themselves may have reasons not to initiate procedures, such as the offender's motivation to participate or the existence of mental health issues for either of the parties. In one study, however, almost two-thirds of restorative justice practitioners and researchers did believe that categories of offences included should be extended (Willemsens, 2008).

Presser and Lowenkamp (1999) recognise that current screening tools are both limiting access and choosing unsuitable offenders to participate in restorative justice programmes. Because risk assessments often look at offender recidivism, they exclude offenders who may be a high risk for repeating offences, yet are suitable in the sense that they are motivated to participate and show empathy and moral maturity. Therefore the authors propose a 'victim-risk' assessment, which takes these factors into consideration. Moreover, a formal screening procedure linked to the criminal justice system may motivate justice authorities who otherwise are overburdened and do not have time to carry out victim oriented assessments.

It is likewise important to understand those who are quite generous in their decisions to refer to or carry out restorative justice procedures. For example, promoting the idea that it is the parties' decision is one means of ensuring the greatest amount of restorative processes. This belief is held by some restorative justice practitioners, who claim that the decision to deem a case unsuitable is not in their hands; rather, the parties' wanting to meet is enough reason to proceed (Bolivar, 2013). Particularly where the legal framework allows for flexibility in assessing who is suitable for restorative justice – which appears to be the case in many countries – attitudes of referral bodies and restorative justice employees will play a role.

4. Attitudes

Related to exclusion criteria is the need to improve attitudes regarding restorative justice by referrers. While it is important for referral bodies to know about their options, it is also important that they understand the benefits (and risks) involved. This is an important aspect anytime a new procedure or way of thinking is introduced. Van Ness and Strong (2010) suggest that in many cases, the way we think about crime is inadequate. Our pattern of thinking must change into one that introduces principles not limited to the adversarial relationship between the offender and the government. Exposure to alternatives will assist in creating a new pattern of thinking. Changing the attitudes of legal authorities is a tedious task, as these individuals are often educated and trained from a law and order perspective. Indeed, changing such a culture is a difficult and long process (Shapland et al., 2004). In general, many criminal justice agencies have little experience working directly with victims, though this is changing, largely as a result of new victims' rights mechanisms. Still, there is not enough attention for the victim, as has been revealed in countless victimological studies. When this is combined with high case loads and time pressures, it is understandable that criminal justice authorities do not make referrals a priority. Also where principles of the legal system (e.g., mandatory prosecution, issues of due process) are likely to influence attitudes, sufficient attention must be given to addressing these attitudes and introducing alternatives in the way of thinking, namely to adopt support for restorative justice.

Issues with referrals have been documented within victim support agencies. Research by Wemmers and Van Camp (2011) distinguished between proactive and protective models of referrals. The protective model is often adopted by victim support personnel in an attempt to protect their clients, subsequently resulting in few referrals. Interviews with victims revealed that many were unable to access a restorative justice procedure because, even when being proactive themselves towards legal authorities, they were not referred to victim-offender mediation. Other research has proposed the possibility that victim support workers are perhaps too cautious (Bolivar, 2013; Van Burik et al., 2010). While there have been higher numbers in recent years regarding their likelihood of informing victims about the option, evidence suggests they do not offer thorough information out of fear of pressuring the victim (Van Burik et al., 2010). There is also a reluctance due to both a protective approach towards the victim in addition to wariness in bringing up the subject. Employees are not focused enough on aspects of the offender and are sometimes afraid of leniency in sentencing if the

victim takes part in the encounter. While it was found that these employees are often educated on the encounter and the service (100% of Victim Support were educated, 95% were educated when including the other two referral bodies), a change of attitudes was noted as a more relevant means of increasing referrals (Van Burik et al., 2010). Suggestions here were to have employees hear from each other, for example during internal meetings, regarding the benefits of victim-offender encounters. Furthermore, learning about such a mechanism in an early stage, namely during the introductory training of employees, would help to bring about positive attitudes.

The attitudes of mediators themselves may also be a barrier to accessibility. The process may be interrupted or never initiated because of doubts of suitability of restorative justice (Bolivar, 2013). Bolivar's research also compared restorative justice practitioners and victim support workers, finding that victim support workers were less positive about the applicability of restorative justice to all types of crime. This group also felt that traumatised and vulnerable victims cannot participate in mediation. Both groups, however, did not support the idea that restorative justice is not meant for victims experiencing negative feelings such as anger or revenge (though restorative justice practitioners did not support the idea to a significantly greater extent). Each mediator, however, has his or her own approach and perspective regarding who is suitable (Andries, 2005), which also suggests a need for greater standardisation.

The general public also may show some hesitation towards restorative approaches, particularly when citizens do not possess a mentality of willingness to take responsibility for their conflicts (Fellegi, 2005). This is heightened in post-communist countries, where there is a disappearance of a sense of community. Subsequently, people are often very passive in the response and it makes it more difficult to stimulate individuals to play a more active role in dealing with their conflicts.

Generally, it seems more important to change the attitudes of legal professionals. Though the small sample size and methodology should be taken into account, research in Ireland found that several defence attorneys considered restorative justice to be a bad idea (McCarthy, 2011). The majority of participants believed that restorative mechanisms should be limited to minor offences and public order offences. While the police often have a good opportunity to provide offenders with information about mediation services, and offenders indeed have been found to express interest, research finds that police often give too little attention for this option and sometimes even discourage it (Van Burik et al., 2010). Other research has also suggested that, from the perspective of restorative justice practitioners and victim support employees, doubts among judicial authorities regarding restorative justice restrict the offer of mediation to a large extent (Bolivar, 2013). Research in Israel found that from 132 participants who were qualified to be mediators but had other jobs such as judges, lawyers, psychologists, police, engineers, or employees in the business or insurance fields, 32% were in complete opposition to the idea of penal mediation (Shechory, David & Jakob, 2012). Only 10% were in favour of penal mediation when it concerns serious cases. Also in several central

and Eastern European countries, it was suggested that there is a very punitive attitude among the government and criminal justice authorities, who consider restorative justice a 'soft' option (Fellegi, 2005).

Evidence would suggest that a change in attitudes is possible, even for legal authorities. In the same Irish study as noted above (McCarthy, 2011), there were several positive reports where defence attorneys believed parties could benefit from a restorative meeting. Probably the most significant finding was that it was those respondents who had the best knowledge of restorative justice who were most positive about its benefits. As noted, these findings should be taken in caution due to the small sample size, but they do suggest a link between awareness and positive attitudes, warranting focus on this association in future research. Other research examining prosecutors and judges in southern European countries indicates support for more constructive responses to crime and opposes the more retributive focused approach of the criminal justice system (Casados Coronas, 2008). Findings show that though it takes time, prosecutors and judges can in fact get used to the idea of reconciliation methods (Lummer, Hagemann, & Nahrwold, 2012). Furthermore, in the year of adoption of the Recommendation on Mediation in penal matters, research had already found support by judges for restorative procedures (Bazemore & Leip, 1999). Though there were some judges opposed to this means of dispute resolution, this often appeared to be a result of not knowing more about the benefits of restorative justice. Indeed, several expressed strong support for such non-adversarial measures. Fellegi (2010) noted that legal authorities in Hungary were in fact rather positive about restorative justice, believing that decision making power should be delegated to the parties if done in a manner that respects basic moral rights and abides by procedural rules. Similarly, research was conducted in Romania on the perceptions of victim-offender mediation among prosecutors. The majority of respondents (73.3%) believed mediation to be 'useful' or 'very useful.' Differences, however, did exist with regard to the applicability of mediation to all offences, where only 7.8% believed it should be used for serious offences (Parosanu & Balica, 2012).

Identifying socio-cultural differences is also necessary in understanding the cultural context of accessibility. First, countries tend to show resistance, at least to an extent, towards informality and flexibility within the formal criminal justice system (Fellegi, 2005). This notion is more valid in post-communist countries, falling somewhere within the process of democratic transition. In these countries, because community-based control approaches were "broadly used and often abused during the communist system, it is quite understandable that after the fall of the communist system a general mistrust of informal and extra-judicial procedure was experienced" (Fellegi, 2005: 68). This mistrust also resulted from a move towards legalism and the rule of law. Mistrust then is also one reason for the resistance of courts to give more individualised responses to crime (following the principle of relative proportionality). At the same time, these political shifts can also work in favour of restorative justice. More trust in the criminal justice authorities provides a first step to accepting restorative justice. It can also be argued that citizens become more capable of dealing with their own conflicts if this trust exists.

Second, the criminal justice model is very offender-oriented in post-socialist countries (Fellegi, 2005). Consequently, the victim does not have a strong position in criminal proceedings, as can be argued in other European countries that have made significant strides through various victim rights' mechanisms. This advancement of the victim's position through active participation will take longer in these countries, though many Eastern and Central European countries have made progress in the past years.

Separate categories of offences may also lead to sceptical attitudes regarding the applicability of restorative justice, for example vulnerable victims including crimes such as domestic violence and sexual assault. For example, the Handbook for Legislation on Violence Against Women went so far as to recommend that legislation should "explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings" (Department of Economic and Social Affairs, 2010, 38). Research examining victim advocates' perceptions regarding mediation found that they are in favour of such a solution for victims of gender violence (Curtis-Fawley & Daly, 2005), often due to the alternative option: a criminal justice system that re-traumatises, questions victim credibility, further harms the relationship and does not validate the victim. While two of the fifteen respondents were entirely negative about restorative justice in gender violence cases, the remaining advocates asserted that there were (at least some) potential benefits of restorative justice in these situations. These advantages included the informality of the process, victim expression, and offender acknowledgement. Still, many of the respondents also expressed concern about other issues, namely restorative justice as a soft option that discredits the progress made to raise consciousness about violence against women.

5. Trust

As noted, a main barrier to referrals is negative attitudes regarding restorative justice more generally. This is closely tied to trust and confidence in the restorative justice organisation, where often referring bodies are not entirely trusting of their capabilities. Umbreit argues that an obstacle to an assertive case referral process is the credibility of restorative justice programmes. Therefore, a relationship of trust must be built, for example through the hiring of staff who may have a background working within the criminal justice system or related areas of human services. Not knowing enough about the aims of the organisations and being (physically) far away from the organisation can be a reason for non-communication (Van Burik et al. 2010). Trust may also be improved through legitimacy, which may result from having a sufficient legislative framework on restorative justice (Bolivar, 2013). Indeed it takes time for restorative justice programmes – particularly those of a voluntary nature – to gain 'standing' in the process (Shapland et al., 2004). One way to establish this trust is through negotiating formal protocols, including how to get information and what will be done with those individuals who are referred to the programme. Moreover, trust by the parties is vital in accepting an offer for restorative justice programmes, and this should be attained during the offer.

Also in central and eastern European countries, the issue of trust may play a significant role in hindering implementation of restorative justice programmes (Fellegi, 2005). Largely as a result of a weak sense of community and a lack of multi-agency cooperation, much distrust resulted among criminal justice professionals and extra-judicial organisations.

6. Awareness

When discussing the notion of access to justice, a common theme that arises is the need for a clearer and more intelligible understanding of the law. Such awareness, or access to information, refers to the extent that criminal justice authorities, victim support agencies and the parties themselves know about the opportunity for restorative justice. Past research has suggested that not knowing about the existence of these programmes is a main obstacle to the use and further development of restorative justice (Aertsen et al., 2004; Casado-Coronas, 2008; Fellegi, 2005).

In a report examining the state of affairs of restorative justice in eight European countries, recommendations were made in each country to some extent to raise awareness regarding this type of conflict resolution, also among the general public (Casado-Coronas, 2008). More specifically, attention was given to the need to inform citizens of this possibility, including an understanding of what it is and how best to access it. In several of the countries under study, for example Malta, Portugal, Turkey and France, awareness and knowledge among citizens and the judicial authorities was scarce.

Awareness of the public may be increased through the media, telephone helplines, booklets, internet, posters, public awareness campaigns, seminars, programmes for “mediation weeks,” and open days at court for mediation services. This awareness will also be strongly linked to self-referrals by victims and offenders, which also is a means of coming into contact with restorative justice procedures. In the majority of countries with restorative justice schemes, parties can either themselves go to the restorative organisation or at least suggest it to one of the referral bodies. Where victims do want to get in touch with mediators themselves, a public database of these individuals could be set up to help parties locate the nearest practitioner. Furthermore, there is a lot of research, though varying by culture, on the preference for alternative dispute resolution when compared to the criminal justice system as the latter reinforces their belief in a legal right to a day in court. While this may hold true, we must also consider the empirical evidence on the needs of victims and offenders, with a chief conclusion being that the outcome (often in terms of retributive justice) is not the only concern. Rather, the procedural quality (often in terms of dialogue) is also factored into evaluations of justice procedures. Therefore, when parties are aware of the benefits of restorative justice, and not only the *existence* of such programmes, they may be more likely to access restorative procedures at their own initiative.

Studies have also examined the awareness of legal authorities. Research in Romania, for example, indicated that only about 20% of prosecutors advised parties to turn to mediation, even though an amendment was introduced that required the judiciary to inform the parties

(Parosanu & Balica, 2012). It should be noted however, that this research did find a significant increase from the time before the amendment was enacted (less than 7% informed parties). A large minority of these prosecutors (35%) stated that they themselves were poorly informed of the legislation around mediation. Similarly, a questionnaire was disseminated to member States in order to determine their levels of awareness of Recommendation R (99) 19 concerning mediation in penal matters. The findings indicated that there was a lack of awareness among the judiciary, prosecutors, victim support organisations, legal professionals and the parties themselves. Other research in the Netherlands found that referring bodies, namely Child Protective Services and the Youth Probation Service, were not fully nor regularly educated on victim offender encounters (Van Burik et al., 2010).

Awareness of legal professionals, for example the judiciary, may be increased by allowing them to observe mediation sessions. Training is also vital, even with regard to educating judges and prosecutors about the differences between penal and restorative approaches, as for example, is done in Poland (Fellegi, 2005). Information, moreover, should be provided at an early stage.

Employees of restorative justice organisations should also be actively involved in raising awareness. In a study of four restorative justice programmes, Shapland et al. (2004) found that very proactive behaviour could lead to greater awareness within the criminal justice system. One of the restorative justice schemes encourages workers to attend court in order to be known by the relevant statutory agencies. Reminding criminal justice employees of the existence of the restorative justice programmes was also done through using brightly coloured slips and stickers on their files.

Delattre (2008) also brought attention to the potential of other individuals in raising awareness. He argues for ‘multipliers,’ which include occupations such as doctors, therapists, priests and teachers. These individuals should also be educated on the benefits of restorative justice, which could also enhance the ‘culture of restorative justice’. Another source of referrals that appears to get less attention in the literature is the party’s lawyer. Though defence attorneys may have ulterior motives for not referring their clients to restorative justice procedures, their potential as referral bodies who may make restorative programmes more known should not be overlooked.

7. Cooperation

One main cause of the ‘implementation failure,’ described earlier, is related to cooperation. Newburn (2007) refers here to partnerships among agencies who are not used to working with one another. For example, legislation or guidelines should dictate who specifically will be required to provide the offer of mediation to the parties. Often this is unclear and no standards are provided for legal authorities or victim service professionals. Furthermore, when only limited information is provided when new schemes are implemented, cooperation and communication between the mediation organisations and referring bodies are formed on an informal basis, which subsequently does not develop further (Casado-Coronas, 2008).

Successful cooperation exists when there is an understanding of tasks among the organisations involved (Aertsen et al., 2004). Even within a given organisation, responsibilities must be made clear to everyone (e.g., within the prosecution service, it must be made explicit who should take the lead in providing information to the restorative justice organisation). Strategies that have been put forward include regular meetings between the referral organisations and the practitioners of the mediation service.

Information regarding the process and benefits of restorative justice may also be improved through cooperation. For example, presentations and seminars can prove to be fruitful for continuing cooperation and helping referral bodies understand more about the mediation organisation (Umbreit, 1993). These should be done on a regular basis, at least annually, and can include mini-seminars with guest speakers who may present a broader perspective on restorative justice and its developments. Umbreit also recommends the implementation of an advisory committee, which should consist of key justice system representatives and can “increase support for the program and provide helpful feedback and guidance.” Furthermore, leaflets are often used to provide referring bodies with signals to look for when deciding upon appropriate cases.

In the Netherlands, past research has suggested that there is quite some cooperation between the mediation service and the three primary referring bodies (Van Burik et al., 2010). The mediators are required to educate the referring bodies. Findings examining this cooperation were mixed, though generally indicated that the organisations were collaborating with each other. Greater cooperation, however, is also believed to improve attitudes regarding victim-offender encounters. This cooperation may include a greater role of the victim support employee in the process of the meeting, including the preparation phase and reporting back of the results.

Providing the referral body with feedback on the RJ process will help to increase referrals. In Canada, restorative justice programmes utilising police referrals incorporates closing letters that report the status of the mediation back to the police. Such an effort aims to provide the referrers with a greater understanding of restorative justice while encouraging referrals in the future (Abramson, 2003). Furthermore, where mediators and facilitators do not receive any further information about the results of the mediation, they may be discouraged to refer more cases as they do not see the benefits. By hearing the details of the restorative procedure, the referral agencies will understand it in terms of those involved, and not see it simply as another case. Unfortunately, restorative justice organisations are sometimes hesitant to provide this, citing issues such as privacy, time issues and a lack of a duty to inform.

As noted earlier, the public prosecution office in the Netherlands is often hesitant to provide the mediation service with contact details of the victim (Van Burik et al., 2010). The time it takes to contact the victim themselves often results in a delay, which may result in more offenders opting to leave the mediation procedure. Where victims indicated that they do not want contact from Victim Support, the public prosecution office assumes this also includes

the mediation organisation, and therefore will not provide information in these cases. Similarly, the police have been reported to be hesitant about revealing contact details of victims as a result of data protection acts (Holdaway et al., 2001; Shapland et al., 2004). As a result, restorative agencies do not get the contact details quickly enough, and offenders often drop out during the elapsed time. This is also due to the police wanting to establish victim willingness themselves, before referring to restorative justice programmes. While having police refer parties to restorative justice is a means of evading the data protection restrictions, these individuals may not always be best suited for this task.

Research has also found that in many European countries there is somewhat poor collaboration between restorative justice services and victim support (Bolivar, 2013). In a large minority of cases, respondents answered that they have no collaboration whatsoever with the other organisation. Furthermore, only about one-fifth of respondents reported that restorative justice staff members suggest to victim support how to tell victims about the option for mediation or conferencing. Though only less than a third claimed to participate in meetings together to discuss criteria and guidelines, there was interest for cooperation in the future. In Finland, there does appear to be cooperation between legal authorities and mediation services through meetings that discuss practices, however, there is still a need for such cooperation with victim support organisations (Honkatukia, 2013).

It should also be noted how there may be a heightened lack of coordination among organisations and criminal justice authorities as a result of cultural factors, as has been the case in some Eastern and Central European countries (Fellegi, 2005). This in part can be attributed to the idea of ‘common interest,’ which was rejected by the public due to ties with communism. As a result, a competitive attitude arose among organisations, resulting in difficulties in teamwork and communication.

Even where the views of the referral bodies – such as the police – are in support of restorative justice, programmes may still not be receiving contact details of the parties (Shapland, et al., 2004). Where cooperation is not successful, countries may benefit from extending the authority that different actors have with regard to mediation referrals (LHuiller, 2007). Assigning just a few authorities with the responsibility of referrals could be a reason why numbers are currently inadequate. Moreover, issues emerge when multiple agencies are involved, for example when data protection laws require the police to initiate the first contact (Dignan, 2002). In these situations, in addition to the police, others will have to be involved to properly assess the situation, as police have been noted as unsuitable in selecting appropriate cases. This ‘split responsibility,’ however, is not only time-consuming, but also requires successful communication, particularly when other individuals (e.g., a reparation report writer in addition to the mediator) are involved.

8. Costs

Accessibility may also be perceived in terms of costs. Costs and legal aid have often been named as important indicators of access to justice, which is no different for restorative justice.

Member states are called on to provide financial support to mediation services. Comparative research in Europe found that none of the countries included placed the financial burden of mediation entirely on the parties (L'Huillier, 2007). The author states how, "from the national information forthcoming, no section of the population seems likely to be debarred on financial grounds from penal mediation." This, however, is not always the case. For example, research in Romania found that prosecutors named a lack of financial resources for mediator fees as a reason that parties did not accept mediation (Parosanu & Balica, 2012). In some cases, offenders are required to contribute, though often they receive some type of financial assistance. Funding for mediation may come from both public (e.g., ministerial, institutional and local level) and private sources (e.g., charities, foundations). Generally, financial barriers do not appear to be very prevalent. Largely due to the link with the criminal justice system, financial support often comes from the State.

9. Standardised procedure and good practices

The actual way in which the referral is set up has implications on the implementation of restorative justice procedures. Many times, however, the procedures are not standardised nor are guidelines implemented. This is also often a result of legislation that does not clearly stipulate what the referral procedure should look like. The use of exclusion criteria among practitioners, as will be discussed, also suggests there is a need for greater standardisation. Experts in European countries argued that more than setting up new laws and mediation procedures, attention must also be given to quality standards and creating guidelines and referral protocols (Casado-Coronas, 2008). The options for legislation as noted above (e.g., juvenile justice acts, codes of practice, mediation laws) should indicate who the referral bodies are, at what moments referrals may be made and who should be contacted first.

This is not to say, however, that there are no good practices already existing that are not necessarily guided by legislation or guidelines. In the Netherlands, for example, requiring employees of Child Protective Services to include the offer in a checklist of their responsibilities provides for a higher number of referrals (Van Burik et al., 2010). In England, the offer for restorative justice comes during rehabilitative sessions, where one of the twelve sessions is dedicated to victim awareness and is carried out by the mediation service (Shapland et al., 2004). At the end of the session, if deemed a suitable candidate, the offender is asked if he or she is interested. Umbreit (2001) argues that an effective approach is to negotiate with the referral bodies to devise a process for allowing the mediation staff to visit the offices of the referral bodies on a regular basis. In this way, the mediation service can select cases and remove this task from the referral bodies' workload. The only task for the referrer is to identify a large pool of suitable cases and pass this information on to the mediation organisations. Other approaches that could lead to more standardised referral procedures include providing information leaflets in a systematic way or by victim awareness and offers through resettlement or reintegration programmes through the probation service, attending courts as a means of understanding what cases are being missed, extracting names from the court's 'dead list,' that is, those cases being heard the same day, and designating

specific moments to explain the restorative procedure, for example when victims meet to discuss victim impact statements.

9.1. Institutionalisation

When discussing accessibility of restorative justice, attention should also be given to the institutionalisation of such practices. In general terms, institutionalisation involves the emergence of institutions into society. A given process or habit may be institutionalised towards or within the formal system. This may occur for example through habitualisation (behavioural patterns becoming common). In this way, behaviours and activities of individuals become usual and more systematic. The practice of institutionalising restorative justice has been voiced by Blad (2006: 105),

“In order to conclude that we are really institutionalizing restorative justice – both in a formal and informal sense – it will be crucial to see restorative practices being passed on to new generations, consolidated with a clear ideological, cultural identity as a new or at least distinct social interaction pattern, suitable to deal adequately with specified social problems. In the end, the use of restorative practices should become a self-evident resort to redress (certain) harms and wrongs.”

More systematic definitions have called for various elements to be present in order for institutionalisation to occur. According to Merry (1989), institutionalising a new method of conflict resolution requires funding, case referrals and staff to be controlled by an existing social structure. For restorative justice, it appears most evident for this structure to be the formal criminal justice system. Faget (2006) also describes a process of institutionalisation that includes a new creative idea (often followed by experiments), established principles for guiding the practice, legalising the practice and professionalisation of the activity. Many of the countries under study have met these criteria, though undoubtedly to varying degrees.

There are several examples of where certain restorative practices may be seen as institutionalised within the current system. Blad (2006) refers to the well-known New Zealand experience, emphasising the importance of the legislative background. Here the legislator prioritised family group conferencing when dealing with juvenile offences. Aertsen (2006) refers to two types of mediation in Belgium as being institutionalised, penal mediation and mediation at the police level. These forms are more embedded within the criminal justice system, while mediation for redress - a programme that also targets more serious offenses – is more autonomous. In Canada, institutionalisation of restorative justice came in the form of sentencing legislation that was created due to the notion that offender rehabilitation and victim reparation were possible goals, without necessarily implementing restorative processes (Roach, 2006). Particularly in Aboriginal justice schemes, such institutionalisation emerged.

While institutionalisation could lead to an attempted transformation of the criminal justice system, this may be too far a discussion for the current project. It is important to consider, however, the long-term repercussions that institutionalisation may have on accessibility, while

taking into account the argument that such institutionalisation will have repercussions on the principles of restorative justice. More specifically, the mainstreaming of restorative justice may lead to a clash between safeguarding the quality of restorative justice and institutionalising these programmes. As the process of legitimation requires, it takes time for routines of older generations to be normative in nature, so that ‘the way things have always been done are the way they ought to be done’ (Blad, 2006: 95). In the long run, there is likely to be an increase in the percentages of victims and offenders who have contact with restorative justice programmes.

Conclusion

Nine factors were identified as barriers to greater accessibility: availability, legislation, exclusion criteria, attitudes, trust, awareness, cooperation, costs and good practices. *Availability* largely refers to having sufficient criminal justice resources and establishing equal access. Funding or staff may be lacking to conduct a greater amount of restorative procedures. Equal access may be hindered due to geographical restraints, ethnic or cultural biases or poor methods of selection. Most countries in Europe have developed *legislation* outlining the process of restorative justice, though this legislation varies across countries and may limit practitioners and legal bodies in what they may refer. Within legislation, certain cases may be excluded and therefore not referred. Similarly, practitioners themselves may hold their own ‘subjective’ *exclusion criteria* regarding who is best suitable for a restorative justice procedure. *Attitudes* are a large barrier to referrals, as there still may be a punitive culture as an approach to criminal justice. Knowing more about the benefits of restorative justice, often through party narrative or restorative justice practitioners, legal bodies may be more likely to engage in referrals. Directly related to attitudes is *trust*, and the notion that mistrust may lead to fewer referrals. For this reason, *awareness* about the advantages and disadvantages is vital, though past research suggests that most people, whether the general public or legal practitioners, do not know about restorative justice principles or practices. Greater *cooperation* will also increase both awareness and attitudes. Unfortunately, in many countries a lack of such cooperation can be found. *Costs*, though rarely a financial obstacle for the parties in restorative justice procedures, may play a role when countries require fees for procedures. Finally, *good practices* can be found across the world, and better understanding and sharing these approaches may help to increase accessibility and initiation.

INITIATION

Research examining victims who have received an offer found that they generally were comfortable with how and when it was conducted (Bolivar, 2013). It is important to understand to what extent the referral process and offer is of good quality. This will largely be related to how and when the parties are approached and what they are told in the offer, which has direct consequences for the decision to accept or reject the offer. When examining the quality of the offer, we discuss several factors: the influence that may be exerted and its link to legitimacy, information, mode of delivery, timing and frequency, language, and preventing secondary victimisation.

1. Level of influence

The ability to influence human behaviour and beliefs has been the focus of study in many contexts. Communication interventions more specifically target certain beliefs that are central to an individual's decision making process. There are numerous typologies that refer to differences among concepts such as persuasion, influence, compliance and coercion. The coercive influence continuum makes a distinction between five modes of influence: choice respecting, educative, compliance gaining, persuasive arguments and controlling. The first two emphasise the message, where choice respecting includes techniques such as clarification, discussion and information giving while educative include techniques such as discussing the problem, suggesting ideas and recommending solutions. Compliance gaining and persuasive arguments emphasise the response over the message, and include techniques such as consistency, social proof and authority¹⁰.

Controlling techniques may be seen as coercive, going too far when offering parties the option for mediation. As was discussed earlier, the maximalist approach proposes that coercion may under some circumstances be required (Walgrave, 2001). This perspective, however, is incompatible with legislation calling for voluntariness in restorative justice procedures (see e.g., Recommendation R (99) 19, Paragraph 11: "Neither the victim nor the offender should be induced by unfair means to accept mediation"). Research has found, however, that some victims – though only a minority – do feel pressure to accept an offer for mediation (Bolivar, 2013). Interestingly, this occurred more often when the restorative justice schemes were closely related to the criminal justice system (e.g., diversion). Other exceptions that question the assumption of voluntariness also exist, such as requiring mediation before offering legal aid. Similarly, for offenders, there is an on-going debate regarding just how voluntary the process may actually be. At the same time, we must ask to which extent persuasion may be appropriate from a more practical level. As noted, this issue has long been debated within the

¹⁰ There are many other techniques included in these modes of influence, though they are unrelated to the current topic (e.g., hypnosis and dissociative states).

field of restorative justice. This is not to say, however, that jurisdictions do not adopt procedures that may be labelled as coercive. For example, as has been done, restorative justice may be imposed as a binding condition of sentencing (Shapland et al., 2004).

While we may agree that coercion is too extreme, there still may be disagreements regarding how far legal practitioners and referral bodies should go when offering restorative options. Past research has made a distinction between proactive and protective models when approaching victims of crime regarding victim offender mediation (Wemmers & Van Camp, 2011). In protective models, victims are not approached as a means of preventing secondary victimisation. Only when victims initiate a process themselves will they be able to proceed to restorative measures. The proactive model, on the other hand, argues for a systematic way of providing victims with information regarding possibilities for victim offender mediation. It may run the risk of being intrusive, though this is unlikely if victims are objectively provided with all the information about the procedure, and not pressured into any decision. While Wemmers and Van Camp (2011) conclude that both models may be favourable, there were numerous issues with the protective model, suggesting that this may not be sufficient in approaching victims of crime. It is difficult to make strong conclusions about the protective model though, as there was no measure of those victims who did not receive an offer, which may be considered the most extreme form of protection.

Therefore, a proactive perspective is necessary, and we start from the need for an informative talk with the referrer or mediation organisation. This must include certain elements, primarily an emphasis on meeting the needs of the parties. Additionally, a certain degree of influence must be exercised. While the extent of this influence is debateable, a level of persuasiveness should not be ruled out. A main conceptual dissimilarity between coercion and other more persuasive techniques is that the receiver does not have the ability to accept or reject the persuasive attempt (Stiff & Mongeau, 2002). Therefore, when reviewing the indicators that lead to initiation, we must ask whether they deny the party the ability to reject the offer. Where this is the case, persuasion has transitioned to coercive and such a tactic should not be utilised.

1.1. Increasing legitimacy

One factor that may increase one's ability to be persuasive is legitimacy. Research has shown that victims and offenders may also participate because they have been advised to by authorities such as the police, public prosecutor or victim support agencies (De Mesmaecker, 2012). Legitimacy, the belief that authorities are entitled to be obeyed, has been the focus of much social-psychological research, and has often been linked to trust in the legal system (Tyler, 1990; 1997). We noted above that a lack of trust may be a barrier for referral organisations to refer victims and offenders to restorative justice procedures. It is undeniable that greater trust and perceptions of legitimacy will also make parties more likely to accept offers for mediation.

Legitimacy includes a feeling of obligation to defer and accept and has been cited as being more efficient than coercive or induced authority (Tyler, 1997). The roots of legitimacy can be found in (1) people's assessments of fairness of procedures used by authorities and institutions, and (2) the social connection between people and authorities (Tyler, 2001). To explain the former, models of procedural justice have been devised, also in the context of criminal justice (Wemmers et al., 1995). With regard to the latter, relational models stressing the importance of the individual's status vis-à-vis the authority impact his or her social identity. People look for evidence of caring and integrity when judging authorities.

Several indicators lead to the ability of authorities to be effective to some extent in determining behaviour (Lind & Tyler, 1988). The various perspectives and models contain several underlying features, including neutrality, benevolence, status recognition, and control. Most notably, procedural justice and interactional justice were formulated, arguing that elements of the process are also important in justice judgments. More specifically, participation through process-control and decision control, objectivity, accuracy, and information are necessary. Many of the fairness models did not include non-control issues, hence a need for relational models. In addition to fairness indicators, there is a need for benevolence and respect.

Throughout the interaction with the referral bodies and the mediation organisation who provide a preparatory meeting before an offer is formally proposed, behaviours may possess those characteristics of procedural justice. In essence, this refers to providing information to the party in a respectful manner while allowing them a voice in the process. While we can hypothesise that this is likely to occur in the preparatory meeting, referral bodies whose main task is not to discuss restorative options with the parties may not be meeting these needs as extensively. Subsequently, there may be a negative impact on perceptions of legitimacy, lowering chances of entering into a restorative procedure.

2. Information during the offer

In essence, a needs assessment would largely borrow from research on reasons that parties choose to participate and could inform what should be told to the parties regarding what to expect. Umbreit (2001) illustrated the importance of the preparation phase, including the information that would be given. This information must pay particular attention to the needs of offenders and victims. The purpose of the pre-mediation interview is to help parties share "their experience of the crime, explain the mediation process in detail, and assist the parties in deciding whether or not to participate in mediation" (Umbreit, 2001: 39). The mediator should be in a focused listening mode in order to gather background information and assess the readiness and appropriateness of the parties to participate. The goal is to inform the parties and gain their trust. The information during the pre-mediation meeting includes an explanation about confidentiality (and its limits), the basic facts of the mediation process, including what may be perceived as advantages to the parties (e.g., telling about the harm, offering an apology) and the possible solutions that will result. Other detailed suggestions

include an assertive and persuasive attitude, explaining the purpose of any phone calls and not giving too much information that may result in a refusal.

Umbreit (2001) identified preparation for mediation as an important phase that cannot be rushed through. Offers may be time-consuming, which may be a reason for prosecutors to either hurry through them, providing a poor quality offer, or refrain entirely from making the offer. Before first telephone contact with the victim, he advises an introductory letter be sent to the parties to explain that the case has been referred to the programme. A follow-up telephone call is made to schedule a visit to inform the victim or offender further. Discussing the face-to-face option with the offender should be done in person to deal with feelings of apprehension (Donnelly et al., 2013).

Restorative practices should be based on the needs of the parties (Aertsen et al., 2004). This topic has been researched extensively (Aertsen & Peters, 1998; Bolivar et al., 2013; De Mesmaecker, 2012), finding that common reasons for participation are to get answers from the offender, to obtain restitution and reparation, to receive a lighter sentence, to mend the relationship with the other party, to express feelings toward the offender, to receive an apology, to get information about the reason for the offence and to make sure that the offender does not commit another crime. The research conducted by Van Burik and colleagues (2010) also presents numerous other insights into the offer's reference to party needs. While the authorities working with offenders largely express the opportunity to show remorse, apologise and explain what has happened, victim support emphasised to victims that it will be supervised in a safe environment. While some employees of victim support do stress the benefits of such a meeting, others leave it as an open ended question. A majority of the referrers provide arguments in favour of the encounters to motivate the parties, though this varied among organisations (57% at Victim Support, 77% at Child Protective Service and 88% at Youth Probation Service).

It is also important that the offer includes enough information about the mediation service and the procedure itself. Jin Choi, Gilbert & Green (2012) conducted qualitative interviews to examine victim marginalisation in the restorative justice process. They found that victims were often provided with a poor quality offer, for example due to very unhelpful preparatory discussions regarding victim-offender mediation, even reporting feelings of coercion. Without useful offers that explain the process, initiation is likely to be hindered. Often, hearing the term 'mediation' may be somewhat misleading to the parties. To combat these misunderstandings, it is therefore necessary to provide information of what will occur during the procedure, starting from a needs-based perspective.

An offer may also be poor due to lack of knowledge (awareness) by the person discussing the option for restorative justice. For example, in the Netherlands, while not technically a main referring body, it is sometimes the case that someone from the public prosecution office will contact the victim, because they often do not want to give the victims' information to the mediation service (also an issue with cooperation, as was discussed earlier) (Van Burik et al.,

2010). Problems may arise because these individuals often are not fully informed of the victim-offender encounters. Similarly, police in Finland have been criticised for their lack of knowledge about mediation and subsequently, their failure to inform parties properly about the possibility (Honkatukia, 2013).

Negative expectations and emotions related to the restorative justice procedure should also be addressed. For example, we noted earlier how the principle of presumption of innocence may not truly be protected in victim-offender mediation or there may be a lack of predictability, restricting the offender from understanding how he or she may benefit in relation to the formal justice system (Groenhuijsen, 2000). Where this may impact an offender's decision to participate in mediation, it becomes important to fully inform him or her of the extent to which accepting some responsibility and pleading guilty are not the same thing. Similarly, parties should not worry that the information given to the judge regarding what was said during the mediation may affect their case.

For the victim, emotions may arise such as anxiety and fear, particularly in anticipation of encountering the offender. Practitioners report that victims show doubt, angst and uncertainty when they first hear about the possibility, and often do not want to consider it if they perceive mediation to be face-to-face contact with the offender (Andries, 2005). When indirect mediation is an option, victims are more likely to consider restorative justice procedures. Research also found that when victims heard that the offender proposed the offer, they were more likely to fear that he or she had bad intentions. Full information is likely to put the parties at ease and therefore they may be able to express their emotions regarding the impending meeting.

3. Mode of delivery

Delivery of the offer may be done face-to-face, through the telephone or via mail or information packets, to name a few. Using informative pamphlets or information sheets is not always an ideal approach. The research of Jin Choi, Gilbert & Green (2012) found that one issue that emerged was receiving an uninformative letter from the district attorney. Umbreit's (2001) guidelines called for a letter, phone call and a preparatory meeting which would together comprise a more complete offer of mediation. In England, for youth offending, several options exist to get in touch with the victim. These include phone calls, letters and home visits. Research has found that phone calls are generally not seen as inappropriate means of contacting the victim (Wemmers & Cyr, 2005). Letters alone, do not appear to be very effective as they are not proactive enough (Holdaway, Davidson & Dignan, 2001), though this is a common way of informing parties.

Though different countries choose for different methods of contact when dealing with victim reparation, Dignan (2000) argues that more personal contact is more likely to elicit a positive response. He also suggests that a letter could even cause anxiety or resentment. After leaving preparatory meetings, employees have also noted that leaving a DVD behind (e.g., of past participants telling their stories) can help the parties to further understand the procedure in

their own time (Donnelly et al., 2013). Other options are to allow victims to speak with other victims via the telephone to hear about their experiences with the restorative justice procedure. Both leaving behind the DVD and talking with other participants can, in addition to highlighting the benefits, provide for social proof, one of the principles of influence. Such mechanisms show parties that other people are performing similar acts, and particularly in uncertain situations this identification is valuable.

In some countries, different jurisdictions differ with regard to the letter that they send to parties. These differences also are due to the level of proactivity of the mediation organisation. For example, in the region of Flanders in Belgium, letters may be sent that allow the victim to contact the mediation service or that inform the victim that someone from the mediation service will show up at the victim's home (though this practice is decreasing). Research has found that the rate for willingness to join was the same with an informative letter and a house visit.

4. Timing and frequency of the offer

The timing of the referral also varies and there is generally no set protocol when this occurs. In many cases, organisations do not always feel they have a practical moment to introduce the option of victim-offender mediation. For example, the first moment of contact is perceived as too soon for the victim to handle the offer, while the victim may have other concerns during the legal process (Van Burik et al., 2010). Furthermore, the police, due to their early contact with the victim, may not be a suitable referral body, as the victim may need more time to reflect on the offer (Honkatukia, 2013). Providing victims more time to think, possibly with the assistance of social workers, for example, could improve the referral process (Morris et al., 1993). The same is true for offenders. Research found that timing can influence their decision to consent if they feel overwhelmed by the offer. This was particularly the case, for example, in Thames Valley where the offenders serving community sentences were being offered restorative justice post-sentence, a time when they also received information about other programmes that target their offending behaviour (Shapland et al., 2004). Furthermore, probation officers reported that they felt they did not have sufficient time to discuss the possibility of restorative justice with the offenders.

Not only the timing of the offer, but also the frequency of the offer may result in a higher likelihood of acceptance. It may be argued that rather than choosing one moment in time, the offer should be provided regularly at different stages of the process. This would entail information from the police, the prosecutor, victim support agencies, offender organisations, the judge and other societal agencies. Not only would this ensure that parties get to hear about the offer, but also when the timing is bad, they will have another opportunity to engage in a restorative procedure.

5. Language and specific content of the offer

Even the term ‘restoration’ can cause confusion and anxiety for victims (Naegels, 2005). Victims may misunderstand and feel that there is nothing to ‘restore.’ For this reason, practitioners choose not to introduce restorative justice with such a term, but rather use phrases such as ‘receiving answers.’ Other research has found that, when inviting victims to participate in restorative justice procedures using terms such as ‘victimisation resulting from an offence’ rather than ‘helping victims resolve the conflict’ leads to greater acceptance (Vanfraechem, 2007).

Whether through a letter, phone call or house visit, the information that is presented in the short time allocated for an offer by a restorative justice organisation or other initiator is vital. From a social-psychological perspective, there are elements of an offer that are more likely to influence parties in a given direction. For example, social norming or ‘social proof’ suggests that when people do not know what to do, they look around to see what their peers are doing. An action appears to be more correct if others are involved. Such a phenomenon may suggest that informing parties about the fact that most people who receive an offer for mediation do accept is more likely to lead to agreements for participation themselves. This behaviour has been observed in voting habits, health behaviours and school attendance (Blanton, Koblitz & McCaul, 2008). Chapter 9 will take a closer look at this concept.

6. Psychological effects of the offer

Besides evaluating a good offer based on the decision to accept, the offer should also refrain from causing further harm to the well-being of the victim or offender. While the well-being of the parties in terms of coercion was discussed above, we may also focus on the particularly vulnerable party, the victim, and possible negative psychological effects that may result. While this area will not be the main focus of the study, we would like to note the importance of preventing negative effects for the parties involved. For victims, this largely refers to preventing secondary victimisation. Therefore, when examining access to restorative justice procedures, attention must be given to implementing referral processes that consider these possible effects.

The concept of secondary victimisation has been given much attention within the victimological literature (Campbell & Raja, 1999; Orth, 2002). In short, secondary victimisation occurs when legal authorities or society more generally revictimise the victim as a result of his or her contact with different societal institutions, including the criminal justice system (Montada, 1994; Symonds, 1980). Revictimisation may be the result of perceiving no support from authorities or experiencing a detached demeanour. Consequently, victims may undergo a feeling of helplessness. This harm can also be caused during the interaction where the offer for restorative justice takes place and victims are negatively reminded of the crime and its impact. As was noted earlier, research has found that many victims appreciate the offer and there is further support that refusing to participate after an offer would not be harmful to the victim (Bolivar, 2013). Secondary victimisation was not found to occur for both those who did not choose to participate or those whose offender did not want to participate. Still, it

should not be disqualified as a possible harmful effect in certain cases. In fact, one study found that about a fourth of participants did report fear when asked about the possibility to participate in mediation (Wemmers & Cyr, 2005).

Conclusion

The initiation factors identified provide a framework for the next step of more empirically assessing how to improve the offer for restorative justice. The level of influence, information provided during the offer, mode of delivery, timing and frequency of the offer, language used and preventing secondary victimisation are some of the important aspects. The *level of influence* must find a balance between preventing coercion of the parties, as is laid down in all restorative justice guidelines as a guiding principle, and providing enough motivation to engage in such procedures. *Information provided* would be based on the needs of the party and help them to better understand the procedure and the organisation. Addressing concerns and hesitations is also vital during such communication. This may be accomplished by, for example, increasing legitimacy of the referral body and/or restorative justice practitioner. The *mode of delivery* can also take a variety of forms, and clearly each practitioner has his or her own preferences. Research is lacking, however, on better understanding which measures may be more successful in leading to a restorative justice procedure. Questions also arise regarding the *timing and frequency of the offer*. It is difficult to assess when the victim or offender may be most (emotionally) equipped for a restorative procedure, and therefore frequency of the offer becomes a vital issue. Similarly, there is a lack of research examining which *language* may motivate or discourage the parties from participation. When considering all of these aspects, the possibility of *secondary victimisation* should also be considered. Though research suggests this re-victimisation does not occur, it is important to take measures to ensure the victim especially is protected from further harm. The following chapters will empirically assess both the accessibility and initiation phases through quantitative and qualitative interviews with legal professionals and restorative justice practitioners.

METHODOLOGY

1. Research question

The current research will focus on the following two questions. First, we ask,

When and under what conditions are restorative justice processes accessible to citizens?

The accessibility factors noted earlier will be investigated: Availability, legal basis, exclusion criteria, attitudes, trust, awareness, cooperation, costs, and a standardised procedure emphasising good practices. Moreover, the open-ended nature of the data gathering techniques used will allow for other factors to arise. Understanding these conditions leads to a better comprehension of how to improve the current situation regarding the referral procedure.

The second research question explores,

How are restorative justice processes initiated under different jurisdictions and in different models?

With regard to the initiation phase, the results will provide insights into understanding how victims and offenders are informed and in which ways their understanding of the procedures may be enhanced (also leading to a greater likelihood of acceptance). ‘Initiators’ therefore play an important role and should be understood in a broad sense. More specifically, initiators refer to all individuals and bodies who play a role in the decision of the victim or offender. This may be due to an extensive conversation about restorative justice and its benefits, but also a less detailed mention of the option, with further information coming later.

2. Quantitative analyses

2.1 Questionnaire

A questionnaire was devised to gauge the current state of issues surrounding accessibility in European countries. To best attain this goal, the instrument included both open and closed-ended items. Each of the factors guiding the accessibility framework was investigated through several questions. Both electronic (LimeSurvey) and pencil and paper versions were made available. The questionnaire was pre-tested by both practitioners and non-practitioners. All versions were in English. SPSS 19.0 was utilised to analyse the closed-ended questions. The questionnaire can be found in Appendix A.

2.2 Approach

The aim was to obtain responses in all EU member states, though understandably this was not possible. Referral bodies and employees working at restorative justice organisations comprised the sample. In total, practitioners in 17 different countries completed the

questionnaire. The sampling method consisted of convenience sampling. Within each of the partner countries (Croatia, Ireland, the Netherlands, Poland and Romania), each researcher made use of his or her own professional network. Other respondents were approached through e-mail (largely from the European Forum for Restorative Justice member directory) and gatherings attended by the research coordinator. The limitations of this method are discussed f

2.3 Respondents

In total, the sample included 96 responses, comprising 64 individuals working at a restorative justice organisation and 32 individuals whose tasks include referring victims and/or offenders to restorative justice programmes (13 prosecutors, 9 judges, 4 probation officers, 1 lawyer, 1 police officer and two employees at a social insurance institution). Of those who referred cases, 24 referred to victim-offender mediation only, 1 referred to family group conferencing only, and 4 referred to both of these procedures (3 had missing values). The majority of respondents were female (66.7%). The average age was 43.49 (SD = 11.84). Countries included Romania (17), Belgium (12), Ireland (10), the Netherlands (9), Poland (9), Finland (7), Spain (6), Croatia (5), Sweden (5), Austria (4), the U.K (3), Hungary (2), Italy (2), Norway (2), Estonia (1), Germany (1) and Luxembourg (1). Respondents held their posts for an average of 7.93 (SD = 6.87) years and were in a post related to the legal system for approximately 14.80 years (SD = 10.70).

3. Qualitative analyses

3.1 Interviews

Semi-structured interviews were used to examine issues surrounding the initiation phase. Interviews were conducted by each of the partner countries, and the focus was on these 5 countries specifically. Data was collected by each of the local researchers. People were selected based on the partner's network, and the ability to find victims and offenders who were willing to participate in the study. In each country, an attempt was made to reach a representative group to illustrate the current restorative justice situation. Items were devised on the basis of the initiation framework. Interviewers were first instructed to ensure that the respondent understood what was meant by the initiation phase. Respondents consisted of practitioners, in addition to victims and offenders. The way in which they were selected does not allow for any generalisation to the larger population. The reason for including the latter was to understand what mechanisms were present in their decision to participate. For practitioners, general questions regarding accessibility were also included to complement the quantitative results. Respondents were questioned in their native language and transcripts were later translated by the local researchers. Data were then analysed by examining common themes among respondents.

3.2 Approach

To conduct the qualitative analysis using semi-structured interviews, interviews were utilised in each of the five countries. Interviews were obtained with the goal of focusing on one precise procedure for inviting the victim or offender. Therefore, they were not limited to one programme or type of initiator. Rather, each case referred to an initiator inviting a specific party to a given programme (e.g., *prosecutor's office* inviting the *offender* to attend *victim offender mediation*). The decision for who to include in the interviews was based on the local situation, namely who may be involved in each procedure (as this varies per country). Each country examined approximately 5 cases, in addition to general victim and offender questionnaires, which were analysed together. Results were presented in general themes, in addition to a general analysis of the findings in all the countries together. The first overview allows for a better understanding of the issues involved in each country. In addition to their focus on initiation, the interviews briefly examined accessibility issues. These results (in the form of direct quotations) are presented in Chapter 7, along with the results from the questionnaires (marked as 'Respondent x').

CHAPTER 7

QUESTIONNAIRE RESULTS: ACCESSIBILITY IN 17 EUROPEAN COUNTRIES

This chapter discusses the general findings from the questionnaire including all the countries noted above. The results will follow the structure outlined in Chapter 4 on factors influencing accessibility. First, however, general information will be provided on the referral procedure, including timing of the offer, followed by a brief overview of the referral bodies and restorative justice procedures.

1. The referral procedure

Because of the diversity of systems under study, it is necessary – and often difficult – to define what is meant by the referral procedure. Referrals are conducted by various bodies dependent on the country, and it is unlikely that one can find two countries that conduct referrals in the exact same way. To define a referral, a distinction must be made with informing parties about restorative justice programmes, as was done earlier in this report. Many authorities and organisations may take this role, but providing information to the parties is not sufficient. Rather, *where the restorative justice organisation receives information about the parties or the case from the various referral bodies, it may be concluded that a referral has been made. Where information is received from the parties themselves, a self-referral has been made.* In some cases, there may not be many authorities, because due to legal regulations, only certain authorities may have the power to refer cases (most often the prosecutor or judge). This is not to say that providing information is not necessary. This information is vital in both promoting self-referrals, and also allowing the victim or offender to show the interest in restorative justice towards the referral authorities. Furthermore, this information is one point where ‘initiation’ may occur. There of course are more specific differences in how the referral procedure looks (e.g., whether the referral bodies send the case file and/or contact information; if restorative justice is ordered as part of the sentence; whether this is done after informing the parties about restorative justice and to what extent, etc.). These differences will be highlighted in the case studies.

2. General information about the referral procedure from the questionnaire

Countries where referral bodies completed the questionnaire included Austria, Croatia, Estonia, Finland, Hungary, Ireland, the Netherlands, Norway, Poland, Romania, Spain, and the U.K. Most often, referrals by the various bodies were made in ‘most of the suitable cases.’ It should be noted, however, that in addition to the small sample size suggesting the findings are not always representative, there is another methodological issue. Those who are completing the questionnaire are more likely to have favourable attitudes towards restorative justice when compared to the general referral body population. Consequently, it is likely that they will refer more often.

As noted, the referral procedure can take many forms. In many cases, information provisions may solely consist of telling the parties about restorative justice programmes (17 of the 28 (4 missing) respondents in Austria, Estonia, Ireland, the Netherlands, Norway, Poland, Romania, Spain). Of these, however, 9 (Austria, Estonia, the Netherlands, Poland) did so in combination with sending contact details to the organisation. In total, 16 of the 28 (Austria, Croatia, Estonia, Ireland, the Netherlands, Norway, Poland, and the U.K) respondents made use of this latter referral procedure. Furthermore, restorative justice may be imposed as part of the sentence or as an alternative to prosecution. It may also be the case that the referring authority is also approached and asked about the possibility for restorative justice, either by the parties themselves (14.3%) or lawyers (7.1%).

There may be regulations guiding the extent to which informing parties about or referring cases to restorative justice is mandatory. It is likely that referrers do not always know their obligation; therefore it is important to understand their perceptions of the rules regarding their referral behaviours. Of the 32 respondents who referred cases, only 2 said they must refer all cases by law (both in Austria). Indeed this is not a requirement seen in the legislation in many European countries. Six of the respondents (Austria, Croatia, Hungary and the Netherlands) indicated that they must take the option for restorative justice into account when deciding what to do and, similarly, 6 respondents (Austria, Poland, Romania and Spain) indicated that they must inform the parties about the existence of restorative justice. The majority (19) responded that they have no obligations according to the law in their countries. The variability in answers even within one country also suggests the obligations are not always clear to the referrers themselves.

Where consequences for not referring may occur, authorities may be more likely to refer cases. Legislation, however, rarely requires bodies to refer (though the duty to inform may exist). Even where these requirements are stipulated by law, not adhering to them does not necessarily lead to sanctions. None of the participants reported that there would be consequences in response to non-referring.

2.1 Timing of the referral/information

With regard to the timing of the referral, respondents were asked to indicate when they believed the best moment to be to refer a case. Many respondents (38) suggested that there is no one best time, but rather it depends on the circumstances of the case, the victim and the offender. This also included the seriousness of the offence, where responses illustrated the idea that more serious crimes should be dealt with after the trial while misdemeanours and less serious offences could be handled early on in the process, often as a means of diversion.

More specific answers were given referring to the prosecution stage or before trial (15), or at the police level (6). One respondent cited the moment at the end of an interrogation. One remark however, would advise against such a time span, rather suggesting that the best moment is,

“...as soon as it gets to the prosecutor’s office. That means still early in the process and well thought through; it’s less random than when the police refers.” The Netherlands, working at a restorative justice organisation

Three respondents indicated more generally pre-sentence or at court as the best moment. A need for routine was also mentioned, suggesting that while it is true that there is no best moment, as it depends on factors such as the healing process and the severity of the crime, having a more systematic approach would be constructive. Some participants indicated the need to continuously inform or inform at multiple stages (3), primarily due to the differences among victims and offenders concerning their readiness to participate. Another suggestion was to offer mediation as soon as possible, but with flexibility in when the mediation procedure would actually occur.

One respondent, referring more to set periods of time, stated,

“I think that three to four months after the offence is the best time for victims and offenders to be referred to RJ. It’s not too close to the offence and also not too long (if you call years later, people are not interested anymore)” Italy, working at a restorative justice agency

Also for legal concerns, there may only be certain moments when a case can be referred. As was stated by a prosecutor in Estonia,

“The best time is when the case has been viewed by the prosecutor, because the decision to prosecute or not to prosecute can only be made by the Prosecutor’s Office.”

Though most respondents indicated that there is no best time but rather restorative justice should be available at any stage, several respondents (20) did insist that an early stage is best. One reason may involve the mind-set of the parties, for example as according to one respondent who stated that the best moment is,

“before trial, because the motivation of victim and offender might be bigger than afterwards.” Germany, working at a restorative justice organisation

As noted, 6 respondents mentioned the police stage. Such a finding has implications for the police, a body that does refer in some countries, but by far not in all European countries. The police are a first contact point who all victims and offenders will come into contact with. Setting up a systematic protocol at this stage could prove to be successful in informing all parties about the option of restorative justice. For example, in countries where the police play an active role in asking about victim support, a similar responsibility can be adopted in terms of restorative justice. Furthermore, even where there may be a given time when the case may be referred (as was the case with the prosecutor’s office in Estonia), this should not rule out information for the victim or offender about restorative justice at other stages, particularly where they may suggest such a procedure themselves (even if they cannot officially self-refer).

3. Referral bodies

As has been noted earlier (Aertsen et al., 2004), the prosecution is the gateway to referrals and often information for restorative justice procedures. The police may also play an important role, partly due to their early contact with the parties. Other bodies include probation, victim support, offender programmes, lawyers, and the parties themselves. Highlighting the importance of these legal professionals, one participant stated,

“The courts can never (in the Norwegian system) be the driving force in RJ. Awareness and training for judges is important, but to raise awareness among police and prosecutors is far more critical.” Norway, Judge

The respondents in a position to refer cases were asked if they believed they were the best person to be referring cases. In most instances, the referrers indicated they were indeed the best authority to conduct such a task (18 of the 26 cases). One respondent who did perceive that she has an appropriate profile for referring cases stated,

“Working in the public attorney’s office enables good insight into all crimes committed by minors and having an educational background in social pedagogy provides knowledge and skills needed for the targeted population.” Croatia, working as an Expert Advisor to the District Attorney in the field of Juvenile Delinquency and Child Protection.

Highlighting the necessary understanding of restorative justice, an Irish respondent argued,

“I have a good knowledge of restorative justice and won’t put the wrong people into a room with each other.” Police officer referring juvenile cases, Ireland

A criminal lawyer in the Netherlands, though seeing the benefit of his role, believed that others may be more appropriate to serve as referrers,

“The lawyer is certainly in a good position in some circumstances to act as a referrer. It is ever better, however, when an unbiased and independent individual or organisation refers in order to allow the restorative procedure to go as smoothly as possible.”

Furthermore, responses indicated that working closely with the restorative justice organisation, being objective and knowing the procedure were reasons that they were good candidates for referring cases. A respondent working at a mediation office in a court in the Netherlands stated that being part of the court organisation made it easy to contact the parties, both at the start and the end of the procedure. One respondent from the youth care service (*Jeugdzorg*) in the Netherlands explained that her organisation did not decide the best moment for offenders to be informed because they often receive cases after a court judgment while mediation could in fact be applied at an earlier stage.

Respondents were asked if other bodies should be referring cases. Surprisingly, many answered ‘no.’ Of those who did think that other authorities should be involved in this task, several suggestions were given. A respondent in Spain indicated that the police should be

referring, and that though prosecutors and victim support are currently carrying out this task, they could be referring more cases. Similar concerns were expressed by respondents in Belgium, Estonia and the UK. Schools were also mentioned, in addition to lawyers, psychiatrists, psychologists, doctors, offender organisations, social workers in adult cases, therapists, companies and prisons. Such findings are in line with Delattre's (2008) concept of 'multipliers,' that includes individuals such as these in addition to priests, trainers etc.

Box 1. The Practitioner's View on Police as Referrers: Mari Granath, Mediator at the Highland of Småland

Indeed, the police are one example of an efficient referring body. Because a national organisation for victim-offender mediation does not exist in Sweden, it is difficult to get numbers on how many cases are referred by the police. Mari Granath, a mediator in Sweden, explains that she receives many cases from the police within the three municipalities applicable to her. This is due to the police guidelines about victim-offender mediation, which state, *"If an investigation is started in the case of an offender between the age of 15 and 21, who admits guilt in the said case or partly admits guilt, the police shall always ask if the mediation service can contact the offender."*

Important about the guidelines is that the offender is not asked if he or she wants to take part in victim-offender mediation, but if the mediation organisation may contact the offender to inform them about victim-offender mediation, including what it may mean in their case. The police will give the mediation service information about the case, including the case number, the name of the investigator, the name of the police officer handling the case, the offence, time and place of the crime and contact information of the offender (and of the parents if he or she is younger than 18).

The extent to which the police informs the offender depends on the investigator's knowledge and attitude towards mediation.

"This can sometimes be problematic. An investigator with little knowledge about victim-offender mediation, who questions the benefits of victim-offender mediation will most likely inform offenders about mediation in a different way than an investigator with a lot of knowledge who believes there are many benefits to the parties affected. I am constantly giving this issue attention, that the investigator must not or shall not let his or her own values guide whether or not the case is appropriate for mediation. Nor should the investigator's own personal view about the offender's ability to participate in a good way in a mediation influence the investigation. The investigator's sole assignment is to always ask if the mediation service can get in contact [with the offender]."

Mari recognises that while it is good that the police are posing the question about mediation, it is equally important that representatives from other agencies also ask or inform about mediation: social services, probation, prosecutors and judges. *"We know there is a lot going on inside a person who is accused of a crime and possibly sentenced for the crime as well. That includes feelings of denial, shame, guilt, regret etc., meaning that individuals are receptive in different ways to mediation at different times in the process. That follows that a 'no' about meeting the mediation service posed by the police might be a 'yes' later on in the process when the probation officer poses the question."*

The issue remains that the police need to be more informed about mediation, including its benefits. General information about mediation and restorative justice can be given during their meetings, in order to provide more information and to discuss the philosophy behind restorative justice. Tailored information through feedback to the investigating officers of the particular case can be stimulating. Police and investigating officers have many thoughts and feelings concerning their cases and offenders. Mari's experience is that they are often touched when they hear about how the case was

handled by mediation. “*A mediation-positive investigator or police officer is the best ambassador one can have for mediation or restorative justice.*” Luckily, Mari’s office is at the police station, and she is convinced that this is a factor in the success of accessibility – she can discuss her work whenever she feels the need and they can easily contact her when they have questions about mediation and how she feels about a specific case.

In roughly one-third of the cases (35.8%), the respondents indicated that referral bodies do not always know about the option to refer¹¹. In these cases, limited awareness about the existence of restorative justice was often a barrier. It may have to do with people forgetting, for example the police who already have too much to remember during the interrogation and investigation stages. A lack of a policy was also named as a reason that people often do not know about this option (Netherlands). One mediator (Finland) also stated that through consistent cooperation, this could change as personnel is often changing, making it hard for everyone to constantly be made aware of this option. Taken together, these findings illustrate the importance of awareness, which will be discussed in the following sections as one of the barriers to accessibility.

4. Other restorative procedures

The focus of this report has been on victim-offender mediation. The results show that the majority of respondents have experience with victim-offender mediation only. It is important, however, to also address other restorative practices that should be understood in terms of accessibility. In some cases, this may be a model that is not considered to be a chief practice in a given country (e.g., sentencing circles in Belgium) while in other cases a particular model may be the way a country sees restorative justice. Therefore, we filtered the responses so that after indicating which restorative options were available in a country (e.g., victim awareness programmes, compensation), it would become clear which of these involved some type of communication between victim and offender. Among the answers from the countries included in this project, there were 5 practices that facilitate communication¹²: neighbourhood mediation (Belgium); Neighborhood Justice Panels and Referral Order Panels (UK); Victims in Focus (Belgium); Offender Reparation Panels (Ireland). For some of these options, barriers to accessibility were listed. The programme Victims in Focus aims, among other things, to make the offender aware of the harm caused by the criminal act. During this course, the victims may speak about how they were affected. One of the respondents stated that there are only a few victims that wish to go to the prisons to have such contact. Additionally, there are

¹¹ This bias of this question should be noted; it may be argued that referrers themselves are more likely to say that all referrers know about the option. In fact, when only examining this issue among respondents working at a restorative justice organisation, more than half (57.7%) answered that referral bodies do not always know about the possibility.

¹² This is not an exhaustive list, as the respondents may not always have known all restorative possibilities within their country.

budget constraints, which also limit the number of offenders who may register for the programme. Reparation Panels in Ireland¹³ may allow for a victim to be included in an active role if he or she has clearly been identified and is seen as an appropriate part of the process. What may be considered to be the prevailing model in Ireland, these panels have issues with access because “the victim does not feel they want or need to participate in a similar way to victim-offender mediation.” Other factors were named and unsurprisingly, most of these factors were in line with the barriers to victim-offender mediation, as will be discussed in the following section. Reparation panels in Ireland will also be given attention in the qualitative findings.

5. Barriers limiting accessibility of restorative justice

As noted, the questionnaire was devised using both open-ended and closed-ended items. Two general open-ended questions were coded to analyse the results, “Can you think of reasons that cases do not get to the restorative justice organisation?” and “How can referring behaviours be increased?” Because of their conceptual overlap, it was decided to analyse these two items together. After reading through the answers and developing a coding scheme, the following categories were identified: awareness, cooperation, attitudes, legal culture, legislation, standardised procedure, institutionalisation, availability, experience, referrals, funding, political support, understanding, exclusion criteria, delay, victim interests and culture. Further sub-categories were then also devised to more closely examine the responses. Each of these will be discussed, in addition to the other parallel findings from the questionnaire.

5.1 Availability

Restorative programmes can now be found in most European countries and in some cases at multiple stages. The countries included were those that already had existing restorative justice schemes. These schemes referred to victim-offender mediation and family group conferencing, though the large majority of employees working at restorative justice organisations were involved in victim-offender mediation only and only one referral body indicated that both victim-offender mediation and family group conferences were considered when referring.

Respondents were asked if they perceive there to be a shortage of cases within the restorative justice interventions that exist within their country. The majority indicated that there was indeed a shortage of cases (67.4%). Approximately 26.1% were not sure and the remaining 6.5% indicated that some programmes could not handle all the requests they receive (Ireland, Belgium). In these cases, though limited, more funding and more personnel were needed. In Belgium, this response was from one mediator who worked in Antwerp, a jurisdiction with referring patterns that differ from other regions and may be considered to be more successful

¹³ Attention will be given to this particular programme in one of the interviews in the Ireland country profile.

(Suggnome, 2001). In Ireland, the respondents were likely to have been referring to reparation panels, the predominant restorative programme used.

Though not given foremost attention in this project, one aspect that does need further research is accessibility for cross-border victims. In these cases, access to restorative justice programmes becomes even more limited. Respondents were asked: If one of the parties does not live in your country, will you find a way to still bring the parties to a restorative justice intervention? The majority of respondents (62.6%) indicated they would, through e-mails, letters, video conferencing and telephone calls. It was often mentioned, however, that this was strictly with the border regions. One respondent in Spain said that the letter they sent was in their own language. In Romania, it was noted that contacting relatives or acquaintances of the parties is also helpful in locating them, or by contacting an organisation in their country of residence. More attention to this issue will be given in the section on exclusion criteria.

5.1.1 Equal access. To measure equal access, one item included, “To what extent is there equal access to restorative justice in your country?” Most often, this inequality was due to geographical reasons (19 of the 37 respondents who provided an explanation). In Croatia, there were inequalities in age, as victim-offender mediation is primarily available for juvenile offenders. Similarly, in Sweden, adults were disadvantaged. Though they also have the option for victim-offender mediation, the law requires police to inform offenders only in cases of juvenile crime. A mediator in Spain suggested that victims were disadvantaged because of the procedure for contacting parties; offenders were contacted first and only if they agreed to mediation was the victim subsequently contacted. A mediator in Belgium indicated how information regarding mediation is not provided in all languages, providing unequal access to foreign speakers. Another respondent in Belgium referred to inequality due to the different styles adopted by the police and prosecutors in referring cases – a notion directly associated with exclusion criteria in selecting cases. In Belgium, it was reported that there is also unequal access due to differences in the selection of cases, particularly with regard to the severity of cases, which will differ among regions. Furthermore, a Dutch respondent stated that it is often those who are verbally stronger that will participate. One German respondent referred to the unequal access that exists for homeless persons.

As noted above, geography also resulted in unequal access for parties. One respondent explained,

“Some services in some autonomous communities receive more money and therefore can afford more cases and parties can apply more easily. In others, there are more difficulties because of the little funding they receive.” Spain, working at a restorative justice organisation

Respondents were also asked (1 = very small extent, 5 = very large extent) to indicate the extent to which minority populations had equal access to restorative justice ($M = 4.06$, $SD = 1.07$), which was to a large extent. Though this finding may be unreliable due to issues of social desirability (i.e., answering the question as they believe others will approve of), several individuals did explicitly refer to ethnic minorities when asked more generally which groups

did not have equal access. Five respondents (UK, Spain, Romania, Hungary and the Netherlands) suspected that access may largely be dependent on ethnic minority status, where minorities are less likely to receive the opportunity for restorative programmes. The Romanian and Hungarian respondents referred to the Roma population while the other respondents did not specify who had unequal access to restorative justice.

5.2 Legislation

The literature review earlier in this report pointed to the need for a legal basis in order to give restorative justice more statutory footing (Willemsens, 2008). In the current study, about 15.6% (14 of 90) of the respondents believed that factors related to legislation were necessary to make restorative justice programmes more accessible. Most of these answers explicitly referred to a lack in legislation or legal support. One respondent (Belgium) stated that a duty to inform and/or refer must be formally given to each of the criminal justice authorities that are involved.

As will be seen in the country profiles, legislation guiding the referral process is quite common among European countries with established restorative justice programmes. In Chapter 8 we will more closely analyse the legislation in the five countries. The quantitative results, however, also provide a general overview for other countries that have implemented laws or acts on mediation. As can be seen in the table below, most of the countries do have a legal basis in place (though the content of these documents does vary).

Country	Legislation
Croatia	The Juvenile Court Act of 1997
Ireland	Adults: none; Juveniles: Children's Act
The Netherlands	Article 51h of the Code of Criminal Procedure (2012)
Poland	Adults: section 23a of the Criminal Code; Juveniles: The Act of 26 October 1982 on the Proceedings in Cases Concerning Juveniles
Romania	Law on Mediation and the Mediator's Profession (Law no. 192/2006)
Austria	Code of Criminal Procedure and Criminal Code
Belgium	Law of 22 June 2005 regarding the implementation of mediation in penal matters
Estonia	Code of Criminal Procedure
Finland	Law about mediation in crimes and some disputes (1015/2005).
Hungary	Criminal Code, Code of Criminal Procedure, Act 123 of 2006 Law on

	mediation in criminal matters
Germany	Youth Court Act; Penal Code (Section 46); Code of Criminal Procedure (Section 155)
Italy	DPR Law 274/2000; indirectly for juveniles DPR 448/1988
Luxembourg	Adults : - Code of Criminal Procedure; Law on penal mediation; Law on Protection of Youth (Juveniles)
Norway	Criminal Procedure Act, Municipal Mediation Boards Act
Spain	Law 5/2000 about Penal Responsibility of Minors
Sweden	Mediation Act (Act 2002:445 on mediation for breach)
U.K	Crime and Courts Act 2013

Approximately the same amount of participants responded that there were no problems with the legislation (40.3%) as those who did perceive there to be problems (41.6%). One issue in the Netherlands is that organisations do not feel addressed, probably due to the fact that referral bodies are primarily non-legal authorities (e.g., victim support, youth protection). In Sweden, a mediator responded that the law does not make the duty to inform or refer parties binding. It furthermore does not include the consequences of “*what happens if people don’t get the possibility to go through the RJ process,*” a concern also expressed by a Dutch respondent. In Finland, one mediator remarked that there was a lack of equality due to the police and prosecutors using different approaches, as stricter guidelines are not in place. Other more general comments referred to legislation being too vague and without clear definitions. In Romania, a mediator suggested that the law could be improved by allowing for more types of offences to be mediated. Similarly in Croatia, a mediator stressed that the criteria of the penalty of the offence limited which cases could go to mediation. More specifically,

“Legal conditions have changed: for some criminal acts there is now a higher prison sentence prescribed (above 5 years). Now we can’t refer those cases to the mediation procedure. Violent behaviour is now a misdemeanour, but grand theft and serious bodily injury now have 8 years prison sentence prescribed, and those were the most common criminal acts in which we referred a case to mediation... there is a decrease in mediation cases.”

Regarding how to respond to such an issue, she continues,

“We write the initiative, appeal wherever we can to increase the minimum years; we don’t have the real power to change the system but we do whatever we can: at round tables, at meetings, at the prosecution service, we push for an extension of this criteria. Now I think

that we have been heard, and we have heard that grand theft, which represents all kinds of burglaries will again be included.” Respondent 5

“The legislation only provides that restorative justice is an option that might be provided. It does not require local agencies to make restorative justice available. Therefore, restorative justice is available in some areas (and at some points of the justice system) but not always/everywhere.” The UK, working as a referral body

Respondents were also asked to indicate if there were criteria that made a case inappropriate for a restorative justice programme, as stipulated in legislation¹⁴. A Swedish respondent noted that there must be a victim and offender and the offender must accept responsibility. These requirements are the same in Belgium, where other criteria do not restrict mediation. In Spain, gender violence cases are excluded in the adult system, though this requirement does not exist in the juvenile system according to legislation. In the post-sentence stage, however, all cases may be mediated. In Finland, the law does not rule out domestic violence or sexual crimes, but particularly in the latter mediation is rarely used. Furthermore, domestic violence may only be mediated if proposed by the police or prosecutor. Crimes against children are excluded from mediation. In Norway, the mediation act does not restrict cases, but contains a wide definition of the field of work. Even where the offender does not acknowledge his guilt, as is required in many countries, mediation can still occur if he or she does admit to the facts of the case. In the UK, though it does not appear in the legislation, one respondent indicated how exclusion criteria differs based on the stage. While less serious crimes are considered when restorative justice is used as a diversionary measure, more serious crimes may be considered when it is part of the sentence. Moreover, restorative justice at the post-sentencing stage may even include homicide.

In other cases, the law may only be used to serve as guidance. For example, one mediator in Finland, again illustrating how the attitudes of others may play a more prominent role in referral decisions, stated,

“The law is the guideline; it is not very specific since each case is individual and a lot rests on the assessment of the police, mediation manager, mediators and prosecutors.”

Legislation may also stipulate time limits on how long restorative justice organisations have to conduct a procedure with the parties. It was noted earlier that states should ensure that provisions are in place to suspend limitations where they may hinder access. These limits vary per country; in Poland, the case may only be suspended for one month. One respondent referred to this issue:

¹⁴ It should be noted, however, that respondents were only asked to indicate such criteria if they knew it themselves, and not search for the answer in legal documents.

“...there is one more problem related to time – referring the case to mediation will delay the time for finishing the case, although the time of mediation is not calculated into the time of preparatory proceedings. And “time” is the most fragile point in our (Polish) juridical system as Poland has the most complaints on protraction of proceedings at the Tribunal in Strasbourg.” Respondent 21

While these constraints in law guide the referral procedure to a certain extent, they cannot be seen as exhaustive. There may be other legal documents or government reports providing guidelines for what cases to refer. For example, this was the case in Italy, Spain and Norway. When asked about guidelines in Norway, one prosecutor in Norway mentioned how,

“The staff has to be loyal to the guidelines given by the Director of the Public Prosecution [service]. The Director of the Public Prosecution [service] cannot give instructions to the courts. My impression is, however, that the courts also use the guidelines from the general principles that equal cases have to be treated equally.”

5.3 Exclusion criteria

In the general open-ended questions, 12 of the respondents mentioned factors that could be considered exclusion criteria that prevent a case from getting to a mediation procedure. These criteria could be further divided into two sub-categories, those criteria that were subjective, and those that were required due to the theoretical underpinnings of restorative justice (i.e., that the offender acknowledged responsibility). With regard to the subjective criteria, reasons for excluding cases included the crime being too serious (sometimes specifically referring to rape and murder), the offender being a recidivist, ongoing domestic violence, child victims in serious cases and offenders with behavioural disorders.

Respondents were also asked to indicate which of the following cases they did not consider to be suitable for restorative justice programmes: very serious crimes, domestic violence, sexual offences, cases with elderly victims, cases with elderly offenders, where one of the parties does not live in the country, where drugs are involved and where one of the parties has mental health issues. Table 1. shows an overview of these results. Elderly parties and domestic violence cases were almost always considered to be suitable cases for restorative justice programmes. Interestingly, in the breakdown by respondent’s occupation, there were two differences. More specifically, the results indicated that there were statistically significant differences in the case of cross-border cases and very serious crimes. For both criteria, referral bodies were significantly less likely to believe these cases were suitable when compared to restorative justice practitioners.

Table 1. Types of cases that respondents believed to be suitable

Type of case	Referrers		RJ practitioners		Total	
	Yes	No	Yes	No	Yes	No
Very serious crimes*	43.3%	56.7%	67.2%	32.8%	59.6%	40.4%
Domestic violence	90.0%	10.0%	90.6%	9.4%	90.4%	9.6%

Sexual offences	63.7%	33.3%	85.9%	14.1%	78.7%	20.3%
Elderly victims	100.0%	0.0%	98.4%	1.6%	98.9%	1.1%
Elderly offenders	96.7%	3.3%	96.8%	3.2%	96.8%	3.2%
Cross-border party *	66.7%	33.3%	89.1%	10.9%	81.9%	18.1%
Drugs involved	83.3%	16.7%	73.4%	26.6%	76.6%	23.4%
Mental health problems	63.3%	36.7%	53.1%	46.9%	56.4%	43.6%

When elaborating upon the reasons for such exclusion of cases where mental health was an issue, numerous reasons were cited. The reasons included that informed consent is necessary but difficult to obtain when mental health problems exist, mental health cases should be referred to other services, there are inequalities between the parties, it will be difficult to impose the principles of restorative justice on the parties and mediation is not therapy.

One respondent, though not ruling out the use of restorative justice in any of the cases, stated,

“When drugs and mental health problems are in place, it may be difficult to secure a safe meeting and the problems they have can make it difficult for them to remember what they have agreed to in the mediation. But it is up to the parties in the end to decide if they want to mediate.” Sweden, working at a restorative justice organisation

A similar remark was made with regard to mental health,

“Mediation with [mental health patients] is definitely possible but support persons (e.g. psychologists) must be involved. This way, all communication can be understood so that an estimation can be made based on the burden and capacity of the parties.” Belgium, working at a restorative justice organisation.

Sexual assault was also deemed as inappropriate for restorative justice measures by several respondents (n = 19). One Polish mediator expressed her retributive perspective, stating,

“This is a specific kind of crime [sexual offences] in which the offender has to be punished.” Poland, working at a restorative justice organisation

With regard to one of the parties living in a different country, there was a practical issue where there were no resources for contacting people abroad. No international phone calls nor Skype are available, only e-mail which does not allow for the ‘live communication’ necessary to conduct a successful communication process (Spain). Similarly, a respondent in Belgium was unsure of how to organise a procedure when one party was out of the country. Another issue with dealing with a foreign party is that restorative justice is meant to handle the impact on the local community, which cannot be done when one of the parties does not live in the country. One of the interviewed mediators also referred to these cases as often being excluded,

“Another obstacle for why we don’t refer cases is because the victim lives in a distant city or another country, although in my last case we sent invitations to both at the same time: to the

offender and to the victim who lives far away with the explanation of the situation and with our contact number and address, and a note in which we said that if the victim is interested at all for this kind of procedure to contact us. We can't pay for travel expenses, so we informed the victim of this...the victim hasn't contacted us so I gave [the offender] other obligations."

Respondent 5

In domestic violence cases, where there may be power imbalances, it was stated that one party may agree in order to appease the other party who has (psychological) power over the more vulnerable party. Sexual violence cases were sometimes deemed too serious. Though restorative justice was not always ruled out for such serious cases, it was suggested that specialised programmes may be necessary.

Respondents were also prompted to indicate others types of cases that they believed to be unsuitable for restorative justice. These included where the victim is a police officer, when the victim is a child, when the victim and offender are in a parent-child relationship, and with terrorism, genocide and organised crime. When the victim is a police officer it was believed that the case would become more complicated because parties are not equals and police officers are difficult participants. Similarly, for child victims, it was argued that there may be power imbalances. With offenders involved in organised crime, restorative justice was not considered to be suitable because the participants are unable to act and decide on their own free will. The financial situation of the offender also played a role in decisions to mediate. As one prosecutor in Croatia stated,

"In my opinion, it wouldn't be appropriate to mediate in cases when the offender has a difficult financial situation. When the damage is large we expect material compensation to be settled. But each case is very individual, if someone is poor that doesn't mean that the case wouldn't be referred to mediation. Only during our first conversation, when we speak about the damage that he or she has caused, if there is no chance for any kind of compensation will I decide not to refer to mediation. It wouldn't be fair to put the victim in that kind of situation." Respondent 5

Similarly in Croatia and Poland, the seriousness of the crime has an impact on the referral decision, though to different degrees,

"They [the mediation service] even now say that we shouldn't process the minors in so much details if it is a less serious crime. If we have a petty crime, but one that is not insignificant enough to dismiss the charges, then we apply 'unconditional purposefulness' and then the case doesn't go to the mediation procedure." Respondent 11, referral body

"Mediation is very helpful in the case of petty crimes, especially in family cases, while in serious crimes mediation cannot fulfil the expectations of the victim and society. The victim usually is expecting just punishment for the crime, which very often means imprisonment. Also in such cases there is no place for punishment, which discourages and shows that crime brings very negative consequences." Polish Judge, Respondent 13

Respondents were asked to indicate the extent to which they believe that “the parties meeting is enough to conduct a restorative justice procedure.” The average score was 4.07 (SD = .95), indicating a large to very large extent. There were significant differences¹⁵, however, between referrers (M = 3.63, SD = 1.10) and those working at restorative justice organisations (M = 4.28, SD = .81). Several responses regarding the comments on exclusion criteria, however, expressed a similar notion:

“We don't exclude any cases, it depends on the needs of both parties, the crime itself, the way RJ can help.” Netherlands, working at a restorative justice organisation

“The victim should be able to decide if he or she wants RJ, subject to consent of offender, and considerations of safety (but RJ should not be over-protective of victims deemed vulnerable, or there will be 'theft of the conflict').” UK, working at a restorative justice organisation

“It always depends on the parties to make a choice and I strongly believe every party has the right to and the capability to choose for himself.” Belgium, working at a restorative justice organisation

Legislation fails to explicitly decide who may be suitable for restorative justice procedures. In some cases it may also be restrictive, for example by setting legal limits based on the type of crime and extent of punishment. International instruments also lack a clear base with strict definitions, leaving a lot of discretion to the referral bodies and restorative justice organisations themselves. This is a reality that must be acknowledged and dealt with accordingly. The next question then is how to ensure that practitioners will be more open to which cases are appropriate for restorative justice. Such an endeavour is largely linked to changing attitudes, as will now be discussed further.

5.4 Attitudes

A second category that received much attention was a need to change attitudes, primarily among the referral bodies, which was expressed by approximately 17.6% of the respondents. A mediator in Sweden referred to a “*lack of employees working at the same place long enough to understand the importance of restorative justice (especially within the police and the social service).*” There were also several comments relating to the need to sensitise referring authorities. Furthermore, one Belgian respondent mentioned the need for a political belief in restorative justice, suggesting a benefit of having support for restorative justice at the political level. Another mediator in Hungary similarly expressed how due to political reasons, the government is restricted in its behaviour towards restorative justice, where criminals must be punished through incarceration. Also related to attitudes is victim interests, which are primarily in terms of protection of the victim. As was noted in earlier chapters, there is often an inclination for victim support employees to ‘protect’ the victim from possible harm or re-victimisation that may come from meeting with the offender. One Dutch respondent

¹⁵ $t(92) = -3.22, p < .01.$

illustrated this point, referring to the tendency of these individuals to discourage victims from participation in the programme. A lack of supporting attitudes may also have implications for decisions made by prosecutors. For example, one mediator in Germany stated how “prosecutors want to close the case as early as possible; some of them are not supporting VOM.” When expressing a fear judges have of losing authority, one Romanian mediator stated,

“The most common problem is that those with the responsibility to refer cases to mediation don’t understand this procedure’s potential and most prosecutors, police officers and lawyers see mediation as a threat to their authority. More concretely, parties’ decision to seek mediation is interpreted by judges in the sense that ‘we, the parties, have decided to go over your authority and address the mediator, to not let you – the judge – decide.’ Opting for mediation is interpreted by judges as an offence to their exclusive authority over sanctioning criminal acts.” Respondent 9

Referral bodies were asked to indicate their opinions on several statements related to restorative justice. These included: (1) Justice should be about trying to heal relations between a victim, offender, and the community, (2) Justice can be served if the victim, the offender, and the community meet to discuss, and find ways to repair the harm that was done, (3) The ideal way to deal with crime is for a victim, the community, and the offender to meet to discuss how the crime should be dealt with, and (4) The criminal justice system should accommodate the process of dialogue between offender and victim. These items were extracted from earlier research that examined attitudes towards restorative justice (De Keijser, Van der Leeden & Jackson, 2002; Strelan, Feather & McKee, 2011). Additionally, referral bodies were asked whether they did not refer due to several reasons. Table 2 provides an overview of the results, making a distinction between referral bodies and restorative justice organisations with regard to the Restorative Justice Scale.

Table 2. Means and standard deviations of the Restorative Justice Scale, by item (N = 95)

Statement	Total	RJ organisation	Referrer
Justice should be about trying to heal relations between a victim, offender, and the community	4.17 (.95)	4.19 (.96)	4.13 (.96)
Justice can be served if the victim, the offender, and the community meet to discuss, and find ways to repair the harm that was done	4.14 (.95)	4.25 (.84)	3.90 (1.14)
The ideal way to deal with crime is for a victim, the community, and the offender to meet to discuss how the crime should be dealt with*	3.68 (.97)	3.84 (.91)	3.35 (1.02)
The criminal justice system should accommodate the process of dialogue between offender and victim**	4.36 (.81)	4.61 (.61)	3.84 (.93)
Average (Restorative Justice Scale) **	4.09 (.70)	4.22 (.60)	3.80 (.80)

* $p < .05$, ** $p < .01$

Table 3. Means and standard deviations of reasons for not referring (N = 30, *referral bodies only*)

Statement	Mean (SD)
Sometimes they are not emotionally suitable for such a procedure.	3.37 (1.03)
I do not believe in restorative justice as a solution to the harm.	1.69 (.97)
It would cause further harm to the victim.	2.60 (1.10)
I believe the offender is only trying to get a lighter punishment.	2.67 (1.40)
I feel uncomfortable discussing this option with the victim.	1.77 (1.00)
I do not have the time to inform the victim.	2.03 (1.38)

The findings regarding the reasons for not referring appear to be rather positive. Again it should be noted that this group of referring individuals is not representative due to the convenience sampling method that was adopted. Differences among the reasons can be observed. The decision not to refer where parties are not emotionally suitable for the restorative justice procedure indicates between a moderate to large extent, a substantially higher mean when compared to the other reasons. Interestingly, this reason refers to the well-being of the parties, whereas the majority of the other reasons relate to the referrers themselves (e.g., feeling uncomfortable, not having time) or a negative view of the offender.

As was noted, attitudes are largely linked to exclusion criteria. This is true, for example, when we consider the extent to which referral bodies and restorative justice facilitators believe that programmes are suitable for vulnerable victims, namely victims of sexual assault and domestic violence. Earlier the reasons often noted for deeming these cases inappropriate were addressed (namely power imbalances and a return to relegating the crime to the private sphere). The findings indicated that both victims of sexual assault (M = 3.67, SD = 1.21) and domestic violence (M = 3.08, SD = 1.31) were considered to be appropriate candidates between a moderate to large extent, which is in line with the findings examining the categories of victims that should be excluded.

What has also been mentioned is the use of schools in changing a punitive culture to a more restorative one. Restorative justice in schools may have the power to change both the level of awareness and attitudes regarding restorative justice principles. With regard for the former, schools present a platform for the benefits and functionality of restorative justice to be experienced by students through behaviours of staff members. With regard to the latter, introducing restorative means of conflict resolution into schools helps to ensure that human needs are addressed and the community becomes responsible (see Hopkins, 2004; Morrison, 2007). Box 2 provides a closer look at this means of changing attitudes.

Box 2. The Practitioner's View on Restorative Justice in Schools: Dr. Belinda Hopkins, Director of Transforming Conflict and Coordinator of the European Circle for Restorative Educators, the U.K

“When educators and young people live and work in a totally restorative environment where there is mutual respect, trust, care, consideration and compassion for each other, then they are also much more disposed to the restorative justice ideal of putting things right together when they go wrong. In that sense, helping our schools become more restorative also contributes to a less authoritarian, less punitive society and therefore a less punitive criminal justice system.”

Belinda Hopkins believes that relationships are key to a restorative environment. Restorative classrooms are places where relationships matter, for example in learning, active participation, inspiration and peaceful collaboration. One restorative process involves sitting in circles and sharing time and activities together, which can help develop empathy, trust, connection and a sense of shared accountability. Based on principles such as equally valued perspectives, consideration for others and collective responsibility, proactive circle meetings help to develop cohesive learning communities and enhance emotional literacy. They are also fun as they often involve game-like activities and laughter. Responsive problem-solving circles then build on these qualities to help groups find ways forward together when they experience problems. A restorative response can be effective for all those involved and can be used in a multitude of cases, including bullying, damage to property, theft, violence and gang problems. Implementing a restorative approach in schools is a long-term initiative. The ‘journey of change’ may take between 3 to 5 years and includes understanding the values and visions of all staff, students and families in order to ‘reconnect with what the school is there for.’

According to Dr. Hopkins, it is important that people do not only think of restorative justice in schools as a ‘mini version of the justice model;’ this will limit its success. Rather, a whole restorative approach is necessary. This can be achieved by developing relationships emphasising care, compassion, empathy and respect. Belinda remarks, *“These are the skills that grow in a well facilitated restorative conference or meeting, and it is going to make a huge difference in society if these skills were taught to young people from very young and not just when they get into trouble.”* People involved in schools also need to learn empathic listening and interpersonal conflict resolution. Adults must learn how to mediate (both formally and informally) and students can learn through peer mediation.

Once core skills have been developed and applied in everyday settings, an ethos of tolerance and understanding emerges, in addition to the appreciation that people have needs. Where these needs are left unmet, negativity and harm may result. Once an appropriate attitude has developed, *“the foundations are in place for using more formal skills and processes such as conferencing and problem-solving circles for more serious issues. The whole school community – staff, students and their families and carers – will then be able to experience a non-punitive atmosphere where everyone is held to account and expected to put things right when they get them wrong (adults too) but in productive ways – not using punishments or threats.”* Belinda maintains that this new ethos can help to improve public awareness about punishment and challenge the existing beliefs about punishment. Indeed, where schools promote restorative justice, a more restorative society may develop which is key to accessibility.

Trust. Trust with the referral organisation is also related to attitudes. As noted earlier, not knowing enough about the organisation and how it functions in addition to being (physically) far away from the organisation can be a reason for poor cooperation and negative attitudes. Trust by referrers in restorative justice organisations was measured using a previously devised scale by Tyler (2005), taken from his measure for institutional trust in the police. The items included, *“I have confidence that the restorative justice organisation does its job well,”* *“Overall, the restorative justice organisation is a legitimate institution,”* *“The organisation*

cares about the well-being of everyone they work with,” and “There are many things about the restorative justice organisation and its policies that need to be changed.” After reversing the scores for the last statement, the average score was 3.65 (SD = .57), indicating between a moderate to large extent.

Although in general trust was high among referral bodies, there were some exceptions. One judge in Poland mentioned *“mediators should have more knowledge about the law”* as something about the organisation that must be changed. Similarly, another remark was made with regard to excluding sexual offences and very serious crimes, where a Polish judge stated that mediators are not well prepared to handle such cases. Other reasons that two Romanian judges believed the restorative justice organisation needed to be changed included the fact that mediators are not sufficiently informed of the criminal procedure, becoming a mediator should require more stringent conditions, and there are insufficient guarantees for the parties in mediation.

As was illustrated by one judge, although positive towards mediation, the perception of the quality of mediators may affect referrals,

“The other issue with [referrals to] mediation is that there are no standards of obligatory education for mediators. This is the reason that there are very different levels of mediators – some very good specialists and some complete amateurs. It discourages judges to direct cases to mediation.” Polish judge, Respondent 18

A judge in Romania stated,

“Trust. The mediator is not seen as trustworthy before the judge nowadays, based on different reasons. Trust is an issue – ‘Who are the mediators? I heard that they don’t have a juridical background’. The judge stalls when he or she hears that someone without a juridical background handles the case. He or she doesn’t understand the meaning of handling the case, doesn’t understand what mediation is all about, what the mediator does – ‘what does that person know if he or she doesn’t have juridical background?’, and period, that’s it. But mainly because judges are not informed. This is why I say that the institutional contact between mediators and judges from local courts is important.” Respondent 15

Similarly, a prosecutor in Poland communicated a similar opinion,

“We don’t trust the mediators, we don’t know what abilities and knowledge they have. I try to meet with mediators - at official meetings at the prosecutor’s office, court or at conferences to get knowledge about their experience in the field of conducting mediation. What is especially important for me: previous experience of the mediator and his or her profession.” Respondent 20

Culture. Another aspect that arose among 12 of the respondents was related to culture. Within culture, two sub-categories could be defined, namely legal culture (largely tying in with

attitudes) and more general societal culture. When mentioning the importance of legal culture, there was a tendency to refer to the retributive nature of the legal system. One Norwegian respondent remarked how, *“people think traditionally about wrong and right, punishment and revenge.”* Similarly, a respondent from Norway stated, how the *“justice system is more focused on punishment than on reparation.”* At the same time, there were comments on the national culture more generally. For example, a mediator from Croatia noted how the country being in a period of transition may be a barrier to accessibility. In addition to general comments about mainstream society and culture not being ready for this type of conflict resolution, one Belgian mediator remarked, *“people do not learn how to deal with a conflict themselves, but rather allow others to decide on their situation.”*

Respondents were also asked to indicate the extent to which they believed that “any lack of support for restorative justice may be due to cultural factors.” The mean score for this variable was 2.78 (SD = 1.04), indicating between a small to moderate extent. Open-ended responses, however, indicated that in some cases cultural factors did play a role.

“The culture in my country has been more disposed to retribution although since the peace process in Northern Ireland the subject of reconciliation has begun to surface and bring RJ ideas to the fore.” Ireland, working at a restorative justice organisation.

“In our country we focus on punishment and there is little consideration with offenders. We don't want to be seen as 'soft' and justice is also meant to be preventive . The best solution is to lock offenders up.” Netherlands, working at a restorative justice organisation.

“Taking conflict out of one's hands is embedded in our culture. Giving the conflict back to the parties is something that people do not know within our culture. In Anglo-Saxon countries, I think this is even more the case.” Belgium, working at a restorative justice organisation.

“A lot of people still think about the criminal justice system as a system that has to punish and convict people.” Italy, working at a restorative justice organisation

“The criminal justice system we know exists for more than 200 years. It is not so easy to change it...To change concepts, you need time. It is crucial to get people involved, so it can gain common ground.” Netherlands, working at a restorative justice organisation

“It is seen as a soft touch, in its purest form it is not a soft touch. It will take time to change the culture of wanting to lock people up. People have seen that the justice system doesn't work but they may see the RJ route as going backwards.” Ireland, working as a referrer

The attitudes towards restorative justice are generally positive, also among the legal bodies including prosecutors. As noted, this is most likely due to a sampling bias, which results in those individuals who already show an interest in restorative justice. It should be assumed that attitudes towards restorative justice are far more negative among the general population of legal authorities, based on previous research and literature. The findings from the restorative justice practitioners, however, do confirm a focus on retribution, in addition to a persisting

need to make restorative justice more the norm – perhaps going as far as institutionalisation of restorative justice.

5.5 Awareness

The large majority of the respondents (71.4%) referred to awareness as a barrier to accessibility and referrals. Awareness includes knowledge about restorative justice more generally (e.g., the benefits) but also knowledge about how the process works (e.g., what cases they could refer). This lack of awareness applies to many different individuals, including lawyers, judges, prosecutors, prison staff, police and citizens. For example, one respondent (Belgium) stated, *“Victim support services should be more convinced about the benefit of mediation with the offender and their clients.”* Informing the referral bodies about the results was also mentioned as a possible benefit and means of increasing access. A Romanian respondent noted,

“One problem is a general lack of information regarding the existence of mediation. Judicial bodies and courts don’t inform all cases that they can go to mediation, although they are eligible for mediation. Why? Some because they don’t know, police and courts don’t know when a certain case can go to mediation. Second, because they think they will complicate their work, because if they tell they might be asked for further information and either they don’t know or don’t want to tell more. Third, lawyers don’t encourage parties to go to mediation for several reasons, such as: they don’t exactly know the procedure and their role in it or they think they will lose their clients if they solve the conflict through mutual agreement.” Respondent 8

A Romanian judge commenting on barriers to accessibility reinforced this assertion,

“They [judges] do not realize whether this [mediation] benefits them or not, for example that they have less cases. They don’t even know very much about the mediation procedure. Today, judges have the impression that mediation is some sort of pseudo-advocacy. So, as they don’t trust mediators, because some of them don’t have juridical background, and as they don’t know exactly what mediation is, judges don’t refer cases to mediators. Moreover, although since 2010 we have the current Criminal Prosecution Code stipulating that the mediation agreement for those simple offences can result in the termination of the penal process, the provision was not enforced during the past 3 years, a fact which is unexplainable. Why it is not enforced? Judges are not concretely informed on the new profession, its importance and the importance of the mediation agreement.” Respondent 15

Awareness was also expressed through a need for more education and the use of the media. In general, awareness may relate to (1) the referring bodies’ knowledge about restorative justice and how to refer, and (2) awareness of victims, offenders and the general public as a means of promoting self-referrals.

Awareness strategies may include delivering presentations (see Box 3) or providing leaflets to the referral bodies in order to inform and educate them about the restorative justice organisation, in addition to restorative justice more generally. In general, the leaflets provide information on the meeting between victim and offender, the advantages of such a meeting, when it can occur and what the role is of the restorative justice organisation. From the questionnaire results, it appeared that the majority of respondents from the restorative justice organisations did provide presentations for the referral bodies (78.6%) Similarly, 82.1% of the respondents indicated their organisation provided leaflets. Furthermore, of the respondents working at one of the referral bodies, under over half (8 out of 19) indicated that they received presentations while the majority (14 out of 19) indicated that they received leaflets. The extent to which the presentations have a positive influence on referring behaviour was 3.55 (N= 11), indicating a moderate to large extent, while the extent to which the leaflets have a positive influence on referring behaviours was 3.00 (N = 14), indicating a moderate extent. Referral bodies also mentioned courses and information sessions as a means of staying informed within the organisation.

Box 3. The Practitioner’s View on Delivering Presentations to Referral Bodies in the Netherlands – Kim Roelofs, NMI and Victim in Focus mediator

Kim Roelofs is currently a full-time mediator, where approximately 80% of her cases involve criminal offences. Kim also works for Victims in Focus (*Slachtoffer in Beeld*), the Dutch organisation dealing with victim-offender conversations. Victims in Focus often provides informative sessions on this form of restorative justice to their network and partners.

One of the main referring bodies in the Netherlands to Victims in Focus is the national Victim Support organisation (*Slachtofferhulp Nederland*). Despite the fact that there is one director for both organisations, and the institutes are ‘sister organisations,’ a low number of referrals has been observed. For that reason, as Kim explains, it was decided to inform employees of Victim Support about what the mediation organisation actually does and how they can gauge the needs of the victims they deal with. Recently, more referrals have been made from Victim Support, suggesting that informing does work.

Unawareness was one of the reasons that employees did not think about the option for restorative mediation. “*Bluntly stated, you could say that Victim Support is concerned with the victim, and wants to protect him or her from the offender.*” Now, however, there is more understanding that a particular form of contact with the offender may be exactly what the victim needs when dealing with the consequences of the crime.

Victim in Focus has a group of permanent ‘informers’ to referral bodies, though Kim is not one of them. She has, however, provided two presentations, focusing on the new pilots that are now taking place in the Netherlands (see Chapter 8). One of the presentations was at the Courthouse in Utrecht, for both volunteers and professionals working at Victim Support. A presentation will last about an hour, with the main goal to inform participants. Victim in Focus has a standard information packet, but the presentation helps to provide more information about restorative justice. Even just informing about restorative justice in a general sense is important, as this provides employees with the proper

context and understanding for applying it themselves.

Of the practitioners whose responsibilities include referring cases to restorative justice programmes, 19 out of 32 (59.4%) had followed some type of training. The shortest training lasted half a day. One Norwegian judge stated that though he did follow training, it was at his own initiative, suggesting that training may need to become more mandatory in order to reach the desired number of legal professionals. Another respondent referred to a good one-day training, but added that follow-up was necessary though not provided (Ireland). One prosecutor in Poland explained how trainings were effective in spreading knowledge throughout the country,

“...my colleagues use the procedure of mediation all over the country, not only in one prosecutors office. It was caused probably by the big workshop on mediation at all prosecutor offices when the main chief of prosecution were trained on mediation in the range of victim-offender mediation. It wasn't only an informal session but also [provided for] active participation in the workshop where prosecutors took part in real mediation through a case study. The workshops were conducted by trainers of the Polish Mediation Centre, very experienced mediators in crime cases. Since a few years there are special 3-4 hour seminars for prosecutor applicants in The National School for Prosecutors and Judges on 'prosecutor application on mediation.’” Respondent 22

Respondents were asked to indicate if they believed the training to be effective for understanding the benefits of restorative justice and for understanding the referral process. The average score for the extent to which the training helped in understanding restorative justice was 4.16 (N = 19), indicating a large to very large extent; for helping to understand the referral process, the mean was 3.68 (N = 19), indicating a moderate to large extent. The training was considered to be effective for several reasons, including assistance in understanding the (intent of the) law and advantages of restorative justice and the opportunity to learn about practices in other countries. Where respondents were positive about the training, they referred to enthusiastic and professional trainers in addition to gaining more practical experience, for example through role plays.

The extent to which respondents (N = 84) believed the public was aware of restorative justice was small (M = 2.00, SD = .78). They were also asked which awareness strategies were existing in their countries that contributed to general knowledge among the public on restorative justice. Answers included the media (e.g., TV, newspapers, internet, radio programmes), advocacy at the service level, conferences, e-help sites referring to restorative justice and information to schools. Many respondents (N = 18), however, noted that there were no awareness strategies in their countries (Italy, Estonia, Finland (mixed), Ireland (mixed), the Netherlands (mixed), Romania (mixed), Spain, Sweden) and some stated how formal strategies were lacking. Others mentioned that there were strategies, but they were

limited, and 4 respondents were not sure. Political support could be one means of influencing awareness. Awareness campaigns, moreover, must be given further attention and funding should be allocated to such schemes. An example of such a successful campaign in Portugal is illustrated in Box 4.

Box 4. A Practitioner's View on Awareness Campaigns: Sonia Reis, Trainee Assistant at the Lisbon Law School in Portugal

According to Sonia Reis, awareness campaigns do in fact have the capacity to lead to greater numbers of self-referrals by both victims and offenders. Though the current level of awareness in Portugal is very low, attention was given in 2008 to at least temporarily educate the public on the availability of Public Mediation. Though focusing on family and labour mediation, the campaign was available on two television stations, newspapers and the radio, including a 30-second advertisement on victim-offender mediation available on the internet. As victim-offender mediation was only available in four counties, it was not national like family or labour mediation. Furthermore, the 1st International Congress on Mediation took place in Lisbon in 2010. Ms. Reis was interviewed on the topic of victim-offender mediation, and an article appeared in a well-known Saturday paper. She maintains that the numbers of referrals to Public Mediation were greater after the campaign when compared to before the advertisements went public, supported by the high number of viewers. Victim-offender mediation also benefited from that campaign.

According to Ms. Reis, The most important feature of a successful message is one that is understandable, relating restorative justice to the conflict at hand. Important keywords should be selected, such as 'conflict,' 'people,' 'justice,' and 'reparation.' One catch-phrase must also be developed, that will lead individuals to seek more information on restorative justice. In the case of Portugal, the slogan read, "Mediation can be the solution," though as was noted, its focus was on family and labour mediation. It is also important to help people understand there are other options besides the Courts. Simple and original. The campaign included cartoons, to appeal to all ages and to not appear too official (e.g., as is in the case with handshakes and often associated with lawyers). Campaigns in the future should be creative; Ms. Reis suggested one possibility: running the campaign alongside a contest in schools that would request children to present works on restorative justice and that could be presented in public locations (e.g., town halls, train and bus stations). By having the public evaluate the work and deem one person the winner, awareness will spread. Such a campaign could lead to a more long-term solution, namely by introducing restorative justice in schools.

The majority of open-ended responses examining factors affecting accessibility included awareness; first with regard to the legal authorities and referral bodies knowing about their options and second with regard to awareness among the general public leading to self-referrals. Several suggestions have been given on how to educate the public, though the extent to which this is occurring is limited. This is partly due to a lack of resources. For awareness among the public, not knowing beforehand about restorative justice could be counteracted by a positive experience during the initiation phase (i.e., being told the right message regarding restorative justice so that parties are likely to participate). Regarding legal

authorities, the notion of institutionalisation again becomes relevant. Where restorative procedures become ingrained within the legal system, awareness will be inevitable.

Indeed, the results revealed another interesting conclusion, namely that many of the referral bodies were themselves not aware of issues surrounding restorative justice in their country. This is reflected by the lack of knowledge on the current legislation in addition to inaccurate information regarding who can refer cases to the restorative justice organisation.

While the media exists as a platform for dissemination of restorative justice information to the public, it is by far not sufficient in reaching parties who are not informed about their options by the corresponding referral bodies. All of the respondents in this study indicated that victims and offenders were at least allowed to suggest the use of victim-offender mediation. Furthermore, in countries such as Finland, the Netherlands, Norway, Sweden, Spain and Belgium victims and offenders may themselves initiate restorative justice procedures. It should be noted, however, that while restorative justice continues to be unknown among citizens in general, the use of a '*linear offer*' as used in Belgium, can provide a buffer for this gap. In such a method, at least in some regions in Belgium, all victims and offenders (often after selecting the type of crimes) are notified through an electronic system about the option for restorative justice. Returning to the concept of 'multipliers' (Delattre, 2008), there is also a need to get other professionals involved, who could communicate the message to those potential participants.

5.6 Cooperation

Cooperation between referral bodies and restorative justice organisations was also identified in the open-ended questions as important in making such procedures more accessible (12 respondents). This cooperation included working together with other target groups such as defence attorneys and victim support. The findings show that many of the restorative justice organisations have contact with different bodies. Most frequent contact was with the police (80.6%), followed by the prosecution (74.6%) and social welfare services (62.7%). Other bodies that the organisation had frequent contact with included victim support (61.2%), offender organisations (55.2%) and judges (50.7%). In less than half of the cases, respondents had contact with probation (43.3%), schools (37.3%) and prisons (35.8%). These results need to be considered in combination with the legal system and procedure of referrals. Box 5 presents an example of close cooperation between the mediation organisation and legal authorities.

Box 5. The practitioner's view: Virginia Domingo, mediator and coordinator of the victim-offender mediation service in Castilla and León -Amepax (Burgos) Spain

In Spain, there is no legislation on restorative justice for adults, only for minors. Therefore, a protocol was created with the Prosecution's office which is similar to the legislation for minors. Now judges and prosecutors can make referrals. In the district of Castilla and León -Amepax, there are four main prosecutors making the majority of referrals to the mediation organisation. To ensure these referrals,

Virginia Domingo maintains close ties with the prosecution service. She reports that it is easy to meet with them, and very often they meet a few times a week. This is done by going to the prosecution office and contacting them directly.

Her advice is to “*show prosecutors that we truly believe in what we do.*” The first time they met, the prosecutors asked what restorative justice is. After a month, Virginia and her colleagues came back with research about restorative justice, its tools (e.g., mediation), possible protocols and how other countries were involving restorative justice. Prosecutors then believed that the mediators knew the subject and were motivated to begin a restorative project. It was a way of building trust, a necessary component of a successful cooperation. Furthermore, a case such as this one illustrates how hierarchy can in fact benefit the accessibility of restorative justice, “*...in some way it is easy, because if the Chief Prosecutor is convinced, as they are hierarchical, the others are more or less going to cooperate.*”

“*If we meet one of the four prosecutors we have in charge of doing the referrals, we generally discuss topics such as the type of cases he or she refers to us, the status of the cases, news of the service (e.g., contact with other organisations to improve the service, information about conferences), whether or not we should include more serious cases.*” They also discuss cases when the prosecution is having doubts, for example the application of restorative justice to serious offences, doubts of the prosecution about some referrals. In addition to these weekly meetings, Virginia’s organisation has meetings a couple times a year with the four prosecutors and the Chief Prosecutor together. The aim of these meetings is to discuss the service, questions, doubts and how to improve protocols.

While the cooperation and atmosphere with the prosecutors is positive, Virginia would like to have more contact with the judges. The problem here, however, is stability. While in the past 7 years there has only been one change with the prosecutors, changes are much more common among the judges. Consequently, the mediation organisation must repeatedly explain restorative justice and its benefits to the judges in order to gain their support.

To get a better understanding of the nature of the contact with the referral bodies, respondents were also asked if they had regular meetings. For the mediation organisations, 64.1% of the mediators said they had regular contact with the referral bodies. For the referral bodies, 50% indicated they had regular contact with the mediation organisations. In general, frequency of these meetings varied, where the most frequent contact consisted of every week with prosecutors, while the least frequent contact occurred approximately once per year. A few respondents, however, also mentioned that contact occurred more frequently when it was necessary, for example through phone or e-mail. Mediators who did have regular contact stated most often they had contact with referral bodies 1-2 times a year (14) and least often on a weekly basis (2). Referral bodies stated they most often had contact 3-4 times a year (6), and in no cases did they have contact on a weekly basis. Table 4 displays a more detailed breakdown of the meetings between these bodies.

Table 4. Frequency of meetings

	Mediators with referral bodies (N = 54)	Referral bodies with mediators (N = 22)
Never	19	12
1-2 times a year	14	2
3-4 times a year	11	6
Monthly	4	1
Weekly	2	0
Varies	4	1

Respondents were also asked to indicate if they followed any other cooperation strategies. As noted earlier, attitudes related to restorative justice may be influenced when referral bodies understand the benefits and outcomes for a given case. In many situations, however, the referrer never hears any details about the outcome of the case, whether legal or in terms of advantages for the victim or offender (e.g., if the victim is better off because he or she received an apology). Greater cooperation, however, would lead to more detailed information regarding the restorative justice programme and achievements, and subsequently more referrals. Indeed, mediators in Belgium, Finland and Spain both listed this feedback as means of improving cooperation. Other common responses included maintaining informal contacts, disseminating information through conferences and meetings, and involving more influential individuals. One respondent from the Netherlands indicated that trainings are provided to the referral bodies to specifically provide them with suggestions on the best way to inform the parties about restorative justice. It should be noted, however, that the majority of referral bodies in the Netherlands are not legal authorities, but rather victim support and offender oriented organisations. Having the opportunity to provide this information to people such as police and prosecutors may prove to be more difficult.

Furthermore, a mediator in Romania explained about one innovative means for increasing cooperation,

“I think the main problem during the referral process is the lack of trust in the mediator’s professionalism. Because of this, my office frequently offers to those who want to learn more about this procedure the possibility to contact us for a “coffee or tea” meeting to discuss more. Until now, lawyers, prosecutors, judges, judicial counselors and managers of private companies have participated in these meetings. Following such meetings we create a good collaboration, helping each other when problems arise in our practice.” Respondent 15

An issue also arises when contact information is withheld by the referral bodies. This problem may not be applicable to all countries, for example when cases can only be referred by the prosecution and a referral entails sending a case file to a mediation service. In many countries, having the contact information is vital in arranging for a restorative justice intervention to take place. The results suggest that data is sometimes withheld; 32.7% of the respondents had to deal with this issue. In the Netherlands, this was an issue with both the police and prosecution service,

“Sometimes certain agencies do not want to provide information because they are not behind the mediation or they believe that the procedure would interfere with the task of investigation and prosecution.” The Netherlands, working at a restorative justice organisation

For example, a mediator in Belgium stated that they often have to make an appointment, read the file and note down the contact information. In response to such concealment, he stated,

“As for referring bodies, we keep on trying to have sensitized contacts, but for the past couple of years we try to “bypass” the reluctance of the local authorities by promoting a structural cooperation at the political level in order to integrate a “referral duty” in the usual mission of the main partners.” Belgium (Wallonia), working at a restorative justice organisation

Respondents working at restorative justice organisations were asked if they give tips to the referring bodies for making the offer. Approximately half (47.2%) of respondents answered yes, often explaining that these tips or suggestions were related to the manner in which parties are to be contacted (e.g., through letters and brochures). In one case in Belgium, the mediators help to design an appropriate letter to make the offer for restorative justice. Several respondents referred to the need to discuss the benefits of mediation, both with the referrers to stimulate referrals but also with the parties when providing the option for restorative justice. Another respondent in Belgium discussed the differences between bodies. The prosecution service should be informed that the referral moment should come before the summons, but that it can come both before and after the verdict. Most important is to pay attention to the needs of the parties. With social workers, role playing was suggested, primarily as a means of understanding how to bring up the topic of victim or offender. Finally, in the Netherlands, one respondent emphasised the importance of explaining the signals displayed by victims and offenders, and that bringing up the subject of mediation in an indirect way is more successful.

Though the initial findings about the bodies with whom the restorative justice employees had contact were rather positive, the results on the frequency of meetings was less encouraging. Furthermore, while there was a lot of contact with the police, other bodies such as schools and probation were not as often in contact with the restorative justice organisations. While the latter may be related to the relation with the criminal proceedings (i.e., mediation referrals before prosecution), schools are one institution that deserve more attention. It is likely that as restorative justice obtains a more legitimate status, cooperation will also become stronger. In the meantime, access is largely relying on the proactivity of the restorative justice organisations.

5.7 Standardised procedure and best practices/institutionalisation

When asked about barriers to accessibility, respondents indicated that one barrier resulted from the need for a more *standardised procedure* or themes related to the *institutionalisation* of restorative justice. Factors included authorities simply forgetting to ask parties about their

interest for restorative justice, having a dysfunctional organisation, and restorative justice not being embedded in the daily tasks of the referral bodies.

A standardised procedure is largely in line with adopting good practices for referring cases to restorative justice programmes. Several good practices have been identified in countries and provided the frame for closed-ended questions. Furthermore, respondents were prompted to identify any best practices they use to increase accessibility. Those already identified include the following: going to court to talk with victims and offenders about restorative justice possibilities; receiving a list of cases from the referral bodies, such as the prosecution, in order to contact the parties; sitting in court to make the restorative justice organisation more visible to the legal professionals; telling offenders about restorative justice programmes during offender-oriented programmes; and sending a standard letter regarding restorative justice to the parties.

With regard to going to court to talk with the parties, only 11 of the respondents said they do while 49 said they do not. The average score for the extent to which they believed it could be implemented within their organisation if it was not already 2.20 (SD = 1.23), indicating between a small to moderate extent. In countries where the prosecutor or other legal authorities are the only ones able to refer cases, it was stated that this option did not exist (Croatia). Additionally, where restorative justice is seen as an alternative to punishment, the case may be dismissed before there would be an opportunity to meet in court. In other countries, a lack of time and resources were mentioned as a reason it would not be possible. Some respondents also believed that it was not the right time to approach victims or offenders. Furthermore, it was expressed that the offer should come earlier. One respondent from Belgium also questioned if privacy would be violated. Very often, parties are represented by attorneys and therefore they may not be present, making it practically not a very feasible option. Finally, another Belgian mediator stated how the region (Wallonia) already had a high case load which would prevent the ability to engage in any type of auto-referring.

A second possibility to increase referrals is to obtain a list of all cases that come to the attention of the police or the prosecutor and contact the parties themselves. This may occur before or after the legal authorities or other bodies have already made a selection. There were 26 respondents whose profile fit this description. When asked if they believed it could be applied within their organisation, the average score was 2.45 (SD = 1.09), indicating between a small to moderate extent. One Belgian mediator stated that the prosecutors already make a good selection so it would be unnecessary. She added, however, that for the cases referred by the judge it may be a possibility, though it would seem difficult to organise. Another respondent was rather positive about the idea, stating

“It would help to receive lists from the youth judges, but it would be a new strategy of informing parties. I don't know if the youth judges are willing to give lists. It would help

already if they would inform all the parties about RJ or at least give us permission to inform parties.” Belgium, working at a restorative justice organisation

Indeed some jurisdictions in Belgium are conducting what is known as a linear offer, as noted earlier, which sends out letters to all victims and offenders who become known within the prosecution service. The information in this letter, however, varies and may not always come at the right time, which is why the mediators having contact details of the parties may prove to be advantageous. Other reasons for not receiving a list of potential cases include privacy, fear of increasing the work load of the referral bodies and time issues. In fact, one Belgian mediator explained that calling and going to the partner organisations is more productive.

Only 12 of the 59 respondents answered that they went to court to make themselves more visible to legal professionals. Respondents were also asked if offenders were informed about restorative justice during different offender oriented programmes. Many respondents (30) did not know if this existed in their countries. Several (19 of the remaining 55) did, however, state that different programmes provided the opportunity for this information. These included victim awareness, drug programmes and other programmes in prison (*Choose for change: Kies voor verandering; Victims in Focus: Slachtoffer in Beeld, Offender in Focus: Dader in Zicht*) (Belgium), state-wide offender programmes and anger management (Finland), and victim awareness programmes (*Sycamore* in the UK).

The majority of respondents (55.3%) indicated that parties are sent a standard letter informing them about the opportunity for restorative justice. When asking those whose organisation do not send such a letter, the extent to which they believed it to be feasible was 2.83 (SD = 1.23). One facilitator (Ireland) believed it was not feasible, describing it as ‘too cumbersome’ with a need for a ‘gatekeeping process.’ 32 of the 40 respondents who did send out letters believed that it was in fact effective. The remaining 8 respondents felt it was not effective, for example because it is not enough to stimulate action, it comes at a bad moment, the information is ineffective and a phone call may be more efficient.

The manner in which the letter was distributed also differs among the countries. In Belgium, at least in some jurisdictions, a letter is sent to parties who meet certain criteria (in some cases all parties) when a decision has been made to summon the offender, though this letter also contains information about the court date. A subsequent letter is sent from the mediation organisation if there is no response from the parties. In Ireland, once a judge agrees to participation in a restorative justice programme, the restorative justice office will send a letter. In Finland, the letter is sent after the police hearings, if the police refers the case to mediation and the mediation organisation accepts the referral. In Croatia, a letter is sent from the restorative justice organisation to the victim after they receive a case from the public attorney’s office. The victim will receive a letter if the offender has agreed to the programme. The State Attorney’s office will send the letter to the offender, inviting him or her to a mandatory discussion about how to proceed with the case (where one option can be mediation). A first invitation for victim-offender mediation in Austria is sent and proposes a

date, including a standard information leaflet about the legal basis, the chances and need for participation. In Spain it was stated that the letter is sent to all offenders if the case is prosecuted; where the offender agrees, the victim will be contacted. In Sweden a letter is sent after a police report has been made. It should be noted, however, that in many cases the findings were mixed per country, where some respondents indicated parties did not receive a standard letter. In these instances (such as Sweden and Finland) there may be differences among regions.

These possibilities of ‘good practices’ lead to a greater standardisation of the procedure, which directly leads into the possibility for institutionalising restorative justice. Where certain practices were not already included in the referral procedure, it appeared that respondents were generally negative about the feasibility of their future application. The questions that were included in the survey represent only a small minority of ways in which accessibility can be increased.

As many countries utilise a letter or brochure in order to invite the offender or victim, more attention should be given to understand how to create a successful message. Such content is being given consideration in countries such as Belgium, where changes have been made in the past years. Still, factors such as the timing and where it is coming from, in addition to the content, must be given further attention. This will be done more extensively in Chapter 8.

5.8 Lawyer fees

Many of the respondents reported that one referring body may be lawyers of victims and offenders. Where this is the case, an issue appears regarding their willingness to refer cases or inform their clients about mediation when it may have repercussions on their own fees. For example, when specifically asked why lawyers do not inform their clients, one Romanian judge answered,

“To make money. In big cities, it is practice for lawyers to have a fixed fee for each trial term. It suits them to appear more than once before the judge so that they receive a fee for each term. It’s an illegal practice, but it exists in Romania.” Respondent 15

5.9 Costs

Costs paid by the offender and victim for restorative justice programmes are rare, and for the most part cannot be considered a barrier to restorative justice. According to the questionnaire responses, there were three exceptions¹⁶. First, in Spain (Barcelona), one respondent indicated that offenders are required to pay for the first interview with the mediator. Second, in Austria, before a case is dismissed by the prosecutor, the offender must pay an amount (up to 250

¹⁶ It should be noted that other costs may be incurred including travel costs, lost employment hours, voluntary costs or costs due to the outcome of the programme. These, however, are not directly linked to participation in the programme.

Euros, depending on their economic situation) to the State. These costs are equivalent to the amount an offender would have to pay in case of conviction. Third, in Romania, mediators do not get paid by the organisation, but rather by the clients. This is settled by the victim and offender themselves. According to one mediator, costs are often shared equally by the parties. Costs were referred to several times in Romania as a barrier to restorative justice where one mediator stated how, *“people want the offender to pay, irrespective of the material consequences on the victim.”*

Another lawyer explained, *“The most affordable prices that I’ve seen were at one mediation office from Buftea (near Bucharest), they were asking 300 lei [about 67 euros] per session, which could last for 3 or 4 hours. But there are mediators that ask 300 lei per hour from each party. It’s hard to think that a normal person would have the possibility to pay 600 lei for a mediation session.”*

Conclusion

The first part of the questionnaire focused on the referral procedure more generally, including information, timing and referral bodies. Information provisions varied between the countries, where the majority only told parties about the existence of the restorative justice procedure. Fewer respondents commented that they went so far as to send the contact details to the restorative justice organisation. Regarding the timing of the referral, it was clear that there was no consensus regarding the best moment for such an action. Before trial and at the police stage did appear to be common answers among the respondents. With regard to the appropriate persons and bodies to make a referral, there was a tendency for this person to be someone with experience with and understanding of restorative justice.

More specific questions were posed regarding the barriers that were identified in the accessibility framework. Regarding there being a shortage of cases, more than two-thirds indicated this to be accurate. Cross border victims were clearly an issue that need more attention in the future; more than one-third of respondents replied that they did not attempt to contact the party if he or she lived abroad. Inequalities in access were also reported, referring to age, ethnicity and geography as moderating variables. A review of the legislation indicated that the participating countries enacted legislation, at least at some level. Problems were reported, however. For example, laws did not provide for an obligation for many key actors to inform parties about restorative justice; stricter guidelines were necessary to ensure more equal application; exclusion criteria such as the maximum punishment possible for a case to be eligible limited the suitable cases. Responses also indicated the wide variation in which cases may be applicable for restorative justice in each country. Regarding subjective exclusion criteria, the most common criteria for deeming a case unsuitable was that it was of a very serious nature or the offender has mental health problems. The latter was due to, for example, the fact that informed consent could not be obtained though is necessary, and there could be inequalities between the parties.

An overview of attitudes illustrate the punitive attitude that still largely exists within criminal justice responses. The mean of all respondents on the (support for) restorative justice scale indicated that they believed in restorative justice between a large to a very large extent. This is indicative of the sample that was assessed, namely that it is likely that those with favourable attitudes are those who were willing to participate in the research. Still, respondents did express to some degree the unwillingness to refer certain cases, a theme which is largely in line with exclusion criteria. Responses to issues regarding attitudes included the use of schools in promoting restorative justice and gaining trust between restorative justice organisations and referral bodies. Indeed, trust was rather positive, though some referrers expressed the view that mediators were not knowledgeable enough on the law. Awareness was cited as a barrier by almost three-fourths of the respondents. Presentations and trainings were identified as two possible approaches to increasing awareness. About half of the referrers received presentations educating them about restorative justice. Approximately 60% of referral bodies had followed training, although this was often insufficient instruction. Regarding cooperation, it was seen that this did not occur to a great extent, but in some cases cooperation was well-functioning between key referrers and restorative justice organisations. Finally, some good practices were reviewed, with a general finding that organisations did not make use of very standardised procedures.

QUALITATIVE FINDINGS ON THE 'INITIATION' PHASE

CASE STUDIES IN ROMANIA, IRELAND, THE NETHERLANDS, CROATIA AND POLAND

Positive 'initiation' may be defined as the process of getting the victim or offender to agree to participate in a restorative justice programme. The following analysis will focus on this issue, through illustrations in five countries (Croatia, Ireland, the Netherlands, Poland and Romania). Through qualitative interviews, insights will be provided into good practices for making the offer for restorative justice, in addition to the procedures that are currently being followed. After a brief description of the background of restorative justice, restorative justice procedures and national legislation in each country, the local investigations will continue by presenting the interview results and themes that emerged to provide more concrete information on the initiation phase.

1. Romania

1.1 Background of RJ

The EU Standards of Justice, Freedom, and Security influenced the development of restorative justice, due to Romanian interests in EU accession (Balahur, 2010). The regulation of alternative strategies was one area that was required within justice system reform. Furthermore, similar to other European countries, restorative justice largely grew with the aim to reform the juvenile justice system by implementing the UN Convention's standards concerning children's rights. Consequently, there may be greater flexibility of the sanction system applied to juveniles, reduced contact with the justice system and greater reintegration into the community. Between 2002 and 2004, the first victim offender mediation experiments were conducted as pilot projects in Bucharest and Craiova, as provided for by several Ministry of Justice ordinances.

Mediation practices are not widespread and only private institutions are able to provide professional mediation services. The general public and legal authorities remain largely uninformed (Parosanu & Balica, 2012). Furthermore, there is ambiguity concerning what exactly is required by law (Stefanut, 2013). Next steps would include greater education about mediation for legal professionals, including judges and public prosecutors (Parosanu & Balica, 2012).

1.2 Restorative justice interventions and referral procedures

Victim-offender mediation is mostly implemented in urban areas by private mediation offices or by mediators hired by NGOs. Mediation is voluntary for victims and offenders and may occur before the trial begins (Parosanu, Balica & Balan, 2013). If the parties reconcile at the end of the procedure, the victim may not again report the offence to the authorities. If the

restorative procedure begins after the prosecution or trial already started, then the case may be suspended until the mediation is terminated as is possible according to the law. Judicial authorities are given the responsibility to inform parties and guide them to use mediation as a solution. Police, prosecutors and judges inform parties where they can go to get more information from the mediation service. This may be through info points in courts or leaflets provided. They are also referred to a Mediators' Register which includes the names of all authorized mediators. Parties must then get into contact themselves with the mediators. The mediator will then decide if the case is appropriate, and subsequently give information to the parties about the procedure and how it may help in their particular situation. If parties opt for mediation, they must provide the court or prosecution office with a signed mediation contract, in order for the criminal process to be suspended during the mediation procedure. Furthermore, parties are presented with the possibility to be assisted by a lawyer if they undergo victim-offender mediation. Victims and offenders also have the option to attend a briefing session on mediation, free of charge. This session provides parties with information about the procedure and answers questions that they may have.

1.3 Legal basis

The Law on Mediation and the Mediator's Profession (Law no. 192/2006) provides the legislative base for mediation – it contains a section on “Special provisions regarding mediation in criminal cases”. One important modification to the Law 192/2006 was made in 2009, introducing the duty of legal authorities to inform parties about the existence of mediation in addition to working towards its wider use. Also, the new Criminal Code that came into force on February 1, 2014, expands the use of penal mediation for two types of criminal cases:

- *In complainant cases or cases where reconciliation of the parties removes criminal liability:* For these types of cases, if prosecution or trial already started, a successful mediation agreement will immediately stop the criminal process; if the victim has reconciled with the offender prior to filing the complaint, once a successful mediation agreement was reached she will no longer be able to file the complaint.
- *In criminal cases for which the punishment is a fine or imprisonment up to 7 years:* For these types of cases, if a successful mediation agreement is reached during *prosecution*, the prosecutor has the power to decide to waive prosecution and establish a period of up to 9 months for the offender to complete the agreement; if the offender doesn't complete the agreement during this period the prosecutor also has the power to revoke the waiver and send the offender to trial. If a successful mediation is reached during *trial*, the judge can take it into consideration when individualising the punishment, either retaining it as a mitigating circumstance and reducing the punishment by a third, or choosing a less severe sanction such as probation, waiver of punishment or postponement of punishment.

The Law on Mediation and the new Criminal Code make the distinction between offences for which mediation applies and offences for which mediation does not apply. When the parties come to the mediation office, however, the mediator does not know what the legal classification of the offence will be, as this is first established by the prosecutor and it can change during trial. Also, the mediator will rely only on what the victim and the offender will tell, as the police, the prosecution and the court never sends information about the case to the mediation office. So, the mediator will actually mediate a conflict between two parties, conflict that may or may not be an offence for which the successful mediation agreement will affect the criminal process. It is up to the prosecutor or the judge to decide when and in what conditions the successful mediation agreement will be taken into consideration.

1.4 Specific aspects regarding initiation of RJ from the professionals' point of view

It is important to note the fact that most of the quotes highlighted in this section depict the situation in Romania prior to the coming into force of the new Criminal Code, although not much has been changed since that time. Initiation of penal mediation in Romania is still low, but much hope was generated among professionals with the new legislation.

The main role in the process of referring criminal cases to mediation is given to the judicial bodies, meaning that police officers, prosecutors, judges, and lawyers have a duty to let parties know that mediation is available. Parties may then choose a mediator's office by consulting the Mediators' Registry published online by the Mediation Council (www.cmediere.ro) or available in courts. Most courts also have information about mediation posted on their websites. Some courts in Romania also reserve a room for a so-called 'on duty mediator,' where mediators take shifts to provide parties with information.

Regarding the role that judicial bodies play in the referral process, Mr. Mihail Brînzea¹⁷ says that lawyers are also a useful source for referrals. He tries to involve the police and courts, but states that it is difficult. Rather, 'lawyers remain our best friends', he says. The same point is made by Mr. Constantin Asofronie¹⁸, who says that parties usually hear about mediation from the lawyer, and adds that sometimes parties also hear about mediation from 'someone in the family that had a similar problem'. When lawyers understand the advantages of mediation for their clients, they will propose to the parties that they should opt for mediation rather than going to trial. Unfortunately, there are not too many lawyers that understand the advantages, though their numbers are increasing. One example of a lawyer who supports mediation in Romania is Mr. Adrian Doru Zamfirescu,¹⁹ who advises his clients to engage in mediation when he believes they are able to find a peaceful solution through such means. He states,

'My idea as a lawyer is that I want to solve cases as swiftly as possible and in the interest of the client that hired me, and not to delay.'

¹⁷ Mihail Brînzea is an authorised mediator, with a private office in Bucharest.

¹⁸ Constantin Asofronie is an authorised mediator, with a private office in Galați.

¹⁹ Adrian Doru Zamfirescu is a lawyer with a private office in Bucharest.

As mentioned previously, according to Mr. Zamfirescu, parties tend to first hear about mediation from lawyers. There are cases, however, where his clients already knew about mediation, often because they heard about it from the media. The system can be improved further by implementing a mediation office in all courts and informing the courts that they can avoid congestion of too many trials by increasing mediation through these offices. He is also convinced that compulsory information sessions would be useful. Such a session would allow the parties to be informed about the advantages of mediation and increase their likelihood to participate.

The issue of using compulsory information sessions in order to increase the number of referrals to mediation was highly debated in Romania in the past year. Such sessions provided by mediation offices free of charge were introduced as compulsory for certain types of civil cases in February 2013, but were declared unconstitutional by the Romanian Constitutional Court in May 2014 because they violated the fundamental right of access to justice (as mentioned in the Decision of the Romanian Constitutional Court no. 266 from May 7, 2014, published in the Official Gazette on June 25, 2014). Compulsory information sessions were supposed to be introduced also for criminal cases together with the coming into force of the new criminal legislation in February 2014, but the article from the Law on mediation that was stipulating its introduction (art. 60¹, para 1, point g) was repealed in August 2013 by the Law for the implementation of the new Criminal Procedural Code (art. 84, para 5 of Law no. 255/2013). After long public and semi-public debates, the compulsory participation of parties in information sessions regarding mediation and its advantages no longer exists in Romanian law, for both civil and penal cases. The decision to participate in information sessions about mediation and to enter mediation now rests entirely with the parties.

Besides lawyers and information sessions provided by mediators, judges, prosecutors and police officers also represent a link between parties and mediation offices. The obligation of these judicial bodies to inform parties regarding their right to appeal to a mediator is stipulated by both the Law on Mediation (art. 6) and by the new Criminal Procedural Code (articles 107, 108, 111 and 83). Informing parties becomes compulsory when parties are heard for the first time and only for offences for which a complaint is needed. As Judge Cristi Danileț²⁰ notes, however,

‘These obligations, in practice, judges don’t apply. And besides, they don’t even have an interest [in applying it], they don’t show any interest today, as the role of penal mediation will increase only after February 1, 2014... But from my own point of view, informing parties should be done for all types of offences, not only for [complainant offences]. Because if in the case of a simple offence the parties go to mediation, than the trial is suspended (which helps me as judge so theoretically I have an interest in sending parties to mediation). In the case of more serious offences, the trial will not be suspended if parties go to mediation, but I will be

²⁰ Cristi Danileț is Judge and member of the Romanian Supreme Council of Magistracy. He is a promoter of mediation in Romania.

able to take into account the mediation agreement when I decide if a sanction is needed or the type and length of the sanction.'

As of February 1, 2014, there is a new requirement to inform parties in writing. This is due to the fact that there are several rights that need to be communicated to the parties – one of which is mediation – and in order to help them remember them all some sort of proof must be provided. It is an obligation of the judicial body to provide a 'proof' in writing, with all rights enumerated and the party's signature. Unfortunately,

“The risk will be that it may become too formalised, such as needing a signature and that's it, the process goes on. The prosecutor, the police officer, the judge have to become interested – 'Look, see? Among these rights there is one that says you can go to mediation. Your complaint is eligible for mediation. So, go first and talk to a mediator.' For this to happen they need to be interested. So, the risk as of February 1 is for this form to appear and nothing else.”

The impact of this stipulation, however, is still unclear.

According to Mr. Danileț, the information that the judge provides is general. It does not specifically refer to the case. In his case, he underlines the advantages of mediation. For the offender this includes the possibility of not being sentenced, while for the victim the main advantage is that the damage caused by the offence is recovered faster when compared to the trial. Furthermore, mediation will solve the matter more quickly. The procedure, however, is not free while a criminal trial will not result in any costs for the parties. Mr. Danileț does expect that the parties will give some type of answer regarding their decision for participation in mediation. This is because there would be no point in starting to analyse a case if the parties anyway want to engage in mediation. Therefore, suspending the case if requested is possible if the offence implies the need for prior complaint. The parties, however, may also ask for the possibility to think about their decision. In this situation, parties will have roughly three to four weeks to decide – the length of one term of the hearings.

An important problem that is hindering the initiation of the mediation procedure by victims and offenders is the lack of knowledge regarding mediation and its advantages by the referring bodies, namely by police officers, prosecutors and judges. This is exemplified by Mrs. Andreea Răduț²¹, who explains that information received by victims and offenders about mediation from such judicial bodies is often incomplete and may even be erroneous, as police officers, prosecutors and judges do not know the exact steps of the procedure when parties come into contact with the mediation office. Actions against this problem have been taken. For example, at the end of May 2014 the National Council of Magistracy launched a three year project called 'Mediation for judges and prosecutors,' financed through the Norwegian Financial Mechanism, which aims to increase the knowledge of such judicial bodies regarding the mediation procedure.

²¹ Andreea Răduț is an authorised mediator, with a private office in Bucharest.

Regarding *the best moment* within the criminal process for offering mediation to victims and offenders, opinions are divided. For example, Mr. Mihail Brînzea states that the best moment is prior to starting the criminal procedure. This is because once the procedure has started, the victim is publically exposed and may face unwanted consequences of the trial. Mr. Brînzea furthermore believes it is more important to provide correct information. The source of this information (i.e., restorative justice practitioners versus legal authorities such as the police) is not relevant. On the other hand, Judge Danileţ states that informing the victim or offender about the possibility to enter mediation multiple times during the criminal process is not necessarily an invasive strategy. According to him, if the information comes from the judicial body, it might provide the victim with enough motivation to agree to mediation. As was noted, cases going to mediation often include those that need a complaint of the victim. If the victim did not do so before, he or she has another opportunity to come back to continue with the complaint. In fact, with regard to it being invasive, Mr. Danileţ states,

‘No, on the contrary. I had cases where I was able to reconcile the parties by being harsher, more authoritative. For example, in cases of assault or using strong language during holidays, if I told them that it is not acceptable in the small town where I was judging, for parties to quarrel during Easter or Christmas time, and that it would be best to reconcile, and I would be extremely firm telling them that they have five minutes to go outside and to get along, in 90% of the cases they would come back saying that they came to a resolution. Only because I was firm and gave them 5-10 minutes. The community being smaller, the people knowing each other, the authority of the judge being higher, the firmness as well, than they would be more tempted to come to a resolution [agree to mediation].’

In fact, even where parties may show signs of uncertainty of anxiety, Mr. Danileţ adopts a strict demeanor.

‘I tell them that I said so, go to a mediator, we have nothing to talk about yet. It all depends on how firm you are. If I see that they didn’t quite understand what it is all about... I try to oblige them to go to mediation, but without insisting, it’s a question of attitude, of firmness. In the end you are an official body that has to decide the resolution in a conflict in a way that is not pleasant for at least one of the parties, the defendant will have a criminal record. Meaning that you have to tell them straight forward that he or she risks having a criminal record. It’s better to go there [to mediation] and maybe in the end you come to a resolution... I can suggest to them this so firmly that they will understand the need to go, the judge obliged them to do so, it’s something important, so we go.’

The procedure in Romania does not allow for mediators to be proactive in contacting parties. While this strategy is commonly used in other European countries, the privatised nature of the Romanian mediation structure does not allow for such an intervention. Mrs. Andreea Răduţ believes that this, however, is not necessary in Romania, stating,

‘This [proactivity] is not a good option. Each court has an information point where interested parties can find out what mediation is, details on the steps of the procedure and a Registry with authorized mediators.’

Victor Constantinescu and Mirela Ghiță²² also don’t believe that the mediator should recruit participants by going to court. The referral bodies, however, do need to become more active, mostly because the level of the public’s general knowledge about the existence of mediation is very low. They state,

‘This is why it is important to inform citizens regarding the status and role of mediation through all legal means possible such as mass media (written press, radio, TV) and persons working in the judiciary. All persons working in the judiciary should have the responsibility to guide interested parties towards solving their penal conflict through mediation.’

Taking the stipulations of the current law into account in Romania, it is unlikely that the mediators may become more active in ‘recruiting’ participants. Parties are informed about the possibility for mediation to solve their conflicts from the judicial bodies and only then will they decide if they choose to follow such a path and subsequently locate a mediator. As long as Article 6 of the Law on mediation is respected, then there should be no problems with the legal authorities telling victims and offenders about the existence and the general advantages of mediation – in such cases, they will be informed on a minimal basis. The duty to thoroughly inform the parties on the particularities of the mediation procedure applicable to their case will lie with the mediator, if the parties choose to come to an information session.

Mrs. Elena Ionescu’s²³ strategy is to inform all persons around her about mediation as a method for dealing with conflict. In general, parties go to her after being recommended to do so by former clients or lawyers of other persons that know her as a full time mediator. She never recruits clients from court, and most clients go to her before they reach the trial phase. She never sends letters but rather comes into contact with the parties at information sessions, where she is often the first mediator that they meet. The parties that go to her office have been informed about mediation by the professionals that they have previously had contact with. She usually arranges prior discussions between herself and referral bodies, during which the referrers are told about mediation and will generally understand the procedure. Mrs. Ionescu commented that she has not received any cases where the parties were misinformed. This clarity is also due to the professionals not going into detail, but rather allowing the mediator to provide more detailed information during the information session. Regarding the information session, she comments,

‘I think that in order to hold a good information session, in addition to a solid theoretical background, mediators should have an inner openness towards people. I believe that you do not need a special educational background [meaning graduate diploma] in order to

²² Victor Constantinescu and Mirela Ghiță are authorised mediators, with a private office in Bucharest.

²³ Elena Ionescu is an authorized mediator, with a private office in Bucharest.

communicate with people. For me there is no difference in how I explain the mediation procedure to a potential client or to a friend. This is what I also try to explain to new colleagues that ask me how I prepare myself for the meeting with a new client. I tell them that I am as stressed as I would be as when preparing to meet on a Saturday afternoon with my best friend.'

Still, even if mediators in Romania are not allowed by law to be proactive, they play a very important role in the initiation of the procedure. When parties are sent to the mediation office by judicial bodies or lawyers, they have already been told that the conflict may be solved through mutual agreement. The parties, however, do not have more information about the mediation procedure. Rather, the mediator has the task of discussing how the procedure will look, what the advantages are and what the effects of the agreement will be.

Once a case has been referred, parties can come together or separate. When only one of the parties approaches the mediation office (either the victim or the offender), the mediator can be mandated to contact the other party in order to invite her to attend an information session. The party that first approached the mediation office can also choose to contact the other party in order to invite him or her to mediation.

When mediators are mandated by one of the parties to contact the other party, the law stipulates that they are obliged to send a written invitation, via mail with a confirmation that it has been received. There is no standard letter and each mediation office has its own model. But there are cases, though seldom, where the mediator has to go to personally invite the parties. Means include phone, e-mail and house visits, though Mrs. Andreea Răduț does not make use of the latter option. Mr. Mihail Brînzea also does not recommend house visits in order to give the written invitation. The law however is very general, only stating that the mediator can take any legal steps that are necessary in order to reach the parties.

Mr. Adrian Doru Zamfirescu, a lawyer, further commented on the content of the letter, which should include from his point of view explanations regarding what can happen if mediation is not accepted by the victim or the offender, in order to convince parties to participate in mediation. He states,

'... those letters sent by companies that recover debts. They usually state that if you do not willingly pay, you will suffer the following consequences. You should explain what the supplementary costs are if the party doesn't want to go to mediation. The person should know what the supplementary costs are if he doesn't accept to go to mediation. Both the advantages and disadvantages. Advantages such as the fact that the conflict doesn't become public, the mediator is obliged to maintain confidentiality.'

Regarding preparation for the information session, it is important to first prepare the space where the information session will take place – in Mrs. Ionescu's case this is no longer necessary as the office where she conducts the mediation has been arranged so that it provides clients with a warm atmosphere, and is welcoming and secure. Mrs. Ionescu furthermore

believes that moments of introspection are needed every day, since the mediator should be a balanced person. It is further recommended that mediators have some psychological knowledge.

The first meeting that the mediator will then have with the parties to inform them about the procedure is conducted in the mediator's office, partly to guarantee confidentiality. The main points made in the offer include the principles of mediation in addition to the obligations of the mediator and the parties. The advantages of mediation should be told, but not exaggerated. According to Mr. Mihail Brînzea, it is particularly important to discuss the obligations of the mediators:

'Most participants of mediation assume that the mediators, just as the judge, have no obligations and can do as they please. When they realize that the mediator also has obligations, their perception changes favourably towards mediation.'

Mrs. Andreea Răduț summarised how to begin the first meeting with the parties:

'Before anything, you have to have the consent of the victim and of the offender to participate in the information session. After these, the information stage includes:

- *listening to the parties to gather basic information regarding the conflict;*
- *analyse the conflict (is it eligible? what type of conflict? what are the causal factors?);*
- *informing parties on the specific advantages mediation would have in their case, on the procedure and the consequences of the mediation agreement*
- *giving them time to decide whether they want to go through mediation*

The main points made in the offer by the mediator to victims and offenders within an information session include the definition of mediation, the rights of the parties, the role of the mediator, confidentiality aspects, and the particular advantages that mediation has in their case. Most important is to help the parties understand how they will benefit financially, as mediation is not a free service. Efficiency may also be increased, as the conflict can be solved in a shorter period of time when compared to court proceedings. Furthermore, according to Mr. Victor Constantinescu and Mrs. Mirela Ghiță,

'Mediation offers flexibility: traditional ways of solving the conflict are always available if wanted, mediation sessions are scheduled according to parties' interests and not according to the court's needs as it is traditionally done... confidentiality of the mediation process is guaranteed by law, removing any possibility for a private matter to become public – everything that is said and shared during mediation is confidential.'

To motivate the parties despite the (possible) disadvantages of mediation (e.g., no longer having the option for repressive justice and financial restraints), it is important to emphasize the benefits. Most important is to explain the direct advantages of mediation. These include financial compensation (the victim), remaining free (the offender), quicker solution than

going to trial, the possibility to maintain confidentiality of the conflict, and solving both the civil and the criminal aspects of the case at the same time. To help others better understand the offer of mediation, *'mediators should exchange experiences among each other,'* suggest Mr. Victor Constantinescu and Mrs. Mirela Ghiță.

When asked about informing the parties of the disadvantages or risks of mediation, and the possibility of 'scaring them off', Mr. Mihail Brînzea gave the following response,

'I just talk. Risks and advantages depend on parties' perceptions, which in turn depend on many factors such as educational background and life experiences. I personally remain neutral to the parties' patterns of behavior (the 'scaring off' mentioned in the question) during the informing session. There are persons that want their pain to be emotionally and behaviorally exposed, and the mediator's presence represents the chance for someone to learn about what happened to them. It may also be that a disadvantage is seen as an opportunity by one of the parties, for example the fact that mediation suspends the criminal case.'

There are differences between how to approach a victim and how to approach an offender. Again, Mr. Mihail Brînzea stressed how the public nature of the trial could be detrimental to the victim. Therefore, the most specific aspect that must be highlighted according to Mr. Brînzea is that the victim is not exposed to the general public and to different interpretations that would bring blame, stress and unbearable stigmatisation. In what concerns the offender, he argued that the most important aspect concerns the chance to show remorse and repair the harm in the terms of the victim and not in the terms of the law. Mr. Constantin Asofronie, on the other hand, differentiates between informing the victim and the offender from another point of view. He states,

'I usually treat the offender colder and I am shorter with him. I just tell the offender that if the victim will understand, we'll first have a conversation so as for the victim to know what she is getting into. In order to inform the victim I talk maybe double in time, so as to be sure that she understands that this is not a trick. I had the sensation in one or two cases that the victims feared us, like we are from the police or the prosecutors' office, so they weren't talking. So I had to build the trust slower, step by step. Because the other party [the offender] already knew something, that the mediator can arrange with the other party to get away with a smaller penalty. The victim doesn't understand why the offender will not be punished at all. And after you explain to the victim that she can gain something and that she should not be interested only in the punishment of the other, that she should also be interested in covering some of the damages caused by the harm... So, in principle, informing the offender will be shorter, while the victim has to be convinced that mediation is no trick, that in fact she can gain something out of it and that by using the traditional process she risks not to even recover the damages. I will insist with the one that has less information.'

The points that usually convince parties to agree to mediation are the advantages mediation has in their particular case, such as confidentiality, flexibility and swiftness of the procedure.

Despite this, uncertainties and anxieties may arise during the offer. Where anxiety or uncertainty arises, it is possible to hold separate sessions with the victim and the offender (as stipulated by art. 60 of Law on mediation). On a practical level, Mrs. Elena Ionescu, for example, maintains that it is important to understand what fears the parties may have, and to deal with them accordingly. The threat of angst can be diminished by using reason, especially for those mediators who have some psychological training, to be able to detect and diffuse anxieties. Mrs. Andreea Răduț, on the other hand, gives parties time to think when they show signs of anxiety or uncertainty. The decision to enter into a mediation procedure cannot be taken hastily. The moment of entering the mediation procedure will be delayed until parties are clear on all points (i.e., willing to enter, understand the procedure and its legal/personal consequences). She also advises parties to consult with a lawyer before agreeing to participate.

Furthermore, the language used should be understandable to the parties so that they are fully informed. It should also be neutral, meaning that there should not be any labels, attributes, or compliments towards either the parties or their lawyers. Mrs. Andreea Răduț, for example, will not mention the name of the crime (e.g., burglary or assault), but will rather use a more neutral term. Also, Mrs. Ionescu Elena highlights the importance of understanding the power of non-verbal language, both as a tool to be used by mediators and as an indication of the state of the victim and offender. She says,

‘... language is of very high importance, but also the non-verbal language can offer many clues regarding the parties’ state. I believe that in penal cases, the most important aspect is for the mediator not to treat the parties as a victim or offender, but as people that have a conflict who, with the help of the mediator, can cooperate to find a solution to their conflict.’

Also, coercive measures are unacceptable. Mr. Mihail Brînzea told about one example where considering the parties own needs would suggest that persuasion is pointless, as a victims’ needs may anyway benefit from the criminal justice route. In one case, he informed the victim about the advantages of mediation, including the fact that it is confidential and they can recover the expenses they had with psychological counseling. The victim responded that she has enough money to pay for ‘thousands of hours of psychotherapy’ and concerning the matter of confidentiality, the press already knows. The victim therefore insisted that the offender should prepare for trial and ‘not stall by using mediation.’ Therefore, when convincing parties, it is important not to violate their interests.

Mrs. Andreea Răduț makes an interesting suggestion in response to the level of acceptable coercion. While she does not agree that such a behavior is acceptable, she does insist persuasion is appropriate, referring to a ‘theory of risks’ and following almost the same line as that highlighted earlier by Mr. Adrian Doru Zamfirescu when discussing what should be included in the invitation letter,

‘You have to make them think about what would happen if they do not use mediation to solve the conflict – ‘What would happen from now on? Prosecution will start...’. You explain what

the risks during trial are, what the lawyer can do, what the judge can decide. You can discuss this with them, in order to show them the situation from a different perspective, one they weren't thinking about. This would be a persuasion technique.'

Where more serious offences such as rape in simple form or domestic violence are involved, there is a possibility to allow parties to come to a resolution indirectly. In these cases, parties are informed about this opportunity, and told that it is not compulsory to meet face-to-face. For example, Mrs. Elena Ionescu recognises that when dealing with victims of sexual violence and informing them about mediation, the mediator must understand that these persons opt for this alternative in order to be listened to. This is one of the disadvantages of going to court, the fact that the victim must prove that she is the victim. She states,

'As a client once confessed to me about her experience in court, the lawyer, the prosecutor and the judge talk, and none are interested in how this person feels. During mediation, a person is present, not a victim, and she must be treated as such.'

2. Ireland

2.1 Background of RJ

In an effort to reform the Irish justice system, there has been a call for alternative community sanctions, in addition to a need for greater consideration for the victim's interests (McCarthy, 2011). Due to such changes, in addition to influences from international developments, restorative justice in Ireland has gained greater attention in the last years. In 2007, with the benefits of restorative justice in mind, the Minister for Justice, Equality and Law Reform appointed a National Commission on Restorative Justice. The Commission published its report in late 2009 which included many positive proposals and recommendations to encourage and develop further use of restorative justice programmes and interventions within the Irish criminal justice system.

2.2 Legal basis

While there would appear to be deepening support amongst legislators, judiciary, statutory and voluntary criminal justice agencies, currently there is no legal basis, legislation or regulations with regard to restorative justice in adult cases.

The option for restorative justice measures in juvenile diversion has existed in the Children's Act (2001). This legislation was introduced to deal with the care, protection and control of children. The Children's Act provides a new framework for meeting the needs of offending and non-offending children. The key objectives of the Act include a juvenile justice route, which emphasises restorative justice and diverts young offenders from Court, from conviction and from custody. While there is no explicit reference to restorative justice, the Children's Act does facilitate the use of such practices, for example through family group conferencing. The Act explores the possibility for providing young offenders with the opportunity to accept responsibility and make amends to victims. This provision is applicable to individuals under

the age of 18. The Act is based on the principles that children have rights and freedoms before the law and should be given the opportunity to participate in proceedings. Those children who accept responsibility should be diverted from criminal proceedings. Furthermore, it encourages the consideration of all other possibilities before resorting to incarceration. Section 26 and Section 29 of the Act regulate the role of the victim in formal cautions as well as in family conferences, respectively. Section 78 regulates the probation-led restorative conferencing scheme.

2.3 Restorative justice interventions and referral procedures and legal basis

Restorative Justice Services (RJS) is an NGO established in 2000. It is funded by the Department of Justice via the Probation Service and only deals with adult clients, aged 18 and over. RJS offers 'court referred pre sanction' Victim Offender Mediation (face-to-face, including shuttle, proximity and by letter). In 2004, in response to the low number rate of victim-offender court referrals and the recognition that there were more offenders wishing to take part in restorative processes than victims, the Offender Reparation Programme was developed. In this programme the offender meets a 3 person panel which is chaired by a member of the community. The offender agrees to a contract of reparative actions.

In the pre-sanction court referred victim-offender mediation model, the offender must plead guilty or have been found guilty and accepting the finding of the court. Then, the proposal for mediation may be put forward by any of the relevant parties in the case including the judge. When a formal decision is taken by the court to refer for restorative justice, the judge then adjourns the matter for an agreed period and refers the case to RJS. The judge always has the final decision on whether a case is referred.

The victim and offender are contacted separately and are informed about the Court referral, how the restorative process works, and what options are available in terms of participation. This process of contact can involve correspondence, telephone calls and meetings. If both parties agree and the service believes the appropriate conditions exist, an agreed form of mediated/facilitated communication can take place. A report is then provided to the Court before sanction is decided. If a victim declines to participate in victim-offender mediation, the offender may be diverted to the Reparation Programme.

In the pre-sanction court referred Offender Reparation Programme, similar referral criteria and conditions exist as is the case in mediation, where the proposal for referral to restorative justice may be put forward by any of the relevant parties in the case, including the judge. The judge adjourns the matter and has the final decision on whether a case is referred.

The offender meets with a three person panel, consisting of a representative from the community, the probation service and the Garda (police officer). At the first panel meeting, the context, effects and implications of the offence are addressed. The panel and offender agree on a contract of reparative actions, which will include certain reparative, practical and reflective actions. Where a judge has made a direct referral to the reparation programme

(rather than first making a victim-offender mediation referral), victim issues are addressed in full and the offender's reparation contract may also involve an action to participate in a victim-offender mediation process *or* a meeting with a victim advocate or representative. There may also be letters of apology, voluntary work in the community, attendance at alcohol awareness, anger management, actions related to education and training. On completion of all or part of the actions (depending on the time frame provided by the court), the offender meets with the reparation panel a second time for a review of the work. A report is provided and the offender's level of completion and cooperation is taken into account in the sanction. If further time is required to facilitate completion another adjournment is requested.

The reports to the court provided by RJS for the respective programmes do not contain any recommendations with regard to the matter of sanction. However, the principle of mitigation is clearly established and agreed by all participating courts. That is, the judge will take into consideration an offender's efforts to participate and make some amends for their behaviour. However, there is no set scale of mitigation; every judge will make their own decision based on a number of factors, including, the offence, the circumstances of that offence, previous criminal history, and the report from RJS.

The Children's Act 2001 provides for court referred Family Group Conferencing for young people under the age of 18. This process is managed and co-ordinated by the Probation Service – Young Persons Probation and is also court-referred. The service coordinates and leads the Family Group Conference model. These conferences discuss the juvenile's actions and the consequences on the community, the victim and the youth's family. If the court orders conferencing, the victim will be contacted by the probation service. There is also an aim to formulate an agreed action plan to prevent the young person from committing crimes in the future. During the procedure, introductions are made, followed by an explanation of the consequences by the victim. While victims are strongly encouraged to attend and often do, this is not a requirement for the conference to take place. Together the youth and his or her family then make an action plan to respond to the victim, which is later discussed together with the remaining conference participants. The court may then approve the plan.

2.3 Specific aspects regarding initiation of RJ from the professionals' point of view²⁴

As outlined above, the adult models of restorative justice available in Ireland are court referred. The main restorative justice organisation, in this case RJS, does not have the resources to provide full time representatives in Court. The referral is initially discussed and agreed by the judge, defence solicitor, a court duty probation officer and offender. The referral information is then sent to RJS by the probation service court duty officer.

²⁴ The use of pseudonyms was agreed for some of those who responded. Where pseudonyms are not employed a first name and surname is provided. Where pseudonym is employed only a first name is utilised.

Maria (pseudonym) has been a mediator with RJS since the service was established. *“Both of our restorative programme models are court referred. Referrals are made in Court by the Judge. The referral is passed on to our service and contact is then made with the participants. The offender receives an information leaflet in Court when they are referred and then I write to both the victim and offender offering further information and inviting them to meet separately with me to discuss the process and explain what it is about.”*

Elaine (pseudonym), a mediator with a restorative justice NGO in the south west of the country described a similar court referral process,

“Both parties receive a letter from the service which is followed up by a telephone call with a view to meeting in person (separately). We explain in detail what has happened in court and address all the questions an offender or victim might have. In the context of the offer this can usually mean that the offender is aware of the offer first, as many victims do not attend court. While this slightly skews the equality of the timing of the offer, once we receive the referral we start what is effectively a new process.”

Restorative Justice is still a relatively new concept in Ireland and a lot of time can be spent with victims and offenders explaining what it means. Patricia (pseudonym) is a mediator with Restorative Justice Services,

“It is important to go through all the information again and again to ensure there is a full understanding. For example, the previous conversations the offender may have had in court with a judge or solicitor could have been rushed or the person may not have been in a state to take in all the information.”

A feature of the Irish pre-sentence court referred process is that the victim and offender may end up having a number of conversations with different actors within the justice system with regard to participating in a restorative process. A solicitor may have mentioned restorative justice to his client. A Garda (police) might mention to a victim of crime that the judge hearing the case is known to refer cases to restorative justice. When the case is called, the judge may put a case back for a 2nd or later calling and ask a court duty probation officer to ask the parties to consider participating in a restorative process. When the matter is called again, the judge may possibly then talk directly in open court to the parties about restorative justice and why it might be appropriate.

Consequently, in the course of one day, a potential participant may have heard a number of very different perspectives on restorative justice before they even meet a representative from the mediation service. This has potential for some confusion in that the solicitor, the guard, the probation officer and the judge may have different understandings or have over emphasised one particular aspect of the restorative justice referral or process. For example, the defence solicitor may have led the offender to believe a particular beneficial court sanction will be *guaranteed* if they participate in RJ, but this may not necessarily be the case as all judges have their own way of deliberating. The judge may have talked in court about

restorative justice in the context of the referral being something the offender *must* do to show his or her remorse to the victim. This may leave both parties feeling they are obligated to participate, which is not the case.

Maria stated that she does not “... *see this as a fatal flaw. We cannot control what every judge will say in open court or what a solicitor will say in a private conversation with a client. There are many stakeholders within the criminal justice process who have a full, correct and common understanding on the restorative process...we know that many of the court process stakeholders who come into contact with victims and offenders are providing information on restorative justice that is correct. So we don't see the issue of multi-party approaches as problematic. In fact, sometimes it can make our job easier to explain the process to the participants. When it is obvious or becomes apparent that there has been some misinformation we quickly address this and clarify for the parties exactly what is involved and assure them that their participation is voluntary.*”

While we know there are many legitimate reasons that motivate a person's desire to participate in a restorative process, many of the mediators in the Irish court referred model are conscious of the undue influence or burden a court referral might carry in the mind of a client. Patricia believes that the voluntary nature of the process is an important principle that must be upheld and stressed to both parties,

“Judges are a central piece in the referral process and while it's a very positive development that more and more judges are considering restorative justice in the context of their sanction we need to ensure that neither victim nor offender feel under pressure to participate or feel coerced by the fact that the judge may have been the instigator and/or formally agreed to the referral.”

Monica Egan, a mediator with RJS for approximately 10 years concurred,

“It is important that victims and offenders understand that they can refuse to participate. I explain to them the process in detail and how it works. I try to ascertain whether they really want to go through with it or if they are participating because they feel under pressure. People should not feel coerced into taking part in restorative justice. The process is about giving decision making power back to those directly affected by the offence so coercion is completely at odds with this.”

Elaine does not believe that coercion is acceptable, *“Restorative justice is a process that calls for personal responsibility and decision making power to be restored to participants. I do not believe that coercion fits with those principles. We recognise that some of the victims we work with do not wish to meet the offender. In those circumstances the most important thing is that they do not feel coerced into doing so but by inviting them to engage we have created an opportunity to consider their options and that they feel empowered rather than pressured.”*

The assessment of a person's (victim or offender) capacity and ability to understand and engage in a restorative manner is also a key piece in the context of initiation. Elaine expressed the view that, *"both of the central actors must have a good sense and understanding of the restorative approach and of their position and their role in the process. Before discussing the possibility of a restorative justice encounter I meet with the offender to get a sense of their attitude to the offence and assess his or her capacity to engage in a restorative encounter. I also meet with the victim to assess their needs and expectations in relation to the process. This contact and assessment is vital before any discussion takes place in relation to an arranged restorative justice encounter or dialogue between both parties."*

Patricia also noted that the capacity and ability of a client (victim or offender) to grasp or understand the restorative process can be influenced by the language and vocabulary used by mediators and she relates this directly to the issue of accessibility,

"As mediators we must always be very aware of the language we use, straightforward accessible communication is key. It is important that we get to know the victim or offender a little and that we feel they understand what is going on before using what might be termed 'professional jargon'. We must use words people understand but which are still true to the process. There is no point making people believe the process is one thing when it is another, so plainly speaking, sensitivity and honesty are important. There is a danger that people will be frightened off by mediators using language that is completely alien and inaccessible to them."

Working with victims and offenders within the restorative and mediation context can be challenging. Mediators must present themselves as neutral whilst ensuring that the roles of the two central actors are clearly acknowledged and accepted, i.e. one of the actors is the person who has been harmed, the other actor is the person who has caused the harm. Therefore the approach in the context of the offer to either side must be given careful consideration.

In the context of the initial contact, RJS sends a letter followed up by a telephone call. This happens whether or not a victim or offender has been in court. It is the experience that the parties can often be unsure, confused or anxious with regard to what happened in court. The letters utilised by RJS provide as much information as possible and endeavours to clarify what has happened in court, why the judge may have made such a decision (to refer), and what will happen next. It also explains in simple terms what the restorative justice approach is and how it is different from the court process.

With regard to the letter, Patricia noted how there is a lot to say in the first letter, but it should be kept as short and informative as possible.

"A 2 page letter would probably be overkill and confuse the reader. So we condense into one page and hope there is enough information and assurances to keep the parties interested to hear more and also ease any anxieties they have about the process or about receiving a

telephone call. We customise the letters depending on the circumstances of the offence and the letter to the offender will be different to the letter that the victim receives.”

It is the view of RJS that the approach to the different parties cannot be based on one template. There is a need to approach every case and client based on the information that accompanies the referral. A different approach is also required for the victims and offenders.

“With victims we talk about how restorative justice can offer the opportunity to become a central figure in the process when they may have previously felt isolated. They will have an opportunity to be heard, to have a say in what happens next and to receive information on outcomes. We discuss benefits that may have been experienced by victims who have engaged in restorative justice such as receiving an apology and feeling that the apology was sincere, a feeling that the offender was held to account, less anger and help coming to terms with the offence. There may also be benefits in some cases in the sense of having monetary loss restored or understanding that the offender has taken responsibility for the harm caused by apologising or undertaking some form of reparation” (Patricia).

The offender has the opportunity to ‘put things right’ for the person who has been harmed and to show that person and the judge that you (the offender) are a good person.

“I ask them (the offenders) to put themselves in the shoes of the victim. To think of how they would feel if the offence happened to one of their family members and what they would like the offender to do in that scenario. I also speak about how the offence has affected them (the offender) and encourage them to talk about how they are now perceived by their own family friends and the community. That this is an opportunity for them to turn things around and show everybody that they want to put things right in so far as possible” (Elaine).

There are many challenges for those working as restorative justice mediators within the court referred process. The timing of the offer or the referral can be a significant factor. One to three years may pass before a case reaches a court process or has come to the end of all the hearings and has reached the sanctioning stage. The victim may have moved on and put the whole matter behind him or her. The offender may have also made many positive changes, now *“being a different person between the time of the offence and the actual court hearing [he may have grown up].”*

Patricia explained how the service was enabled to work earlier in the process, it could offer much more to victims and offenders. They receive cases directly from the judge in court. Some time may have already passed since the offence occurred. If the case could be referred by the police the restorative justice process could commence earlier and possibly deal with the matter without the need for prosecution, bringing a swifter response and potentially swifter reparation for victims.

Elaine raised what she sees as a potential issue of perceived bias by victims who may not be present in court and which could influence their decision to participate. The referral is made

on the basis of the offender in court. The victim is not privately or previously consulted in relation to the referral. This can create the perception that the process is offender focused. If the restorative process was initiated earlier, before prosecution, it could be offered to both the victim and the offender at that point and seek the consent and engagement of both. This may lessen any feelings the victim may have that the process is focused on the offender. Unfortunately in the model used it is not possible to contact the victim of the offence before the matter has formally been referred by the Court.

As noted, the Children's Act 2001 also provides for Garda Diversion - Restorative Cautioning. These formal cautions are administered by a Garda (police officer) to young people under the age of 18. Before any young person is brought before the courts they must first be considered for such a caution. The decision to caution or prosecute is made by a Garda Superintendent. Garda Michael Mulhall explained,

“Juveniles are referred automatically for diversion once the decision has been made not to prosecute. I contact the offender and the person who has been harmed’. When the offender and the victim have been spoken to [by the facilitators or referrers] separately about the incident, then an opportunity may arise when you think is a good time to bring up the idea of meeting or some form of dialogue.”

In the diversion programme, the young person receives a Garda caution either with or without twelve months supervision. Under certain circumstances, the victim is invited to attend the caution, resulting in a restorative caution. In his preparation for the restorative caution, Garda Mulhall will make an assessment of the needs of the victim that is attending,

“From my experience a victim will always have a set of needs and aspirations which we must try to meet within the process. They will need to feel safe, they want to be heard, they usually want to be reassured that the offender will not offend again, they want to feel that justice has been done.”

Similarly, *“meeting a victim of crime is not easy for an offender and they also need to be supported in the process. As facilitators we have to be thorough when arranging such meetings... there are no guarantees with restorative justice. I trust the process and it usually works. I give no guarantees to the parties but also point out that the offender may not be able to apologise etc. If it's not safe, it won't happen. I have not had to call off any conference as yet.”*

3. The Netherlands

3.1 Background of RJ

Like other European countries, the early stages of restorative justice in the Netherlands can be found within youth justice. These projects that mainly started in the early nineties were conducted in cooperation with the youth justice system (Wolthuis, 2012). In the second half of the 1990s, a practice was implemented to target adult offenders, known as ‘strafrechtelijke

dading’, though this form of restorative justice was eventually eliminated. There have been initiatives within civil society, detention and aftercare (Van Hoek, Slump, Ochtman & Leijten, 2011). The history of restorative justice programmes dealing with criminal offences in the Netherlands would also suggest that there has been a lot of activity in this area in the last 30 years (Van Hoek & Slump, 2011). A lot of these programmes have been in the form of local pilot projects, but some models have persisted and may now be found throughout the country.

3.2 Restorative justice interventions and referral procedures

While there are several programmes currently existing that have restorative features (e.g., meetings within the framework of HALT for first-time offenders where youngsters work towards taking responsibility, or victim awareness), we will focus on those that involve a substantial number of cases including both parties. First, victim-offender dialogues are offered by Victims in Focus (Slachtoffer in Beeld) and are largely in line with victim-offender mediation. Victims in Focus is responsible for the uniform and nationwide application of victim-offender dialogues. Such a practice was initiated in response to the 2001 EU Framework decision, in an effort to provide victims with the opportunity to meet the offender. Unlike many victim-offender mediation programmes, however, the dialogues are independent of the criminal justice system, though if they occur before a hearing the prosecutor may be informed of the outcome. Dialogues may occur at any time, and are used for all types of offences. In the beginning they excluded cases of domestic violence, though this is changing. The crime must also be reported to the police. Referrals to Victims in Focus are largely provided by three main sources: the Dutch victim support organisation, youth probation and child protective services (Van Burik et al., 2010). Other organisations may also refer cases, such as probation and prison personnel. Where victims are informed by victim support and subsequently agree to victim offender dialogues, they will, often together with the victim support organisation, register with the mediation organisation. The mediation organisation will then contact the offender. Similarly, the two offender organisations also have an opportunity to inform the offender about restorative justice, and together they may get into contact with the mediation organisation.

Second, conferencing carried out by the organisation ‘Eigen Kracht,’ has a restorative element, with an aim to minimise the harm caused, prevent isolation of the offender and lower recidivism. Here independent coordinators work to bring together family and others within the social networks of the parties. These conferences are based on the New Zealand model of family group conferencing (Blad & Van Lieshout, 2010). These procedures are often used when youth care is involved. When there is a link with criminal behaviours, these procedures are referred to as restorative conferences, though there is no direct link with the criminal justice system. Also in penal cases, restorative conferences can be used when it is considered to be beneficial to enlarge the network of the ones involved in the (criminal) conflict, both by Victims in Focus or by the court system (see below). Again, a coordinator is responsible for facilitating the dialogue, which aims to address the harms caused and possible means of

restoration. Using open questions, the aim is to provide participants with the possibility to use their own strength and become empowered, utilising their social environments. Shortly after an application is made in youth care cases, a coordinator gets in touch with the family and tries to get others in the social network of the child involved. A similar method exists for penal cases, but there both parties and their networks are approached by the coordinator.

Third, currently in the Netherlands, pilot initiatives are being conducted at the court level, known as ‘mediation in addition to penal law’ (‘mediation naast strafrecht’). Mediation is a part of the criminal justice system, where the result of the mediation may be taken into account by the judge or prosecutor, possibly leading to a decision to dismiss the case. In 2010, 26 cases were handled in Amsterdam, leading to positive results from both the perspective of the parties and the professionals (Verberk, 2011). This number was also limited because while there were meetings to provide information on the pilot, no active policy was pushed for, due to an effort to reduce the prosecutors’ workloads. Because of the positive results, it was decided at the policy level that pilots would be initiated in other areas in the country. Since October 2013 they have been launched in 5 other courts (The Hague, Rotterdam, Breda/Middelburg, Brabant-East and North Holland). Each pilot is conducted in cooperation with the public prosecution and a coordinator from the court system. The needs of the victim are considered to prevail, and therefore a first meeting with the offender is necessary to understand his or her motives for participation. Parents and other members of the victim or offender’s social network may also be included.

Partly on the basis of an obligation of the EU Victim’s Directive 2012, the Dutch Ministry of Justice developed a preliminary (draft) policy paper in February 2013 on restorative mediation in penal cases (*herstelbemiddeling in het strafrecht*), targeting initiatives at several levels, including the police and probation. It describes the way restorative justice can strengthen the position of the victim. Penal mediation aims to give the victim and the offender the possibility to restore the (material or immaterial) harm that results from a criminal offence. It also stimulates the participation of others directly involved, strengthening the social capability of citizens and creating procedural justice. The policy paper considers the possibility of penal mediation as a part of the sanction, but also independent of it. A victim should be able to use mediation in three phases: at the police level, the prosecutor level and judge level, and the level after conviction or a court decision.

Fourth, the province of Maastricht deserves attention for its restorative approach. While it has been stated that the Netherlands lags behind other neighbouring countries in restorative justice schemes (Claessen & Zeles, 2013), one positive feature is mediation in criminal cases as found in Maastricht. Since 1999, cases have been referred to mediation if the sentence does not exceed one year imprisonment (Dierx, 2010)²⁵. Referrals come from the assistant of the public prosecutor (parketsecretaris), but also the police and judges in some cases. Wiel Erens

²⁵ These cases include (simple) assault, public violence, threats, vandalism, causing bodily injury, theft, neighbourhood disputes and some domestic violence cases.

mediates cases as a form of diversion at as early a stage as possible; where a successful agreement is reached, the case will not be prosecuted further. The case may be suspended until the mediation is completed or deemed unsuccessful. If the agreement is not fulfilled within the indicated time, however, the case may again be brought before a judge. While the goal of the mediation is largely outcome-based, most of the procedures are direct, encouraging dialogue between the parties. Recent research on this scheme was positive, finding that of an average of 134 mediation procedures per year, more than two-thirds were successful within an 11 year period²⁶, i.e., resulted in an agreement (Claessen & Zeles, 2013).

3.3 Legal basis

Until recently, no specific laws or regulations existed on restorative justice or mediation in penal cases. Restorative justice was possible in practice, but largely dependent on the individual prosecutor or judge. In 2012, a change in the Code of Criminal Procedure stated that the office of the public prosecutor will arrange a procedure for the police to communicate the possibility for mediation in as early a stage as possible. Article 51h also allows for judges to take the result of mediation into account when deciding upon a verdict. The public prosecutor may also promote mediation after the victim has given his or her consent. More specific legislation on mediation in criminal matters, however, is lacking in the Netherlands.

3.4 Specific aspects regarding initiation and accessibility of RJ from the professionals' point of view²⁷

Similar to the situation in Romania, the main role in the process of referring criminal cases to mediation is given to the judicial bodies; police officers, prosecutors, judges, lawyers have a duty to inform parties about mediation (since article 51h Sv was introduced in 2012).

As noted above, the court in Amsterdam has been running a pilot with mediation in penal cases in 2011/2012. This practice will be continued, as well as in five other courts. Lawyers may take the role of referrers in these kinds of cases. Klaartje Freeke works as a lawyer in a criminal law office in Amsterdam. Therefore, she may refer cases to the pilot projects that are currently being implemented. She herself is involved in mediation, having followed a mediation education, and is slowly convincing her colleagues to do the same. Referrals are lacking because too many people are unaware of the option to use mediation. There are also prejudices among legal professionals that it is a 'soft' option. Klaartje thinks referrals by lawyers are lacking because they often believe mediation has too many risks for the client (e.g. the risks involved in talking to the victim and the fact that a mediator does not have a

²⁶ This number is likely to be even higher since the researchers included those cases that did not reach the mediation stage (e.g., the victim or offender refused to participate) as unsuccessful cases.

²⁷ In the Netherlands interviews were conducted with three mediators from different cities and organisations, and with one lawyer, the coordinator of the mediation bureau in Amsterdam and with a public prosecutor.

right of privilege). If the victim or the mediator should be requested to testify in court, they are not exempt from answering a question, despite a confidentiality clause in the mediation agreement. Another issue is that lawyers do not earn anything during the mediation process as only mediators receive a payment from the Legal Aid Board. Therefore, they will not earn money if they bring the case to court. On the other hand, Klaartje notes how mediation is the cheapest option for society as it is a quicker compared to the criminal procedure that requires time from the public prosecution service and representatives from the court, in addition to lawyers.

Jolien Boeding has been the coordinator of the Mediation Bureau for 7,5 years at the court in Amsterdam. Jolien handles mediation in court, the new pilots currently implemented in the Netherlands, where she estimates that about 50% of the cases are sent from the judge and 50% are sent from the public prosecution service. The Mediation Bureau is contacted when public prosecutors or judges (often the investigating magistrate, *rechter-commissaris*) think a penal case is suitable for mediation. The initiative is thus coming from others and not from the Mediation Bureau itself. Lawyers and parties can also initiate a request.

Jolien starts the process by sending out a written invitation to both parties; if they agree, the next step is to find a mediator who can accompany the process. They work with a list of mediators who have both a mediation certificate and experience in penal cases. Results of a first pilot show that only about one-third of the cases will proceed to mediation, often because people do not react to the invitation for mediation or it is difficult to reach them because of incorrect contact details. The initiation process begins by sending out a letter to the parties, with information about the procedure and the request to call the Mediation Service. There is a general letter and a folder which is used for both offenders and victims. The language of the letter is important and will be adapted if needed.

Janette Kouwenhoven works as a public prosecutor for youth in Amsterdam and was involved in a pilot for youth cases. When the mediation pilot started, she brought in cases, conducting about five herself. Files are sent to the mediation bureau when they are considered suitable. After the offender is contacted and agrees, the victim will be contacted. The public prosecutor is then informed.

Janette comments how it is essential that the accused has declared that he or she is willing to cooperate before proceeding further. In relation to victims the office of the public prosecutor has no direct tasks, unless a victim comes to them directly. Janette believes the best moment to make the offer for restorative justice is in the pre-phase of a court process. It is important that the office of the public prosecutor is involved.

Janny Dierx is a mediator and the co-founder of the Penal Mediation Foundation (*Stichting mediation in strafzaken*). This organisation wants to increase the knowledge (and publicity) of mediation in penal cases, focuses on contributing to the establishment of mediation in penal cases and solid practice and has a country wide network of specialised mediators in the area. Janny deals with conflicts at all stages: pre-police, police, prosecution and court. She wants to

activate restorative processes and give power to people to decide and restore. She works with police, neighbourhoods managers for safety, housing cooperations, local welfare institutions, schools, and lawyers.

Since 1999, Wiel Erens, who works for the office of the public prosecutor in the south of Holland, has been mediating criminal cases in Limburg under the penal mediation model. His philosophy follows that most cases can be resolved between the parties, without the intervention of legal officials. According to Erens, one of the primary reasons that accessibility is hindered relates to (financial) resources. More specifically, the number of employees is limited, both as mediators and those with the task of selecting cases to send to Erens. Furthermore, with regard to attitudes, he refers to the belief that penal mediation is a 'soft' approach. In reality, however, he himself believes this is not true; rather, such a procedure is emotionally confrontational and requires a lot from both parties.

The gatekeeper of the penal mediation procedure in Maastricht is the public prosecution service. In some instances, however, the police may also refer cases. Those making a selection of suitable cases receive files from the public prosecution service. After cases are selected, a letter is sent to both parties on letterhead from the public prosecution service and signed by the public prosecutor. According to Erens, this is the best medium for inviting parties to participate. The text of the letter is rather persuasive stating for example,

"I am bringing to your attention that the public prosecutor has the intention to deal with this case through a criminal mediation procedure."

There are several ways that parties may be contacted in the Netherlands, depending on the restorative justice intervention. Following the letter, Erens (Maastricht) waits to be contacted by the parties. Very rarely will he call either the victim or offender. Where only one party gets in touch with the mediator, a second reminder may be sent to the other party. When contacted by the parties, Erens will explain the procedure, including both the advantages and possible risks. Where feelings of anxiety or uncertainty arise, his approach is to reassure them and suggest the possibility of bringing someone along to the mediation procedure. Where he believes they may not be able to express themselves, however, he will not encourage them further. Rather, he explains to the parties, *"you do not come here for a pleasurable experience, but that is how you will leave."* Moreover, a different approach is necessary for vulnerable victims such as those who have suffered sexual or domestic violence. In these cases he understandably gives more attention to the needs of the victim, waiting for him or her to show interest before contacting the offender. Of particular interest to this case and the initiation phase is the percentage of victims and offenders who are willing to participate. According to Erens, almost all of those who receive a letter are interested in mediation.

Kim Roelofs does not see much difference when making the offer for the offender versus an offer for the victim,

“...not really, it is that they get back their own say about what happened to them. That need is often felt by both parties. An offender to be able to take an active role in taking responsibility and the victim to really have a voice. Both have the need to process it and to make it to an end. Closure.”

Kim believes the important factors in getting parties to agree to participate are voluntariness and confidentiality,

“I explain that I start with individual intakes/conversations to avoid secondary victimisation. I explain very clearly how the process is built up and I comfort them by saying that they can stop. You can point [to the fact that] this is a chance to take responsibility. I often question what they need. If they do not know I ask them what their expectations are from the legal system. I am future oriented. How would they want to look back at this in a year? What is needed to reach that?”

First contact with the victim or offender will, according to Jolien, resemble a counselling session, where parties are told about what to expect and how they may benefit. She explains that the mediation procedure is aimed at ‘restoration,’ and not on finding out the truth. It is also important to inform the parties that mediation is voluntary. Parties are also asked what they will need from the other party, often using examples, and stressing that mediation will not have a negative impact on the participants.

Similar to other comments, Freeke mentions the importance of stressing the benefits for the parties. For the suspect, this primarily refers to the possibility for the case to be dismissed if he or she participates and successfully goes through the mediation procedure. She also mentions disadvantages and risks and that a situation can get worse.

“If the mediation does not succeed, the conflict between the suspect and the victim may be aggravated. If the victim wants to make things worse for the suspect, he can act as a witness against the suspect and tell the court about what was said during the mediation. As noted before, the confidentiality clause is no absolute guarantee.”

The chances that this will occur are small, as it is unlikely that parties with these bad intentions will enter into mediation in the first place. In general, Freeke maintains that there is not much to lose for the parties, and explains this to the offender.

With regard to the language, Erens (mediator Maastricht) will use the term ‘mediation,’ even though it may be confusing or misleading for victims and offenders. Erens argues that it has now become a well-known term within society, and if necessary he will explain it to the parties,

“Regarding the language of the offer, mediation needs to be explained in simple terms, as people do not understand the term restorative justice (herstelrecht).”

In fact, all mediators stated that it is important to speak in simple and accessible terms. Furthermore, Kim Roelofs stated, *“I try to talk as neutral as possible, without words that can be seen as ‘burdened’. Thus not focusing on conflict or solutions, but on ‘the event/what happened’ and ‘outcome’, ‘agreements’ etc. It is important that people do understand it well. This while talking to youngsters is more simple than with adults. Try to be the least juridical as possible.”*

The use of coercive methods also arose during the interviews. Mr. Erens does not believe in coercion; rather, it is a question of fully informing the parties of what they will experience if they participate in mediation. Erens does admit, however, that,

“sometimes it is important to be more convincing, for example by suggesting that if the case comes before the judge, it is out of their hands. In the mediation procedure, however, they are allowed to do almost anything.”

Legitimacy and level of influence appear to be the primary factors leading to greater participation rates by victims and offenders. Legitimacy is most likely gained because the letter is dispatched from the public prosecution service. While this similarly occurs in other countries, it is sometimes part of another important notification (e.g., the subpoena). The advantage in penal mediation in Maastricht is that a separate letter is sent to parties, perhaps not resulting in an overload of information. Furthermore, the level of influence, though by no means coercive, is questionable if examining the language of the letter as used in Maastricht. It may appear to the victim or offender as though this decision by the prosecutor should be followed.

When making the offer, Klaartje Freeke’s advice to lawyers is simple: *“Handle it as though you are a mediator. Listen well and do not push.”* Regarding coercion and persuasion, Freeke thinks that parties may believe they are forced to participate when the prosecution or the court refers the case. She remarks,

“As a lawyer, you can never push, but you can take plenty of time to make parties see that mediation can be a very good way forward. It always starts with resistance, but it will normally end with relief.”

In general, the respondents thought more than one offer was most effective. Janny stated how sometimes people might start to think differently the second time an offer is made. Though Jolien believes the offer should be made often, during the different phases of the procedure starting at police level, she recognises that the Mediation Service does and should give up after two attempts if they are unsuccessful. *“Repeating the offer by different organisations, however, is necessary and ‘steering’ the parties in the right direction is also desirable.”*

Janette, the public prosecutor, similarly thinks it is okay to mention the option for restorative justice several times,

“People need to get to know what it is about, although it would be best if the systems (when offers are made) are well connected. It would be good if it would be mentioned at several moments and locations.”

It may be the case that special treatment should be afforded to more serious offences. Erens, for example, explains that a different approach is necessary for vulnerable victims such as those who have suffered sexual or domestic violence. In these cases he understandably gives more attention to the needs of the victim, waiting for him or her to show interest before contacting the offender.

4. Poland

4.1 Background of RJ

In order to develop new ways to respond to juvenile delinquency and victimisation in the early 1990s in Poland, attention was given to restorative justice. An initiative group for the introduction of mediation in Poland - the Committee for Introducing Mediation in Poland, operating at Penitentiary Association "Patronat" - was established in 1994 and became independent in 1995. The team, based on the experience gained in Germany and the knowledge and practice of the team members working with young offenders of criminal acts, developed a pilot programme of mediation between the victim and the juvenile offender. The Group consisted of family court judges and juvenile probation officers and staff rehabilitation centres, family centres, diagnostic and consultative, and academics. As in most European countries, mediation in Poland (among other things because of the high rate of rehabilitation), began with mediation of juvenile offenders. In 2000, the Committee for Introducing Mediation in Poland was transformed into an independent non-governmental association – the Polish Centre of Mediation. Currently, victim-offender mediation is available in both adult and juvenile cases.

4.2 Restorative justice interventions and referral procedures

The changes made to the CCP allowed for mediation at all stages of the criminal procedure. Mediation may only occur if victims have face to face contact with their offenders. In Poland, cases may be referred by the police or prosecutors at the pre-trial stage. At any level of judicial proceedings, up until the final judgment, the Court may refer cases to mediation. Referrals may also be made at any time during imprisonment. For juveniles, the family court refers cases to mediation, also when acting on the initiative of the parties, at any stage of the proceedings. Furthermore, defence attorneys or the parties themselves may show interest in mediation, and where the case is suitable, the judge may approve. The judge and prosecutor may inform the parties briefly about mediation, though this is not common practice. Rather, contact information is often forwarded automatically to the mediation organisation. Once the referral reaches the mediation organisation, the mediator will get into contact with the parties for a possible pre-mediation meeting. Consequently, parties are primarily provided with the

information about the mediation process by the mediation organisation. Self-referrals are not possible.

4.3 Legal basis

Mediation as an institution was included in the Criminal Code as early as 1997. In 1998, mediation was incorporated into the Code of Criminal Procedure. Successful mediations may lead to continual discontinuances of criminal proceedings, mitigation of the punishment, conditional suspension of the punishment or the imposition of a penal measure in place of a punishment. Legal proceedings may be discontinued conditionally if the victim reconciles with the offender, the offender redresses the damage, or the victim and offender have come to an agreement for how the damage should be repaired. Moreover, time limits prescribed by law for investigations of criminal cases do not include the time allotted for conducted mediations due to the changes in the CCP.

Section 23a of the CCP states that the Court and the prosecutor in preparatory proceedings may refer a case to an institution or person who may conduct mediation between the two parties. The Section also specifies the time limit for mediation to be one month and states who cannot act as a mediator. Unfortunately, the law fails to impose an obligation for training of mediators and does not refer to confidentiality (Wojcik, 2004). Furthermore, in 2003, a regulation concerning the mediation process issued by the Ministry of Justice provided legally binding obligations for the mediator. These responsibilities included a requirement to call the victim and the offender to arrange for a pre-mediation meeting (which would consist of information on mediation, its rules, and party rights), in addition to conducting the mediation and helping parties write down an agreement.

It has been argued that legal provisions for juveniles are better than those for adults (Wojcik, 2004). The Act of 26 October 1982 on the Proceedings in Cases Concerning Juveniles lays down the rules for family court referrals and has a wider scope than regulations in adults cases. The law discusses norms and procedures for conducting mediation, the link between mediation and the sentence, and required training for mediators. It states, "At each stage of the proceedings, the family court may, on the initiative or with the consent of the victim and juvenile delinquent, refer the case to an institution of a trustworthy person in order to conduct a mediation." Furthermore, guidelines are made explicit for the manner for conducting mediation, namely two separate preparatory meetings followed by a face-to-face meeting. Other paragraphs in the legislation specify the time allowed for the mediation process (6 weeks), who may be allowed to conduct a mediation, the participants in mediation, the need for voluntariness and confidentiality, the possibility for indirect mediation, and more generally rules guiding the process. Family judges have broad discretion in dealing with juvenile cases, where a case may be dismissed following a successful mediation. The Act (Article 42, paragraph 4) also provides the judge with the authority to transfer cases to schools or other social organisations that the juvenile may be a part of. The Act does not provide

guidance on cases that are most suitable for mediation, nor does it provide criteria for referring cases to mediation.

4.4 Specific aspects regarding initiation and accessibility of RJ from the professionals' point of view

In theory, prosecutors may inform victims and offenders about mediation, often during the investigation phase. Pursuant to applicable regulations, mediation can be applied at the stage of preparatory proceedings so the case can be referred to mediation by the police and prosecutor's office. Prosecutors can refer cases for mediation when they themselves believe it would be helpful or also at the request of one of the parties. Judges can also refer cases to mediation according to the same article. According to one prosecutor, Andrzej, the General Prosecutor has prepared special informational letters for prosecutors. These letters may be used by prosecutors to help them inform victims and offenders. Due to restraints in resources, as is the case for many professionals, there is insufficient time to explain all the rules to the parties.

The President of the Regional Court manages a list of mediators. Judge Rafał most often uses this list, because then the mediators there can decide who would be best to deal with the particular case. There is also a procedure in some courts that the provision of directing the case is issued by the courts sending information to the mediator by post, and the mediator is obliged to invite the parties to mediation. This way of proceeding is closer to the practice outlined in the amendment of the Criminal Code, according to which the mediator would be the person to initiate the procedure, and not the referring body - police, prosecutor or judge.

Judge Rafał illustrated the important role of the judge in referring cases,

“Since mediation as a method is not very popular, it most often happens that the judge is the person who proposes mediation to the parties. We may propose mediation to the victim and offender during the trial, so it is direct talk; the judge will not send any invitations letters. If both sides agree on mediation, I issue a provision for referring the case for mediation and send the indictment and contact details of the parties to the mediator.”

Jagoda has more than 10 years of experience as a mediator, including victim-offender cases. She usually receives cases from the court or prosecutor's office, and very rarely from the police. Jagoda may also receive school mediation cases directly at the mediation organisation. When she meets with parties – first with the offender and then with the victim, she will normally be the first person to inform the parties about mediation. At this moment she explains that mediation provides an opportunity to solve the conflict according to the needs and expectations of the victim, and with full acceptance of the offender. It is particularly important that the parties are actively involved in finding a solution to end the conflict, bringing back law and order and a good relation between the parties. She will explain to parties at the informal meetings that, *“it is a great pleasure to make your own decisions and responsibility for them instead of rely on the court decision.”*

The mediator will first contact the offender by mail or phone and invite him or her to a preliminary information meeting where the offender is informed about mediation. In the invitation, the mediator informs the party who referred the case for mediation (police, prosecutor or court), that the meeting is confidential and discusses the goal of the meeting.

Grazyna has been a mediator dealing with both civil and criminal cases for four years at the Polish Center for Mediation. She confirms that in Poland, depending on the details of a case, mediators tend to contact parties by letter or phone, unless they do not have this information but rather only a mailing address. When they have both, a letter is sent followed by a phone call. In some cases, the prosecutor or judge will already have asked the parties if they agree to mediation before forwarding the case to Grazyna's organisation. In other cases, the prosecutor will directly ask the mediation organisation to contact the parties.

When Judge Rafał decides to propose mediation to the parties, he relies on his own experience and knowledge about mediation. The National School for Judges and Prosecutors was conducting a large-scale project of workshops for judges in the field of mediation. There are also conferences and workshops organised often by the mediators cooperating with some courts.

“During the direct talk with the victim and offender, I explain the rules of mediation (impartiality, voluntarily, neutrality, confidentiality and acceptability) and try to emphasise the benefits for parties – speed of proceeding and the solution in accordance with their expectations and needs. There is also a possibility of dismissal of the proceedings; this information is very important for the offender but also for the victim, as it allows him or her to avoid talks about his or her intimate (family) affairs in the court. It is important not to discourage parties and prevent them from thinking that the case will be automatically dismissed, as all citizens have the constitutional right to such a legal [criminal] procedure.”

Indeed the advantages are important when talking to the parties, as has been illustrated in other practices. When Andrzej, a public prosecutor, communicates with the parties, he explained,

“...I try to emphasise that mediation gives one the chance to solve the conflict according to his or her expectations...during the talk with the offender, I emphasise the chance he or she has to repair the harm and to avoid penal proceedings...I think that in cases related to domestic violence, mediation gives people a chance to build their relations on new rules. I have read in ‘Mediator’ (a quarterly edited magazine on mediation issues) an article written by Christa Pelikan, summarising her research in the field of mediation – ‘Men after mediation are not better, but women are getting stronger [from translation]’. I often cite it to victims to encourage them to take part in mediation.”

At the first meeting with the victim, particularly in cases of domestic violence, Jagoda tries to show the victim how empowered he or she will feel in making one's own decisions, which must be taken into account by the offender. Other themes include listening to each other,

hearing each other's expectation, safety, and confidentiality. The victim is informed that the mediation agreement has to be approved by the court and the victim has a right to ask for the conditions of this agreement to be inserted into the file. It is furthermore important that the offender knows that the case will not automatically be dismissed after the mediation, but that the final decision by the judge may be influenced by the mediation agreement.

The offender is furthermore often told about the principles of RJ, namely that it is voluntary, impartial and confidential. Jerzy, a mediator, stated,

"I present the mediation procedure to him – namely that the settlement decided upon with the mediator is to be taken into account by the prosecutor and judge, and that the verdict will definitely be different than if there was no mediation. I note that the court gave the offender a chance to resolve the matter in such a way where his point of view will also be taken into account."

During the meeting with the victim, Jerzy emphasises that the victim's point of view is the most important at this stage of the proceedings. The victim can talk about his or her emotions and fears. He also informs victims that at the end of the case, reparation will be given according to their needs, and is not limited to what is provided for in the Code of Criminal Procedure. The most important information to provide to the parties is the ability of mediation

"...to repair the harm and/or compensation in accordance with the needs of the victim . It is important also to note that, thanks to mediation, relationships and mutual responsibility may be built in the community. Handling the crime is not limited to punishing the perpetrators and excluding them from society (e.g., through a prison sentence)."

When talking to the victim, Maria emphasises that his or her vision for solving the conflict is the most important. For the offender, again the relation with the criminal justice system is discussed, informing him or her that the agreement will be taken into account by the legal authorities. It is also important to the offender to express that he or she will have the opportunity to explain that he or she is not a bad person. To put the parties at ease at the first informal meeting, she always starts by talking about practical issues, for example the weather or if there were difficulties in finding the mediation service. She then offers information on mediation, including the rules, procedure and agreement and subsequently discusses the reason for their meeting.

Among the Polish respondents, there was some divergence regarding the most suitable person to provide the offer, though there was a tendency to promote the mediator in this role. Judge Rafał recognised that the offer for mediation, though made by the referral bodies including the judge, prosecutor and police, would benefit if it were to be made by the mediation organisation. According to the changes that will be made to the Criminal Code in 2015, the mediator will also be able to make the offer for mediation, and he or she is most likely the best person to do so.

In Andrzej's opinion, it would be better if mediators played the 'initiator' role. They have the possibility to explain the rules, the procedure, and advantages of mediation. Mediators are able to ensure that the decision to participate is voluntary.

Indeed, Jagoda (a mediator) believes the mediator is the best person to make the offer for mediation. Places such as the police station or court are often associated with compulsion. This is a very important argument particularly for the offender. Jagoda notes that offenders often report that sometimes they feel forced to make the decision immediately at court or at the prosecutor's office or that the decision is imposed on them. Furthermore, the mediator is most often the first person to inform the parties about the principles and procedures of mediation. And this, according to Jerzy, is the best way, rather than information being provided by the police, prosecutors or judges. These individuals are not specialists in mediation; the information given by them can discourage rather than encourage one to take part in the mediation procedure.

Maria, another mediator, agrees that the mediator is the best person to explain mediation to the parties because,

"...he or she has the knowledge, knows special terms, can find the best way to communicate with the parties, has knowledge about the psychology of the victim and offender, and deals with the parties if they are anxious or frightened. Since working closely with the police and judicial system, I could see how difficult it is to change communication from a language of commands to cooperative language."

It is difficult to say with certainty if the information provided to parties is incorrect or if there is a misunderstanding. Grazyna explained,

"One client told me she was frightened of mediation and the judge told her it was the way she has to do it. I then told her it is voluntary... it still could be her interpretation that she had to. But this is a problem because the situation for most people, being in a court or talking to a prosecutor is a stressful situation; understanding what is being told can be confusing. I have seen how long is often needed to give a person chance to understand clearly the meaning what they are told, and a chance to feel being prepared to make a responsible and conscious choice."

One issue that arose was related to time provided to make the offer. Though the judge tries to motivate the parties to participate in mediation, there is a lack of time. Consequently, it is not possible to provide a full description of all the advantages of mediation as a method of solving the conflict. There is also no time to focus on the doubts and worries of the parties. For this reason, with the changes to the Criminal Code in 2015, the invitation by the mediator will be a lot more efficient. The mediator has enough time and the best knowledge to explain all aspects of the mediation procedure. Jagoda explained,

“It is very difficult to decide which moment is best to refer the case for mediation – possibly at the police station, at the prosecutor’s office or finally in court. It depends on many reasons – the crime, the victim. I think that it could be shortly proposed to both sides at every stage of proceedings as a proposal – when the case is referred to mediation, the mediator has a possibility to show both sides all the advantages and risks of the mediation procedure.”

Regarding coercion, Judge Rafał stated, *“When I propose mediation, I don’t accept any form of forcing anybody to it – if one of the sides doesn’t want to, and refuses the first proposal, I finish talking about it, as I know mediation is voluntary and it is forbidden to force anybody to take part in it.”*

It was also stated how mediation is first proposed to the parties at the prosecution office; because this is not a neutral place, the parties often feel they are required to agree to participate. Moreover, criminal lawyers may argue that if the offender agrees, then he or she is admitting guilt. In reality, however, an agreement to participate in mediation only suggests that the offender agrees to the facts but should not necessarily feel guilty.

With regard to coercion, Grazyna’s perception is to avoid it as much as possible. If, understanding the idea of mediation, they say no for certain reasons, their decision should be respected. If there is doubt, she will not push. The final decision can always be made after the meeting. People must be given sufficient time to make decisions. Grazyna suspects that when the prosecutor or judge ask people to participate, parties do not feel entirely free to answer as they wish.

Another issue that arises with regard to prosecutors as initiators is the language that is used in the everyday life of prosecutors. While it is very easy to learn about procedures and benefits of mediation, it is very difficult to explain such rules in a way that encourages parties to take part in it. Prosecutors use formal language; their phrases are sometimes not clearly understandable for common people. This is tied in to the fact that it is difficult for prosecutors to change their way of thinking about the crime – to stop concentrating on the punishment of the offender and start thinking about finding solutions.

“This [focus on finding solutions] would require one to switch off the language of criminal justice and switch on the language of restorative justice.”

There was some variation regarding which party should be contacted first. When Andrzej proposes mediation to parties, he first talks with the victim, as offenders are more willing to take part in mediation if the proposal is directed to them by the prosecutor. This may confuse victims into wondering if the prosecutor actually wants to take on the case and help the victim to obtain justice. The offender will often ask if mediation can change something in his or her case. As the law provides, he informs offenders that if the mediation ends in an agreement, he will take it into consideration and possibly dismiss the case (depending on the severity of the crime). This possibility is often appealing to the offender.

On the other hand, when Grazyna contacts the parties, she first invites the offender for the individual meeting. Only with his or her positive decision to participate in mediation will she contact the victim. Otherwise there may be an extra burden for the victim.

5. Croatia

5.1 Background of RJ

Restorative justice grew in Croatia, like other countries, as a new way to handle juvenile crime (Zizak, 2010). Societal changes, including democratisation, Europeanisation and privatisation, led to a need for improvements of the existing strategies for dealing with crime. Victim-offender mediation arose out of the project “Alternative Interventions for Juvenile Offenders – Out of Court Settlements,” which helped develop a Croatian model. With the developments in other European countries serving as guidance (the model has been developed according to the Austrian and German models of court settlement), Croatia seized the opportunity to try new methods, and now offers victim-offender mediation in cases of juvenile crimes. Mediation is conducted by the Professional Service for Out of Court Settlement (PSCS), where a procedure is approved by one of the Centres for Social Welfare and a report is sent to the prosecution office. Until recently, mediation was carried out in three cities: Zagreb, Osijek and Split. The UNICEF office in Croatia initiated and carried on a series of activities focusing on children and youth in the court system, with special emphasis on increasing capacities for victim-offender mediation in all of Croatia. As result of their efforts, at the beginning of 2014, 39 new mediators finished their training and mediation is now available throughout the country.

Apart from mediation in juvenile cases, there are no obstacles in legislation that prevent mediation in criminal cases where the parties are adults. The Conciliation Act (OG 18/11) regulates conciliation (mediation) in civil, commercial, labour and other disputes on rights which the parties may freely dispose of. In criminal matters, these include the ‘disputes’ in which the prosecution is carried out by a private lawsuit/the proposal of the victim (for example: offences against honour and reputation, bodily injury, small theft, coercion, threat, etc.). Different from the civil proceedings where the Court may, during the entire proceedings suggest that the parties resolve their dispute in mediation proceedings in court or out of court, criminal proceedings do not have such a possibility. There is, however, an opportunity at the preliminary hearing for the parties to resolve the matter in front of the judge; if the matter is not resolved (by victim withdrawing from the prosecution, reconciling with the offender or accepting the apology by the offender), the same judge will still handle the case. This preliminary hearing, however, does not constitute mediation.

In theory, there are no obstacles for parties to go to the mediation centre themselves and participate in a mediation procedure. Parties, however, often do not know about this option. A judge, who is experienced both in criminal and civil matters, and a mediator as well, explained that the law could be applied in a creative way. Although, criminal proceedings are very strict, the judge used this preliminary hearing to explain the mediation process to the

parties; if they then decided to go to mediation, the judge postponed the hearing. When the hearing took place, the offender withdrew the charges because the mediation was successful. According to the Croatian Mediation Association²⁸, these few cases that were ‘referred’ to mediation make up just a few of the criminal cases that were mediated.²⁹ The judge sees the solution and the possibility for mediation in criminal matters as it is laid down in the Criminal Procedure Act and/or in the training of judges and parties on the possibility of mediation in criminal matters. Some efforts to use the police as an information provider have been made by the Centre for Peace, Non-Violence and Human Rights, an NGO from Osijek, in 2006, when education about mediation in general (and in criminal matters) was provided to police in two counties in Croatia.³⁰ This did not lead to any mediation procedures in criminal cases.

Without information about mediation, mediation for adults in criminal matters in Croatia is still in its initial stage leaving great space for improvement in the accessibility of mediation. In this part of the report only mediation in juvenile matters will be discussed due to the lack of practice in adult criminal cases.

5.2 Restorative justice interventions and referral procedures

Referrals may be made by the prosecutor in juvenile cases. During a pre-trial procedure (which takes place at the discretion of the public prosecutor for minors), the parties are informed about the option to actively participate in a mediation session. This is done through a professional associate working at the State attorney’s office, who may be a social worker or a psychologist. Offenders are told about the out-of-court settlement; the offender must then give written consent that he or she is willing to participate. The case is then referred to the PSCS. The mediator will then contact the offender to provide more information about the service. Only when the offender accepts responsibility will the mediator contact the victim, most often through a letter. Therefore, offenders are already likely to have a lot of information regarding the mediation procedure and its benefits before being contacted by the mediation organisation, giving the professional associate an important role in the procedure. The first contact for the victim is usually through the mediation organisation.

5.3 Legal basis

The Juvenile Court Act of 1997 provides an opportunity for victim-offender mediation for minors and young adults (Zizak, 2010). This Act introduced pre-trial procedures, which would allow the public prosecutor to not initiate criminal proceedings in cases where the

²⁸ The Croatian Mediation Association was founded in 2003 and today has over 400 members. The activities of the Association are focused on the development, implementation and promotion of mediation as an alternative dispute resolution. Within its Centre for Mediation, mediation is conducted with the participation of mediators who are on the list of conciliators at the Croatian Mediation Association.

²⁹ The president of the Croatian Mediation Association remembers those cases but no official record could be found because of problems with the previous statistics of cases from earlier years. In 2014, only one criminal case was mediated by the Croatian Mediation Association.

³⁰ Education about mediation in general (and in criminal matters) has been provided to the police; the goal was to gain trust in mediation so that police officers could recognise suitable cases and refer parties.

offence is not punishable by a prison sentence of more than five years³¹. Mediation was not mentioned in this Act, but it was implemented through an obligation for repairs or compensation for damages³². A new Act³³ in Article 72 specifically refers to the possibility to engage in the mediation process, stating that the decision of the prosecutor resulting from Article 71 “*may be conditioned by the willingness of the minor to (article 72, paragraph c), engage in the mediation process through the court settlement (within the limits set out in Article 10, paragraph 5, and 9).*” This special obligation may be considered to provide for a legal framework for victim offender mediation for juveniles and referral to the restorative justice organisation.

5.4 Specific aspects regarding initiation of RJ from the professionals’ point of view

When a case is sent to the expert advisor from the State Attorney, an evaluation is sent along which estimates any basic legal criteria that would qualify the case as ‘purposeful³⁴.’ In some cases, the prosecutor will consult with the expert advisor before referral. After correspondence with the expert advisor, he or she will send out an invitation to the party on behalf of the prosecutor. Before this, however, the advisor must check if the offender is registered at the Centre for Social Welfare. Where this is the case, a report will be obtained before making the decision to send the invitation. The invitation invites the parents (in case of a minor), together with the child, and states that a prosecutorial decision will be made by the State Attorney’s office against the minor. It further asks the parents to bring along documentation such as school certificates and medical records. It is possible, however, that in different offices (Split, Osijek) different procedures of initiation are being followed, though these differences are not likely to be significant.

As the new Act on Juveniles was enforced in 2011, changes were made in the procedure of who refers, namely that rather than the service for out of court settlement getting into contact with the offender, the State Attorney’s Office now takes up this role. One expert advisor at the States Attorney’s Office who has the task of referring is Ms. Schauerl. She explains the change in legislation,

³¹ For a criminal **offence punishable by a prison sentence of up to five years or by a fine**, the public prosecutor may decide not to request that the criminal proceedings be instituted, although there is a reasonable doubt that the minor concerned committed that offence, if he or she considers that it **would not be purposeful** to conduct the proceedings against the minor, having in mind the nature of the criminal offence and the circumstances in which the offence was committed, as well as the earlier life of the minor and his personal characteristics (Article 63, paragraph 1 which became Article 71 in the new Act).

³² Article 64, paragraph 1 c.

³³ Official Gazette no.84/11, 143/12.

³⁴ According to the State Attorney’s rulebook, the State Attorney's Office sends a letter to the expert advisor stating that because there is reasonable doubt (deriving from the police report/charges) that the juvenile/minor adult committed a criminal offense, **in order to assess the merits of the application of the principle of opportunity** provided for in Article 71-73 in the Law on Juvenile Courts **or to give opinion on the appropriate juvenile sanction**, I suggest to conduct the defectology (personal) assessment....to get the...to do...and after you complete the task, return the case for further proceedings.

“When out of court settlement entered the Law on Juvenile Courts and became one of the obligations towards minors, we became obliged to directly refer. It is no longer in our free will to refer cases. Every proposal of the obligation we must explain to the offender. The simplest and the easiest way to collect necessary data is by calling them so we could talk to them. In that way, we collect arguments for our explanation of the proposal of the obligation to the State Attorney. We work very fast, on one day I get the case, on the other I send the invitations.”

Ms. Schauerl does not believe that it would make a difference from where the offer comes (e.g., the prosecutor’s office versus the mediation organisation). Đurđica Križ, also an expert advisor at the State Attorney’s Office, noted that though the best person to make the offer depends on the individual and less on the institution (i.e., the prosecution service or the mediation service), she does believe an offer coming from the State Attorney’s Office may be more effective. In this case, the minor can make the link between mediation and solving the criminal act that was committed.

A mediator and the coordinator of PSCS, Vesna Gmaz Luški, has a different opinion on the matter. When asked which procedure results in more agreements to participate, Luški preferred the previous protocol, stating that her organisation is now trying to get the procedure to be carried out as it was before (i.e., the first conversation through PSCS). It is likely to be more pleasant if the person comes to a service (the mediation organisation) where he or she gets a complete picture of the process to really understand what mediation is about. Furthermore, she states,

“...we should give it to the offender and to the victim; now, the State Attorney gives it to the offender and I don’t think it represents a good thing because the offender is coming to the service, which works for the judiciary. It is a strict institution. Our service is much closer to people.”

There does appear, however, to be a means of compensating for the information that is provided at the prosecution service.

“When the offender already gives his written consent at the State Attorney’s office, we explain the whole procedure to him or her. Sometimes they consent to mediation out of fear, so we like to explain everything in detail and check if the person is ready for mediation. This way the offender gets the information and the offer twice, but at a completely different level; at our service people feel more relaxed than at the State Attorney’s Office.”

Other mediators interviewed have a more neutral point of view regarding the changes in the procedure. Davorka Lalić Lukač, a certified mediator and an expert advisor at the Juvenile Department at the Municipal Criminal Court in Zagreb, explains that now, the offender is sensitised at the State Attorney’s Office, stating,

“People should recognise their interests, no matter the structure from which the information is coming”

Regarding who is best to provide the offer, Ana Bačić, a mediator who works in the district of Zagreb believes it doesn't matter,

“I think that there is no difference. Given that they [the State Attorney's Office] are well informed and make the selection of cases that are suitable for mediation, I think that they cannot discourage them, but just the opposite: they may motivate them.”

During the mandatory initial meeting with the offender, data on the personal and family circumstances of the minor, in addition to his or her attitude towards the offence is investigated. Where there is more than one offender, all are normally contacted to agree on one set date for mediation. When the offender arrives at the meeting, he or she only knows what is written in the formal invitation, namely that they are invited because of the State Attorney's decision in the case. This is the only moment to make the offer. Ms. Schauerl will then proceed,

“When they come, we explain to them what they are here for. They often think that they are at court, so we explain the difference to them; then we begin the conversation which can sometimes last for two hours and sometimes we collect the needed information in a shorter period. If we, at the end of the meeting, already know what obligation we are going to suggest [and if it is mediation] then we explain the procedure of out of court settlement.”

In general, the procedure will first be explained, and then the offender will give his or her consent. In some cases, however, the offender may mention a desire to apologise to the victim, or the parents will suggest such an action.

Lidija Čačić, an expert adviser at the Municipal State Attorney's professional service in Zagreb stated,

“When the offenders come, we do a socio-pedagogical interview, a conversation focused on getting to know the offender and his life circumstances. First, we talk about the criminal offense; what is the reason why the person is here and about his or her attitude towards the criminal offense. The attitude is very important to us; we can distinguish taught (already learned) speech from sincere speech, which is the matter of experience. After that, we investigate personal and family circumstances which include who lives with the offender, if the parents are divorced, any stressful life events, health conditions, education and schooling, hobbies and free time. We ask questions to see how much the offender is living in reality.”

The expert advisor may feel during the interview that the offender does not have the right attitude towards the criminal offence. Moreover, it is important to examine if there have been any serious problems. Where this is the case (e.g., contact with a psychiatric hospital), they will collect data from the institution to make an informed decision. Alternately, the school may be contacted, particularly when the school is connected to the criminal act. It is most

important to understand what will be gained; mediation is significant because it requires the juvenile to accept a different kind of responsibility. After taking all this information into account, a decision may be made to impose victim-offender mediation, one of the possible eight obligations.

The offender and his or her parents do not have to immediately make a decision about whether or not to participate. When offenders or their parents are unsure about their decision to participate, they are allowed a few days to think through the offer. During this time, Ms. Schauerl suggests that they consult with friends, family and lawyers. She also provides her number, making her more accessible to both the offender and the parents. Unfortunately, due to time pressures, offenders will not have long periods to make a decision; in general, roughly a week is provided.

Again the respondents explained what could be done in order to encourage the parties to participate. When describing how she explains and motivates the offender, Lidija Schauerl remarked,

“I appeal to his or her responsibility and based on that, I explain the benefits of solving the problem, I talk a little a bit of restorative justice principles and explain it is the best thing for everybody. I explain that there is a way to correct his or her mistake which he or she made to the victim by apologizing and by compensating the damages and that the offender will benefit because the criminal proceedings will be dropped. It is often the case that the victim and offender know each other from school or the neighbourhood, and we explain that their relationship would benefit from mediation.”

Because of the system, there is only one opportunity to make the offer. If the offender declines, a different obligation will be decided upon, and once that occurs, there is no chance to have a combination of obligations.

The offer is made to the offender only once by Lidija Čačić. Though the offender is not forced to participate, the decision to participate made by the expert advisor is not up to the offender. Lidija further explained,

“... we are not at the market place. We are the ones who decide about the obligations. We take everything into consideration, they are young people. Our conduct is specific; we don't have an attitude towards the offender that he has to go to mediation. But on the other hand we cannot make lot of offers like we are at the market. They can say: I don't want this obligation, I want that one, but it is our decision. They have to realise that they are responsible for the criminal act.”

Her colleague Đurđica Križ explains her conduct when the juvenile offender does not consent to mediation at the end of the conversation, Đurđica will tell him or her to think things over and she will call the offender two days later to schedule another meeting. In the meantime, she suggests to the offender to consult with a lawyer or someone in their personal network.

As has been noted by other (Croatian) respondents, there is an issue when the minor is not able to pay compensation to the victim. According to Đurđica, when these cases were referred to mediation where the offender did not have sufficient financial means, the cases tended to be unsuccessful. There were exceptions, however, where the victim is satisfied with a smaller sum of money or solely an apology. Đurđica suggests the establishment of a fund for victims (as is done in other countries). If the financial aspect could be dealt with through this fund, more cases would be appropriate for mediation. Unfortunately, as it is now, the offender often apologises and the victim says that he or she will anyway go to the court for the damages.

“You know yourself that the goal is an agreement which is acceptable for all parties which then can become a ground for social peace in the community. That cannot be done if the victim goes to the proceedings for the compensation for the damages.”

When talking about the demeanour and language of the conversation that is necessary with the offender, Lidija Čačić stated,

“...At the beginning we talk about the criminal act, then when we move to personal and family circumstances we ease up the conversation and lighten up. If we were rigid, we wouldn't get anything from the conversation. All three of us (from the service in Zagreb) get very sincere observations from parents about the child and vice versa. When we get to the offer they already see us as a person who is friendly, our socio-pedagogic background somehow emerges. We explain to them that it isn't the end of the world, you have committed a criminal act but it can be fixed and we present one of the possibilities through which you can fix it.”

Currently the expert advisors are more general in the information they offer: the offender will meet the victim, the mediators will explain the procedure and the protocol. They also discuss the advantages of mediation with the offender. When commenting on the reactions of the offenders, Đurđica Križ stated,

“Often they ask what mediation is and how long it takes. I think that they then asses that it won't take long time to go through this meditation, so efficiency is very important to them.”

After the State Attorney decides to refer a case, they send a letter to the PSCS and the case will then come to mediators who proceed in the matter. The offender is sent a written invitation and a leaflet. At the first meeting with the offender, it is again important to consider his or her attitude and consent for mediation. Only if the offender takes responsibility will the case proceed and the same procedure will be applied to the victim; a written invitation and a leaflet. The victim decides if he or she will attend the initial conversation, which lasts for approximately one hour. If there is no response from the victim, mediators will try to contact the person on the phone and ask if he or she received the invitation, as it is possible that there were problems with contact details or picking up mail.

Professionals dealing with the cases state that both parties should be informed about the benefits of mediation. As they see it for offenders, the benefit lies in the possibility to have

charges dismissed. The offender may argue that the facts are not correct, and therefore he or she has a different story. They are told by the expert advisors that they will have the chance to tell their version in detail during the mediation. For victims, however, the motive for participation is that they may solve their conflict in a more comfortable environment than compared to a courtroom. They have the opportunity to express their emotions and their interests are given focus, which is in contrast to their experience in the traditional justice system. Also there are the economic advantages for the offender and speed of proceedings in mediation.

When asked about the important points that need to be made in the offer, mediator Luški emphasised how parties should be told about the possibility for active participation in the process, she feels it is,

“very important from the perspective of one’s morality; when somebody takes responsibility and wants to apologise, it represents a strong psychological mechanism. No one tells the person what to do. From the victim’s perspective, he or she gets to be heard, including telling about feelings and the difficulties that he or she went through.”

At the same time, it may be the case that the mediators have to tell parties about possible negative consequences. For example, confidentiality is not guaranteed and the mediator can be summoned to testify in court. As Luški, stated,

“We had a situation in which we had to testify in Court when the mediation didn’t succeed and the judge thought it was important to hear the mediator apart from the written report. We have to inform the parties that this could happen. We are in some kind of double role because we are connected to the Social Welfare Centre; in [countries like] Austria, they are not in such a position because mediators are completely autonomous.”

Mediator Bačić presents the invitation by insisting that mediation is a *better* option when compared to criminal justice. According to her, this often helps victims in making a decision to participate. Bačić believes that mediation should be offered as soon as possible after the crime has been committed. This is because, *“the goal of mediation is to shorten the process while the victim and the offender are still involved, so that social peace can be established.”* The offer can be given more than once, or the interview can be postponed to give the victim time to consider participation and consult with others.

Understandably, victims and offenders may face emotions of anxiety or uncertainty. Where this is the case, Luški believes they should be given enough time to think about the offer. The mediators provide their private numbers so that they can be reached at any time, making themselves more approachable. It is also important to remind the victim that he or she can express their emotions freely and that the conversation is private.

Bačić explained that it is important to deal with the fears of the parties. Often they have developed their own images of how mediation will be or who the other party is. When they

come together, it often turns out that the offenders are not the ‘terrible criminals’ that they expected, but rather young people who have committed a first offence and deserve a second chance. These more appealing scenarios are communicated to the parties.

The environment during the offer, namely to make the victim feel comfortable, is very important. The neutral position of the mediator must be explained. Bačić described,

“If I notice that they are uncomfortable, I ask them what makes them uncomfortable. I try to create a relaxed atmosphere, through informal conversation; at the first contact I try them to show that there is no boogiemán, try to create comfortable surroundings: chairs are set opposite one another, there are no barriers between us.”

Ms. Schauerl explained that anxiety that offenders feel can be a good thing,

“He or she is not aware of his or her actions and that fact isn’t comfortable. Anxiety is a sign that we are going deeper in the story. We do not protect them from this unease. We say to them that what they feel is part of the process, of taking responsibility for the criminal act.”

To ease their anxiety, Ms. Schauerl commented that they will explain the procedure and remind the offenders that the mediator will be present when they meet the victim and that their rights will be protected. Đurđica also recognises that some offenders will need more information, for example when they are experiencing shame and guilt. She stated,

“In cases when they feel shame and guilt I always explain more. They often say that they don’t feel comfortable meeting the victim. In these cases, I postpone the meeting for a few days. We strongly take care of his/her interests, and protect his/her rights. And we explain that nothing bad will happen during this process of mediation. These are the consequences that he/she has to face because of the criminal act. But he/she shouldn’t have to fear the mediation process because the mediator will be present.”

Strict coercion is undesirable. As one mediator explained, any type of coercion is never allowed; rather, they go deeper in the explanation to motivate the offender, namely by basing the conversation on the benefits of mediation. According to Ms. Schauerl, it is rare that a person declines the offer.

Luški explained how the position of a mediator is neutral; they do not convince the parties to go through mediation. This is possible because they are paid per case regardless of the outcome. She believes it is also important not to scare the person when you talk on the phone. Luški does, however, speak of ‘motivation,’ suggesting more than just an objective offer is acceptable. Unfortunately, when the offender is told about mediation at the prosecution service, there may be fear because of the type of institution. It then becomes possible that the person agrees to mediation out of fear.

Though persuasion is considered to be a soft form of coercion, Đurđica Križ does appear to have responses for those offenders who are apprehensive to join a mediation procedure. If

offenders say they do not want to go through mediation but would rather go through criminal proceedings, Đurđica responds by arguing that the victim may also be present there, so either way they cannot avoid the victim. Where offenders specifically say they do not want to meet the victim, the expert attorney's do not persuade or insist, but rather give them other obligations, for example humanitarian work.

6. Discussion of interview themes

The qualitative findings were presented by country in order to emphasise the different models of initiation that exist. Such an illustration also allowed for a greater understanding of the barriers faced in each of the countries and in the different types of procedures. For this reason, themes and key points were not extracted as may also be done. This section, however, will review some of the main points that were voiced by the respondents as discussed both above and in the original interviews.

6.1 Learning to make the offer

One respondent mentioned how *experientia docet* – experience is the best teacher – is the best means of learning how to make a good offer for restorative justice. This theme was common among most of the respondents. Practice provides what is necessary to develop one's abilities in relation to the parties in addition to learning how best to connect with the parties. Training was a second approach to becoming more successful in the offer. Many respondents expressed the benefits of training in understanding how each step of the process should be taken and how to approach parties. Similarly, education that mediators followed proved to be useful. A few respondents also mentioned how this education may come from other countries (e.g., Austria educating Croatia), where experiences with offering mediation are already more advanced. Other means of learning about the offer included referring to legislation and talking to others within one's institution.

6.2 Best moment to make the offer and frequency of the offer

Generally speaking, the results of the qualitative interviews were largely in line with the questionnaires, with the conclusion that there is no best time to make an offer for restorative justice. While there were differences among respondents, there was a tendency to support the role of the police in making the offer at an early stage. Another common response was that the best time is very individual, and depends on factors such as the type of crime. Because the police stage may be too early for a victim to believe reconciliation is possible, it was noted that repeating the offer is necessary. None of the respondents believed that making an offer for restorative justice was invasive. In fact, repeating an offer gives parties time to think about their decision. It is also the case that in some countries (e.g., Croatia) the only opportunity for an offer to be made to the offender before the case reaches the mediation organisation is after the conversation with the expert advisor. Where this holds true, such countries should consider extending the responsibility of making the offer to other (legal) professionals. Other

countries, such as Romania, also appeared to generally be in agreement about the timing of the offer, namely as early as possible, prior to starting prosecution.

6.3 Disadvantages of having authorities offer who know little about RJ

A few of the respondents commented on the issue regarding victims and offenders who may become discouraged if they are first told inaccurate or incomplete information about restorative justice. For example, lawyers may provide information that is not impartial or they may advise their clients in the wrong way (e.g., referring to mediation as a ‘legal settlement’), victim support may be too focused on financial restitution, prosecutors and judges may not fully understand the benefits of restorative justice and in general previous conversations may have been rushed.

Some of the legal professionals appeared to think that they were best suited to provide parties with information about restorative justice, particularly in terms of its link with formal criminal justice proceedings. This was also due to their perception of being viewed by outsiders as a ‘higher authority.’ Consequently, if they refer cases, they believe victims and offenders are more likely to agree to participation. The shortcoming remains, however, that legal professionals often do not know enough about the actual procedure to adequately help parties come to a decision. Croatia is an interesting case; as was implied by some of the expert advisors, offenders go through an intensive assessment and are well informed about the benefits of mediation. This limits the risk of offenders being told inaccurate or incomplete facts regarding the mediation procedure, as there is time and focus during these conversations to provide sufficient information.

6.4 Mode of the offer

The mode of the offer, as discussed earlier, may take many forms, some which are more effective than others in ensuring participation in restorative justice procedures. The country cases studies also illustrate the diversity of communication techniques, though most respondents spoke of their face to face contact with the parties, and few believed only a letter to be the most appropriate means. A letter followed by a phone call was also sometimes used, and considered to be effective. There also appeared to be a tendency to be in favour of the approach that was implemented in the respondent’s own system. For example, if letters were sent, these were often perceived as the best approach while face-to-face meetings were most favoured when these were adopted.

None of the respondents mentioned innovative ways of making the offer. In fact, in several cases, it was not considered to ever be necessary. Furthermore, all of the respondents felt that there was sufficient time to make the offer, referring to second meetings when necessary.

6.5 Telling about the benefits

A consensus existed among most of the respondents that informing victims and offenders about the benefits of mediation was a powerful tool in ensuring their willingness to

participate. Indeed, many of them are in line with what has been found in victim and offender needs' studies. Communicating that mediation is a possible platform to meet these needs is understandably an effective means of convincing parties to participate in restorative justice programmes.

These reasons took a variety of forms. Some examples are as follow: financial compensation for the victim, hearing what the other party has to say, active participation and getting to be heard, possibility for the offender to correct for inaccurate facts, understanding the real consequences of the offence, not having the offence reported on one's criminal record, moral satisfaction, the possibility to show humanity and magnanimity by forgiving the offender, staying out of prison for the offender, a quicker solution than going to trial, the possibility to maintain confidentiality of the conflict, opportunity to correct for one's mistake, repair of the relationship, establishment of social peace, and the opportunity to reflect and think about the future. Another tactic regarding the advantages of mediation is to provide them in comparison to the traditional justice system. By explaining that expression of emotions, obtaining answers and empowerment may be appropriate during mediation, it could be stressed that this is not the case in the criminal justice process. When attempting to convince or encourage parties to participate, this appeared to be an approach in several of the interviews.

6.6 Most important information during the offer

- Advantages of mediation and getting parties to see the relevance for themselves
- Steps of the procedure
- Legal consequences of mediation
- Obligations of the mediator (changes parties' perceptions to be more favourable towards mediation)
- Costs, voluntariness, confidentiality

6.7 Coercion

There was a general tendency to be against coercive tactics during the offer. This is in line with one of the primary principles of restorative justice related to voluntariness. Even when some respondents argued that some persuasion is acceptable, they for the most part agreed that the decision in the end remains with the parties. Where the offender does not accept responsibility, however, coercion or convincing is absolutely unacceptable. One form of persuasion is the 'theory of risks,' which explains to parties what would happen if they did not participate in mediation – this may show them the situation from a different perspective. A few of the responses, however, suggested that parties may feel pressured if they are informed about mediation by prosecutors or judges, referring to such (unintended) coercion as inevitable.

6.8 Anxiety and uncertainty, dealing with disadvantages

Feelings associated with anxiety and uncertainty may emerge, sometimes as a result of the disadvantages that may exist, but often due to the angst anticipated of confronting the offender. It was sometimes mentioned that anxiety may be beneficial in reaching the desired outcome or that it may not necessarily be a bad thing – anxiety suggests “they are going deeper in the story.” Therefore, it is also important to remind parties that anxiety is normal, and not a reason to decide against participation.

When dealing with these emotions, respondents often expressed that they gave parties the time they needed to think about their decision. Mediators especially understood that a decision to participate cannot be done hastily or without first understanding what it would entail. Some respondents also suggest to parties that they consult a lawyer before coming to a decision. Mediators also stated that they give their private telephone numbers to victims and offenders, in order to become more approachable to parties. Other approaches to dealing with negative emotions include allowing parties to vent their feelings, reassuring parties, helping parties make their own assessment of the risk involved and visiting the victim or offender at home to create trust.

When presenting the disadvantages, one means of ensuring the parties still have liberty to make their own decision is to simultaneously offer solutions to the disadvantages. It was also stated by referrers that they did not know what the risks may be, but were convinced that the mediators would be able to handle any issues that may arise. This is also a reflection of their trust in the mediator’s performance.

6.9 Legitimacy

Legitimacy of the initiators is undoubtedly an important factor when assessing a party’s trust in the restorative process and likelihood of participation. The results would suggest that in many cases, mediators were recognised as professionals, for example where there may be a Mediation Council at the national level or a Mediator Registry. Having such an organisation can help to professionalise the position and increase perceptions of legitimacy. With regard to treatment, the interviews suggest that good communication skills and attitudes are key, namely that they do not act superior to the parties but rather show they are not enemies and genuinely want to help solve the problems victims and offenders may be facing.

6.10 Language

The language used when informing victims and offenders about restorative justice is understandably a very important factor. The respondents provided various suggestions regarding word use and level of simplicity. For example, terms such as the name of the crime (e.g., assault) should not be used, but rather more neutral terms such as ‘incident’ or ‘misunderstanding.’ Attributes, labels and compliments towards the parties are also inappropriate, according to some respondents.

7. Letters inviting victims and offenders

This section focuses on letters that are currently being sent to victims and offenders in Austria, The Netherlands, Belgium, Italy and Ireland. The information that may be found in the letter varies depending on the country, but often focuses on an explanation of restorative justice, what happens if mediation does or does not occur, and information on the restorative justice organisation. Furthermore, the tone of the letter may have implications on how the offender or victim may react. The level of authority or pressure may also differ among the letters. The goal is not to evaluate these letters, but to show the differences and comment on some possible strengths and weaknesses. Below some concrete examples are provided.

7.1 Explanation and information

The goal of the letter is to provide sufficient information to the parties so that they can make a decision about their participation. This is undoubtedly difficult to manage in both a non-threatening and appealing way. The primary information is about the advantages that may be obtained through restorative justice programmes, though other information such as the relation to the criminal justice system (legal implications), possibility for indirect mediation, contact information of the organisation and possible outcomes for the offender can be found. In addition to being informative, the presentation of the letter is important. Most restorative justice organisations enclose a leaflet with more information on the procedure. Because of the possibility that the victim or offender only reads the letter, it is vital that all important information is also provided. The letter offers a mode of catching the recipients attention, and therefore should be thought through regarding the message it contains.

Austria

Opening sentence (victim): *You are the victim of the incident* [incident number, offence].

The letter is brief, referring to the accompanying information pamphlet, and is sent from and signed by the mediation organisation. The text mentions the ‘incident’ and that the prosecution service has asked the mediation organisation to offer an alternative to the criminal case. The letter provides a day and a time when the parties may come to the mediation organisation. Where they are not able to attend the meeting, they are asked to contact the service by phone. This approach may result in more contact, particularly if the parties are under the impression that they are required to call, as there is mention of the Courts and the prosecutor. A support person that the victim trusts may accompany him or her to the meeting.

The Netherlands

Opening sentence (offender): *Following the receipt of documents from the police, where it appears that you as [victim/offender] were involved in a [type of crime], I am bringing to your attention that the public prosecutor has the intention to deal with this case through a criminal mediation procedure.*

This first sentence makes up the bulk of the letter. The attached one page information sheet provides more information on the mediation procedure, beginning with an explanation of penal mediation. The text explains that penal mediation is an agreement by the victim and offender, done in order to avoid criminal prosecution, and requires that the offender at least compensates for the material as well as immaterial damage to the victim. Parties decide upon the content of the contract themselves, together with the objective and neutral mediator. The contract is put in written form along with the help of the mediator, and subsequently signed by both parties. Other information concerns the agreements that may be made (e.g., course for offenders, letter of apology, restraining order, compensation, charity donation), the cases that are eligible for mediation (all cases where a ‘*transactie*’ is possible, such as assault, threat, theft) and what happens when mediation does not occur (i.e., prosecution).

Belgium

Opening sentence (victim): *On the ____ of _____ you were the victim of _____. As the public prosecutor, it is my responsibility to handle this case.*

After explaining the possible feelings that the victim may be experiencing, the letter continues by stating how victims may be helped by having their questions answered or explaining to the offender the consequences of the crime, in a safe environment and with the support of a mediator. Mediators are trained and will listen to the victim’s story and discuss if they believe that contact with the offender would be meaningful. Both indirect and direct mediation are mentioned.

Italy

Opening sentence (offender): *On the basis of the request from the Office of Social Services at the Juvenile Court of Trento, this Center will evaluate the possibility of conducting mediation between you and the injured party for the offence that occurred on [date].*

The letter begins by referring to the Office of Social Work and shortly after discusses mediation and its advantages. Information includes that the judicial procedure will not end as a result of mediation, in addition to the benefits such as having a listening space to freely express one’s point of view, expectations and needs. The letter continues by informing the party about the possibility to meet and discuss mediation (without the presence of the other party).

Ireland

Opening sentence (victim): *I understand that in [month, year] you were a victim of crime.*

Information is provided on how the organisation works with those affected by the crime. Rather than mentioning mediation or other forms of restorative justice, the text explains the advantages of meeting with the offender, including seeking an apology and receiving compensation. In addition, the impact that restorative justice may have on the offender is mentioned; the offender's behaviour will be challenged and they are encouraged not to act in a similar way in the future. The voluntary nature of the programme is also stated.

7.2 Approachability and recognition: Catering to the parties

Two aspects can be found in the letters in order to motivate parties to participate in restorative justice programmes. First, for both victims and offenders, the level of proactivity of the organisation or approachability they may perceive differs dependent on the procedure adopted by the organisation. The different procedures used in these countries include: already providing the party with a date to come to a first meeting (and requesting them to call if they cannot attend); providing contact information for the party to call the restorative justice organisation; sending an attached reply slip so that the organisation knows to contact the party; and preparing the victim or offender for the proactive contact that the organisation will make with them. Second, for victims, it is important to recognise that they have been injured or harmed. This does not necessarily translate to referring to the harmed person as a 'victim,' but that harm should be acknowledged. Most of the letters did recognise the harm and consequences of the crime.

Austria

I invite you, therefore, to a discussion on [date] at [time] in our office at [address].

The Netherlands

I ask you to contact me via the telephone in the week of [week].

Where it appeared that you were the victim/offender in a crime.

Belgium

On [date], you fell victim to [crime]...undoubtedly you are upset by what happened. You might ask yourself how something like this is possible, why people do that, what kind of person does that and how he or she now sees things. Maybe it is important to you to receive...

If you are interested in mediation, you can contact the mediation service, [contact information found below]. When you send in the attached reply slip, the mediator will contact you.

Italy

In the coming days, I will get in touch with you to provide any explanations you require and to determine a date for our meeting.

Ireland

Perhaps you would take the opportunity to contact me at our office number when I can explain more about our work and the ways in which you might be able to participate or contribute to this process.

7.3 Authority/Pressure

One guiding principle of restorative justice, and theme throughout this report, is voluntariness. Research has suggested, however, that some feelings of pressure may exist, particularly for offenders (Bolivar et al., 2013). It is difficult to assess when too much pressure or coercion has been placed on the parties. The first step towards participation is showing interest in the letter, which then leads in most cases to a first pre-mediation meeting. The question then is, how much (indirect) pressure can be exerted in the initial letter, which can later be accounted for in the face-to-face preparatory meetings. One can argue that safeguards would be in place during this later meeting, and therefore some pressure may not be inherently problematic. Particularly if the letter informs parties that the procedure is voluntary, other persuasive tactics should not be a problem. These tactics can be found in the specific language used and in the source of the letter (i.e., legal authorities such as the prosecutor versus the restorative justice organisation).

Austria

The prosecutor/court has asked us to offer an alternative to resolving the criminal offence.

If for important reasons you are unable to attend, please provide us with timely notification by phone.

Furthermore, where the offender or victim does not respond, a second letter is then sent out. The second text is largely comparable to the first letter, though somewhat more threatening.

If you do not meet this deadline [to inform about your presence at the informational talk], I

must report to the prosecutor / the court about it. The pending criminal proceedings will then continue against you.

The Netherlands

Following the receipt of documents from the police, where it appears that you as [victim/offender] were involved in a [type of crime], I am bringing to your attention that the public prosecutor has the intention to deal with this case through a criminal mediation procedure.

Belgium

As the public prosecutor, I am responsible for handling this case.

Italy

The Office of Social Work has informed us [the mediation organisation] about your case.

Ireland

Before making a final decision on what sanction to impose on the offender(s) in this case, Judge [name] formally referred this matter to our service.

7.4 Providing examples

Belgium

Examples of cases were provided in one of the letters. These included short explanations of crimes that occurred. The examples, however, did not go into detail about the mediation procedure nor its outcome. They appeared to provide victims with possible cases (e.g., robbery, stabbing, assault, manslaughter) that could be dealt with through mediation.

Marie-Claire's handbag was torn from her shoulder. She feels that the offender should be punished, but she also wants to ask him a lot of questions: Why did the offender choose her as the victim? Does he know that since then, she is afraid to be outside?

Conclusion

Several themes arose from the interviews with the initiators. It appeared that experience was the best means for *learning to make the offer*. Furthermore, education and (follow-up) training were also useful mechanisms. Similar to the findings from the questionnaires, interview respondents indicated that it is difficult to assess the *best time to make an offer*. Diversity was

also seen in answers regarding the *best mode of delivering the offer*. It is possible that people answer what they are used to, and may not believe that ‘better’ methods are necessary. A common agreement was that *advantages* should be expressed (e.g., financial compensation for the victim, active participation and getting to be heard, possibility for the offender to correct for inaccurate facts, understanding the real consequences of the offence, not having the offence reported on one’s criminal record, moral satisfaction, a quicker solution than going to trial, opportunity to correct for one’s mistake, repair of the relationship). Respondents also reported how sometimes parties may be anxious. Approaches to *dealing with anxiety and negative emotions* included providing the parties with personal contact information, allowing parties to express their feelings, reassuring parties, or helping parties make their own assessment of the risk.

The chapter also presented an analysis of several letters currently being used by restorative justice organisations throughout Europe. The countries included Austria, The Netherlands, Belgium, Italy and Ireland. Each of the letters varied to some extent, though there were many common characteristics. These included, for example, explaining the benefits of restorative justice, who to contact for such a procedure and the link with the criminal justice system. After analysing each of the letters, some differences can be concluded. These differences may then lead to insights into how to create a suitable letter for parties when informing or inviting them to restorative justice procedures.

First, mediation is a term that may scare or confuse parties. Therefore, as was done in the Belgian letter, mediation should not be mentioned in the first few sentences. Rather, it may be beneficial to first explain the needs that the victim or offender may have and then mention how mediation is one option for taking care of these needs. Second, the harm of the victim is recognised to varying extents. It is likely that this would communicate to the victim that mediators understand that they have been harmed, an idea that is not communicated by the criminal justice system. The differences can be seen in the Dutch and Belgian letters, for example, where the former uses the same text for both parties and the latter explicitly refers to victim harm. Third, rather than solely listing the advantages, it may be advantageous to personalize these benefits. For example, in the Belgian letter, the content of the letter did not refer to restorative justice as a means of answering questions, but rather formulated it personally by stating, “maybe you have questions for the offender.” Fourth, differences can be seen in the language, where sometimes it is more legal and complicated, while other times everyday language is adopted. Fifth, the sender may be important, and some may have more influence over the parties than others. For example, in Belgium and the Netherlands, the letters were sent by the public prosecution service, which may provide for more credibility. Alternatively, parties may feel they have less of a choice when the letter is sent from such an authority. Finally (though more a reflection of the procedure than the letter), the letter may be a means of informing the parties that they will be contacted in the future, or it will be the sole means of encouraging the parties to be proactive themselves and contact the restorative justice organisation.

INTERVIEWS WITH VICTIMS AND OFFENDERS AND RESULTS OF A SOCIAL NORMING EXPERIMENT

Chapter 9 takes a ‘party’ perspective, first by presenting information on qualitative interviews with victims and offenders, followed by a quantitative analysis of a student experiment on social norming. In the first examination, 7 victims and 6 offenders from the 5 countries were interviewed by the local partners; the goal was to find out how they experienced the offer, what aspects they were satisfied with and what could have been done differently. In the experimental study, university students were examined to understand how two factors of the offer through a letter could influence one’s participation in victim-offender mediation. More specifically, the analysis looked at the impact of authority and social norming (explained in further detail in the following sections) on participation.

1. Interviews with victims and offenders

When explaining how they were approached, respondents answered that they received a letter followed up by a phone call; they were informed by a lawyer; they received a letter inviting them to a talk with the prosecution service; they were in court when they heard about restorative justice from the judge; they were told by the prosecutor about mediation; or (in one case) he was contacted by a Garda official, who was not supposed to make contact, and later received a leaflet and letter in the mail from the restorative justice organisation. One Polish offender emphasised a preference for the letter, suggesting that in this way, he had more time to make a decision and was not rushed, as would be the case with a phone call. A Romanian victim of assault described another rare means of getting into contact with a mediator,

“I was Facebook friends with a mediator and I saw his [news]feeds. I first contacted him [the mediator] on Facebook, he asked for my phone number and after that we talked about the problem I had and he told me that he was not available at that time for mediation, so he recommended another mediator to me, a lady. I contacted her, and she informed me about mediation and how I can benefit from it, and I said let’s.”

As noted, the initiators include those individuals who first provide information about the offer for restorative justice. These people may include the judge, prosecutor, police, victim support or others associated with the legal system, but may also refer to employees at the restorative justice organisation itself. Furthermore, there may be a multiple step process, where parties are first briefly informed about their option for mediation (for example in Court) and later provided with more information by the restorative justice organisation.

As discussed earlier, following a deductive method of data analysis, the questions in the interviews extracted several common themes among the respondents. It became clear that the

interviews were particularly useful because they provided insights into what makes an impression on the victims and offenders. These themes will serve as the main focus of the qualitative analysis. They include feelings about authority, coercion, lack of awareness, manner of the initiator(s), timing of the offer, most influential factors in the decision-making process, initiator(s) dealing with concerns and suggestions for change. Furthermore, using a more inductive approach led to several themes throughout the interview, which we discuss as (1) environment of the offer and (2) other issues.

1.1 Coercion

Above we concluded that initiators vary in the extent to which they believe coercion or persuasion to be appropriate. This is, in some cases, in contrast to the restorative justice principle of voluntariness. Therefore, many would argue that a ‘coercion-free’ offer must be ensured. On the other hand, however, parties may not always realise or understand the benefits, and in these cases persuasive tactics become less unacceptable. Indeed, there is evidence that some respondents felt some pressure. This is in line with previous research (Bolivar et al., 2013) that found, depending on the country, that some victims did report feeling of pressure to accept the offer. Often, this is stronger when the offer is more directly linked to the legal authorities such as the prosecutor or judge. Where other bodies (e.g., victim support or the restorative justice organisation) offer such a procedure, less pressure is likely to be experienced.

The findings did support the notion that prosecutors may lead to greater perceptions of involuntariness. There was a clear impact of agreeing to mediation on the perceived behaviours of the prosecution. This was often the case with offenders.

Some examples of perceptions of coercion include,

“I suppose the fact that the Court asked for it to happen made me feel a bit under pressure.”
Victim, Ireland

Though it may not also be referred to as pressure, feelings that one had no choice may emerge when parties view authorities as having a lot of control or power. For example, one offender (Ireland) referred three times to such a perception, stating for example,

“My solicitor said the Judge thought it would be good for me to do and that it would stand to me at the end. I mean no one is going to upset the judge that is dealing with their case. So I just said yea.”

“The solicitor told me the judge wanted me to do a programme, he said if I did well it would help me at the end (of the court process). Even though it was talked about a lot in court I really didn’t know what to expect until I got a letter from the service and then met up with the caseworker (mediator).”

“As far as I was concerned I was doing it anyway, once the judge suggested it.” Offender, Ireland

“I have no other option but to go through with it. I have no other choice.” Offender, Croatia

In the interviews with initiators, a common approach that was adopted to encourage or convince offenders to participate in restorative justice programmes was to explain the benefits of avoiding prosecution and a criminal record. From these perspectives, it may appear to be objective and even harmless to provide such an explanation. This ‘motivation,’ however, may resemble coercion, where offenders are almost led to believe they have no other options to accept; for example, one offender remarked,

“...first they told me that I could be charged for a criminal offence of concealment, which would go into my record and that later I would have problems because of it in case of employment...I would consent immediately.”

1.2 Authority

It is clear that in some cases perceptions of pressure may be higher when the procedure is linked to legal authorities such as the judge or prosecutor. While one can argue that this may imply non-voluntariness for the parties, a counterargument could be that such influence is positive in that it gives parties the necessary motivation to participate in a procedure which in the end will benefit them. In the following quote, it appears that the association with the formal legal system was in fact a deciding factor, even if it changed the behaviour of the offender. With regard to the outcome of the whole procedure, he states

“I think if I had been asked outside the court [process], I probably would have thought it was a load of hassle, cause I just wanted to get the thing over with. I had taken days off work for court and didn’t want any more hassle from the job. But overall I’m glad it happened as it happened cause it was good for me in the end.” Victim, Ireland

1.3 Lack of awareness

The lack of awareness among the general public has been noted on a number of occasions. This is also true of the small sample here, where only a few had already heard of restorative justice. It appears that only when the parties come into contact with the restorative justice agency will they fully understand what the procedure entails.

“Well to be honest I had no clue what was happening in the court. After court I got a letter and had to go and meet someone from RJS. They explained more about what I had to do and what was involved. At that stage I understood more about what it was and what it meant for me, but in court I hadn’t an iota.” Offender, Ireland

“To be honest I hadn’t a clue about RJ and what it meant. The leaflet and letter were helpful but I was a bit confused about what I was going to be doing.” Victim, Ireland

Often the parties will deal with several people when being informed about restorative justice. These individuals often do not have the time to properly inform, and rather brief details will be provided. For example in Ireland, after the judge refers the case and before getting into contact with the restorative justice organisation, the probation officer may play a role,

“The probation officer in the court gave me a quick heads up but most of what she said about the programme was right.” Offender, Ireland

This report has discussed the attitudes of referral bodies, namely a retributive mentality that prevents trust in restorative justice as an appropriate response. For victims, a similar attitude may be held. For example, when asked if he knew about restorative justice before the offer, one victim answered,

“No...It was all new to me. In my day you would have been locked up, end of story.”

What is important, however, is that the initiators help to address any uncertainties, and properly inform the parties of the procedure ahead. Where parties have attitudes that justice should be punitive, measures should also be taken to help them understand the benefits of restorative justice for society, and also what it would mean for the offender (e.g., that it is not necessarily a ‘soft’ response).

1.4 Manner

All the respondents indicated that the demeanour of the restorative justice practitioners was positive, often being a direct influence on their decision to participate. Being personal, knowing what they are talking about and properly speaking with people are important elements in the manner of the practitioner. Others cited how satisfied they were when mediators gave them a voice, listened to them and were able to see both perspectives rather than judge the party. Indeed, the therapeutic nature that could be provided by even the first informational meeting was appealing to the parties.

“It was the first time in so long that somebody was listening to me and thought what I was saying was important...not only my wife’s [the victim] opinion was important.”

“The person was very nice and very understanding. She said at least twenty times that it was my own decision to make. I did feel safe talking to her, I mean in that I knew she wasn’t going to try to get me to do anything I didn’t want to.” Victim, Ireland

“Yes, he was very professional and very courteous. He listed out on a piece of paper each step and what would happen, wouldn’t happen, and what we could decide to do. He drew a kind of map showing where it would go if we said no and where it would go if we said yes. He told us loads of times that we didn’t have to do it if we didn’t want to and that he wouldn’t ask us to do anything he didn’t think was appropriate or might be too much for us.” Victim, Ireland

1.5 Timing

Earlier it was noted that the timing of the initiation phase is tricky, for example because the victim may have moved on. As one victim stated,

“I couldn’t believe the case took so long to get to court. I had married, moved to another town and had a child in that time. It was like it (the offence) had happened to a completely different person.” Victim, Ireland

“Maybe if it was offered a week or two after it had happened, I would have said no as I was very upset over it.” Victim, Ireland

There were also neutral comments about the timing of the offer.

“I don’t think it was crucial. It didn’t make a huge difference to me to be honest. I hadn’t known anything about it anyway. So when I found out I found out and we just went from there.” Victim 2, Ireland

Due to the country and legal system differences in how the offer is made, it may be the case that some procedures do not provide enough time for parties to fully consider their decision. It did not appear that the respondents felt rushed into making a decision. No one indicated that they would have rather been given more time to think about their decision. As one offender explained,

“Altogether I had about an hour and half to think it over but really it was an easy decision... you get the time in the court to think about it. For most lads I think that would be enough.” Offender, Ireland

1.6 Most influential factors in making the decision to participate

For the offenders, a dominant theme regarding reasons to participate was the impact participation would have on the legal outcome of the case. This opportunity was similarly expressed by many of the initiators. Though it may be argued that it should not be the sole reason parties participate, it can make individuals more open to such an alternative.

“Was alright, first I heard of it. If it meant not going to prison I was open to it... it meant a chance I wouldn’t do time. So I was open to looking at it.” Offender 3, Ireland

One Romanian victim voiced several times how his interest in mediation was largely due to the possibility to solve the matter quickly and efficiently, with lower costs. He was also convinced that the outcome would be better when compared to the outcome of criminal proceedings. His remark, *“The option being very simple, I chose it,”* implies that initiators should include this advantage with explaining about mediation, as it is likely to make restorative justice a much more appealing alternative. Similarly, a respondent referred to the appeal of time,

“I agreed to it [mediation] as the only thing I was thinking about was how to finish the case as soon as possible because I had a job and my private life and the possibility of a negative judgment was awful for me.”

There was also mention of motivation due to an ‘it couldn’t hurt’ mentality. A few respondents indicated that the initiator (e.g., prosecutor, mediator) suggested that the parties could not know what would happen if they did not at least try to use mediation as a means to resolving the conflict. Furthermore, one victim was content when she learned that even if the mediation was unsuccessful, she could still prosecute the case,

“She [the prosecutor] also told me that in case we wouldn’t sign an agreement the case would come back to her. It persuaded me the most – we can try mediation and if it wouldn’t work I still had the possibility to get help from the prosecutor.” Victim, Poland

Previous research has shown the motivation victims sometimes have to go through mediation for the sake of the offender (Bolivar et al., 2013). One victim responded,

“The mediator explained to me that the offer came from the state attorney’s office to help the offender, so in order not to prosecute the minor...there is out of court settlement which I feel to be more [valuable].” Victim, Croatia

Another point was made by a Polish offender who was motivated because the mediators explained that the procedure is not meant to include a discussion about determining guilt, but is rather focused on the conflict and how to repair the harm that has been caused.

1.7 Dealing with concerns

One offender (Ireland) expressed concerns with meeting the reparation panel. After being told that the panel members were all supportive and would be open and fair, his mind was eased. By taking more time per case, the restorative justice case worker is also likely to deal with any concerns by the parties. This was true in one case for a victim, who further stated that the availability of the employee (i.e., always answering questions he had when he called) was helpful in tending to his worries.

Another offender (Poland) admitted he was frightened before the first informational meeting with the mediator. He explained that because the meeting started with basic information about the procedure, he was able to relax. When they showed that they were concerned with how he felt about the situation, he also was reassured that his opinion mattered and he became more at ease.

Regarding the possibility that the case may not be discontinued in the end, one respondent stated,

“What frightened me was that even if we sign an agreement, the prosecutor would take the final decision – to discontinue the proceedings or to send the case to the court...but the

mediators added that the prosecutor wouldn't refer the case for mediation if she wasn't going to take our agreement into consideration." Offender, Poland

1.8 Environment of offer

One factor that was not probed for in the interviews but did emerge is the environment of where the offer was made. One victim (Ireland) stated,

"He [caseworker] called down to us and talked us through the whole thing. That was good, it was in the house, we could relax and just chat and ask questions. Well I asked all the questions, I don't think [my wife] was too keen on it. But the personal touch was important."

1.9 Other issues arising from the interviews

An interesting case occurred in one of the victim interviews in Ireland. The victim spoke of an irritated Garda officer, who had called him to inform him that the judge made a suggestion for restorative justice. Not only is this likely to lead to incorrect information, but it may play a negative role in the victim's decision because the authority may give the impression that it is not a good idea. This is particularly true where, in this case, the Garda was the first person to contact the victim about restorative justice, becoming a self-appointed overseer of the justice process.

2. Experiment with students: Factors in the letter that influence participation

As noted above, a second analysis was conducted at the party level, though in an experimental design. The goal of the experiment was to examine (1) how social norming may impact one's decision to participate in a restorative justice procedure and (2) how legitimacy or credibility is related to one's decision to participate in a restorative justice procedure. To test these relationships, students were asked to read a scenario where they were a victim of crime, and answer the questions accordingly. Social norming guided the first investigation, serving as a theory to explain why people may be more likely to participate if they are provided with a text insisting that restorative justice is the social norm. The second examination was focused on the authority providing the offer, hypothesising that the decision to participate was dependent on where the letter originated from. The theories will be explained briefly followed by a look at the quantitative analysis.

2.1 Theory of social norming

The theory of social norms "predicts that interventions to correct misperceptions by revealing the actual, healthier norm will have a beneficial effect on most individuals, who will either reduce their participation in potentially problematic behaviour or be encouraged to engage in protective, healthy behaviours" (Berkowitz, 2005). The theory further maintains that people who believe they are in the majority of a given phenomenon are silent, while those who actually are in the minority (but perceive themselves as the majority) are more vocal. Such beliefs are the result of a 'false consensus,' where one falsely believes that others are similar

even when this is not the case. Subsequently, there is a need to be provided with correct and normative information to counter these beliefs.

Social norming is linked with the concept of misperceptions. Misperceptions are considered to be normative by individuals holding certain beliefs and are further spread by ‘public conversation’ among community members (Perkins, 1997). Social norming is a form of indirect persuasion, that rather than telling people what they should do, informs them about what other people are doing. This may correct for misperceptions by initiating a process of change within the individual. A review of the existing research suggests that both discouraging negative behaviours and encouraging positive behaviours have been explored.

The majority of research surrounding social norms appears to examine problem behaviours, such as alcohol consumption, littering, in addition to negative attitudes such as homophobia, prejudice and sexism. Positive effects on behaviour have also been documented, for example on reusing towels in hotels (Goldstein, Cialdini & Griskevicius, 2008). With regard to participation in restorative justice, however, this relationship remains unexamined.

As has been noted numerous times in this report, restorative justice is not widespread in public knowledge and is undoubtedly not seen as the ‘norm’ of conflict resolution. Both punitive attitudes and a lack of understanding among the general public prevents the use of restorative justice from spreading, also due to a lack of ‘public conversation’ within the conflict resolution discourse. Therefore, it may be hypothesised that social norming may be particularly effective in creating a change in attitudes towards restorative justice in one’s personal case when it becomes known that other people use and approve of such a means of conflict resolution.

2.2 Legitimacy

It was also suggested earlier that the person providing the offer for restorative justice may influence how likely an individual is to agree to participate. The offer for mediation coming from a mediation organisation may have a different impact than when coming from actors within the legal system, for example a prosecutor or judge. What this impact may be, however, is unclear and requires further examination. It is possible that a prosecutor or judge is considered to be legitimate or credible, and therefore trusted as a source when dealing with a victim’s criminal case. On the other hand, a mediator may be considered to be ‘closer to the people,’ and therefore more influential in what they suggest or provide.

This hypothesis is in line with the findings that have been reported in the earlier chapters. As was noted earlier in the discussion on initiation, persuasion may be influenced by the level of legitimacy or credibility. Authoritative figures are obeyed by people in general (Cialdini, 2001). Indeed, research supports this notion, finding that victims and offenders may participate due to the advice of police, prosecutor or even victim support agencies (De Mesmaecker, 2012). Legitimacy refers to feelings of obligation to defer and accept, possibly being more efficient than coercive or induced authority (Tyler, 1997). Furthermore, legal

authorities such as the judge or public prosecutor may have a particularly persuasive effect due to their legitimacy, as was illustrated in the qualitative findings of interviews with victims and offenders. Several respondents emphasised the authority of the judge leading to their decision to participate, often with the attitude that it was almost required if requested by the judge.

At the same time, it was voiced that the mediation organisation is sometimes the best means for providing the offer for restorative justice. These individuals may be able to relate to the individual victims and offenders to a greater extent. In these cases, 'persuasion' or 'convincing' may be best achieved through a person who is close to the victim or offender. This notion related to Cialdini's (2001) idea of 'liking,' where people may be persuaded by people they like. The question remains, however, whether an authority figure *should* make the offer in order to provide a certain (appropriate) amount of pressure.

2.3 Design and results

Here we review the two variables that were under examination, namely social norming and authority/credibility. Social norming was measured by providing half of the participants with the text, "*the majority of victims in your situation have participated in a similar programme. A studies showed that 90% of the respondents would choose for mediation if they were given the opportunity.*" The level of authority was manipulated by having the letter originate from the public prosecution service for half of the participants and from the mediation organisation for the remaining half. In the public prosecution group, it was mentioned, "*as [Procureur des Konings], it is my legal responsibility to make a decision about how this case file will continue.*" The text was largely taken from existing letters as are distributed to victims in Belgium in the case of restorative mediation. Participants were then asked to indicate the extent to which they would participate in victim-offender mediation (on a scale from 0 to 9).

The questionnaire was distributed to 110 Criminology bachelor students at a Belgian university. Three of the returned questionnaires were deemed unsuitable due to missing values and therefore the total sample consisted of 107 responses. The course topics included restorative justice, and therefore all of the respondents participating in the study already had an understanding of restorative justice before completing the questionnaire. The majority of the respondents were female (85.5%). The average age was 20.85 years. The mean score on the dependent variable, participation in mediation, was 5.95 ($SD = 1.87$).

The aim of the first analysis was to understand if there were differences between those who were presented with a social norming manipulation³⁵ and those who were not presented with such a manipulation. Independent samples t-tests were conducted between the two groups

³⁵ A manipulation check was conducted to examine if differences could be observed by the respondents on the social norming variable. An independent samples t-test indicated that victims with the social norming message scored higher on their belief that restorative justice is a normal way to solve problems, where the association approached statistical significance, $t(110) = -1.71, p = .08$.

with regard to their likelihood of participation. The results indicated that there were significant differences between the two groups, $t(107) = -2.35, p < .05$. Participants who were provided with the social norming messages scored higher ($M = 6.38, SD = 1.77$) when compared to those with no social norming message ($M = 5.55, SD = 1.90$).

The second analysis inspected whether there would be a difference dependent on who would send the letter. Again, a similar analysis was conducted as above. Unsurprisingly considering the non-significant manipulation check³⁶, there were no significant differences between those who received a letter from the prosecution service and those who received a letter from the mediation organisation, $t(107) = .15, p = .88$.

Particularly where previous ways of thinking have to be challenged, social norming may be an influential approach. For this reason, public awareness campaigns integrating social norming messages can be useful in making a change in the general punitive culture. Public awareness campaigns have been found to be significant in influencing behaviour (Berkowitz, 2004). It remains necessary, however, to find out which messages are most influential and can suggest to people that restorative justice really is an appropriate response. Rather than only targeting individual victims and offenders after a crime has already occurred (e.g., through a letter), an awareness campaign can already make people understand the benefits of restorative justice in addition to the idea that it is a suitable option for solving a conflict. Including social norming messages for example, in posters, the media, flyers explaining restorative justice, postcards, websites and other dissemination strategies can help to counter the punitive 'public conversation' that currently exists.

The findings suggested that whether the information came from the prosecution service or the mediation organisation was not associated with the decision to participate. One hypothesis noted earlier was that the 'closer' the offering body is to the victim or offender, the more likely he or she will accept. Measuring and manipulating this 'closeness,' however was not a focus of the research design and it is likely that respondents were not able to observe differences regarding their feelings towards the person sending the letter. Future research could examine this variable more closely, but the findings in this study would suggest the source of the offer is not a deciding factor when sent through a letter. Certain individuals, however, may be more influenced by the source; therefore, this future research should take a more individualised perspective.

In addition to needing to further examine the 'close' relationship, there were other limitations. The most obvious is the lack of a real-life setting. Indeed, including victims and offenders would be more accurate for the purposes of this research, but also would require access to a difficult group to reach. Furthermore, criminology students will be a very specific group. They have already been made aware of the benefits of restorative justice. That a social

³⁶ The manipulation check showed there were no significant differences between the two legitimacy groups on their perceptions of legitimacy of the criminal justice system, $t(110) = -.65, p = .52$.

norming message was linked to greater likelihood of participation, however, would suggest that even these students are still susceptible to 'persuasive' methods. It may be further hypothesised that people who have never heard of restorative justice would be even more likely to look to other social information when making a decision.

Conclusion

The interviews with the parties led to some overarching themes regarding initiation. Coercion did appear to be problematic for some of the respondents, particularly offenders. This was due to the perception that prosecutors or judges had a lot of power and their outcome of the case might be influenced. A more lenient form of coercion occurred when offenders were encouraged to participate in restorative justice programmes by explaining the benefits of avoiding prosecution and a criminal record, which may have communicated to them they had little choice to refuse the offer. Supporting the quantitative findings, it was clear that there was a lack of knowledge of restorative justice among the participants. Sometimes a leaflet or brief phone call may be insufficient when it is the first time an individual is hearing about a less traditional means of justice. Supportive responses both when providing the offer and when dealing with concerns of the parties proved to be beneficial in the respondents' decisions to participate.

Results of the social norming experiment indicated that there were significant differences between the two groups of those who were presented with a social norming message and those who were not. Participants who were provided with the social norming messages scored significantly higher when compared to those with no social norming message with regard to their likelihood of participation. While it may be argued that this group cannot be generalised to the larger group of victims, it does appear that such differences within the letter should be considered and further research may help to identify more concrete factors in assessing participation decisions.

CONCLUSIONS AND RECOMMENDATIONS FOR ACCESSIBILITY AND INITIATION

This report, Accessibility and Initiation of Restorative Justice, has been written at a time when, although many countries are involved in well-functioning restorative justice programmes, the majority can still benefit from greater access. This access is being hindered by several elements that have been discussed in this report, defined as, “factors that impede or assist parties in getting to a restorative procedure (i.e. those that can increase or prevent referrals).” At the same time, the initiation of restorative justice procedures needs attention, as many elements may impact the likeliness of a victim or offender deciding to participate in a restorative justice programme. These ‘initiation’ elements may discourage or encourage parties, and are related to the moment when legal professionals or restorative justice practitioners will invite or inform them about the possibility for restorative justice. The questions that were investigated are as follow:

- (1) *When and under what conditions are restorative justice processes accessible to citizens?*
- (2) *How are restorative justice processes initiated under different jurisdictions and in different models?*

Understanding the topic of the project require the identification of sources that would measure accessibility. Existing access to justice literature, international legislation and past research findings provide for a framework that helped to measure accessibility. First, the access to justice literature outlines the importance of fair and transparent conflict resolution measures within society. It looks at means for ensuring equal treatment for all citizens, and how to safeguard rights to justice. Second, though the EU Directive establishing minimum standards on the rights, support and protection of victims of crime is considered a milestone in victims’ rights, past mechanisms have also provided both victims and offenders rights and remedies in terms of justice. These stipulations sometimes define how access can be achieved or improved, and which elements are necessary to achieve greater accessibility. Third, past research within restorative justice has looked, to some extent, at both accessibility and initiation issues. These findings often are not the focus of the research or may contain methodological limitations, but they provide a concrete starting point to build upon.

Factors related to accessibility were identified as availability, legislation, exclusion criteria, attitudes, awareness, trust, cooperation, costs and good practices. Each factor has been outlined in the introductory chapters and confirmed as significant in most countries in the empirical analyses. While it is difficult to rank these factors, the issues surrounding attitudes

appear to emerge most often. It was earlier mentioned that changing our pattern of thinking is necessary, particularly where the adversarial relationship is consistently reinforced in our understanding of justice (Van Ness & Strong, 2010). The findings supported the notion that culture may influence attitudes regarding more restorative responses (e.g., *the culture in my country has been more disposed to retribution; in our country we focus on punishments; taking conflict out of one's hands is embedded in our culture*). While attitudes have been changing, a real shift in thinking is difficult and will take more time. Still, procedures throughout most of the countries are in place which appear to contribute to helping legal professionals formulate new opinions regarding restorative approaches.

Attitudes and other accessibility factors would also benefit from the institutionalisation of restorative justice. A restorative culture should be accepted among the general public, but more importantly those who have a direct influence on what happens with criminal cases. This, however, is in stark contrast to the way in which socialisation occurs, which largely reflects the punitive model (though cultural differences may be emphasised). By supporting a restorative culture, it becomes possible to understand restorative practices as separate from penal and civil law (Blad, 2006), and the real meaning of restoration. Encouraging acknowledgment of the harm, making reparations and allowing for dialogue must be at the fore, while denouncing the behaviour and imprisoning the offender should be a last resort. Indeed, changing attitudes to a more restorative climate is a pre-requisite for institutionalisation.

In earlier chapters it was noted how secondary legislation, such as decrees, ministerial circulars and advice of a public authority may also exist. Awareness in these cases is also vital, and increasing knowledge of such legislation – both primary and secondary – should be given more attention. Making these laws and informal rules common knowledge is a step that must be taken before institutionalisation can be realised. Moreover, training which includes reviewing legislation may also be one means of increasing comprehension of laws related to restorative justice. Additionally, we should look at the classification provided by Miers & Aertsen (2012) on permissive and mandatory legislation; mandatory legislation guided by judicial review is also likely to enhance the quality and likelihood of abiding by existing legislation.

The case of Croatia as illustrated earlier showed how changes can be made through proper lobbying. Undoubtedly this is a long process, but further attention must be given to *how* to modify existing laws where they prove to be insufficient. It is also important to understand how to avoid the ‘implementation failure’ which represents a gap in practice and what is written in law.

When investigating the second part of the research – initiation – the report identified several factors: the influence that may be exerted to lead to participation and its link to legitimacy; information; mode of delivery; timing and frequency; language; and preventing secondary victimisation. Again similar findings were found in each of the countries, despite, in some

cases, very different methods. Many actors may play a role in the initiation phase; unfortunately, where these individuals are not restorative justice professionals themselves, their contact with the parties may in fact be harmful to their decision to participate. For this reason, there is an obvious link to accessibility, where initiators are most successful when they are well informed of restorative justice and hold a mentality that supports such principles.

In most cases, the results suggest there is no ‘best’ approach regarding the initiation stage. For example, respondents tended to diverge in their opinions about the timing of the offer and how often it should be made to parties. These differences could be found not only among participants but also among countries. Similarly, the desired mode of delivery ranged among the individuals included in this research. While preferences for actual terminology also differed, it was clear that this was an important factor, one that would benefit from further research. In most cases, however, it became clear that the first informational meeting with the mediator is the best moment to be informed about restorative justice without fear of being dissuaded. Where decisions have to be made when information has only been communicated by uninformed or unsupportive practitioners, parties are likely to be discouraged.

The issue of coercion raises an important point. The voluntary principle maintains that consent should be obtained and may be withdrawn. Moreover, any agreements made must be voluntary. Yet the responses of those interviewed at times reflect the blurry lines surrounding voluntariness. As one respondent stated, *you do not come here for a pleasurable experience, but that is how you will leave*. Whether we refer to it as encouraging, convincing, persuading or coercive, it is clear that there is some influence being exercised. ‘Educative’ falls on this continuum (see Chapter 5) as presenting and discussing the problem and finding solutions. Furthermore, if the party (particularly the offender), feels there is pressure to participate, but then is satisfied with the restorative justice procedure, would this be violating the principle of voluntariness? Indeed, research has found that there is some pressure exerted on parties (see Bolivar et al., 2013), but research conducting some type of cost-benefit analysis has not been done. Where trauma or negative reactions are not experienced, it may be concluded that some pressure is not necessarily unethical or counterproductive.

Within the empirical research results, a small scale student experiment was included. The main finding was the benefit of social norming in agreements to participate in restorative justice procedures. This may be due to the fact that it corrects for previously held misperceptions about how justice ‘should be.’ Perhaps more important, however, is the use of different disciplines and theories in gaining a greater understanding of the decision to participate. Indeed social behaviour has been studied to a great extent, and an outcome such as participation can be better understood by looking to these theory for guidance in further research.

The empirical contribution to the project is of course not without its limitations. Perhaps foremost is the issue with the quantitative findings, namely that those respondents who chose

to reply to the questionnaire request likely did so due to their support for restorative justice. For this reason, many of the findings may appear more positive than reality would indicate. Furthermore, the project aimed to provide good practices for accessibility and initiation, but it is clear from the findings that this is not always a feasible task. Practitioners have different methods and countries different systems which make it difficult for one organisation to implement practices from another. While this project may be successful in providing a general overview of the accessibility situation within Europe, it does not go into further detail with most of the issues. Indeed, each factor could benefit from a 2-year study if one wishes to fully understand the concepts. In some cases, however, the research did look more closely into the issues at hand, for example letter writing and social norming theory. What the results do provide is a first step for future research in the area of accessibility and initiation.

The project has led to many recommendations regarding accessibility and initiation of restorative justice. A practical guide has been developed which provides more concrete, elaborate recommendations and good practices. The following section will provide a shorter summary of these findings, which have been collected from the empirical research in addition to the trainings and workshops which took place as part of the project.

Recommendations and good practices, extracted from the findings of the empirical research, workshops and trainings throughout the project, in addition to the Practical Guide (Biffi & Laxminarayan, 2014)

- Legislation alone is not enough to improve initiation and accessibility. More is needed to ensure implementation, in addition to greater cooperation among restorative justice practitioners, awareness and attitudinal shifts.
- Closing letters that report the status of the mediation back to the police or judicial authorities can improve cooperation, attitudes and awareness of restorative justice.
- Creative awareness campaigns are fundamental to the expansion of restorative justice. Below are some examples extracted directly from the *Practical Guide* (Biffi & Laxminarayan, 2014):
 - During RJ Week 2013, the EFRJ prepared five types of *postcards* to spread awareness. The postcards had different designs (quotes from victims/offenders, a comic, quotes concerning the benefits of restorative justice). The postcards were disseminated to all organizational members of the EFRJ, including restorative justice and criminal justice practitioners, in addition to the general public (i.e. students).
 - Combining dialogue and arts through panel discussions, open mic nights, murals, (radio) plays, theatre performances, poetry, film, photo exhibits, documentaries, fairy tales.

- A steering group or advisory *committee* is useful in enhancing cooperation. It may be made up of individuals from the public prosecution, restorative justice services, social work, justice houses, prisons, victim support, local government, universities, police, youth care, and courts. Other relevant agencies may be included, and can be determined by conducting a stakeholder analysis. The steering group should evaluate, stimulate and coordinate restorative initiatives, projects and developments. A *purpose statement* may outline the reasons each party has for participating in such a committee. A *signed protocol* should include the goal of the committee, the method that will be used, practical issues surrounding the steering group, the possibility to engage in different initiatives, compliance and termination of membership and an indication of which agency will oversee the committee (extracted from the Practical Guide).
- Restorative justice practitioners may prepare seminars, inviting interested politicians. One means of getting the message across is learning how to best cater to the needs and interests of politicians. For example, politicians may be interested in the financial benefits of restorative justice. Comparing restorative justice and the traditional criminal justice is a powerful tool to convince politicians about the benefits of restorative justice. Numbers may speak to this group, even if it does not always match with the principles of restorative justice.
- Lobbying activities may help to enhance accessibility. The preparatory stage entails identification of individuals and organisation of the group who will argue for the cause. Lobbyists meet to agree on arguments that support the specific cause, write the relevant materials to be distributed and organise educational meetings on the topic. Communication (whether oral, written or electronic) should then begin between lobbyists and legislators or other relevant staff working in the field. It may be helpful to maintain a report and list of contacts to keep an overview of all lobbying activities. Guidelines should be published to help similar organisations initiate their lobbying activities on restorative justice issues.
- Use judicial training role plays to enhance knowledge and understanding. Judges may be invited to join a role-play of a restorative justice conference, based on a real case given to them in advance by trainers. The participants play the roles of victim, offender and their supporters in presence of a facilitator and a co-facilitator (these last two roles are usually played by the trainers themselves), the rest of the participants observe the group dynamics of the process.
- Clearly identify the needs of the parties as understanding these are likely to lead to greater accessibility and more successful initiation. Both referral bodies and restorative justice practitioners should be aware of these needs, and how restorative justice procedures can play a role. Consider explaining these advantages in comparison to the traditional criminal justice system.

- The message communicated to people about restorative justice may include several concepts. The notions of empowerment and control have been emphasised. Some more concrete examples include:
 - “Build your own solution”
 - “You don’t have to be a victim”
 - “Transform yourself into a builder”
 - “You don’t have to remain a victim, empower yourself using RJ”
 - “Trust yourself”
 - “Justice is not about the punishment”
 - “Use justice for building the future”
 - “Help your profession to the next level by using other professions”
- Provide referrers with the information that will motivate them to refer cases: costs for keeping people in prison and re-offending figures. This can be done through (regular) presentations and informal meetings.
- Education in schools is a means of increasing awareness of restorative justice. Children who learn to deal with conflict in a restorative way are likely to accept and use such means in the future. Even in schools there is often a more punitive means of dealing with rule-breaking. Implementing a restorative programme would help young students to deal with conflict through dialogue and understanding of the harm. In the long-run, such programmes would influence the larger society
- The media is a tool that can distort the goals of restorative justice, but it may also be used to spread favourable attitudes about such processes. Article titles may be misleading and subsequently depicting restorative justice as a ‘soft’ response that allows murderers and rapists to walk free with only an apology to the victim. Because the media may be detrimental to the public reputation of restorative justice, it is important to talk to these individuals in a way that convinces them that such a story portraying restorative justice positively would also be interesting for citizens. The positive should be promoted and the negative counter-argued
- Observer programmes allow legal professionals to be present during a restorative justice intervention. They are then likely to more fully understand the benefits and processes involved
- When writing a letter, it should be as interactive as possible to engage the parties. For example, victims and offenders could be asked to answer some questions (e.g., do you

want to get answers from the offender; do you want to express yourself) and at the end of the letter be instructed that 'restorative justice may be for you'; Parties should not be labelled, and words such as closure or forgiveness should not be used; The message of the offer could ask, "what do you need to be restored?" or "what do you want out of the situation?"

Decades have passed since the introduction of restorative justice in Europe and elsewhere. It is hailed as a positive new approach to dealing with crime, one which avoids many of the disadvantages of the traditional criminal justice system. Yet as this project emphasises, there are still many barrier to overcome before restorative justice reaches its full potential. Getting to this point will require a lot of changes, both at the systematic level and the individual level (e.g., changing attitudes of legal professionals). But the improvements that have been made and the exchange of information among those within the field suggest that such change is possible and impending. Greater cooperation and increasing knowledge leads to a transformation in attitudes and more trust among the relevant bodies. Facilitating discussions in the public sphere, which is becoming more common as this report illustrates, is one means of changing attitudes and understanding of the general population, eventually leading to greater self-referrals. While institutionalisation may still require further dedication and hard work, it is undeniable that the future of restorative justice will benefit from greater accessibility and more favourable initiation strategies.

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Appendix A. Questionnaire to European countries on current accessibility issues



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

Restorative justice procedures are developed as a means of including the parties involved in the criminal act, possibly leading to greater satisfaction when compared to the traditional criminal justice system. European countries have, to differing extents, implemented different programs that may be considered to be restorative. Unfortunately, there still sometimes are limited numbers of victims and offenders reaching these restorative procedures.

Together with partners from several European countries we are conducting research on the initiation process and the accessibility of restorative practices. This research is funded by the European Commission (Directorate-General Justice, Directorate B: Criminal Justice). To get more information we developed a survey to understand what barriers exist that may be preventing victims and offenders from accessing restorative justice procedures, namely victim-offender mediation and restorative conferencing.

With your assistance, we aim to improve the understanding of the use of restorative justice, helping such procedures to reach their full potential.

We would like to ask you to fill in this questionnaire. It will take approximately 25-30 minutes to complete.

All answers are confidential and you will not be identified along with your responses. Thank you very much for your help. If you have any questions, please contact Malini Laxminarayan, project coordinator, at malini@euforumrj.org.

Background information

Country where you are employed _____

Region _____

Gender Male
 Female

Age 18-24
 25-34
 35-49
 50-65
 65 +

What post do you currently hold? (If you only work in either an adult or a juvenile justice system, please specify)

How long have you held this post? Less than 1 year
 1-3 years
 4-6 years
 7-10 years
 More than 10 years

How long have you held any post that had direct or indirect contact with the legal system?

Less than 1 year
 1-3 years
 4-6 years
 7-10 years
 More than 10 years

The referral process. We would like to ask you about your referral strategies. Please note, we consider a referral to be an action that *actively brings the parties into contact with the restorative justice service. Informing the parties is simply letting them know about the existence of restorative justice services.*

Does your job include making referrals to restorative justice procedures or do you work at a mediation organisation? If both may apply to you, please select the option where you work more often.

- I am in a position to refer parties to restorative justice procedures.
- I work at a restorative justice organisation.

Of the following options, which programmes do you refer to? (We realize you may refer to other types of restorative programmes, but now we are interested in only these two options).

- Victim offender mediation only
- Family group conferencing only
- Both of these

If both, how do you decide which one to refer to?

(Referrers only) How often do you refer suitable cases to restorative justice programmes?

- Never
- Sometimes
- About half of the suitable cases
- Most of the suitable cases
- Always

Before referring contact details of parties to the restorative justice organisation, please briefly explain any criteria that must be met.

(Referrers) Please indicate the referral process you MOST OFTEN follow:

I send the contact details of suitable parties to the restorative justice organisation.

I inform the parties of the opportunity for restorative justice (in person, letter, phone).

I have the authority to require restorative justice as an alternative to prosecution.

I have the authority to require restorative justice as part of the sentence.

I wait for a lawyer to approach me before sending contact details to the service.

I wait for parties to personally ask me about restorative justice before putting them in touch with the restorative justice organisation.

- I wait for other representatives such as family or support persons to approach me.
- Other, please specify _____

(Referrers) Do you have the duty by law to refer suitable cases?

- Yes, I must refer all cases.
- Yes, I must take the option for restorative justice into account when deciding what to do.
- Yes, I must inform the parties about the existence of restorative justice.
- No, I have no obligations by law.

What authorities or bodies in your country are able to refer parties to restorative justice?

- Police
- Prosecutors
- Judges
- Social welfare organisations
- Offender organisations
- Schools
- Victim support
- Prisons
- Probation
- Defence attorneys
- Self-referrals
- Other

(Referrers) Are self-referrals possible in your country?

Yes No

(Referrers) Can the victim or offender suggest restorative justice?

Yes No

(Referrers) Do you have the duty to inform parties about restorative justice?

Yes No

Can you think of reasons that cases do not get to the restorative justice organisation?

Yes No

If yes, please explain _____

(Referrers) If possible, would you want to refer cases more often?

Are you the best person to be referring? Yes/No

Why/why not?

How can referring behaviours be increased?

(Referrers) When do you refer cases?

- Before prosecution
- During a prison sentence
- Other _____
- As part of the sentence
- After a sentence and/or during probation

Other RJ options

Does your country have other restorative options available that are commonly used besides victim-offender mediation and family group conferencing? Yes No

If yes, what are they?

If yes, do any of them include a procedure where the offender and victim can meet, even if this does not always happen in practice? (example: a reparation panel where the victim may be invited by s not required for the procedure to occur) Yes No

Which procedures may include the involvement of both the victim and offender?

Of these procedures that MAY include both the victim and offender, what problems exist that limit referrals to these procedures?

Availability

Is there a shortage of cases within the restorative justice interventions that exist in your country? Yes, most interventions need more cases

No, some interventions cannot handle all the requests they get

If no, do some or all of the interventions need access to more resources? (You may choose more than one) Yes, more personnel

Yes, more funding Yes, other _____ No, there are enough resources

Are there time limitations on how long a case may be suspended in order to conduct the RJ intervention? Yes No

If yes, how long? _____

If yes, do these time limitations restrict the amount of cases going to restorative justice interventions? Yes No

If one of the parties does not live in your country, will you find a way to still bring the parties to a restorative justice intervention? Yes, always or sometimes

No, never

Is yes, please explain how you deal with the party in the other country.

	To a very small extent	To a small extent	To a moderate extent	To a large extent	To a very large extent
To what extent is there equal access to restorative justice in your country?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

Legal knowledge and training

What legislation exists that guides the referral process? (Please list Laws, Code of Criminal Procedure, Criminal Code). It is not necessary to look it up if you are not aware of the laws.

What cases may not be considered for restorative justice as a result of legislation that prohibits it?

Are there guidelines or protocols existing that guide the referral process? Yes No

If yes, please explain what these are.

If no, please explain how you know what to do with suitable cases.

Did you undergo training about restorative justice? Yes No

If yes, approximately how long was this training?

	To a very small extent	To a small extent	To a moderate extent	To a large extent	To a very large extent
If yes, to what extent do you believe this training was effective	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

What happens if you do not refer cases to RJ interventions? Nothing

There may be consequences, namely

If no consequences, do you think that if there were consequences, you would refer more cases? Yes

No

If consequences, do fear of these cause you to refer more cases? Yes

No

If no, why not?

Exclusion criteria

- Which cases do you **not** refer to restorative justice interventions? Very serious crimes
- Where either party has severe mental health problems
 - Where one of the parties does not live in the country
 - Domestic violence
 - Sexual offenses
 - Where drugs are involved
 - Where there is an elderly victim
 - Where there is an elderly offender
 - Other, please specify

If any of the above, please explain why.

To what extent do you agree with the following?	Very small extent	Small extent	Moderate extent	Large extent	Very large extent
---	-------------------	--------------	-----------------	--------------	-------------------

The parties' wanting to meet is enough reason to proceed with an RJ intervention.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Ethnic minorities in my country are equally appropriate candidates for restorative justice when compared to the rest of the	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
---	-----------------------	-----------------------	-----------------------	-----------------------	-----------------------

population.

If very small or small, please explain.

Criminal Justice Resources

About how much extra time does assessing victims' or offenders' suitability for restorative justice take?

Do you have time for this? Yes No

Are there ways this time per case can be reduced? Yes No

If yes, please explain.

Is there always a location for conducting the procedure?

Awareness

What awareness strategies for the public exist in your country?

If your country accepts self-referrals, which of these you listed, if any, lead to a substantial number of self-referrals?

What awareness strategies exist within your organisation to get staff knowledgeable and motivated about RJ interventions?

Do you discuss your experiences with restorative justice with your colleagues? Yes (sometimes) when the experiences are positive only
 Yes (sometimes) when the experiences are negative only
 Yes (sometimes) when the experiences are positive or negative
 No never

Attitudes

To what extent do you agree with the following:	Very small extent	Small extent	Moderate extent	Large extent	Very large
---	-------------------	--------------	-----------------	--------------	------------

					extent
Justice should be about trying to heal relations between a victim, offender, and the community.	0	0	0	0	0
Justice can be served if the victim, the offender, and the community meet to discuss, and find ways to repair, the harm that was done.	0	0	0	0	0
The ideal way to deal with crime is for a victim, the community, and the offender to meet to discuss how the crime should be dealt with.	0	0	0	0	0
The criminal justice system should accommodate the process of dialogue between offender and victim.	0	0	0	0	0
Sometimes they are not emotionally suitable for such a procedure.	0	0	0	0	0
I do not believe in restorative justice as a solution to the harm.	0	0	0	0	0
It would cause further harm to the victim.	0	0	0	0	0
I believe the offender is only trying to get a lighter punishment.	0	0	0	0	0
I feel uncomfortable discussing this option with the victim.	0	0	0	0	0
I do not have the time to inform the victim.	0	0	0	0	0
Please indicate to what extent:	Very small extent	Small extent	Moderate extent	Large extent	Very large extent
Any lack of support for restorative justice may be due to cultural factors.	0	0	0	0	0
To what extent do you agree that family violence cases	0	0	0	0	0

should be included?

To what extent do you agree
that sexual abuse cases should
be included?

-
-
-
-
-

Cooperation

(RJ org. only) With which bodies do you have contact?

Prosecutors

Offender organisations such as (youth) probation

Social welfare services

Victim support

Other, _____

(RJ org. only) From which bodies do you receive referrals?

Prosecutors

Offender organisations such as youth probation

Social welfare services

Victim support

Other _____

Police

Judges

Prisons

Probation

Defence attorneys

Police

Judges

Prisons

Probation

Defence attorneys

Do all the people who may refer know that they have this option?

(RJ org. only) Do you think more bodies should be referring cases?

Yes

No, this is enough

If yes, please explain who

(RJ org. only) Do you have regular meetings with the referring bodies to keep in close contact?

Yes

No

If yes, how often? If not, why not?

(Referral only) Do you have regular meetings with the RJ organisation(s) to keep in close contact? Yes No

If yes, how often? If no, why not?

(RJ org. only) Do the police or other referring bodies withhold contact information about the parties, or has this happened in the past, that would help you to get more referrals? Yes No

If yes, how do you deal with this issue?

(RJ org. only) How else do you inform referral bodies about your service? We offer presentations We provide leaflets Other, please specify _____

(Referrer) Does the RJ organisation do any of the following? Offer presentations about restorative justice Provide leaflets about restorative justice

If yes to either, please indicate to what extent these have a positive influence on your referring behaviors (very small, small, moderate, large, very large).

(RJ org. only) What other strategies do you use to encourage cooperation with the referral bodies? (e.g., report the outcome of the case back to the referrer, include the referrer in preparation interview).

(RJ org. only) Do you give tips to the referring bodies on how to best provide the offer for restorative justice? Yes No

If yes, please explain

Best practices: We are interested in understanding what techniques and procedures your organisation follows in order to increase the number of referrals. This helps us to understand best practices. Please indicate which of the following you do.

(RJ org. only) Do you ever go to court to talk with victims and offender about restorative justice possibilities? Yes
 No

(Referrer only) Do you use a checklist that ensures that you will tell the parties about restorative justice options? Yes
 No

(RJ orgs.) Do you receive lists of cases from referring bodies, such as the police or juvenile organisations and contact the parties yourselves? Yes
 No

In some countries, offenders are told about restorative justice options during one of their rehabilitation sessions. Does your country do this? Yes
 No

Are victims or offenders sent a standard letter informing them of the possibility for restorative justice? Yes
 No

If yes, is this effective? If no, why not?
[RJ ORG] Do you sit in court to make yourself more visible to the legal professionals? Yes
 No

If no to above responses [this will come directly after the corresponding item above], to what extent:

	Very small extent	Small extent	Moderate extent	Large extent	Very large extent
--	-------------------	--------------	-----------------	--------------	-------------------

Could going to court to talk with victims increase referrals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
---	-----------------------	-----------------------	-----------------------	-----------------------	-----------------------

Could a checklist help increase referrals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Would receiving a list of cases increase referrals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
---	-----------------------	-----------------------	-----------------------	-----------------------	-----------------------

Could informing offenders about RJ in rehabilitative sessions help increase referrals?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
--	-----------------------	-----------------------	-----------------------	-----------------------	-----------------------

Does a standard letter going out	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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If large or very large for last question, please explain.

Appendix B. Questionnaire for semi-structured interviews with victims and ‘initiators’

Victims:

[Before beginning these questions, it is important that the victim or offender understands what is meant by the offer. Therefore, please review this first with the respondent. The offer may have come from the prosecutor, police, defence attorney etc., but the real informative discussion may have been with the RJ organisation. The offer is whomever the victim or offender spoke to before agreeing to participation.]

1. How were you approached when you were offered RJ (letter, home visit, during court phone, other?)
2. How do you feel about the way the program was introduced to you [*cover for each of the possibilities, perhaps one was not good, for example the letter*]?
3. You may have heard about RJ practices from a number of sources. Who influenced your decision to participate? [*This should be either between the legal authorities (police, prosecutor, judge, lawyer), the RJ organisation or someone in their own environment.*]
4. Had you already heard about restorative justice?
5. [*If offer made by legal authorities*] If you were approached by the prosecutor, police, lawyer or judge, did their authority impact your decision to participate? How?
6. [*If offer made by mediation service*] Did the manner or your perception of the RJ practitioner have any impact on your decision to participate? How?
7. Did you already have information prior to your contact with the RJ organisation? From where? Was it sufficient? Accurate?
8. What information did you receive when you received the offer from the RJ organisation?
9. Was this information useful in your decision to participate? Why or why not?
10. Was the timing of the offer good? (e.g., was there enough time to think about it)? Please explain.
11. Do you think if RJ had been offered earlier, you would not have agreed?
12. Did you feel pushed into accepting the offer? If so, please explain.
13. What were your main concerns or hesitations when you heard about the offer?
14. How did the mediator help in dealing with these concerns?
15. Did you feel the mediator really listened to your concerns?

16. What was particularly influential during the offer in your decision to participate?
17. If you could improve the experience of the offer to another person in your situation, would you have any suggestions?
18. After having gone through the procedure and looking back, should it have been offered in a different way?

Initiators

[An explanation should be provided for initiators about what is meant by the offer. For example, a lot of information may have already been given but the offer will be right before the parties agree to participate.]

1. *[It will first be important to understand the role of the initiator in the initiation process and details of the referral]* What is your role in the referral process? Do you contact the parties or do they come to you? Do you go to court to recruit participants? How? Have they already received a letter, information session etc or are you the first to explain the procedure to them?
2. In many countries, low numbers of cases are being dealt with by restorative procedures. What do you think is causing this? How can it be improved?
3. What common problems do you see in the referral process? *[this may have been covered above. Note: the above question is intended to get an overall view of the accessibility stage. The remaining questions will really focus on the initiation (i.e., how the offer is made)]*
4. How have you learned to best make the offer for RJ? (e.g., trainings or through experience)
5. Are there any important first steps before you start talking about RJ?
6. At what moment do you think it is best to make the offer for RJ?
7. How frequent should the offer be made? Is it invasive to offer more than once *[for example if the police, prosecutor and RJ service all tell about it]*?
8. *[for restorative justice service only, not if initiator is police, prosecutor etc.]* If the parties have already heard about the procedure from other bodies (e.g., the police, prosecutor etc), do you think there are problems with what they are told in this conversation?
9. Do you think parties are more likely to accept the offer if the first time they hear about it is from the restorative justice organisation themselves? *(e.g., could the police discourage parties from participating because they give insufficient or incorrect information?)*

10. How is the offer communicated (letter, phone call, house visit, other)? Which do you believe works best? Why?
11. Do you have any innovative ways of making the offer? (e.g., DVD; having a victim or offender present who can tell about their past experiences with the RJ procedure)
12. What are the main points you make in your offer?
13. Of these, which are the most important in getting parties to agree to participate?
14. Do you tell about the benefits? [*Skip if already covered above*]
15. Do you tell about the disadvantages or risks? How do you keep these disadvantages or risks from scaring off participants?
16. If victims or offenders show signs of anxiety, what do you do?
17. If victims or offenders shows signs of uncertainty, what do you do?
18. Is the language of the offer important? Are there certain things you should not say (e.g., using the word mediation).
19. Is any level of coercion or persuasion acceptable? How far can you go in convincing parties? Please explain.
20. Is there any way for you to appear legitimate to the parties? How?
21. What tips would you offer to others when making the offer for RJ?