

# Restorative Justice in Cases of Domestic Violence

Best practice examples between increasing mutual understanding and awareness of specific protection needs.

**(JUST/2013/JPEN/AG/4587) WS1.Comparative Report**

January, 2015

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# 1. Introduction

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## 1.1 Why and how is this research undertaken

This project, Restorative Justice in Cases of Domestic Violence, Best practice examples between increasing mutual understanding and awareness of specific protection needs (JUST/2013/JPEN/AG/5487), financed by the European Commission and coordinated by the Verwey-Jonker Institute, aims at filling research gaps and getting together existing knowledge on using restorative justice (RJ) in cases of domestic violence (DV) or rather – more precise – intimate partner violence (IPV). The main question is: How can restorative justice practices like victim-offender mediation (VOM) or conferencing be of use in these specific cases of IPV. Furthermore it aims at exchanging risk points and best practice among practitioners and creating a network of practitioners to increase mutual understanding between different judicial systems and RJ practices in the member states. Partners in this project are from Austria, Denmark, Greece, Finland, the Netherlands and the UK (England & Wales). Current practices and regulations in these countries will be studied in depth, but the project aims to get better insights into the topic in the whole of Europe. This will result in a better understanding of the risks and potentialities of the use of restorative justice in cases of intimate partner violence. This again results in a better protection of victims and society at large in the European member states.

This comparative report consists of an introductory chapter (chapter 1) in which we explain the definitions and the aims of the project. We also describe what the international and European legal instruments (conventions, guidelines and recommendations) say about the use of RJ in IPV cases. In the last paragraph we give insight into the more theoretical discussion about opportunities and risks of RJ in cases of IPV, including pro and contra arguments and – if appropriate – requirements. Chapter 2 gives a comparative overview of the situation in the six partner countries.<sup>1</sup> Chapter 3 presents some first conclusions and discussion points.

### ***Definitions***

In this project domestic violence is understood as violence used by (former) adult intimate partners, i.e. intimate partner violence. Restorative justice is focused on reparation of harm in the aftermath of a crime or conflict. The most frequently used restorative justice practice in the context of IPV is victim-offender mediation (VOM). Sometimes conferencing is used. Therefore our main focus is on IPV cases that have been reported to the police and/or have led to criminal procedures and have been referred to VOM. Civil cases are not part of this research project.

### ***Aims and products***

Restorative justice practices have been developed over the last decades in various European countries in different legal and social contexts. Community based organizations, police, probation services or others provide RJ services for victims of violence committed in close relationships. In Finland and Austria, for example, crimes including intimate partner violence have been referred to VOM for many years, even though there are specific restrictions on when this can be done. The dynamics of IPV create

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<sup>1</sup> The full country reports of this project stage are available at the Verwey-Jonker Institute and at the offices of the national partners.

particular challenges for the practice of RJ, especially what concerns achieving safety and voluntary participation. Suitability and inappropriateness of RJ for cases of IPV have remained largely unexplored in many countries, therefore in-depth research is needed, as well as the exchange of promising practices and difficulties or problems faced in practice and of regulations throughout Europe.

The aim of this exchange and research project is to generate relevant knowledge on practices of RJ and to identify criteria for offering RJ to victims of IPV so that they can benefit to the maximum extent and in accordance with the EU Victims' Directive of 2012. Another objective is to set standards to guarantee the quality of the implementation of RJ practices.

Based on this knowledge, a guide for practitioners will be developed and tested. This guide can be used in the training of VOM mediators, but also officials like police officers, prosecutors and court staff can benefit from such a guide..

The main questions in order to achieve these objectives are:

- 1) What are the relevant RJ practices and policies concerning IPV in different European countries?
- 2) Can RJ be useful in case of IPV, and if so, under what circumstances or conditions? What do victims of IPV need in respect to RJ?
- 3) Can RJ in cases of IPV be offered at each stage of the criminal procedure (before, during and/or after) and/or should victim-offender mediation (VOM) (or other methods such as conferencing) be carried out by using a different (community) approach outside the criminal justice system?
- 4) Can networking with regard to IPV be stimulated between practitioners of RJ/mediation both at national and European level in order to support sustainable implementation of RJ in IPV cases?

## 1.2 International and European standards

On international, national and regional level guidelines and binding instruments for the use of RJ practices have been developed. In 1999, the Council of Europe set up an extensive framework for the use of mediation in Europe by launching the first Recommendation No. R (99) 19 of the Committee of Ministers to Member States concerning mediation in penal matters.<sup>2</sup> The use of victim-offender mediation in penal matters is seen as a flexible, problem-oriented, participatory option complementary or alternative to traditional criminal procedure. Since then many EU and other international documents on this topic have been issued and adopted.

In 2001, the European Commission adopted the Framework Decision on the standing of victims in criminal proceedings.<sup>3</sup> It was replaced in 2012 by the European Directive on minimum standards on the rights, support and protection of victims of crime.<sup>4</sup> It obliges member states<sup>5</sup> to take measures that will ensure that victims who choose to participate in RJ processes have access to safe and competent RJ services (article 12). These RJ services have to work with trained staff following professional stand-

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<sup>2</sup> <https://wcd.coe.int/ViewDoc.jsp?id=420059> (last visited 10.11.2014)

<sup>3</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2001.082.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2001.082.01.0001.01.ENG) (last visited 10.11.2014)

<sup>4</sup> <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32012L0029> (last visited 10.11.2014)

<sup>5</sup> The Directive will apply to every EU Member State except Denmark. Denmark did not take part in the adoption of this Directive and is not bound by it.



ards (article 25) (see Annex 1). Neither the Framework Decision nor the Victims Directive nor the Directive on the European Protection Order (2011)<sup>6</sup> refers explicitly to the use of RJ in IPV cases – it is important to mention this as there is an ongoing discussion among scholars if victim protection can be guaranteed in the context of RJ (see 1.3).

In 2002, the Economic and Social Council of the United Nations adopted the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.<sup>7</sup> One of the declaration's most important aims is victim protection, but like the EU documents it does not prohibit the use of RJ interventions in IPV cases. Also the UNODC Handbook on Restorative Justice Programmes only states that “(t)he use of restorative justice in cases of domestic violence and sexual assault, for instance, is often controversial.” (UNODC 2006: 45).<sup>8</sup>

However, in 2009 the United Nations recommended in the Handbook for Legislation on Violence against Women to “explicitly prohibit mediation in all cases of violence against women, both before and during legal proceedings” (UN 2009: 38) as “(i)t removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability” (ibid.). According to the Handbook “an increasing number of countries” follows this recommendation, among them Spain since 2004 (ibid.).

On 1<sup>st</sup> of August 2014 the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) has come into force after having been ratified by ten states. Prevention, protection, prosecution, and eliminating violence are the main purposes of the Convention. As regards IPV and RJ, it demands from the signatory states to prohibit *mandatory* alternative conflict resolution, including mediation and conciliation (article 48). The explanatory report concerning the Convention states that victims of domestic violence could never enter the VOM process on an equal level with the perpetrator, that the perpetrator would always be more powerful and dominant, and that the state would be responsible for avoiding the re-privatization of domestic violence.

Nevertheless, most European countries do have experience with (voluntary) forms of RJ interventions in cases of DV. Examples can be found in chapter 2. Now we will first elaborate on opportunities and risks of these experiences.

### 1.3 Restorative justice and intimate partner violence: opportunities and risks

Intimate partner violence may comprise a number of different behaviours, causes or sources of violence and consequences for victims and their children. Nevertheless, it is crucial to distinguish between coercive control in intimate relationships (intimate terrorism) and situational couple violence. In contrast to situational couple violence, intimate terrorism refers to recurrent, escalating violent acts in combination with the exercise of power and control: the victim is isolated and lives in permanent fear (Johnson, 2006). Partner violence takes place on a continuum, with severely traumatized and isolated vulnerable victims living in fear, to strong victims who have support from family, friends and advocates (Edwards & Sharpe, 2004: 17).

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<sup>6</sup><http://www.eujusticia.net/index.php/victimsrights/category/additional-victims-protection/european-protection-order1> (last visited 10.11.2014)

<sup>7</sup> <http://www.unrol.org/doc.aspx?d=2752> (last visited 10.11.2014)

<sup>8</sup> [http://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf) (last visited 10.11.2014)

In spite of the scepticism mentioned above, for about ten, fifteen years, forms of restorative justice have been used in each of the six partner countries – Austria, Denmark, Finland, Greece, the Netherlands, and the United Kingdom, –also in cases of IPV. Nevertheless, this instrument is not well established in all countries. In Denmark, for example, only very few IPV cases were referred to RJ. Since RJ practices have become an alternative (or in some countries, a complementary instrument) to formal criminal justice procedures especially feminist scholars and practitioners have pointed out problems emerging when such measures are used in cases of IPV. The dynamic of IPV creates particular challenges for the practice of RJ, not only in various countries in Europe, but also in Australia, New Zealand, North America, and other parts of the world. In cases of coercive control victim-offender mediation can be dangerous, but in case of situational violence the use of RJ/ mediation can turn out to be helpful and effective, especially when children are involved (Pelikan, 2010). Therefore, flexibility in how to deal with different types of offenders, victims and kinds of relationships is necessary. In this paragraph we look for supporting and counter arguments to use RJ in cases of IPV. Before that, we give a sketch of the historical background of RJ and stress differences between RJ in IPV cases and RJ interventions as a reaction on public crime (crimes committed outside the private sphere).

### ***Historical background***

It is important to differentiate between RJ/mediation in cases of IPV and in cases of public crime. Historically restorative justice is seen as an alternative to repressive criminal sanctions; it brings the conflict back to the persons involved. But when it comes to IPV the situation turns: Partially even until today IPV has been seen as a private matter where the state and the criminal system were not supposed to intervene. Feminists criticized this privacy argument: The state was protecting men's privacy, but did not protect battered women. Feminists took IPV out into the public venue of the courtroom; police and prosecutors and magistrates had to take IPV serious and it became obvious that victims of IPV need to be protected by the state (Cameron, 2006; Lünemann, 1996). But also criminal justice has its limitations. The criminal justice system follows a punitive approach and the needs of victims are not of primary concern. In the first place victims of IPV want support in stopping the violence, also when they seek help from the police or the criminal system. The criminal system is not always giving the protection needed, though, and the crime control strategies can even endanger women, especially those who are most vulnerable to state intrusion and control (Edwards & Sharpe, 2004; see also the Directive on the European Protection Order (2011/99/EU)).

Besides this historical argument, there are three other significant differences between IPV and public crimes. Firstly, a crime in public is an incident between people who might not or barely know each other while domestic violence is a continuing process between two persons who are living together and/or have children together. Secondly, the main objective of RJ in public crime is reparation (to restore the harm done), retribution and rehabilitation of the community. It is about working on taking responsibility and maybe apologizing, but in case of IPV the priority is to stop the violence and when there are children, to agree, for example, on safe and caring visiting agreements. Monitoring to guarantee safety for women and children is an important outcome in cases of IPV, while in cases of public crime an agreement is the main result of an RJ intervention. The last difference has to do with equality: In cases of IPV there has to be explicit attention on how to deal with power imbalance in the relationship (Ptacek, 2010; Stubbs, 2008).

### ***Critique of applying VOM***

Critique of applying VOM in IPV cases is argued from a feminist point of view and focuses on various levels. It has to be borne in mind that – although this is rarely said explicitly – VOM opponents usually

think of victims of intimate terrorism, not of situational couple violence (Johnson, 1995; 2006). There are a number of arguments against VOM in these cases.

### *Safety*

A central concern is the safety of the victims participating in VOM. Because of the power imbalance in the relationship the victim is not free to follow her interests and is afraid of disagreeing with her partner. The RJ process will be manipulated by the offender. Victims can feel intimidated by their (ex)partners, perceive the outcome as unfair or find the experience a waste of time and resources. It can lead to re-victimization of the women (Edwards & Sharpe, 2004). Is the victim free to follow her interests? The core criticism is that the gendered power imbalance cannot be safely addressed (Cameron, 2006). The vital condition of VOM is neglected, because the victim cannot freely choose VOM participation and follow her interests during the process. Moreover, even if violence gets aggravated during the RJ process, the power imbalance stays invisible, and this means increased risk for the victim.

### *Double pressure*

The victim is not only terrorized by her partner but also by the VOM setting, experts underline. The most common situations are, on the one hand, the pressure to participate actively in VOM proceedings even if the victim is not convinced that she wants to do so. (Sometimes it is argued that her situation at court is better because she may at least refuse evidence.) On the other hand, she might agree with a certain outcome because she knows/feels that she is supposed to do so, particularly to accept an apology even knowing that it is not meant sincerely (Daly & Stubbs, 2007: 17).

### *Counterproductive intervention*

Does the victim agree with the outcome out of fear? The victim might accept a certain result because she knows that she is supposed to do so. The regular outcome of VOM is reparation. Reparation as a substantial aspect of VOM is seen as a benefit for victims by its advocates. But VOM opponents judge it as a rather worthless argument, as abused women are not interested in reparation in the first place, but in gaining safety (Stubbs, 2007: 171). Also to accept an apology knowing that it is not meant sincerely is not in the interest of the victim (Stubbs, 2010: 105; Daly & Stubbs, 2007: 17). To apologize after the outburst of violence is part of the well-known cycle of violence in partnerships: offender is feeling tense, outburst, apology, honeymoon period, feeling tense etcetera. This cycle – assault is followed by an apology that leads to forgiveness – is enforced in VOM as apologies are seen as important steps for reconciliation. As perpetrators often use apologies to manipulate their partners, scholars have labelled the emphasis on apologies ‘the cheap justice problem’ (Stubbs, 2008: 18). So there is scepticism about the possibility of reaching an outcome that meets the needs of the victim.

### *Violence being trivialized*

This concern plays a role both with regard to the idea of VOM and to offenders’ strategies. VOM opponents argue that it is inherent to the idea of VOM to see violence as a ‘dispute’ that has to be ‘managed’. The perpetrator’s aggressive behaviour is minimized and it is not made clear that he has committed a crime. Women testified minimizing emotional, psychological or financial abuse by the mediator or conciliator, or that certain behaviours were not recognized as abusive (Ptacek, 2010: 19). The minimizing of violence is also a risk when communities are involved in the RJ process, because of the prevalence of norms that support violence against women, excusing the violence and blaming the victim (Frederick & Lizdas, 2010).

Such a strategy of mediators and communities goes well with perpetrators' tendencies to deny their guilt or to see their deeds as justified and to blame the victim for what has happened. Both tactics may lead to re-victimization.

#### *No long-term intervention*

It is widely agreed that long-term interventions are necessary to change aggressive behaviour, but VOM is just a punctual/one time or short-term intervention. Even if the outcome of VOM were the obligation to participate in an anti-violence training or an alcohol therapy, this would not have the same weight as such a condition being imposed by the court, critics say. Moreover, it is not possible to monitor the fulfilment of such VOM outcomes (Ptacek, 2010).

#### *Lack of norm clarification*

Another critique is that the 'soft informal RJ process' is not clear about the norm articulation. The message must be clear: violence, also within a relationship, is a crime, not only in a legal sense, but also by attacking societal norms and values. Offenders have to be told in a strictly formal context – during court proceedings, by a judge or a public prosecutor – that they have committed an offense. It is criticized that this affirmation of the norm is not possible in such a clear way within a victim-offender mediation. Within VOM there can be a tendency to accept justifications of the offender (what may lead to blaming the victim). "If the restorative justice process fails to explicitly denounce violence against a partner as being unacceptable, that failure will reinforce the batterer's belief in the rightness of his behaviour, minimize the harm of his violence and control, and undermine the victim's belief in her right not to be beaten" (Edwards & Sharpe, 2004: 11). Engaging victim and offender in a discussion creates an environment that easily confuses the message that the offender is responsible for the violence by implying that both have a role in creating the 'problem' (Frederick & Lizdas, 2010: 55). Informal proceedings are not supposed to be able to influence an offender's behaviour in that sense.

Another aspect in this context is the importance of multi-agency interventions and the necessity for all agencies to follow the same line (Kavemann et al., 2001: 33). So if the police ban a perpetrator from his home, the criminal system as well has to blame him for his deed.

Sending the wrong message to a perpetrator does not only play a role for special deterrence, but also for general deterrence.

#### *Symbolic implications*

Last but not least, symbolic effects of VOM are discussed: RJ is seen as a 'reprivatisation' of domestic violence what means a dramatic backlash for feminist efforts since the 1960s to 'make the private public' (Daly & Stubbs, 2006: 17).

This list of objections illustrates the wide range of problems that have been identified. What remains out of sight is that some of these arguments contra VOM attribute special qualities to the formal criminal justice system which are not always achieved in practice. So the decision pro or contra the use of VOM in IPV cases may partially be ideology-based. We now look after the arguments in favour of RJ in IPV cases.

#### ***VOM as opportunity to change violent relationships***

Proponents of VOM have different arguments why VOM is or can be a good instrument to empower the victim and stop the violence also in cases of IPV. However, the feminist proponents of RJ plead for VOM only in cases of not aggravated intimate partner violence. They are reluctant with regard to its

use after sexual assaults and aggravated, coercive violence. We distinguish five arguments in favour of restorative justice.

#### *The criminal justice system does not meet the needs of victims of IPV*

Its advocates stress the importance of VOM in general, especially by doubting positive effects of formal sanctions with regard to a reduction of criminality as well as to recidivism. Regarding the needs of victims of IPV, the inadequacy of the criminal justice system is seen as a special concern, because of the risk of victim blaming, the danger of re-victimisation, and the trivialisation of IPV incidents (Bush, 2002: 225). Persons who call for assistance and protection end up having no say in the intervention once the legal system has entered their lives (Ptacek, 2010). Increased availability of RJ might result in more victims reporting IPV to the police, as RJ offers more possibilities to meet the needs of the victim (Hayden, 2012).<sup>9</sup>

#### *Women's voice and empowerment*

Advocates of VOM argue that the RJ process offers victims the chance to participate and gives them a voice to share what they have experienced. Victims are (maybe even for the first time) heard by the offender and can get empowered in this confrontation – an empowerment that aims at compensating existing power imbalances, and thus lends support to the weaker party (Pelikan, 2010; Daly & Stubbs, 2007). During the RJ meeting an open dialogue and a healing process for the victim (and offender) can occur in a non-judgmental environment (Kingi et al., 2008; Liebmann & Wootton, 2010). Also hearing from a third neutral party that they are not to blame, may empower victims; moreover, external validation is a public record of abuse (Daly & Stubbs, 2007).

#### *Offenders take responsibility*

Offenders can take responsibility for their behaviour without blaming the victim, for a communicative and flexible environment, as well as for a respectful relationship (Pelikan, 2010; Kingi et al., 2008). In the process of RJ the offender can move from external blaming (of the victim and the situation like being unemployed) to an internal responsibility-taking locus of control, and experience greater empathy, what means also: hearing the victim's feelings, offering repair for his actions, and not reoffending (Loeffler et al., 2010: 525).

#### *Decision to divorce or continue for good reasons*

A benefit of RJ might be repairing the relationship if both partners want to continue it (Daly & Stubbs, 2007: 18). But the victim might as well decide to divorce or to separate because she gets the external feedback that her claims are rightful (Pelikan, 2010: 10). So VOM may result in continuing the relationship or in separating – in any case, the victim can take her decision on better grounds.

#### *Safety and monitoring*

As an outcome of the RJ process various safety measures can be agreed upon, such as a contact arrangement (Daly & Stubbs, 2007: 18). Monitoring of compliance of these measures is possible within

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<sup>9</sup> Besides, in the 1980s a discussion about the position and role of victims in criminal proceedings has started in many Western European countries, one of its core values being the stronger consideration of victims' interests and their active participation. This went well with the advocacy for VOM.

the criminal procedure, for example as probation has supervisory duties. But also police or prosecutors can have a role in this (Lünnemann et al., 2010).

### ***Requirements to use VOM in case of IPV***

When we look at the discussion between feminists being against RJ and its advocates we see that although they stress different arguments, they have two purposes in common: they both aim at empowering / restoring victims of IPV and preventing offenders from reoffending. RJ practitioners can learn from feminist critics about the consequences of victimization and the dangers of a 'one size fits all' RJ process. On the other hand, the feminists – who well understand the limits of a criminal procedure – can learn from RJ practitioners how to expand options for victims of IPV (Ptacek, 2010). Therefore the question is: What are the conditions of using VOM in cases of IPV?

Voluntariness and safety are the most important conditions. The victim has to opt for RJ and it must be clear that she joins the process voluntarily and can withdraw whenever she wants. The victim must have control over the process at any time. It must be safe for her to join the VOM and the process itself should not make her uncomfortable or endanger her. But also in general safety is at stake: RJ must aim at safety. In cases of intimate terrorism RJ will be more of a risk to sustain the coercive relationship. But also when situational couple violence is at stake, practitioners should still be aware of the risks. It seems that controlling behaviour is more of a risk that mediation will not succeed than the violence in itself. Therefore it is important to assess controlling behaviour (Newman, 2010). The question is if safety measures should be part of the outcome of VOM, or if safety measures like protection orders should be part of the criminal procedure (and also the civil procedure). RJ as intervention should not be isolated from the context in which the victims find themselves (Stubbs, 2008: 6).

Proper screening is crucial in deciding whether or when it might be safe to facilitate a dialogue between victim and offender in case of IPV (Edwards & Sharpe, 2004). The history of their relationship and the current balance of power need to be assessed. Obligatory back-up to ensure safety and compliance is essential as well as monitoring safety.

Training and education of mediators in IPV is also important, actually there is a lack of proper training in some countries. Mediators do not always have enough knowledge about the complexity of IPV and about special power-balancing techniques (Edwards & Sharpe, 2004; Cameron, 2006).

## 2. Comparison of the countries

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### 2.1 Introduction

The aim of this chapter is twofold. On the one hand it gives an overview of the legal regulations and governmental strategies for tackling intimate partner violence (IPV) in six selected European countries (Austria, Denmark, Finland, Greece, the Netherlands, and England and Wales as part of the UK) (chapter 2.2). On the other hand it aims at describing and comparing in detail the legal situation and the practice of RJ in the respective countries with a focus on RJ in IPV cases to get insight in the conditions under which RJ is appropriate in such cases (see chapter 2.3 and 2.4).

In order to get a clear picture, each project partner has provided a country report based on a literature study and interviews with key persons working in the field.<sup>10</sup> These reports have been analysed and integrated in this chapter.

### 2.2 Tackling Intimate Partner Violence

The most relevant legislative and policy measures to address IPV are protective orders and the criminal law as well as – with regard to prevention – programmes for perpetrators. This division will focus on protective orders and national criminal laws but also present National Action Plans (NAPs) as far as national governments have developed such instruments. Furthermore, national support structures for victims of IPV will be outlined.

#### *Protective orders*

Protective orders are aiming at imposing physical distance between perpetrator and victim either in a situation of imminent danger or for the longer term. Three types of protection orders – this name being used as an umbrella term – are used in the EC: (i) civil restraining orders, imposed by the civil court; (ii) criminal law protection orders that may only be imposed in the course of criminal proceedings; and (iii) emergency orders, being called removal order, go-order or barring order, which are used by the police for a very limited time span. Protection orders imposed by (either civil or criminal) courts usually last for a longer period.<sup>11</sup>

Emergency orders (mostly called barring orders) are used in all of the six countries. They are mostly given by the police, except in **Greece** where the public prosecutor or the court of jurisdiction decides and in the Netherlands it is the mayor (van der Aa, 2012: 190-194). They were first implemented in **Austria**, in 1997, the other countries followed much later, the latest one were **England and Wales**.<sup>12</sup> Usually they are limited to a few days, but can be extended under certain circumstances (the maximum being 28 days). In **Austria, Finland, Denmark** and **Greece** the breach of a barring order is considered a criminal offence.

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<sup>10</sup> The full reports are available at the Verwey-Jonker Institute and at the offices of the national partners.

<sup>11</sup> See also Directive 2011/99/EU of the European Parliament and of the Council on the European Protection Order.

<sup>12</sup> In the UK a pilot project was tested in 2011/12, when in three areas police got the power to use 'Domestic Violence Protection Orders' (DVPO) (Kelly et al., 2013). Answering the question whether these orders could effectively reduce domestic violence, the authors stated (with all due caution) that this was true, especially in chronic cases (ibid.: 29-31). Following their suggestions, DVPOs were implemented across England and Wales from March 2014 (Home Office 2013).

Protective orders imposed by the civil court should guarantee longer-term protection. They are used in each partner country except **Denmark**<sup>13</sup> and **Finland** (see below). Their maximum duration varies; the longest period is twelve months.

Protection orders as an instrument of criminal law are used to a lesser extent. They are common in **Greece**, the **Netherlands** and in **the UK**, both pre-trial and post-trial (van der Aa, 2012: pp.191-194). **Finland** is a special case as – according to van der Aa – protection orders are neither a purely criminal, nor a purely civil order: it “can be obtained in a quasi-criminal procedure that is not necessarily–not even usually–connected to a criminal prosecution. The victim, the police, the public prosecutor and social service workers can all apply for an order under the Act (on the Restraining Order) and the police are obliged to carry out an investigation as to the desirability of the order. (...) Next to the orders under the Act on the Restraining Order, the courts can also impose orders in the course of a criminal procedure, but most orders are granted under the Act.” (van der Aa, 2012: 190)

### ***Criminal law***

In the context of tackling domestic violence, three approaches for the use of criminal law can be found within the EU. Firstly, general criminal laws are applied and there is no specific legislation (like in **Austria**, **Denmark**<sup>14</sup>, **Finland**<sup>15</sup>, and **the UK**<sup>16</sup>). It is often underlined that domestic violence is not (no more) a ‘private matter’ and has to be treated in the same way as other criminal acts by police and penal system. Secondly, all criminal acts committed in the family/against (ex-)partners are defined as aggravated; about half of the EU countries follow this approach, among them **Greece** and the **Netherlands**. Thirdly, some countries introduced a specific offence/specific offences related to domestic violence into their criminal codes (cf. EIGE, 2012: 22-24). These three approaches may coexist.

### ***National action plans for the protection of women (and children) against domestic violence***

National Action Plans (NAPs) are supposed to be a strong instrument as they list diverse legislative and policy measures on which the government has agreed on and committed itself.<sup>17</sup> These actions, which mostly focus on prevention of and tackling violence, on training of relevant actors and on victim support, have to be implemented within a defined (short) time period. Meanwhile all EU countries are using or have been using NAPs – Austria has been the last one among the EU-28, but its government has just recently, in August 2014, resolved on a NAP<sup>18</sup> (see Table 1 in Annex 1).

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<sup>13</sup> Concerning Denmark, all protection orders are issued by the police.

<sup>14</sup> <http://www.refworld.org/docid/3df4be2a18.html> (Sept. 24, 2014)

<sup>15</sup> [http://www.wave-network.org/sites/wave.local/files/WAVE\\_CR2011\\_FINLAND.pdf](http://www.wave-network.org/sites/wave.local/files/WAVE_CR2011_FINLAND.pdf) (Sept. 24, 2014)

<sup>16</sup> [http://www.womensaid.org.uk/domestic\\_violence\\_topic.asp?section=0001000100220007&itemTitle=Criminal+Law](http://www.womensaid.org.uk/domestic_violence_topic.asp?section=0001000100220007&itemTitle=Criminal+Law) (Sept. 24, 2014)

<sup>17</sup> Therefore the need for NAPs is part of international agreements like the Istanbul Convention which demands ‘comprehensive and co-ordinated policies’ (chapter II, art. 7). <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%2010%20English.pdf> (Sept. 25, 2014).

<sup>18</sup> Before that Austria had only implemented NAPs combating specific forms of violence: the NAP to fight human trafficking (2007–2008; 2009–2011; 2012–2014) and the NAP for the prevention and elimination of female genital mutilation (2009–2011).



Table 1: NAPs in the project's partner countries

Austria	2014-16 NAP for the protection of women against violence
Denmark	2002-2004 The Danish Government's action plan to stop violence against women 2005-2008 Action plan to stop men's domestic violence against women and children 2009-2012 National strategy to prevent violence in intimate relations 2014-2017 Measures against violence in the family and in close relationships. National action plan (the latter is additional information by our Danish partner)
Finland	2004-2007 Prevention of Intimate Partner and Domestic Violence 2010-15 Action plan to reduce violence against women
Greece	2009-2013 National programme for prevention and combating of violence against women
Netherlands	2002-2008 Private Violence — Public Issue — Summary of the Netherlands Government memorandum on the joint approach to domestic violence 2008-2011 Action plan on domestic violence: the next phase
UK	2005-2006 Domestic violence — A national report and national domestic violence reduction delivery plan (Annex A) 2009-... Together we can end violence against women and girls: a strategy

Source: EIGE, 2012: 109-113

### **Support structures**

This overview sketches relevant support structures only in broad outlines. The information has been provided by the European Institute for Gender Equality (EIGE, 2012).

Four out of six project countries have installed special police units for the support of victims of IPV (**Austria, Denmark, Finland** and **the UK**) but this does not necessarily mean that these officers take over every single case (EIGE, 2012: 46).

Counselling centres in terms of non-residential services offering various forms of support have been established in all countries except **Finland** and **the Netherlands**<sup>19</sup> where this form of support is provided by women's shelters (EIGE, 2012: 19).

24-hour hotlines for victims of intimate partner violence operate in all countries and not gender specific helplines for victims of all forms of violence exist (EIGE, 2012: 22).<sup>20</sup>

<sup>19</sup> In 2015, the local Domestic Violence Support Centres will be merged with the Advice and Report Centre on Child Abuse into 26 centres. This means that all cases or presumptions of child abuse or domestic violence will be reported to one centre and support will be given not only in case of IPV and other forms of domestic violence, but also in case of child abuse.

<sup>20</sup> Greece is mentioned as an exception in Eige, but Greece has hotline 15900 of the General Secretariat of Gender Equality, a gender specific helpline for victims of all forms of violence.

Women's shelters are available in each project country and in each country at least one shelter is run by an NGO. The Council of Europe's recommendation to offer at least one shelter place per 10,000 inhabitants is only met by **the Netherlands** (EIGE, 2012: 21).

Finally, legal advice for victims of IPV that is (partly) free of charge, is available everywhere although in **the Netherlands** there are no specialised legal services for victims of IPV (see also EIGE, 2012: 26). Moreover, **Austria** is the only country offering a combination of psycho-social and legal support for victims of violence which is for victims of IPV in most cases organised by a special type of counselling centres, the "intervention centres" or "violence protection centres". The Ministry of Justice funds the accompaniment of victims to the police and to court (including victim-offender mediation), psycho-social support in all fields, as well as legal advice and representation at court (Haller & Hofinger, 2007).

## 2.3 Legal provisions for RJ

It has to be noted that five partner countries use continental European law, only the UK has established a common law system.

### *National Legislation*

In the majority of the participating countries national legislation on RJ was introduced only recently. In **the UK**, for example, until the passing of the Crime and Courts Act 2013, RJ in the adult sector has been mainly provided on a non-statutory basis. Now regulations concerning RJ have become part of the Statute and courts can use their power to defer the passing of a sentence to allow for RJ, provided that all parties agree (Schedule 16, Part 2). In **the Netherlands**, there is a relatively new article in the Criminal Procedure Code which gives a legal basis for mediation. It says that the office of the public prosecutor arranges that the police will inform both victim and offender in an as early stage as possible about mediation. In **Denmark**, a nationwide law regulating VOM complementary to court procedures came into force in 2010.

Other countries have a somewhat longer history of nationwide legal regulations for RJ, as for example **Finland**, where the Act on Mediation in Criminal and Certain Civil Cases came into force in 2006. In **Greece**, penal mediation (VOM) in IPV cases was introduced in 2007 as a result of the harmonization of Greek legislation with EU directives.<sup>21</sup> **Austria** seems to be a forerunner in this field, with the legal implementation of RJ (including IPV cases) in the Criminal Procedure Code in 2000.

### *Pilots*

In most countries, the nationwide legal implementation of RJ was preceded by a phase of pilot projects. In **Finland**, for example, VOM as a method of RJ has a long history. The first pilot projects were established already in the beginning of the 1980's and were mainly inspired by Nils Christie's idea to return conflicts to the parties themselves, instead of leaving them to the State and its criminal justice system. Mediation was also expected to have less harmful and less labelling consequences especially for young offenders than traditional criminal justice proceedings (Christie, 1977; Braithwaite, 1989). Already in the 1980's, cases including intimate partner violence were referred to mediation. Similarly, **Austria** gathered first experiences with VOM as diversionary measure as early as in the 1980ies.

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<sup>21</sup> More recently, VOM was introduced for certain felonies against property (Law 3904/2010).

In **Denmark**, pilots took place from 1994-1996 and from 1998 to 2003, with an extension on a small scale until 2010 when the Act on *Konfliktraad* was passed. In **the Netherlands**, RJ has gained importance in the last decade. The Dutch pilots encompass the police level, the court stage, and probation.

### ***Relation to Criminal Justice System***

Across the countries, RJ measures and practices can be observed in all stages of criminal proceedings (pre-trial, trial, and post-trial) throughout formal and semiformal practices. The most common model is the offer of VOM in an early stage of the criminal proceedings, usually at the stage of the public prosecutor who has a kind of gate-keeping function. In **Greece**, for example, RJ is a pre-trial measure with the prosecutor supervising the whole process as well as the actions of the other involved authorities (police, prisons and the officers in the justice system). In **Austria**, 85% of the cases are referred to the mediation services by public prosecutors.

The role of the police differs across the countries. While they are not involved in the initiation or referral to VOM in **Austria**, they play an important role in **Finland** referring or initiating the majority of cases. In **Denmark**, the police are actually *the* agency responsible for VOM. In **the Netherlands**, the public prosecutor works together with the police who are to inform both victim and offender about the possibility of mediation.

At court level, referral to VOM by judges is possible in **the Netherlands**, in **Greece**, and in **Austria** as well as in **England and Wales** where the new law stipulates that judges should consider proposing each case for RJ. Alongside this legal provision, the British police have been using RJ-practices as part of community resolutions for quite some time.

### ***Access and Eligibility Criteria***

In most legal systems, the main access to VOM is via referral by the public prosecutors or the police. While victim and offender do not have the possibility to apply for VOM in some countries (as in **Austria**), other countries like **the UK** have many different entry points. **Greece** allows for the application by the defendant in addition to the referral by a prosecutor or a judge. In **Finland**, IPV cases are to be referred exclusively by a prosecutor or the police. In other cases the parties are free to suggest VOM. It is also possible at court level, even though most cases are referred in earlier stages of the criminal proceedings. In **the Netherlands**, victim support centres and probation services are involved. Who takes the lead, depends on the (pilot) project in question; sometimes, even lawyers refer cases to the Dutch mediation services.

Some national RJ legislations explicitly mention strict eligibility criteria in cases of IPV, such as **Greece** where only misdemeanours, namely no (aggravated) bodily harm, threat, insult, or coercion, are to be referred to VOM. According to Greek law mediation presupposes (a) the perpetrator's unconditional declaration and promise never to commit any crime of domestic violence in the future (he should give his 'word of honour'), (b) removal from the victim's residency on the victim's request, (c) the victim's compensation, and, most of all, (d) attendance and participation to a special counselling psychotherapeutic program.

In **Austria**, there are no special legal provisions for IPV cases. The public prosecutor (or the judge) may propose a case for VOM if punishment is not necessary to prevent the offender from committing another crime in the future or to deter the public; unless the offence is punishable with a prison sentence of more than 5 years; if the guilt of the suspect is not considered as 'severe', (i.e. higher culpability and

unlawfulness of the offence); and unless someone has died in consequence of the crime. Other pre-conditions are the agreement of the victim as well as the willingness of the suspect to take over responsibility, to compensate for damages, and to accept further conditions.

In **Finland** eligibility depends upon the nature of the offence and the relationship between suspect and victim. There is no referral if the victim is underage and if there is a special need for protection (e.g. sexual offences against children). A report from the Legal Affairs Committee states that VOM should not be considered if a mediation has already taken place with the same parties, if it is a case of recurring violence, and if the offender regards the use of violence as acceptable.

In **the Netherlands**, in **Denmark**, and in **the UK** all cases are in principle eligible. In **the UK**, however, the use of RJ in IPV cases has been strongly discouraged by several government strategy papers (see e.g. Home Office, 2003, 2004), especially for the police. In **Denmark**, a full or partial confession and both parties' consent to VOM are required. A commentary to the Danish law states that most cases are expected to be cases of violence, theft, burglary, vandalism, but also cases of severe violence.

The victim's consent is a precondition for VOM in all legal systems; the withdrawing of the victim's consent is possible at all times.

In addition to the legal eligibility criteria mentioned above, some countries' mediation services have their own additional rules for the selection of appropriate IPV cases. In **Austria** a special regulation for VOM in IPV cases postulates that no mediation should take place if the offender blames the victim, downplays or denies his own wrongdoing, and/or if there is a serious power imbalance, a history of violence, or a lack of emotional stability of the victim (Neustart R41, professional standards). A first assessment of a case is done on the basis of the report of the public prosecutor. If risk factors appear, a separate personal meeting with both parties and a risk-assessment tool help the practitioner to estimate if a case is appropriate for VOM or not.

The **Greek** National Centre for Social Solidarity accepted to implement the penal mediation in IPV cases under the following circumstances: the unconditional agreement of the victim, the cohabitation of the couple and in case of not living together, the existence of children in the family. In **Finland** and in **Denmark** the assessment lies within the discretion of the mediation office that evaluates the cases primarily on the basis of police reports, but also phone calls and personal conversations of the coordinator with the victim and/or offender can take place.

### ***Mechanisms for Complaint***

Many legal systems provide no special mechanism for complaints about the access to VOM, the procedure or the outcome. An ombudsperson responsible for complaints about the criminal justice system in general exists in **Austria**, **Greece** and **the Netherlands**. In **the Netherlands**, the National Mediation Federation as well as the victim support organisation Victim in Focus have additional complaint procedures. In **Finland**, parties may appeal against decisions concerning access to mediation made by the mediation office to an administrative court. In **Denmark**, a complaint (about referral or facilitation) is dealt with by the police.

### ***Procedural Consequences***

Depending on the actual legal provisions for RJ and their implementation within the criminal justice system, the outcome of VOM is more or less binding for prosecutors or judges. In **Austria** and **Greece**,

the successful completion of VOM regularly leads to the waiving of the criminal prosecution/ a sentence.<sup>22</sup> In **the Netherlands** and **Finland**, the result can lead to a closing of the case or can be taken into account by a judge in his sentence. In those countries the prosecutor can take the VOM and the agreement made there into consideration when deciding to waive charges. In contrast, VOM in **Denmark** is conceptualized as an additional measure meaning that VOM is no alternative to punishment. However, a judge may consider it when imposing a sentence. This is similar in **the UK** where a report is sent to the judge who *may* impose a more lenient sentence after successful completion of VOM.

## 2.4 Practice of RJ in IPV cases

In this chapter, the practice of RJ in the participating countries will be explored, with a special focus on RJ in IPV cases. In each of the six partner countries, victim-offender mediation (VOM) is a (more or less well) established practice and has also been used, even if only infrequently, in cases of partner violence. However, there are large differences how mediation in penal matters is organised, and how it is implemented and provided in practice. What kind of different models can be found in the six countries, what good or promising practices can be identified, and what are problems and bottlenecks?

### Organisation

The organisation of VOM in the six examined countries varies substantially: From **Austria** with one well-established nationwide provider of penal mediation – the same organisation since the 1980ies – to **the UK** with its community-based, bottom-up RJ model in transition.

In **Austria**, all VOM cases are referred to *Neustart*, a nationwide provider of judicial services (such as probation, help upon release, community service, etc.), financed by the Ministry of Justice. In each of the nine provinces of Austria, the mediation service has a regional office.<sup>23</sup> They deal with more than 1,200 partner violence cases each year.<sup>24</sup>

By the time the **Greek** law on penal mediation was introduced in 2006, the only organisation that handled IPV cases and at the same time had a program for couples' and individuals' counselling and psychotherapy was the *National Centre for Social Solidarity (E.K.K.A.)* to whom the penal mediation procedure was finally assigned. *E.K.K.A* is a state organisation, whose objective is the coordination of the network that provides social support services and care to individuals, families, groups and populations in crisis situations or in need of emergency social aid.

After a period that has been described as 'Let the thousand flowers bloom' phase in the development of restorative justice in **Finland** (Kinnunen, Sambou, Flinck & Slögs, 2014) the new Mediation Act came into force in 2006 intended the nationwide expansion and funding of the services as well as the promotion of more uniformity and legal protection for the involved parties. Till then mediation was arranged by civil society organisations and NGOs or municipalities with minimal state supervision and guidance. Nowadays, the *Finnish Regional State Administrative Agencies* are responsible of arranging mediation services and ensuring that they are appropriately accessible throughout the country. The

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<sup>22</sup> In Greece, the successful accomplishment of VOM includes the completion of a psychological counselling programme (see below).

<sup>23</sup> In addition, *Neustart* operates not fully equipped regional offices with bureaus to conduct interviews and meetings. In total, there are 35 offices all over Austria (with an area of 84,000 square kilometres and a population of 8.5 Millions).

<sup>24</sup> The yearly number of referrals varies from 9,424 in 1999 to 6,354 in 2013. Around 20% of these cases are partner violence cases.

services are primarily provided on the basis of commission agreements, which are made with municipalities or some other public or private service providers. Interestingly, penal mediation in Finland is provided under the auspices of the Ministry of Social Affairs and Health. 16% of all cases dealt with are domestic violence cases.

In **the Netherlands**, mediations and conferences are carried out by different organisations (Victim in Focus, office of the public prosecutor Maastricht, courts, police, probation, *Eigen Kracht Centrale*). In October 2013, five RJ pilots have been set up that are at this stage financially covered by the Ministry of Security & Justice (see below: pilot projects). There is some experience with VOM in domestic violence cases. Organisations like *Victim in Focus* and others involved in these pilots are currently looking into effective and appropriate ways to handle IPV cases with regard to the needs of the victims and other parties involved.

In the **UK**, the Crime and Courts Act 2013 stipulates that RJ services are now being commissioned to private and voluntary organisations through the *Transforming Rehabilitation Scheme and Police Crime Commissioners*. A variety of community-based organisations provide RJ in IPV cases, independently or in cooperation with the police or the probation services. There are no state-run practice organisations.

In **Denmark**, the national police are responsible for mediation. The VOM-secretariat is placed within the *National Centre for Prevention* in the national police. On a local level a police coordinator is appointed in each of the 12 police districts. They are responsible of the local implementation of VOM and contact to the mediators. The role of the coordinator varies in these 12 districts. There is a general reluctance to use mediation in cases of IPV, but it is done in some police districts.

### **Mediators/Training**

There are big differences between the countries concerning the mediators' professional background and status as well as their training. Whereas in **Austria**, the **Netherlands**, **Greece** and the **UK**, professionals who offer counselling and trained mediators are providing VOM in IPV cases, **Finland** and **Denmark** work mainly with lay persons.

In **the Netherlands**, VOM is provided by professional mediators (registered by the national mediation organisation). **Austria** also works with professionals having approximately 80 active mediators employed at *Neustart*.<sup>25</sup> Austrian mediators are social workers, lawyers or psychologists with extra training or practice. The obligatory internal curriculum encompasses 212 units of theoretical instructions and demands the practical experience of 36 VOM sessions. Special methods for IPV cases are taught as well as knowledge on the dynamics of intimate partner violence. In IPV cases, two professional mediators work together (see below: methods). As IPV is considered a 'sensitive and complex' case in **England & Wales**, experienced professionals whose training is covered in the 'sensitive and complex case' or 'sexual violence' training carry out mediation in IPV cases. In **Greece**, professionals (working in the field of DV) are not trained mediators, but family therapists and counsellors in the context of family therapy. There is an internal training but a shortage of trained mediators and services has been stated (see below: problems and bottlenecks).

**Finland** and **Denmark** work with lay persons, also in IPV cases. **Finland** has 90 professionals nationwide and more than 1,000 lay mediators.<sup>26</sup> Lay persons are trained in RJ and receive a special training of 6 days (practical and theoretical) if dealing with IPV cases. Two lay mediators, if possible male and female, work together in these cases. Mediators are interviewed and selected and those mediating IPV

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<sup>25</sup> One fulltime equivalent is supposed to deal with 180 referred indicted persons per year.

<sup>26</sup> Finland has about 5.4 million inhabitants, Austria 8.5 and Denmark 5.6.

cases have already been involved in mediating 'easier' cases. In **Denmark**, the around 60 lay persons are citizens recruited by newspaper announcements, many with prior practical and/or theoretical knowledge of mediation and an additional training (five days) including VOM methodology, introduction to RJ, criminal law, police and court proceedings as well as victim support. There is no special training on using VOM in cases of IPV. The mediators are affiliated to the police coordinators in each police district.

## **Methods**

### *VOM or Conferencing*

In most of the selected countries victim-offender mediation (VOM) is the only form of RJ in IPV cases, in **the Netherlands** and **the UK** conferencing as an RJ method is used as well. In **the UK** sometimes also indirect rehabilitation techniques are practiced. In **the Netherlands** conferencing can be applied in IPV cases through the so-called Eigen Kracht conferences. In a province (North-Holland) a pilot with 25 of those family group conferences in cases of domestic violence was conducted. The initiative was taken by the Domestic Violence Support Center in the region and was carried out in close cooperation with local partners (Van Beek, 2009). This form of conferencing can also be used in criminal cases when the mediation organization, the public prosecutor, or the judge and both (ex)partners think it is more appropriate to have a larger circle involved than this would be the case in a victim-offender mediation.

In most of the countries (**Austria, Finland, the UK, the Netherlands** and **Denmark**) conferencing is used besides VOM for several other conflicts or incidents with or without a legal context: for example for juvenile delinquents (**Austria**), at school or workplace (**the Netherlands, Finland**), in prison (**the Netherlands**), in neighbourhoods (**England and Wales**), or outside the criminal justice system with families (**Denmark and the Netherlands**).

### *Special methods for IPV cases*

Most countries have a different approach or method for IPV cases compared to 'standard' cases. In **Finland**, for example, preferably a male-female team of mediators works in the context of IPV. This is also the case in **Austria** where two opposite-sex mediators cooperate. In **the UK**, co-working is encouraged for mediation in IPV cases and it is for the victim to choose which sex is more suitable for her. In **the Netherlands, Greece** and **Denmark** the mediation is often done by only one mediator, but then more experienced practitioners are chosen, although in **Denmark** they are not specially trained.

In **Austria, Finland** and **Greece** the mediation process starts (after the parties have been invited and agreed to attend) with a preparatory meeting of the mediator(s) and both parties, before stepping into the actual mediation session. These pre-meetings are essential in assessing eligibility and power relations as discussed above. In **Denmark** the possibility of paid preparatory meetings was introduced in July 2014, though not made mandatory. In **the Netherlands** there are different projects and pilots, so the start can differ a little from case to case.

When it is decided that VOM is suitable, the mediation takes mainly place in a direct way, meaning a personal meeting between victim and offender with the assistance of (a) mediator(s). But mediation can also be carried out indirectly, comprising anything else than a face-to-face meeting between victim and offender. Indirect mediation can be a safer, less confrontational or an easier way to arrange mediation. In **Austria, the Netherlands** and **the UK** indirect VOM is possible, mostly used on request of the victim. For instance in **the Netherlands**, VOM can result in writing a letter.

The **Austrian** mediation service, *Neustart*, has developed a special methodology for partner violence cases that covers two specific settings. Both methods start with separate single interviews with the

involved (ex)partners to assess the suitability of the case for RJ and to prepare the mediation session. The first method, titled 'working in teams of two' ('Arbeiten zu zweit') entails two mediators to be present during the whole process and also during the single talks.<sup>27</sup> If this method is applied, the mediation session is not held immediately after the single talks.

In the second method, called 'mixed double' ('Gemischtes Doppel'), separate meetings with victim and offender often take place at the same time, but in different rooms. Right after these meetings, both (ex)partners and the two mediators get together for the mediation session. The core element of the 'mixed double' is the 'mirror of stories' ('Geschichtenspiegel'): The mediators tell each other what they have heard during the previous single talks, i.e. they mirror the stories of the partners. Pelikan (in press) describes it as follows:

"The mirror of stories entails a rather sophisticated and elaborated professional design that aims at bringing into effect the two main working principles of mediation: recognition and empowerment. At the beginning of this session the two mediators are facing each other, while the two partners remain also on opposite sides, each sitting next to their mediator. The mediators tell each other what they have heard during the previous single talks: the story of the relationship, the story of suffering violence and of acting violent, of threatening, hitting, constraining the other's freedom. Thus they mirror the stories they have been told and present these mirrors to each other. The partners are asked to listen without interfering, and only afterwards they have the opportunity to comment, to correct and to modify the rendering of their story by the mediator. This is also the beginning of the immediate exchange of the partners – about their perceptions, and their expectations."

In **Greece**, the prosecutor has to investigate the probability of implementing penal mediation, after having talked to both the victim and the perpetrator, and then sends a referral to *E.K.K.A.* in Athens (for couples) and Thessaloniki (for male perpetrators who used violence against women). Then, a Prosecutor's Order is sent to *E.K.K.A.* and its social workers and psychologists have to meet at least once with the couple (in Athens' program) or the perpetrator (in Thessaloniki's program). The prosecutor explains to the couple or the perpetrators that they are obliged to call *E.K.K.A.* to arrange for an appointment. This phone call is necessary and is considered to be part of the process, it proves their consent for starting the mediation process. For every person or couple, three to five sessions are held, every 15 days. During three years the prosecution, or the trial, if it has started yet, are suspended. The case is closed when the counselling program run by qualified psychologists has been conducted and completed.

#### *Possibility to bring a support person*

In **Austria**, **Denmark** and **Finland** it is possible both for victims and offenders to bring a support person to the mediation meetings. Often both need to agree with that beforehand, although in Austria the consent of the offender is not needed. **Austria** and **Finland** specify these support persons as either friends and family members or a lawyer, representatives of women's associations or NGOs. In **England and Wales** it depends on the individual case. However, the possibility of bringing along a support person (family member or professional) is often offered to victims. In **the Netherlands** it also depends on the individual case, but usually a request is accepted. **Greece** does not allow support persons in the mediation meetings.

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<sup>27</sup> Internal guidelines state that it is also possible to conduct the single session with one mediator only; during the actual mediation session both mediators have to be present.



### ***Outcome of the mediation***

The outcomes of mediation are of a personal nature to the victims and offenders but also relate closely to the criminal proceedings of the particular case (see paragraph 2.3b). In most countries the outcome is some kind of agreement reached by the (ex)partners (i.e. victim and offender). The agreements in IPV cases are often about seeking help and therapy for violent behaviour or alcohol problems, but mostly state how the offender should behave in the future.

In **Finland**, guidelines for the perpetrator's future behaviour are agreed upon especially in IPV cases where the partners want to continue living together (Uotila & Sambou, 2010). Moreover, the agreements may address economic compensation. In **Austria, Finland and the Netherlands** the agreement has to be written and signed. In **Denmark** it can either be an oral or written agreement or simply a notification that the meeting has taken place. In **Greece**, according to the law, a successful mediation presupposes that the offender gives his 'word of honour' to never commit any crime of domestic violence in the future. If any of the conditions is violated for a three years period, the case is brought back to the criminal procedure and continues at the stage before mediation (as if mediation had never happened). In **England and Wales** the outcome is very much dependent on the individual case and the particular VOM program. There are programs that work towards some kind of outcome agreement, but mainly they focus on meeting the needs of both parties (and the community).

### ***Safeguards/victim's safety***

The protection and safety of victims of IPV is a priority in all the countries discussed here. Mediation can only take place with the agreement of the victim who is informed of all available options beforehand. During VOM the victim's needs and wishes have always to be taken into account. However, when it comes to concrete safety measures applied in practice, we find that in some countries clear standards are missing.

**Greece**, for example, notes specific problems with the lack of victim protection during VOM. It may sometimes take too much time – several months – before the mediation meetings actually start after VOM has been ordered by the prosecutor. Another problem that can occur is that mediation may allow an offender of intimate partner violence to gain access to a victim who has successfully avoided contact since the abuse took place, what could lead to re-victimization. In theory, victims could deny participation to mediation, in practice victims sometimes accept to participate in mediation because they need to arrange other practical matters with the offender, such as financial matters or children's custodies.

Most countries (**Austria, Greece, England & Wales, Finland and the Netherlands**) focus on the preparation phase to protect the victim's safety, for example by having a thorough intake procedure and preparatory meetings. In **Denmark** however, preparatory meetings are not yet mandatory. In **England** the CPS (Crown Prosecution Service) aims to advise the victim on all available options and routes before going into mediation. In **Greece**, victim safety is protected by simply not referring severe cases to mediation. In **Finland**, cases with a history of violence known to the police (reported to the police) are not mediated although sometimes the history of 'hidden' violence can come up during the VOM when the parties want to discuss their situation seriously and honestly.

Only in **Austria**, mediators may use a risk assessment tool to assess the eligibility of a specific case for VOM. Items in this assessment refer, for example, to whether the offender possesses a firearm or to the history of violence as well as to the risk of another violent incident. The assistance and involvement of a victim support agency may also safeguard the victim's rights during the mediation process. In

Austria, victim protection organisations can be involved in the mediation process, e.g. by accompanying the victim to the meeting with the offender.

### ***Observation period, supervision of agreements***

In all countries but Greece there is no obligatory observation period after the mediation has been successfully completed. Only **Greece** has a time period of three years in which the trial pauses depending on the fulfilment of the mediation and its outcome agreements, i.e. the completion of the counselling program.

In other countries, like **Austria, Finland** and **the UK**, an observation period or a follow-up on the outcome agreements is possible, but not mandatory. It depends on the organisation handling the case (**England & Wales**) or on the needs of both parties (**Finland** and **Austria**). In **Finland** the follow-up can be arranged as a face-to-face meeting with the mediators or by phone calls to the parties, either by the mediation advisor or the mediators. The result (agreement fulfilled or not) will be reported to the prosecutor who can take it into consideration during sentencing. In **Denmark** and **the Netherlands** there is no observation period and the agreements are not officially supervised either. But in **the Netherlands** the non-fulfilment should be reported (by the victim or the probation services or another organisation involved) and this should result in the continuation of the 'normal' criminal procedure.

### 3. Conclusion & discussion

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In all six countries legal and social measures are in place to tackle intimate partner violence, and victim-offender mediation has taken a role in this area, too. Practice and regulations in the countries differ though. Countries like Austria and Finland have a well-established status of RJ practice as they both started their pilot projects in the 1980ies. In Austria, RJ was implemented in the Criminal Procedure Code in 2000, and in Finland in 2006. Both countries handle thousands of VOM cases each year, and one fifth (Austria) or one sixth (Finland) of them are cases of IPV. In countries, such as Denmark and the Netherlands, first initiatives started in the final years of the 1990ies or in the 2000s and a law on mediation was implemented only a few years ago (2010 and 2011 respectively), so RJ is still under development. Denmark had around 700 VOM cases in 2013, of which 51 were cases of IPV, and the Netherlands deal with around a thousand each year, but figures about RJ in case of IPV are missing. In Greece mediation especially for cases of domestic violence was already introduced by law in 2006 (actualised in 2010), although many organisational, operational and financial obstacles prevented that RJ flourished all over the country. In the UK the governmental interest in RJ began in 2002, but the implementation in cases of IPV was never all that successful because it was highly contested. A new phase started with the Crime and Court Act from 2013. RJ is not mainly organised bottom-up by communities, but also top-down by courts.

The country reports show that in most legal systems, the main access to VOM is via referral by the public prosecutors or the police. In Austria and Finland victims and offenders (not only in IPV cases) do not have the possibility to apply for VOM. In Greece the defendant can apply in addition to the referral by a prosecutor or a judge. In Denmark, the Netherlands and the UK all cases are in principle eligible, thus also in cases of IPV. Some national RJ legislations explicitly mention strict eligibility criteria in cases of IPV, such as Greece where only misdemeanours are to be referred to VOM. In Austria, there are no special legal provisions for IPV cases. The public prosecutor may propose a case for VOM if, among other preconditions, the offence is punishable with a prison sentence of less than 5 years and the crime had no lethal consequences. In Finland eligibility depends upon the nature of the offence and the relationship between suspect and victim. For example, if the victim is underage and if there is a special need for protection (e.g. sexual offences against children), there is no referral. In Denmark, a full or partial confession and both parties' consent to VOM are required. The victim's consent (as well as the offender's) is a precondition for VOM in all legal systems and withdrawing is possible at all times. In some countries mediation services have their own additional rules for the selection of appropriate IPV cases.

The organisation of VOM in the six countries varies substantially: From Austria with one well-established nationwide provider of penal mediation to the UK with its community-based, bottom-up RJ model in transition. There are also big differences between the countries concerning the mediators' professional background and status as well as their training. Whereas in Austria, the Netherlands, Greece and the UK, professionals provide VOM (not only in) IPV cases, Finland works mainly and Denmark only with laypersons. In Greece, prosecutors are doing the mediation, while psychologists and social workers are responsible for counselling in cases of IPV.

In each country cases of intimate partner violence are regarded, more or less, as 'special cases' within victim-offender mediation. Only Austria has developed a distinct methodology for partner violence with two main elements: the involvement of two opposite-sex mediators (a man and a woman) and the use of the 'mirror of stories': Opening the session, the mediators tell each other what they have been told by victim and offender, so the two of them hear their stories from a third person. In Finland, preferably a male-female team of mediators works on IPV cases.

In all six countries the protection and safety of the victim of IPV in the RJ process is a topic of debate or concern. But it is rather difficult to address which safety measures are used in detail during the VOM process and after VOM. Currently only Austria has a risk-assessment tool available for VOM in cases of IPV. Most of the other countries seem to focus on the preparation phase to guarantee the victim's safety, for example by having preparatory meetings to decide whether VOM is suitable. In most countries the outcome of mediation is some kind of agreement reached by the parties. When the mediation has been successfully completed there is no obligatory observation period afterwards. Only Greece has a time period of three years in which the trial pauses depending on the fulfilment of the mediation and its outcome agreements.

We can conclude that practice and regulations in the countries (and partially even within the countries) differ, and that the countries can learn from each other. Austria seems to have the most thoughtful method. In the next phase of this research on restorative justice in cases of IPV we will discuss, together with professionals from the six countries and Germany, good practices, problems and bottlenecks of VOM in cases of intimate partner violence.

Subjects we will discuss are for example:

- *Power and control issues in intimate partner violence.* Critics of VOM in cases of IPV argue that the power imbalance between victim and offender leads to the consequence that the victim is not free to follow her interests. This is especially a risk looking at intimate terrorism (Johnson, 2006). Questions are: How do mediators know if the victim joins the VOM voluntarily? Is there enough attention for mechanisms of power and control during the process of VOM? Is it possible to detect intimate terrorism before or during VOM? Is there a need for a victim support agency to safeguard the victim's rights during the mediation process?
- *Victims' safety.* Victims want protection and a life without fear. In what way can VOM help to create a safe world for the victims (and their children) - not only before and during the VOM process, but also after the VOM meeting? In what way is the outcome of VOM in line with other criminal measures, civil protection orders, counselling programs for offenders and/or support (is VOM part of a multi-agency approach)? Is there a lack of victim protection during VOM?
- *Role of victim and offender.* Situational partner violence may lead to the result that both partners have used violence, and sometimes both are treated as victim and offender in the criminal justice procedure. How does VOM handle such cases of mutual violence? And if in the criminal procedure just one is treated as the victim and the other as the offender, how are their double roles addressed during VOM?
- *VOM as part of the criminal process.* In general, VOM can be offered before trial, during trial or after the court decision. In what sense influences the VOM outcome the decision of the prosecutor or judge? What happens in the context of the criminal proceedings when the VOM procedure is not finished or stopped? And are there possibilities (legally and in practice) within (or outside) the criminal procedure to monitor the outcome of VOM (has the agreement been fulfilled)?
- *Mediators' competency.* In most countries mediators are not specially trained how to mediate cases of IPV. What are the qualities and competencies of a good mediator dealing with IPV?

- *Special methods for IPV cases.* As described above, in Austria a special model (the mirror model) has been developed to mediate cases of IPV. An open dialogue and a healing process for victim (and offender) can occur in a non-judgmental environment. What can we learn from this model which is also used in parts of Germany?

This project aims to get more accurate knowledge about the conditions under which restorative justice is possible and suitable in cases of intimate partner violence in order to develop professional standards and good practices for the handling of these cases. That also includes focusing on problems and bottlenecks. In February 2015 we will discuss this with practitioners and researchers in Hannover, Germany.



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

The Directive establishing minimum standards on the rights, support and protection of victims of crime [2012/29/EU] of 25 October 2012.

Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order.

ECOSOC Resolution 2002/12, UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002.

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## Annex 1 National Action Plans

Table 1: National action plans, EU-27 and Croatia 1999-2016

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
BE			2001-03			2004-07			2008-09			2010-14						
BG									2007-08				2011					
CZ													2011-14					
DK			2002-04			2004-08			2009-11									
DE			1996-2006						2007-...									
EE												2010-14*						
IE												2010-14						
EL											2009-13							
ES						2006		2007-08	2008-11*									
FR						2005-07			2008-10			2011-13						
IT												2010-...						
CY												2010-13						
LV*									2008-11									
LT									2007-09			2010-12						
LU						2006-08*						2009-14*						
HU												2010-21*						
MT						2004-06*												
NL						2002-08				2008-11								
AT*																		
PL									2006-16									
PT		1999-2003				2003-06			2007-10			2011-13						
RO						2005-07				2008-13*								
SI												2009-14						
SK						2004		2005-08		2009-12								
FI						2004-07						2010-15						
SE									2007-10			2011-14*						
UK						2005-06				2009-...		2011-15						
HR						2005-07			2008-10			2011-16						

Source: EIGE, 2012: 21

## Annex 2 Victim Directive

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### *Official Text of the Articles of the Victim Directive 2012 Related to Restorative Justice*

The Directive establishing minimum standards on the rights, support and protection of victims of crime [2012/29/EU] of 25 October 2012<sup>28</sup> has to be implemented by the member states into their national law by 16 November 2015. DG Justice of the Commission has issued a guidance document<sup>29</sup>.

#### Article 2

##### Definitions

1. For the purposes of this Directive the following definitions shall apply:

[...]

(d) **‘restorative justice’** means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

#### Article 4

##### Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

[...]

(j) the available restorative justice services;

#### Article 12

##### Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

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

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

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<sup>1</sup> O.J. L 315 of 26 November 2012, 57.

<sup>2</sup> DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU, Ref. Ares(2013)3763804 of 19.12.2013: [http://ec.europa.eu/justice/criminal/files/victims/guidance\\_victims\\_rights\\_directive\\_en.pdf](http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf).

- (c) The offender has acknowledged the basic facts of the case;
  - (d) Any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
  - (e) Discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.
2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

## CHAPTER 5

### OTHER PROVISIONS

#### Article 25

##### Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.
2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.
3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.
4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.
5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory

