RESTORATIVE APPROACHES
Introduction to the working groups

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Presentation prepared based on ECJJ materials

- ECJJ research on restorative juvenile justice publications:

- ECJJ materials
- other EU documents
Restorative justice

“any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator”

Economic and Social Council, UN (2002)
Three usual models/practices

1. victim-offender mediation
   - participants: victim, offender, mediator

2. restorative conferencing
   - participants: victim with supporters (e.g. family members), offender with supporters (e.g. family members), facilitator

3. peace-making circles
   - participants: even larger spectrum - police officers, prosecutors, probation officers, etc.
Why is it useful and helpful?

- It aims at addressing **the needs** of both the victim and the offender
- It builds **the understanding** of the causes and consequences of the offence
- It is focused on **repairing the harm** caused

⇒ opens more space for **offender’s accountability** for the offence
Presumptions

- **Participation** should be consensual (on both sides)

- **Agreement** on how to solve a conflict should be consensual

- In line with the **best interest of the child** (on both sides)

⇒ **ESSENTIAL REQUIREMENTS:**
  - voluntary participation,
  - confidentiality of the process,
  - neutrality of the facilitator.
Promotion of restorative justice - especially in juvenile cases

- Restorative approaches are promoted and recommended by:
  - the Council of Europe
  - the European Union
  - the United Nations

- ECJJ focused many research and project activities on promoting restorative approaches and continues to do so
Legislation - EU countries level

- all EU countries provide forms of restorative justice to resolve criminal conflicts, in legislation and/or in practice

- space for improvement:
  - improving legislation and spectrum of interventions/models
  - improving practice: evidence-based and research focused
“Good legislation frame”
*recommendations for EU countries*

1. Legislation should provide law enforcement authorities, prosecutors and the members of judiciary with the **options** to promote restorative justice processes **at all stages of the criminal proceedings**.

2. Legislation should provide **clear guidance and structure** for their use (guiding principles).

3. Legislation should ensure the **quality of the services** in restorative practice and **equal application of fair trial** guarantees to restorative measures for both the victim and the offender.
Benefits of restorative justice I.

ON AN INDIVIDUAL LEVEL ⇒ promotes good values:

- Participation, respect and **empowerment of participants**
- Preference for **consensual outcomes** over imposed ones
- **Flexibility** of the process and the outcomes
- **Commitment** of parties to the agreement reached through the process
- **Lower tendencies towards anti-social behavior** and re-integrative potential for both victims and offenders
Benefits of restorative justice II.

ON THE COMMUNITY LEVEL ⇒ promotes good values:

- Creates a community of care around youth in conflict with the law (lower risk of stigmatization)
- Enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime
- Increases community engagement and facilitation of the involvement of community residents in the resolution of problems of crime and social disorder
10 Points for Improving the Implementation of Restorative Justice

ECJJ research study outcomes
1. Restorative processes and practices should be made available at all stages of criminal proceedings and be offered to all victims and offenders, not being restricted on grounds of offence severity, offending history and offender characteristics;

2. Legislation should ensure the respect of fair trial guarantees, especially of children's and victim's rights, in restorative justice;

3. Efforts to build strategies and initiatives that seek to enhance the restorative value of community service;

4. Broader restorative justice strategies should promote initiatives to introduce conferencing and peace-making circles into the justice systems;

5. Efforts to provide information for practitioners on the benefits of a restorative approach for victims, offenders and communities at large, and to build support for restorative justice at all levels of society;
6. Effective **training** should be provided for all relevant law enforcement and justice actors, as well as for the facilitators.

7. To explore ways of **reforming the penitentiary climate** and culture by using restorative practices;

8. Decision-makers should be able to take the **outcome** from such processes into consideration in their decisions;

9. **Inter-agency cooperation** and knowledge sharing between judicial decision-makers and practitioners in order to increase the effectiveness restorative justice processes;

10. Restorative justice initiatives should be based on tested and evaluated experiences, and be subject to monitoring and **evaluation**.
Example of Croatia

* contribution to the debate for the working group *
POSSIBILITY OF DIVERSION IF A JUVENILE SUCCESSFULLY PERFORMS CERTAIN OBLIGATIONS:

- to **apologize** to the victim,
- to **repair** the damage
- to get involved in the **victim-offender mediation**
- to perform **community work**
- to get included in the **drug addiction program**
- to get included in the **psychosocial treatment**
- to go to the **driving school**
- **other obligations** set by the State Attorney

⇒ 8% of all diversion measures
Croatian legal context and practice in short

<table>
<thead>
<tr>
<th>Some good points</th>
<th>Some space for improvement / not in accordance with recommendations</th>
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<tbody>
<tr>
<td>- widely used,</td>
<td>- offences that are punishable by a prison sentence of up to 5 years of prison or by a fine (for adults)</td>
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<td>- focused on the best interest of the child</td>
<td>- police has no authority of diversion measures</td>
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<td>- first time offenders are priority but recidivist are not excluded</td>
<td>- not enough mediators - investment in trainings</td>
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<td>- consent is needed by both parties for mediation process</td>
<td>- improving evidence-based research and evaluation of practice</td>
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Thank you!