



Restorative Justice in Latvia: Advancement, Perspectives and Challenges in Future

Riga, 16 Augusts 2013

Ilona Kronberga

**With contributions of:
Indra Mangule
Sanita Sīle**

1. Understanding Restorative Justice

The primary goal of justice system is to ensure justice itself - balance of one's rights and duties. Furthermore, existence of justice is a precondition of safe society. Justice system does not consist only of the written law - it also includes legal principles and a system of law enforcement agencies¹, their goals and objectives. The aforementioned components are of such importance that any changes within their content may cause shift in understanding of the concepts "justice" and "safety". In order to avoid interpretation of the justice concept and to ensure safe surroundings for all members of society, creators and developers of criminal justice policy have to answer a substantial question: "What should be state's reaction to a criminal offense?"

In general, it is not so complicated to answer this question. If one can assume that, as a result of criminal offense, the balance between one person's (victim) rights and other person's (offender) duties to respect those rights is disturbed, it can be concluded that the goal of justice is to restore the fairness (legal balance). The result of criminal offense is a conflict between two parties and state's duty is to restore fairness by intervening with the tools provided by the justice system. It must be taken into account that only by implementing all aspects of justice – restoring both the legal balance and fairness, people can be provided with safety. If this consideration is not duly valued it can lead to a situation where the crime is stopped, the offender is identified and convicted but the fairness is not restored, therefore making described approach only formal². Restorative Justice, on the other hand, includes methods that offer possibilities to restore the fairness for both the victim and the offender.³ Considering the fact that Restorative Justice is a separately defined concept, it differs from formal justice by its goals and results. Therefore it can be inferred that Restorative Justice tools include such approaches and programs that result in compensation of damages for the victim, restoration of justice, application of inclusive reactions, treating the interests of specific persons and wider society respectfully, reintegration of victim and offender and fair settlement of legal relations.

2. The legal framework of Restorative Justice in Latvia

Research⁴ shows, that „...a large portion of the society is skeptical about the ability of the state to combat crime, to protect people against criminal offenses, to prevent new criminal offenses, to have a positive impact on the future behavior of offenders. Besides, lack of confidence in the system is expressed also by

¹ Author's note: for instance, police, prosecutors' offices, courts, probation offices and prisons' system

² Author's note: victim's material damages are not compensated, damage to health is not averted etc.

³ "A systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders and communities caused or revealed by crime". Available at: <http://www.oijj.org/en/docs/glossary?letter=R> [last visited on 05.15.2013].

⁴ "Restorative Justice in the Aspect of Juvenile Delinquency: Baltic States in European Dimension", Page 10. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/RJ_research.pdf [last visited on 05.15.2013].

those whose professional work is directly aimed at achieving aims of criminal justice – police officers, prosecutors, judges. Several interviewed process facilitators give an accurate description of problems of criminal justice in Latvia pointing out that they lack legal instruments that would enable them to be more efficient in achieving the overall aims of criminal justice. By using the legal remedies and instruments provided by legal acts, the system responds in a formal way to criminal offenses, however, it provides only a short-term result; it does not focus on “agents of crime”, it fails to cure the social disease – crime, it only reacts to its external symptoms, trying to prevent or minimize them”.

All of the above indicates that large part of society faces difficulties when it comes to accepting new methods of influencing crime – more support is received by formal and simplified, although short-term solutions. Taking into account these and other considerations, Ministry of Justice of Republic of Latvia elaborated amendments to Criminal Law⁵ - the goal of criminal punishment was clarified, a component of Restorative Justice was also added.

As a result, at the moment the objective of punishment is: to protect the public safety; to restore justice; to punish the offender for the criminal offence; to re-socialize the punished person.

Nevertheless, Restorative Justice as part of Latvian justice system is not yet defined - there are only several laws and regulations which provide implementation of tools that are in accordance with the goals and philosophy of this approach. Those specific tools and methods allow saying that there is Restorative Justice in place in Latvia and it functions, however, the mere fact of their existence does not indicate an overall systemic development of Restorative Justice. At the moment the situation in Latvia is as follows - Restorative Justice tools are introduced as a result of separate projects (state and local government institutions) or are carried out by non-governmental organizations on their own initiatives.

It is almost impossible to evaluate how common the Restorative Justice methods are unless there is a separate law for all the methods and the results of implementation of this law are shown in official, formal statistics. Although since the amendments of April 1 2013 the Criminal Law of Republic of Latvia stipulates restoring the fairness as one of criminal punishment’s goals, up to this point there are no clear guidelines on how this new wording of Article 35 of Criminal Law should be interpreted and implemented in practice. It can be concluded that the legal framework of Restorative Justice in Latvia is rather diverse: there are laws and regulations⁶ directly providing implementation of Restorative Justice tools (a), others stipulate implementation of specific Restorative Justice tools (b), the rest does not deprive from implementing Restorative Justice tools as part of pilot projects (c).

⁵ The Criminal Law of Republic of Latvia. Available at: <http://likumi.lv/doc.php?id=88966> [last visited on 05.15.2013].

⁶ The Criminal law and the Criminal Procedure Law. Available at: <http://likumi.lv/doc.php?id=107820> [last visited on 05.15.2013].

As the lack of concrete criteria makes it impossible to dissociate and identify all methods of Restorative Justice, further analysis will be carried out on those methods foreseen in laws and regulations (a), and the most commonly implemented ones (b).

2.1. Legal framework of separate Restorative Justice methods within laws and regulations of Latvia.

Without a doubt Restorative Justice methods can be implemented in various environments due to their broad range of possible application - in schools, work environment, local communities, within the field of criminal justice and civil justice.⁷ At the moment, all of the aforementioned forms of Restorative Justice can be identified in Latvia but indepth analysis of each form would require more detailed research on the issue. For the purposes of this research Restorative Justice will be analyzed from the Criminal justice point of view with the following consideration as the basis of research - Restorative Justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community. Restorative Justice programs are based on the fundamental principle that criminal behavior not only violates the law, but also injures victims and the community⁸.

- Victim – offender mediation

In Latvia, one of the most commonly used tools with the most detailed regulation is **mediation**. Legislative framework has developed in a way that there are two types of mediation in place:

- 1) mediation⁹ within the civil and commercial matters which will be regulated under the “Mediation Law” after its adoption by Latvian parliament, Saeima. In order to develop unified practice of mediation, an association¹⁰ “Council of Mediation” was created. The goal of this association is to unite all the non-governmental organizations (NGOs) working in the field of mediation, promote cooperation among them, elaborate mediators’ ethical code, standards for quality and trainings. Association also certifies new mediators, maintains the list of all certified mediators and promotes development of beneficial environment for mediation in Latvia.

⁷ Author’s note: On the basis of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, on February 17 2009 a Conception “Introduction of Mediation for Settlement of Civil Disputes”. In accordance with the Conception, an Action Plan for implementation of Conception “Introduction of Mediation for Settlement of Civil Disputes” in 2010-2012. on May 5 2010 Cabinet of Ministers decided to support the Action Plan. As it was foreseen in the Action Plan, Mediation Law (available at <http://ej.uz/su9b>) is in process of passing the second reading in Seima (Parliament of Republic of Latvia). It must be taken into account that Mediation Law will regulation mediation only within civil and commercial disputes.

⁸ Handbook on Restorative Justice Programmes; Criminal Justice Handbook Series, United Nations. New York, 2006; Page 6, http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf [05.17.2013].

⁹ Mediation law of Republic of Latvia. Available at: <http://ej.uz/su9b> [last visited on 05.17.2013].

¹⁰ Author’s note: Association “Council of Mediation” consists of 4 NGOs, it cooperates with institutions from Justice system as well as state’s and local governments’ organizations.

2) victim-offender mediation in criminal cases, which is regulated under the Criminal Procedure Law¹¹ and State Probation Service Law¹².

Since 2005 victim-offender mediation in criminal cases is carried out by State Probation Service. Article 381 of Criminal Procedure Law stipulates that in case of settlement an intermediary trained by the State Probation Service may facilitate the conciliation of a victim and the persons who committed a criminal offence. A person directing the proceedings - police office, prosecutor or judge, may inform specialist from State Probation Service regarding the possibility of settlement.

Article 13 of State Probation Law stipulates that specialists from State Probation Service (SPS) shall ensure the possibility for a victim and a probation client to engage voluntarily in the process of mediation, SPS also performs training of volunteer mediators. Article 13 also indicates that Cabinet of Ministers of Republic of Latvia must determine the procedure how volunteer probation officers are certified and later becomes intermediaries in case of settlement. Therefore the work of intermediary is currently laid down in 04.12.2007. Rules of the Cabinet of Ministers No. 825 "Procedure of how State Probation Service organizes and leads settlement with intermediary"¹³ and 20.11.2007. Rules of the Cabinet of Ministers No. 782 "Procedure of certification of volunteer probation officers who are intermediary in settlements"¹⁴

According to these rules, SPS organizes and leads settlement between the offender and victim:

1. Before the beginning of proceedings;
2. Within all stages of criminal proceedings;
3. After the court's ruling is made;
4. After the injunction of a public prosecutor regarding a punishment has come into effect;
5. After the decision of termination of criminal proceedings, conditionally freeing one from criminal liability has come into effect.

According to the amendments of Criminal procedure law that came into effect on 16.06.2009., it was planned that as of 01.07.2009. to 31.12.2012. in situations foreseen in Article 381, part 1 and part 2, intermediaries from SPS will engage in settlements within criminal proceedings only until the case goes to court. From 01.01.2013. the aforementioned limitations for organizing and carrying out the settlement within criminal proceedings are abolished. Specialists from SPS can engage in the process of settlement at the pre-trial stage of proceedings, at the stage of punishment execution, besides there are no limitations for organizing a settlement also in cases of punishment that is related to isolation from society - imprisonment.

¹¹ Criminal Procedure Law of Republic of Latvia, Section 381. Actualization of a Settlement. Available at: <http://likumi.lv/doc.php?id=107820> [last visited on 05.17.2013].

¹² State Probation Service Law of Republic of Latvia. Available at: <http://likumi.lv/doc.php?id=82551> [last visited on 05.17.2013].

¹³ 04.12.2007. Rules of the Cabinet of Ministers No. 825 "Procedure of how State Probation Service organizes and leads settlement with intermediary (in Latvian). Available at: <http://likumi.lv/doc.php?id=167543> [last visited on 05.17.2013].

¹⁴ 20.11.2007. Rules of the Cabinet of Ministers No. 782 "Procedure of certification of volunteer probation officers who are intermediary in settlements". Available at: <http://likumi.lv/doc.php?id=166680> [last visited on 05.17.2013].

Settlement with intermediary is also used as a tool for diversion¹⁵ of underage people's responsibility or as a responsibility that is an alternative to punishment. On 22.04.2010. amendments in Law On Compulsory Measures of a Correctional Nature¹⁶ came into effect. The law now stipulates that also in cases when judge decides on whether to apply compulsory measures of a correctional nature and sees a possibility to terminate criminal proceedings on the basis of settlement, settlement with intermediary is possible. If the criminal liability for the offense is foreseen in Criminal Law, settlement should be organized by SPS¹⁷.

When working with the issue of mediation within criminal proceedings, professionals from SPS apply principles of Restorative Justice. In specific cases¹⁸ foreseen by the law, the criminal proceedings can be terminated on the basis of settlement if the committed offense is a misdemeanor or a less serious crime and offender has reconciled with the victim or his/her representative. Therefore the settlement with an intermediary can be used as an alternative to punishment if the offense is misdemeanor or a less serious crime. A successful process of settlement with an intermediary can be a reason to release a person from criminal liability or in other cases - as a mitigating circumstance when bringing offender before the court.

- Different types of community services

There is no reason why not to count specific criminal sanctions as part of Restorative Justice methods, if the content of those sanctions is in accordance with the goals of Restorative Justice. Most commonly used sanctions of such content in Latvia are compulsory work and community service. **Compulsory work**¹⁹ is a criminal punishment that can be applied to persons of legal age and underage persons that have reached the age of 14 years, but **community service**²⁰ is a compulsory measure of a correctional nature that can be applied to minors who have reached the age of 11 years and this sanction does not lead to child having a criminal record.

The content of the sanctions is identical in both cases - it is work for public benefit with the objective to diminish the negative consequences of an offense. The goal of this sanction is in accordance with the

¹⁵ Diversion: A child is diverted where he or she is in conflict with the law but has their case resolved through alternatives, without recourse to the usual formal hearing before the relevant competent authority. To benefit from diversion, the child and/or his or her parents or guardian must consent to the diversion of the child's case. Diversion may involve measures based on the principles of restorative justice; <http://www.oijj.org/en/docs/glossary?letter=D> [05.18.2013]

¹⁶ [Law On Compulsory Measures of a Correctional Nature](#) of Republic of Latvia. Available at: www.vvc.gov.lv [last visited on 05.18.2013].

¹⁷ Ibid, Section 6.

¹⁸ Criminal Procedure Law, Section 379. Termination of Criminal Proceedings, Releasing a Person from Criminal Liability: An investigator with consent of a supervising public prosecutor, public prosecutor or a court may terminate criminal proceedings, if the person who has committed a criminal violation or a less serious crime has made a settlement with the victim or his or her representative, <http://likumi.lv/doc.php?id=107820> [05.17.2013]

¹⁹ Criminal Law: Section 36. Forms of Punishment. Part (1), Para 5, Community service; Available at: <http://likumi.lv/doc.php?id=88966> [last visited on 05.20.2013].

²⁰ Law On Compulsory Measures of a Correctional Nature; Section 6. Compulsory measures. Part (1), Para 7, Duty to perform community services. Available at: www.vvc.gov.lv [last visited on 05.18.2013].

principles of Restorative Justice and provides several possibilities both for the offender (as some of the affects are spared for him/her by not being sentenced with prison - the connection with the family is kept, the job is not lost, there is a possibility to compensate the victim damage that was caused) and the victim (victim and society gets a possibility to receive compensation for the damages that were caused).

The difference between compulsory work and community service is only in the legal consequences of these sanctions and the amount of hours that can be applied (community service for children - from 10 to 40 hours; compulsory work as a criminal punishment - from 40 to 280 hours). Underage people can be imposed with only such types of work that are suitable and useful for their development as well as does not cause any harm.

Figure no. 1

| | | |
|-------------------------|---|--|
| The type of sanctions | Compulsory measure - a duty to perform community services | Basic criminal punishment – community service |
| Whom to apply? | Minors from 11 to 17 | Adult persons from 18 |
| Content of the sanction | A community service is an involvement of a child in services necessary for the public, which the child shall perform free of charge in the area of his or her residence during the time free from regular employment or studies. Community services shall be organized by taking into account the prohibitions and restrictions on child employment specified in the law. | Community service as a basic punishment or additional punishment is compulsory participation in indispensable public service, which a convicted person or a person for whom community service has been determined with an injunction of a public prosecutor regarding punishment, serves as punishment by doing work in the area of the place of residence, as specified by the community service implementation authority during free time outside regular employment or studies and without remuneration. Community service shall be determined for a term of not less than forty hours and not exceeding two hundred and eighty hours. A public prosecutor in determining community work in the injunction regarding punishment may apply not more than one half of the length of the maximum community service provided for in this Section. Community service as an additional punishment may be determined for a term of not less than forty hours and not exceeding one hundred hours to persons to whom a suspended sentence has been imposed. |

- Compensation mechanisms for victims of crime

Reaching the goals of Restorative Justice is not possible without restoring the fairness for all the parties that have been somehow involved in the offense - offender, society in general and most importantly the victim.

It is understandable that a single, formal action is not enough to restore the fairness and justice. A comprehensive and targeted set of measures is required - one that diminishes the negative consequences of a criminal offense and is in place parallel to the formal criminal proceedings. This set of measures includes financial, emotional and psychological support to the victims as well as providing the necessary legal assistance. A research about the support mechanisms for victims of crime that are in place and are necessary in Latvia was carried out in 2013²¹. It showed a number of problems that deter principles of Restorative Justice to be fully implemented in cases concerning the victims of crime.

Within the research it was concluded that there are several significant elements forming the system but the system itself - Victims Support System - is lacking. There is no targeted set of measures that would be based in law. State compensation for victims of crime (a) and legal assistance (b) are only two small elements of the whole system. Victim compensation system that is foreseen in Criminal Law and Criminal Procedure Law forms only one part of compensational mechanisms. Support that is provided for specific groups of victims does not mean that there is sufficient victim support system in Latvia and the annual budget allocation for compensations provided by state is not the ultimate solution²².

The status of a victim and his/her rights are stipulated by Chapter 6 of Criminal Law and in general all the components from international legislation are included there. However, there is no reason to think that the safeguarding of victim's rights begins or finishes with the criminal proceedings. Restoration process of justice expands beyond the traditional²³ criminal proceedings and its goals.

In order to ensure restoration of justice, it is not enough to terminate the criminal proceedings. For the victim and offender restoration of justice and fairness does not end in the prison or court, it ends only with restoration of legal balance for the victim (including restoration of health damage, compensation of material losses and other negative consequences) and integration in society for the offender. Victims Support System must be based on Inter-Institutional Cooperation model where all the institutions involved are not focused on division of functions among themselves but are focused on development of cooperation methods instead. All institutions that are part of Victims Support System should be able to jointly do their work - the victim should not be sent from one institution to another one, institutions should

²¹Research: “ Mechanisms for compensation of victims in criminal proceedings in the EU”, <http://www.providus.lv/public/27819.html> [05.21.2013]

²²Research summary: Mechanisms for compensation of victims in criminal proceedings in the EU (in Latvian). Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Kopsavilk.Meh.ciet.kompens.pdf [last visited on 05.22.2013].

²³ Author's Note: The term "traditional" means the process which was considered until now as sufficient.

“gather around” the victim.²⁴ In order to implement this approach, law enforcement institutions should develop comprehensive cooperation with local governments, providers of social services as well as other institutions and organizations - working together for restoration of justice and fairness in inter-institutional environment. It must be admitted that this is one of the most serious challenges when speaking of Victims Support System establishment.

At the moment the rights of the victims are regulated by three laws - Criminal Procedure Law, Law on State Compensation to Victims²⁵ and State Ensured Legal Aid Law²⁶. According to Section 22 of Criminal Procedure Law, person upon whom harm has been inflicted by a criminal offence shall, taking into account the moral injury, physical suffering, and financial loss thereof, be guaranteed procedural opportunities for the requesting and receipt of moral and financial compensation.

Victim of crime has rights to receive compensation from the offender and in specific cases indicated in law, victim has rights to receive compensation from the state. Victim can request compensation within criminal proceedings but in case he/she is not satisfied with the amount of compensation granted, there are possibilities to submit a claim in civil court therefore initiating separate proceedings. According to Section 95, part one, of Criminal Procedure Law, a victim in criminal proceedings may be a natural person or legal person to whom harm was caused by a criminal offence, that is, a moral injury, physical suffering, or a material loss. Compensation for moral injury can be requested by natural person but compensation for material loss can be requested both by natural and legal person.

Article 350 of Criminal Procedure Law stipulates that compensation is payment specified in monetary terms that a person who has caused harm with a criminal offence pays to a victim as atonement for moral injury, physical suffering, or financial loss. Compensation is an element of the regulation of criminal-legal relations that an accused pays voluntarily or on the basis of court adjudication. If a victim believes that the entire harm caused to him/her has not been compensated with compensation, he/she has the right to request the compensation thereof in accordance with the procedures specified in the Civil Procedure Law. In determining the amount of consideration, the compensation received in criminal proceedings shall be taken into account. In addition, Article 353 provides that a special law²⁷ determine the procedures by which harm must be compensated from the State funds to victims, and the amount of harm to be compensated from such funds.

Law On State Compensation to Victims entered into effect on 2006 and it is in accordance with:

²⁴Research summary: Mechanisms for compensation of victims in criminal proceedings in the EU (in Latvian), http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Kopsavilk.Meh.ciet.kompens.pdf [10.05.2013]

²⁵ On State Compensation to Victims of Republic of Latvia. Available at: <http://likumi.lv/doc.php?id=136683> [last visited on 05.22.2013].

²⁶ State Ensured Legal Aid Law of Republic of Latvia. Available at: <http://likumi.lv/doc.php?id=104831> [last visited on 05.22.2013].

²⁷ Law On State Compensation to Victims of Republic of Latvia. Available at: <http://likumi.lv/doc.php?id=136683> [last visited on 05.22.2013].

a) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims which stipulates that all Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent crimes, which guarantees fair and appropriate compensation to victims, and

b) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims which stipulates that Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Compensation from state's budget is granted only in specific cases, if intentional criminal offence has resulted in the following:

1. if death of the person has occurred;
2. if severe bodily injuries have been caused to the victim;
3. if sexual inviolability or morality of the victim has been violated;
4. if the person is victim of trafficking in human beings;
5. if the victim has been infected with the human immunodeficiency virus, Hepatitis B or C.

The amount of compensation victim can receive is limited and is determined according to the harmful effects that the offense has caused. If the amount of compensation granted by the state is smaller than the harm that was caused by offense, victim retains the rights to request remaining part of the compensation from the offender. The amount of money the victim receives as compensation from the state is later recovered from the offender.

The maximum amount of the State compensation to be paid to one victim of a criminal offence is 5 minimum monthly wages specified in the Republic of Latvia (currently the amount is EUR 1422, 5). The amount of the State compensation to be paid shall be calculated, taking into account the amount of the minimum monthly working wage²⁸ determined at the time when the person was recognized a victim. The compensation is paid if:

- a) death of the person has occurred - in the amount of 100% (5 minimum monthly wages);
- b) Severe bodily injuries have been caused to the victim or sexual inviolability of the victim has been violated, or the victim has been infected with the human immunodeficiency virus, Hepatitis B or C - in the amount of 70%²⁹.

²⁸ Author's Comment: the minimum monthly working wage in Latvia is LVL 200 or EUR 284,5.

²⁹ Law On State Compensation to Victims, Article 7, <http://likumi.lv/doc.php?id=136683> [05.22.2013]

State compensation for victims can be considered as a crucial toll for restoring the justice after the criminal offense has occurred. Most of the offenders do not have financial resources necessary for the purpose of compensating the caused harm, not even a small part of the damage done. The victim has to cover the expenses of treatment. In case of serious harm, those expenses can be considerably higher than the financial resources available to the victim. Research has showed that only a small part (30-40%) of all requests for compensations are collected from the offender in favor of the victim

Legal aid, just as compensation of the damage, is one of the most important needs of victims. In order for the victims to exercise their rights foreseen in the law, one needs a legal consultation on how to do that. Even though the Criminal Procedure Law stipulates a right for the victim to invite lawyer as his/her representative within criminal proceedings, there is a reason to believe that defending the interests of a victim is more complicated than defending the interests of an offender. Legal assistance to the offender is provided by state and it is free of charge, but the victim, on the other hands, it not entitled to such free of charge assistance.

In research³⁰ that was carried out in 2013 it was concluded that “the offender within criminal proceedings (as a suspect, accused person or a defendant) is entitled to have a representative provided by state if the offender can not afford to hire one himself/herself. In order to ensure equal defending of victims’ interests, one should have rights to state provided legal assistance since the moment a person is recognized as victim within criminal proceedings. This right should not be dependant on whether the person has low income, this right should be resulting from the existence of the status “victim” within criminal proceedings”. The afore-described situation leads to conclusion that offenders’ rights to legal assistance are greater than victims’ rights (a) and that the rights of offender and victim for defending their interests within criminal proceedings should be equal.

State Ensured Legal Aid Law³¹ stipulates that free of charge legal aid is available only to the victims who:

- a) have obtained the status of a low-income or needy person in accordance with the procedures specified in the regulatory enactments regarding the recognition of a natural person as a low-income or needy person; or
- b) they find themselves suddenly in a situation and material condition which prevents them from ensuring the protection of their rights (due to a natural disaster or *force majeure* or other circumstances beyond their control), or are on full support of the State or local government (for instance, persons in homes for elderly or persons in orphanages).

³⁰ Research summary: Mechanisms for compensation of victims in criminal proceedings in the EU (in Latvian), Page 23. Available at: http://www.providus.lv/upload_file/Projekti/Kriminalitesibas/Kopsavilk.Meh.ciet.kompens.pdf [last visited on 10.05.2013].

³¹ State Ensured Legal Aid Law of Republic of Latvia. Available at: <http://likumi.lv/doc.php?id=104831> [last visited on 05.22.2013].

In order for legal aid to be fully considered as one of Restorative Justice tools, its legal framework needs substantial improvements.

2.2 Methods of Restorative Justice that are currently being implemented

The previous chapter analyzed instruments of Restorative Justice, application of which is already regulated in the Latvian Law. However, there are several methods, which are not regulated by law, but are nevertheless exercised practically via execution of pilot projects. Considering the high number of projects being executed every year, the scope of this research paper is too limited to describe and analyze them all, therefore only the methods which are being implemented at the highest speed will be considered.

In Latvia, methods of Restorative Justice are mostly used in the field of crime prevention. These methods can be used for working with all groups, depending on the behavioural risks, which correspond to the group in question – individuals from low risk groups (such as children and young people, who have not yet committed any crimes), as well as individuals who are under arrest for serious crimes and people who have concluded their imprisonment via early release.

- Circles of accountability and support³²

On 15th of January, 2013 Latvian State Probation Service began work on the project of EC special program *EU Specific Programme Daphne III 2011-2012 Circles for Europe (CIRCLES4EU)*. Support and accountability circles in this context are used as a method of Restorative Justice, which promote integration of high risk sex-offenders into society after their release. Latvian State Probation experts believe this group of offenders to have a particularly high risk of committing violent crimes and sex-crimes. In order to introduce support and accountability circles in Latvia, help is provided by specialist from the Netherlands, Belgium and Great Britain³³.

Support and accountability circles³⁴ are intended to assist sex-offenders with integrating back into society after having served their sentence. This method solves two problems at once - it helps them overcome the barriers to integration and the resistance of the society to accept them and at the same time it decreases the risk of them committing new crimes.

The pre-condition of the support and accountability circles is for the ex-offenders to recognize their risks and to wish to overcome them (accountability) and in return they receive organized support (support).

³² More about this: <http://www.restorativejustice.org/RJOB/good-news-from-canada-on-circles-of-support-and-accountability> [last visited on 05.10.2013].

³³ More about this: <http://www.probacija.lv/page.php?id=1> [last visited on 05.12.2013].

³⁴ A circle of Support and Accountability is a community-based initiative operating on restorative justice principles. A circle assists individuals who have served a prison sentence for a sexual offence(s) in their effort to re-enter society, more about this: <http://www.csc-scc.gc.ca/text/pblct/lt-en/2006/31-3/7-eng.shtml> [last visited on 05.10.2013]

Method is comprised of two parts – internal and external. The internal circle contains the sex offender and volunteers, who support and simultaneously monitor the individual in question, whilst compensating for the risks of exclusion and negative attitude from the society. The external circle consists of specialists who assist the volunteers and circle-coordinators with solving professional issues. Even though this method is still in its early stages of implementation in Latvia³⁵, in the future it is planned to ensure longevity of the method, which is why parallel to the pilot project methodological materials are developed.

- Restorative Conferencing³⁶

One of the methods introduced in Latvia in 2010 is the restorative conferencing method. It is mostly used when working with minors and their parents. All parties affected by the crime take part in the conference, but for the settlement meeting professionals can be invited to support the victim as well as the offender and to decrease the consequences of the crimes.

The restorative conference method is considered to be particularly fitting for the work with minors, because it allows for the victims and their family/friends to talk to other people about what had happened whilst (a) letting the offender taking responsibility for the situation, (b) allowing the offender to minimize the damage done to the victim, (c) allows the victim to participate at the conference together with his/her relatives and thus feel safer throughout procedure of negotiating for a favourable compromise to decrease the effects of the crime committed. In contrast to victim-offender mediation this method is particularly appropriate for children and young people, as it includes more active support from victims' parents and friends, who can assist the minor throughout the process – which is a particularly important aspect of the method, regardless whether the minor is the victim or the offender.

- Victim` support circles

Restorative Justice can help not only the offenders, but also the victims of the crime. In Latvia the status quo has been to mainly concentrate on the offender – to identify, put to trial and to punish the individual responsible, leaving the victim to assume the role of a passive observer.

The research project conducted this year, “Provision for the Needs of Crime Victims: Support to Prevention of Victimization in Latvia³⁷” concluded that in the period of last five years nearly every other inhabitant has been a victim of crime and more than half of these individuals have not received support of any kind, even though they have been in need.

³⁵Circles of Support and Accountability, Page 10, <http://www.iirp.edu/pdf/Nova-Scotia-2011-Presentations/Nova-Scotia-2011-Dixon-Farnsworth.pdf> [last visited on 05.13.2013].

³⁶ Author`s Comment: An Restorative Conference is a voluntary, structured meeting between offenders, victims and both parties' family and friends, in which they address consequences and restitution.

³⁷ Author`s Comment: The study will be available in English on PROVIDUS website in September 2013.

Jan Van Dijk³⁸, professor of the Tilburg University, has said the following about the support system of victims: “If the system of criminal justice would consist of private enterprises, they all would be forced to leave their businesses, because half of their clients (namely, victims), are unhappy with the service they provide”.

Undoubtedly, in order for the general framework to change, series of complex steps have to be made. It starts, however, with a single effort and in the case of Latvia this happened in 2011 when a pilot project of support circles for victims was introduced to three Latvian NGOs. The support circles were used as a method of Restorative Justice and targeted women as well as parents of children who had become victims and had difficulty admitting it. The leaders/chairpersons of these circles were first trained and prepared for the activities by the specialist form the USA and the Netherlands.

It has to be noted, that the support circles for victims is a method organized and practiced by the NGOs and the specialists get involved on their own initiative or within the framework of projects. Hence, the method is not an ongoing option and is not available to all those in need.

3. The results of the best Restorative Justice practices in Latvia

The criminal procedure and criminal justice is a crucial element of social regulation, but the purpose and content of it will depend on the form of societal organisation. In authoritarian societies criminal justice is a tool of control, so that the government can contain its legitimacy. In democratic societies, on the other hand, criminal justice works in two directions simultaneously – it provides a way of ‘dealing with’ offenders and at the same time protects democratic freedoms of the society in question³⁹.

Without a doubt, the best practices of Restorative Justice in Latvia are methods of victim-offender mediation and community service. Both of these methods correspond to the values of Restorative Justice and are currently used as alternatives to the methods of ‘traditional justice’.

Both of these methods really stand out on the background of general criminal justice practices in the country. However, it has to be noted, that both of the good practices are used so as to help with re-socialization of offenders – a set-up where the role of the victim is still secondary to the offender. To illustrate, victim-offender mediation was introduced and is regulated as one of the possible options for the offender, not the victim and the community service is defined by law as a form of compulsory measure of a correctional nature for minors. This is one of stages of criminal-policy development, which is pointed out by Tony Peters and Ivo Aertsen: „For a long time the interests of victims of crime have been „une

³⁸ Jan Van Dijk, <http://www.tilburguniversity.edu/webwijs/show/?uid=jan.vandijk> [last visited on 05.05.2013].

³⁹ More details: Crime and Criminal Justice in Europe, Page 10, Introduction by Christopher Nuttall. <http://ej.uz/mbj3> [last visited on 05.12.2013].

*quantité négligeable*⁴⁰ⁿ. Punishment and the social reintegration of the offender polarize the powers of criminal justice. From the moment of reporting the offence the victim experiences victimization. Once a case enters the criminal court system, the victim-witness becomes susceptible to a myriad of problems and needs⁴¹.

Bearing this in mind, it can be concluded that system of criminal justice in Latvia still has not accepted that the victim and the offender are at least equally important both in the context of criminal process as well as outside it and that (a) consequences of a criminal offence cannot be eliminated merely within the framework of criminal process and that it is precisely why methods of Restorative Justice are important, as it is possible to work with those both in secondary⁴² as well as primary⁴³ forms of prevention (b).

- Victim-offender mediation (VOM)

Victim-offender mediation is conducted by specifically trained professionals at the State Probation service since 2005. VOM is a voluntary process of conversation between the victim and the offender, led by a neutral and specially trained intermediary (mediators?), who helps the sides to come to a fair and acceptable solution. There are 93 intermediaries at the State Probation service, 20 of which are volunteers. The settlement is based on principles of Restorative Justice and the aim of it is to illuminate the need of the victim, so as to decrease the damage (consequences) caused by the crime (offence) (a) and to allow the offender to take responsibility for his actions (b).

If there are children involved in the VOM process, their parents and other persons of support are included. If minor, the victim of the crime, is not willing to meet the offender in person, VOM is not possible. If the police, prosecutor or the court find that settlement is a viable option, probation specialists are informed instantly. If the offence is committed by a minor, it is the responsibility of the police, the court and prosecutor to inform the probation specialists about the case which then offer the minor to get involved in the VOM. State Probation service begins to organise the settlement when they receive a formal request from the police, prosecutor, court, the victim or the offender.

Figure no.2

| Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 6 month |
|------|------|------|------|------|------|------|------|------|--------------------|
| | | | | | | | | | |

⁴⁰ ENG: *a negligible amount*.

⁴¹ Crime and Criminal Justice in Europe, Page 35, Chapter 2, Tony Peters and Ivo Aertsen. Available at: <http://ej.uz/mbj3> [last visited on 05.12.2013].

⁴² Secondary crime prevention seeks to change people, typically those at high risk of embarking on a criminal career. Available at: <http://www.aic.gov.au/publications/current%20series/crm/1-20/crm001.html> [last visited on 05.12.2013].

⁴³ General measures to promote social justice and equal opportunity, which thus tackle perceived root causes of offending such as poverty and other forms of marginalization. Available at: <http://www.ojji.org/en/docs/glossary?letter=P> [last visited on 05.12.2013].

| | | | | | | | | | |
|------------------|----|-----|-----|------|-----|-----|-----|-----|-----|
| VOM cases | 51 | 251 | 744 | 1140 | 745 | 440 | 696 | 706 | 493 |
|------------------|----|-----|-----|------|-----|-----|-----|-----|-----|

While consulting the above table, it is important to note that the number of cases when VOM was used dropped in 2009 due to the economic crisis, but has been restored fully in 2013, meaning that the number of VOM cases has grown significantly – there have been 493 VOM requests in six months, including 112 cases when minors have been involved. In comparison, there were only 108 requests in total from such cases in 2012.

The majority of offenders, who are involved in VOM have committed crimes that have to do with property – thefts, robberies, fraud; less so those that have committed physical offences and more serious crimes.

| Type of Crime | Number of VOM |
|---|---------------|
| Different types of theft | 306 |
| Destruction of property of another person | 84 |
| Different types of bodily injury, including cases with serious consequences | 74 |
| Violations of road traffic | 26 |
| Hooliganism | 11 |
| Other | 25 |

In order to apply VOM in Latvia more widely, it is pivotal that the efficiency of VOM is improved and developed. For example, there should be a system in place to ensure that the offenders keep the promises they have made during the settlement.

Similarly, because VOM is a new method, its benefits need to be explained and presented to the society. This would promote and foster implementation of Restorative Justice ideas whilst also convincing the society and the specialists of the field that there are ways for the system of justice to work much more effectively.

- Community service

In Latvia, community service is organized and overseen by the State Probation service. Every year approximately 3500 convicts are assigned to community service. During the process of community service two main goals are set – to restore justice and to resocialize the convicts.

With this in mind, the State Probation service cooperates with socially responsible entrepreneurs, creating a range of work options that do not belittle the convicts and allow them to undergo the service with dignity, matching their skills and abilities. Entrepreneurs, organizations and companies who offer work to the convicts become part of the community service process and in a way represent interests of the society of the offender would get a chance to compensate for the damage that he/she has caused.

When choosing the potential employer of the offenders for the community service, special attention is paid to the ability of probation clients to use their knowledge and skills, so that both society and the offender can gain as much as possible and the inclusion component of the punishment is exercised. Recently, the employers have started to entrust offenders responsible tasks more actively, which would directly make use of their expertise. For example, offenders with engineering education constructed benches and swings, which were fit for the security requirements and fit in the corresponding setting and an offender with knowledge in forestry, cultivated tree plant growth. Similarly, a probation client with cynologist qualification took part in dog socialization at an animal shelter. In these cases, not only is the employer satisfied, but the probation clients feel they have done something meaningful and are given a chance to develop their existing skills further and to gain new experience whilst being integrated into society.

Figure no.4

| Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Number of employed persons in Community service | 1059 | 2545 | 3159 | 3904 | 4290 | 4018 | 3724 | 3951 |

Based on data provided by the Latvian Judicial Information System⁴⁴, 28% of all offenders in Latvia are sentenced with community service.

Community service as a sentence can be applied to many different cases of criminal offence: the majority of individuals are sentenced for thefts, robberies and fraud (32%), for driving under the influence of intoxicating substances (23%), for acquiring, storing and selling narcotic drugs and psychotropic substances (5%), for intentional damage to property (4%) and others. In some cases, community service can be used as an additional punishment when the offender has been assigned probation supervision.

⁴⁴ Data from the Judicial informational system 2005 -2012.

4. Conclusions

- In Latvia, Restorative Justice tools are considered to include such justice practices and programs, which result in compensating the damage to the victim, restoration of the rule of law, inclusive reactions, respecting the rights of individuals and the general society as well as the re-integration of the offender and the victim to the society and a fair settlement of legal relations.
- Large part of the society finds it difficult to accept and adopt new criminal ill-treatment, including Restorative Justice and is more sympathetic to formal, simplified, short-term solutions.
- Many of the Latvian Restorative Justice tools have been developed within the framework of individual projects (national and local authorities) or are based on personal initiative of NGOs. In fact, only *Victim-Offender mediation* and *Community Service* are tools regulated by law, and have been successfully implemented with the support of the state funding.
- Latvian mediation system has been developed so that there are two types of mediation: a) mediation in civil and commercial matters, and b) a settlement with the mediator (victim-offender mediation in criminal cases), including restorative conferencing, which is currently in a stage of implementation and the law does presuppose it.
- Two types of community services exist in Latvia, one of which is the criminal penalty for persons from 14 years and the other being a coercive measure for children from the age of 11.
- Although the Latvian State has provided a system of compensation for victims of crime, it can only be received by a certain range of persons who have suffered from the most serious consequences of the crime.
- Even though there are many significant parts of the judicial system in place in Latvia, victim support system, as a well-focused and legally secured entity is not one of them. Legal aid (a) compensation to the victims of crime are only two small elements of such system.
- In Latvia, state compensation to victims is a very important instrument for restoring the justice after the crime. Most offenders do not have the financial resources to let them compensate for even a small part of the damage caused.
- Despite the fact that the Latvian Criminal Law stipulates that the victim is entitled to a lawyer to defend his/her interests in criminal proceedings, there is reason to believe that the interests of the victim in criminal proceedings should be defended in a more complex way as the victims (in contrast to the offender) are not entitled to free protection of their interests, unless they are officially recognized as a low-income or needy person.
- Methods of Restorative Justice methods are currently in their implementation phase in Latvia and are mostly used in the field of crime prevention. They are mostly funded from the resources of individual

projects: Circles of support and accountability – for high-risk offenders (a), Restorative conferencing - for victims and young offenders (b) and Victim Support Circles – for individuals (and their loved ones) who have suffered from various forms of violence (c).

- It still has not been recognized in the Latvian Criminal Justice system that the offender and the victim are at least equally important to the criminal process and that the harmful effects of crime cannot be eliminated solely by the criminal proceedings.
- To develop a justice system that serves for the purpose of restoring the justice and not for punishment and proving the guilt, work is needed in all areas of justice - from the creative development of legal norms to training the professionals and regularly informing the society about the benefits of safety and order development area.