THE POSSIBILITIES FOR RESTORATIVE JUSTICE IN BULGARIA WITHIN THE CURRENT LEGISLATION - **RESTORATIVE APPROACHES IN CRIMINAL JUSTICE AND THE EXECUTION OF PUNISHMENT. PROPOSALS FOR LEGISLATIVE CHANGES.**

(draft report)

I. Introduction. Justification of needs.

1. Context and national specificity

The development of restorative justice after the Second World War and the realization of the limitations of positive law, which did not prevent the "Jewish question" from being "solved" by the legitimate means of the National Socialist state, showed that it was an extremely appropriate tool for societies in transition between different forms of totalitarianism and democracy. The equation after the concentration camps is that law, as a normative system whose basic features are abstractness, universality, binding force, implicitly involving subordination sanctioned by the state and enforceable by coercion, can also pervert social relations - expropriate the property of "non-Aryans" on legitimate grounds, turn murder into an industry. "The "autoimmune" defense of traditional justice to resolve the conflict between legal certainty and justice triggered the development of the "intolerability" formula, according to which "where justice is not the goal, where equality, which constitutes the core of justice, is deliberately denied in the application of positive law, the law is not only 'incorrect law,' but actually lacks any legal character" (Gustav Radbruch). Traditional justice has continued to seek other means to overcome its tragically identified deficits, so that it may never again become a man-hating industry. Thus came the flowering of the doctrine of human rights. In practice, the reckoning from the defeat of law and justice by the modern state during the war led to the understanding, established and institutionalized in the new constitutions, that the entire legal toolkit should be applied on the basis of the inalienable proposition that every human being has an intrinsic value that must be respected; that some forms of behavior are incompatible with respect for that value; and that the state exists for the individual, not vice versa.

Therefore, sound traditional justice, having understood its inherent limitations by definition, leaves ample room for the inclusion of other forms in which citizens, not the government, have the leading role in resolving their own conflicts. Into this field enters so-called restorative justice, in which not experts and authorities but the participants in events find a way to share the truth and reach understanding. Restorative (conciliatory) justice contributes to the peaceful functioning of a community, to the creation of a convention of order, but in a significant departure from the prominent principles of traditional justice (abstractness, universality, binding force, subordination and state coercion). Conciliatory justice is always concrete, within a person's power and size, focused on their personal history, not based on coercion, facilitates the creation of

order in community relations, and does not rely on any patronage, i.e., it has no need for authority or the drive for power. Conciliatory justice allows people to bring out the whole truth of the events in which they are the central characters. Truth and reconciliation commissions in the Republic of South Africa were constructed on this principle at a stage in the country's history when punishing the perpetrators of crimes would not have been sufficient to rebuild the moral fabric of a society traumatised by violence and deceit. That is why the preamble to South Africa's new constitution begins with the words: 'We, the people of South Africa, acknowledge the injustices of our past...'.

Restorative justice is suitable for traumatized societies in transition states, including as a means to overcome the mistrust in the judiciary after the introduction of the separation of powers because, unlike traditional justice, it involves the active participation of the parties to the conflict in its implementation and the final decision is not accepted by them as a decision "handed over" down the vertical from the state power, but as a personal achievement – a result of their own effort and assumption of responsibility. At the same time, this develops a culture of intelligent and literate attitude towards the activity of administration of justice.

The resource of restorative justice can also be sought in another aspect. The just conclusion of the judicial process is reached through formal procedures in which the persons concerned use procedural means to reconstruct that truth which the law defines as "relevant." However, the facts relevant to the legal rule do not always convey the comprehensive truth, the recovery and disclosure of which is often of paramount necessity to the people concerned. In this sense, traditional justice is not always sufficient to restore damaged social ties and achieve much-needed understanding of what has happened. This 'insufficiency' of traditional justice should not, of course, diminish its paramount importance in establishing the rule of law. But its realised limitations show that systems of social control (to achieve social peace and social welfare) need to create networks of citizen interdependence that are not based on power and subordination, and do not rely on sanction from state power. Scholarly arguments for the realization of this necessity are being developed in criminology, particularly critical criminology, because restorative justice, as one of the means of creating a bonded community of interdependent citizens, is at the heart of effective and lasting crime prevention.

So far, various civil and scientific initiatives have been developed in Bulgaria to promote restorative justice[1] Restorative justice is part of the updated strategy of the

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Assoc. Rumen Petrov from New Bulgarian University, Department of Health and Social Work
is the author of key texts on the possibilities of conciliatory justice in Bulgaria and the limitations of the environment, as well as on the distinction between conciliatory and retributive justice.
Between 2003 and 2016, restorative practices developed in prisons. Restorative communities have been established in prisons in the city of Lviv. The restoration centres were established in Sofia and in the town of. Vratsa with the active participation of Elena Evstatieva under the PF Bulgaria project. Participants go through the restorative community in two phases: an external program - 4 months, which is a preparation for the placement in the "Adaptation Environment" center and a stay in the center for a minimum of 6 and a maximum of 18 months, depending on the sentence. From 2003 to 2005, 72 inmates went through the Adaptation Environment Programme, 24 of them in both stages and 48 in the external programme of the Adaptation Environment Centre.

Ministry of Justice for judicial reform, approved by the National Assembly on 21.01.2015. This is a proof of a deepening understanding of the dangerous consequences of the aforementioned problem of lack of trust in the judiciary, of the growing alienation of citizens from institutions and the devaluation of state coercion as a result of a wrong criminal-law policy – the increase of the number of criminal offences and the increase of the punishments without answering the questions why and what comes from that. This requires to recall some significant long-standing shortcomings - the lack of criminological research and the absence of a viable social infrastructure that carries out the rehabilitation of offenders, leading to predictable consequences - increasing recidivism, a significant part of which is the result of poverty and social neglect - severe illiteracy and the absence of any social prospects for offenders after serving their sentence.

It is in this context that the initiative of the Supreme Judicial Council (SJC) to develop the project "Improving the implementation of restorative justice mechanisms" emerged. This is the first institutional effort on the part of the judiciary administration body to seek opportunities to strengthen public confidence in justice by expanding the scope of voluntary and responsible citizen participation in conflict resolution and the inclusion of restorative practices in judicial procedures where this is permissible and there is already a willingness on the part of the judicial community. We therefore see our work on this project as an extremely valuable commitment on the part of the judiciary to the humanisation of justice, which will inevitably be reflected in stimulating other authorities to take responsibility in this direction, including by creating the preconditions for the development of a system of social services that are tailored to the specific needs of vulnerable people involved in the various court proceedings. It is through this prism that the members of the working group understand our involvement and responsibility - to share with our colleagues the benefits of restorative justice and its possibilities, realised in our own professional experience and in our experience of the inspiring Norwegian experience, in areas where it is not only legally permissible but would not meet serious resistance in the legal community because of the humanising effect it would have on traditional justice due the effective prevention of crime and the

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Tulip Foundation promotes and develops the practice of family group conference.

Restorative approaches are found in various school practices (activities of the Partners Foundation, the long-standing school initiatives of Judge Vladimir Valkov from the Sofia Regional Court for group work with students in different schools).

Justice and Reconciliation Society invited prof. Christie in April 2014 in Bulgaria. Prof. Nils Christie was a guest of the Sofia. Professor N. Christie gave two interviews, gave lectures to a forum of "Goricka", to academic lawyers in the auditorium of the Sofia University St. Kliment Ohridski and to legal practitioners in the Court Chamber in Sofia. He also spoke at a lecture at the Faculty of Law in Sofia. The Kultura newspaper published articles selected and translated by the supporters of the Justice and Reconciliation Society, who also contributed to the publication of three of Prof. Christie's books. Christie in Bulgarian.

The Restorative Justice Blog in Bulgaria (https://restorativejusticebg.com) maintained by Elena Evstatieva its contributors and other contributors are initiating a series of conferences in the period 2018-2021 on restorative justice and its best practices in Bulgaria, Europe and the world.

promotion of a civic culture which motivates people to participate in their own self-organisation and thus become a more and more reliable corrective of the state authority.

2. International legal incentives for the development of restorative justice in Bulgaria

Bulgaria's membership in the European Union and the international trend to encourage legal systems to expand the possibilities of alternative dispute resolution in recent years has also been a significant factor in deepening the understanding of the benefits of restorative justice in Bulgaria.

Directive 2012/29/EU also provides for the introduction in Bulgarian legislation of restorative justice as a process in which the victim and the offender are given the opportunity - after freely expressed consent on their part - to actively participate in the resolution of issues arising as a result of the offence with the assistance of an impartial third party. In fulfilling the obligation under Article 12(2) of Directive 2012/29/EU, Member States should facilitate the referral of cases, where appropriate, to restorative justice services, including through the establishment of procedures or guidelines on the modalities of such referral, as it is accepted beyond dispute that restorative justice is a tool for the priority protection of the victim. Alongside mediation, it is recommended that family conferences, reconciliation circles, etc., be conducted between the victim and the offender.

II. Development of concepts of restorative justice. The role of customary law.

1. The ideas of restorative justice are related to the critiques of institutional power in the writings of Michel Foucault[2] , Paolo Freire[3] , Ivan Illich[4], Howard Zehr and Niels Christie.

1.1. **Paolo Freire**[5] sees dialogue as a method for learning from experience in the course of living together and learning about the factors that influence relationships between people. Dialogue thus becomes a means of learning, of critically reflecting on experience. Freire sees learning as constituting a relation to experience, and experience

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[2] Foucault, M. Supervision and punishment. The birth of the prison. S.: UI "St. Kliment Ohridski", 1998.

[3] Freire, P. Pedagogy of the Oppressed. Continuum, New York, 2007

[4] Illich, I. Deschooling Society. Harper & Row, New York, 1971.

[5] **Paulo Freire** (1921-1997) was a Brazilian educator, philosopher of education and social critic. He studied law and philosophy. He is considered the main representative of the so-called "critical (emancipatory) pedagogy" in adult learning.

Formative for his thinking was his experience as a trainer of illiterate (before the change) peasants in the course of the agrarian reform in Latin America in the 1950s and 1960s. In the process of working with poor peasants, he shaped his view that education and literacy are tied to changing the world in which the educated and the educator participate and which they co-create. For Freire, the metaphor of the empty vessel that is filled by the process of education is both meaningless and harmful. He became known for teaching Portuguese, in the course of which he actively discussed with his adult students their social situation and the need and possibilities for social change in which they were participants through active political action. His major work is Pedagogy of the Oppressed.

arises as a result of problems and contradictions (conflicts). This understanding contrasts with the idea of learning as instructing, as filling empty vessels with data, facts, rules ("knowledge"). When it comes to learning about the social world, Freire argues, this learning cannot help but consider the problems that weave relationships from different perspectives. Authority in such an approach to learning is not didactic (it is not the holder of the only truth). Problems, facts and their descriptions are not made clear in advance and thus are not the property of the "teacher" but are the subject of joint learning, of joint achievement. Learning thus becomes an act of liberation rather than a form of subjugation. This reveals the meaning of dialogue understood as an encounter between people. Dialogue for Freire is a prerequisite, a condition for the achievement of critical thinking, which is based on the solidarity between people and on their quality as co-authors of the social reality of which they are a part.

1.2. The Austrian philosopher **Ivan Illich**[6] , another well-known ideologue of restorative justice, discusses the relationship between industrial capitalism and the power-based nature of the basic social institutions of modern society. He develops the idea of the mutualist society as an alternative to the industrial, institutionalizing society

Reciprocity in Ilitch is the antithesis of industrial productivity, an expression of individual freedom. He sees modern industrial society as one that sacrifices meaning for productivity. Social progress is created by the production of goods and services instead of reciprocity. According to Illich, the technocratic catastrophe of alienation and the overcoming of its effects with yet more consumption that increases the power of institutions and the alienation that follows can be avoided by social changes that guarantee each member free access to the means of the community to achieve mutuality while limiting his freedom only in favor of the equivalent freedom of other members of the community.

The conditions for reciprocity are those structural changes that make possible the fair distribution of the unprecedented power of institutions. The concentration of power that once began with the development of imperial social arrangements leading to high levels of productivity is also known for its incredible possibility of absolute power of people over people on an unprecedented scale (from plantations of slaves and/or prisoners to build the backbone of the productive "miracles" of these societies). According to Ilitch, in a post-industrial society, the capacity for self-expression should not require forced labor, forced learning, or forced consumption of someone else as a condition of its existence.

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[6] **Ivan Illich** (1926-2002) was an influential Austrian social critic and philosopher. He was born in Vienna into a Catholic and Jewish family. A practicing Catholic priest, he is fluent in more than 10 languages and has a doctorate in history on Arnold Toynbee.

Illich studied and systematically criticized the projects of the Catholic Church and the "West" for social development in the so-called Third World (mainly in Latin America) in the mid-20th century. In the course of doing so, he developed an influential critique of the cultural hegemonic and social engineering attempts of the US-led liberal-democratic alliance during the Cold War. This often made him politically uncomfortable, especially in the late 1980s when social engineering, this time of the Cold War victors, found new grounds for cultural superiority. He is known for his systematic critique of the power of institutions over individual freedom and their ability to reproduce the constraints and damage of consumer society on humanity. His best known book is Emancipation from School (Deschooling Society,1971)

In his best-known critique of industrial society, Ilitch sees the school as an institution that does not serve individual freedom, solidarity, and critical thinking about the world. Instead, the school creates attitudes of participation in a world of structural corruption. Under these conditions, people leave it to the institutions that serve industrial society to define their values. Such an organization of the world vests power in institutions rather than people. [7]

1.3. **Howard Zerr** and the laying of the foundations of the practice-oriented concept of restorative justice

Howard Zehr began his work as a practitioner and theorist in the late 1970s, when the foundations of restorative justice were being laid.[8] He directed the first formal victim-offender reunification program in the United States. According to Zehr, restorative justice is based on a common sense understanding of offending. While it is expressed differently across cultures, the approach is common to most traditional societies. The understanding of wrongdoing as causing harm to the individual but also to the community is based on the idea of the interdependence of all members of society. Zehr draws on the concept from Jewish scripture of "shalom," the belief that we should live in understanding with others, with our creator, and with nature. Zehr points out that in many cultures there is a distinct word that expresses the idea of people's common connectedness to each other and the world around them - "wakapapa" for the Māori in New Zealand, "hojo" for the Navajo Indians, "ubuntu" in the Bantu language of South Africa, "tendrel" for Tibetan Buddhists. According to these customary ethical systems, offending harms the community and the normal functioning of relationships among its members. According to this understanding, harm done to one is harm done to all. Such a view of wrongdoing presupposes a concern for the healing of those involved in the conflict - the victim, those causing the suffering, and their communities.

Zehr articulates the three core questions of restorative justice - who is the victim, what are their needs, and who is obligated to repair the harm - as well as the three pillars of restorative justice - focusing on the harm caused to the victim and the community; an obligation to repair the harm by those who caused it, but also holding the community accountable; and engaging and involving all stakeholders in the conflict through various forms of dialogue.

According to Zehr's concept, restorative justice focuses on the reintegration of victims, offenders, and the well-being of the entire community. He identifies three basic models of restorative practices that have different modifications according to local and cultural differences - victim-offender meetings, family group conferences, and the circle model.

Zehr problematizes the very notion of restorative justice, assuming that it is more socially appropriate to call it transformative justice because it emphasizes the social

[7] The summary of Freire and Illich's ideas is quoted from the article by Petrov, R., Conciliatory Justice in Bulgaria - Limitations of the Environment", published in a book of the New Bulgarian University, Department of Law, The Low of the Right or the Right of the Law National Conference.

[8] Daniel W. Van Ness and Karen Heetderks Strong, in their book Restorative Justice - An Introduction to Restorative Justice, note that the term "restorative justice" was probably coined by Albert Eglash in 1958, when he distinguished three approaches to justice: (1) "retributive justice," based on punishment; (2) "distributive justice," involving therapeutic treatment of offenders; and (3) "restorative justice," based on restitution with contributions from victims and offenders.

causes that led to the conflict. In adopting such an approach, the aim is to arrive at a solution that prevents future socially undesirable events, and this is possible at the level of changing the social structure and public policies.[9]

1.4. **Niels Christie**'s ideas[10] - inspiration for the Norwegian model of restorative justice

In one of his recent writings[11] Nils Christie discusses the mission of the Norwegian system of municipal commissions to deal with conflict - "not necessarily to resolve it, nor to restore it or to bring it to justice, but to deal with conflict - to uncover what actually happened, to enable one side to understand the other side about what actually happened. Maybe the conflict will become more bearable. Maybe the parties, and the whole community, will understand more."

Nils Christie suggests that we should consider reconciliation commissions not in relation to the concept of "restorative justice" but as "conflict work councils". He believes that "this is a less heroic terminology, but it is also a terminology less prone to abuse and misleading expectations".

In his seminal article 'Conflict as Property', published in 1977 in The British Journal of Criminology, based on his lecture on critical criminology given a year earlier at the Centre for Criminology, University of Sheffield, he set out his basic understanding of the principles on which conflict resolution work, or so-called restorative justice, should be built. According to Christie, decisions about what is relevant and on what grounds is considered relevant in resolving a conflict should be taken away from law professors, the chief ideologues of crime control systems, and returned to courtrooms where these issues can be freely decided. Christie emphasizes changing the focus of the trial – it should not be centered on determining guilt but on what can be done to make right what has been done. Shifting the perspective requires restoring the victim's place in the case by clarifying the harm she has suffered, even if that harm is not recognized by criminal law as an element of the offense. This will naturally lead to a discussion of how to repair the harm, enable the offender to change his or her situation and move from being a listener to being a participant in the discussion of how he or she could make things right and be given the opportunity to be forgiven.

Nils Christie accepts that there is a need for a structure to organise the systematic application of the different options for reconciliation practices and through it to enable the perpetrator to repair the harm according to the needs of the victim, balancing this

[9] Howard Zehr, Restorative or Transformative Justice, 2011 - https://emu.edu/now/restorative-justice/2011/03/10/restorative-or-transformative-justice/

[10] Professor Niels Christie (1928-2015) was a Norwegian criminologist whose books and lectures have been essential in all serious discussions about the perspectives of criminal justice systems and the purposes of punishment. He graduated in sociology in 1953 with a study of the mindset of guards in a concentration camp for Yugoslav prisoners of war during World War II in Norway. He defended his PhD on "Young Norwegian offenders". Professor of criminology at the Faculty of Law, University of Oslo. N. Christie's views make him a natural critic of the existing retributive penal system and a proponent of the "restorative justice" approach. His ideas served as the basis for the system of restorative justice bodies and procedures established in Norway. The publishing house "Sibi" has published in Bulgarian three of the books by prof. N. Christie's books - The Limits of Suffering, The Measure of Crime and Crime Control as an Industry. Gulag, but in the West"

[11] Christie, N. Words for Words. B. "Culture, issue 31 (2823), 18.09.2015.

process without taking the lead from the parties and without allowing the experts to dominate in order to prevent the 'theft of the conflict' by its owners.

Professor Christie sees the role of local courts, which are aligned with local values, as enabling the application of restorative practices. The role of the local court is important in establishing the needs of the offender because their personal and social circumstances have already become well known to the court. According to Christie, a discussion of the offender's ability to make restitution to the victim cannot take place without simultaneously clarifying the offender's situation. It may reveal a need for social, medical, educational or spiritual care - not to deter him from further offending, but to meet his needs, for only then would the conditions for offending be neutralised.

Particularly important in view of the Bulgarian social and judicial situation is Christie's view that courts are public stages where the needs of the participants in the conflict become "visible". However, he stresses that this stage - the identification of needs and the necessary support measures - must follow sentencing, because there is a danger that instead of support during the trial, the offender will receive participation in a "mandatory programme", which is a euphemism for the indeterminacy of punishment.

According to Christie, the idea is to make the local court a court of equals who represent themselves rather than attending through professionals, because when the parties can find a solution between themselves, the judges become redundant, and when they can't, the judges should also be equals with them.

1.5. **Daniel Van Ness**' contribution to the promotion of restorative justice ideas

Daniel Van Ness[12] maintains that restorative justice is not a program, but a theory of justice that not only gave rise to the idea of deploying conflict resolution tools such as mediation, but also has the resources to guide public policies.

He stresses that one cannot speak of a universally accepted definition of restorative justice. Instead, there are three similar but distinct concepts. They overlap to a significant degree, but they also have important differences, arising from different challenges related to the limitations of modern criminal justice.

The first challenge, according to Van Ness, is that crime harms victims and communities, which requires justice to repair that harm. However, instead, the criminal justice system seems too preoccupied with causing equivalent harm to the offender (retribution) or influencing the offender so that he or she is less likely to cause harm in the future (deterrence or prevention). Thus, the first concept of restorative justice focuses on repairing the harm done to the victim and the community. Society has a responsibility to require - and help - offenders to make restitution for harm and, where the offender is unknown, to help the victim to recover in other ways. Van Ness calls this

[12] Daniel Van Ness is the Director of Prison Fellowship International's Justice and Reconciliation Center. He is one of the world's leading experts on restorative justice. Daniel van Ness was attracted to and involved in PFI's activities and staff 30 years ago when he began building the Justice and Reconciliation Center. He was instrumental in the creation of the Sycamore Tree Project®, a victim and offender awareness/awareness program now being conducted in prisons in 34 states. He is the leader of a coalition of NGOs that have described and successfully promoted the adaptation of the UN Basic Principles for the use of restorative justice programs in criminal cases. He is the author and editor of several books, including Restorative Justice: an Introduction to Restorative Justice. In 2013, he received the John W. Byrd Pioneer Award for contributions to the development of restorative justice, a NACRJ (National Association of Community and Restorative Justice) award.

the "reparative" concept of restorative justice because it focuses on repairing the harm caused by the crime.

The second challenge to modern criminal justice that Van Ness writes about is the one formulated by Nils Christie – crime is property of the victim and the perpetrator and by law belongs to them. The state has 'stolen' the crime and therefore it, not the victim and offender, decides what should be done in the case. Thus, the second definition of restorative justice focuses on giving victims and offenders a voice in deciding what should happen. There are multiple ways in which to reach this decision - meeting the parties through restorative mediation, conferences or circles. This concept of restorative justice is called the "meeting concept" because it brings parties together in facilitated meetings.

The third challenge to criminal justice identified by Van Ness is also a challenge to the other two concepts of restorative justice. The third concept of restorative justice can be called the 'transformative concept' and is the most ambitious of the three. According to this view, the goal of restorative justice is not simply to repair but to transform - individuals, relationships and structures.

Van Ness is a proponent of a definition of restorative justice that Prison Fellowship International uses: restorative justice is a theory of justice that emphasizes restoring the harm caused by criminal behavior. This is best achieved when the parties affected by the crime themselves cooperate, and when this happens, transformation of personalities, relationships, and structures can be achieved.

1.6. In many countries, dissatisfaction and disillusionment with the formal justice system, or a renewed interest in preserving and strengthening customary law and traditional justice practices, is giving rise to the need for alternative responses to crime and disorder. Most of these alternatives provide the parties, and often the surrounding community, with the opportunity to participate in conflict resolution and to deal with its consequences. Restorative justice programmes are based on the belief that parties to a conflict should actively participate in its resolution and in mitigating its negative consequences. In some cases, the programmes also help to build and develop local communities, which is particularly relevant in our national context, where for decades we have seen community structures crumbling and disappearing at different levels - in settlements, schools, professional circles. This approach is also perceived as a means to support peaceful conflict resolution, to promote tolerance and personal participation, to build respect for differences and to enforce responsible social practices. Often, restorative justice practices are implemented through **customary law** - examples include Canada, which adopts the customary rules of its indigenous Indian population, and New Zealand, which builds on Māori restorative practices.

1.7. The History of the **Conciliation Courts in Bulgaria**

The Conciliation Court has deep roots in Bulgarian jurisprudence, which are linked to the common law of the years of the Second Bulgarian State.[13]

[13] In the research of Assoc. doctor of historical sciences Evgeni Yochev[13] "The Conciliation Court in the Kingdom of Bulgaria", published in "Judicial Law", April 2016 , traces the historical development of the conciliation court from the times of Ottoman rule to the peace court in the Third Bulgarian State. Associate Evgeni Yochev is a doctor of historical sciences, a long-year teacher of History of the Bulgarian State and Law (HBSL) at the Faculty

It is established that during the Ottoman rule the tradition was continued by the usual judicial authorities. The establishment and activity of the conciliation court then became possible thanks to the partial autonomy granted to the Bulgarian Christian population. The decentralisation of government at the lowest level allowed the preservation and functioning of local government and self-government bodies in accordance with the norms of customary law. Moreover, the Bulgarian population, for ethnic, religious and financial reasons, deliberately avoided the organs of Ottoman justice. Sometimes this was also done under pressure from the village princes.

The study of historical sources shows that the usual judicial authorities were the village municipal authorities, as well as the local dignitaries (elders, big landholders). The composition of the court varies in the different regions of the country. Thus, in the Rhodope Mountains, the so-called "public self-judgement" administers justice, in which all the old people participate, but the opinions of the "most prominent and most distinguished" among them are of the greatest weight and importance. [14]

In terms of composition, the court is either single (mayoral) or mixed with the participation of the elders or village chiefs. [15]

Its aim is to achieve reconciliation of the parties. The existence and activity of the court are based on the willingness and readiness of the disputants to reconcile, to reach a mutually acceptable agreement. As Zachariy Stoyanov writes, "if two or more have any quarrel between them, so both parties agree to come to terms with each other or through the mediation of the village or town elders." [16]

The consent of the parties to conciliation implies their willingness to voluntarily accept and comply with the decision of the conciliation court. T. Vasilyov, who writes that before the Liberation the people of Teteven did not know the judicial process in the modern sense of the word. "For ordinary disputes: civil, commercial, even legal, those concerned resorted to amicable settlement, either directly or through the mediation of some respectable or influential prince, or finally to the municipality".[17]

These and other sources show that the Conciliation Court is not permanent, has a different composition but one main function – its activity is linked to the existence of a dispute, the parties' agreement to resolve it with the help of conciliators, and with voluntary undertaking to comply with the court's decision.

In the course of the Russo-Turkish War of Liberation, the Provisional Civil Government preserved and restored the Old Councils, giving them a more democratic character. Their composition was determined by elections in which men over 18 years of age who owned some real property took part. The requirements for council members

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[14] Andreev, M. Bulgarian Customary Law. S., 1979, pp. 261-262.

[15] See Hristov, Hr. Bulgarian Municipalities in the Revival. S., 1973, 64-65; Marinov, D. Bulgarian customary law. S. Academic Publishing House "Marin Drinov", 1995, p. 210.

[16] History of the Bulgarian State and Law. Sources 681-1877. Compiled by. Petrov, P., G. Petrova. S., 1996, p. 247.

[17] Vasilov, T. Memories of persons and events in the 19th and 20th centuries. S., 1934, 544-545.

are 1) to be 30 years of age or older and 2) to own real property. The village priest enters the council by right.

After the Liberation, the old councils were transformed into the so-called conciliation (polemical) courts. According to Article 1 of the Provisional Rules on the Structure of the Judiciary in Bulgaria, "the judicial power belongs to:

- conciliation (mutual) courts;
- general courts: district and provincial; and
- special courts: administrative courts, spiritual courts of the Orthodox and other faiths, and justice of the peace courts".

The Provisional Court Rules (PCR) were approved by the Russian Imperial Commissar Adjutant General Prince Alexander Mikhailovich Dondukov-Korsakov on 24 August 1878.

Conciliation (community) courts are established in every village, regardless of the ethnic composition of the population. The Muslim population is also given the right to form its own reconciliation court. This creates opportunities for resolving disputes within individual communities. The court is composed of the heads of the religious communities and three to 12 elected members, chosen through two-stage elections for a term of one year. The requirements are as follows: they must be over 30 years of age, have no convictions, be literate and own real estate or have secondary/higher education. This establishes the right of any resident who meets the above conditions to fill a judicial position of their choice. The members of the conciliation courts shall be elected from among all persons residing in the village.

Conciliation courts have limited powers. They only hear civil disputes and criminal cases of a private nature in which the parties can reach a settlement, as well as custody cases. The court is not constrained by any procedural forms or rules. It is guided by custom and complies with the requests of the parties. Its decisions shall have effect only if both parties have given their prior written consent. They shall be final and enforceable by the Mayor.

1.8. **The concept of community courts**[18]

In the common (case-) law countries, the concept of a community court has been developed and applied, which focuses on addressing the concerns of vulnerable members of the local community. The community court is an appropriate form for the application of restorative practices because it offers appropriate conditions, under which the members of the local community meet with the representatives of various social health and educational services. What is of essence is that the court in the community is set by a resolution (and in case of a realised need) of the active members of the populated area, rather than on the initiative of the central or local authority. The experience shows that the court and local community affect each other for the maintenance of social peace.

A brief description of the concept of community courts:

In terms of the legal dispute

a) traditional courts focus exclusively on:

- gathering comprehensive (available) information that leads to clarity on the dispute;

[18] SJC Report on the Importance of District Courts - http://www.vss.justice.bg/root/f/uploads/files/Doklad-sadebna-karta.pdf

- the merits of the parties' arguments for the resolution (outcome) of the dispute;

- determining the new relationship after the dispute (the outcome of the dispute);

(b) Problem-focused courts (PFCs) (problem-solving courts) organise a process of interaction and information gathering that enables an understanding of the problems underlying the immediate dispute.

The idea is that these problems, left unresolved, my lead to new disputes (conflicts, crimes). Examples are situations of domestic violence, child and adolescent delinquency, drug abuse, mental health problems, family conflicts and disputes, etc. Usually these problems lead to repeated court appearances with all the negative consequences for the people involved in the conflict, for the community and for the court. The purpose of the JFS is to understand the problem, but also to support the work on it, which generally involves the involvement of other (non-judicial) institutions. These courts are voluntary. People who choose to appear before them usually have social problems, mental disorders, family conflicts and/or a combination of these. As a result of such problems, people may have committed acts that qualify as criminal offences and thus be subject to prosecution - for example - domestic violence, child abandonment, drug abuse, etc.

In the United States, this legal and social practice began with juvenile courts, the first of which opened in Chicago in 1899. This was in response to the understanding that juvenile delinquency posed a pressing issue for the failure to raise antisocial children. It raises the old ethical question of how just it is for society to punish a person who has not had the opportunity to develop as an ethical citizen because of the environment in which he has developed and matured. In these early courts, the court used its authority and power to involve the adolescent in a process of care (rehabilitation for the purpose of re-socialization) rather than a process of punishment (of the "infliction of pain" manner of Nils Christie).

The new wave of SFA began with the creation of the Specialized drug treatment court (drug treatment court) in Miami in 1989. In some ways, the SFA judge worked as a social worker, although he had no clinical training. This is necessary both because of the versatility and complexity of social problems, for which there is usually no clear algorithm of action to address and motivate the participants in the problem to resolve it in a humane way for all.

Drug courts, similar to juvenile courts, arise following court overload with substance abuse cases. It has been observed that incarceration does not break the dependency of many inmates, which gives rise to the need to seek other solutions. In the Miami drug court, a treatment process to overcome drug dependence is being introduced, but supervised by the court. The goal is to have rehabilitation and the judge in a case like this as part of the treatment team.

Characteristic features of all SFAs are:

- immediate and immediate intervention - a process that avoids confrontation;

- Intensive communication between judge and offender - an interdisciplinary approach;

- A clear behavioural contract between the court and the offender with defined rules and objectives.

This agreement requires a defendant in a drug abuse case to agree to be "clean" of drugs, participate in a rehabilitative treatment program, submit to periodic testing to

determine the presence of drugs in his or her system, and report to the court every 10-14 days. The treatment team discusses each defendant's case in open court. The court hears and decides whether the defendant meets the condition to quit consuming drugs. The judge openly encourages and congratulates the defendant when he/she is able to maintain a drug-free lifestyle. Otherwise, the judge has the authority to impose escalating penalties that are intended to encourage acceptance of treatment. Successful cases are concluded with an event that is public in nature and has the atmosphere of a graduation (honouring for personal achievement).

The effectiveness of this integration is high and there are currently more than 2,300 such programs operating in the United States.

Domestic violence courts, mental health courts, child abandonment courts, etc. function similarly. In practice, these are all programs in which the court uses its authority to encourage participation in corrective activities implemented by care programs.

The model of a community court focussed on problem solution is particularly appropriate for small populated areas, in which small regional courts operate. In 2015, the SJC adopted a resolution whereby it approved a report on the role and importance of the regional courts within the judiciary in Bulgaria. In the report, the SJC made a commitment to adapt the concept of community court to the specificity of the regional courts in the country, which should develop in the future.

1.9. The use of the term "restorative justice" itself is not accepted uncritically. For example, Howard Zehr notes that the use of restorative approaches and practices in schools or other professional communities or institutions such as hospitals, universities, etc. indicates that the term restorative justice is not particularly appropriate.[19] When writing about restorative pro-justice, Nils Christie uses terms such as 'empathetic justice', 'conflict regulation', 'conflict resolution', 'empathy in conflict resolution'. Restorative justice also uses the terms 'community justice', 'reconciliation', 'positive justice', 'relational justice', 'community justice' and 'restorative justice'. The idea is to emphasise that our focus should not be on the outcome but on the process itself, because participation in conflict resolution is more important than the resolution itself.[20] The Canadian researcher and inspirer of restorative justice, Daniel van Ness, supports the same idea. He coined the term Restoring Justice, translated as Restorative Justice, in his 2014 book, Daniel W Van Ness, Restorative Justice: An Introduction to Restorative Justice. The author's idea is to emphasize that restorative justice is a process of repairing the harm of the act and healing the parties involved.

2. Concept and international standards of restorative justice

Notwithstanding terminological objections, it is the notion of restorative justice that is used in a number of UN, Council of Europe and European Union legal documents.

Restorative justice is a significant topic on the agenda of the United Nations congresses on crime prevention - Vienna, 2000 and Bangkok, 2005. The final declarations of both forums focus on the application of a restorative approach to crimes

[19] Howard Zerr, A Little Book on Restorative Justice, S.: La Conference OOD, 2018, p. 22.
[20] Christie, N. , Limits of Suffering, Sibi, 2015, pp. 118-119

committed by juveniles and young adult offenders. Of particular relevance is the UN Handbook on Restorative Justice Programmes, 2006.[21] This document overcomes a narrow understanding of the scope of restorative justice and promotes its widest application.

2.1. The concept of "restorative justice" adopted by the UN

The notion of 'restorative justice' adopted by the UN includes proceedings to address the crime by focusing on repairing the harm caused to victims, holding perpetrators accountable for what they have done, and often engaging the community in conflict resolution. The involvement of the parties is an essential part of the proceedings, through which emphasis is placed on building a relationship between the victims and the offender, reconciling them and reaching agreement on a desired outcome. Restorative justice procedures can be adapted to diverse cultural settings and to the needs of different communities. Through them, the victim, offender and community regain some control over the process itself. Moreover, the proceedings themselves can often transform the relationship between the community and the justice system as a whole.[22]

The UN Basic Principles for the Application of Restorative Justice state that restorative justice programmes can be applied at any stage of the criminal justice process, as long as national legislation allows it. They can be used by the police instead of arrest. Prosecutors use restorative programs instead of bringing charges. Judges invite victims and offenders to meet before sentencing and sometimes they make that meeting part of the sentencing. Prison administrators allow victims to enter the prison to meet with their offenders. Probation and parole officers facilitate meetings between offenders, their families, victims, and their communities to prepare them for reintegration into the community. In all of these cases, the meetings are voluntary for both offenders and victims and are conducted in a safe environment by experienced facilitators/facilitators.

2.2. The notion of 'restorative justice' adopted in Directive 2012/29/EU

In Art. 2, §1, par. "d" of Directive 2012/29/EU of the European Parliament and of the Council on the establishment of minimum standards on the rights, support and protection of victims of crime and repealing Framework Decision 2001/220/JHA of 15 March 2001, a more restrictive definition of restorative justice is adopted - a process whereby the victim and the offender are given the opportunity - after freely expressed consent on their part - to actively participate in the resolution of issues arising from the crime with the assistance of an impartial third party. The participation and involvement of the community or communities affected by the conflict, or to which the victim and offender belong, is not included as part of the concept of restorative justice.

An essential part of the directive under consideration is the measures that Member States must take to establish safeguards in the context of restorative justice services.

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[21] Handbook on Restorative Justice Programmes, United Nations Office on Drugs and Crime (UNODC) Vienna, New York, 2006

[22] *Basic Principles for the Implementation of Restorative Justice Programmes in Criminal Matters*, adopted in 2002 by the United Nations Economic and Social Council; Handbook on Restorative Justice Programmes, p. 8

Article 12 of the Directive affirms that Member States must provide in their legislation for measures to ensure that victims who choose to participate in restorative justice procedures have access to safe and competent restorative justice services, subject at least to the following conditions:

- Restorative justice services shall only be used if they are in the best interests of the victim, subject to safety considerations, and shall be based on the victim's freely given and informed consent, which may be withdrawn at any time;
- Before agreeing to participate in a restorative justice process, the victim is provided with full and impartial information about the process and its potential outcomes, as well as information about the procedures for monitoring the implementation of any agreement;
- the offender has admitted the basic facts of the case;
- any agreement reached is voluntary and may be taken into account in any subsequent criminal proceedings;
- Discussions during the restorative justice process that are not held in public are confidential and, accordingly, shall not be disclosed subsequently, except with the consent of the parties or if required by national law due to an overriding public interest.

In order to promote and support restorative programmes and practices of different kinds and nature, the Directive provides for an obligation for Member States to establish the legal and factual conditions to facilitate the referral of cases, where appropriate, to restorative justice services, including by establishing procedures or guidelines on the conditions for such referral.

2.3. The concept of "restorative justice" as adopted in Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States on restorative justice in criminal matters

Similar in scope and content is the definition adopted in Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States on restorative justice in criminal matters, which replaced Recommendation R 99/19: Restorative justice refers to any process that enables victims of crime and those responsible for that harm, if they freely consent, to actively participate in the resolution of issues arising from the crime with the assistance of a trained and impartial third party (hereafter referred to as a facilitator (conciliator).

The Council of Europe Recommendation promotes the application of restorative justice standards in the context of criminal proceedings, and sets out the general principles of restorative justice: the opportunity for parties to be actively involved in decisions relating to the crime (the principle of stakeholder involvement), and for these decisions to be primarily aimed at repairing harm, relationships and society (the principle of repairing harm).

Other basic principles of restorative justice include: voluntariness; deliberative dialogue with respect for everyone; equal consideration of the needs and interests of those involved; procedural fairness; reaching a common agreement based on consensus; focusing on reparation, reintegration and achieving mutual understanding; and avoiding domination by one party.

These principles can be used as a framework to support broader criminal justice reforms.

Legal certainty requires that a legal basis for restorative justice within criminal proceedings be regulated by law. In this sense, it is advisable to establish a clear legal basis for when the judiciary refers to restorative justice programmes or when they are otherwise used by including them within criminal/judicial proceedings.

Recommendation CM/Rec(2018)8 of the CoE proposes general guidelines for the activities of services providing restorative justice services: to develop standards of competence and ethical rules and procedures for the selection, training, support and evaluation of facilitators (conciliators); to provide adequate human and financial resources for restorative programmes and coordinating services; and to encourage contact with local communities to inform them about the use of restorative justice and involve them in the process where possible.

Tracing the development of the idea of restorative justice in legal acts shows the danger of instrumentalizing it (reducing it to a procedural means of easing the system of traditional justice), insofar as training and strict regulation of the activities of conciliators and commissions can lead to professionalizing the process to a degree that again creates the danger of taking the conflict away from the parties involved. It is therefore necessary to strike a balance between the need for legal regulation of restorative justice and preserving the decisive participation of the parties to the conflict in the process of reconciliation.

In this regard, a clear distinction needs to be made between restorative justice and mediation. In mediation, the parties are on equal footing and seek a common solution to an existing dispute between them, whereas in restorative justice conferences or 'rounds' the offender has to admit responsibility for the offence committed, which is normally a condition for entering into conciliation procedures.

3. Why Restorative Approaches are Needed within Traditional Justice

3.1. Tracing the development of restorative justice theory and its incorporation into legal regulation, we converge on an understanding of **restorative justice as an approach to achieving justice that engages, to the extent possible under the legal framework and the will of the actors, all stakeholders in a particular crime/conflict and empowers them to jointly identify and discuss their harms, needs and obligations. The goal is reconciliation and making things right to the greatest extent possible.[23] It is therefore more appropriate to talk about a restorative approach and practices/programmes which can take a variety of manifestations and forms**.

Critical criminology concludes that no matter how hard justice is democratized, it is not enough if we do not find means and ways to empower people. This is because the more the individual is deprived of responsibility for his own destiny and it is placed in the hands of the "authorities" and experts (including the judiciary), the more he reacts with irresponsibility and this becomes the strongest criminogenic factor and threat to lasting peace. As prof. Nils Christie points out, if we create a society in which many people have no responsible tasks, the prospect that many of them will respond with irresponsible behaviour is enormous. And he adds that critical criminologists have a responsibility to expose "those structures that create crime". Restorative justice can help

[23] Howard Zerr, Op. cit., p. 63. Daniel Van Ness writes about three concepts of restorative justice - focusing on repairing harm; the encounter/repair concept; and the transformation concept (source: Restorative Justice Blog https://restorativejusticebg.com/%D0%BD%D0%B0%D1%87%D0%B0%D0%BB%D0%BE/)

to address the problem of institutional alienation as it involves the victim, the offender, their social environment, the justice authorities and the community in its various forms. Restorative justice programmes are based on the guiding principle that criminal behaviour not only breaks the law but also harms victims and the community. This requires that, whenever possible, both the offender and the affected parties are involved in the process of recovery from harm, while at the same time providing the necessary support to both the victim and the offender.

Although restorative and traditional/retributive justice are normally viewed in opposition, they influence each other. Successful systems of social control over the factors that generate crime create situations in which it is important for the ordinary person to have the opportunity to participate, to be involved in the process, and to be heard as the greatest expert of their lives. Therefore, an effectively functioning traditional justice system that understands its inherent limitations by definition leaves ample room for the inclusion of other alternative forms in which citizens, not the government, take the lead in resolving their own conflicts. Into this field enters restorative justice, in which it is not experts and authorities but the participants in events who find a way to share the truth and reach understanding. Restorative (conciliatory) justice has as its task to facilitate the peaceful functioning of a community. Reconciliatory justice is always concrete, focused in a person's personal history, is not based on coercion, and facilitates the creation of order in the relationships of people in a community. Therefore, restorative approaches can expand and enhance the potential of the existing justice system, as long as they address the fundamental challenge of person-centred justice - finding ways to effectively engage citizen participation and provide meaningful protection for the rights and legitimate interests of both victims and offenders.

3.2. In the highlighted national context, promoting and unleashing the potential of restorative approaches is an **effective means to:**

- increase citizens' satisfaction with justice;
- prevent crime (achieves both accountability and inclusion);
- enhance victim protection;
- comply with European Union law;
- reduce the burden on the criminal justice system by diverting some of the caseload away from it and to provide it with a variety of constructive sanctions.

3.3. **The possibilities of restorative justice**

Traditional criminal justice is not only about retribution but also rehabilitation. This in itself holds significant potential for incorporating reconciliatory means into the criminal justice process.

Exploring the relationship between disclosure, punishment, and the protection of public safety, including by encouraging the offender by appropriate means to develop the resources to live a law-abiding lifestyle so as not to pose a danger to society, demonstrates the areas of possible and useful reconciliation of restorative approaches and restorative practices with the statutory procedural framework for the realisation of criminal responsibility and the enforcement of punishment.

In this sense, we consider the possibilities of applying restorative practices and engaging in restorative programmes within different types of criminal proceedings. This is a legitimate possibility insofar as the judge in a criminal trial has a duty to establish the identity of the offender, to gather evidence about the offender's background with a view to the possibility and necessity of imposing certain penalties; to ensure the equality of the parties insofar as so-called procedural fairness requires that the parties - offender and victim (where they are parties to the proceedings) - be given the opportunity to participate fully in the process. The application of the restorative approach in the criminal process is not restricted by law when the basic principles and principles of the process are respected. Arguments in this direction are found in the following legal provisions.

3.3.1. According to Article 1 of the Criminal Procedure Code, the **main task of** the criminal procedure is to ensure the detection of crimes, to expose the guilty and to correctly apply the law. This means that when the perpetrator of a crime is discovered, it is not sufficient for the correct application of the law that the process ends with the declaratory exoneration of the guilty. It is required that the impact through punishment on him is such that it is fit to protect public safety (this is evident from the articulated objectives of punishment in Article 36 of the Criminal Code (CC)). Only then will the law be properly applied. Therefore, in some cases, the objectives of punishment require that, if the offender and the victim agree, ways and avenues of reconciliation/dialogue between them be sought.

Exploring the relationship between disclosure, punishment, and the protection of public safety, including by encouraging the offender by appropriate means to develop the resources to live a law-abiding lifestyle so as not to pose a danger to society, demonstrates the areas of possible and useful reconciliation of restorative approaches and restorative practices with the statutory procedural framework for the realisation of criminal responsibility and the enforcement of punishment.

3.3.2. **The requirement of fairness**

Pursuant to Article 348(5) of the Criminal Procedure Code, the punishment imposed on the offender found guilty is manifestly unfair when it is manifestly not in conformity with the social danger of the act and the offender, the mitigating and aggravating circumstances, and the objectives under Article 36 of the Criminal Code, which include a rehabilitative aspect.

At the same time, definitively, justice is closely tied to trust and understanding, which allows a connection to be made to the foundation of restorative justice - encounter, problem identification, satisfaction with mutual understanding.

3.3.3. **The requirement to clarify the objective truth**

The aim of the criminal process is to achieve the objective truth, but this aim is not opposed to the personal history of the perpetrator, which always clarifies the motives, the motives, the circumstances that justify the criminal responsibility, if the accusation is proven. Therefore, and in fact, the relevant facts in a criminal trial are much broader than the usual understanding in practice - they include all the

circumstances that clarify the defendant's personality and his capacity to bear repression, his potential to build, with appropriate measures, sustainable volitional self-control and lead a law-abiding lifestyle.

The relevant legal norms that constitute an argument in this regard are:

- Art. 102 of the Criminal Procedure Code In criminal proceedings are subject to proof:

1. the offence committed and the participation of the accused in it;

2. the nature and extent of the damage caused by the act;

3. the **other circumstances relevant to the responsibility of the accused, including his family and financial situation**.

- Collection of data on the identity of the minor

Art. 387 of the Criminal Procedure Code. During the investigation and trial, evidence shall be gathered as to the day, month and year of the minor's birth, his education, the environment and conditions in which he lived, and evidence as to whether the offence was not due to the influence of adults.

- Art. 36, para. 1 of the Criminal Code. The penalty shall be imposed in order to:

1) to correct and re-educate the convicted person to respect the laws and good morals,

(2) to act as a deterrent to him and to deny him the opportunity to commit other crimes; and

3) to have an educational and warning influence on other members of society.

(2) Punishment may not be intended to cause physical suffering or to degrade human dignity.

- Art. 54. (1) of the Criminal Code. The court shall determine the punishment within the limits prescribed by law for the offence committed, guided by the provisions of the general part of this Code and taking into account:

the degree of public danger of the act and the offender,

the motives for committing the act and other mitigating and aggravating circumstances.

- Art. 60 of the Criminal Code. The punishment of minors shall be **inflicted in order, above all, to re-educate them and prepare them for community service**.

- Art. 61, para. 1 of the Criminal Code. The public prosecutor may decide not to initiate or to discontinue pre-trial proceedings in respect of **a minor who has committed, through infatuation or frivolousness, an offence which does not constitute a serious public danger,** and the court may decide not to commit him for trial or not to sentence him if he can be successfully subjected to educational measures under the Law on Combating Juvenile Delinquency.

- Art. 301, par. 1 of the Criminal Procedure Code. In passing sentence, the court shall consider and decide the following questions:

4. whether the grounds for exemption from criminal liability under Article 61, par. 1 and Article 78a, par. 1 of the Criminal Code;

5. should the defendant be released from serving the sentence, what should be the probationary period in case of conditional sentencing, and in cases under Art. 1 of the Criminal Code - what educational measure to impose;
7**. to whom to entrust the educational work with the defendant in cases of suspended sentences**;

- Art. 395, par. 1 of the Criminal Procedure Code. When postponing the execution of the penalty against the minor, the court shall notify the relevant local commission for combating juvenile delinquency for the organisation of the necessary educational care.

3.3.4. Publicity of hearings and public participation

It is expressly provided that the penal process should achieve an educative impact that allows the possibilities of restorative approaches to be deployed.

Under Article 261 of the CCP, the court shall take "necessary measures" to ensure the educational impact of the hearing. Court hearings are public (Article 20 of the CCP), unless expressly provided otherwise.

There is also an opportunity for the public to assist in the detection of the crime and the clarification of the circumstances of the case (Article 204 of the Code of Criminal Procedure). This means - about all the circumstances related to the conflict, to the defendant's personality and to the victim, if any.

In cases against minors, pursuant to article 391, paragraph 2, of the Code of Criminal Procedure, inspectors at the children's pedagogical room and representatives of the educational establishment where the minor is studying may be invited.

Pursuant to Article 392, para. 1 of the CCP, their parents or guardians must be summoned in cases against minors. They have the right to participate in the collection and examination of the evidence and to make requests, comments and objections.

This allows for the inclusion in the process of all citizens connected in one form or another with the conflict and with the possibilities for overcoming it.

3.3.5. **Possible restorative practices in some methods of solving criminal cases:**

3.3.5.1. In the case of an agreement for the resolution of cases of a general nature (Article 384 of the CCP).

3.3.5.2. In case of reconciliation as a way of termination of the case between the complainant and the defendant (Article 24, paragraph 5, item 3 of the CCP).

3.3.5.3. In case of statements of the victim in cases expressly provided for the termination of criminal proceedings for offences of a general nature (Article 24, paragraph 1, item 9 of the CCP).

3.3.6. Unleashing the potential of Article 61 of the Criminal Code in cases against minors.

3.3.7. Possibilities for restorative approaches in custodial measures against minors, as according to Art. 386(3) of the Code of Criminal Procedure, precautionary measures include the exercise of educational supervision over the minor.

3.3.8. Possibilities for restorative approaches in the imposition and enforcement of punishment.

3.3.9. When educational or probationary measures are imposed during the probationary period of a suspended prison sentence - direct opportunities for restorative justice in community impact programmes.

3.3.10. In the activities of the monitoring committees (Art. 170 - Art. 171 of the Execution of Punishments and Detention in Custody Act (EPDCA))

3.3.11. In assessing the effect of rehabilitation programmes in early release proceedings

3.3.12. In the special care requirements for young adults.

3.3.13. In social and educational work with prisoners.

3.3.14. When executing the probation penalty (for example - Art. 202, para. 5, Art. 215, Art. 218 of the Execution of Punishments and Detention in Custody Act)

3.3.15. In the work with conditionally sentenced prisoners (Art. 67 of the Criminal Code) and in the imposition of educational care on those released early from serving the remainder of their prison sentence (Art. 73 of the Criminal Procedure Code)

The Penal Code does not define the term "educational care" used in Articles 67 and 73 of the Penal Code. This allows the district judge or the representatives of the monitoring committees to offer the convicted person an appropriate social service that exists in the municipality - Art. 171, para. 1 (2) of the Execution of Punishments and Detention in Custody Act. The possibility of applying restorative practices within the framework of the implementation of the educational care with the conditional convicts is open, although it is not explicitly regulated in the law, its application is not prohibited, but on the contrary it is contained in the idea of the re-socialization of offenders.

The unleashing of the potential of restorative practices and approaches in the criminal justice process and in sentencing procedures in case law to date has shown that this can have an extraordinary humanising effect on justice. Alongside this, it increases civic competence, mobilises human efforts in crime prevention, and teaches the community civic effort and responsibility, which includes the ability to distinguish - when it is truly participating (its actions have legal and social significance), when it is interested in participating, when it is being manipulated for populist effects and allowing state authorities to abuse on its behalf, when its participation turns violent (for example, the comradely court is not restorative justice). There is a widening understanding of the importance of due process.

Thanks to the Norwegian experience of integrating restorative justice into the conflict resolution system, we have united around the understanding that we should initially focus our efforts on the deployment of restorative practices in the areas where the jurisprudence has already reached the realised need to resort to restorative approaches in order to fully achieve the main objective of the respective judicial proceedings - in relation to juvenile offenders with the application of Article 61 of the Criminal Code for ruling out of criminal justice; in the hypothesis of conditional sentencing also the possibility to develop on the grounds of Article 67 of the Criminal Code for young and adult offenders mechanisms and programmes for educational, corrective and preventive work with specific groups of convicted; as regards those serving an imprisonment punishment, when different forms of educational work are possible, including with the inclusion of restorative practices.

III. The Norwegian experience of building a normative and institutional infrastructure based on restorative approaches to conflict resolution

1. Background and first steps for the practical implementation of restorative justice approaches in Norway

1.1. The idea of restorative justice presented by all Norwegian experts at the first meeting in April 2022 in the city of. The first meeting of the Restorative Justice Council in Sofia and the working visit in Oslo, is based on:

- the values enshrined in Prof. Nils Christie's 1977 lecture "Conflict as Property";
- the process ("step by step") that Norwegian society has gone through to their legislative settlement and the role of international standards and recommendations from the UN Committee on the Rights of the Child;
- the understanding that restorative justice is more a movement of ideas than a norm, which is why the attitudes of the specific people involved in its various forms - conciliators, prosecutors, police officers, judges - are key to its success.
- Restorative justice is not a legal term, but a conceptual worldview that helps to develop tools that integrate restorative values into the criminal justice process to the extent that is permissible in the rule of law - a response that is outcome-oriented - meeting the needs of the offender, the victim and society.

1.2. In Norway, restorative justice/reconciliation is institutionalised in the early 1980s. Initially, a system of reconciliation centres was established, on the basis of which the network of the **National Conflict Resolution Service** - **Konfliktråde** - subsequently developed**.**

The institutionalization of the conciliation process in Norway and the emergence of the original National Conflict Resolution Service are linked to the implementation of a pilot project based on the ideas of Prof. Christie in 1981, a small municipality was involved in the process. The project, focused mainly on juvenile offenders and looking after the best interests of the child at risk, continued until 1983. The Ministry of Social Affairs was the responsible authority for its implementation and the verification of its effectiveness. The Attorney General played a significant role in the process of promoting the initiative by sending letters that encouraged cooperation between the Attorney General's Office and the Department and helped to develop an approach to identifying which cases were appropriate for conciliation. Subsequently, it was the Attorney General who proposed legislative changes. The first Reconciliation Act[24] was passed unanimously by Parliament on 15 March 1991. The so-called reconciliation infrastructure (commissions and procedural rules) was introduced across the country between 1992 - 1994. A feature of the Office of Conflict Resolution is that reconcilers are recruited from members of the relevant local community because of their personality and ability to successfully mediate.

1.3. It is crucial to consider the context and reasons that have led to the substantial reform of juvenile justice in Norway. In addition to the public consensus that children

[24] In English, the law is translated as the "Mediation Act", but the difference between the established concept of mediation, including in Bulgaria and in Norway, which, as stated above, is different from restorative/conciliatory justice, must be taken into account.

should only be sentenced as criminals in exceptional cases, an additional factor in the reform has been the serious criticism of the Norwegian state by the UN Committee on the Rights of the Child for failing to meet some of the most essential requirements of the UN Convention on the Rights of the Child, including that of creating a child-friendly justice system that emphasises rehabilitation opportunities for young offenders.[25] Unlike adult criminal proceedings, the primary goal of juvenile proceedings is the "best interests of the child." The Convention provides that "rehabilitation shall be more important than retribution or deterrence," and Article 40 requires States to consider various alternatives to institutional care. Examples include supervision, counselling, probation, foster care, education and others to "ensure that children are dealt with in a manner appropriate to their welfare and proportionate to both their needs and [the] offence." Therefore, under the Convention, "detention of a child should only be imposed as a measure of last resort."

In 2014, the best interest of the child was elevated as a fundamental principle in Article 104 of the Constitution of the Kingdom of Norway[26] .

The next step in the process of reforming the Norwegian juvenile justice system is a substantial change in the regulation of juvenile penalties and measures in the Penal Code, the power of the prosecutor to refer cases to the Conciliation Service, and the content and implementation of juvenile penalties/measures by the Conciliation Service. The new paradigm builds on the well-established practices developed in four projects over the previous 10 years, building on the concept of an integrated approach - linking all systems, authorities and people committed to the well-being of a particular child offender.

2. Organization, structure and activities of the National Conflict Resolution Service (Konfliktrådet / National Mediation Service) of Norway.

The organisation of the National Conflict Resolution Office **is** built at two administrative levels: one central administration, which functions as a directorate, and 12 regional offices (with 22 locations). There are a total of 130 staff at central level and about 550 local mediators appointed for periods of 4 years. Mediators are recruited through a process of public advertisement, interviews and basic training before being considered suitable for the task. They are supervised by the local office of the service and receive ongoing training and guidance, for example through local mediator meetings and workshops. [27]

2.1. As provided for by law, the National Conflict Resolution Service arranges meetings between the parties involved in conflicts that have arisen because one or more persons have caused harm, injury, loss, offence or have in any way affected another person. The Office also enforces juvenile sanctions and juvenile tracking measures; handles disputes in civil cases brought by the parties or referred by public authorities when the case is appropriate for a restorative process. Meetings organized by the

[25] The quoted criticism of the Kingdom of Norway from 2010 is available here: https://www2.ohchr.org/english/bodies/crc/docs/crc.c.nor.co.4.pdf

[26] https://www.stortinget.no/globalassets/pdf/english/constitutionenglish.pdf

[27] The current law on the service is available in English here: https://lovdata.no/dokument/NLE/lov/2014-06-20-49

National Conflict Resolution Service may be between the parties directly involved in the conflict; may be conferences attended by more involved and supportive persons, or the so called youth conferences facilitating a future conciliation meeting, etc.

2.2. The National Conflict Resolution Service (also referred to in this submission as the **Norwegian Mediation and Conciliation Service** for clarity) is organisationally subordinate to the Ministry of Justice and Public Security, Crime Prevention Directorate.

The Norwegian Mediation and Conciliation Service handles criminal and civil cases generally under the following conditions.

a. *Criminal cases.:* a crime that has been reported to the police, where the accused confessed his/her guilt, the prosecutor's office found the case appropriate for the Service and all the parties have consented to meet.

b. *Civil cases:* a crime that has not been reported to the police or the prosecution has dropped the case, and cases of conflict between people over personal matters, again with the mandatory condition that all parties have agreed to meet.

2.3. The National Conflict Resolution Service meeting, whether for a criminal or a civil case, is based on the needs, concerns and expectations of the parties.

The meeting is voluntary and the parties may withdraw from the meeting at any time. Prior to the meeting, the conciliator contacts the parties to propose a conversation, clarify the different needs, prepare the parties for the meeting, and schedule a conciliation meeting. If the parties are under the age of 18, a parent or legal guardian must approve any agreement made during the conciliation meeting. If the parties reach a mutual agreement on a settlement, it may include compensation in the form of payment, work, or other forms. The parties should consider the elements they wish to include in the agreement prior to the conciliation meeting. During the meeting, the conciliator's job is to provide a safe space for the parties to come together, despite their conflict, and to help them put their experience into words. Before the parties consider the conflict, the mediator provides information about the meeting to the National Conflict Resolution Service and the roles of the participants. To be valid, any agreement must be approved by the conciliator. The conciliator has the right and obligation to reject an agreement that unreasonably favors one of the parties or is unfavourable for other significant reasons. The conciliator shall be impartial and bound by a requirement of confidentiality.

In criminal cases: at the meeting all parties have the opportunity to talk about their experiences, their reactions and feelings about what happened. The parties - not the conciliator - are responsible for the content of any agreement. All parties can make suggestions about what the agreement should contain, which is finally signed in writing, and where any of the participants are under 18, a parent, guardian or carer must also sign. If the agreement includes a follow-up period, there is a two-week period in which the parties can change their minds and the agreement can be cancelled.

In civil cases, all parties also have the opportunity to talk about their experiences, reactions and feelings about what happened. There is no requirement for the agreement to be in writing, but it is considered good practice to make a written agreement to document what the parties have agreed. If the parties wish, they can agree on a date for a waiver so that they have the opportunity to withdraw from the agreement.

The written agreement also allows the National Conflict Resolution Office to follow up on the case.

After the meeting:

- in criminal cases: the Conflict Resolution Office administration sends a copy of the agreement to the prosecutor's office. Where the agreement includes a deadline, the complainant shall notify the Office of its implementation. The case is closed upon execution of the agreement. The Public Prosecutor's Office shall also be informed of the outcome. If the agreement is breached, the police may reopen the case and consider taking other criminal action. Criminal cases resolved at the National Conflict Resolution Service are not recorded on police records but are included on the police certificate of good conduct within the next two years. The notation on the police record (register) shall be deleted after two years, provided that no new punishable offences have been committed during those two years.

- in civil cases: where the agreement includes a deadline, the complainant shall notify the Office of its implementation. The case shall end with the execution of the agreement. The Office of Conflict Resolution asks the parties whether they want a new conciliation process when agreements are not implemented.[28]

3. The restorative process in criminal cases. Conditional imprisonment

3.1. The restorative/reconciliatory process (restorative practices) is a method, a system of means for facilitating dialogue between conflicting parties.

The main questions raised in the process are:

- What happened? Describe as specifically as possible.
- How did you experience what happened?
- What did you feel?
- What are your current needs?
- What do you want to follow from this meeting?

For both victim and perpetrator, the encounter can be important for both to process the trauma of what happened, move on with their lives, and sort through chaotic thoughts, feelings, and unanswered questions. This provides an opportunity for the perpetrator to take responsibility for what they have done. Victims can describe their experiences and ask questions that only the perpetrator can answer. Speaking directly with the other party to the conflict in a well-prepared meeting in a safe environment can outline new understandings and insights, help for restoring a sense of safety, for addressing and acknowledging harm and responsibilities. The goal is for the parties to develop their own capacities to reach an understanding and agreement that can restore or achieve their best treatment.

The restorative process is based on voluntary participation and parties may withdraw at any time during the process. The process shall be prepared and facilitated in dialogue with the parties by an impartial facilitator. Both parties may bring a person to accompany them for moral support during the process and with whom they can share reflections after the meeting. All those who participate in the meeting must be prepared in advance and agree to keep the meeting confidential. All staff and facilitators also have a duty of confidentiality.

3.2. According to Article 33 of the Norwegian Penal Code, imprisonment for juvenile offenders is an exceptional punishment applicable only "in view of the

[28] https://youtu.be/c2giruPi7Fk - informative video on how conciliation meetings are conducted and how an agreement is reached

circumstances". Article 34 lays down the conditions for suspension of imprisonment (so-called suspended imprisonment).

Under Norwegian law, when imposing a custodial sentence, the court may decide to **suspend** execution **in part or in full**. The duration of the suspended sentence trial period is normally two years, but in certain cases it may extend to five years. The sentence may be activated if the person re-offends during the period of the suspended sentence. During the period of the suspended sentence, the court may impose special conditions on the basis of Articles 35 to 37 of the Criminal Code and, in appropriate cases, the sentenced person shall be given the opportunity to express an opinion on the special conditions before they are finally imposed by the court.

The special conditions of a suspended sentence may be:

- restoration of the damage (payment of compensation) - Art. 35;
- obligation to report to the police at certain times - Art. 36;
- other special conditions - Art. 37:

a. assignment of duties concerning residence, work or training;
b. restricting the offender's contact with certain persons;
c. restrictions on income and the creation of financial obligations on the offender such as the payment of mandatory maintenance;
d. prohibition of the use of alcohol or other intoxicating or narcotic drugs and the obligation to test;
e. an obligation of the offender to undergo treatment to counteract the abuse of alcohol or other intoxicating or narcotic substances, if necessary, in an institution;
f. requiring the offender to complete a court-supervised drug treatment program or a DUI diversion program when the offense is the result of alcohol dependence or dependence on other intoxicants/drugs, provided the offender agrees to complete the programs;
g. an obligation of the offender to undergo psychiatric treatment, if necessary, in an institution;
h. a prescription to the offender to remain in his home or institution for up to one year;
i. the offender undertakes or voluntarily accepts to participate in a conciliation/ restorative process with the National Conflict Resolution Office and comply with any agreements made during the proceedings, or undergo a follow-up period by the National Office of up to one year, provided the case is appropriate for this procedure and the victim, the convicted person, and their guardians or conservators, where such a requirement exists, have consented;
j. an obligation of the offender to undergo a period of National Service youth tracking for up to one year, provided that: 1. the offender was between 15 and 18 years of age at the time of the offence; 2. the case is suitable for this procedure; and 3. the offender (their guardians, where such a requirement exists) has given consent;
k. the court may also impose other special conditions as the court may deem appropriate.

4. Youth Justice

4.1 The categorical public consensus that has become the basis for penal policy in Norway has been to define the need to keep all young people out of prison. Until 2005, the punishment of juvenile offenders was not regulated in special rules.

In 2005, all institutions involved in children's welfare began to work more closely together. Between 2005 and 2009, this collaboration resulted in the

implementation of 4 projects, the results of which were later evaluated by university professors. The conclusion is that the integrated approach is the best and it does not require additional funding, as the only thing needed is **to 'link the institutions'**.

Since 1 July 2014, legal amendments have been in force providing for special penalties and measures for juvenile offenders aged 15-18, based on the principles of restorative justice and the possibility of achieving control through social measures without infringing on the offender's physical freedom.

4.2 Chapter 8a of the Norwegian Penal Code is entitled "Penalties for minors". Article 52 bis regulates the conditions for imposing a penalty on a minor. The punishment includes a meeting between the offender and the victim (youth conference) and a youth action plan according to Chapter IV of the National Mediation Service Act. The penalty may be imposed instead of imprisonment if: the offender was under 18 years of age at the time of the offence, has not committed repeated or serious offences, agrees to the penalty and lives in Norway, and provided that the purpose of the penalty can be achieved without imprisonment.

4.3. Pursuant to Article 52b of the Criminal Code, when imposing punishment on a minor, the court shall determine:

a. a period of performance between six months and two years, and up to three years under certain conditions;

b. an alternative punishment to imprisonment that corresponds to the imprisonment that would have been imposed in the absence of the special juvenile penalty (minimum term of imprisonment of 14 days). It is also provided that, where the sentence imposes a penalty on a minor, the sentence shall be read out or handed to the convicted person and he shall be informed in detail of its contents and of the consequences of breaching it by committing a new offence during the period of the suspended sentence.

4.4. The consequences for violation of the conditions of the juvenile penalty are set forth in Article 52c. The district court may at the request of the probation service order that all or part of the suspended sentence be served when the conditions provided for in Article 31 of the National Conflict Resolution Service Act have been violated or at the request of the public prosecutor if the convicted person commits a new offence during the period of the suspended sentence.

4.5. The Criminal Procedure Act (**Straffeprosessloven)** regulates the prosecutor's powers to drop a criminal prosecution by discontinuing the case or referring it to the National Conflict Resolution Office. Termination is provided for in Article 69, according to which, even in cases of undisputed guilt, the public prosecutor may, where special grounds exist, abandon the prosecution of the act. Waiver of prosecution may be granted provided that the accused does not commit a new offence during the probationary period. The probationary period shall be two years from the date of the decision not to prosecute, but no longer than the limitation period for the initiation of criminal proceedings for the act. For defendants who were under 18 years of age at the time of the offence, the probationary period may be set for 6, 12, 18 or 24 months.

4.6. A waiver of prosecution is also admissible under the conditions of Articles 35, 36 and 37(a) to (h) and (k) of the Criminal Code. If the circumstances so require, the public prosecutor may, during the probationary period, waive or modify the conditions

provided for and may provide for new conditions. To the extent possible, the accused should be allowed to comment on the conditions before they are imposed.

If the accused claims that he or she is not guilty of the offence for which the prosecutor has decided to discontinue prosecution, the accused may request the prosecutor to bring the case to court unless the prosecutor withdraws the charges. The request to do so must be made within one month of the defendant being notified of the refusal to prosecute.

4.7. The rules for referring a case to the National Conflict Resolution Service are in Article 71 a. – if guilt is proven, the prosecutor may decide to transfer the case to the service or to the tracking system for up to one year, provided the case is appropriate and when there is consent from the victim and the accused and their parents if the vctim or the accused are minors.

For defendants aged 15 to 18 at the time of the offense, the prosecutor may decide to transfer the case to the National Conflict Resolution Service's youth tracking program for up to one year when the case is appropriate to do so and again with consent from all.

4.8. Article 71b regulates the cases of a crime committed by a person who has not reached the age of 15. In these cases, the public prosecutor transfers the case to the Child Protection Service, which must subsequently notify the public prosecutor of the action taken.

4.9. The content and implementation of juvenile sanctions and the tracking of juveniles is regulated by the Office of Conflict Resolution Act (hereinafter referred to as the OCRA for brevity)

Article 22 of the OCRA stipulates the content of juvenile punishment:

- participation in a youth conference;
- preparation of an individually adapted action plan for the minor;
- tracking/monitoring the implementation of the plan.

Youth Conference - The National Office of Conflict Resolution begins preparing the youth conference as soon as the case is referred by the court or prosecutor. The youth conference is chaired by a coordinator who must ensure that the appropriate parties are represented. They may be represented by the probation service, the school, child protection authorities, health and social services or other services. When the sentence is carried out, the minor, parents and representatives of the probation service and the police must be present at the youth conference.

Upon completion of the youth follow-up, the adjudicated defendant, defendant, and defendant's guardian must attend the youth conference. Representatives of the police should attend if the service deems it appropriate.

Action plan concerning the minor

The youth conference must develop an action plan that should be approved by the youth coordinator, the minor, and the minor's parents. The plan may, among other things, include the following responsibilities for the minor: to provide non-material compensation to the affected party; to participate in crime prevention programs or other similar measures; to perform community service; to comply with certain rules of residence, place of work or educational institution; to report to the police or probation office; abstain from the use of alcohol and other intoxicating or narcotic substances and submit to drug tests; observe curfews; have no contact with certain people; an obligation

to remain in an institution or undergo some form of therapy may also be provided for as a measure.

The Youth Coordinator is responsible for the implementation of the Action Plan.

Where no agreement is reached when the plan is implemented, the case must be sent back to the court, which decides whether to implement all or part of the suspended sentence. When follow-up is part of the conditions for the prosecutor's referral of the case and no agreement is reached, the prosecutor decides whether to proceed with criminal proceedings once the case is referred back to him.

The follow-up team is responsible for the implementation of the measures defined in the Youth Action Plan. It shall be led by the Youth Coordinator and shall include the minor, his parents and all persons who have responsibilities regarding the implementation of the action plan. The youth coordinator may also ask other people who have a close relationship with the minor to participate. In the case of a sanction imposed on the minor, representatives of the police and the probation service mandatorily participate as members of the team

If the juvenile offender wilfully or negligently violates the terms of the plan, the youth coordinator may order the juvenile offender to appear for an interview to prevent further violations and must clearly warn the juvenile offender of the consequences of repeated commission of violations.

The youth coordinator may transfer the case to the probation service with a request to take the case to court.

If the juvenile commits another offense before the expiration of the plan, the prosecutor may petition the court for partial or full execution of the suspended sentence. The youth coordinator may, with the concurrence on the part of the police and probation service, request the prosecutor to make such request to the court.

Article 33 of the OCRA regulates the consequences of violations during the execution of the ordered follow-up actions against minors.

If the accused or convicted person intentionally or recklessly violates any provision made under Part One of Section 25, Section 27 or Part One of Section 28 of the Act, the Youth Coordinator may order the accused or convicted person to appear for an interview to prevent further violations. During the interview, the consequences of repeated commission of offences must be explained in detailed to the accused, respectively to the convicted person. The coordinator may also impose additional conditions, and may also convene a new youth conference or refer the case directly back to the prosecutor to determine whether to resume prosecution brought a case before the court for new conditions or for enforcement of the sentence.

Section 34 of the CJA provides that if the accused or convicted person commits another offence before the expiry of the period of execution, the prosecutor shall decide whether the prosecution should be resumed or should be brought before the court for the imposition of new conditions or to activate the execution of the suspended sentence.

In summary, Youth Punishment is imposed only by the court as an alternative to imprisonment or the harshest penalties and can last from 6 months to a maximum of 3 years, while Youth Follow-up is imposed by the prosecutor or the court and can last from 4 months to a maximum of 1 year. The purpose of this sanction is to address the risk of new offences and to satisfy the need to supervise the juvenile offender.

The content of both sanctions has the three identical components:

- restorative meetings/processes with victims or others affected by the crime if they agree to participate.

- developing an individual action plan for the young person for the period of the sanction (measure);

- signing and implementation of this plan, overseen by a multidisciplinary follow-up team.

These youth penalties/measures for minors newly introduced in 2014 are administered by the National Conflict Resolution Service (Konfliktrådet). Examples of possible measures that are part of the plan are: non-monetary compensation, participation in specialised programmes, stay in an institution, no contact with certain persons, work for the local community, stay in a certain place, assignment to specific work, training, periodic reports, abstinence from alcohol or drug use, periodic tests, curfew, etc.

The main approach is related to the construction of social circles of control and support around each offender - a personal and institutional circle, a network of people - relatives, social workers, educators who monitor the implementation of the plan. The juvenile himself is involved in drawing up the plan, insofar as the measures to be imposed on him must also take his interests into account. Instead of prison walls, 'social' walls are built around the minor, i.e. restrictions appropriate to his personality, arising from the specifics of his usual family and social environment.

4.10. Referral of criminal cases by the prosecutor for restorative/reconciliation process between victim and offender is the most common situation of referral of criminal cases to the National Conflict Resolution Service.

The basic criteria for using reconciliation in criminal cases is that the offender has admitted to the facts of the case, there is a victim of the crime, and both (all) parties agree to participate in a restorative process.

The recovery process is voluntary. Either party may withdraw from the process at any time, and if a written agreement is reached in a criminal case, the parties may withdraw from the agreement within up to two weeks.

If a reconciliation is reached and the written agreement is executed, the criminal case is dismissed, leaving no visible information on the offender's criminal record, and after two years, if the offender has not committed a new offense, the information about the offense is deleted entirely from his or her criminal record.[29]

5. **Criteria for referral to a restorative/conciliation process**

The prosecutor makes an assessment as to whether the case is suitable for restorative/conciliatory justice using a Guidance Note which contains guidelines. The Guidelines are flexible, allowing some discretion to each prosecutor when deciding whether a particular case is appropriate for restorative/reconciliation process. According to the Guide, a case may be referred for a restorative process/reconciliation if:

- this will contribute to reforming the offender;
- the offence committed is not of a high degree of public danger;
- Sufficient evidence has been collected on the perpetrator and his guilt;
- the conditions for a suspended sentence are met;

[29] https://youtu.be/F9zxnscKt-0 informative video introducing the concept of youth penalties and follow-up measures

- there is a victim of the crime and both he and the offender agree to send the case for restorative/reconciliation proceedings.[30]

IV. The development of the idea of juvenile justice in Bulgaria in the light of our international legal commitments

Similar to the situation in the Kingdom of Norway, the recommendations of the UN Committee on the Rights of the Child to the Republic of Bulgaria[31] can serve as an incentive to reform the juvenile justice system, including by expanding opportunities for restorative approaches and practices. The Committee's recommendations express concern at the continued lack of understanding by the Bulgarian authorities of the importance of the principle of the best interests of the child and the responsibilities it entails, in particular those of the judiciary and child protection professionals and social workers.

The Committee recommends that the Bulgarian State strengthen its efforts to ensure that this right is duly incorporated and consistently interpreted and applied in all legislative, administrative and judicial procedures and decisions. The Committee also notes as positive the efforts made to reform the juvenile justice system through the Juvenile Justice Act adopted in 2011. While noting that the 2011 State Policy Concept on Child Justice and the 2013 Roadmap for its implementation, together with the 2015 Judicial Reform Strategy adopted by the Minister of Justice and the training of judges, prosecutors and investigators in the field of children's rights, remain deeply concerned that most of the previous recommendations have not yet been implemented.

Concern has been expressed along the following lines:

(a) The compulsory deprivation of liberty of children from the age of 8 years in correctional institutions under the Act on Combating Juvenile Delinquency shall continue;

(b) The principle of deprivation of liberty as a measure of last resort and for a minimum period of time is not expressly provided for in the legislation;

(c) Amendments to the Juvenile Delinquency Act and the Code of Criminal Procedure have not been adopted, as proposed by the Committee in its previous concluding observations;

Decisions of the European Court of Human Rights (ECtHR) also contain findings of violations of the fundamental rights of minors, the remedy of which requires juvenile justice reform. For example, in its judgment of 7 June 2022 in *IGD v. Bulgaria* (Application no. 70139/14), the ECtHR held that the Republic of Bulgaria had violated Article 5 § 4 ECHR and Article 8, individually and in conjunction with Article 13 ECHR, in the case of a child placed in a socio-pedagogical boarding school. The Court reiterates that the authorities have a duty to ensure that the detention of a minor is

[30] The Norwegian Code of Criminal Procedure https://app.uio.no/ub/ujur/oversatte-lover/data/lov-19810522-025-eng.pdf
https://lovdata.no/dokument/NL/lov/1981-05-22-25/KAPITTEL_2-2#KAPITTEL_2-2
The Norwegian Penal Code https://lovdata.no/NLE/lov/2005-05-20-28

[31] https://sacp.government.bg/sites/default/files/regulatorybase/preporki-za-blgariya-kpd-2016-g.pdf

decided as a measure of last resort in the best interests of the child, referring to the reasoning in a previous case, *DL v. Bulgaria*

In its judgment of 19 May 2016 in DL v. Bulgaria (Applicatin No. 7472/14), the Court noted that the Juvenile Delinquency Act (JDA) was outdated and that, for historical reasons, it was based more on the philosophy of "punishment" than "protection" of minors - a situation that has been criticized by international and national organizations (§76). This decision (§39) discusses the commitment made by the Republic of Bulgaria to reform the juvenile detention institutions so as to ensure a system that is entirely child-centred and provides for an individual approach to the child's particularities and needs. Measures proposed in the Action Plan on the implementation of a national youth justice policy for the period 2013-2020 include the repeal of the Juvenile Delinquency Act and the adoption of a new law on juvenile justice for juveniles in conflict with the law, which aims to offer children in difficulty a wide range of social, pedagogical and educational services.

V. **Opportunities for development of juvenile criminal justice in Bulgaria in the light of the shared Norwegian experience**

1. Background in the light of the current legal framework

The analysis of restorative practices applied in various countries, including those examined in the Kingdom of Norway, shows the particular importance attached to restorative approaches specifically in relation to juvenile offenders.

This is readily explainable in view of the desire of communities to influence children's behaviour as sparingly as possible in time because of the incomplete process of their personal and social growth, so as to overcome the criminogenic factors that were at the root of the offence without inflicting further unjustifiable trauma to the achievement of the ends of justice. The experience of countries with developed restorative/reconciliation systems shows that the participation of juveniles in restorative programmes, alone or alongside punishment, has a beneficial educational impact and is a real crime prevention measure.

Bulgarian tradition is not alien to this understanding. In the period 1943-1948, the Juvenile Courts Act was in force, which provided for a system of combining educational measures with punishment under the control of the courts. It provided for the specialization of judges, prosecutors, and lawyers to handle cases against juveniles. The current Criminal Code stresses the particular importance of the re-educational purpose of juvenile punishment:

Article 60 of the Criminal Code - *"The punishment of minors is imposed with the aim, first of all, to re-educate them and prepare them for community service."*

If we view restorative justice practices as a departure from the general order of the criminal process, then in this case the state is justified in retreating from resolving the conflict through the means of criminal repression, giving priority to the re-educative function of educational measures and programs of various kinds and content. This same idea is expressed in Article 61 of the Criminal Code, as well as in the special rules provided for in the Criminal Procedure Code for the development of cases against minors.

For the sake of clarity, it is necessary to consider the distinction between the two options that the current legislation provides for the introduction of restorative approaches when considering the consequences of offences and antisocial behaviour committed by juvenile offenders.

The first possibility is the use of restorative practices of various types and nature within the framework of criminal proceedings initiated against a juvenile offender. In this case, the restorative approach must be applied in compliance with the principles and limitations of procedural law.

The second possibility is the use of restorative approaches to depart from the traditional criminal justice process, where the juvenile is not held criminally responsible, but is instead subjected to educational and training measures that are appropriate in type and content and that lead to the achievement of the goal of restorative justice - reconciliation between the perpetrator and the victim, healing of the trauma of the offence, both for the individuals involved in the conflict and for their families and communities.

When considering the hypothesis of introducing restorative approaches into the traditional criminal process, we should always return to the starting point that, notwithstanding the diverse forms of restorative practices, restorative justice is at its very core founded on the idea of a kind of 'restitution' of the conflict of offender and victim, which inevitably requires the active participation of the victim in the resolution of the issues arising from the crime, including the issues related to consequences. Obviously, the victim's will, understanding, sense of justice and even specific needs and views are essential to achieving the reconciliation sought. This means that a change in the professional culture of judges and prosecutors to examine these circumstances should be stimulated by an appropriate system of measures.

At the same time, the participation of the victim as a private prosecutor is not allowed in the criminal proceedings against a juvenile defendant (Article 392, paragraph 4 of the CCP - *"No private prosecutor shall participate in these cases")*. The legislative expediency involved, which is typical not only of the Bulgarian criminal process, is clear and is related to the special protection of minors and their specific needs, assuming that equality of procedural means can be achieved through mandatory defence of the minor defendant and the reduction of the function of the prosecution to only one carrier - the one representing the state interest. However, this legal situation does not limit the possibilities for restorative approaches in the trial itself. On the contrary, when the victim is not tied to the charging function, a restorative encounter with the accused is more feasible. Under appropriate conditions, the court can create the conditions for such a restorative encounter to take place if the victim and the defendant agree, with safeguards in place to ensure that the victim's rights and safety are not compromised. In order to make this decision, the court may also refer to the forensic psychiatric expertise specifically appointed in the proceedings, and may question the parents, teachers or other relatives of the parties to the conflict in order to understand the restorative potential in the conflict. In the same vein is the court's obligation under Article 387 of the Code of Criminal Procedure to gather evidence of its own motion about the defendant's personality, which may provide additional information about his environment, his contacts with the victim and the practical possibilities of applying restorative solutions, either alone or alongside the penalty imposed.

Not unrelated to the latter is another aspect related to the issue of equality of arms when the accused is a minor and the victim is an adult. At each stage of the criminal trial, the relevant management authority should consider whether restorative contact in such a procedural situation is possible and useful in view of the greater susceptibility of the minor accused to suggestion, in order to avoid any risk of unfairness of the trial.

2. The significant potential for good practices in the application of Article 61 of the Criminal Code

Insofar as the application of restorative approaches may lead to a departure from the criminal process, special attention should be paid to the institute under Article 61 of the Criminal Code:

Art. 61.(1) *In respect of a minor who has committed, through infatuation or frivolousness, an offence which does not constitute a serious public danger, the public prosecutor may decide not to initiate or to discontinue the pre-trial proceedings initiated, and the court may decide not to commit him for trial or not to convict him, if educational measures under the Law on Combating Juvenile Delinquency can be successfully applied to him.*

(2) *In such cases, the court may itself impose an educational measure by notifying the local commission for combating juvenile delinquency or by sending the file for the imposition of such a measure*.

(3) *Where the prosecutor decides not to initiate pre-trial proceedings or to terminate the pre-trial proceedings initiated, he shall send the file to the Commission for the imposition of an educational measure*.

The provision of Article 61 of the Criminal Code is of particular significance insofar as it constitutes one of the few hypotheses in Bulgarian criminal law of a deviation of the criminal proceedings against the minor, in which reference is made to a series of measures that may have an essentially restorative character. In this light, the educational measures provided for in Art. 13 para. 1 of the Juvenile Delinquency Act, which have obvious capacity to conciliate, may be developed:

2. *requiring the minor to apologize to the victim;*

9. *obliging the minor to repair the damage caused by his own labour, if this is within his means;*

10. *obliging the minor to perform certain work for the benefit of society;*

The enumeration is by no means exhaustive, since essentially almost every measure under Art. 1 of the Law on Combating Juvenile Delinquency can be applied in compliance with the principles, methods and values of restorative approaches.

Therefore, it is the grounds and procedure of Article 61 of the Criminal Code that appear to be the most appropriate for introducing restorative measures without legislative change, where appropriate, while communicating and promoting relevant good practices.

It should be borne in mind that the institute of Article 61 of the Criminal Code was not created when the Criminal Law was originally adopted as an instrument for the introduction of restorative practices in the sense that is embedded in this concept today. The subsequent amendments to the law have not affected the basic principles of the institute and have mainly been limited to refining the powers of the public prosecutor - not only to discontinue but not to initiate criminal proceedings at all - and in limiting his power to impose an appropriate educational measure himself. However, in essence, the

institution of Article 61 of the Criminal Code has, since its inception, contained the restorative spirit of juvenile-friendly measures, which would exclude criminal proceedings; provide an opportunity for the young offender to be reformed and re-educated, to repair the damage, including that caused to the victim; and to involve the efforts of parents, the school community and other stakeholders in his inner circle in the process of re-socialisation - a return to a lawful way of life. Although this institute was not called "restorative" at the time, looking at it retrospectively, we find today some basic features of restorative approaches.

With reference to this, it is necessary to take into account the importance of certain features.

In the effective provision of Article 61 of the Criminal Code, the decision on its application by the prosecutor or the court is not explicitly linked to the basic principles or values of restorative justice, resp. – it is not explicitly aimed at resolving the issue of the consequences of the crime with the participation of both the victim and the community, respectively – at achieving a form of reconciliation. The willingness and consent of the minor himself is not envisaged as a condition for the application of the institute. The prosecutor's or the court's assessment of the perpetrator's motives and the degree of public danger of the act itself is sufficient.

However, this is not an obstacle to the implementation of restorative practices. A general prerequisite for the applicability of Article 61 of the Criminal Code is the collection of sufficient evidence on the personality of the minor and the specificity of the act. The competent authority must collect the information referred to in Article 387 of the Criminal Procedure Code from all persons and institutions relevant to the act and the offender, including the victim and other representatives of the community, about the consequences of the offence and the means of remedying those consequences. Such activity is always possible, even in the hypothesis of the preliminary examination before the prosecutor's decision to initiate pre-trial proceedings. This is even more true for the court, which, unlike the prosecutor, may determine and impose the educational measure itself under Article 61(2) of the Criminal Code.

It is therefore possible, under Article 61 of the Criminal Code and under the current legal framework, to achieve a departure from the criminal proceedings against the minor, which should be terminated by applying educational measures consistent with the understanding of the community, the victim and the minor offender for a fair and mutually acceptable solution to the consequences of the conflict. For example, the minor could apologise, repair the damage caused by his or her own labour, do something useful for society, etc.

A challenge to the successful realization of the restorative potential of the institute is the consideration of an effective mechanism for monitoring the implementation of the relevant educational measure under Art. 1 of the Law on Combating Juvenile Delinquency, insofar as there is no explicit power of the court and the prosecutor in this respect. This lacuna can be overcome with some success when educational measures are implemented as social services and their quality is adequately monitored under the special law.

De lege ferenda it could be recommended to link the application of Article 61 of the Criminal Code with an assessment by the guiding and deciding authority of the post-criminal behaviour of the juvenile offender, aimed at an attempt (in the broadest sense)

to overcome the consequences of the act, in accordance with his individual capacity to do so, as well as with the specificity of the offence itself.

3. The restorative potential of Article 64 of the Criminal Code

The possibility of applying restorative approaches under the current legislative framework with the establishment of good practices are available before the court and under Article 64 of the Criminal Code:

Article 64, paragraph 1 of the Criminal Procedure Code – *Where the punishment imposed is imprisonment of less than one year and its execution is not suspended under Article 66, the minor shall be released from serving it and the court shall place him in a boarding school or impose on him another educational measure provided for in the Law on Combating Juvenile Delinquency*.

It is evident that the envisaged substitution of the imposition of a custodial sentence is not at the discretion of the court, but follows from the text of the law itself, but at the same time the court is given the possibility to choose an educational measure, which gives it the freedom to consider, inter alia, whether it is appropriate in the case to apply restorative practices.

In order to realise the restorative potential, it is necessary that in the course of the criminal proceedings a specific evidentiary activity is manifested, aimed at a thorough investigation of the consequences of the criminal act, including those related to the victim and the community, as well as of the possible ways to overcome them.

Collecting data on the personality of the perpetrator and the victim, their environment and family ties is a perfectly feasible task after the introduction and dissemination of good practices and appropriate forms of training for judges and prosecutors. Moreover, it stems from a proper understanding of the scope of the subject of evidence under Article 102 of the Criminal Procedure Code and from the international instruments to which the Republic of Bulgaria is a party – the UN Convention on the Rights of the Child and the so-called Beijing Rules, the EC Victims Directive, according to which the court and the pre-trial authorities are obliged to examine all relevant data relating to the personality and background of juvenile offenders. This is the purpose of the so-called social report, which the relevant social services prepare for the purposes of criminal proceedings. The content and scope of this report may be of crucial benefit for the prosecutor and the court in deciding whether to apply the legal institutes referred to in Articles 61 and 64 of the Criminal Code. It is also necessary to involve, through appropriate forms of training, the members of the relevant local committee for combating antisocial behaviour of minors, who should be involved in the actual implementation of the educational measure imposed by the court.

In relation to the latter, it should be taken into account a specificity in the procedure under Article 64 of the Criminal Code, which is not provided for in the concept of Article 61 of the Criminal Code – the possibility of subsequent control and discretion to replace the educational measure.

Article 64, paragraph 2 of the Criminal Code - *"Upon the proposal of the prosecutor or the relevant local commission for combating antisocial behaviour of minors, the court may, even after the sentence has been passed, replace the placement in a boarding school with another educational measure.*"

It should be taken into account that the educational measure - placement in an educational school - boarding school under Art. 1, Paragraph 1, Subparagraph 13 of the Juvenile Delinquency Act does not provide a serious resource for the implementation of the restorative approach. Therefore, the substitution provided for in Article 64(2) of the Criminal Code could have a positive effect in most cases. The initiative for it should come from the prosecutor or the relevant local commission for combating juvenile delinquency, which again confirms the conclusion that the introduction of such good practices is only possible with a comprehensive approach and a common understanding of the own responsibility of all state bodies involved.

4. **Proceedings under the Act on Combating Juvenile Delinquency**.

The only currently existing procedure in the Criminal Code to depart from??? criminal proceedings against a minor is by reference to the Juvenile Delinquency Act. The Act regulates in relative detail the procedure for imposing a disciplinary measure, but the means of enforcement and, above all, the standards to which such enforcement should conform, are not specifically set out. For a part of the envisaged educational measures the latter is lawful, insofar as the implementation of the placement in a social-pedagogical boarding school under Article 13, paragraph 1, Subparagraph 11 of the Juvenile Delinquency Act and the placement in an educational boarding school under Article 13, paragraph 1, Subparagraph 13 of the Juvenile Delinquency Act is limited to the fact of the placement itself. However, the measures with a far more significant potential for the implementation of restorative practices, such as the obligation of the minor to remedy the damage caused by his own labour under Article 13(1)(9) of the Juvenile Delinquency Act, the obligation of the minor to carry out certain work for the benefit of society under Article 13(1)(10) of the Juvenile Delinquency Act. The procedure and means of enforcement thereof, including the scope and content of the assessment of the suitability and adequacy of the actions specifically prescribed for the minor in terms of restoration and reconciliation with the victim and the community, depend entirely on the understanding, mentality and activity of the members of the relevant local committee.

It is obvious that the successful implementation of restorative approaches in the practice of local commissions would also be impossible without gathering the necessary broader information about the conflict, including - data about the environment, conditions and preconditions for the same, the possibilities of achieving reconciliation, the expectations of the victim and/or other related members of the community, etc. Moreover, the procedure for imposing a restorative measure, as far as the activities of the local commission in imposing the measure described in Articles 16 – 21 of the Juvenile Delinquency Act, does not contain a requirement for a similar broader examination of the question of the consequences of the act in the sense put forward. On the contrary, the peculiarly 'closed' nature of these proceedings, which permits the participation only of an exhaustively enumerated range of persons in camera (Article 19, Paragraph 5 of the Juvenile Delinquency Act), could constitute an obstacle to such an examination. At the same time, the participation of persons who, in their official capacity, can significantly facilitate the restorative process is envisaged - these are the persons who carried out the examination under Article 16(2) of the same Act, a

representative of the relevant Social Assistance Directorate, an educator, a psychologist, a psychiatrist, a class teacher, a pedagogical counsellor, a school psychologist, a public educator. Pursuant to Article 19(5) of the Juvenile Delinquency Act, where the chairperson of the committee deems it to be in the best interests of the minor, the chairperson of the committee may invite the victim of the antisocial act. Unfortunately, the prevailing practice in such proceedings (those of them which, on one occasion or another, come before the court) shows that such procedural activity towards summoning and hearing the victim is not common.

A proceeding for the imposition of an educational measure pursuant to the Juvenile Delinquency Act shall be subject to judicial review only in the event of a complaint filed by the minor, his parents or the person who protects his interests, when it concerns a measure imposed by the Commission under Art. 13, Paragraph 1, Subparagraphs 3 – 10 and Subparagraph 12 of the Juvenile Delinquency Act. In the event of an appeal, the court has full discretion to review the issue of the measure imposed (Article 24, Paragraph 5, Subparagraph 2 of the Juvenile Delinquency Act), including – by applying a restorative approach, and is required to exercise ministerial activity to fully investigate the circumstances that delineate the specific "social walls" for the juvenile offender.

The introduction of explicit requirements to link some of the measures referred to in Article 13, Paragraph 1 of the Juvenile Delinquency Act to restorative practices – where this is possible and appropriate – and the creation of a more detailed regulation of the way of implementation of these measures and of the control thereof, would cause a sustainable positive effect for achieving the objectives of youth justice.

Under the effective legal framework, both the local juvenile delinquency commissions (LJDC), and the courts in the court procedures referred to in Article 24, Article 24a and Article 24b the Juvenile Delinquency Act have options to apply restorative approaches in order to achieve the correct and fair application of the law in the child's best interest.

E.g. – in the proceeding under Article 24a of the Juvenile Delinquency Act, it is possible to apply a restorative approach in order to establish in its entirety the factual background in the case so as to recognise the child's best interest and to thus substantiate the necessary educational impact. It is admissible to appoint an expert examination to examine the socio-psychological development of the child with the participation of a child's psychiatrist, child's psychologist and a social work specialist. On the basis of all relevant evidence the court can establish both the resources and the harming impacts of the environment, in which the child is being raised, and define the child's main physical, emotional, intellectual and social needs, evaluated as fields of vulnerability. This would allow the court to clarify the appropriate measures for the achievement of a pro-social attitude in the juvenile's behaviour, including the need to search for an adult that is important for him/her, to whom he/she is to build secure affection and whose example of good behaviour would be followed by him/her. It is a good practice for the court to appoint the making of a multidisciplinary personal description of the child, which is to represent an **integrated evaluation** of the juvenile made by an expert in a psycho-social work with children in conflict with the law and a clinical psychologist, whereby after an examination of all spheres of the personality

and development of the child an opinion is to be expressed on an appropriate form of protection that accompanies or even substitutes the measures referred to in the Juvenile Delinquency Act. In this sense the outcome under privately prosecutable criminal case No.273/2018 in the docket of the Lukovit Regional Court is indicative. The integrated evaluation clarifies that the child is a victim of violence and negligence, has grown up in the conditions of suffering in his family and needs to be provided with protection within the meaning of the Protection of the Child Act, as the high risk requires the imposition of a set of protection measures, which are to ensure intensive and professional support. In the same proceeding, the court heard in the court session all persons who may be relevant to the subject of the case – the juvenile and his defendant, the persons from his close family and circle of trust – the mother, the grandmother, the social and school educator, the headmaster of the school. Representatives of the regional prosecutor's office, LJDC, the local Social Assistance Directorate, the juvenile's defendant, the Juvenile Delinquency Service (Детска педагогическа стая) inspector also took part in the hearing. The court has reached the conclusion that the proceeding's objectives and the best interest of the child are achieved if the juvenile is placed in a professional foster family or an educational measure under Article 13, Paragraph 1, Subparagraph 4 of the Juvenile Delinquency Act – placement under an educational supervision of a substituting parent with an obligation to take intensified care is imposed on him/her. The hearing conducted by the court of all interested parties in a court session is in the spirit of the restorative school/family conferences.

5. Educational measures in case of juveniles sentenced on probation

One of the areas in which restorative approaches have a great potential for application and would be particularly useful for achieving the educational effect provided for in Article 60 of the Criminal Code is related to educational measures for conditionally sentenced minors.

Conditional sentencing in Bulgaria has a long tradition – it is first introduced by the Conditional Sentencing Act, approved by Decree No. 95 of 31 December 1903, promulgated in State Gazette No. 3 of 5 January 1904. For more than a century, the concept of conditional sentencing has established itself in practice as an important means of preventing recidivist crime, not only by juvenile offenders. We will therefore consider this issue as a separate part of our study.

VI. Possibilities for Restorative Approaches in Conditional Sentencing under the Criminal Code

1. The legal framework of restorative practices in the criminal process of the Kingdom of Norway imposes obvious analogies for the possibility in Bulgaria to avoid effective execution of the penalty of imprisonment by imposing suspended execution of the penalty for a certain probationary period - according to Article 66 of the Criminal Code for adults - from 3 to 5 years, and for minors under Article 69 of the Criminal Code - up to three years.

Pursuant to Article 66 of the Criminal Code, where the court imposes a penalty of imprisonment of up to three years, it may postpone the execution of the penalty for a

period of three to five years if the person has not been sentenced to imprisonment for a crime of a common nature and if the court finds that it is not necessary to serve the penalty in order to achieve the objectives of the penalty and, above all, for the correction of the convicted person.

The similarity between the two concepts is obvious – in addition to the formal criteria, the court is bound to decide whether in a particular case the objectives of the punishment can also be achieved without serving the punishment.

If some deficiencies in the application of this concept are observed at present, they can be explained by the insufficient measures to be observed by the convicted person during the probation period. There is a weak network of 'social' walls to deter the convicted person from committing a new offence.

In Article 66, para. 3 of the Criminal Code provides for a general obligation during the probation period for the convicted person to work or study, unless he is obliged to undergo medical treatment. However, on the one hand, this requirement is socially unacceptable given the high levels of unemployment and, on the other hand, no clear sanctioning mechanism is provided in cases of non-compliance.

Serious potential for the application of the principles of building the so-called social walls and of restoring all injured relations is contained in the possibility provided for in Article 67 of the Criminal Code. According to par. 1, when suspending the execution of the sentence, the court may entrust the relevant social organisation or labour collective with the educational care of the convicted person during the probationary period. And pursuant to Paragraph 2, in the absence of such consent, or at the discretion of the court, the court shall entrust a designated person with the educational care of the probationer. If the conditionally sentenced person is domiciled in another place, that person shall be appointed by the relevant district court. According to par. 3, where the suspended penalty of deprivation of liberty is not less than six months, the court may order one of the probationary measures referred to in Art. 42a, para. 2, items 1 - 4 of the Criminal Code during the probationary period - mandatory registration at the current address; mandatory periodic meetings with a probation officer; restrictions on free movement; inclusion in vocational training courses, social impact programmes.

Pursuant to Article 66, paragraph 4 of the Criminal Code, when suspending the execution of a sentence in respect of a minor, the court shall notify the relevant local commission which shall organise the educational care. The length of the probation period for minors is shorter - up to three years - Art. 69, para. 1 OF THE CRIMINAL CODE.

Article 68 of the Criminal Code regulates the consequences of violations of the probation period: if the convicted person commits another intentional crime of a general nature for which, although after this period, he is sentenced to imprisonment, he shall also serve the suspended sentence; if, under the conditions of para. 1, the court may order that the deferred sentence shall not be served or that it shall be served in whole or in part; if the convicted person on probation does not, without just cause, comply with any of the sentences imposed on him under Art. 3, **the** court may, on the proposal of the probation board, replace it with another one or order that the suspended penalty of deprivation of liberty be served in whole or in part; if the conditionally sentenced person

interrupts the treatment without good reason, the court shall order that the suspended penalty of deprivation of liberty be served in full; outside the preceding cases, the suspended penalty shall not be served.

In all cases, **the general control** over the educational care and behaviour of the conditionally sentenced prisoners is exercised by the district court of their place of residence - Article 67, paragraph 5 of the Criminal Code.

2. Restorative practices can be successfully integrated into suspended sentencing through the work of probation services when they are entrusted with the administration of this additional behavioural control measure under Art. 3 OF THE CRIMINAL CODE. **This approach does not require legislative changes or additional financial resources, but only clear methodological guidance and appropriate training for probation officers.** In this case, there is also a strong incentive for the convicted person to cooperate, since the failure to comply with the probation measure is sanctioned by the replacement of the measure or the activation of the suspended sentence.

3. The little-used concept of assigning **custodial care during the probationary period** to a particular person or organization also offers good opportunities for restorative practices. A major advantage of custodial care is the fact that all conditions/obligations are based on the principle of voluntariness, because in this form of additional control over the behaviour of the probationer, the law has not introduced adverse consequences for non-compliance with conditions, unlike in the case of probationary measures.

It is for the court, within its power to exercise general control over the educational care and over the behaviour of the conditionally sentenced person, to decide which persons should be involved, what the appropriate care and measures are and how they should be adapted if circumstances change.

4. The evaluation of the court whether conditional sentencing can be successfully applied in a particular case and whether and who can carry out the remedial work during the probationary period can be seriously assisted by the “pre-trial report” instrument.

Pursuant to Article 202, Paragraph 2 of the Law on Execution of Punishments and Detention in Custody (PECD), probation officers prepare pre-trial reports at the request of the court. The detailed provisions are laid down in the Rules for the Implementation of the Act - Part Five of the PPINZS. It is based on the results of an offender assessment system based on an interview and analysis of comprehensive information provided by the court, the prosecutor's office, the police, social and health services, as well as data from other sources necessary for each specific case. The report contains information on the accused person's personality, financial and family situation, background, living environment and conditions, behaviour before and after the offence, origin, social situation, criminal record, and an assessment of the risk of re-offending and harm, including resources, problem areas and needs, on the basis of which effective probation measures could be selected. The reports shall be prepared according to an established methodology.

Having such a survey allows the court to confidently target the appropriate resources to address risks by meeting the needs of the prisoner and involving the appropriate individuals to keep the person behind the 'social walls', as successfully achieved by the Norwegian system of control with minimal use of custody.

5. An additional benefit for Bulgaria in promoting more intensive use of suspended sentencing, as well as early release on parole, would be to overcome the systemic problem of overcrowding in prisons and the poor conditions there, which have become the occasion for a number of convictions of the State and laid the basis for the pilot judgment in the case of *Neshkov and Others v. Bulgaria of 27 January 2015* (appeals Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13).

6. Insofar as there are no clearly regulated commitments in Bulgaria for a specific body to deal with the administration of suspended sentences, it would be appropriate to use the experience of Norway to link the different systems, thus without additional financial resources, multidisciplinary teams will be involved in the process of achieving crime prevention. One such suitable partner for the court and the penal enforcement system could be the monitoring committees that are established at local level as bodies under the municipal councils, which, according to Article 170(2) of the Criminal Justice Act, include a probation officer and a prison representative, as well as representatives of the local community who have the appropriate personal qualities, professional experience and authority.

In Art. 171, para. 1 of the Penitentiary Act lists the main functions of the supervisory commissions, including: to exercise public control over the activities of places of deprivation of liberty; to assist in the re-socialisation of prisoners, including by initiating social services in the municipality; to make proposals for the modification of the regime, for the transfer of prisoners to lighter or heavier type prison facilities or for early parole; to make proposals and give opinions on requests for pardon; to assist the families of prisoners

7. The power of the monitoring committee to initiate social services allows another system to be included in the work with convicts - the social system.

Social services are defined as activities to support individuals to prevent and/or overcome social exclusion. Under this legal framework in Bulgaria and given the Norwegian experience of social inclusion and the use of social prevention instead of the walls of prisons, the goals of the penal process can be successfully supported by the local community through the monitoring committees and the social system through services and programmes relevant to the needs of the particular community.

The foregoing is also supported by the conclusions made in the Analysis of the substantive and procedural aspects of the institutes of parole, probation measures under Article 67, Paragraph 3, Article 70, Paragraph 6 of the Criminal Code and the replacement of life imprisonment with imprisonment, prepared and presented by the National Institute of Justice in 2020, available in the Electronic Reading Room of the Institute.[32] The analysis examines the measure - the educational care and supervision of parolees and early releasees.

The authors of the analysis provide an answer to the question of why, despite the presence of the institution of custodial care since the adoption of the Criminal Code in 1968 to date, its application is hardly found in practice. The reasons given are: '*The*

[32] The analysis was prepared by a research team consisting of Daniela Atanasova, judge at the Supreme Court of Cassation, Lada Paunova, judge at the Supreme Court of Cassation, Plamen Pachev, prosecutor at the Supreme Cassation Prosecutor's Office, Dr. Rositsa Toncheva, judge at the Varna Court of Appeals, and Dr. Valentina Karaganova, program coordinator at the National Institute of Justice.

change in social conditions since the 1990s and the peak in crime rates have shifted the debate towards punishability for a crime, with the issue of educational care under Article 67 of the Criminal Code completely closed. Sporadically, the same was raised with the instructions of the Inspectorate of the SJC during the planned revisions of the district courts, without, however, bringing the process to an end. A review of the relevant case law under Article 67(1) of the Criminal Code shows the dominance of three models - assignment of the educational care to the district inspector of the convicted person's place of residence (in some cases assigned to the head of the relevant police station), assignment to the mayor of the municipality, or a situation in which the court does not explicitly make use of the possibility under Article 67(1) of the Criminal Code.[33]
The application of Article 67(4) of the Criminal Code to juveniles sentenced on probation is characterized by greater consensus in the administration of justice, insofar as the provision does not give discretion to the relevant court. The prevailing acts are under Chapter Twenty-Nine of the CCP, with courts making use of their powers under Article 382(5) of the CCP and proposing amendments to the parties to the agreement to resolve the case, including explicit notification to the ICTY of the conditional sentence imposed on a minor. ***Although very poor, the practice under Article 67(5) of the Criminal Code arouses interest in the court's desire to fulfil its obligation of general supervision over the implementation of the educational care and behaviour of the conditionally sentenced person. In this connection, we would like to mention a case in which a panel of a district court has scheduled a meeting before the mayor of the municipality between representatives of the Child Protection Department and a parent of a conditionally sentenced juvenile, or has created an obligation for an appropriate police officer to notify the court of the conduct of a conditionally sentenced adult within a certain period of time.*** *Without going deeper into the difficulties of fulfilling the obligation under Article 67(5) of the Criminal Code, we can suggest considering the resources possessed by municipal drug councils, which, according to Article 15 of the Criminal Code, have a general preventive role and, in our opinion, appear to be an appropriate structure for the implementation of educational care when they are entrusted to the head of the local administration in cases of conditionally convicted persons for offences under Articles 354a-354c of the Criminal Code. We do not doubt the existence of other structures that can put real substance into educational care by their work, and finding a workable option is a matter of regional policies.*

Similar is the normative solution for the supervision and educational care of early and parolees, which found its legislative expression in Article 73 of the Penal Code. A perusal of the published case law on Article 73(1) of the Penal Code shows that the courts are not fulfilling their obligation to entrust the supervision and educational care to the ICMPCC and the monitoring committees under Article 170 of ZINZS. The latter are legally obliged to organize the work on the re-socialization of prisoners, including by initiating social services on the territory of the municipality, to provide assistance for the domestic and employment development of persons released from prisons. Their powers under Article 171 of the Penitentiary Act are broad, and no

[33] *Publicly prosecutable criminal offences No.No.70/2013 of the Svishtov Regional Court, 1140/2014 of the Targovishte Regional Court, 50/2017 of the Levski Regional Court, 381/2017 of the Harmanli Regional Court, 225/2017 of the Lukovit Regional Court, 1195/2014 of the Dunitsa Regional Court, 5438/2015 of the Varna Regional Court.*

specific information on the functioning of these commissions can be found in the public domain or in the available documentation of local administrations. The present team was not tasked with examining the work of the bodies under Article 170 of the INPSA, but in the process of analysis nevertheless found it important to characterize their essential role in the resocialization of parolees. The general opinion of the study team is that the educational care and supervision of the parolees and early releasees (under Article 70 and Article 71 of the Criminal Code) have a high anti-criminal resource. The target group of the measures are persons with deviant behaviour, who need support and motivation to change the construction of their attitudes and life pattern. Inaction in this direction is highly likely to leave them, and society, with the belief that their behaviour is out of control, often leading to recidivism with the irreversible consequence of forced isolation from society, loss of the established social pattern, or serious difficulties in facing rehabilitation trials. To this end, the application of Article 67 (we are not yet talking about paragraph 3) and Article 73 of the Criminal Code could be optimised, as we have said, with regional policies, and here the relevant administrative heads in the judicial authorities have the resources to insist to the representatives of the local authorities not only that the law is respected, but also to seek the effectiveness of the care of the vulnerable group of persons under Article 66, Article 67, Article 70 and Article 71 of the Criminal Code. Probably because of all these difficulties, the legislator provided for the possibility of a stronger control over the behaviour of the above category of persons, regulating in 2002 a hypothesis in case of a sentence of not less than six months of imprisonment or an unserved balance of the same amount, probation should be ordered during the probation period. The legislative solution caused serious problems in terms of the absent distinction between the punishment of probation and probation supervision in the conditions of Article 66 and Article 70 of the Criminal Code, which found normative clarification only in 2009, when the Law on Probation and Parole provided for the possibility, under the above substantive conditions, to control the behaviour of convicted persons on probation and parolees to be carried out through a measure of probation supervision under Article 42a, paragraph 2, items 1-4 of the Criminal Code. This is also the moment when a distinction was made by law between probation as a punishment and the measure of probation supervision aimed at controlling the behaviour of the special category of persons with a view to satisfying the objectives of Article 36 of the Criminal Code."

Possibilities for the application of educational measures with conditionally sentenced persons exist in the Criminal Code. The court may by the sentence or the agreement assign with the conduction of the educational work/cares a person determined by it who agrees and has capabilities and resource to assume such an obligation.

For this purpose, the court must take action for the identification of an appropriate person to take educational care of the conditionally convicted person, conduct a hearing in a court session as it must by using the admissible evidentiary means collect in advance information for the socio-psychological condition of the convicted person, for his/her close family/friends circle and make on this basis a decision under Article 67 of the Criminal Code.

An eloquent example in this aspect is given by the court in publicly prosecutable criminal case No.71/2015 of the Lukovit Regional Court. The proceeding is initiated for the resolution of the case by the approval of an agreement. The criminal defendants are two juveniles accused of a robbery under Article 198 of the Criminal Code under the condition of prevailing aggravating circumstances. The victims is an elderly lady who felt physical suffering and fear that continued even after the commission of the infringement upon her. The court approved the agreement, in which the parties accepted the proposal of the court for the assigning of the mayor of the populated area where the two convicts and the victim lived, on the grounds of Article 67, Paragraph 1 of the Criminal Code, with educational measures.

In pursuance of his obligation under Article 67, Paragraph 5 of the Criminal Code, the regional judge scheduled a meeting in the mayor's office, at which he ensured the presence of the two convicts, of the victim, of near and dear of the two parties in the conflict, of the mayor of the populated area and of the representatives of the local police department. An agreement was reached to adopt a plan for the taking of the education care, by which the mayor undertook to make it possible for the convicts to perform work for the benefit of the local community; for the recovery of the harms caused to the victim; for the securing by the local community of a possibility for the convicts to continue their education. The close relatives declared their readiness to secure care and accommodation and control with respect to the two convicts. The court ordered all participants in the meeting to show up every last Friday of the month in the building of the court and to discuss with the regional judge the implementation of the adopted plan for taking of educational cares with respect to the two convicts. Within the probationary period, the court held many meetings between the convicts, their relatives, the mayor the populated area and the police inspector, at which the measures for the implementation of the adopted plan were discussed. The court admitted changes in the plan depending on the needs of the local community and the change in the life of the convicts.

In the end of the trial period the court found the successful implementation of the plan, the absence of unlawful behaviour of the convicts in the period, as well as the undoubted benefit for the victim who was no longer afraid of the convicts.

VII. Opportunities for introducing restorative practices in the process of serving a custodial sentence

1. The comparative study shows that the individual correctional-educational goal of punishment under Article 36(1) of the Criminal Code can be achieved, in principle, when the case allows, through the realization of the defined goals of restorative justice - achieving justice with the participation of all stakeholders who jointly identify and discuss the harms, needs and obligations in order to best meet the needs of victims of crime - material, emotional and social, and at the same time to help also the offender to realise his responsibility for what he has done; to cause a reformative and preventive

effect on the perpetrator but not through the strictness of the specific punishment (as a method of the traditional justice) but by his reintegration in the society. This means that current law allows for restorative approaches and practices to be applied in activities that realise the aims of punishment.

The applicable special law, the Law on Execution of Punishments and Detention in Custody, defines the means for achieving the objectives of punishment:

Article 2, paragraph 1 - "control over the behaviour of convicted persons in order to restrict their ability to commit other crimes and cause harm to society and

item 2 - "differentiation and individualization of the penal-executive influence for correction and re-education of the convicted depending on their behaviour. "

It is evident that the formulation of the means does not explicitly refer to the values or practices of restorative justice, but the process of achieving prevention and re-education can be effective in some cases, and its content is specified precisely by planning events for the awareness of the impact of the offence on the community and for the attempt to repair the damage, material or immaterial, including, in appropriate intervention, the organization of a restorative meeting between the convicted and the victim, where this will facilitate the h

2. It is a statutory obligation of the administration of the penitentiary institutions to include the convicts in a programme for adaptation to the conditions, including an explanation of the measures for social impact and re-socialisation. This means that it is possible to include programmes of a restorative/reconciliatory nature without legislative change.

3. The current legal framework in the Execution of Punishments and Detention in Custody Act and the Rules Implementing the Execution of Punishments and Detention in Custody Act is very consistently structured, which allows for detailed and according to their systematic place complementation, "weaving" into the existing norms of new provisions that explicitly propose the application of restorative practices, without disturbing the "fabric" of the normative act, with preservation of the logic and meaning of the law.

4. The Execution of Punishments and Detention in Custody Act sets as a standard the interaction of the prison administration with non-profit organisations and legal entities registered for the public benefit, with international state authorities and with non-government organisations, for the purpose of achievement of an educational and corrective effect on the persons convicted to imprisonment (Article 4. (1) In order to achieve the objectives of punishment, there shall be interaction between state bodies, specialized governmental and non-governmental organizations.").

5. An essential factor, and therefore a favourable prerequisite, is the desire in principle of a wide range of prisoners (especially those with a first offence or first effective conviction) to serve their sentence without problems and, if possible, to be released from serving it early (a detailed discussion on the possibilities of introducing restorative approaches in conditional early release (CER) cases follows).

6. Chapter 11 of the Law on Social and Educational Work (LISW), which lays down the rules for conducting social and educational work, provides for joint activities with external experts (Article 157, paragraph 1 of the LISW). The outlined

objectives of the JWRC are aimed at promoting law-abiding behaviour, increasing social competence and building behavioural skills and overcoming addictions.

Individual work with convicts under Article 158 of the Penal Correction Act includes informing them about the possibilities for alleviating the conditions for serving their sentence, referring and mediating with external organisations to solve specific problems and motivating them to actively participate and cooperate in preparing for life in freedom.

7. The general normative basis thus outlined provides a basis for the application of various restorative practices in the process of execution of sentences, which, although not explicitly provided for and regulated, may be supplemented, incorporated, and subordinated to the stated goal of applying differentiation and individualization of the penal-executive impact for the correction and re-education of convicted persons depending on their behaviour (Article 2(2) of the Penal Correction Act**)**.

The application of restorative approaches can play a significant role in the process of correction of convicts, as well as their re-socialisation.

Social and educational work, which includes diagnostic and individual correctional work; impact programmes to reduce the risk of reoffending and the risk of harm; education, training and qualification of prisoners; creative, cultural and sporting activities; and religious support, is of fundamental importance in the correctional process. Social and educational work may be carried out both in groups and individually with prisoners.

The Inspectors of Social Work and Educational Work (ISWER) are tasked with the implementation of the so-called specialised programmes for individual and group work (**Article 157, paragraph 1 of the Criminal Offenders Act**), and the participation of convicts is voluntary. The similarity with the approach to the introduction of restorative measures is obvious. There are no obstacles in the law within the framework of individual programmes with convicts to encourage their participation in restorative meetings with victims of crime. To this end, a careful and thorough case study should be carried out, resulting in an assessment by the inspector as to whether the prerequisites exist to work in this direction.

Due to the insufficient awareness of the prisoners (and unfortunately not only of them, but also of a wide range of practitioners in the field of penitentiary affairs), we consider it appropriate to conduct active explanatory activities within the framework of the programme for adaptation of convicts provided for in Article 153 of the Penitentiary Act as soon as each convict enters the place for serving the sentence. The right of prisoners to be informed, enshrined in the special law, should undoubtedly extend to the possible beneficial effects of the application of restorative practices during the execution of the sentence, in the convicts' and the victims' emotional and social spheres. Undoubtedly, conscientious and consistent compliance with the regime's requirements and predictable behaviour of the persons serving the sentence cannot be expected if they are not provided with comprehensive information both on the internal rules and on the measures of encouragement and punishment, on the nature of social activities and educational work.

In the system of rewards regulated in Section II of Chapter 10 of the Penal Correction Act (**Article 98, paragraph 1**), rewards are also provided to prisoners in the

hypothesis "for cooperation in social and educational activities". It should be taken into account that, due to the lack of sufficient staffing and adequate training of the inspectors directly involved in social activities and educational work (SAEWI), there is an objective inadequacy of the correctional and educational process carried out in prisons and prison dormitories. To the extent that a single SAEWI is assigned to work with dozens, and in some cases – around 100 prisoners, difficulties and even de facto impossibility of carrying out the correctional process are observed.

Therefore, in view of the current unsatisfactory results of the consistent conservative policy of rewarding and punishing convicts, the possibility of encouraging their informed, conscious and voluntary participation in currently unenforced practices that are based on restorative justice principles should not be viewed with criticism and scepticism.

Pursuant to Article 154, paragraph 1 of the Act, during the stay in the reception ward, each convicted person is included in an adaptation programme, a relapse and harm risk assessment and an initial report are prepared. Accordingly, the risk assessment and the initial report itself should take into account the factors constituting that risk. It can be concluded that the legislator intended the adaptation measures and the subsequent relapse risk assessment to be interlinked. Therefore, there are factual prerequisites for the SAEWA to carry out a preliminary, initial assessment of the applicability of rehabilitation measures with regard to every convict and with his voluntary participation as early as in the preparatory period after his placement in the facility for deprivation of liberty. The convict can be expected to indicate willingness to voluntarily engage in a restorative justice procedure, when the SAEWA clarifies to him the essence of restorative justice and its objectives. This may help the realising by the convict of his own role in the process of recovery of the damages caused and the overcoming of the emotional traumas (with priority – these of the victim but not of the perpetrator himself, as long as his offence is rooted in specific personal motives or social catalysts). The need for full explanatory activities on the applicability of restorative approaches and practices already during the preparatory period appears to be a key factor for the personal initiative of the prisoner, i.e. for his voluntary participation in a subsequent restorative process and re-socialisation.

According to Art.124, par. 124, paragraph 1, of the Rules Implementing the Execution of Punishments and Detention in Custody Act, the specialised impact programmes provided for by the legislator aim at "changing the behaviour and personality" of the convicted person. In this legal basis, which is insufficiently applied and developed "on the spot" in the facilities for deprivation of liberty, there is a wide scope for the introduction and permanent imposition of restorative approaches, all the more so since, according to paragraph 2 of the quoted text, the participation of convicts in such programmes is voluntary. The similarity between the approach taken by the legislator and the principles of restorative justice is obvious. The definition itself does not restrict the penal enforcement authorities either as regards the competent persons to be entrusted with carrying out these joint correctional processes or as regards the specific impact measures. The supplementation of the above-mentioned rule of the secondatyr legislation would contribute to detailing the competences of the Execution of Punishments Directorate General CCDI as set out in Article 7, Paragraph 6 of the Rules Implementing the Execution of Punishments and Detention in Custody Act.

As already stated, the special law and its implementing regulations entrust the implementation of measures to influence prisoners both to state bodies and to organisations and structures from the non-governmental sector. This provides ample opportunities for the involvement of external specialists with relevant qualifications in specialised mediations (see Article 157(1) of the Execution of Punishments and Detention in Custody Act), providers of social services based on restorative approaches, and trained volunteers. It also allows for the training of inspectors involved in social and educational activities, psychologists at penitentiary institutions who are obliged to carry out initial and follow-up psychological examinations of convicted persons.

On the basis of the initial assessment of the risk of recidivism and harm, after defining the problem areas in the personality of each convicted person, as well as on the basis of the initial report, an individual plan for the execution of the sentence is drawn up, which includes activities and impact programmes for the resocialisation of the convicted person.

Article 156, Paragraph 2 of the Execution of Punishments and Detention in Custody Act stipulates that the type and nature of the offence committed and the amount of the penalty imposed, but also the assessment of the convicted person and the factors that form the risk of recidivism and harm, shall be taken into account for the preparation of the plan.

It is explicitly stated as a **goal of** the Individual Sentence Implementation Plan "to involve the sentenced person in programmes and activities for personal change and to eliminate the factors that form the risk of recidivism and harm" (item 1); but also "early parole" (item 3).

These statutory provisions open up a wide horizon for the introduction of restorative approaches to prisoners. Here, the concept of "personality change" goes beyond the narrow limits of special prevention, which, according to Article 36, Paragraph 1 of the Criminal Code, is limited to correctional and preventive-deterrent impact - an expression of unilateral application of the state sanction system to the convicted offender. It introduces the obligation to clarify the factors determining the risk, which undoubtedly includes taking into account the social and cultural microenvironment in which the offender was identified and motivated, criminogenic factors, psychological conditions, etc. It is concluded that there is a statutory possibility to take into account the applicability of measures from the restorative justice spectrum and their actual introduction in the Individual Sentence Implementation Plan. In order to give life to the existing possibility, it would be advisable to adopt an amendment to the wording of Article 156(2) of the Criminal Justice Act.

Respectively, in the course of the replanning of the initial plan, the prisoner's activity, his personal motivation and his voluntary cooperation should be taken into account as criteria for reformation, if the restoration measures were foreseen and included in the plan and accordingly accepted for implementation by the person.

In summary, it can be assumed that when working with convicted prisoners, it is possible to introduce an updated approach of the prison administration, including a preliminary explanation of the nature of restorative justice in the period of adaptation, information on the specific prospects for voluntary personal participation of the prisoner; then, if there is a stated desire, to plan the implementation of restorative practices in the individual plan for the implementation of the sentence and, accordingly,

if personal results are achieved - to report this in ongoing Encouraging prisoners in such a direction can be successfully achieved through a combination and correspondence between the established social and educational activities carried out by the SAEWI on the one hand and restorative sessions carried out by a wide range of external actors, including experts, NGOs, volunteers. To this end, it is useful to allow to amend and supplement the effective cited provisions by explicitly writing down restorative justice programs.

8. With regard to **juvenile prisoners,** all the considerations set out above are fully valid. The first priority in the execution of the penalty of deprivation of liberty in respect of juveniles is, above all, their re-education and preparation for life in freedom (Article 186 of the Law on the Protection of Human Rights and Fundamental Freedoms). Article 190, para. 190, paragraph 1, of the Juvenile Detention Act stipulates that the overall resocialization of imprisoned juveniles shall be carried out in conditions that maximize **the opportunities for the convicts to come into contact with the external environment in general**, with relatives and persons who positively influence them, with volunteers and representatives of non-governmental organizations. This describes to a large extent the environment necessary for the implementation of restorative justice approaches and provides a very conducive environment for the conscious participation of the juvenile offender in the conduct of restorative dialogues/sessions.

9. Some aspects on the possibility of applying restorative approaches to life and long-term prisoners.

The above proposals are highly relevant to the introduction of practices for first offenders and first-time prisoners. Undoubtedly, the expected results would be more predictable and the harm caused more reparable on a wider scale.

The situation is different with regard to the correctional impact on persons convicted of serious intentional crimes and sentenced to more than 15 years' imprisonment or life imprisonment. The limitations imposed by the regime for serving sentences of such length presuppose the dynamics of the mental processes taking place in the minds of prisoners, and this has implications for the approach to influence, which follows a different logic.

The case-law of the courts competent to rule in proceedings relating to the execution of sentences under Chapter 35 of the Code of Criminal Procedure reveals regularities concerning the adaptation and behaviour of convicts facing the prospect of long-term or life-long isolation from society in prison. After initially demonstrating non-acceptance of the sentence and problematic adaptation under an aggravated regime, in the first years after admission to the MLS the convict manifests an increased reaction, intransigence to the regime requirements and in some cases their violation. With the passage of a prolonged period and after a de facto adjustment, the convicts begin to become aware of the impending alternative-free stay, to seek their own way of making sense of their existence in the special conditions, filling their days with activity, overcoming isolation through contact with other prisoners or joining in activities. Some of the prisoners complete an educational process interrupted years ago or seek pathways

to acquire new skills or qualifications; they are interested in topics of general and global relevance. Due to the legal restrictions on paid work, convicts frequently express desire to work on a voluntary basis or for volunteer initiatives.

It is extremely difficult for these convicts to engage in activities in the process of which they can provide evidence of their reformation and claim for mitigation of the regime, substitution of life imprisonment by deprivation of liberty or by early release.

It is exactly in this period that it appears appropriate to inform prisoners about the possibilities for inclusion in the established programmes of influence within the meaning of Article 124 of the PPINPS. There is no legal obstacle to the implementation of restorative practices with the participation of 'long-term' prisoners after careful examination of a number of personal factors. Accordingly, there is a possibility of allowing an amendment to the INPSA and the PPIPA to explicitly mention restorative approaches and practices as an alternative. In addressing the problem areas of 'attitude to offending' and 'thinking skills', more significant successes can be achieved by engaging them through a restorative/reconciliatory approach. The reintegration of the offender into society targeted by restorative justice is difficult to achieve, but it is entirely possible to transform this by harnessing the energy of the offender themselves, following prolonged involvement in restorative sessions, into a changed volunteer role within the prison community for a 'mutual learning' method within the internal prison environment and subculture. There are, therefore, conditions for achieving personal transformation and of those convicted of serious crimes through the application of restorative approaches.

Practice shows that at an advanced stage of serving a custodial or life sentence, the convicted person begins to analyse more deeply the reasons for what happened, with a focus on the victims, reflecting on the circumstances of his own life that led to the commission of the crime: violence, abuse, injustice or poverty that had a formative impact on his personality. At this stage, for long-term prisoners, the theme of forgiveness - to self and externally, by society - takes priority. Acknowledgement of responsibility is a game changer for offenders, along with exploring the reasons for what they have done and seeking reconciliation. In this aspect, it is quite possible and not overdue to hold restorative sessions.

10. Potential for the application of restorative approaches is also contained in the activities of the monitoring commissions, whose status and functions are regulated in Articles 170 – 171 of the Criminal Law.

The monitoring commissions are established by the municipal councils, but in addition to them, the work on re-socialization of prisoners is supported by representatives of the commissions for combating juvenile delinquency, territorial structures of the Ministry of Labour and Social Policy, civil and religious associations and NGOs. According to the provisions of Article 171 of the Law on the Protection of Human Rights and Fundamental Freedoms, the monitoring commissions have the possibility to establish specific social services on the territory of the municipality to support the re-socialisation of prisoners. More generally, offering the opportunity to engage in appropriate restorative practices organised by an external organisation in the form of a social service can make a significant difference to the reform and re-socialisation of the prisoner. Monitoring committees have the advantage of including

representatives of local communities and prisons. In this way, local communities can, through programmes and specific social services, support the resocialisation of convicts, including through participation in appropriate restorative communities.

VIII. Opportunities for introducing restorative justice programmes into the probationary period of conditional early release.

In the proceedings under Article 440 of the Criminal Procedure Code for conditional early release (CER) from serving the remainder of the custodial sentence, the court shall verify the existence of the substantive prerequisites contained in Article 70, para. 1 of the Criminal Code - the convicted person must have given evidence of his/her reformation and actually served a certain part of the punishment (1/2 in the general case, 2/3 for convicted persons with dangerous recidivism and 1/3 of the punishment for minors). Evidence of reformation, according to Article 439a paragraph 1 of the CCP, are all circumstances that indicate a positive change in the convicted person during the serving of the sentence – good behaviour, participation in labour, educational, training, qualification or sports activities, in specialised programmes for influence, socially useful actions. Evidence of correction is contained both in the documents drawn up by the prison administration (the assessment under Article 155 of the Penal Correction Act and the reports on the work under the individual sentence implementation plan) and in all other sources of information on the behaviour of the convicted person while serving the sentence.

With the amendments to the Criminal Procedure Code in early 2017 (promulgated in State Gazette No. 13/2017), the convicted person has been granted the right to independently initiate proceedings for his or her conditional early release from serving the remainder of the sentence of imprisonment imposed on him or her, as well as the sentence of deprivation of rights when this sentence was imposed together with the first sentence. The sentenced person shall also have the right to initiate an appeal against the order of the relevant district court if he disagrees with it. The prison governor is also granted the right of appeal, and a corresponding addition has been made to Article 440(2) of the Code of Criminal Procedure.

With the amendments to the Criminal Procedure Code, a CER proceeding are characterized as a multiparty (mandatory participation of the prosecutor, the prison governor and the convicted person), adversarial, full-fledged judicial proceeding with a subject matter related to the execution of the sentence. This necessitates that the collection and examination of evidence be carried out at the initiative of the parties and ex officio by the court, in compliance with the principle of equality of arms. The convicted person is given the opportunity to point to evidence (both that in the prison record and new evidence) that he has reformed.

The prisoner's participation in a restorative justice program, as well as in other specialized impact and community service programs, will undoubtedly be counted as evidence of a progressing correctional process.

The question of the applicability of restorative measures and practices in the probation period under Article 70, paragraph 6 of the Criminal Code in the case of the admission of the particular prisoner to CER is relevant. The effective provision of Article 70, Paragraph 6 provides for the possibility for the court, when deciding whether to grant early release, to order the execution of one of the probation measures referred

to in Article 42(2)(1) to (4), taking into account a report drawn up by the probation officer. In this sense, it is possible to integrate content based on restorative approaches and practices into the probation measure of the inclusion of the convicted person in social impact programmes. For this purpose, it is sufficient to promote the effects and benefits of such activity with the convict, both to facilitate his own rehabilitation in freedom and to protect the security of the victim and the interests of the community.

As a matter of principle, it can be assumed that there is a good basis for a legislative change to provide explicitly for the inclusion of the early release in a restorative justice program as an alternative to probation (or for joint application) imposed in the trial period. However, it is necessary to consider the specifics of restorative practice, which require that participation in restorative sessions be voluntary, which should be a mandatory effort for a court to rule that such a program/practice is applicable in a particular case.

VIII. Opportunities for integrating restorative approaches and practices through the social service delivery system

Recent years have seen the development of good judicial practices that extend the possibilities of social protection to vulnerable people in various court proceedings. In this way, some of the deficits of the social welfare system are being successfully overcome (with real effect for specific people) with the establishment of standards in judicial practice that do not exceed the judicial powers, on the contrary - they correspond adequately to the legislative expediency enshrined in the legal framework. At the same time, the promotion and consolidation of a jurisprudence integrating social support in judicial proceedings has a beneficial impact both in humanising the profile of justice, in increasing the efficiency of the execution of the judicial acts and in enhancing confidence in the courts. In some cases, social protection requires a restorative approach. For example, where the convicted person committed the offence because of poverty and social deprivation and there is a victim who, in the course of the trial, becomes aware of the offender's situation and the criminogenic factors for the offence, it is appropriate to consider, in the event that the court imposes a custodial sentence, the execution of which is suspended with a probationary period, what form of supervision and support under the terms of Article 67 of the Criminal Code should be applied. Such an appropriate form of successful re-socialisation could include a social programme based entirely on a restorative approach - preparation for the restorative process, restorative meeting, reparation, etc.

In this regard, a group of judges requested the assistance of the Supreme Judicial Council (SJC) for the securing of the administration of the court's efforts to liaise effectively with other state and municipal institutions, community organizations, and competent professionals, and to identify the range of appropriate social services in the community, including those aimed at deploying restorative justice opportunities. Within the framework of the legal status quo, prior to the explicit introduction of legislative amendments institutionalising the procedure and bodies for the application of restorative justice, it is through probation programmes, the delivery of social services and educational care (for example, under Article 67, Paragraph 1 of the Criminal Code) that the application of restorative approaches is possible. In order for the court to be

able to propose appropriate measures, and then to monitor their implementation and effectiveness, it must have specific knowledge of social service providers, and of the different types of social, educational and health programmes and services. In the long run, the deployment of this jurisprudence will require the establishment of specialized administrative units within each district court and its respective circuit courts in the judicial district. The Workload Committee of the Judges' College at the SJC organises a discussion on the possibility of creating a specialised administrative unit within the SJC with coordinating functions, which would be in direct contact with judges, who would be able to contact social, health and educational institutions and organisations through the unit if necessary, depending on the specific nature of the cases they are assigned to handle. This issue is to be considered by the Judicial College, and the decision could have a significant supportive effect, including for the development of restorative justice in Bulgaria.

IX. Proposals

1. Development and institutional support of good practices with the assistance and leadership of the two colleges of the Supreme Judicial Council

1.1. The development of training initiatives based on the multidisciplinary approach by the SJC in cooperation with the National Institute of Justice, the Ministry of Justice, the Ministry of the Interior, the Ministry of Labour and Social Services, the Ministry of Education, municipal councils, probation services, prison administration, social welfare providers, and other stakeholders could have a significant beneficial effect on the process of promoting the possibilities of restorative practices and approaches within the framework of the current law. A good start would be to organise a series of training formats involving prosecutors, investigators, police officers and judges to discuss specific court practices that already include restorative approaches. It would then be wise to organize conference meetings at the leadership level of the listed state institutions to discuss possible frameworks of inter-institutional cooperation for the development of restorative justice in Bulgaria.

1.2. Another form of institutional support is the organisational and administrative provision (through the establishment of a specialised court administration) of the already existing good judicial practices for the inclusion of restorative approaches in the content of probation measures and educational care in the relevant court proceedings.

1.3. A form of an institutional support would also be achieved by a resolution of the Judges' College of the SJC, which determines two pilot court districts, in which an overall integrated approach to juvenile perpetrators, as well as to conditionally convicted persons, is applied in accordance with the good practices of the restorative approach.

2. We are convinced that the natural development of the ideas from the present project includes the following objectively possible steps:

– planning and organisation of the criminological research in cooperation with the Ministry of Justice and the restored Criminological Studies Board, which are to support the implementation of the restorative programmes;

– involvement of the Supreme Court of Cassation in the process of popularisation and establishment of the restorative practices in the various types of court cases;

– attraction of the prosecutor's office to the process of trainings and use of restorative practices by the direct involvement of the prosecutor general in the process of planning and stimulation of the prosecutors and the other investigative authorities to apply the restorative approaches at the earliest stage of the criminal process;

– engagement of the SJC with an overall plan and timetable for the creation and organisation of the introduction of the restorative approached in court cases and within the investigation – by the definition of the sequence of acts of the competent institutions, organisations and citizens, including by the creation of a coordinating mechanism with the bodies of the executive branch and the local self-government for the building of an accessible network of social services available for use to the judges, prosecutors, investigators and police bodies.

3. Legislative changes

3.1 Amendments should be proposed to the Criminal Procedure Code and the Criminal Code, providing explicit possibilities for the inclusion of restorative practices in the probation measure "community impact programmes", in the content of educational care, as well as the possibility of referring to participation in restorative practice in the form of social service in Art. 3 of the Criminal Code, in the preparation for the conclusion of reconciliation in cases brought on the complaint of the victim under Article 24, paragraph 5, item 3 of the Criminal Procedure Code, in the inclusion of probationary measure in the probationary period of conditional early release under Article 70, paragraph 6 of the Criminal Code.

With regard to the content of the objectives of the penalty, it should be allowed to be amended and supplemented by providing for new objectives to be set by the imposition of a penalty on a minor, namely: the provision of supervision, protection, support for development and lawful behaviour (art. 60). This amendment is essential, given that the aim is to ensure that juvenile criminal justice is based on the rights of the child and is in line with contemporary standards in this area.

3.2. To propose amendments to the Execution of Punishments and Detention in Custody Act, explicitly defining as a means to achieve the objectives of the penalties the possibilities for inclusion of convicts in programmes based on restorative approaches.

3.3. A law on diversion and imposition of educational measures on minors to be adopted to replace the conceptually outdated Juvenile Justice Act.

A draft of such a law was prepared in 2015 by a working group in the Ministry of Justice and it constitutes a good basis for public discussion.

Such a bill would prevent, on the one hand, the socially dangerous and victimogenic behaviour of children, while at the same time providing effective highly

specialised protection of their rights and legitimate interests, including humane and lawful correction of their behavioural deviations, individually tailored to the best interests of the child in conditions of legal certainty and a stable legal order. It is necessary to develop a specific legal framework for diversion and the imposition of educational measures on juveniles that will support their full integration into society. Diversion from criminal proceedings should only take place with the explicit consent of the minor, which will allow the introduction of restorative justice so as to achieve the repair of the damage caused by the unlawful conduct and, as far as possible, the restoration of relations between the offender, the victim and society. Appropriate to achieve the objectives of such a law is the regulation of a family council, with the participation of: the minor, his parents/guardians, relatives with whom close relations have been established, and representatives of various institutions, according to the circumstances of each particular case, for example, a social worker from the Child Protection Department, his class teacher or pedagogical counsellor or another teacher preferred by the child. One of the functions of the family council may be to draw up an individual plan for the minor, also subject to the approval of the court.

The draft should explicitly regulate the initiation of an educational case, the specific conditions for the imposition of the relevant educational measures, the rules for their implementation, the possibility of appeal, review and amendment of the imposed measures, as well as the termination of the implementation. In the implementation of the measures imposed, provision must be made for constant monitoring by the educational support services, for the preparation (periodically or when circumstances change) of appropriate reports by them, and for time limits for their submission to the court, which is empowered to suspend the educational measure concerned, to review it and possibly to impose another measure. These provisions also meet the requirement for periodic monitoring and review of measures in respect of minors.

In response to the observations and recommendations of the United Nations Committee on the Rights of the Child and those of the Council of Europe Commissioner for Human Rights, new arrangements for placement in closed institutions for educational supervision should be provided for in accordance with the ECHR.

The draft law prepared by the Ministry of Justice proposes the establishment of a National Educational Support Service under the Minister of Justice, as well as of local educational support services to be established by a decision of the municipal council of the municipalities in whose territory there is a district court with comprehensively defined functions and tasks of these structures. The powers of inspectors for work with children in specialised units for work with children under the Ministry of the Interior are also regulated. We consider such an approach to be appropriate, as it will also allow for better synchronisation of the complex policies in relation to the protection of children at risk and the prevention of anti-social behaviour, and will finally achieve coordination between the juvenile justice system and the protection system in order to ensure that the best interests of minors are respected.

The juvenile diversion statute should expand the range of circumstances that the court will consider in determining a juvenile's punishment, including the time required for the juvenile's personal development, the juvenile's environment and level of neglect of the juvenile's personal and educational development, the influence of adults, and the juvenile's attitude toward the offense and the victim. This also corresponds to the

requirement of Article 7 "Right to a personal characterisation" of the Directive to guarantee the right of the juvenile defendant to have a personal characterisation drawn up, which is necessary to identify the specific needs of the juvenile in terms of protection, education, training and reintegration into society, to determine whether and to what extent he would need special measures during criminal proceedings. This requirement should also be taken into account by amending Article 387 of the Code of Criminal Procedure accordingly, by providing that, in the course of pre-trial proceedings, the prosecutor should instruct the Educational Support Service to prepare an individual assessment of the minor, which should be ready by the time the indictment is drawn up.