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Restorative practices in the Portuguese Youth Justice System Perspectives on the implementation of Restorative Justice in Portugal

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REVJ

Revij Project Overview

REVJ

- The REVJ project - *Reparation to the victim in the European Juvenile Justice Systems: Comparative analysis and transfer of best practices* - aims to conduct a comparative analysis of the measures provided to the victims of offenses committed by youngsters and administered by European Juvenile Justice Systems.
- This project is oriented to understand both:
 - a) European compliance with Directive 2012/29/EU of the European Parliament and The Council;
 - b) Partners' practices' on restorative justice regarding juvenile justice field and victims' rights.

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Revij Project Overview

REVJ

- Aims:
 1. Obtain a shared vision about restorative justice services to the victim in the field of Juvenile Justice System;
 2. Analyze compliance with Directive 2012/29/EU of the European Parliament and of The Council regarding victims' rights, support and protection;
 3. Compile a compendium of best practices;
 4. Propose guidelines that can be used by professionals and policy makers.

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The Portuguese Youth Justice System General Overview

General Overview

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Youth Justice Act
(LTE)



Revised on
15th January 2015

Protection of
Children and
Young People
in Danger
Act

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Youth Justice Act

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(Law no. 166/99; rev. Law no. 4/2015)

- A **Youth Justice Measure** can be enacted when a youngster between **12 and 16 years old** has perpetrated an **act legally qualified as crime** and when he/she needs to be educated to **law compliance**;
- When several offenses are perpetrated, different measures can be enacted, according to the specific need of minor's education to the right.

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Youth Justice Act REVJ

(Law no. 166/99; rev. Law no. 4/2015)

- **Two phases**
 - Inquiry phase
 - Jurisdictional phase

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Restorative Practices REVJ

in the Portuguese Youth Justice System


- **Elaboration of a conduct plan**
(inquiry phase – case suspension)
- **Victim-youngster mediation**
(inquiry and jurisdictional phases)
- **Restorative-based measures**
(jurisdictional phase)

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Elaboration of a Conduct Plan REVJ

(case suspension)

- During the inquiry phase, the case suspension can occur when:
 - The offender has perpetrated a crime with a corresponding sentence not exceeding five years;
 - Educational intervention is still needed.



Conduct Plan
Individual plan which may include several social engagements and reparation activities to be developed by the minor.

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Elaboration of a Conduct Plan REVJ

(case suspension)

◻ **Which are the possible commitments regarding the conduct plan?**

Restorative-based commitments

Apologizing to the victim

Compensation regarding the whole or partial damage by paying with pocket money or by providing an activity in favour of the victim

Implementation of economic benefits or activities in favour of community

Achievement of certain goals in personal, scholar, professional or free-time areas;

Exclusion from certain places or peers' networks.

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'Victim-Youngster Mediation' REVJ

- **When can the 'victim-youngster mediation' be required?**

Inquiry Phase - a process of *direct mediation* resulting on a mediation agreement. If this is approved by the court, the youth justice case is archived.

- By any legal actor;
- Depends on the decision of the Prosecutor's office.

Jurisdictional Phase

- By the judge or prosecutor;
- For instance, to evaluate which non-institutional measure is going to be applied to the youngster (pre-trial audience).

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Restorative-based measures REVJ

- **Victim reparation**
 - Apologizing for the damage caused, in the presence of the judge and the victim;
 - Economic compensation related to the property damage, which can be paid (in the whole or in the part) exclusively through goods or funds available to the minor;
 - Developing of an activity related to the caused damage in favour of the victim.
- **Payment of economic benefits**
 - Paying to a non-lucrative entity a certain amount of money.
- **Activities in favour of the community**
 - Developing an activity in favour of a non-lucrative entity (maximum of 60 hours).

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Statistical Data

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- 'Victim-youngster mediation' and conduct plan

Year	Victim-Youngster Mediation	Conduct plan development
2008	44	92
2009	49	93

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Statistical Data

REVIJ

- Restorative-based measures

	2008	2009	2010	2012	2013
Victim Reparation	7	6	4	1	0
Payment of economic benefits	2	2	3	3	0
Activities in favour of community	186	189	118	217	183
Total	1196	1188	1116	1703	1639

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Method

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- **Sample**
 - 6 Magistrates from Family and Minors Courts
 - 7 Youth Offending Officers
 - 2 Victim Support Officers
- **Instruments**
 - In-depth interview
 - Audio-recorded, transcribed and coded
- **Analysis**
 - Free-floating reading
 - Content analysis (semi-inductive logic)
 - Software QSR NVivo, version 10

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Results

Definition of Restorative Justice (RJ)

REVIJ

- Re-education and rehabilitation of the young offender (3/12)
- Reparation and minimization of the damage caused to the victim (7/12)
- Reconciliation of interests to resolve conflicts (8/12)
- Conflict resolution out of court (3/12)
- Non-punitive (2/12)

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Perspective about RJ Implementation

REVIJ

Yes, it is implemented.
(10/13)

- It must be further explored, it is still a residual implementation (6/10)

No, it is not implemented.
(3/13)

- The three participants think that it is not implemented (3/3)

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Perspective about RJ Implementation REVJ

Restorative practices with higher and lower application

Higher application

- Apologizing to the victim
- Activities in favour of the community

Lower application

- Victim-Youngster Mediation
- Payment of economic benefits
- Developing an activity in favour of the victim

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Constraints and Limitations to the implementation of RJ REVJ

- Insufficient resources (8/13);
- Lack of preparation and specialization of the existing structures (6/13);
- Lack of preparation and specialization of professionals (9/13);
- Unclear, inadequate or non-existent implementation procedures (5/13);

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Constraints and Limitations to the implementation of RJ REVJ

- Lack of culture and appreciation of RJ in Portugal (8/13);
- Absence of an autonomous youth justice system (1/13);
- Lack of other restorative measures in the law (1/13);

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Constraints and Limitations to the implementation of RJ REVJ

- Difficulties or failures in the practical implementation of the existing restorative measures (4/13);
- Trend and conformism to always apply the same measures (2/13);
- Lack of incentives for entities that receive young people who are complying a measure (e.g., activities in favour of the community) (1/13)

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Constraints and Limitations to the implementation of RJ REVJ

- Lack of suitability of restorative measures in certain types of crime (5/13);
- Unavailability of one of the parties, or both, to participate in the process (3/13)
- Lack of coordination between the services involved (1/13)

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Favourable Conditions to the implementation of RJ REVJ

- The law is adequate and includes restorative-based measures (7/13);
- There is a change in the paradigm, towards a higher consideration of the victim (4/13);
- There is a need for an alternative model (2/13);
- There is predisposition of the justice agencies to implement restorative measures (2/13)

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Favourable Conditions to the implementation of RJ

REVJ

- There has been investment in the training of professionals, namely in mediation (1/13);
- There are examples of success in Portugal and other countries (4/13);
- There is effort and cooperation between the entities involved in implementing the measures (2/13)
- The work of the teams in the field is good (2/13)

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Conclusions

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- Most of the participants consider that RJ is implemented in the Youth Justice System. Nevertheless we should be aware to the fact that 6 of the participants consider that this implementation is still residual and 3 participants agree that restorative justice is nothing implemented.
- The implemented restorative measures seem to be almost always the same - *Apologizing to the victim* and *Activities in favour of the community*, compared to others that are never applied - *Victim-Youngster Mediation*, *Payment of economic benefits* and *Developing an activity in favour of the victim*.

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Conclusions

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- Several limitations to the implementation of restorative justice were identified, and in fact they are more in number and are identified by a larger number of participants than the favourable conditions for implementation.
- The limitations are pervasive and of several types.

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Conclusions

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- However, some of the favourable conditions seem very relevant, such as the obvious need for an alternative model of youth justice, the change in the justice paradigm and the fact that the Youth Justice Act already contemplates restorative-based measures.
- *Data analysis is still in progress.*

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THANK YOU VERY MUCH FOR YOUR
ATTENTION!

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