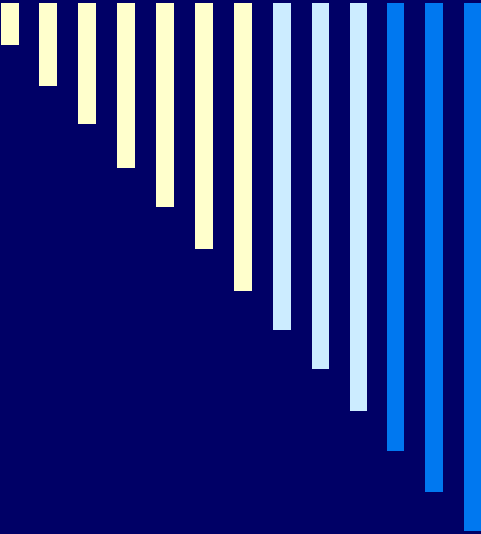
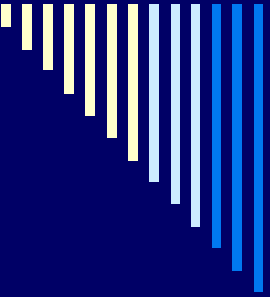



International legislation Restorative Justice

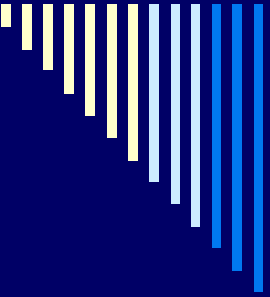
Prof. Dr. Dobrinka Chankova





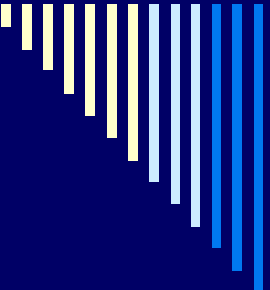
Main sources of the regulation

- UN Acts
 - Councils of Europe Acts
 - EU Acts
 - Other documents
-



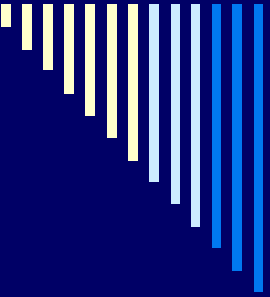
UN Acts & Tools

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.
 - Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.
-



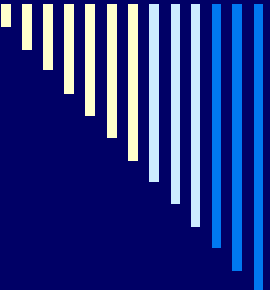
UN Acts & Tools

- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990
 - They do not explicitly direct us to Restorative Justice, but stick to its spirit.
 - They share the same basic principles with Restorative Justice: promoting the involvement of society, encouraging the offender to take responsibility, etc.
-



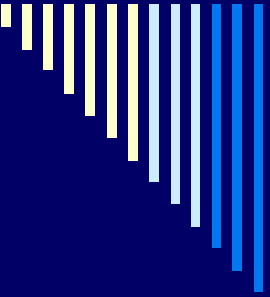
UN Acts & Tools

- Resolution 1999/26 of the Economic And Social Council: “Development and implementation of mediation and restorative justice measures in the criminal justice system”
 - Mediation and RJ are regarded as a relevant response to juvenile crime.
-



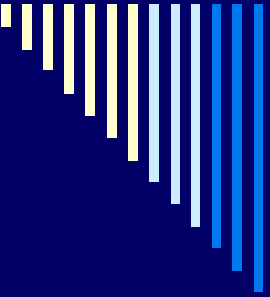
UN Acts & Tools

- ECOSOC Resolution 2002/12 Basic principles on the use of Restorative Justice (RJ) programmes in criminal matters
 - It focuses on the basic principles and standards when implementing RJ and the measures to be taken for its further development.
-



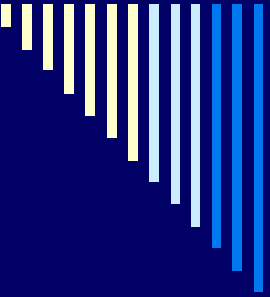
UN Acts & Tools

- RJ is a major topic on the agenda of several United Nations Congresses on Crime Prevention, especially in Vienna, 2000 and Bangkok, 2005.
 - In the final declarations, the focus is mainly on the implementation of RJ for crimes committed by minors and young offenders
-



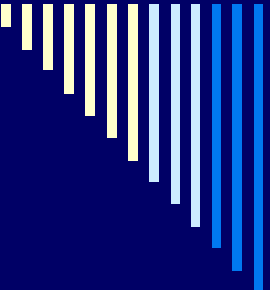
UN Acts & Tools

- UN Handbook of Restorative Justice programs, 2006
 - It overcomes the prevailing view of the limited field of application of RJ.
 - It encourages the wide application of RJ.
-



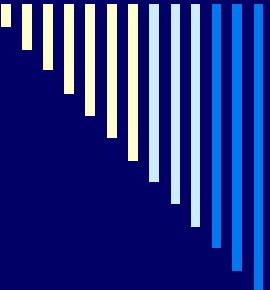
UN Acts & Tools

- They do not oblige Member States to take concrete action but only encourage them.
 - It is difficult to achieve agreement among 193 countries, taking into account the diversity of cultures and in their legal and social order.
 - There is still a lot left to do in the future.
-



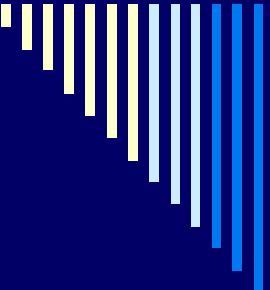
Council of Europe Tools

- Recommendation № R / 85/11 on the situation of the victim in the framework of the criminal and law and procedure
 - recommends the governments of member states to study the advantages of mediation and reconciliation and apply them in the criminal justice process.
-



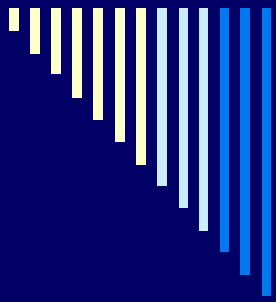
Council of Europe Acts & Tools

- Recommendation № R/87/21 on assistance to victims and the prevention of victimisation
 - recommends the Member States to encourage experiments in mediation between the offender and his victim and evaluate the results with particular reference to how far the interests of the victim are served. (later R/2006/8 on assistance to victims of crime)
-



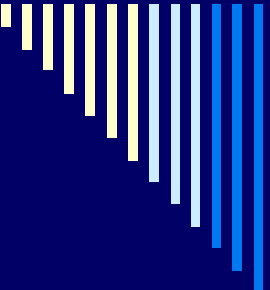
Council of Europe Acts & Tools

- ❑ Recommendation № R/87/20 on social reactions to juvenile delinquency
- ❑ encourages alternative measures and mediation at the stage of investigation;
- ❑ requires the consent of the minor and their parents
- ❑ appropriate attention is paid to the rights and interests of the minor as well as to those of the victims



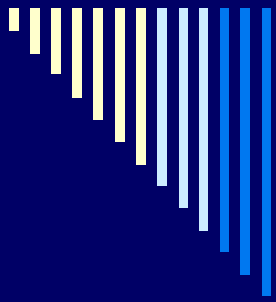
Council of Europe Acts & Tools

- entails reparation for the damage caused by the criminal activity of the minor;
- encourages comparative research in the field of juvenile delinquency so as to provide a basis for policy in this area, laying emphasis on the study of reconciliation between young offenders and their victims.



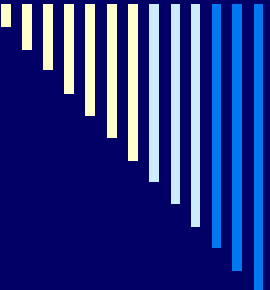
Council of Europe Acts & Tools

- Recommendation № R/88/6 on social reactions to juvenile delinquency among young people coming from migrant families
 - It requires Member States to provide these young people with the opportunity to effectively take advantage of innovations such as alternative proceedings and mediation.
-



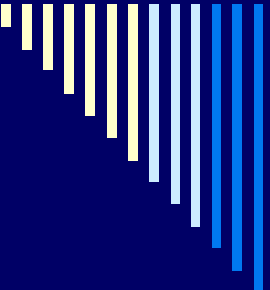
Council of Europe Acts & Tools

- Recommendation № R /95/ 12 on the management of criminal justice.
- Mediation is seen as a means of solving the problems of the criminal justice system (together with decriminalization and simplifying criminal proceedings)



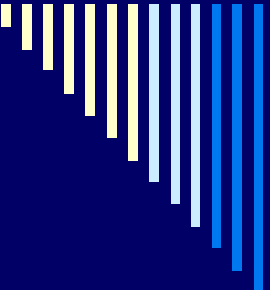
Council of Europe Acts & Tools

- ❑ RECOMMENDATION No. R (96) 8 on crime policy in Europe in a time of change indirectly incorporates some of the basic ideas of RJ:
- ❑ restriction the penalties associated with imprisonment,
- ❑ active public participation,
- ❑ appropriate attention to the needs of victims.



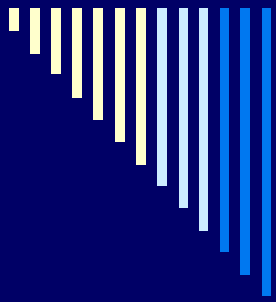
Council of Europe Acts & Tools

- Recommendation № R /99/19 on mediation in penal matters
 - It defines mediation as any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)
-



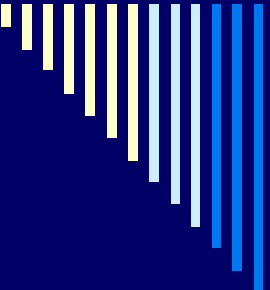
Council of Europe Acts & Tools

- The recommendation is an innovative and comprehensive document which:
- secures basic principles of RJ;
- determines the need for far-sighted penal policy and legislative framework;
- Explores the relationship between mediation and criminal justice and fundamental legal guarantees;
- focuses on the quality of practice.
- 2007 - Guidelines for effective implementation of the recommendation for mediation in criminal cases.



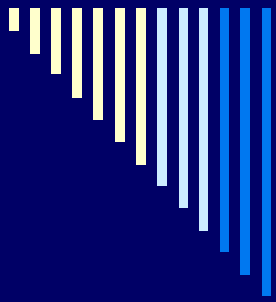
Council of Europe Acts & Tools

- Recommendation № R (92) 16 on the European rules on community sanctions and measures
- Recommendation № R /2000/ 22 on improving the European rules on community sanctions and measures
- Mediation is pointed out as an example of such a measure



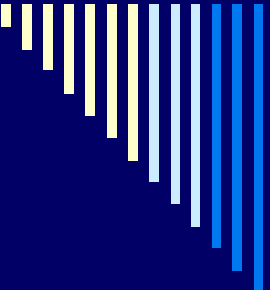
Council of Europe Acts & Tools

- Recommendation № R /2003/ 20 on conditional release and new ways to combat offenses of minors and the role of justice in relation to young people
 - requires Member States to develop a wide range of innovative and effective community sanctions and measures to address systemic juvenile offenses;
 - promotes the implementation of mediation, restorative measures and compensation, where possible and appropriate
-



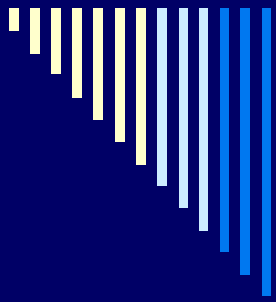
Council of Europe Acts & Tools

- Recommendation № R /2006/ 2 on the European Prison Rules
- takes into account the potential of remedial measures and mediation to resolve conflicts in prisons between prisoners and between prisoners and staff



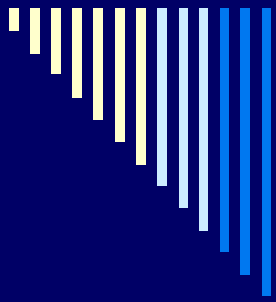
Council of Europe Acts & Tools

- Recommendation № R /2006/ 8 on assisting victims of crime
 - considers the potential benefits of mediation for victims, but warns of possible risks;
 - requires compliance with clear standards to protect the interests of victims.
-



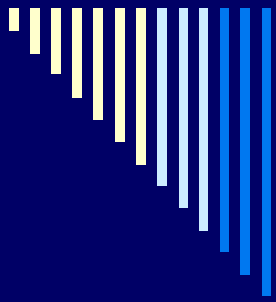
Council of Europe Acts & Tools

- Recommendation CM / Rec (2010) 1 of the Committee of Ministers of Council of Europe member states on the rules of probation
- stimulates the implementation of restorative practices of probation agencies.



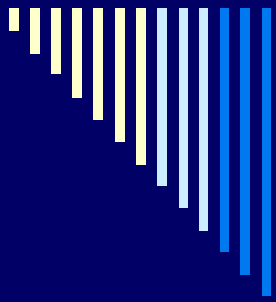
Council of Europe Acts & Tools

- ❑ Integrated project "Responses to violence in everyday life in a democratic society" /2002-2004/
- ❑ The application of mediation is defined as priority.
- ❑ A guidebook was published.
- ❑ "Rebuilding community connections- mediation and restorative justice in Europe", 2004



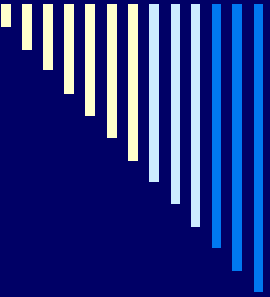
Council of Europe Acts & Tools

- The 26th Conference of European Ministers of Justice / Helsinki 2005 / adopted a resolution "The social mission of the criminal justice system: Restorative Justice"
- Ministers agreed on future cooperation for active promoting of RJ.



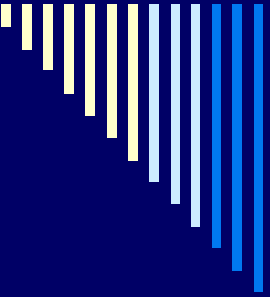
Council of Europe Acts & Tools

- The 27th Conference of European Ministers of Justice / Yerevan, 2006 / adopted a resolution, which also refers to mediation and RJ.
- Emphasis on the need for monitoring the implementation of Recommendation No R /99/19



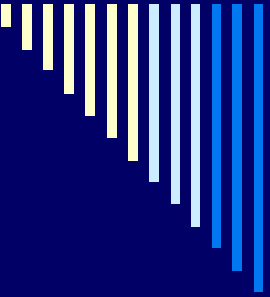
Council of Europe

- A number of other activities within the Council of Europe promote mediation and RJ.
 - Mediation is one of the topics discussed at various forums organized by the Council of Europe.
 - The Council of Europe systematically supports the development of mediation in a number of countries.
-



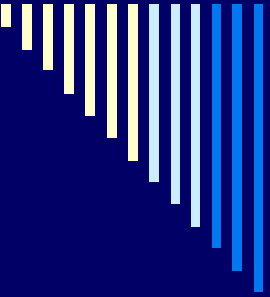
Council of Europe

- Long-lasting interest in mediation and restorative justice measures;
 - A balanced approach - both to the victim, and the perpetrator, as well as the common interest for good justice;
 - Non-binding acts.
-



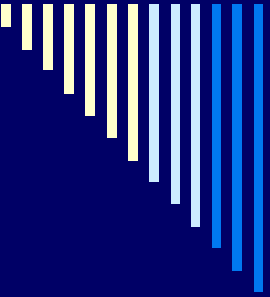
European Union Tools

- ❑ In 1999, the European Commission issued a Notice about the victims of crime in EU
 - ❑ Mediation between victim and perpetrator can be an alternative solution to long and discouraging criminal proceedings, and is in the interest of victims.
 - ❑ It also recommends further research, experimentation and assessment.
-



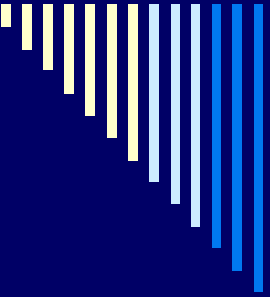
European Union Tools

- In 1999, European Council adopted an Action Plan / 1999-2004 / towards a Union of freedom, security and justice: the Tampere milestones.
 - Member States should adopt alternative, extrajudicial procedures.
-



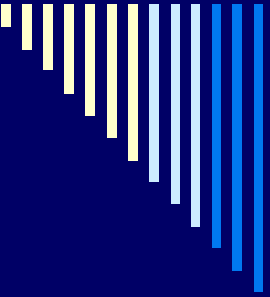
European Union Tools

- **Framework Decision of the EU Council of 15 March 2001 on the standing of victims in criminal proceedings.**
 - **Art. 1. Mediation in criminal cases is a search prior to or during criminal proceedings, for a resolution between the victim and offender mediated by a competent person.**
-



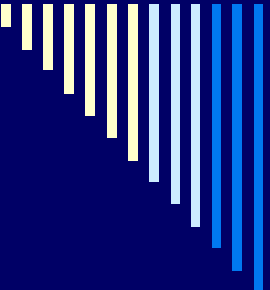
European Union Tools

- Art. 10. All Member States shall seek to promote mediation in criminal cases for offenses for which they considers such a measure appropriate to implement.
 - Each Member State shall take measures so that the achieved agreement between victims and perpetrators, as a result of mediation in criminal cases, will be taken into account.
-



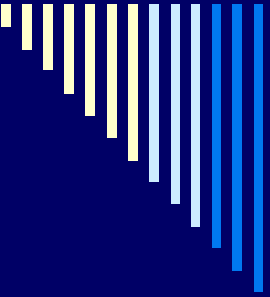
European Union Tools

- Art. 17. Each Member State shall bring into force the laws, regulations and administrative provisions necessary for the implementation of this Framework Decision.
 - The Framework Decision was not implemented fully and subsequently was canceled.
-



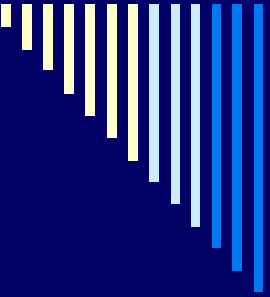
European Union Tools

- ❑ **Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**
- ❑ It promotes the implementation of restorative justice, with a special focus on the protection of victims from secondary and repetitive victimization.
- ❑ Member States should comply with the Directive by 16 November 2015 !!!!!



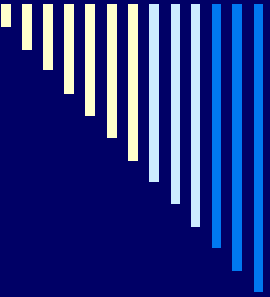
European Union

- Green Paper on the approximation, mutual recognition and enforcement of penalties in the EU, 2004
 - RJ seen in the context of alternative sanctions
 - Focus on crime categories, the mediation process, the status of the mediator and the training
-



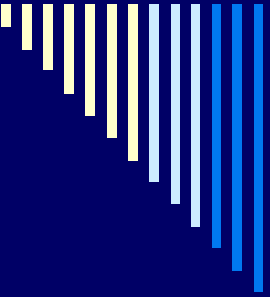
European Union

- Opinion of the European Economic and Social Committee for the prevention of offenses of minors, 2006:
 - RJ is seen as an ideal model of justice with regard to minors.
-



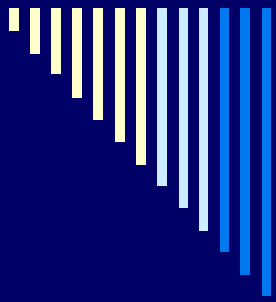
European Union:

- finances projects in RJ;
 - gives priority to victims;
 - focuses on the development of RJ at national level and encourages the exchange of information and cooperation between Member States.
-



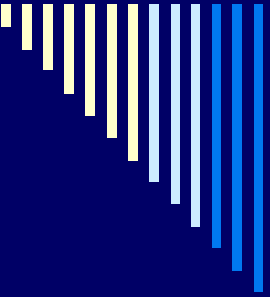
Other documents

- Declaration, Leuven, on advisability of promoting restorative approach to juvenile crime, 1997
 - It was adopted by the First International Conference "Restorative justice for juveniles: Opportunities, risks and issues to be researched"
-



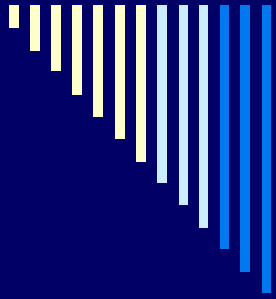
Other documents

- Opinion on the situation of the victim in the process of mediation, 2003, European forum for assistance to victims
- Statement on the principles of restorative justice, 2004 Restorative Justice Consortium, UK
- And a lot more !!!



In stead of conclusion

- Restorative Justice and, in particular, mediation between victims and perpetrators of a crime is a priority issue today
 - It engages the attention of both international and national institutions, scientists and NGOs
 - It only depends on us whether we will be just extras or real actors on the stage of life.
-



□ Thank you for your time!!!