

## Perspective for RJ in Europe

Let me begin by thanking the organisers of this excellent conference for all their good work – particularly I want to thank Annette Geibel and Corina Badea.

I am chair of the European Forum for Restorative Justice. The Forum is, as in ancient Rome, like a market place for discussion about restorative justice and its development. It has a membership of around 300 including national organisations and individuals; it is based in Leuven in Belgium. My role here is to comment on perspectives for restorative justice (RJ) in the European Union.

I want to say 3 things:

- 1 We welcome and support this new initiative of the Commission in replacing the framework decision of 2001 with a new Directive on Victims.
- 2 There are a number of clarifications that we seek in the current draft and the communications about the draft.
- 3 Regarding restorative justice specifically, we think something more is needed from the Commission.

I will elaborate on these points as I go through this presentation by answering a number of questions:

- What is restorative justice?
- What do we know about RJ?
- Will directive help us or hinder us in future?

What is restorative justice?

Slide 2 The first question is about definition. It has been said that it is easier to describe restorative justice than to define it but it has been attempted as you can see by the UN and a National Commission on RJ in Ireland (slides 3 & 4). There is an emphasis on active participation and engagement that in effect allows for RJ to be a process that brings the victim and offender together in a face-to-face meeting or allows for some form of indirect communication such as what is sometimes called shuttle dialogue. The draft Directive contains a definition which is arguably captures the essence of restorative justice; it is the bare bones approach (slide 5) and this is its strength. The wording could be clearer and I have taken the liberty of both highlighting in red the limiting words and suggesting in green a possible alteration. It is an issue of clarification and not a “show stopper”, something that we cannot easily amend. These definitions show some perspective on how far we have come in the RJ world. It is important to see the word “harm” being used in the definition. Addressing the harm caused to crime victims is a primary concern of restorative justice; the acknowledgment by the offender of the harm caused by the crime and an agreement on making amends is a major part of the process at the heart of restorative justice approach. The words “harm” and “recovery” are often used together in RJ literature as a focus of RJ activity in contrast to the “crime” and “punishment” focus of the criminal justice system. In talk of justice we hear a lot about crime and punishment but not enough about harm and recovery – this too is a dimension of justice and it is where RJ comes into its own. It is for that reason that I have added in the notion of “safety” into the definition – RJ is not intended to make matters worse and safety is a prelude to addressing harm. What we are finding in the RJ world is that some victims cannot move on without experiencing an encounter with the offender facilitated in a safe way by trained practitioners that brings with it a therapeutic benefit – this is part of the fuller experience of justice. There was mention made yesterday to managing expectations – for victims I believe there is an expectation that they will get their justice needs met in court but the reality is often not like this. Let me give you an example – I worked on a case some time ago in which the parents of a boy killed in a hit and run incident wanted to meet the man who killed their son – they wanted to hear his voice because he had not been allowed to speak in court. What would you do if you were in a similar situation? They went to the local prosecutor’s office (procurator fiscal in Scotland) and were told that the law had taken its course and legal involvement was ended. They then went to social services and, after much discussion and protest, the case was finally referred to a service in which I used to work and I was able to work on facilitating their request. Eight years after the incident the parents finally heard, through a restorative justice process, the voice of the man who killed their son. Restorative justice would say to the legal profession and to social services that there is more to justice than what happens in a court of law. It is time to make greater provision for more justice.

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What do we know about RJ? (slide 6)

In the para 3.5 of the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS there is a reference to RJ as a relatively new concept in criminal proceedings, that focuses on the recovery of the victim. As an alternative to, or in combination with formal justice, it aims to restore victims to **the position they had before the crime**. This is a legal influence but it can be misleading when applied to RJ and it gives me a chance to address some common misunderstandings about restorative justice. Any victim would say that s/he would prefer not to have been the victim of a crime – that is the position they had before the crime. RJ does not and cannot turn back the clock – it cannot undo the crime. It can however provide a facility in cases of property crime for example to restore what was broken and facilitate communication about the annoyance and inconvenience of property damage. In crimes against the person we need to think bigger here – some of the RJ writers talk of restoring relationships – the relationship that the victim has with herself/himself, with those closest to them and to the community where the victim's sense of dignity, security, and empowerment, among others, have been deeply affected by the crime. I am inclined to simply take out those words in red altogether and add in the words in green above.

A common misunderstanding is that restorative justice is about forgiveness. Let me say this loud and clear: **restorative justice is not about forgiveness!** It is about safe communication between a victim and offender on how to address the harm caused by crime; it provides victims with, among other things, the opportunity to get answers that only the offender knows thus enabling victims to begin rebuilding their lives in peace; it holds offenders to account directly to those harmed by the crime so that they can hear the full impact of their offending behaviour and begin to change their ways for good. The focus of the restorative justice process is good communication; forgiveness is not the primary focus of this work.

The phrase I have underlined glosses over a lot of what we know about the relationship between RJ and the Criminal Justice System (CJS). We know that this can be a difficult relationship. You may remember a series of adverts for Volkswagen cars in which a problem was contrasted with the problemless Volkswagen and the caption was: "If only all things in life could work as well as a Volkswagen!" (slide 7) It is notoriously difficult to introduce something new into the justice system – Joanna Shapland, a leading academic who has contributed enormously to the RJ field, notes this in a recently completed Home Office research programme. The issue is not about legal professionals' good intentions to be supportive or RJ practitioners being less than professional; it is more to do with the machinery of the CJS – it is notoriously resistant to change and just trundles on like a big machine that has a specific purpose that we seem helpless to change or influence. For that reason some RJ folk have abandoned efforts to collaborate too closely with the CJS, they have even gone as far as to use different words for victims and offenders, they use instead the person harmed and the person responsible for the harm. What we know is that this relationship – whether close or not so close – it needs time and effort with regular opportunities for reviewing and updating. Even in countries where there is a legal requirement to consider or use RJ measures, the relationship has to be worked on; it cannot be taken for granted.

We know too that RJ is growing across Europe, as was said yesterday by the Vice President (slide 8). In a Forum publication written by Jolien Willemsens she charts the growth from 2004 to 2008 where if there is not a legislative support for RJ there is at least some practice being undertaken. In addition, a soon to be published Forum research report on conferencing by Estelle Zinnstag notes that the use of RJ is more widespread than they first thought. We also know from meta-analyses that there are benefits to victims (slide 9) in a well run RJ service such as reduced post traumatic stress symptoms, increased satisfaction with justice and reducing vengeance. It is also known that from a number of studies that victims will make use of RJ if it is offered. The Forum is the promoter in further research on victims' involvement in RJ conducted by Inge Vanfraechem and the preliminary results will be presented at our next conference in Helsinki in June 2012. A brief summary of the UK government's research on RJ compiled by the Restorative Justice Council of England and Wales concludes that:

- restorative justice provides 85% victim satisfaction,
- reduces the frequency of re-offending,
- provides value for money by saving the taxpayer £9 for every £1 spent on RJ.

The case for legislation and investment to give all victims of crime access to restorative justice is clear. I just want to comment briefly on Article 11 of the draft Directive which contains safeguards for victims participating in RJ or mediation – comment on each one. (slides 10 11 & 12). All in all this is a good piece of work and we hope that it is not altered as the draft goes through the further stages of consultation.

Will the Directive help or hinder us in the future?

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The simple answer is yes but...! I mentioned earlier about a couple of points that need clarified such as the definition and the idea of restoring victims to a position they had before the crime was committed. I doubt very much if RJ would have moved on as far as it has in Europe without article 10 of the current Framework Decision on the Standing of Victims in Criminal Proceedings – in some of my reading I have seen explicit reference to this article in legal documents. It is reasonable therefore to assume that member states will take heed of the RJ provisions in the draft Directive.

As I look back over the growth and development of Rj from the early days in Canada of the famous Elmira case in 1974, I see a shift in emphasis towards the victims and a greater awareness and sensitivity to victims needs. I welcome this shift. This is evidenced, for example, in a recent Council of Europe Recommendation on Probation in which there is reference to the assumptions of RJ as:

- a. that the response to crime should repair as much as possible the harm suffered by the victim;
- b. that offenders should be brought to understand that their behaviour is not acceptable and that it has had some real consequences for the victim and the community;
- c. that offenders can and should accept responsibility for their action;
- d. that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and
- e. that the community has a responsibility to contribute to this process.

Remember that whoever pays the piper calls the tune. (slide 14) In reality most RJ services in Europe are provided by CJ professionals or volunteers paid from the CJ budget or provided by an independent government funded organisation. While I do not see RJ as necessarily the sole preserve of victim services I do see an onus on CJ providers or funders of RJ services to demonstrate the centrality of the victim in their work. This will challenge some providers but ultimately support RJ practitioners to remain in role and this can only be good for victims. Gerry Johnstone, a leading UK academic on RJ, commented at the Forum's Barcelona summer school in 2009 that it is only when governments start to divert money from the CJS into RJ or victim services that we will know change is happening. In addition, the provision of article 11 in the draft Directive opens up the possibility of supervisory or accreditatory roles to oversee the adherence to the European standards.

Given the weight of evidence of the benefits of RJ to victims particularly why can the new Directive not state that all victims of crime in every member state (slide 14) of the European Union should have the possibility to profit from the potential benefits of restorative justice? This issue of accessibility requires explicit reference in the context of the victim-related directive envisaged. Simply because Rj involves not only the victim but also the offender and the community we hold at the Forum hold that any references to RJ is necessary but not sufficient in the Directive. We think that something separate is needed specifically dealing with RJ (slide 16) that provides clarity of understanding across Europe on key aspects of RJ and we are willing to work closely with the European Commission on this.