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**COMMUNITY OF  
RESTORATIVE  
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# Draft Recommendation CM/REC (2018) xx concerning restorative justice in criminal matters

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European Forum for Restorative Justice  
10<sup>th</sup> International Conference: Expanding the Restorative Imagination  
Tirana International Hotel and Conference Centre  
Tirana, Albania  
14-16 June, 2018

‘...four key aims [of the Recommendation]:

- firstly, to **enhance the awareness, development and use** of restorative justice in relation to member States’ criminal justice systems;
- secondly, **to elaborate on standards for its use**, thereby encouraging safe, effective and evidence-based practice, and a more balanced approach to the conceptualisation and development of restorative justice than is implied by the Victims’ Directive;
- thirdly, to integrate **a broader understanding of restorative justice and its principles** into the (comparatively narrow) 1999 Recommendation;
- and, fourthly, to elaborate on the use of restorative justice by **prison and probation services**, the traditional remit of the PC-CP.

This Recommendation goes further than the 1999 Recommendation in calling for a broader shift in criminal justice across Europe towards a **more restorative culture and approach within criminal justice systems.**’

*Draft commentary to the Recommendation, p.2*

# Drafting process

**Sept 2016:** European Committee on Crime Problems (CDPC) asks the Council for Penological Co-operation (PC-CP) Working Group to explore whether a new Recommendation should be drafted.

**Jan-Sept 2017:** PC-CP Working Group hires Ian to draft a new Recommendation and commentary. The drafts go through several versions during three meetings of the PC-CP Working Group.

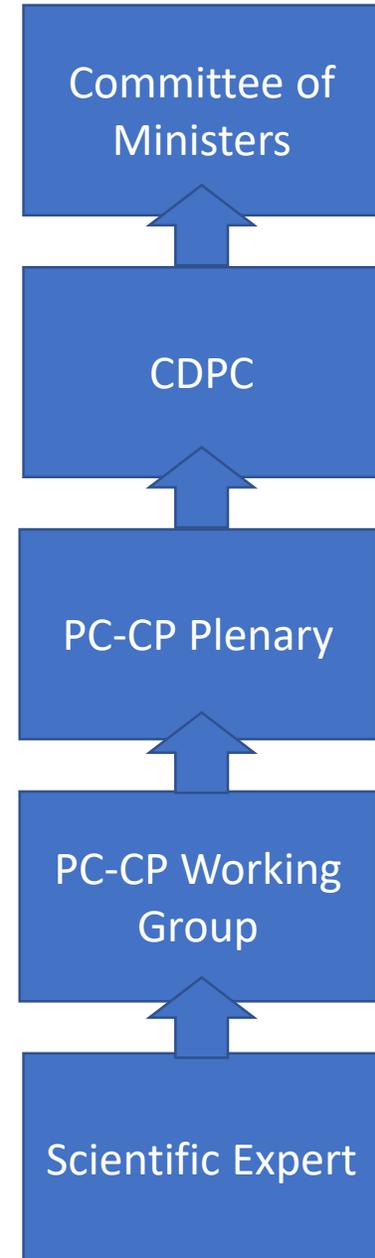
**Nov 2017:** Drafts presented to PC-CP Plenary Meeting, which adopts it after some minor amendments.

**Dec 2017:** CDPC chooses not to pass the draft Recommendation at the first attempt, but sends it out to member States for comment.

**Apr 2018:** States' comments are integrated into the drafts before and during another PC-CP Working Group meeting.

**Jun 2018:** New drafts presented to, and adopted by, the CDPC.

**Later in 2018:** Drafts to be presented to Committee of Ministers for formal adoption.



# Structure of the draft Recommendation

- I. Scope of the Recommendation
- II. Definitions and general operating principles
- III. Basic principles of restorative justice
- IV. Legal basis for restorative justice within criminal procedure
- V. The operation of criminal justice in relation to restorative justice
- VI. The operation of restorative justice services
- VII. Continuing development of restorative justice

## II) Definitions and general operating principles

3. 'Restorative justice' refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter: the 'facilitator').

8. Practices which do not involve a dialogue between victims and offenders may still be designed and delivered in a manner which adheres closely to the basic principles of restorative justice (see Sections III and VII). Restorative principles and approaches may also be applied within the criminal justice system, outside of the criminal procedure (see Section VII).

### III) Basic principles of restorative justice

13. The core principles of restorative justice are that the parties should be enabled to participate actively in the resolution of crime (the principle of **stakeholder participation**), and that these responses should be primarily oriented towards addressing and repairing the harm which crime causes to individuals, relationships and wider society (the principle of **repairing harm**).

14. Other key restorative justice principles include: voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; collective, consensus-based agreement; a focus on reparation, reintegration and achieving mutual understanding; and avoiding domination. **These principles may be used as a framework with which to underpin broader reforms to criminal justice.**

15. Restorative justice should not be designed or delivered to promote the interests of either the victim or offender ahead of the other. Rather, it provides a **neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible.**

### III) (Cont.)

18. Restorative justice should be a **generally available service**. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders.

19. Restorative justice services should be **available at all stages of the criminal justice process**. Victims and offenders should be provided, by the relevant authorities and legal professionals, with sufficient information to determine whether or not they wish to participate. Referrals could be made by judicial authorities or criminal justice agencies at any point in the criminal justice process; this does not preclude possible provision for self-referral to a restorative justice service.

## VII) Continuing development of restorative justice

60. Restorative principles and approaches **may be used within the criminal justice system, but outside of the criminal procedure.** For example, they may be applied where there is a conflict between citizens and police officers, between prisoners and prison officers, between prisoners, or between probation workers and the offenders they supervise. They may also be applied where there is a conflict between staff within judicial authorities or criminal justice agencies.

61. Restorative principles and approaches **may be used proactively by judicial authorities and criminal justice agencies.** For example, they could be utilised to build and maintain relationships: among staff within the criminal justice system; between police officers and members of the community; among prisoners; between prisoners and their families; or between prisoners and prison officers. This can help to build trust, respect and social capital between or within these groups. Restorative principles and approaches may also be applied proactively by judicial authorities and criminal justice agencies when making managerial decisions and consulting staff, and in other areas of staff management and organisational decision-making. **This can help to build a restorative culture within these organisations.**

# Next steps...

- A once-in-a-generation opportunity to drive wholesale implementation – help governments and criminal justice institutions to develop policies, pilots and **long-term strategies** for developing restorative justice.
- The need for a multi-level impact and knowledge exchange strategy (McAra, 2016) – engage IGOs, national and regional governments, institutional policymakers, managers, practitioners, NGOs and the Third Sector, and the general public.
- No reinventing the wheel – make sure that we share information and learn from places which have already done this work.



*If not now, when?*

