

Introduction to Restorative Justice

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MISSION: IMPOSSIBLE

- a. Making easy things difficult
- b. Making difficult things easy

WHY DON'T WE LOOK
AT A SYSTEM OF
RESTORATIVE JUSTICE?



CHRIS

...there was once 'restorative justice',
and it was a...?

- a social movement, professional field
- a theory of justice, discourse/ideology
- a set of practices, methods
- a lifestyle, philosophy, set of values and principles
- a new paradigm, an alternative approach
- a set of complementary programmes, reforms
- a problem solving, informal approach, response, mechanism
- an innovative, or traditional justice mechanism

Aims of the presentation

1. Main Definitions
2. International Regulations
3. Implementation 'features'

1. Main Definitions



- 1.1. Process oriented definition
- 1.2. Outcome oriented definitions
- 1.3. Balanced definitions
- 1.4. Policy definitions

1.1. Process oriented definition



- “Restorative justice is a **process** whereby all the parties with a stake in a particular offence **come together** to resolve collectively how to deal with the aftermath of the **offence** and its implications for the **future**” (Marshall 1999: 5).

1.2. Outcome oriented definition

- “Restorative justice is **every action** that is primarily oriented toward doing justice by **repairing the harm** that has been caused by a **crime**” (Bazemore and Walgrave 1999: 48)


1.3. Balancing process and outcome

- “Restorative justice is a **theory of justice** that emphasizes **repairing the harm caused or revealed by criminal behaviour**. It is **best accomplished** through inclusive and cooperative processes” (Van Ness 2005: 3)

- “Restorative justice is an option for **doing justice** that is primarily focused on repairing harm that has been caused by the crime. It is best accomplished through cooperative processes that include all **stakeholders**” (Vanfraechem 2007: 18)

1.4. Policy Definitions

- “Restorative justice means **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 criminal offence through the help of an impartial **third party**.” (Article 2.1d, Victims’ Directive)

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- “Restorative justice is a way of **responding to criminal behaviour** by **balancing the needs** of the community, the victims, and the offenders.”
 - “Restorative justice programmes are any programme that uses restorative processes and seeks to achieve restorative outcomes.” (United Nations 2006: 6-7)

- “Restorative process means any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the **crime**, generally with the help of a **facilitator**.” ” (United Nations 2006: 6-7)

- “Restorative outcome means an agreement reached as a result of a restorative process. The agreement may include referrals to programmes such as reparation, restitution and community services, aimed at meeting the individual and **collective needs and responsibilities** of the parties and achieving the **reintegration of the victim and the offender.**” (United Nations 2006: 6-7)


2. Main Regulations

- 2.1. Council of Europe Recommendation R(99)19 of the Committee of Ministers to Member States concerning mediation in penal matters.
- 2.2. United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (ECOSOC Resolution 2002/12).
- 2.3. The Directive 2012/29/EU (*aka* Victims' Directive) establishing minimum standards on the rights, support and protection of victims of crime.


2.1. CoE Recommendation (1999)

- Council of Europe Recommendation R(99)19 of the Committee of Ministers to Member States concerning mediation in penal matters.



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- **Section 1** defines mediation in penal matters.
 - **Section 2** formulates 5 general principles (such as voluntariness, confidentiality, service availability, all stages, and autonomy)
 - **Section 3** deals with the legal basis of mediation (facilitation nevertheless against over-regulation, national guidelines defining the use of mediation, conditions for the referral of cases and their follow-up, procedural guidelines such as right to legal assistance, translation and interpretation, and the right for minors to parental assistance in mediation).


- Mediation in penal matters applies to “**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 criminal offence through the help of an impartial **third party** (mediator).”
(Council of Europe 1999)

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- **Section 4** discusses the operation of criminal justice in relation to mediation (decision to refer, assessment of the outcome, informed choice, special safeguards for minors, acknowledgement of the basic facts and its difference from legal admission of guilt, safeguards etc.)
 - **Section 5** deals with the way how mediation services should operate (the importance of adopting 'recognised standards' and ethical rules, procedures for the selection of cases, and the training and evaluation of mediators).
 - **Section 6** deals with the need for continuing development of mediation (recommending regular consultation between criminal justice authorities and mediation services, and setting up research and evaluation of mediation practices).

2.3. UN Basic Principles (2002)

- United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (ECOSOC Resolution 2002/12).





The basic principles are (same with the Council of Europe Recommendation):


- a free and voluntary service,
- to be used at any stage of the criminal justice system,
- the principles of impartiality and confidentiality,
- the presumption of innocence,
- the safety and procedural guarantees for the parties,
- the necessity of establishing national guidelines and standards, ...

2.3. Victims' Directive (2012)

The Victims' Directive introduces restorative justice through:

- recital 46** (general)
- article 2.1d** (definition)
- article 4j** (right to receive information)
- article 12** (right to safeguards)
- and collaterally mentioned in a few other recitals (training, information, statistics)



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- “Restorative justice means **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 criminal offence through the help of an impartial **third party**.” (Article 2.1d, Victims’ Directive)



Victim's Directive does **not** oblige Member States:

1. to **introduce** restorative justice services where they are lacking


2. to promote **actively accessibility** to existing restorative justice services



Victims' Directive obliges Member States to:

1. inform victims about **available restorative justice services**;

2. where services are provided, **safeguards** must be in place to ensure that victims access safe and competent services.

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- Victims' Directive itself **does not explicitly exclude** any victim from participating in restorative justice, but only mentions a list of **factors** to be considered to protect victims participating in a restorative justice process, which are: 'the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, **power imbalances**, and the **age, maturity or intellectual capacity of the victim**' (Recital 46).

Art 12. Right to safeguards

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation....Such measures shall ensure that victims who participate in RJ processes **have access to safe and competent RJ services**, subject to **at least** the following conditions:

(a) the RJ services are used **only if they are in the interest of the victim**, subject to any safety considerations, and are based on the **victim's free and informed consent**, which may be **withdrawn at any time**;

(b) before agreeing to participate in the RJ process, the victim is provided with **full and unbiased information about that process and the potential outcomes** as well as information about the **procedures for supervising the implementation of any agreement**;

Art 12.1. Right to safeguards

- (c) the offender has acknowledged the basic facts of the case;**
- (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;**
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.**

Art 12. Right to safeguards



2. Member States **shall facilitate the referral of cases, as appropriate** to restorative justice services, including through the **establishment of procedures or guidelines** on the conditions for such referral.

Briefing Paper about the regulation of restorative justice in the Victims' Directive (2016). European Forum for Restorative Justice. <http://www.euforumrj.org/wp-content/uploads/2016/12/EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>

3. Implementation 'features'



3.1. Organisational structures and status of mediators

3.2. Relation to criminal justice

3.2. European landscape

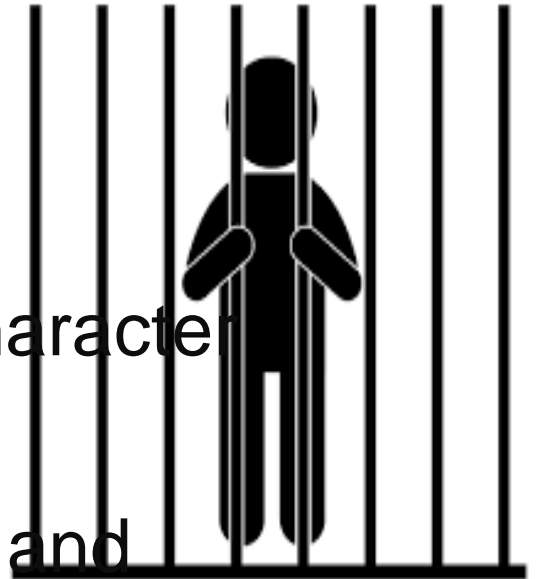
3.1. Organisational structures and status of mediators/facilitators

- State funded/subsidized NGOs (ex. Belgium)
- Non-state funded NGOs (ex. Ukraine)
- Probation services (ex. Latvia)
- Social (public) services/institutions (ex. Finland)
- Private services (ex. Netherlands)
- Public and private mixed services (ex. Germany)
- Volunteers (ex. Norway), professionals (ex. Austria), or a mix of both (ex. Belgium)



3.2. Relation to criminal justice

- Ground for **pre-court diversion**
- Ground for **court diversion**
- Ground for **sentence mitigation**
- **Court sanctions** with a restorative character
- Restorative justice in **prisons**
- **A right/service** offered to all victims and offenders at all stages of the criminal procedure and for all offences



3.3. European landscape

- 13 (out of 36 surveyed by **Dunkel et al. 2015**) European countries have a **national availability** of VOM services and 5 of Conferencing
- 35 countries have **VOM** services available (national or regional), while 13 have **Conferencing**
- VOM is predominantly used throughout Europe, mainly regarded as appropriate for **less severe** offending
- Conferencing is used mostly as a diversionary method and in cases of **juvenile offending**
- 18 countries use restorative justice in **prisons**



Thank you!



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