



Constitution of the European Forum for Restorative Justice

Memorandum

(The term 'restorative justice' will be used to include victim-offender mediation, community conferencing and other well-known and widely-used procedures for achieving it. 'Europe' refers to the member states of the Council of Europe.)

1. Restorative justice has increasingly received attention during the last ten or fifteen years and it has come to take hold in Europe. Restorative justice is regarded as a new paradigm, although it has roots in earlier historical periods and in many different cultures. It has been called a 'Third Way': a different reaction to those social conflicts that have been brought to the attention of the criminal justice system and/or the community.

What is restorative justice? What is victim-offender mediation?

There are several definitions of restorative justice. Mediation UK defines it as follows:

Restorative Justice is based on the principle of repairing as far as possible the harm caused by crime. It offers the victim, the offender and all parties concerned and affected by a particular offence the opportunity to come together and resolve collectively how this can be done.

Restorative justice can be achieved in various ways, victim-offender mediation being the most widely known. But, there are also sentencing circles and family or community conferences. Truth and Reconciliation Commissions are restorative efforts to respond to the most horrible atrocities and the most distressing human suffering.

An essential feature of all restorative justice practices is the element of active participation of both victim and perpetrator. The definition of victim-offender mediation used in the Recommendation No. R(99) 19 of the Council of Europe reads:

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Secretariat	Tel.	0032 16 32 54 29	
Hooverplein 10	Fax	0032 16 32 54 74	
3000 Leuven	Mail	info@euforumrj.org	
Belgium	Web	www.euforumrj.org	

Victim-offender mediation is a 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).

Another feature of mediation consists in the mutual effort towards recognition and empowerment (often assisted by trained volunteers or professional facilitators). Reparation and reconciliation are important potential outcomes of these processes.

2. The quest for restorative justice has become a movement, complementing but also counteracting the tendencies and developments that have emerged during the last decades; namely:

- A tendency to move away from classical penal reaction toward more preventive measures. This includes 'situational prevention', in the form of improved physical security measures, the call for increased surveillance of public space and wider rights and realms of competence of the police. But there is also a turn toward 'social prevention', which focuses on trying to reduce social and environmental pressures towards crime and which is apt to complement and support restorative efforts.
- An intensification of punitive and repressive measures, combined with the criminalisation of a wider range of actions and heavier punishments.
- The establishment of diversionary measures intended to counter the growing caseload of state prosecutors and courts. Within them restorative justice is increasingly finding a place. However, it is important that restorative justice be seen as more than just the diversion of offenders away from formal criminal procedure and punishment. Restorative justice is an approach to crime and criminal justice in general, whatever the nature or seriousness of the offence or the stage of the criminal justice process in which the case is.
- The emancipation of the victim and the growing victim movement, which results in the creation of victim services and the formal recognition of victims' rights. Restorative justice strives for a well-balanced approach of the needs, rights and responsibilities of both victim and offender and their communities.

The movement for restorative justice is an attempt to reconcile on the one hand the achievements of classical (positive) penal law as guarantee of freedom (freedom from violation of one's physical integrity and possessions, and a minimum of restriction of one's liberty by the state) and on the other a law that is close to people's authentic and concrete experiences, their needs and interests. With regard to criminal law this means: working through the concrete acts of inflicting pain, hurt and loss by the perpetrator and making good as far as possible the pain and harm suffered by the victim.

It aims at a 'criminal policy for people' ("Kriminalpolitik für Menschen", the title of a book by Horst Schüler-Springorum, Frankfurt a.M., Suhrkamp, 1991) - as simple as that. It is a movement that serves to renew the ancient concept that harm that has been inflicted is not to be answered by another harm but by an attempt at making good. This knowledge and this practice is still alive within groups and nations but could easily be overturned, pushed aside and forgotten; the restorative justice movement has come together to uphold and revive it.

3. To give momentum to the movement as it materialises in Europe the '**European Forum for Victim-Offender Mediation and Restorative Justice**' (now: European Forum for Restorative Justice) has been created. Its overall aim is to preserve, to further establish and to promote the idea and the practice of restorative justice, as against a criminal justice system that makes increasing use of surveillance and repression, despite evidence of their ineffectiveness, and is in danger of losing sight of normal and ordinary concerns, needs and sufferings of victims, offenders, and those who are close to them.

For this purpose an international European effort seems indispensable. It will realise its general aim mainly through international exchange of information and through mutual help - pertaining to policies and legislation, research, the establishment of services and of good practice.

4. **The motivation and the impetus for the foundation of the Forum** comes first of all from the Department of Criminal Law and Criminology of the Katholieke Universiteit Leuven which brought together people working in the field of victim-offender mediation in various countries and also from the people that had been co-operating within the "Committee of Experts on Mediation in Penal Matters"

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within the Committee on Crime Problems of the Council of Europe (including some of those who were contacted by the Leuven group). They had become aware that the recommendation issued and adopted in September 1999 can only be the starting point for a more intensive exchange and co-operation for the promotion of victim-offender mediation in Europe. The initiative taken by the 'Leuven group' therefore found wide support and with EU (GROTIUS) funding a project could be started. In the beginning of 1999 a co-ordinating group was formed, consisting of mediation experts from eight European countries (Austria, Belgium, Finland, France, Germany, Norway, Poland and the United Kingdom). (For a full report of the activities of the Forum in the year 1999, see Willemsens, J. and Lauwaert, K., Report for the Grotius-Committee of the European Commission. The European Forum for Victim-Offender Mediation and Restorative Justice, unpublished, June 2000. This report is available from the Secretariat of the Forum).

It has been agreed that the main focus of the European Forum should be on mediation in criminal matters and related restorative developments, such as family group conferencing. Nevertheless, links should be made with other fields of mediation (such as family mediation, school mediation and community mediation). The Forum should be concerned with both juveniles and adults. The target group of the Forum consists of mediators and mediation services, policy makers, researchers and criminal justice practitioners all over Europe. The Forum aims to influence the development of criminal justice and penal policies in European countries. It was established that contacts should be further developed with other regions. Also, the Forum considers other European and international organisations working in the field of victim assistance, offender care and restorative justice as important partners in realising its objectives. Lastly, the decision to limit the Forum's action to Europe was taken for different practical reasons, but also the cultural context was taken into account.

In the year 1999, several activities were organised. First of all, there was a European conference (Leuven, October 1999) that resulted in the publication of a book (The European Forum for Victim-Offender Mediation and Restorative Justice (ed.), Victim-Offender Mediation in Europe. Making Restorative Justice Work, Leuven, Leuven University Press, 2000). Also a European newsletter was

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prepared. Finally, in the year 1999 the co-ordinating group started discussion on the creation of a formal organisation.

5. The reasons for deciding to create a formal organisation, given and discussed within the co-ordinating group, during the above-mentioned conference and during a special technical meeting organised in June 2000, were the following:

The formal organisation of the Forum ought to:

- provide the necessary framework for the promotion of exchange of knowledge and information and of bilateral and multi-lateral activities;
- secure its continuity and stability;
- provide permanent staff to facilitate exchange and support activities;
- secure funding for ongoing work, including the exchange and mutual support of the members of the Forum, and specific projects; and
- provide an organisational backing for local and national programmes (and the people working in them) in their efforts to secure political, public and media support.

At several points in time, a broad consultation on the need to create a formal organisation and its form has been organised in order to make sure that the initiative received as broad a support as possible.

The Forum uses English as its working language, but will attempt to organise events using other languages, or interpreters, and to issue publications in other languages, in order to include as many people as possible in its work.

The Forum is conscious of unequal economic circumstances among countries in Europe, and will attempt to make financial arrangements to facilitate the participation of people from all parts of Europe.

It has been agreed that the Forum will try to conduct its business in the spirit of its own principles. If any conflict arises within the Forum which cannot be resolved between the parties, they will be invited to use mediation or similar conflict resolution methods.

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6. **The constitution** sets out the aims and objectives of the Forum, and its intended activities and principles of functioning

- It provides for **two categories of membership**, with and without voting rights, to accommodate the requirements of different countries. Also, it has been decided that individuals as well as governmental and other statutory organisations and non-governmental organisations, who support the aims of restorative justice, can be members of the Forum.
- It provides for the **election of a Board**, in a way that is intended to make participation as representative as possible of countries from all parts of Europe.
- In addition to arrangements for the conduct of meetings, the Constitution includes provisions which demonstrate its intention to live up to restorative principles: where possible **decisions will be made by consensus**.