



European Forum for Restorative Justice

Research and Actions on Restorative Justice in the Victims' Directive

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Research and Action

1. *Briefing Paper* (potential and limits of the Victims' Directive in relation to the *regulation of restorative justice*)
2. *Brief Survey* (for RJ services)
3. *Practice Guide* for RJ practitioners (based on the Summer School)
4. *Expert Seminar* (CJP) on training and cooperation in the VD
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Briefing Paper

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THE DIRECTIVE 2012/29/EU

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RESTORATIVE JUSTICE IN THE VICTIMS' DIRECTIVE

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REFERENCES

<http://www.euforumrj.org/wp-content/uploads/2016/12/EFRJ-Briefing-Paper-RJ-in-the-Victims-Directive.pdf>

Lauwaert, K. (2013). Restorative justice in the 2012 EU Victims Directive: A right to quality service, but no right to equal access for victims of crime. *Restorative Justice: An International Journal*, 1(3), 414-425.

Kerner, H-J. (2013). Establishing new minimum standards on the rights, support and protection of victims of crime (Directive 2012/29/EU): a promising step also for the further development of restorative justice initiatives and institutions in Europe, *Restorative Justice*, 1(3), 430-437.

Gavrielides, T. (2015). The Victims' directive and what victims want from restorative justice. *Victims and Offenders*, 1-22.

Briefing Paper

- The Victims' Directive introduces restorative justice mainly 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)

Transposition: 16 November 2015

Important! None of the articles in the Directive obliges Member States:

1. to **introduce** restorative justice services where they are lacking
2. to promote **actively accessibility** to existing restorative justice services

What it 'obliges' them to do is:

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.

Right to information

- 4.1. Right to receive information from the first contact with a competent authority on **the available restorative justice services.**
- 4.2. The extent or detail of information referred to in paragraph 1 may vary depending on the **specific needs and personal circumstances** of the victim and **the type or nature of the crime.** Additional details may also be provided at **later stages** depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

Research

- Lack of information about restorative justice is one of the main obstacles and reasons for its underuse (see Willemsens, 2008; Laxminarayan, 2014; APAV, 2016), in addition to negative attitudes by referring bodies (Van Camp and Wemmers, 2013) and poor cooperation among partners involved (Casado-Coronas, 2008).
- Important factors when informing parties about the option to participate in a RJ programme, include: the level of influence and authority of the initiator, the information provided, the mode of the offer, the language of the offer, the timing and the frequency of the offer (Umbreit, 2001; Wemmers and Cyr, 2005; Laxminarayan, 2014; De Mesmaecker, 2011).
- The IVOR project showed that in some countries, driven by victim's protection, the information about restorative justice is not shared with the victim, and restorative justice services are not given access to the victim's contact details and information (APAV, 2016).

Right to safeguards

- **1.** Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes **have access to safe and competent restorative justice services**, subject to at least the following conditions:
 - **(a)** the restorative justice 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 restorative justice 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**;
 - **(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.
- **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.

General comment

- Overall the article is very progressive, and a reflection of best restorative practice and core principles of RJ (voluntariness, confidentiality...). They might even sound redundant because they are assumed, but it is only advantageous to have them binding (ex. Ireland case).
- Problematic ‘tone’ (‘right to safeguards’, only for RJ?, might have been detrimental if it came earlier, but perhaps only useful at this stage)
- Other understandable but still problematic points from an RJ point of view remain: “only if they are in the interest of the victim”, “primary consideration the interests of the victim”
- Information about the **procedures for supervising the implementation of any agreement**
- Backed by research: lack of follow-up communication with the victim or feedback about the agreement can be a problem for victims (Zernova, 2007; Garbett, 2016; Vanfraechem and Bolivar, 2015).
- Lead to: probationary function, lower referrals rates, or improved cooperation between services?

Research

- The Directive *does not explicitly exclude* any victim from participating in RJ, but only mentions a list of factors to be considered for ‘appropriateness’ (Recital 46).
- Member States have specific exclusion criteria in their legislations, according to vulnerability, categories of victims of certain crimes, age of offender, or seriousness of offence used to define the ‘appropriateness’ (Miers and Aertsen, 2012; APAV, 2016).
- With a few exceptions- in most European countries, criteria and procedures to select and refer cases to RJ programmes are related to characteristics of the offender or the offence, and not to characteristics or needs of the victim (Dünkel et al., 2015).
- The legal qualifications of a crime, severity of harm, or vulnerability of the victim have been shown to be poor indicators, while criteria like imbalance of power between parties and the degree of emotional impact of the crime are more relevant indicators when deciding the eligibility of a case (Willemsens, 2008). Differences between victims exist mainly in the way they actually experience the process, but not according to the crime or vulnerability of the victim (Bolivar, 2012).

Post-VD RJ-related projects and resources



- “Accessibility and initiation of restorative justice”(2013-2014);
- “IVOR project: Implementing victim-oriented reform of the criminal justice system in the European Union” (2014-2016);
- “Restorative justice in Europe: safeguarding victims and empowering professionals”(2012–2014)

- “Restorative Justice at Post Sentencing level; Supporting and Protecting Victims”(2013-2014);
- “Building Bridges” (2014 – 2015);
- “ECOR – European Communities of Restoration in prisons and as alternatives to detention” (2014-2016).
- “Alternatives to detention”...etc.

- “Developing integrated responses to sexual violence: An interdisciplinary research project on the potential of restorative justice”(2013-2015);
- “Victims and corporations” (2016-2017);
- “Implementing RJ with child victims” (2017-2018).
- “Victims of Road Traffic Offences”...etc.

- Dünkel, F., Grzywa-Holten, and Hosfield, P. (2015). *Restorative justice and mediation in penal matters: A stock of legal issues, implementation strategies and outcomes in 36 European countries (vol. 1 and vol. 2)* Monchengladbach: Forum Verslag Godesberg.

Brief survey

“Breakthrough” and opportunities

- No breakthrough for RJ avant garde countries (Belgium, Finland, Austria...)
- New legislation passed, submitted, or in process- and improved or updated existing legislation (**France**, Spain, Malta, UK, Luxembourg, Poland, Hungary, Romania, **The Netherlands**, Croatia...)
- Increased attention for RJ (The Netherlands, France, Bulgaria...)
- Increased cooperation with Victim Support (Spain, Belgium, Austria, France)
- Increased attention for the victim (UK, The Netherlands...)
- Applying RJ at different stages and levels (The Netherlands)
- Training, workshops, seminars, working groups (The Netherlands, Bulgaria, Belgium, Spain)
- Funding (The Netherlands)
- “Agreement may be taken into account in any further criminal proceedings” (Poland, discontinuation at the request of the victim?)
- National statistics on RJ expanded according to VD (Germany), November 2017 important!
- Supervising agreements (Latvia, Norway’s experience controversial?)
- Overall increased awareness and information about RJ (all countries)

Brief survey Challenges

- Legislation/acts passed without funding, and lack of funding in general for RJ
- Focus on the ‘protection’ of victims, and primary focus on victims (ignoring the triangle)
- Lack of political commitment and punitive public opinion
- Biased and sceptical criminal justice system and practitioners to give information of RJ (awareness and attitude)
- Lack of trust and lack of cooperation between different practitioners, and perhaps competition in the RJ field instead of cooperation
- Statistics and effective systems for data collection
- Major differences in RJ training (vagueness and little transparency)
- Assessment tools increasing?
- Victims not in contact with CJS?

Brief survey

Future directions

- Research on RJ and vulnerable groups and evaluation tools
- Mandatory and minimum binding standards for RJ
- National and international standardised and best practice training
- Coherence of national and international regulations and policies (RJ and gendered violence?)
- Training of CJS and VS on RJ
- Exchange of best practices, mentor-mentee country exchange, cooperation in European projects
- Separate directive or supranational instrument on RJ?

EFRJ is currently in the process of drafting a *Position Paper* with policy recommendations for MS and the EC, so all comments and suggestions are welcomed!

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Thank you for your attention!