



THE IDEA OF RESTORATIVE JUSTICE AND HOW IT DEVELOPED IN EUROPE

This article gives an overview of how contemporary restorative practices emerged in Europe. It discusses the roots of concept, sheds light on the key development in different European countries and regions, discusses the development of different legal frameworks for the application of restorative justice services. Finally it also explores the current situation. The article was written by Ivo Aertsen for [our website](#).

The roots of restorative justice concepts

The idea of responding to crime by making good on it by direct participation of those involved, is not new. Every society is continuously looking for better ways on how to deal with incidents and harmful behaviour amongst its members, without imposing additional harm or polarising people. It is a permanent quest by communities to learn coping with crime and injustices in a peaceful and rightful way, and to balance the needs for justice and redress towards all parties. This is indeed the idea of 'doing justice', not by exercising revenge or retaliation or inflicting more pain, but by involving all stakeholders – victims, offenders, their families, community members, and professional actors and institutions – in a process of dialogue where the incident and the harm caused can be discussed and its consequences fully understood. It is through carefully crafted spaces in 'mediation', 'conferencing' or 'circles', that such dialogue can take place in a safe way and that solutions can be agreed on to repair the harm in its material, relational and social dimensions. This is, in a nutshell, the idea of 'restorative justice'.

This old and self-evident idea of restorative justice has again appeared in the foreground during last decades. Our criminal justice systems, through their strong focus on bureaucratic and retribution oriented justice processes, have moved away from the idea



and ability of reacting to crime through participation and reparation as its first goals. Towards the end of the 20th century, criminal justice systems were fundamentally criticised because of their lack of attention for victims and their limited potential to make offenders act in a responsible way. Criminal justice systems in most of our countries became self-confirming mechanisms without real connection to the life-world of people and without effective means to control crime in society. As an answer, restorative justice aims at improving our justice systems by its inclusionary and participatory approach, in particular by re-valourising the role victims and offenders can play with the help of their communities and institutions.

At the beginning of the 21st century, restorative justice has become a worldwide movement. In some regions, initial developments have been inspired by cultures and practices of aboriginal communities. Often practitioners and academics in the field of criminal justice played a pioneer role as well, driven by professional experiences or theoretical insights. Because of this diversity, restorative justice appears in different forms and has adopted a variation in its [definitions](#). However, at its core, restorative justice practices share the same fundamental [values and principles](#).

Different models adopted across Europe

For Europe, the recent history – or ‘re-birth’ – of restorative justice started in the 1960s–1970s. The debate on how the consequences of an offence could be faced and resolved by those immediately involved (the victim and the offender) started in the late sixties when concrete proposals for innovative projects related to conflict handling were formulated in various European countries. This was around the same time that the first



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experiments with victim–offender mediation were set up in Canada and the U.S., and from this first period both regions have clearly inspired each other.

Whereas in various Anglo–Saxon countries restorative justice mainly, but not exclusively, further developed in the form of ‘family group conferences’ or ‘community conferences’, in European countries, ‘victim–offender mediation’ (or ‘penal mediation’) became the predominant model. The present form of victim–offender mediation came into existence in the 1980s. A first pilot project was started in Norway in 1981 and Finland followed two years later. In Austria the model was called ‘out-of-court offence resolution’ and was introduced nationwide first in juvenile courts (1988) and later also in the context of criminal procedure. In England, after small-scale experiments from 1979 onwards, the government funded and researched some projects from 1985–87, but they did not expand nearly as rapidly as in Germany, which started at about the same time and counted over 400 services in the late 1990s. In France, where relevant initiatives work also began in the mid-1980s, mediation was linked from the outset with victim support, although later restorative justice also developed more explicitly as part of community sanctions to offenders. Belgium is another example of a country where, in the beginning of the 1990s, restorative justice was initiated starting from research on victims’ needs, mainly for more serious crimes. These developments in Europe – mainly in the 1980s and 1990s – make clear that restorative justice emerged differently in various environments, depending on the institutional context where projects were set up: from an offender or probation oriented perspective (Austria, England, Germany), from a victim support perspective (France and Belgium) or from a more neutral and local governmental perspective (Norway, Finland). Later on, as we will see, other countries completed this varied European landscape.

Initially, victim–offender mediation in Europe showed a rather slow development, and the same applies for restorative justice in general. Although experiments were deemed

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positive, not least by the victims and offenders involved, the movement did not immediately receive widespread support. The approach was very new within the culture of legal professionals and criminal justice policy makers. In most countries more than a whole decade had to pass in order to develop a practice of some significance. The creation of a legal framework in various countries provided an important impetus, but did initially not always cause the hoped for breakthrough. Although the number of cases dealt with through mediation remained modest, from a qualitative point of view however, many small-scale experiments and national programmes provided conclusive evidence that this way of responding to crime indicated a strong innovative potential.

Towards the end of the 1990s, the number of mediation programmes and the amount of cases dealt with on an annual basis had grown steadily. Besides the European countries already mentioned, other jurisdictions started programmes in the meantime. Northern Ireland became an example of how a conference model could become mainstream in the juvenile justice system, while also Scotland and Ireland started innovative programmes in the 1990s. The same applies to Poland, with important legislative initiatives in the same period, both in adult criminal law and juvenile justice. Also the Czech Republic adopted a model of mediation, inspired by its Austrian neighbour. Albania developed a community oriented model of conflict resolution from the early days in the 1990s. Denmark, Sweden and the Baltic states followed in a somewhat less assertive way, which has also been observed in some Central and East European countries including Switzerland, Slovenia, Slovakia, Hungary, Bulgaria, Romania and Turkey. A special position has been taken by several South European countries such as Portugal, Spain, Italy, Croatia and Greece, where innovative and creative projects have been started at the local level but which were often slowed down by a lack of legislative basis or national policies. Finally, after 2010, countries as The Netherlands have strongly expanded their restorative justice programmes and policies, whereas more recently East European countries including

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Georgia have implemented programmes and adopted legislation in the field of restorative justice. For the time being, there seem to be more isolated initiatives in countries such as Ukraine, Belarus, Moldova and Russia, although regional cooperation in this part of Europe now becomes effective as well.

International Legal Background

Of great importance for the development and implementation of restorative justice in Europe has been the work of the Council of Europe and the European Union. As the United Nations adopted its United Nations Economic and Social Council (ECOSOC) Resolutions on restorative justice in 2000 and 2002, the Council of Europe published its Recommendation on Mediation in Penal Matters in 1999. The latter contained the basic principles on how mediation (and restorative justice in general) can be organised and offered in a proper way. While this Recommendation (and a series of related Council of Europe Recommendations) helped various countries in Europe to build a sound practice of victim-offender mediation both in juvenile justice and adult criminal law, the Council of Europe also supported the development of mediation in some countries by offering training for legal professionals and other practitioners. More recently, the revised Council of Europe Recommendation (CM/Rec(2018)8) concerning restorative justice in criminal matters, besides providing a definition of 'restorative justice', elaborates in more detail the general and basic principles for restorative justice practice while also explaining how restorative principles can be integrated within the daily work of criminal justice staff and agencies.

At the level of the European Union, two legal instruments were adopted to support victims' rights and victim policies throughout Europe in general, and wherein also



mediation and restorative justice, serving the needs of victims, are promoted: Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings, and Directive 2012/29/EU of the European Parliament and Council establishing minimum standards on the rights, support and protection of victims of crime. It goes without saying that these binding legal initiatives have pushed various EU member states to adopt legislation on restorative justice. In 2020, nearly each member state of the EU has adopted a legal basis for restorative justice, be it in varied ways.

The situation today

Restorative justice has now become a well-founded practice in a good number of European countries. In some places volunteers play an important role as facilitators in daily restorative practice, whereas in other countries the intervention is highly professionalised. Diversity is equally shown in the type of relationship that the restorative justice programmes have with the criminal justice system: from exclusively system-based to primarily community based. The practice – contrary to common belief – does not in any way remain limited to property or less serious offences. Although the focus of restorative justice in some European countries is still predominantly on juveniles, the application in general criminal law is gaining more and more acceptance. Restorative justice experiences in the successive stages of the criminal justice process, also after sentencing, is are growing. The latter refers to the increasing trend of supporting victims' rights and promoting restitution and redress as eminent principles of criminal justice in general. At the same time, efforts are made in many countries to improve or restore the relationship between civil society and the justice system, and therefore it is of utmost importance that restorative justice practices are well embedded in society at large, that they can operate according to its own principles and values, and that they can contribute



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to realising social justice. In more and more countries, restorative justice programmes affiliate with restorative practices in schools, neighbourhoods, work places and other environments. These are unique settings where all kinds of disputes, tension and confrontation between people offer fertile soil to learn how to look at conflict in different ways and how to acquire new skills to respond as responsible citizens in democratic societies.

Both research and practice convincingly demonstrate the added value of restorative justice. Mediation, conferences and circles do support victims, offenders and communities in 'doing justice' in a more effective and humane way. However, this is only true if the principles of restorative justice are respected and the process adheres to high practice standards. In the future, more expertise has to be developed in understanding which factors make restorative practice effective – or less effective – in certain cases. Other important challenges are to remedy the under-use of restorative justice opportunities in various countries and to expand the field of application to less conventional types of crime and injustices.

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