



EUROPEAN FORUM FOR RESTORATIVE JUSTICE

Connecting People to Restore Just Relations

European Forum for Restorative Justice¹ Comments on the EU Strategy on victims' rights (2020-2024)

The European Forum for Restorative Justice (EFRJ) supports the new EU strategy on victims' rights and its roadmap, and hereinafter presents its comments.

1. What is restorative justice?

"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."
(EU Victims' Rights Directive, Directive 2012/29/EU)

Restorative Justice (RJ) is an evolving approach oriented towards repairing, as far as possible, the harm caused by crime or other transgressions. Active participation by the victim, the offender and possibly other parties (the community) is a core element of restorative justice, with voluntary participation based on informed consent. Restorative justice practices such as victim-offender mediation, conferencing and circles are used in Europe and beyond to bring together people who experience harm in society, the justice system, organisations, schools or families. Involved parties engage in a respectful, facilitated dialogue over specific question, mostly about the harm, responsibility and restoration. In the last decade restorative justice has been advanced by various international documents:

- The **EU** Victim's Rights Directive 2012/29/EU has provided restorative justice in Europe with a more solid position and a clear victim orientation, while also in other parts of the world victims' rights have increased.
- The new **Council of Europe** Recommendation (Recommendation CM/Rec (2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters), adopted on 3 October 2018 reflects new developments and a broader concept of restorative justice approaches.
- Following the adoption of the **UN** Basic Principles on the use of restorative justice programmes in criminal matters in 2002, a new Resolution 2016/17 was adopted by the Economic and Social Council on 26 July 2016 on 'Restorative justice in criminal matters', completed by Resolution 27/6 (2018) by the Commission of Crime Prevention and Criminal Justice on 'restorative justice'.

¹ **The European Forum for Restorative Justice (EFRJ)** is the leading European network for supporting the development of restorative justice in Europe. Founded in 2000 at the KU Leuven Institute of Criminology, the EFRJ is a membership organization that currently comprises around 500 members (either individual or organisational), from Europe and beyond. The EFRJ brings together researchers, practitioners and policy makers interested in restorative justice, with the aim of helping to establish and develop victim-offender mediation and other restorative justice practices. The EFRJ focuses mainly on the application of restorative justice to criminal matters, but pays attention to other areas, such as family, school and community mediation. The EFRJ is collaborating with other European networks, such as Victim Support Europe (VSE), and is part of the Criminal Justice Platform Europe (CJPE) together with other two organisations, Europris and CEP (Confederation of European Probation).





2. Why Restorative Justice matters in the field of Victims' Right

- **Research findings on Restorative Justice and Victims' Rights**

The research on restorative justice shows considerable evidence about its effectiveness for victims².

Victims want to participate in restorative justice

Some victims want to meet those who have offended against them for many reasons such as to ask questions, to seek reparation and to advance their healing process. In some cases victims hope that they can prevent reoffending and act to reach a safer society.

Victims and offenders have a much more satisfactory experience of justice.

By giving victims the choice to decide about participating in restorative justice processes, restorative justice advances procedural justice and empowers victims. Restorative processes engage the participation of victims and perpetrators more effectively than the traditional justice system. Victims' needs and interests are taken into consideration throughout the whole process. Restorative justice is more successful in increasing offender compliance with restitution when compared to more traditional criminal justice processes and enabling apologies to the victims.

Restorative processes improve closure and healing for victims

Studies consistently state that restorative processes achieve at least 85% satisfaction among victims and reduce the fear of further harm to the victim. Meeting with the offender has been shown to reduce post-traumatic stress symptoms in victims.

Restorative justice saves money

Restorative justice reduces the costs of the criminal justice process and of reconviction. Victim-offender mediation takes a third of the time needed for non-mediated cases. Restorative justice can have long-term health benefits and can reduce (public) health costs since they have been found to reduce post-traumatic stress or other psycho-somatic symptoms.

Restorative justice increases public safety

Research has found that restorative justice is more successful in improving victim and offender satisfaction, decreasing recidivism of offenders and increasing offender compliance with restitution when compared to other traditional criminal justice processes. Studies confirm that restorative justice stimulates desistance from offending. This is due to feelings of remorse, to the non-stigmatising nature of the process, to feelings of being involved in decision making, to agreeing with the outcome and to meeting and apologising to the victim.

² [European Forum for Restorative Justice. \(2017\). Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe.](#) European Forum for Restorative Justice. Leuven. Belgium. Retrievable on www.euforumrj.org





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- **Restorative Justice and Victims' Needs³**

Among the five broad categories of victims' needs recognised by the EC ("*Protecting victims' rights*", click [here](#) for more information) restorative justice is acknowledged as a form of compensation/restoration. Indeed, agreements concluded in the restorative justice process comprise often monetary, material or other compensation of victims by the perpetrators. These agreements are fulfilled by offenders in a higher percentage than court ordered compensation.

Nevertheless, as explained above, research based evidence shows that restorative justice goes much beyond of financial compensation and addresses all five categories of victims' needs, namely: respectful treatment and recognition as victims; protection from retaliation and further harm; support of longer-term psychological benefits; access to justice and participation; and, as already mentioned, compensation and restoration.

- **Restorative Justice in the recently adopted reports in the area of victims' rights (Milquet report, FRA, VSE)**

The EFRJ highly welcomes the paradigm shift from compensation to reparation proposed in the **Milquet report "Strengthening victims' rights: from compensation to reparation"**, which embraces a holistic approach that recognises "in kind" compensation, such as recognition, restitution, support and care, as valuable reparations to support victims to cope with the harm caused by crime. Since repairing the harm caused by a crime lies at the core of restorative justice, the EFRJ welcomes that in this new frame of reparation, the Special Adviser recommends restorative justice "to enhance victim's re-adaptation to society and act as a form of offender compensation" and that a legislative change or recommendation is proposed in this regard (Recommendation N°33).

The above mentioned recommendation proposes to limit the use of restorative justice to less severe offences. In this regard the EFRJ would like to point out that experiences in the field, as well as research findings show us that restorative justice is particularly effective in serious crimes. Indeed, the CoE Recommendation CM/Rec (2018)8 affirms that restorative justice should be a generally accessible service meaning that its availability should not be contingent exclusively on the type of offence. Excluding the right of victims to participate in restorative justice in case of more severe crime could create secondary victimization at a systemic level. In these cases, restorative justice practices would be offered and supported not as a diversionary measure, but parallel or following the criminal justice procedure.

Part of the reparation process endorsed by restorative justice is the opportunity given to the victim to participate in the process designed to address the harm suffered. Thus, restorative justice is addressing one of the key recommendations of the **Fundamental Rights Agency (FRA) report "Justice for victims of violent crime"**, namely to give victims a prominent and active role in the proceeding. Moreover, restorative justice practices, such as victim-offender mediation, provide victims with a safe space to express their experience and feelings and, again, as envisaged by FRA reports, give victims a voice. They can describe what happened to them and the effects it had on their lives. They can ask the perpetrator questions

³ Also see in Annex: European Forum for Restorative Justice. *Infographic on Restorative Justice for Victims*





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that are important to them. In many cases the sad reality is that the perpetrator of the harm is the only one who can answer the victim's most important questions. This leads to greater victim satisfaction and facilitates the healing process. Consequently, the EFRJ fully supports FRA's argument that brings at the fore the importance of the recognition of the victim as an active actor of the justice process and would like to highlight the contribution that restorative justice can provide to achieve this scope.

In order to ensure the above mentioned benefits of restorative justice it is of utmost importance to underline that high quality standards in delivering restorative justice services are needed. Moreover, delivery standards which regulate the restorative justice procedures and their quality are the premises to ensure the right of safeguards foreseen in the EU Victims' Directive. As pointed out in the **Victim Support Europe report "Vociare"**, restorative justice definitions and regulations vary considerably among EU MSs and there is a general lack of knowledge about restorative justice both among professionals and victims. A lack of a legal framework on restorative justice in some MSs has, as a consequence, a lack of regulation that makes it unclear which safeguards are in practice in the delivery of restorative justice services.

• Restorative Justice in the EU Victims' Directive⁴

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereinafter, Victims' Directive) introduces restorative justice mainly through recital 46, article 2.1.d, article 4j (right to receive information from the first contact with a competent authority), and article 12 (right to safeguards in the context of restorative justice services). The Victims' Directive recognizes, on the one hand, the benefits of restorative justice for victims of crime, and, on the other hand, focuses on important safeguards to prevent secondary and repeated victimisation.

In particular, art. 12 of the Victims' Directive on the right to safeguards in the context of restorative justice services calls MSs to "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". On this regard, it is necessary to consider that EU MSs show very different levels of development of restorative justice laws and quality in the national services. In this sense, comprehensive guidelines at the European level that provide clear and harmonised indications on values and standards of restorative justice practices, and that provide guidelines on national coordination, training needs, data collection are needed in order to guarantee safeguards, as well as high quality services. The EFRJ is currently working on a template to support member states to implement standards of practice which would result in high quality experiences of justice for victims and perpetrators who participate in restorative processes.

⁴ Further reading and resources:

- [European Forum for Restorative Justice. Briefing Paper about the Regulation of Restorative Justice in the Directive 2012/29/EU](http://www.euforumrj.org). Retrievable on www.euforumrj.org
- [European Forum for Restorative Justice. Survey report: Restorative Justice in The Victims' Directive](http://www.euforumrj.org). Retrievable on www.euforumrj.org
- [European Forum for Restorative Justice. Practice Guide for Restorative Justice Services: The Victims' Directive: Challenges and Opportunities for Restorative Justice](http://www.euforumrj.org). Retrievable on www.euforumrj.org
- UN ECOSOC (2018) Report of the Secretary-General on the Outcome of the expert group meeting on restorative justice in criminal matters ([E/CN.15/2018/13](https://www.un.org/News/Press/docs/2018/13/E/CN.15/2018/13))





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It is equally important to mention the Victims' Directive article 25 that states that restorative justice practitioners should receive training tailored towards observing professional standards to ensure that restorative justice services are provided in an impartial, respectful and professional manner. To promote the effective application of this provision of the VD, the EFRJ is engaged in an EU funded training project on restorative justice that targets judges and prosecutors (Re-Justice) and, as part of its regular activities, the EFRJ works to strengthen RJ standards of practice as well as to provide a platform for continuous professional development in the field.

3. Restorative Justice approaches to specific categories of victims

The EFRJ welcomes that the new strategy on victims' rights gives particular attention to some categories of victims considered particularly vulnerable. In this regard we would like to illustrate restorative justice approaches addressing the rights of particular vulnerable victims.

Restorative justice has been used to address harm in many different settings, including justice, security, peacebuilding and community life. In the criminal justice, restorative justice processes addressing **serious harm** have proven to be more successful than with less serious property crime in relation to both victim recovery and offender recidivism. For this reason, access to restorative justice should be granted to any type of crime, with the unique condition of the voluntariness of the parties to participate in a respectful dialogue and of the training of restorative justice practitioners for providing a skillful preparation and facilitation of the process. Special training of restorative justice practitioners and a certain experience is especially important when providing services in the cases below. Specialist training in restorative responses to serious harm should include an understanding of the power and control dynamics inherent in such harm and of trauma-informed practice.

• Restorative Justice and child victims⁵

Restorative justice, which in many countries has its roots in child justice, can also include child victims in the process. Restorative justice could be the preferred way to deal with peer violence or conflicts between children. Indeed, without meaningful participation by children in their justice process, healing processes may be delayed or frozen. In all cases involving children in the restorative process, even more than in all cases, adequate preparation, support, process facilitation and follow-up are needed. Restorative justice must be conceived and implemented based on specific needs and rights of children, for example by using creative child-friendly communication tools to encourage children to share their feelings and stories, by including adults in their support and by considering power-imbalances and other dynamics to prevent further victimisation. The most important phase is the preparation, where trained mediators or facilitators must identify the needs of the child, evaluate the motivations and his/her development, and assess his/her suitability to engage in a restorative justice encounter. The EFRJ has been involved in an EU funded project coordinated by the International Juvenile Justice Observatory that focused on the implementation of

⁵ Further readings and resources

- [International Juvenile Justice Observatory \(2018\). Practical Guide: Implementing Restorative Justice with Children. Brussels.](http://www.oijj.org/en/implementingrj-guide) Retrieval on: <http://www.oijj.org/en/implementingrj-guide>.
- Gal, T. (2011). Child Victims and Restorative Justice: A Needs-Rights Model. Oxford University Press
- Wolthuis, A. & Chapman, T. (eds) (forthcoming in 2020) Criminal behaviour, Restorative Justice and Children's Rights, The Hague: Eleven Publishers.





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restorative justice with child victims. For more information, please see the [practical guide developed in the frame of the project \(2018\)](#). By proposing concrete recommendations on how to involve children in restorative justice processes, the aim of the guide is to assist EU countries in promoting and implementing good standards in the application of restorative justice where children are the main stakeholders.

- **Restorative Justice and victims of terrorism⁶**

In recent years, some unique restorative justice experiences have been implemented as a response to (domestic) terrorism (in the Basque Country, Italy and Northern Ireland), also as a strategy to prevent further violence to occur and to create a safe space for memory and for diverse truths to be shared. Also in these cases, facilitators must be well prepared in evaluating the suitability of the parties to meet (e.g. ideologies, individual roles, group dynamics), understanding the different levels of harm, victimization and trauma (individual, collective and social levels), assessing a sort of “transformation” in the perpetrator’s justification of the harm (especially the objectification of victims) and creating a different response to restore the collective feelings of injustice and insecurity, which goes beyond the actual act of terrorism.

A key point to address the harm and suffering caused by the terrorist act is to design and facilitate a victim-initiated restorative justice process. Indeed, victims may experience relief from receiving the answers to the questions that have tormented them for years (e.g. Why did you kill my loved one? How can you justify causing so much suffering? How did he/she die?), appreciate the opportunity to face the perpetrator with courage and explain the impact of the act, and have the occasion to “change the memory” of the event from being a passive victim to an active agent.

The EFRJ started to collaborate recently with two working groups of the RAN – Radicalisation Awareness Network (EXIT and RVT) to explore existing practices and potentials of restorative justice regarding victims of extremist violence and disengagement from the radicalized group. For some first recommendations, please see the [publication by RAN from 2019](#).

⁶ Further readings and resources:

- [European Forum for Restorative Justice. \(2020\). Thematic brief on Restorative Justice and violent extremism.](#)
 - Bertagna, G., Ceretti, A., & Mazzucato, C. eds. (2015). *Il libro dell'incontro Vittime e responsabili della lotta armata a confronto*. Milan: Il Saggiatore.
 - Chapman, T., Campbell, H., Wilson, D., & McCreedy, P. (2018). *Working across Frontiers: community based restorative justice in Northern Ireland*. In Vanfraechem, I. & Aertsen, I. (2018). *Action Research in Criminal Justice: Restorative Justice Approaches in Intercultural Settings*. Routledge.
 - Pascual Rodriguez, E. ed. (2013). *Los Ojos Del Otro: Encuentros restaurativos entre víctimas y ex miembros de ETA*. Santander: Sal Terrae.
 - Ragazzi, M. (2016). *Restorative Justice and Political Violence in Democratic Societies: Book review*. Retrievable on www.ragazziconsulting.com
 - Radicalisation Awareness Network. (2019). *The role of restorative justice in preventing and responding to violent extremism*. Retrievable on: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-wedo/networks/radicalisation_awareness_network/ran-papers/docs/ran_rvt-exit_role_of_restorative_justice_dublin_3-4_122019_en.pdf
- Varona Martínez, G. (2017). Chapter 14: *Restorative processes in the context of eta terrorist victimisations*. In Quintero Olivares, G., et al, *Terrorism in Spain: procedural approach* (pp. 407-427).





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- **Restorative Justice and gender-based violence⁷**

An important response to gender-based violence is to support victims to change the perception of oneself after the crime, to regain the lost power, and to feel safe by discouraging the offender from committing further violence and harm. The criminal justice system often fails to address these needs, because gender-based violence is often not even reported to the police (e.g. in cases of intrafamilial violence, victims prefer to keep silent about the situation) and because it fails to address the different layers and stories inherent within a systematic and long-term problem by responding to a single act of violence.

The benefits of restorative justice in gender-based violence cases are in general not very different from restorative justice in other cases: participation, safe environment for dialogue, possibility to express one's experience and story and being heard, and agree on reparation for the harm caused or suffered or on other measures protecting the victim. Restorative justice offers victims the chance to reclaim their voice, not as a victim but as a survivor, and challenge the negative perception of themselves and creating a new, positive one. Also, restorative justice can support desistance from crime, encouraging a genuine acceptance of accountability, sincere expression of remorse and a personal journey or transformation. In the design and implementation of a restorative justice process, it is crucial to ensure the safety of victims (and all other parties involved) as a primary goal, where victims' interests are not marginalized and the perpetrators do not minimize their responsibilities. Restorative justice can be also beneficial in cases, where victims do not wish or can not completely cease the relationship with the offender in the future.

Conclusions and Recommendation

With regard to the main objective and to build on the main priorities of the new strategy on victim's rights identified by the European Commission, the EFRJ would like to recommend taking into consideration the potential of restorative justice, in particular:

- The contribution of restorative justice to the **empowering of victims of crime**

The victims' needs of recognition and for understanding are more easily met thanks to their greater involvement in the justice process. Restorative justice services give victims the opportunity to participate, to voice their experiences and questions and support their healing process and empowerment by assisting the transformation from passive victim to an active agent.

⁷ Further readings and resources:

- Hudson, B. (2000). *Restorative justice and gendered violence: Diversion or effective justice?* British Journal of Criminology 42(3), 616-34.
- Mercer, V., Sten Madsen, K., Keenan, M., & Zinsstag, E. (2015). *Sexual violence and restorative justice: A practice guide*. KU Leuven Institute of Criminology, Belgium.
- Pali, B. & Sten Madsen, K. (2011). *Dangerous liaisons? A feminist and restorative approach to sexual assault*. Temida, 14(1) 49-65.
- Zinsstag, E. & Keenan, M. (eds.) (2017). *Sexual violence and restorative justice: legal, social and therapeutical dimensions*. London: Routledge.
- Keenan, M. & Zinsstag, E. (forthcoming 2020). Working title: *When victims want to meet offenders: An international study on restorative practices for sexual violence*. Oxford University Press





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- The contribution of restorative justice in **improving support for the most vulnerable victims**

The benefits of restorative justice are particularly significant in serious cases and address and empower also victims who experience certain vulnerabilities. Specific approaches and expertise have been developed to address specificities of the crimes, the harm caused and the vulnerability of the victim.

- The contribution of restorative justice in **facilitating victims' access to compensation**

Restorative justice can play a prominent role in fostering the right to reparation for victims. Repairing the harm caused by a crime lies at the core of restorative justice. It is fundamental to stress that restorative justice is not merely about monetary compensation, but should be seen as part of the holistic and broader approach to reparations (so called compensation "in kind" as envisaged by the Special Advisor).

- The need to **strengthen cooperation and coordination** between the relevant bodies/authorities

Even in cases when restorative justice has a legal framework and available and high quality services in a MS, access to restorative justice for victims based on an informed consent is dependent on various professionals. In this regard training the judiciary (judges, prosecutors, police, victim support, prison and probation officers) on victim awareness and restorative justice is crucial. Collaboration between referral bodies, courts and restorative justice services is key and should be strengthened.

Research has shown that the potential benefits of restorative justice depend on the availability, accessibility and quality of restorative justice services. Thus, the EFRJ helps to establish and develop restorative justice practices in Europe (and beyond) having two major scopes: that every person in Europe should have the right of access to restorative justice services and that these services should be of high quality standards. Hence, in order to further develop restorative justice in the framework of victims' rights:

- an **EU comprehensive act** on restorative justice could definitely support MSs to better define restorative justice services, to increase the accessibility to these services and to guarantee higher quality and standard of restorative justice services. A uniform EU policy could, on the one hand, raise awareness on the benefits of restorative justice for the victims and increase their access to the services, on the other hand, support the implementation of the safeguards envisaged by art. 12 of the Victims' Rights Directive. Please, note that, even if narrowed in the frame of victims' compensation/reparation, the Special Adviser in her report proposes a legislative change or recommendation concerning restorative justice (Recommendation n° 33, Milquet report Strengthening victims' rights: from compensation to reparation).
- The lack of a standard regarding **training of restorative justice** practitioners, in general, and of the judiciary, in particular, is a major obstacle in understanding restorative justice and further implementing these practices in all MSs. This is the reason why we are developing our training offer as well as exploring opportunities to link our trainings with EU promoted training provisions such as the European Judicial Training Programme. The EFRJ would welcome further support from the EC for these initiatives.

Leuven, 02/04/2020





HOW IS Restorative Justice FOR VICTIMS?

What is it?

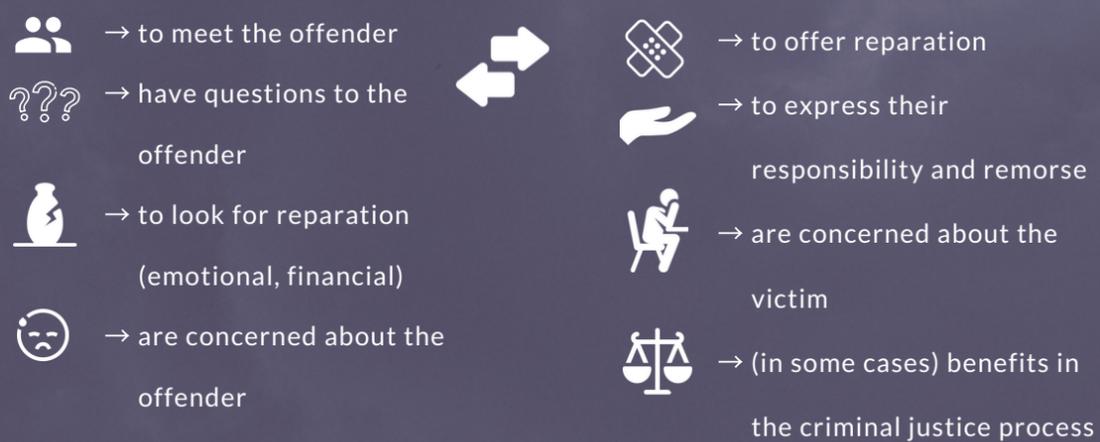
RESTORATIVE JUSTICE

"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."

(Council of Europe Recommendation, 2018)

Motivations to participate

Why do VICTIMS OFFENDERS choose to participate?



What is it like for victims?

THE RESTORATIVE JUSTICE PROCESS

- feeling of involvement and empowerment
- fair process
- apology or other symbolic reparation can be more essential than material compensation
- faster than the traditional justice system
- financially attractive (lower judicial and medical costs)

The outcomes

OF RESTORATIVE JUSTICE PRACTICES



Resources AND FURTHER READING

This leaflet was created by the European Forum for Restorative Justice. The information is based on research evidence. Further reading and resources: [European Forum for Restorative Justice. \(2017\). Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe. Leuven: European Forum for Restorative Justice.](#)