



COUNCIL OF EUROPE RECOMMENDATION 2018 CONCERNING RESTORATIVE JUSTICE IN CRIMINAL MATTERS

A BRIEFING FOR EUROPE

Restorative justice is an inclusive and participative approach to justice which has been shown to help victims recover from crime, reduce reoffending and save public resources.¹ It also encompasses a set of principles which governments can use to reframe, reform and modernise their criminal justice systems. As the use of restorative justice in criminal justice continues to grow across and beyond Europe, it is important that governments are supported in their efforts to ensure that all victims and offenders have access to its well-evidenced benefits.

On October 3rd 2018, the Council of Europe published the new Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters. This Recommendation and its commentary outline several ways in which governments and criminal justice agencies can utilise restorative justice principles and practices to help maximise the effectiveness of their victim and offender interventions, meet international justice standards and change systemic and institutional cultures. The Recommendation is by far the most forward-thinking and sophisticated international legal instrument in this field: it calls for all victims and offenders to have access to a restorative justice process and argues for cultural change towards a more restorative approach to crime and criminal justice at all levels of policy and practice.

This briefing aims to raise awareness of the Recommendation among governments, criminal justice agencies and civil society across Europe and to inspire the further development of restorative justice in European criminal justice systems.

What is restorative justice?

Restorative justice is an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.

The Recommendation defines restorative justice as:

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. (Rule 3)

¹ See, for example, Shapland, J., Robinson, G. & Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. Oxford: Routledge; Strang, H. et al. (2013). *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*, Oslo: The Campbell Collaboration; Sherman, L. et al. (2015). Twelve experiments in restorative justice: The Jerry Lee program of randomized trials of restorative justice conferences. *Journal of Experimental Criminology*, 11(4), pp. 501-540; [European Forum for Restorative Justice Research Summary \(2018\)](#). *Effectiveness of restorative justice practices. An overview of empirical research on restorative justice practices in Europe*.





It notes that this usually takes the form of a dialogue between a victim, offender and other persons who may have been affected by a crime (Rule 4). In some countries in Europe – such as Finland, Norway and Belgium – this process is available to many, if not necessarily all, victims and offenders. In many countries, however, research and published figures² indicate that most victims and offenders are still not offered the opportunity to engage in dialogue – the most effective form of restorative justice for reducing reoffending and supporting victim recovery. The Recommendation then explains how restorative principles can help underpin a broader cultural change in criminal justice (Rules 8, 13 and 14) and inform the design and delivery of a wider array of practices and interventions, both within (Rule 59) and beyond (Rules 60 and 61) the criminal procedure.

What else does the Recommendation say?

The Recommendation provides evidence-based standards for implementing and delivering restorative justice in practice. It describes how legislation and policy can be used to promote restorative justice and ensure that it is delivered safely and effectively (Rules 21-24). It asserts that restorative justice should be 'a generally available service', meaning that its availability should not be contingent exclusively on the victim's location, the type of offence, the offender's age or the stage of the criminal justice process (Rules 6, 18, 19, 27 and 28). Restorative justice can only take place, however, with the informed consent of all parties (Rules 16, 25 and 26) and if a trained and skilled facilitator considers it to be in the best interests of all concerned (Rules 29 and 33). Further provisions are made for staff training (Rules 42-45 and 57), safe and effective facilitation processes (throughout Parts III-VI), recording practices (Rule 39) and outcome agreements (Rules 50-52). The Recommendation also specifies how restorative justice can be utilised post-sentence, including by probation services in sentence planning work, in prison adjudication processes and other contexts (Rules 58-61).

Why is the Recommendation important?

In many European countries, restorative justice services are not available to all or most victims and offenders. Even in countries which do have some provision, it is often not accessible across all parts of the country, in relation to all offences and at every stage of the criminal justice process. In practice, this means that most victims and offenders in Europe are excluded from the well-evidenced benefits of participation and are denied the information they need to decide whether or not restorative justice is right for them.

Jurisdictions across Europe are seeking to establish more comprehensive services for victims of serious crime, to improve the effectiveness of rehabilitative interventions, to enhance the credibility and quality of diversion programmes, and to change the culture of criminal justice institutions. Restorative justice can play a key role in achieving each of these goals. Government ministries with responsibility for justice can

² See, for example, Dünkel, F., Grzywa-Holten, J., Horsfield, P. (Eds.): *Restorative Justice and Mediation in Penal Matters – A stocktaking of legal issues, implementation strategies and outcomes in 36 European countries*. Mönchengladbach: Forum Verlag Godesberg,





lead or support the development of restorative justice by engaging with criminal justice agencies and community groups to pinpoint gaps in knowledge and capacity, identifying opportunities for pilots and other projects, and developing national strategies and policies on the use of restorative justice in different contexts. The publication of the new Recommendation provides an opportune moment to build on the great work to establish restorative justice as a mainstream feature of criminal justice systems by police forces, prisons, probation, youth justice and victim services, judicial authorities and NGOs across Europe.

What support is available?

The Recommendation contains a range of provisions which could help the governments, criminal justice agencies and civil society to develop pilot projects, strategies, policies, consultations or multi-agency partnerships in their jurisdictions. The European Forum for Restorative Justice (EFRJ) is an international non-governmental organisation which includes within its membership many experienced policymakers, researchers, process designers, practitioners and trainers from across Europe. It can provide governments and criminal justice agencies with advice, support and technical assistance relating to the implementation of this Recommendation.

Specifically, the EFRJ and its membership can support governments and criminal justice organisations:

- to develop strategies, policies and legal regulations for restorative justice;
- to develop standards of best practice;
- to undertake research and evaluation into best practice;
- to design restorative process guidelines adapted to local conditions;
- to design, implement and evaluate pilot projects;
- and to deliver high quality training to criminal justice practitioners and managers.

In the coming years, we will be working across Europe to assist governments and criminal justice agencies to develop restorative justice. We would be delighted to work with governments, criminal justice agencies and civil society groups in any jurisdiction to support their efforts in criminal justice reform. We have also launched the new European Restorative Justice Policy Network, composed of ministry representatives from European countries, to help create links across borders, enable the exchange of information and support the further development of restorative justice policies.

Authors: Tim Chapman, Edit Törzs, Ian Marder

Contact details: policy@euforumrj.org

Reference: European Forum for Restorative Justice (2019). Council of Europe Recommendation 2018 concerning Restorative Justice in Criminal Matters: A Briefing for Europe. Leuven, Belgium.

