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THE EFRJ CONTRIBUTES TO THE EVALUATION OF THE EU'S VICTIMS' RIGHTS DIRECTIVE WITH FEEDBACK BASED ON THE EXPERIENCES OF 18 COUNTRIES AND 45 EXPERT RESPONDENTS

The **Victims' Rights Directive** (Directive 2012/29/EU) is a key EU document determining policy priorities promoting victims' rights across the European Union. Being the first binding EU legislation on **restorative justice**, it is one of the most significant international documents concerning restorative justice and its implementation in the EU Member States. The European Commission started the evaluation process of the Directive in the second half of 2021 "to assess to what extent it has achieved its objectives in terms of its implementation and practical application in EU countries".

The **European Forum for Restorative Justice**, as the largest restorative justice network organisation in Europe is participating in this evaluation process - among other actions - by submitting a position paper to the European Commission. The position paper outlines a European perspective concerning the implementation in practice of the restorative justice provisions in the Victims' Rights Directive.

The submission is based on an extensive research process. In order to identify strengths and weaknesses relating to the implementation of these provisions at the national and the regional level, we sent a survey to selected EFRJ members and networks and received feedback from 45 experts and expert organisations from 18 countries.





THE SIGNIFICANCE OF THE VICTIMS' RIGHTS DIRECTIVE FOR RESTORATIVE JUSTICE

The Victims' Rights Directive is one of the most relevant international documents in the field of restorative justice and was, and is, instrumental for the development of legal frames of restorative justice in EU Member States. It has certainly provided restorative justice with a more solid position and a clear victim orientation in Europe. Besides acknowledging the importance of the Victims' Rights Directive for the development of restorative justice in Europe, in our position paper to the European Commission we also present some limitations or limiting effects of the Victims' Rights Directive in its current form to enable victims' rights fully regarding restorative justice.

LIMITATIONS TO ACCESSIBILITY EMERGING FROM THE CURRENT DOCUMENT

From our survey several obstacles emerge on this regard, namely:

- 1 - Lack of awareness of restorative justice of referring bodies and organisations coming into contact with victims (e.g. police, judicial authorities, victim support services).
- 2 - Lack of cooperation between restorative justice services, victim support services and other criminal justice organisations.
- 3 - Lack of information provided to victims on available Restorative justice services; low quality of information provided to victims on restorative justice.
- 4 - Lack of clear standards or minimum rules concerning safeguards for victims in Restorative justice processes.

In order to ensure the benefits of restorative justice for victims, an equal access to restorative justice services needs to be guaranteed for all victims of crime. Removing the obstacles for an effective implementation of the Victims' Rights Directive is a first step towards a greater accessibility for victims to restorative justice services.

Participating countries

45 experts and representative of expert organisations from 18 countries contributed to form the position paper of the EFRJ.

Albania, Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Ireland, Italy, Germany, Latvia, Luxembourg, Norway, Poland, Portugal, Scotland, Spain and The Netherlands.

5 - Lack of access to and lack of availability of high quality restorative justice services in all EU Member States.

6 - Lack of complaint mechanisms for victims regarding access to or experience with restorative justice processes.

7 - National legal framework (if existing) limiting access to restorative justice for victims (excluding self-referrals, setting conditions of access based on the crime or the offender's characteristics, leaving room for a wide discretion of referring bodies based on "appropriateness").





THE RECOMMENDATIONS OF THE EFRJ CONCERNING THE VICTIMS' RIGHTS DIRECTIVE

In our position paper we suggest the revision of the restorative justice related provisions of the Victims' Rights Directive concerning the issues above. In particular:

- **The definition of restorative justice** – to be more in line with the definition of the Council of Europe Recommendation and to include the participation of relevant third parties/community members.
- **The right to information about available restorative justice services** – A revised Victims' Rights Directive should acknowledge the right to information from several relevant bodies (multiple actors) and more times during the process, ensure that the information is clear and understandable for victims. Cooperation with restorative justice service providers in providing information on the process should be encouraged.
- **The right to safeguards** – to make it more balanced with the potentials and benefits for victims of restorative justice, to mention also the interests of offenders and the community, to reflect the principles of restorative justice and to define minimum standards for safe restorative justice practices (through specific guidelines). Pathways for victims to complain about a restorative justice process should be also established.
- **Referrals and accessibility** – we suggest to review the term and conditions of appropriateness, limit the criteria for excluding cases ex officio or connecting these to the effect of restorative justice to the criminal justice procedure rather than to the access to restorative justice, and suggest guidelines for referrals while creating also a right of access to restorative justice for victims (through self-referrals).
- **Training** – promote the training of the judiciary, the police and victims support on restorative justice to raise awareness and knowledge of bodies giving information or referring cases to restorative justice.
- **Cooperation** – promote the cooperation between the police, victim support, judicial authorities and restorative justice services.

Additionally, as the Victims' Rights Directive does not create any obligation for Member States either to create restorative justice services

where these are lacking and does not establish a right of access to restorative justice for victims, we would support that the revision of the Victims' Rights Directive takes into account these steps.





FURTHER RECOMMENDATIONS FOR THE EU

Beyond the revision of the Victims' Rights Directive and the actual provisions of the restorative justice in the Victims' Rights Directive, the EFRJ recommends:

(1) An EU binding act that could, firstly, guarantee the accessibility for victims (and offenders) to restorative justice services at any time and in any case and secondly could address many of the obstacles mentioned above and set minimum standards for providing safeguards.

(2) The inclusion of restorative justice in other relevant binding acts in the field of criminal justice as well as social policy area (e.g. rights of offenders to receive information, child-friendly justice, combatting hate crime, cybercrime, violent extremism, sexual and gender-based violence, environmental crime etc.).

3) Include restorative justice as a topic in EU awareness campaigns on victims' rights.

(4) Provide (financial) support to restorative justice services as foreseen by the EU Strategy on Victims' Rights.

The evaluation process of the Victims' Rights Directive promoted by the European Commission will conclude at the end of the year (approx.). The European Commission will adopt an evaluation report and based on it, it could decide to revise the Victims' Rights Directive next year (2022). The EFRJ will continue its policy engagement with the European institutions to advocate for the revision of the RJ provisions in the Victims' Rights Directive and for a right of access to restorative justice for victims and offenders.

VICTIMS' RIGHTS AND RESTORATIVE JUSTICE

The EFRJ is committed to further victims' rights in Europe and beyond.

Restorative justice processes have a great potential to empower victims and survivors of crime, and to offer them closure. There is more and more understanding of how restorative justice can serve victims of different types of harm, including serious cases. Yet, restorative justice is still not accessible widely to all victims in every country. That is why the EFRJ puts this topic at the heart of the 2021's Restorative Justice Week campaign.

The Restorative Justice Week is observed every November for eight days starting on the third Sunday of the month. It offers an exceptional opportunity to raise awareness of restorative justice, to promote its use, and to present good practices.

In 2021 the EFRJ highlights the potential of restorative justice for victims as the key theme of the Restorative Justice Week 2021 (Protect and Empower the Person Harmed). The Restorative Justice Week will take place between 21 - 28 November 2021.





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. It can be applied where people experience harm in society, in organisations, in schools, in families and in the justice system. Restorative justice is recognised and promoted by policy documents of international institutions, such as the European Union, Council of Europe and the United Nations, and it is embedded in the national legislations of several European countries. Restorative justice has demonstrated its effectiveness in addressing the underlying causes and in generating solutions to many contemporary social problems; building and repairing social relations, generating mutual understanding between antagonistic individuals or groups and strengthening personal responsibility to respect the feelings, needs and values of others.

EUROPEAN FORUM FOR RESTORATIVE JUSTICE

The European Forum for Restorative Justice is the largest European professional network on restorative justice. It counts more than 400 members, including 80 organisations, working on restorative justice practices, research and policy in Europe and beyond. Since its establishment in 2000, the organisation offers support to implement and develop restorative justice through trainings, consultancy, research, advocacy, policy developments and events. Find their publications and more information at www.euforumrj.org.

