



EUROPEAN
FORUM FOR
RESTORATIVE
JUSTICE

ACCESS TO RESTORATIVE JUSTICE

Restorative justice mechanisms provide an efficient and effective means of dealing with crime, both for the victim and the offender. Unfortunately, in terms of quantity, though their use has been increasing, these procedures are not reaching their full potential. Both international and national legislation on restorative justice has emerged in the past years, providing countries with a framework to look to as a guide for the implementation of restorative justice. Yet accessibility issues have existed for the past 20 years, hindering a greater number of cases from being dealt with through restorative justice approaches. Small numbers of referrals are being reported in many countries across Europe. Research suggests that many victims would like to attend restorative justice processes, even when they are not provided with access to such procedures and that the number of people who refuse restorative justice procedures is limited. An offer for participating in restorative justice itself may have empowering benefits for the victim.

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.

Though definitions vary, at its core restorative justice is a process whereby the parties involved in an offence collectively resolve how to deal with the aftermath of the offence and its implications for the future. One clear characteristic of the restorative justice approach is a focus on repairing the harm that resulted from the offence with a forward-looking perspective.

In practice, restorative justice adopts many models, such as victim-offender mediation, family group conferencing, sentencing circles and restorative dialogues, and both indirect (e.g., letters) and direct methods may be applied. Approaches involve a voluntary, participatory process among those involved in the offence, often including the community. Informed consent of parties is key.

Conditions that should be attained include: the offender experiencing and expressing repentance, reintegration into society, taking responsibility, promoting healing, and providing a platform for a communicative process to enhance empowerment.

Despite the positive evaluations of these forms of justice, there is a low number of cases across Europe being referred to restorative justice mechanisms.

THE REFERRAL PROCEDURE

Referring bodies may include prosecutors, police, victim support agencies, probation officers, defence attorneys, social services, judges and the parties themselves. While each country differs to an extent in its referral process, general similarities can be seen. Most notable is the large role of public prosecutors in the referral process. Some countries do have the majority of referrals being carried out by other bodies, namely the police. The referral procedure is direct in some cases, with different referral bodies sending party information to the mediation service, or the parties themselves contacting the mediation organisation. Furthermore, representatives (e.g., family members or lawyers) of the parties may approach legal authorities to request mediation. The referral bodies may assess the suitability of the case themselves, or the restorative justice service may conduct this task. At the same time, the referral procedure is sometimes more complicated, with more than one authority being involved, for example a combination of the police assessing the victim and another person assessing the offender at a different moment in time, before the case is further referred to the restorative justice programme.

WHAT ARE THE MAIN FACTORS IMPACTING ACCESS TO RESTORATIVE JUSTICE?

- Lack in the availability of restorative justice services: Having sufficient (criminal justice) resources and ensuring equal access based on ethnic background, gender, sexual orientation and geographic location, among other factors.
- Insufficient legal basis: Currently most countries do not have restorative justice legislation with clear referral guidelines and criteria. Legislation may refer to juvenile justice acts, code of criminal procedure, mediation laws or subordinate legislation such as ministerial circulars. In *mandatory legislation* models, the referring body is obligated to consider a restorative justice intervention before continuing.
- Exclusion criteria in the law: Countries have implemented their own criteria in their national legislation surrounding restorative justice and mediation bodies and victim support agencies often have their own exclusion criteria.

Examples of exclusion criteria. Type of crime (e.g., sexual violence, domestic violence, where mental instability is a concern); characteristics of the offender (e.g., previous offending); when an adult commits a crime against a juvenile; age of the offender, offense seriousness, premeditation, opinion of how cooperative the parents may be, mitigating personal and family circumstances, victim's preference to discontinue prosecution; perceptions that victim not stable enough.

- Law and order perspective: Many key referrers hold the belief that punitive measures need to be implemented or have doubts about the effectiveness of restorative justice.
- Trust in the restorative justice organisation: Both trust from the parties and from the referral bodies is crucial in order to believe restorative justice is a legitimate approach, yet this is currently lacking in many cases, often as a result of little cooperation among bodies and insufficient information.
- Awareness: There is a need for a clearer and more intelligible understanding of the law and benefits of restorative justice by criminal justice authorities, victim support agencies and the parties themselves to know about the opportunity for restorative justice.
- Collaboration: Poor collaboration among the key players, namely victim support organisations, restorative justice organisations and legal professionals must be improved in the large majority of countries.

THINK ABOUT

There is another crucial aspect to consider when encouraging accessibility to restorative justice and it concerns the issue of delivering the offer to potential participants for actually initiating restorative justice processes. When one of the referral bodies comes into contact with the victim or offender, what is the best way to inform them about the options for restorative justice?

- Adequate time for informing victim and offenders, and during the preparation phase, where all relevant information can be provided.
- The mode of delivery should include the “complete package” namely through phone, letter and face-to-face. Personal contact is key.
- Think about the context-specific words being used. Mediation, for example, is likely to intimidate victims or give them an inaccurate impression of what the process is.
- Where possible, have individuals and organisations make the offer after they are able to build trust with the parties.
- Never coerce victims or offenders into accepting the offer. It should be absolutely clear that their participation is entirely voluntary. This may have implications for the referring body – for example the prosecutor may not be considered the most unbiased.

RESOURCE KIT

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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. Its practices (such as mediation, circles, conferencing) have been offered and delivered to address harm in different conflict areas, such as justice, education, peace-building, families, organisations, and communities.

EFRJ

The European Forum for Restorative Justice (EFRJ) is the largest European professional network on restorative justice. We count more than 400 members, including 80 organisations, working on restorative justice practices, research and policy in Europe and beyond. Since our establishment in 2000, we offer support to implement and develop restorative justice through trainings, consultancy, research, advocacy, policy developments and events. Find our publications and more information on www.euforumrj.org.

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