



Editorial

Dear All,

Life seems to prepare bigger and bigger challenges for us every time. The crisis the world is facing now seems not just a temporary setback, but a global catastrophe in which the global community has yet to find solutions to cope with its consequences. Nevertheless, in times like these, when societies are divided and it is so difficult to find common ground, the need to further explore the potential of restorative justice only increases. The editors of this issue, Diāna Ziedīņa and Olga Kiseleva are excited to present the following four contributions which, hopefully, will raise some questions and initiate discussions among EFRJ members.

The first contribution breaks down one of the well-known stereotypes that is often voiced as one of the counter-arguments to the use of restorative justice in serious crime: ‘restorative justice means privatising justice’ and therefore brings chaos and reduces victims’ opportunities to defend themselves and obtain justice to zero. The authors, Eduardo Santos Itoiz, Rafael Sainz de las Rozas Bedialauneta, Jorge Ollero Perán, and Roberto Moreno Álvarez, based on the discussion that ensued after watching a film about the restorative meetings with ETA terrorists that took place in the Basque Country in Spain, show that participating in a restorative justice process does not mean avoiding a criminal response, but is rather a way of involving citizens in the articulation of an appropriate response to the crime.

With the next article, which was published back in December 2021, we would like to remind you of the prospects for restorative justice in the coming years. In the article the authors, Dr Ian Marder and Dr Petra Masopust Šachová, analyse the main objectives and provisions of the Venice Declaration, which in December 2021 was unanimously adopted and signed by Ministers of Justice of all Council of Europe countries.

The following two articles focus on the practical aspects of implementing restorative justice in domestic and intimate partner violence cases. In our view, this

is a topic that is relevant at all times. In the article, Frauke Petzold and Dr Lutz Netzig describe how restorative work in such cases is organised in Hannover, Germany ([Waage Hannover e.V.](#) has been carrying out victim-offender mediation in cases of domestic violence for over 20 years!). Next, in the interview with Diāna Ziedīņa the issue of how to work with such sensitive cases as domestic and intimate partner violence in an institution designed and focused on working with offenders (State Probation Service of Latvia) is discussed.

We hope that the topics raised in this issue will provoke a fruitful discussion and will give some food for thought to our readers. We always welcome any kind of feedback and hope to stay in touch with you!

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Restorative Justice is not the Privatisation of Justice

Since being screened at the San Sebastian Festival, the film *Maixabel* by Icíar Bollaín has been producing great interest and sparking many reactions of a very diverse nature.

On a cinematographic level, the film is being acclaimed as a great piece of artwork. However, beyond its artistic value, opinions about the true story it describes have been strongly polarised and, in some cases, openly against the restorative encounters that took place in the Basque Country. When this polarisation and criticism come because of a lack of awareness, providing more information can be positive. For this reason, we intend to clarify here some concepts related to restorative justice.

Through restorative justice, society can play a part in validating the norms resulting from a deliberative process in which the responsibility of the offenders has been effectively mobilised and the needs of the victims have been heard.

Firstly, and contrary to what has been affirmed by some writers, restorative justice does not mean privatisation of justice. As established by current legislation, this approach to justice is based on the active participation of the people affected by the crime. This process aims to promote the repair of the harm caused and the accountability and reintegration of those who have caused it. As stated in the EU Victims Rights Directive 29/2012, "the crime constitutes an injustice against society and a violation of the individual rights of the victims" (Recital 9). The protection of both values (collective and individual) must always be guaranteed. Restorative justice practices promote the reparation that the victim needs within the purpose of prevention and can contribute to adapting the proportionality of the criminal system response for those offenders that are aiming at being involved in a restorative process. Within the framework of the constructivist theories of punishment, restorative justice can be understood as part of the communicative dimension of legal systems. According to these theories, society has a voice in the enforcement of sentences and punishments and could validate the rules that bind us all. Thus, through restorative justice, society can play a part in validating the norms resulting from a deliberative process in which the responsibility of the offenders has been effectively mobilised and the needs of the victims have been heard.

In regards to terrorist crimes, the protection of collective values requires the political motivations and consequences of these crimes to be addressed through restorative processes: that is precisely what has been implemented in the case of the restorative encounters with ETA terrorists that took place in the Basque Country which Bollaín's film narrates. It is important to remember that these meetings took place as an initiative of the Basque and Spanish State public institutions that were democratically authorised to do so at that time. In other words, the meetings had both the political and collective extent that public initiatives require. In these restorative meetings, victims participated voluntarily and decided how they needed to restore the harm that had been caused to them. In that sense, there was undoubtedly a healing aspect to the encounters. Regardless, these were meetings initiated by public institutions, with an undoubtedly public intention: to heal the wounds of our community and to advance towards peace. This collective and political dimension can also be found in other restorative processes in the Basque Country (with victims of the GAL), as well as in cases of jihadist terrorism and political violence such as those in Northern Ireland or Italy (Red Brigades).

Forgiveness is not the specific objective of restorative justice.

Secondly, some of the opinions published since the premiere of the film emphasise some scepticisms towards the aspect of forgiveness of some restorative justice processes. They stress the impossibility of forgiving someone who murders a person or terrorises a society and highlights the Christian character of redemption that underlies the concept of forgiveness. In this sense, we should point out that forgiveness is not the specific objective of restorative justice. Restorative justice seeks to repair the harm caused (any kind of harm) and forgiveness is only one possible way of doing so. The collective dimension of the harm is addressed by the public policies that guarantee the victim's recognition and respect, as well as by the institutional declarations that condemn the unfair harm that has been caused. These public policies are enhanced when they work from a restorative perspective.

Participating in a restorative justice process does not mean avoiding a criminal response, but it is rather a way of involving citizens in the articulation of an appropriate response to the crime.



Courtesy of Film Factory Entertainment

It is important to understand that participating in a restorative justice process does not mean avoiding a criminal response, but it is rather a way of involving citizens in the articulation of an appropriate response to the crime. This response must be imposed by a Court or Tribunal, taking into account the public interests that the Public Prosecutor must represent, and respecting all the guarantees offered by the democratic criminal process. Restorative justice aims at promoting the reparation of the victim and the accountability of the offender through a participatory

process that can include other members of the community, always with the guarantees and endorsements of public institutions.

Restorative justice does not, therefore, mean privatisation of justice but a deepening of its collective, authentically political dimension. And it is precisely this aspect, that makes it a particularly valuable instrument to delegitimise terrorism.

Terrorism crime offenders have often the delusional idea of having exercised violence in the name of the people. Restorative justice puts the terrorist in front of these same people, the community, that will make the offender understand that their violence was meaningless and that they have committed a mistake. In doing so, restorative justice sends future generations the message that it does not accept guardianship from any armed group, nor any law other than the one that has been decided democratically.

Because of this alone, initiatives like the one of Maixabel, Lasa should deserve, beyond ideologies and partisanship, the recognition of our entire society.

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How the Venice Declaration contributes to the International Restorative Justice Framework

The Venice Declaration — what happened?

After announcing wide-ranging criminal justice reforms that incorporate restorative justice, the Italian government opted to focus on this topic for its Presidency of the Council of Europe's Committee of Ministers. In December 2021, this culminated in 40 ministerial delegations unanimously adopting the Venice Declaration on the Role of Restorative Justice in Criminal Matters. The Declaration reiterates some key elements of the Council of Europe Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters, while moving us forward in some small, but important, ways. These include provisions on service development, cultural change and higher education, and requests for the Council of Europe to take action in support of national governments.

The Declaration was developed over two sessions. First, at a preparatory meeting in Como in October 2021, senior civil servants from European justice ministries discussed how to adapt restorative justice for child perpetrators and victims, its role in supporting desistance, redress, reintegration and victim recovery, and the importance of training in implementing the 2018 Recommendation.

They expressed strong support for restorative justice, their speeches indicating a high level of consensus in relation to its evidenced benefits and its future development.

Two months later, Venice hosted the Conference of Ministers of Justice. This opened with speeches from high-level officials, including the Minister of Justice of Italy and the Council of Europe's Secretary General and President of the Parliamentary Assembly. They expressed strong support for restorative justice, their speeches indicating a high level of consensus in relation to its evidenced benefits and its future development. The Secretary General, for example, noted that 'progress on [implementing the Recommendation] has been uneven' and encouraged 'member states to look again at whether they might do more to implement [its] terms.' This set the stage for the ministers to make headway.

What was the thinking at the time?

In conversations with restorative justice advocates over 2021, concerns emerged that the Declaration risked stagnating, or even watering down, European commitments to restorative justice, considering the

highly progressive detail of the Recommendation that it sought to follow (Marder, 2020). Ultimately, however, it successfully reiterated core elements of the Recommendation — its initial paragraphs confirming that Ministers 'fully support' the Recommendation, before defining and outlining the primary benefits of restorative justice in accordance with the Recommendation's principles and provisions.

The Declaration follows the Recommendation (Rule 18) in recognising the universal application of restorative justice for all offence types ...

Moreover, the Declaration's language furthers both the spirit and content of the Recommendation in several ways. Most importantly for the development of restorative justice services, Paragraph 15 calls for governments to 'stimulate ... a wide implementation of restorative justice, its principles and methods,' both alongside and as an alternative to criminal proceedings. The Declaration follows the Recommendation (Rule 18) in recognising the universal application of restorative justice for all offence types, even remarking on 'the possible positive impact of restorative justice paths also on countering the radicalisation of individuals.' This is significant given the political sensitivity of radicalisation, and the likelihood that many would presume that restorative justice was inappropriate in this setting (see also Biffi, 2021). Through these general and specific observations, the Committee of Ministers clearly recognises that no offence type is off limits for restorative justice.

Member States, it continues, should 'develop national action plans or policies' to implement the 2018 Recommendation through 'inter-agency co-operation

nationwide [and] adequate national legislation and funding, while reflecting on the idea that a right to access to appropriate restorative justice services for all the interested parties, if they freely consent, should be a goal of the national authorities.’ The main failure of the Recommendation was that it omitted a right to restorative justice from its main text — albeit, its commentary (p. 7) notes that ‘victims and offenders should, ideally, have the right to access restorative justice.’ The Declaration uses similarly non-committal language, but the more optimistic among us can hope that its words add legitimacy to calls for such a right. That such a right would be for ‘all the interested parties, if they freely consent’ is also significant given the balance this implies, relative to suggestions that victims alone might have a right to restorative justice.

Beyond this, the Declaration further aligns the European framework with restorative justice theories and principles. For example, Paragraph 9 states: ‘restorative justice can represent an important tool for addressing conflicts arising from criminal acts and for fostering social cohesion by solving such conflicts and for looking at conflicts not as an occasion for further social divisions.’ This recognises the relationship between crime and conflict, as Nils Christie (1977) asserted.

... ‘a broader culture that should permeate the criminal justice system based on the participation of the victim and the offender on a voluntary basis, as well as other affected parties and the wider community in addressing and repairing the harm caused by crime.’

Paragraph 10 frames restorative justice as ‘a broader culture that should permeate the criminal justice system based on the participation of the victim and the offender on a voluntary basis, as well as other affected parties and the wider community in addressing and repairing the harm caused by crime.’ This builds on the Recommendation’s commentary (p. 2), which called for ‘a broader shift in criminal justice across Europe towards a more restorative culture and approach’. Similarly, the Recommendation asks that all practitioners receive training to ‘understand [restorative] principles and ... apply them in the course of their day-to-day work’ (Rule 57). It also outlines that criminal justice institutions should apply restorative principles across their work (Rule 59), use restorative processes to resolve conflicts outside the criminal procedure (Rule 60), and proactively build

and maintain relationships (Rule 61). The more that the international framework references these ideas, the more that calls for their implementation will be normalised in the eyes of domestic stakeholders.

... ‘university courses which pertain to criminology or to the administration of the criminal justice system should include restorative justice as part of their curricula.’

The Declaration also provides that restorative justice should be taught in higher education, ‘in-vit[ing] the Council of Europe to encourage and assist its member States to ... reflect on how to include the principles, methods, practices and safeguards of restorative justice in university curricula and other tertiary level education programmes for jurists.’ This builds on the commentary to Rule 57: ‘university courses which pertain to criminology or to the administration of the criminal justice system should include restorative justice as part of their curricula.’ Not only must lawyers and judges fully understand restorative justice to enable and support its use (Marder and Wexler, 2021), but their degrees might also use restorative practices to support students to reflect on the goals of their practice and develop an explicit ‘philosophy of lawyering’ (Vedananda, 2020). Academics wishing to incorporate restorative justice in their curricula should note these provisions — and join the new Restorative Justice Pedagogy Network, which organises regular workshops on the teaching of restorative justice in universities.

Finally, the Declaration asks that the Council of Europe show leadership and take action to support its member States to implement restorative justice. Paragraph 14 asserts that the Council of Europe ‘is uniquely placed to take the lead on further work in this area ... through standard-setting, monitoring and co-operation/awareness-raising activities aimed at achieving a greater unity and harmonisation between the Council of Europe member States.’ Paragraph 16 lists specific actions that the Council of Europe could lead, namely to study European laws and practice models, exchange knowledge and best practice, elaborate a set of high-level principles on restorative justice, and assess the implementation of the 2018 Recommendation. The resourcing of the Council of Europe to instigate these actions would create a fantastic opportunity for cross-European collaboration on policy and service development.

What needs to happen next?

The Declaration coincides with a rapidly evolving international framework, and with many jurisdictions (including Ireland, Scotland, Estonia, the Czech Republic and Italy, among others) accelerating the legal and policy development of restorative justice, introducing or expanding services, and using restorative practices to change institutional cultures. In 2020, one of us analysed the changes in the international framework between 2018 and 2020 (Marder, 2020). Since then, there have been developments at the Council of Europe, European Union and United Nations. These include:

- Council of Europe Recommendation CM/Rec(2021)6 (Council of Europe, 2021) regarding the assessment, management and reintegration of persons accused or convicted of a sexual offence states: ‘Participation in restorative justice interventions, where available and appropriate, should be facilitated by providing information on the[ir] nature, relevance and availability’ (Rule 33).
- The forthcoming revisions to Recommendation CM/Rec(2006)8 (Council of Europe European Committee on Crime Problems, 2021) on assistance to crime victims seems likely to include extensive additions on restorative justice services.
- Within the EU, the European Commission recently concluded its [consultation](#) to evaluate the Victims’ Directive, to which the European Forum for Restorative Justice (2021) contributed.
- The EU’s Judicial Training Strategy (2021–24) (European Commission, 2020a) considers that judges should be ‘trained to better support and communicate with’ victims (p. 3).
- At the United Nations, the Kyoto Declaration (2021a) called for the development of ‘restorative justice processes at relevant stages in criminal proceedings in order to assist the recovery of victims and the reintegration of offenders’ (Art. 42).
- The UN also published a common position on incarceration (2021b, 9), which states: ‘the focus of criminal justice responses should be shifted from imposing punishment and isolation to investing in longer-term strategies for crime

prevention, rehabilitation, restorative justice and social reintegration, with an emphasis on the most vulnerable.’

Europe may see an imminent opportunity to lobby for further progress, if a decision is made to revise the EU Victims’ Directive. There may also be scope to develop a binding legal instrument on restorative justice at that level. However, the European framework is already clear: those who are responsible for domestic criminal law and criminal justice policies and practices should act to mainstream restorative justice throughout their criminal justice systems. As the Declaration comments, the Council of Europe is well-placed to connect stakeholders and provide resources to support this work, but the majority of the work must take place at the national level, through an inclusive policy process led by governments, in collaboration with justice agencies, restorative justice practitioners and civil society.

We must collaborate to keep the pressure on at the highest levels, if we expect to maintain this momentum and to translate international policy into real changes on the ground.

As societies open up after Covid-19, many movements and groups will seek to capture governments’ attention and focus. Those that succeed will be those with the best stories, and that are best organised to take the right actions at the right times. We must collaborate to keep the pressure on at the highest levels, if we expect to maintain this momentum and to translate international policy into real changes on the ground.

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References

Christie, N. (1977). Conflicts as property. *British Journal of Criminology* 17(1):1–15.

- Council of Europe (2018). Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3.
- Council of Europe (2021). Recommendation CM/Rec(2021)6 of the Committee of Ministers to member States regarding the assessment, management and reintegration of persons accused or convicted of a sexual offence. https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680a4397a.
- Council of Europe European Committee on Crime Problems (2021). *Proposal for an update of CM Recommendation Rec(2006)8 to Member States on assistance to crime victims*. Strasbourg: Council of Europe European Committee on Crime Problems.
- European Commission (2020a). *Ensuring justice in the EU — a European judicial training strategy for 2021–2024*. Brussels: European Commission.
- European Forum for Restorative Justice (2021). *Position paper on the evaluation of the restorative justice provisions of the Victims' Rights Directive*. Leuven: European Forum for Restorative Justice.
- Marder, I.D. (2020). The new international restorative justice framework: reviewing three years of progress and efforts to promote access to services and cultural change. *International Journal of Restorative Justice* 3(3):395–418. Doi: 10.5553/IJRJ.000048.
- Marder, I.D. and Wexler, D.B. (2021). Mainstreaming restorative justice and therapeutic jurisprudence through higher education. *University of Baltimore Law Review* 50(3). Article 3.
- United Nations (2021a). *Draft Kyoto declaration on advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda for Sustainable Development*. Kyoto: United Nations.
- United Nations (2021b). *United Nations System Common Position on Incarceration*. New York: United Nations.
- Vedananda, N.S. (2020). Learning to heal: integrating restorative justice into legal education. *NYLS Law Review* 64(1):95–113.

Possibilities of intervention and mediation in domestic violence cases

Mediation in cases of domestic violence is not considered a useful intervention everywhere in Germany. There are reservations from employees of some victim protection institutions and women's shelters. However, Hannover is well positioned due to its well-developed network against violence in the family with many support facilities. [Waage Hannover e.V.](#) is part of this network and has been carrying out victim-offender mediation in cases of domestic violence for over 20 years.

Development of Victim-Offender-Mediation in domestic violence cases

For a long time the issue of domestic violence received little or no attention from police and legal practitioners; there was no appetite to prosecute such cases through the criminal justice system. Women, victimised in such cases, were left unsupported and were often advised to raise a private prosecution

through the civil courts — a course of action which most victims did not pursue. A common reaction to be heard during this period from policemen and legal practitioners was 'each to their own.' Fortunately, such attitudes and practices have changed considerably in Germany and legislation has been reformed. New developments across Germany, including Hannover, ensure that police officers receive special training in this area, and social workers are involved at a much earlier stage in the process. In addition, the

Prosecution Service upholds the principle of prosecuting in the public interest in such cases. There is also a strong network of organisations dedicated to providing a range of interventions designed to support victims of this type of crime and provide better outcomes of which Waage Hannover e.V. is one of the most experienced organisations.

Waage Hannover e.V./Network against domestic violence

Waage Hannover e.V. (founded 1990 and also known as WAAGE) is a non-profit centre for mediation and restorative justice in the city and region of Hannover. The aim of the organisation is to support people to resolve conflicts and to repair the harm caused by criminal offences. WAAGE is active in a number of areas and offers help in conflicts between parents, families, colleagues and neighbours, and in conflicts governed by either civil or criminal law. After a complaint of a criminal offence has been filed, the Prosecution Service and/or the Court can request WAAGE to approach those affected and offer victim-offender-mediation (VOM). In addition, any citizen can approach WAAGE on their own.

Creating conditions for respectful dialogue and upholding the interests of the person harmed and the offender are central to a successful outcome.

During a VOM, the consequences of the criminal offence are discussed in a safe environment. Conflicts can be resolved and mutual agreements can be found, i.e. reconciliation for the harm caused and/or compensation for any damage. Creating conditions for respectful dialogue and upholding the interests of the person harmed and the offender are central to a successful outcome.

WAAGE is part of an interdisciplinary network, HAIP (Hannover Intervention Programme against violent men in families), and works in close partnership with other organisations on these complex cases. The helpdesk/support centre plays a particularly important role: it directs women to relevant support agencies. The 'Männerbüro' helpdesk provides similar but different support to men who use violence. Often the person harmed is already receiving counselling and support from institutions of the network before WAAGE is brought in. This additional counselling support is of particular importance as preparation for a possible mediation.

In order to support the person harmed and to ensure her safety before mediation starts, it is necessary to both mitigate the risk of a new escalation of violence (keyword: 'Helix of violence') and manage any power imbalances and relationship dependencies that may be present. Mediators need to attend to these matters in order to preserve the impartiality of the process. WAAGE cooperates fully and closely with the support services, ensuring women have the necessary access to support services so that they can make an informed decision for or against participating in mediation. Some women continue with local support during the mediation process. Sometimes lawyers are involved and advise women concerning their rights and requirements (for example, the advantages of obtaining a temporary restraining order).

About 80% of the couples who come to WAAGE for mediation are already separated, and about 20% are still living together. A lot of the separated couples still remain in contact, because of their children.

How are domestic violence cases handled at WAAGE?

Together with other organisations, WAAGE has developed standard operating procedures for handling domestic violence cases. Because of the intensive nature of this kind of work, only specially trained mediators deal with such cases. Normally the mediators work in pairs and mixed-gender teams. The following is a broad outline of the process:

- Firstly, the woman harmed is invited to a 'no-obligation' interview to explore the advantages and disadvantages of a VOM. Often this initial interview turns into an extensive consultation about relevant support services (such as: support agency support for women, women's shelter, marriage counselling, alcohol therapy, social training services for violent men, child shelter services, youth welfare agencies) and other possible options.
- The approach to the man is only made at the request of the woman harmed.
- The parties themselves decide what type of intervention is used: a face-to-face meeting or indirect mediation.

Mediation can also take place indirectly through one-on-one separate interviews with each party.

It is particularly important for a successful outcome that the mediators remain impartial in cases of domestic violence.

It is particularly important for a successful outcome that the mediators remain impartial in cases of domestic violence. In these cases, mediators need to manage any urges to label or judge either party; they also need to demonstrate appreciation and fairness to both parties. Working in mixed gender teams and co-mediating are especially helpful supports for mediators to remain professional at all times. The underlying causes of conflict (the 'fault') are complex and it is naive to simply or solely 'blame' the man. Each of the parties has needs and motivations that need to be explored and understood. It is crucially important that the responsibility for (physical) violence is not shifted or displaced. In this regard, it is vital that the man takes full responsibility for his behaviour and the consequences of the offence.

If the parties come to an agreement, WAAGE monitors its implementation. Often the content of agreements has to do with modifying behaviours along with requirements for compensation/reparation. If, for example, a man agrees to leave his ex-wife alone after their separation, WAAGE monitors the agreement for a six month period and, after a review meeting with the parties, will report back to the Prosecution Service.

A few years ago, WAAGE began to receive cases for mediation from the family court. The cases involved separated parents in deeply entrenched conflicts to do with, for example, child custody and the right of contact and access. The paramount concern in these situations is the welfare of the child. Sometimes there is also an overlap in such cases with criminal cases of domestic violence.

Which cases are handled and what are the interests of the parties?

The following combinations of themes can be found in domestic violence cases:

- ongoing intimate partner violence;
- violence as unique escalation;
- violence related to marriage separation/relationship break-up;
- permanent harassment of desired partners (i.e. phone terror, threats, waylaying, stalking).

From the perspective of the women harmed in domestic violence, the punishment of the man does not solve any of their problems: neither the act of violence nor the history were discussed, existing conflicts still remain unresolved, the fear of further conflicts and more escalation still exists. Sometimes the women also suffer punishment if, for example, the man receives a court fine, because the money is paid from a joint account. Sometimes the women want to avoid a long and anxiety-ridden lawsuit or they simply don't want their dirty laundry washed in public.

Many women only want to have rest and peace from their ex-husbands; they want to be secure in their everyday lives and they want to finish their relationships with these men. They want their ex-partners not to phone or send emails, texts or gifts any more and to avoid those places where they might encounter each other. Sometimes answers to important questions need to be found, such as, 'who owns what?' 'what will happen to the children?' etc. Occasionally it is necessary to regulate things like compensation for damages or injuries. Sometimes the women request that the men attend for alcohol therapy or take full responsibility for their actions and work on changing how they behave. The outcomes of the mediation are monitored by WAAGE. Often there is another meeting after three to six months to review progress on their agreement.

The men who accept the offer of WAAGE to take part in a VOM have different motivations. Sometimes they want to explain themselves or minimise their behaviour; other times they seek reconciliation, they want to apologise or they want to clarify things concerning the separation (i.e. right of the contact and access to the children, the distribution of possessions etc.). And at times they probably participate in the VOM to be seen in a more favourable light and thus influence the court outcome.

In a mediation . . . , there is an opportunity not only to address the tip of the iceberg, but also to tackle the manifold underlying issues . . .

As can be seen above, there can be many varied motivations and interests for the parties in a particular case. In a mediation at WAAGE, there is an opportunity not only to address the tip of the iceberg, but also to tackle the manifold underlying issues which are not necessarily relevant in a court procedure, such as, background history, emotions, wishes, interests and the search for solutions that last long into the future.

What are the outcomes of the intervention/mediation?

Approximately 50% of the women accept the offer of WAAGE and agree to try VOM. The others either refuse or do not answer the letter of invitation. If they participate in VOM, then about 90% of the cases result in an agreement. The underlying conflicts are often very extensive and cannot be resolved in one mediation session.

The outcomes in cases of mediation in domestic violence are manifold. In cases of domestic violence within the context of separation, for example, the agreements of the parties at WAAGE include:

- talking things through about the implications of separation;
- moving out of the house/flat;
- clarifying material issues, such as, finances, possessions, separation of property;
- agreement about future contacts;
- right of contact and access to the children;
- compensation for damages or injuries.

If the separation was already fixed before the incident happened and the man did not accept the separation, other aspects come to the fore besides compensation, and the default of any contact in the future (restraining order).

Couples who stay together in spite of the violent incident come to the following kinds of agreements:

- the accused person starts therapy (alcohol-therapy or similar);
- the formal start of marriage counselling;
- mandatory handling of conflict situations in the future.

Statistical data

Since 2001, WAAGE has offered VOM in cases of domestic violence. This offer is optional and voluntary. 50% of cases do not result in an intervention/mediation, because the parties either do not answer invitation letters (ca. 20%) or they reject the offer for other reasons (c. 30%).

If the parties accept the offer of VOM, the success rate is quite high ...

If the parties accept the offer of VOM, the success rate is quite high: 90% of cases result in a sustainable agreement (compliance with the agreement is monitored by WAAGE).

WAAGE deals with approximately 150 to 200 cases of domestic violence a year; this is about 50% of the total number of VOM cases.

Limitations and problems/challenges

It is important to state that mediation is not appropriate in every case of domestic violence. And the offer of extrajudicial clarification is also not appropriate for every client or case.

There are many sound reasons to reject a case for VOM/intervention/mediation. For some women it is important to get an official sanction through a court decision; some women want the man to be punished; some want to wash their hands of the incident and give the responsibility to their lawyers. Sometimes there has already been a number of attempts at clarification or agreement and the women no longer trust their husbands or ex-partners, and further recourse to mediation is pointless.

Some men do not feel responsible for their actions; they minimise their behaviour ...

In addition, there can be complications and risks that can prevent mediation from having a successful result. Some men do not feel responsible for their actions; they minimise their behaviour with phrases like 'there is quarrel in every family ...' or they promise to change their behaviour but then they fail to adhere to the agreement. Some women are afraid of being threatened or intimidated again by their husbands if there is prior knowledge of the possibility of referral to mediation. Some women say their conflicts are already solved when, in fact, the opposite is the case. Sometimes the dependencies within a violent relationship are too entrenched that mediation is not possible or appropriate.

Mediation can always be an option. Mediation does not solve every problem, but it could be an alternative to the options in the justice system, especially in cooperation with other supporting institutions in the network.

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Can you switch between probation officer and mediator?

In this interview, Diāna Ziedīņa talks to Olga Kisleva about the difficulties of organising and carrying out restorative programmes for domestic violence cases at the State Probation Service of Latvia. Diāna discusses how to work with such sensitive cases in an institution designed and focused on working with offenders.

The State Probation Service of Latvia is an institution under supervision of the Ministry of Justice, established on 7 October 2003. Its mission is to ensure public safety through the rehabilitation of offenders and organising RJ programmes.

Victim-Offender Mediation (VOM) in criminal cases has been available in Latvia since 2005. SPS is an institution responsible for the organisation and carrying out of RJ programmes. According to the Latvian legislation VOM can be organised in all types and stages of the criminal procedure. Cases can be referred by the police, prosecutors, the court as well as by the parties themselves — victims and offenders. These rules apply to cases of domestic violence as well. In general, practice is based on the principles of restorative justice where crime is defined as a conflict between members of society and their needs should be considered. A well-trained facilitator is an important condition in cases of VOM. SPS has been an active member of the European Forum for Restorative Justice since 2017.

It is evident that the SPS primarily works with offenders, and they are its main focus. How is this aspect addressed while working with sensitive cases, such as domestic violence?

The court or public prosecutor can order offenders to perform community service or attend programmes that address specific problems, and this is where the SPS steps in as offenders are truly the main focus of our institution. The mission of SPS is to ensure public safety by executing criminal punishments, which are not related with deprivation of freedom. It is our task to help them reintegrate into society: find a job or other ways to get the necessary skills/education for that, establish healthy relationships, sort out addictions and productively spend their free time.

On the other hand, mediation is a process that requires the offender's voluntary participation, and it can be seen as an alternative to the traditional criminal process. In cases of lesser felony, mediation could be the circumstance that allows one to discharge the criminal persecution. If an agreement has been reached between offender and victim dur-

ing the mediation process, then it can be used to end a less severe case. In cases of high-class felony (or severe cases), VOM can be considered by court as a circumstance that mitigates culpability. If the parties agree to participate in VOM it gives an opportunity for the victim (or survivor) to speak about their views and feelings, the damage done, the offence and its consequences and find a solution together with the offender to mitigate the harm that was done.

In cases involving domestic violence both parties need to be well informed and prepared for the meeting; there has to be a special consideration towards balancing the needs of both parties. Both parties are able to meet each other but it is crucial that both are equally well-informed and prepared for VOM, as the victim could be at a disadvantage due to their relationship with an offender; thus they also experience different negative emotions, including fear. Both parties are able to bring persons of support with them, but they should also be balanced on both sides to avoid anyone having a feeling of being cornered.

Compared to VOM in other cases, domestic violence cases may not have a specific solution as a goal, but rather revolve around the discussion itself, which can have an invaluable restorative effect. There is no doubt that VOM in domestic violence cases requires experienced and professional mediators who are well-versed in the procedures of mediation and understand the purpose of its discussions, as well as are capable of properly preparing all involved parties for this meeting.

Is it really possible to switch between the roles of a probation officer and a mediator? How do you manage to follow the basic RJ values and principles?

We used to say that a probation officer who is also a mediator wears 'two hats,' and sometimes it's quite challenging to change focus from probation officer to mediator. It has to be noted that our probation officers are experienced multi-taskers as they have to provide probation clients with a wide range of different programmes, but it is true that mediation is in many ways different in comparison with their daily tasks; therefore we have established proced-

ures for selecting and training potential mediators among our staff. Not everyone could perform these tasks. Probation officers, who have expressed their willingness to become mediators, undergo a rigorous assessment process; a significant part of this process is an interview in order to understand whether they share RJ values and are able to stay neutral as much as they can in discussions between victims and offenders. To guarantee their neutrality, they are not allowed to be mediators in cases where they have direct involvement with the offender in another probation programme. Of course, they are also provided with substantial training in RJ principles and desirable methods for conducting mediations. It should be mentioned that we also have volunteers as mediators, but they are not involved in sensitive and difficult cases, like those involving grave violence. Either way, the mediator has to be a professional and well-prepared specialist who understands RJ and is able efficiently to support all the parties involved.

Is the restorative approach widely accepted in the system's domestic violence cases? Are there specific practices designed to address cases such as these?

Unfortunately, RJ practices are not widely used or accepted in domestic violence cases, but there are a couple of reasons for that. In cases of domestic violence there is some degree of ambivalence in the public perception of these cases, due to the close knit relationships between the parties involved. First of all, in these cases there is usually a requirement to involve several experts from different fields, such as psychologists, and they may believe that a conversation with the offender may not be in the victim's best interests, that it could actually do more harm to them, and therefore that participation in a mediation session is undesirable. By law the police could also enforce a restraining order on the offender, which prevents them from coming into contact with the victim, though in reality both parties could stay in touch without the knowledge of the authorities, due to the nature of their relationship and the cycle of violence that it creates. Overall, these cases also tend to focus more on the victim and less on the offender, which is a contradiction to the RJ principle of providing an equal amount of attention to all involved parties, and it should be noted that there is a prevalent gender stereotype that all victims are women while all offenders are men in situations of domestic violence, but that is not necessarily the case.

Are there cases where the involved parties refuse to take part in VOM? What are the main reasons for the offenders? Or the victims?

There are certainly situations like that. Most often it is because the offender denies the accusations, either by insisting that they performed none of the alleged actions, blaming the victim for situation that led to this case, or by justifying their action, genuinely believing that it was for the good of the family or even the victim themselves. As for the victim, they may not have the mental toughness to face their partner, even less so to stand up to them — they could also be emotionally or financially dependent on their partner and/or concerned for their children, believing that it is in their best interests to maintain this unhealthy relationship.

It is absolutely understandable that an offer to meet the offender, who is the perpetrator of the violence, could be really scary to the victim. What would be the adequate and correct way to inform victims about the possibility of taking part in RJ?

Yes, even though they have lived together the victim could be terrified to take part in RJ programmes as in these situations it is required of them to speak openly about their feelings, thoughts and the consequences that they have experienced. If their partner does not fully understand or accept the negative effect of their actions, then this can be a really difficult conversation. Therefore, it is crucial properly to prepare the victim for this meeting — give as much information as possible about the procedure itself, help them with a scenario about the potential questions that they may want to ask and what kind of answers they could expect from their partner. It should be noted that victims are also able to get support from their psychologists with any of these concerns as they are entitled to 10 free sessions, which are provided by a social care institution or NGO. In certain cases, shelter can be provided as well as a police enforced restriction order. There is also new instrument for dealing with domestic violence; from 01.07.2022 perpetrators, by a court's decision, can be forced to participate in a social rehabilitation programme for violent perpetrators to decrease violent behaviour.

How are mediators trained?

Initially they go through several training modules, first among them being an introductory one, which introduces them to the core theory, history and values of RJ, as well the basics of conducting a VOM,

which includes a lengthy role-play with other trainees. Afterwards they are required to facilitate three VOM sessions with the assistance of an experienced mediator, who also provides feedback about their performance. If it is satisfactory, then they are tasked with writing an essay about their reflections from this experience, after which they are able to facilitate VOM on their own.

After gaining experience in VOM facilitation, a mediator can apply for additional training. There are additional modules that train mediators on difficult, more sensitive cases, cases involving minors, facilitation of family conferences, etc. Currently we are working on a project that would introduce a more developed monitoring system for the skills and practices of trainees and new mediators.

Do you cooperate with other social services who work with domestic violence cases? Could you say that there is an interdepartmental cooperation in Latvia?

We do. We organise several events with other institutions and professionals who work with offend-

ers and/or victims, such as the police, psychologists, courts, social workers, judges, prosecutors, etc. Through these events we discuss various topics and issues surrounding our work with offenders and/or victims to share knowledge, best practices, ideas for improvement, and generally promote inter-institutional cooperation.

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Diāna has been working in SPS since 2005 and she is known as a Restorative Justice expert and practitioner in Latvia. Diana has a Masters Degree in Social Pedagogy and Education Science; she is a graduate of the Faculty of Pedagogy and Psychology, University of Latvia.

Calendar

Circle on the Impact of the War 7 June 2022
Online 5–6.30 pm (CEST) More information from the [EFRJ](#).

Restorative Language beyond Borders
21–22 June 2022 Conservatorio Luigi Canepa Sassari, Sassari, Sardinia, Italy. More information from the [EFRJ](#).

EFRJ Annual General Meeting 22 June 2022
5–7 pm (CET) More information from the [EFRJ](#).

EFRJ Conference 23–25 June 2022 Conser-
vatorio Luigi Canepa Sassari, Sassari, Sardinia, Italy.
More information from the [EFRJ](#).

**CJPE Summer course: Responses to Sexual
Violence 2022** 5–8 July 2022 Centre for Legal
Studies and Specialised Training, Barcelona. More
information from the [EFRJ](#).

Basic Restorative Justice Skills 25, 26, 28
October and 2 November 2022 Online 2–8 pm (CET).

More information from the [EFRJ](#).

EFRJ Member Events

EFRJ members organise many more events at the local level. If you wish to keep posted, subscribe to our bi-monthly [Newsflash](#), which includes news on upcoming events, new publications, policy initiatives, call for projects and much more. The archive of past newsflashes is available on the [EFRJ website](#).

Call for submissions

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Each edition we will feature a review of the field of restorative justice, reflections on policy developments and research findings/project outcomes. Please consider sharing your perspective with colleagues.

Book reviews

We very much welcome reviews of books and articles from our membership. If you have published a book and would like to submit it for review, please send it to the [Secretariat](#).

Events

Please let us know about upcoming restorative justice related conferences and events. We are happy to share this information via the [Newsflash](#).

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Join forces with other RJ professionals throughout Europe and beyond and sign up via [our website](#). (If you are a member but have not yet renewed for 2021, you can use the same link.) The process only takes five minutes. You can also email the [Secretariat](#) or use the address below.

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- and much, much more ...

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The views presented in this Newsletter are the views of the authors and do not necessarily represent the views of the EFRJ.

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