



EUROPEAN **FORUM**
FOR RESTORATIVE JUSTICE

GUIDELINE ON THE
PRINCIPLE OF

**VOLUN
UNIT
TARI
NESS**

IN RESTORATIVE JUSTICE

Prepared by the EFRJ Values and Standards Committee

2023

European Forum for Restorative Justice vzw
Herbert Hooverplein 10, 3000 Leuven, Belgium
+32 466209112 / info@euforumj.org
Company number: 0474 656 137
Register of legal entities (Rechtspersonenregister): RPR Leuven

euforumj.org



Funded by the
European Union

VOL
VOLUN
UNIT
TARI
ARIN
NESS
ESS

Connecting People to Restore Just Relations

GUIDELINE ON THE PRINCIPLE OF “VOLUNTARINESS” IN RESTORATIVE JUSTICE

How the principle of voluntariness applies in practice

Introduction

Voluntariness means that participants must freely choose to participate. The process can only take place if all prospective participants freely give permission to the facilitator to organise and facilitate the process, having been given adequate information about how it will be conducted. They must also be given the opportunity to have their questions answered so that they understand what to expect, and they should be given sufficient time to reflect before making a decision. The process must remain voluntary at all stages, which implies that consent can be withdrawn at any time. Facilitators should therefore check from time to time whether participants are still willing to proceed.

The principle of voluntariness is inseparable from respect for people, their agency, autonomy and freedom of choice. This involves recognising human dignity and appreciating each person as an individual to be empowered and respected in his or her freedom of action. It is also about building on the strengths of the individual and trusting that each person knows what is best for them and that no one should make such a decision for another person. It is also important to remember that voluntary participation should not be seen as an admission of guilt.

Definition of informed consent

Informed consent refers to the communication process between facilitators and prospective process participants that can lead to approval or rejection of a restorative process. Each potential participant has the right to receive comprehensive information about the process and has the opportunity to ask questions and receive satisfactory answers.

Thus, when seeking informed consent, have you checked with each party that they:

- Understand what restorative justice is, what it can offer them and what its limitations are?
- Understand what the process might look like?
- Know the benefits and risks that may be involved?
- Are aware of their rights?
- Have been able to ask all the questions they have and to address all their doubts and fears?
- Understand that the process is entirely voluntary at all times and that they can withdraw from the process at any time?
- Understand the legal implications of their participation (or non-participation), if applicable?

When children are involved in the process, special attention has to be paid.

Checklist for child participants:

- Have you communicated details of the process in a language or in a way that the child understands?
- Did you explain to the child that he/she has the choice to participate or not and that there are no consequences if he/she does not participate?
- Did you offer the child different methods of participation (including indirect participation, letters, proxy participation through parents or legal representatives, etc., or tools such as drawing, games, etc.)?
- Have you told the child that he/she can stop participating after the preparation has started?
- Did you make sure that there was no pressure from the child's carers or from people in the legal system?
- Did you make sure that the adults in the room did not take over the conversation and that the child was able to participate freely and express his/her wishes?
- Did you check that the child had an active say in the outcome plan?

What might coerced consent look like? what are signs you might look for?

There is a particular risk of coerced consent if the parties knew each other before the offence, whether they were in a relationship or belonged to the same circle of family or friends. The risk is even higher if there is a power relationship based on social, gender or structural inequalities. The cultural context should also be taken into account, as some parties may find it difficult to say "no" because of their cultural background.

In all these cases, it needs to be carefully assessed whether there is external pressure on the victim to participate. Possible signs of this may be that the parties show signs of distress (e.g. through their body language), or that they are unable to articulate what they personally want from the process and how it might meet their particular needs. It could also manifest itself in a reluctance to attend preparatory processes or to speak.

If we detect coerced consent, what can we do about it?

In this case, it is essential to support the participants and prioritise their wellbeing. Part of this support may be to stop the process. However, this also involves discussing with the person how the decision should be communicated, as in the case of existing relationships it may not be easy for them to stand by their decision. In addition, it is important to clarify what needs the person may have that could possibly be addressed without a restorative process. In some situations, alternative support could be offered, for example, in terms of understanding and addressing their concerns, which could be done through the involvement of external participants.

Voluntariness in the context of diversion or other criminal justice benefits for offenders

Due to different legal and cultural contexts across Europe, practitioners may face challenges related to the concept of voluntariness. For example, in some regions, restorative justice may be incentivised or part of a diversionary process, potentially pressuring or benefiting participants. To address these challenges effectively, it is important for practitioners to understand their working context, including the pressures, rewards and penalties associated with restorative justice. This knowledge will help practitioners to be aware of how these factors may affect the restorative process and enable them to respond accordingly. Practitioners should also be aware that various factors influence individuals' decisions, including their choice to engage in restorative justice. It is not necessarily a concern if this is a factor in participants' initial decisions. However, practitioners need to continually address consent and motivation throughout the process to ensure that participants' involvement remains voluntary and respectful of all involved.

How can we ensure voluntariness when working with children (as either victims or perpetrators)?

Voluntary participation is important for children and their well-being. In order for children to decide voluntarily whether or not to participate, as with adults, it is important to discuss all aspects of the process with the child beforehand, including who the other participants are or might be, what the topics of the discussion will be, what the child's role might be in the process, and how the child's voice can be included in the final outcome (Bolívar, Mera and Narro, 2022). To ensure voluntariness when working with children, non-verbal tools such as art and play can be very helpful to explain different parts of the process and to understand how they genuinely feel about the process.

Reflection questions on voluntariness with regard to outcomes:

- Have you verified that the outcome of the process has been achieved voluntarily by all participants?
 - a. Were there any participants who did not have a vocal say in the outcome?
 - b. Were there any participants who seemed reluctant to agree to the outcome?
- Have you examined whether you may have influenced the agreed outcomes in any way?
- Did you make sure that you did not suggest any ideas or solutions?

How does the principle of voluntariness affect the role of facilitators?

- Did you respect participants' autonomy, freedom of choice and agency throughout the process?
- How did you react when a participant rejected a suggestion/idea or request?
- Did you give participants the opportunity to co-design the process so that it met their needs rather than yours as a facilitator or those of the system?
- Have you considered how wider power dynamics – e.g. in relation to age, gender, race, etc.? – might have affected the restorative process and participants' choices within it? Did you take action to address any power imbalances identified?

If one party decides to withdraw, how can the remaining party be prepared for this or accompanied further?

The fact that either party can withdraw consent at any time means that the process can come to an end. It is therefore important to ensure that the withdrawal of consent does not cause harm or negative consequences for either party. Facilitators have a responsibility to share this information with the other party and to ensure that it does not lead to (re)traumatisation. A facilitator may offer the withdrawing party other forms of engagement, such as indirect restorative dialogue through correspondence, video or voice messages. If these options are rejected, it is important to encourage the person to send a verbal or written message to the other party explaining their decision or simply sharing some thoughts. After sharing this message with the other party, facilitators should look for alternative ways to support the person and possibly offer alternative forms of restorative processes (for example, having a restorative meeting with a close person or family member, participating in a restorative programme with surrogate victims/offenders, or similar). In addition, facilitators should liaise with victim support services and other relevant agencies to offer other forms of support as needed, such as legal aid, psychological support or counselling through social services.



EUROPEAN **FORUM**
FOR RESTORATIVE JUSTICE