
RESTORATIVE JUSTICE IN THE VICTIMS' DIRECTIVE

SURVEY RESULTS

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Author • Brunilda Pali

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Hooverplein 10 – 3000 Leuven – Belgium

www.euforumrj.org

info@euforumrj.org

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INTRODUCTION

The work of the European Forum for Restorative Justice (EFRJ) in the last months in relation to the regulation of restorative justice in the Victims' Directive has been manifold and taken many steps: Drafting of a *Briefing Paper*, which aimed to assess the potential and to highlight the limits provided by the Victims' Directive in relation to the regulation of restorative justice in the European Union (EU); Launching of a *Brief Survey* for restorative justice services and practitioners, which aimed to assess the breakthroughs, challenges and future directions of restorative justice in relation to the Victims' Directive; Drafting of a *Practice Guide* for restorative justice practitioners, which was based on the Summer School of the EFRJ on the topic of the Victims' Directive; Organising an *Expert Seminar* with the Criminal Justice Platform Europe (CJPE) with focus on training and cooperation in the Victims' Directive, and; Drafting a *Position Paper* with policy recommendations for Member States (MS) and the European Commission (EC).

In this report, we only summarise the results of the Survey that was sent to the restorative justice practitioners throughout Europe, with the aim of mapping the latest developments in the field as a direct result of the Victims' Directive. Regarding the information on the other actions undertaken (Briefing Paper, Expert Seminar, Practice Guide, and Position Paper) please visit the website of the EFRJ (www.euforumrj.org).

SURVEY RESULTS

The intention of the short survey was to map the breakthroughs, the opportunities, the challenges, and the future directions of the regulation of restorative justice in the Victims' Directive, according to the restorative justice services and practitioners.

There were overall 18 responses to the survey scattered throughout different countries (Spain, UK, Belgium, Austria, the Netherlands, Denmark, Lithuania, France, Poland, Bulgaria, Ireland, Cyprus). Other research reports, recent publications, or other informative sources were also consulted for other countries such as Hungary, Norway, Latvia, Croatia, etc. with the aim of drafting these results.

The results below are organised according to the main headings of the survey, and when deemed necessary are illustrated with examples from specific countries.

Breakthroughs and opportunities

First of all, from the responses we can deduce that there has been *no major breakthrough* as a result of the Victims' Directive in countries that have already well developed laws and national services on restorative justice such as Belgium, Austria, Denmark, or Norway. More specifically, Belgium and Austria even replied that in terms of restorative justice they are steps ahead of the Victims' Directive.

From the overall responses, the countries with '*major breakthrough*' were identified to be France and the Netherlands, France more specifically for the legislation on restorative justice that was passed in 2014, and the Netherlands for the overall

increased attention and structural funding to restorative justice services as a result of the Victims' Directive, including new legislative proposals, policy frameworks, and application of restorative justice at different levels. The influence on these two important countries which had been until now slow regarding developments on restorative justice is overall an extremely welcomed progress in the field. Unfortunately, no influence has been identified in countries such as Italy and Cyprus, which still to this day lack a legislative basis for restorative justice, and perhaps the Directive can even be detrimental. For example, in Cyprus, the lack of knowledge on restorative justice by the decision- and policy-makers and other key-stakeholders creates a risk as the safeguards set in the Victims' Directive could be misinterpreted, limiting its implementation and benefits for the victims (and the offenders).

As a result of the Directive, in several countries *new legislation* has been passed, submitted, or is in process, or there have been improvements or updates in the existing legislation. For example in Spain, for the first time restorative justice is mentioned in the Spanish legislation. Other countries with new or improved legislation on restorative justice since the transposition of the Victims' Directive are Malta, UK, Bulgaria, Luxembourg, Poland, Hungary, Romania, and Croatia.

In terms of opportunities identified by practitioners, overall there has been an *increased attention* by legislators, policy makers, and scholars for restorative justice mainly in the Netherlands, France, and Bulgaria. Additionally all the countries indicate an *increased awareness and information* about restorative justice in general, and identify the right of the victim to be informed about restorative justice as an important opportunity created by the Victims' Directive.

Another opportunity identified is that restorative justice services have renewed, increased, or improved their *cooperation with the Victim Support sector* ex. Spain, Belgium, France. While countries such as Austria report already long and established *attention for the victim* in their restorative services, increased attention for the victim overall was reported in some countries such as the UK, Ireland, and in the Netherlands. For example, the Irish Prison Service has included the voice of the victim in foundation training for recruits into the organisation. Similarly, in the Netherlands different organisations started to work more on victim awareness and the probation organisation

which had started with victim ambassadors currently call them “restorative justice ambassadors”. In UK, restorative justice seems highly associated with a means of managing offenders and reducing their risk, therefore the Directive offers the opportunity to balance rights and needs and push the argument backed by evidence that restorative justice is a great benefit to victims.

An additional opportunity that was identified, mainly by the practitioners and scholars in the Netherlands is the application of restorative justice at *different stages* and levels of the criminal proceedings, such as court level, prison, and police levels. The Netherlands was also the only country to report the increase of structural funding for mediation in penal matters as a result of the Victims’ Directive.

Almost all the countries identified *opportunities for training, workshops, seminars, working groups* as a result of the Victims’ Directive, more specifically the Netherlands, Bulgaria, Belgium, and Spain. The Basque government has started a collaboration with Catalonia backed by politicians with a Convention of good practices in the areas of Victims Support and restorative justice with adults and minors. An additional opportunity identified was the improvement of the *national statistics* for victim-offender-mediation given that some new questions regarding the Victim’s Directive have been introduced, for example in Germany.

Ambivalent opportunities were more specific in relation to the *new formulations* made in relation to restorative justice in the Victims’ Directive. For example, the requirement that the “agreement may be taken into account in any further criminal proceedings” while a very welcomed requirement, seems to create controversy especially if legislated in favor of the victim. For example in Poland, this condition was introduced in the Criminal Code through article 59a and constituted the rule that after successful mediation (agreement reached and performed) the proceedings shall be dropped on the request of the victim, unless there are special circumstances which indicate that discontinuing the proceedings would contradict the objectives of punishment (see Czarnecka-Dzialuk 2015¹). Likewise, while the requirement of the Directive in relation to the supervision of agreements on behalf of the mediation services seems to have

¹ Czarnecka-Dzialuk, B. (2015) Poland: twenty years of restorative justice implementation, *Restorative Justice*, 3:3, 396-404.

been introduced in the legislation in Latvia (and probably also in other legislations we haven't yet mapped), we know from the example of Norway that the supervisory function of the mediation services has caused controversy (see paper by Nils Christie).

Remaining challenges for restorative justice

One of the main challenges identified for the implementation of the Directive is that in case of new legislation/acts passed, they have been passed *without funding*, such as in the case of Spain. This leads to a good legislative basis but which without funding remains non-implementable. Lack of funding in general for restorative justice was also mentioned by other countries such as Germany and France, Germany even mentioning cuts of funding for restorative services.

Another challenge created in the field by the Directive seems to be on the one hand the focus on the *'protection' of victims*, and on the other the *primary focus on victims*. The respondents from Belgium wonder how will the right of victims to be informed about and referred to restorative justice services be implemented, if the Directive is so overly "protective" towards victims, and presents restorative justice as something to be protected from and that can lead to secondary victimisation. The focus on protection works at the detriment of victims' agency and empowerment. As the IVOR project (2016) has shown, in some countries, driven by victim's protection, the information about restorative justice is not shared with the victim, and restorative justice services are not given access to the victim's contact details and information. The respondent from the Netherlands argued that given the exclusive focus of the Directive on the victim, it remains a challenge to show the importance of the restorative justice triangle and focus also on offenders and the community.

A constant challenge remains the *lack of political commitment and punitive public opinion*. The respondent in Ireland) wrote that restorative justice is seen as "justice on the cheap" and its effectiveness is undermined by the media, which goes along and fuels the punitive turn in society. Likewise, a challenge for the implementation of the

Directive in relation to restorative justice, remains what the respondents (mainly from Bulgaria, Spain, and the Netherlands) identify as a *biased and skeptical criminal justice system and practitioners* who are to give information of restorative justice. While the Directive focuses on awareness and information, the practitioners rightly question how information can be given if the attitudes of the criminal justice practitioners are negative. This leads to lack of trust and lack of cooperation between different practitioners. Lack of information about restorative justice is one of the main obstacles and reasons for its underuse in addition to negative attitudes by referring bodies and poor cooperation among partners involved.

Some countries mentioned more specifically the *challenge to work together*, improve cooperation on referrals, and train the Victim Support Services on restorative justice. Other respondents asked what support and information should be given to the victims that are not in contact with the criminal justice system or Victim Support. The respondent from France argued that we still need more cooperation between mediators, victims, perpetrators, and counteract the divisive approach to restorative justice. This divisive approach is also leading to competition in the restorative justice field instead of cooperation.

Another important challenge mentioned by the German respondent is that, due to the specialised and overprotective focus on victims in the Directive, there is a tendency to *restrict the profession* of mediator in criminal cases on persons with an academic profile in the fields of psychology, social-work or pedagogic, squeezing out the volunteers of the field. The Belgian respondent warned additionally for an increased tendency to call for *assessment tools* to see if restorative justice process are an appropriate step in the recovery/rehabilitation of the victim.

The respondents in Belgium and Austria argued that since there are strictly speaking no concrete implementation deadlines for the restorative justice sector relating to the Victims' Directive, and no formal requirements or changes are needed in our practice or policy, the real challenge really is to *keep the Victims' Directive on the agenda* of the restorative justice providers.

One of the additional challenges identified by our respondent in Lithuania has to do with the *harmonisation* of the Article 2 of the Victims' Directive (the victims of gender-

based violence should be offered restorative justice services with large dose of prudence) with Article 48 of the Istanbul Convention (mandatory alternative dispute resolution processes, including mediation and conciliation are prohibited in relation to all forms of violence covered by the scope of the Convention).

Other challenges mentioned were: the lack of statistics and effective systems for data collection; major differences in restorative justice training throughout Europe, including vagueness and little transparency; sometimes lack of training and structures; challenge to keep up with the diversity of modalities (mediation in penal matters, victim offender talks, restorative conferencing).

What needs to be done: future directions, ideas, suggestions

Among the many ideas and suggestions for future directions, the following were the most important:

- | It is essential to have funding to improve the services regarding Victims Directive, to support awareness-raising actions, trainings, research, and the development of restorative justice services.

- | Restorative justice providers should be staffed with professionals that have structural guarantees for continuing and specialised education and training.

- | It is important to create mandatory and minimum shared and binding Standards for restorative justice; to develop a basic common ground for the training of professionals, or national and international standardised and best practice training.

- | We must develop research based and evaluation tools for quality service (ex. further qualitative and quantitative research on the limitations to prevent secondary and repeat victimisation, intimidation might be needed).

- | We must strive for coherence of national and international regulations and policies; and work on awareness and institutionalisation on national and European level.

- | Exchange of best practices, creating and promoting mentor-mentee country exchange, and cooperation in European projects.

- | We need training of Criminal Justice Practitioners and Victim Support Services on restorative justice; awareness-raising of decision- and policy-makers, and the public; and societal acceptance of the role of restorative justice in the criminal justice system and especially for victims of crime.

- | We need more visibility of restorative justice practices (website, social media, art, case studies, stories); more restorative justice projects in schools, youth movements, and society to train people in alternative models for conflict resolution.

- | Separate Directive or other specialised supranational instrument on restorative justice or alternatives to prosecution/detention.