

European Forum for Restorative Justice

# PRACTICE GUIDE

for restorative justice services

## THE VICTIMS' DIRECTIVE

Challenges and opportunities for restorative justice



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# **PRACTICE GUIDE FOR RJ SERVICES**

## **The Victims' Directive**

### **Challenges and opportunities for restorative justice**

European Forum for Restorative Justice 2016



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If you want to share your thoughts about this Practice Guide and, most importantly, about relevant experiences for the implementation of the Victims' Directive, please share them with the EFRJ Secretariat at [info@euforumrj.org](mailto:info@euforumrj.org).

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# TABLE OF CONTENTS

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<b>PREFACE .....</b>	<b>1</b>
How to read this Practice Guide.....	2
<b>INTRODUCTION.....</b>	<b>3</b>
The Victims’ Directive in a nutshell .....	3
Restorative justice .....	5
Victims and restorative justice.....	6
<b>RESTORATIVE JUSTICE IN THE VICTIMS’ DIRECTIVE .....</b>	<b>8</b>
Definition of restorative justice.....	8
Restorative justice in practice.....	9
The right to be informed.....	10
The right to safeguards .....	12
The right to access.....	15
The right to safe and competent services.....	16
<b>BEYOND MINIMUM STANDARDS: CALL TO ACTION.....</b>	<b>18</b>
Awareness .....	18
Cooperation .....	21
Availability of services.....	23
Information.....	26
The offer and the referral .....	32
Training.....	37
Legislation .....	39
<b>CHALLENGES &amp; OPPORTUNITIES.....</b>	<b>44</b>
<b>RESOURCES .....</b>	<b>46</b>



# PREFACE

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This Practice Guide is the result of the Summer School 'The Victims' Directive – challenges and opportunities for Restorative Justice' organised by the European Forum for Restorative Justice (EFRJ) on 13-17 July 2015 in Lisbon, Portugal. Thirty professionals coming from different parts of Europe and beyond and with different backgrounds and experiences met on this occasion to gain a better understanding of the Directive 2012/29/EU (hereinafter referred to as Victims' Directive) establishing minimum standards on the rights, support and protection of victims of crime.

This Practice Guide includes some of the main ideas, suggestions and conclusions that originated during the debates on restorative justice in the Victims' Directive. The Guide includes also the results of some EU-funded projects recently concluded which worked on this topic (see section 'Resources'). This Practice Guide, as well as the general role of the EFRJ in Europe, demonstrates the importance of international cooperation and exchange of best practices to further understand and further implement restorative justice and to maximise the benefits for the wellbeing of victims of crime across Europe.

## How to read this Practice Guide

There is an important note for the readers of this Practice Guide, especially if the guide is read by professionals who are not experienced in restorative justice theories and practices. For obvious reasons, this Guide will adopt a '**victims-focused tone**', despite the fact that restorative justice offers a balanced approach to give voice to all (i.e. victims, offenders and community members).

Restorative justice is an inclusive and balanced approach to justice in response to crime and conflict which takes into account the needs of victims, offenders and communities. It gives a voice to all parties in order to explore, identify, understand and possibly transform a conflict and repair the harm which originated from the crime.

Such a balanced approach is clearly reflecting the **views of the EFRJ**, an organisation that since 2000 is determined to establish victim-offender mediation and other restorative justice practices throughout Europe, in order for every person, at any stage and in any criminal case, to benefit from these services. With this brief note in mind, please consider that when certain victim's rights are relevant also for offenders, this Practice Guide will mention both parties in the text.

Finally, this Practice Guide will highlight only those articles relevant for restorative justice services. The section 'Resources' will list a series of publications relevant for those ones interested in mastering a better understanding of the whole Victims' Directive.

# INTRODUCTION

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## The Victims' Directive in a nutshell

Starting from the 1970s, Europe experienced major changes in the field of **victims' assistance**, namely in terms of the rights, support and protection of victims of crime. At the European level, some 'pressure for change' originated from the need of the European Union to provide proper and equal assistance to those individuals becoming a victim of crime in a Member State different from their own (so-called 'cross-border victims of crime'). The number of this type of victims needing assistance grew exponentially since Member States opened their borders and their citizens benefited from the right to freely move in Europe. A major change in the field of victims assistance in Europe has been the approval of the *Victims' Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*.

The Victims' Directive replaced the EU Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings. The Framework Decision did not have a major impact on the practices for assisting victims of crime across Europe; consequently, a binding and enforceable instrument was desired to encourage Member States to deliver proper support and protection to all victims of crimes.

The Victims' Directive presents some differences compared to previous regulations and decisions:

- ⇒ It is a **legally binding and enforceable instrument** that had to be transposed by all Member States by 15 November 2015.
- ⇒ It includes **additional contents** (e.g. extended definition of victim, right to individual needs assessment, more information on victim support and restorative justice, more attention to protecting vulnerable groups and children).
- ⇒ It provides **clearer guidance** for implementation.
- ⇒ It calls for **personalised protection measures** not only for specific, well-known vulnerable groups of victims (e.g. minors, women, people with disabilities), but for all vulnerable victims, thanks to a new instrument for assessing individual needs.

By proposing the *minimum standards* to protect and support victims of crime across Europe, the Victims' Directive leaves room for different interpretations and diversity in the practical implementation of the legislation. Indeed, each Member State can use diverse resources and strategies and even go beyond the *minimum standards* required.

The Victims' Directive is composed by **32 articles** (divided into 6 chapters) to assist victims when benefiting from their rights to be informed, their rights to access victim support services, their rights to participate in criminal proceedings (including restorative justice), their rights to receive special protection in cases of vulnerability for secondary and repeat victimisation, and their rights to be assisted by safe and competent professional services.

The Victims' Directive is important also for professionals working in the **restorative justice** field. This is the first binding and enforceable legal instrument at the EU level that defines restorative justice and provides the legal safeguards to protect victims of crimes informed about and participating in a restorative justice process. The Victims' Directive does not require Member States to implement restorative justice services, but it requires that, when these are in place, they provide safe spaces and competent professionals to deliver restorative justice processes in line with victims' rights and needs.

# Restorative justice

In 2016, the EFRJ developed the following working definition of restorative justice:

*'Restorative justice is an inclusive 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.'*

This definition broadens the scope of restorative justice beyond criminal justice, since restorative justice approaches are highly relevant in other contexts (e.g. schools, families, neighbourhoods, work). However, the EFRJ's core objectives are focused on the criminal justice field (e.g. conflict and crime prevention, victim support, diversion and reintegration measures for offenders, community involvement in dealing with conflict and crime).

**Some key-points about restorative justice** are:

- ⇒ Restorative justice exists to prevent, reduce and repair the harm of crime experienced by both victims and offenders;
- ⇒ Restorative justice addresses needs and respects rights more effectively than most formal criminal justice processes, in which the consequences of a crime are dealt with by criminal justice professionals;
- ⇒ Restorative justice aims at alleviating the suffering caused to the victim by the crime and it also encourages the offender's rehabilitation and/or may reduce his/her sentence, but the victim must never be used for the offender's benefits;
- ⇒ In restorative justice, both (victim's and offender's) needs must be listened to, understood and taken into account before proposing and maybe initiating a restorative justice process;
- ⇒ Restorative justice includes the experiences of those people most affected by the crime or conflict and the restoration (of the harm caused) will benefit the larger community directly or indirectly affected by the crime: consequently, restorative justice can contribute to the prevention of crime and escalation of conflicts.

# Victims and restorative justice

Recital 46 of the Victims' Directive states that '*restorative justice services [...] can be of great benefit to the victim*'. Some beneficial consequences, resulting from empirical research, are:

- ⇒ **Recognition** of the victim's status, support, protection and rehabilitation
- ⇒ **Emotional restoration** of the victim, including feelings of respect and dignity of oneself
- ⇒ **Reparation** of the harm caused by the crime and of broken relationships
- ⇒ **Empowerment**, including the restoration of feelings of safety and control
- ⇒ **Fear reduction** about meeting the offender again
- ⇒ **Positive changes** about the view of the world in general and of oneself
- ⇒ **Satisfaction** and perception of fairness in the restorative justice process, compared to the criminal justice process

The benefits occurring in the aftermath of a restorative justice process are the consequences of several **needs met**, such as:

- ⇒ The fact that the offender admitted his/her responsibility: people feel restored because it is the offender himself who repairs the harm on a voluntary basis
- ⇒ The fact that the victim is not blamed for what happened
- ⇒ The fact of being actively involved in the reparation of the harm and the resolution of the criminal matters
- ⇒ The fact that relationships with the victims' social networks got better
- ⇒ The possibility to tell the victim's side of the story, be heard and express feelings
- ⇒ The possibility to be better informed about one's case
- ⇒ The high degree of execution of the agreements concluded during the restorative justice process

⇒ The fact that reoffending is less likely after restorative justice, reassuring victims in their possible future meetings with the offenders

As requested by the Victims' Directive, restorative justice *'services should [...] have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm'* and this seems to be demonstrated in research.

Victims' satisfaction about the participation in a restorative justice process has been also measured by the victims' willingness to refer others to these services and the results have been positive. In general, research findings are consistent in reporting that **at least 85% of victims expressed satisfaction** after participating in a restorative justice process.

# RESTORATIVE JUSTICE IN THE VICTIMS' DIRECTIVE

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## Definition of restorative justice

The Victims' Directive offers a straightforward definition of restorative justice, directly taken from the recommendation R(99)19 on mediation in penal matters of the Council of Europe:

*Restorative justice means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party (Art. 2.1. (d)).*

The definition speaks about '**any process**', leaving room for different types of practices to take place, including indirect (not 'face-to-face') encounters and including processes which are not exclusively verbal communication. It refers to '**the victim and the offender**' and it does not exclude other parties to participate in the process, for example supporters and/or members of the community. It talks about '**resolution of matters**', a broad formulation which does not exclusively focus on reaching a solution, or an agreement, between the parties: the focus is on the process, instead of the outcome.

The definition instead focuses on some basic elements in restorative justice practices:

- ⇒ **The voluntariness of the participation in the process:** participants are invited to take part in a RJ process on a voluntary basis and they are reminded that they can leave it at any point if they wish so;
- ⇒ **The actual active engagement in the resolution of the issue:** the people directly affected by the crime are encouraged to actively participate in the restoration of the harm occurred as a consequence of the crime;
- ⇒ **The impartiality of the facilitator:** even if the facilitator is expected to keep an impartial role between the conflicting parties, restorative justice itself is not neutral, but it actively addresses victims' (and offenders') needs.

Such a broad definition allows to simply focus on the fact that a crime is a break of relationships, not merely of the law, and that it should be dealt with by looking at the experiences and the real life world of the people affected by it. As emphasised in the definition of crime in the Victims' Directive:

*Crime is a wrong against society as well as a violation of the individual rights of victims (Recital 9).*

With restorative justice, the crime remains an affair to be dealt with by the individuals affected by it and not merely by criminal justice professionals.

## Restorative justice in practice

In practice, restorative justice is a participatory and inclusive communication process, supported by a trained facilitator or mediator. This communication process can take different forms, *'including for example victim-offender mediation, family group conferencing and sentencing circles'* (Recital 46 of the Victims' Directive).

The typical practice models in Europe are:

- ⇒ **Victim-offender mediation:** the victim and the offender meet (directly or indirectly) to resolve the harm or the conflict and maybe find an agreement;
- ⇒ **Restorative conferencing:** a large group of people directly affected (or in support of those directly affected) meet to find a solution to the harm of the conflict. The group is generally composed by a victim, an offender, their supporters and other relevant members of the community and professionals;
- ⇒ **Restorative circles:** a large group of people engage in a dialogue to develop relationships. The group is generally composed by all people who have been affected by the harm or conflict (e.g. members of the community) and the victim and offender are not so clear or relevant to the situation.

## The right to be informed

As part of the provisions on information and support, the Victims' Directive includes Art. 4, the '*Right to information from first contact*'. The information given to victims of crimes regard different subjects, such as information on criminal proceedings, victim support, protection measures, legal assistance, interpretation and translation, compensation, reimbursement of expenses, and even information on the availability of restorative justice services.

*Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive: [...] the available restorative justice services (Art. 4,1,j).*

This article is the first step to give victims the right to access restorative justice services. It includes two important elements, relevant for the practical implementation of this right:

- the information must arrive as soon as possible without unnecessary delay;
- the information is given at the first contact with an authority.

This clear timeframe, as well as the fact that an authority provides the information, are concrete practical guidelines to **raise awareness** about the existence of these services and encourage victims to consider their participation in a restorative justice process.

The last paragraph of Art. 4 leaves room for the first *competent authority* (e.g. police) in contact with the victim to consider what type of information concerning restorative justice should be given to a specific victim, considering his/her individual needs and capacities:

*The extent or detail of information [...] may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details (Art.4,2).*

This is important in order to ensure that victims of crime are not overburdened with a large amount of information during the first contact with the *competent authority* and also that they are given proper detailed information at the right moment in time. Indeed, instead of the first *competent authority* in contact with the victim, details about restorative justice can be better explained by restorative justice professionals.

## The right to safeguards

The Victims' Directive includes a series of articles relevant for victims' participation in criminal proceedings. Among others, Art. 12 presents a list of conditions to safeguard victims participating in restorative justice processes. This is the main article dedicated to restorative justice in the Victims' Directive: it does not require Member States to establish restorative justice services, but it obliges the already existing services to protect victims from further victimisation experiences.

*Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services [...] (Art. 12,1).*

The article is also strengthened by the statement:

*[Restorative justice] services should [...] have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm (Recital 46).*

This is in line with the fact that **restorative justice is not meant to use victims** for helping the offender's rehabilitation or for diminishing his/her sentence, even when this is an outcome of the process. Instead, restorative justice aims at repairing the harm caused to the victim and prevent further harm to be done.

The safeguards listed in Art. 12 as minimum standards for restorative justice reflect some of the basic elements in restorative justice (i.e. voluntariness, active participation and confidentiality of the process) and look at the offender's role in the context of acknowledging at least the basic facts of the case. In order to ensure that safe and

competent services are provided to victims (and offenders), the following rights must be met:

⇒ Victims (as well as offenders) must enjoy their **right to be properly informed** about restorative justice processes, outcomes and follow-ups.

*Before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement (Art. 12,1,b).*

⇒ Victims (as well as offenders) must enjoy their **right to voluntarily participate** and find a possible agreement in a restorative justice process.

*The restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time (Art. 12,1,a).*

*Any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings (Art. 12,1,d).*

⇒ Victims (as well as offenders) must enjoy their **right to confidentiality**.

*Discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest (Art. 12,1,e).*

Article 12 includes also a duty for the offender, which has the purpose to protect the victim from further victimisation. Indeed, in order for restorative justice to be initiated:

*The offender has acknowledged the basic facts of the case (Art. 12,1,c).*

The articulation of this article has been largely debated to finally conclude that a full confession, or the admission of guilt, in criminal proceedings are not necessary for an offender to participate in a restorative justice process. This would have clashed with his/her presumption of innocence. Instead, the mere acknowledgement of the basic facts of the case allows more offenders to engage in the process, without a compromise in the criminal proceedings. In practice, such acknowledgment is open to different interpretations, e.g. it could mean that he/she recognises that something has happened or he/she admits a minimum responsibility in the breaking of a law.

Several restorative justice supporters criticised the fact that restorative justice appears in the Victims' Directive mostly as 'something to be protected from' and never as 'something to be empowered with'. While it is true that **this right for protection is not in balance with the right to access to restorative justice services**, from a victim's viewpoint, Art. 12 is crucial to strengthen, support and protect the role of the victim before, during and after a restorative justice encounter takes place. It provides all the basic rules to make it happen, creating a safe space for victims to raise their voices and receive answers to their questions.

# The right to access

The right to access restorative justice services is indirectly reflected in some of the articles of the Victims' Directive, even when this legislation does not oblige Member States to implement the actual services for victims (and offenders):

- ⇒ **All victims of crime may have access to restorative justice service**, since no categories of persons or type of crime are per definition excluded from restorative justice. Recital 46 of the Victims' Directive only lists a series of factors to be taken into account when referring a case to or initiating restorative justice, in order to protect victims making an informed choice to participate and experiencing the outcomes of a process (i.e. *'the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim'*).
- ⇒ **All offenders can access restorative justice service**, independently from their personal characteristics and type of crime committed, and independently from their admission of guilt during criminal proceedings. The acknowledgement of the basic facts of the case is sufficient to participate in the process. This minimum standard is necessary to protect victims from further victimisation, but also to encourage a larger number of offenders to participate.
- ⇒ **All victims must receive information about the available restorative justice services** from the first contact with a competent authority (Art. 4,1,j). More detailed information can be given in a secondary moment, and possibly by restorative justice professionals. This is crucial for raising awareness about the possibility to use these services and to give legitimacy to restorative justice, since it is presented at this early stage by an authority.
- ⇒ **Member States shall facilitate the referral of cases**, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral (Art.12,2). This is important, because

it may require the authorities to propose restorative justice for a given case and even transfer the contact details to the competent services. The only limitation is the definition of 'appropriate', which should not be left at the discretion of the professionals (but it should depend solely on the consent of the parties).

⇒ **Member States are asked to take appropriate action to facilitate cooperation** *between* Member States (Art. 26) and the coordination of services *within* Member States, including the exchange of good practices, consultation on individual cases, assistance of European networks working on victims' assistance issues, and raising awareness on victims' rights. This is an opportunity also for restorative justice to be promoted between professional networks and the general public, in order to improve access to these services for victims of crime across Europe.

## The right to safe and competent services

Safe and competent restorative justice services may only exist if professionals receive appropriate training and cooperate with the different criminal justice agencies. The Victims' Directive includes a series of provisions regarding the **training of practitioners** having direct contact with victims of crimes and the cooperation between Member States. These include police officers and court staff, the judiciary, lawyers, victim support and restorative justice services.

*Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner (Art. 25, 4).*

The training in this case would focus on victims' rights and needs, including a focus on the current Victims' Directive to be implemented in daily practice. Still, this article gives restorative justice services two opportunities:

- ⇒ To train its restorative justice practitioners on victims' rights and needs;
- ⇒ To train other practitioners dealing with victims of crime on restorative justice (for raising awareness and/or for actually training these practitioners in restorative justice practices and the monitoring of such practices).

As proposed in Art. 26 of the Victims' Directive concerning the **cooperation and coordination of services**, restorative justice services could use this opportunity for raising awareness, exchanging best practices (between and within Member States), collaborating on the consultation of individual cases and collecting information to be shared with European networks working in the field of victims' assistance and restorative justice.

# BEYOND MINIMUM STANDARDS: CALL TO ACTION

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This section lists a series of actions that restorative justice services can initiate in order to implement the Victims' Directive, but also, more in general, to establish accessible and competent services for the benefits of victims of crime (and offenders). Indeed, the following action points go beyond the *minimum standards* expected in the Victims' Directive.

## Awareness

The importance of raising awareness about victims' rights is reflected in three articles of the Victims' Directive:

- ⇒ Awareness of victims (Art. 12 on information)
- ⇒ Awareness of practitioners (Art. 25 on training)
- ⇒ Awareness of the general public (Art. 26 on cooperation)

These articles promote victims' rights in general, and not necessarily their right to access restorative justice services. However this section focuses on good practices for raising awareness and thus further contribute to the establishment of restorative justice across Europe.

## **ACTION** Change attitudes and gain trust

A focused (for professionals) or larger (for the public) awareness campaign could have the aim to change attitudes and increase trust in restorative justice practices. This is needed since a general culture of punishment is still dominant within the criminal justice field (but also in other fields where conflict arises).

Starting from the Victims' Directive, an awareness campaign could be initiated based on the statement '*restorative justice services ... can be of great benefit to the victim*' (Recital 46). Restorative justice services could further elaborate on the benefits, such as the fact that giving the victim the voice for expressing his/her feelings and emotions and for asking for an apology or restoration of the damage stimulates his/her wellbeing (see 'Victims and restorative justice' in the introduction). Different strategies can be adopted to raise awareness depending on the audiences (criminal justice professionals and/or the general public).

## **ACTION** Report back to and inform criminal justice authorities

In order to raise awareness within criminal justice authorities, it would be important to focus on two main strategies:

- ⇒ **An automatic procedure** should be put in place in order to keep these professionals well-informed about the outcomes of restorative justice processes. For example, this could be done by sending a report back to the authorities, not only once the process is completed, but also as a follow-up of the agreement.
- ⇒ **Expert seminars, conferences, meetings** should be organized in order to inform criminal justice authorities about restorative justice, presenting not only research findings and concrete data about the benefits of restorative justice for both parties, but also comparisons with the traditional criminal justice practices (e.g. in terms of cost reduction).

Clearly, raising awareness about restorative justice with criminal justice authorities is particularly important in terms of increasing cooperation between different agencies dealing with victims (and offenders). The practices mentioned below (section on 'Cooperation') are also valid for raising awareness.

## **ACTION** Keep the general public informed

The general public should know about restorative justice before actually being in need of using these services. It is likely that citizens will be in touch with the criminal justice system during the course of their lives, either directly or indirectly (via family, friends and acquaintances), either as victims or offenders, most probably of minor offences. Several strategies could be used to keep the general public informed about restorative justice:

- ⇒ Public awareness campaigns may include **printed communication materials** (e.g. flyers, brochures, factsheets, posters to be disseminated on special occasions or constantly on certain public spaces, such as the police, hospitals, schools) or **digital communication materials** (e.g. videos, posters, flyers to be disseminated on relevant websites and social media, such as those of criminal justice authorities);
- ⇒ **Arts projects** could be used to disseminate personal experiences and stories of victimisation and restorative justice: **stories** could be told in short films (e.g. using the technique of 'digital storytelling') or animations, or with photography and quotes, or in letters and poems, or in drawings and paintings (possibly shared in public spaces, e.g. film screenings or expositions in museums, schools, urban spaces);
- ⇒ Educative projects could include **informative seminars or practical trainings** to be organised in different settings (e.g. schools, business, communities) to raise awareness about the principles and practices of restorative justice;
- ⇒ The **media** plays nowadays a crucial role in spreading information to a large and different type of audience in a short period of time and using different tools (e.g.

newspapers and magazines, radio and television, or Internet-based media): **personal stories** are preferred to gain the attention of diverse audiences and such stories should be told utilising written, audio and video techniques.

Throughout a year, there are two special occasions that cannot be missed to raise awareness about victims' rights and restorative justice: the **European Day for Victims of Crime** (22 February) and the **International Restorative Justice Week** (the third week of November). On these occasions, but in general at any time of the year, the initiatives organised to raise awareness about restorative justice and victims' rights (and related topics) could be shared via international networks (e.g. the European Forum for Restorative Justice, Victim Support Europe and the Criminal Justice Platform Europe).

## Cooperation

In order to further strengthen access to victims' rights and restorative justice across Europe, good cooperation between criminal justice authorities, victim support and restorative justice services is essential. The Victims' Directive focuses mostly on the cooperation *between* Member States (exchanging best practices and providing consultation on individual cases), including their cooperation in European networks working on matters relevant for victims' rights (Art. 26).

The article itself does not regulate cooperation *within* each Member State. This is particularly important in countries where no national umbrella-organisation is present to promote victims' rights and restorative justice. Below, some action points are mentioned to collect (and possibly standardise) good practices and to strengthen cooperation between different (national or international) agencies.

**ACTION****Exchange good practices and strengthen cooperation**

The exchange of good practices and the cooperation between different professionals can take place thanks to different strategies, such as:

- ⇒ The creation of **multidisciplinary groups**, where criminal justice authorities, restorative justice professionals, victim support officers, researchers, social and youth workers gather together to discuss, implement, evaluate victim support and restorative justice practices. Clearly, these meetings are needed to further strengthen cooperation between different agencies, but also to identify 'best' practices which could be used for standardising victim support and restorative justice and/or simply exchange them with other Member States in need of innovative ideas for implementation and evaluation;
- ⇒ The organisation of '**observer programmes**', where some special guests (e.g. criminal justice authorities, journalists) can attend a restorative justice encounter, merely as observers of the process. Indeed, if the parties agree, the observer can sit in the same room and he/she is presented by his/her first name (not by his/her function), without taking part in the conversations, but merely observing the process. This method allows to raise awareness, strengthen cooperation and identify good practices on restorative justice and the benefits for victims of crime.
- ⇒ **Conferences, seminars, study visits** also create suitable settings for professionals to meet, discuss their experiences and challenges and engage into further cooperation. Needless to say, this is relevant for all practitioners, including victim support, restorative justice and criminal justice professionals.
- ⇒ **Research and education programmes**, possibly in cooperation with relevant civil society organisations and other stakeholders, are encouraged in the Victims' Directive, but also via the several European funding programmes for action projects in the field of victims' rights and criminal justice.

# Availability of services

Major differences exist across Europe in terms of development and implementation of victim support and restorative justice programmes. The availability of services goes in line with the right to access victim support and restorative justice, which should be taken into consideration as a right to 'equal access', applicable within Member States and within the European Union.

## **ACTION** Understand the origins for implementation

While it is difficult to identify practical tips to promote the establishment of restorative justice services across Europe, it may be easier to identify the origins and the rationales for the implementation of these services where they are actually in place, and try to find similarities for further implementation in other settings.

While looking at the restorative justice movement, the following reasons appear to have encouraged (or discouraged) its establishment across Europe:

- ⇒ the restorative justice movement progressed thanks to the inspiring influences of some bright **pioneers**, leaders and scholars (e.g. Nils Christie in Norway);
- ⇒ restorative justice evolved thanks to the results of **victimological research** on needs of victims of crime, in particular on the needs of victims of violent crime;
- ⇒ restorative justice programmes were born out of a need to deal with juvenile offenders, mainly out of probation services, finding alternative ways to encourage their reintegration in society;

- ⇒ restorative justice prevailed because of a lack of trust in the traditional criminal justice system and sustained trust in community-based justice approaches, sometimes inspired by traditional practices of indigenous populations;
- ⇒ restorative justice developed out of the **willingness to react** also in case of minor crimes, showing that society takes all cases seriously, so that victims do not feel left alone;
- ⇒ in some European Member States restorative justice was discouraged by the strong **presence of victim support services**, simply because no need was felt to develop other services to support victims of crime and much attention was given to strengthen these existing services;
- ⇒ restorative justice became popular only after research and experience in real practice proved the **benefits** of these programmes for both victims and offenders;
- ⇒ restorative justice gained credibility and legitimacy due to its regulation in national legislations;
- ⇒ restorative justice proved to be cost effective in a context of overloaded criminal justice systems;
- ⇒ the restorative justice movement was influenced positively or negatively by the socio-political context of a given country (e.g. the process of democratisation in Central-Eastern Europe has given more legitimacy to restorative justice as part of justice reforms);
- ⇒ restorative justice is sometimes understood as mediation in other settings (e.g. family, business) and not necessarily in the criminal justice field.

This list could help to identify the anchoring point to make restorative justice services available and accessible in countries where they are not yet in place. Generally speaking, monitoring and evaluating existing practices, lobbying for appropriate legislation, raising awareness and promoting a change of (punitive) culture are the first steps for encouraging the implementation of restorative justice services in all Member States.

## **ACTION** Ensure equal access to the services

Even when services seem to be available in a given Member State, some factors may undermine the right to equal access. It is important to identify these factors to assist victims to better access victim support and restorative justice services in their country.

Most limitations listed below apply more specifically to restorative justice services, since victims do not enjoy the right to access restorative justice, but they may not apply for victim support:

- ⇒ **territorial limitations:** some Member States may offer victim support and/or restorative justice only in specific provinces depending on the local movements and funding (geo-political limitations) or depending on the topography of the country (geographical limitations);
- ⇒ **legislative limitations:** some Member States have legislation about restorative justice which includes specific exclusion criteria for certain types of crimes (e.g. homicide, domestic violence, sexual abuse) and/or certain types of victims (e.g. underage, disabled people) and/or certain types of offenders (e.g. recidivists, gangsters);
- ⇒ **subjective limitations:** often access to the available restorative justice services depends on the personal attitudes towards and trust that the referral bodies (e.g. police, judges) have in restorative justice programmes.

## **ACTION** Identify standard practices and consider institutionalisation

It may be important to define standard procedures to make the offer, accomplish and evaluate restorative justice processes in order to better protect victims of crime. These procedures should refer to *minimum standards* and rules, given the fact that restorative

justice processes rely on a certain degree of uncertainty and creativity (e.g. situations may vary on different levels looking at the specific criminal case, the socio-cultural background, the characteristics of the parties and practitioners involved). Standard practices should then be defined according to the **basic restorative justice principles and rules**.

Also, it could be useful to make restorative justice services belong to the formal criminal justice system, in order to gain legitimacy, receive funding, strengthen cooperation and control its practices. However, the institutionalisation of restorative justice has been largely debated because it may risk to undermine the flexibility of procedures that make every process tailored to individual needs, capabilities and personalities. In terms of protection measures, identifying standard practices and institutionalising the services could support to better control the way restorative justice is provided.

## Information

The right to be informed about different services available to support and protect victims of crime includes also an article on the right to be informed about the available restorative justice services (Art. 4,1,j). This right can be enjoyed from the first contact with an authority without unnecessary delay. Some more practical tips on how often the information is given, on what type of message is communicated, and what language is used are explained below.

## **ACTION** Cooperate with authorities and others who can provide the information

Victims should be informed about restorative justice from the first contact with the authority. Normally the source of this information is thus the **police**, but there are **other authorities** (e.g. the judiciary, or social welfare officers) and **other professionals** (e.g. victim support officers, health care providers, social workers, religious and cultural leaders, educators) who may have a role in informing victims about the existence of restorative justice services.

In this case, there is a clarification to be made on the **duty to inform vs. the opportunity for raising awareness**. This distinction is important to be understood since criminal justice authorities (e.g. police, judges, prosecutors) have a concrete duty to inform victims about the available restorative justice services, while the role of other professionals remains as at the stage of raising awareness about restorative justice, without any legal duty in place.

Another aspect to keep in mind when considering who has the duty to inform the victims about the availability of restorative justice services is the fact that criminal justice authorities exercise inevitably an **important influence** when offering restorative justice due to their authority. This authority can be used to give legitimacy to the offer of restorative justice, therefore it is crucial that these professionals cooperate with each other to refer cases and initiate restorative justice processes. Nevertheless, it remains crucial that their authority is not used to pressure victims to engage in a restorative justice process, as this would undermine voluntariness, which constitutes one of the key principles of restorative justice.

## **ACTION** Suggest what authorities should say when informing victims about restorative justice

When considering the actual information to be given to victims of crime at first contact with an authority, it is crucial to differentiate between the **duty to inform and the duty to refer the case**. This distinction is necessary to clarify that the mere information may not be sufficient to encourage a victim to get interested and even engage in a restorative justice process (**self-referrals**). Instead, even if not explicitly required by the Victims' Directive, a procedure should be put in place to easily exchange information about the case between criminal justice authorities and restorative justice services (**referrals**).

It is also important to keep in mind that a victim may not be really attentive during the first contact with an authority. The information should **be clear and concise**, in order not to overwhelm the victim with too much information at once. Special attention should be given to the language used. The main tip is to **avoid legal language** and use everyday terms easily accessible to all types of victims (and offenders). It should **include concrete steps** to move forward into a proper offer and first preparatory meetings with restorative justice facilitators. For example:

'You have the right to access restorative justice services. These services organise one or more structured meetings between you and the offender in the presence of an impartial facilitator. If you freely consent to participate, you are given the opportunity to speak about your case and ask questions directly to the other person involved in the crime. You can withdraw at any time. I will forward your contact details to the restorative justice services, which will contact you to give you further information (by letter and/or by phone). If you want to make contact yourself, these are the contact details of the restorative justice organisation.'

## **ACTION** List what should be said to further explain restorative justice

Unless the victim already asks for further information to the first authority in contact with him/her, it is advisable that this is provided by the restorative justice services who can elaborate on the following elements:

- ⇒ **Definition of restorative justice:** it is a process where victims and offenders engage in a dialogue to communicate about what happened, find answers to each other's questions, and participate in the restoration of the harm and resolution of the conflict.
- ⇒ **Legal safeguards:** the meeting can take direct or indirect forms (e.g. shuttle mediation or videos can be used); it happens in presence of an impartial facilitator who has received the necessary training for this; both parties freely consent to participate and can leave the process at any stage; the process is kept confidential.
- ⇒ **Aims of restorative justice,** such as the opportunity for the victim to receive information about what happened, to make sure that his/her viewpoint is heard, to ask questions and receive answers, to share emotions and feelings, to ask for the reparation of the harm and/or an apology.
- ⇒ **Beneficial consequences of restorative justice practices,** such as the feeling of empowerment, sense of control and dignity, reduction of fear and anxiety, higher sense of safety and justice, realistic perception of what happened in one's case. In some cases, it may be worth to mention that restorative justice could help the offender to understand the impact of the criminal act that he/she committed, take responsibility for this action and desist from committing further crimes.
- ⇒ **Consequences of restorative justice in the criminal justice procedures,** for example if it has effects on the sentence foreseen for the offender, although for the victim it may be important to know that the offender decided to participate without the promise of a alleviation of the sentence.
- ⇒ **Information about the restorative justice service,** such as background history, the experience of the practitioners and contact details.

- ⇒ **Concrete steps and procedures:** after a series of preparatory meetings where victims and offenders meet individually with the mediator, a first restorative justice encounter takes place in a given location; the mediator will explain the rules of the communication process (e.g. respect for the other's person and story; freedom to take a break or leave at any time) and provide drinks in the room; the offender will be asked to share his/her side of the story first and then the victim will be asked to do the same; the mediator will facilitate the dialogue between the two.
- ⇒ **Examples from the real world:** in order to further explain what restorative justice is, it is worth to share some real stories, possibly of cases similar to the one just experienced by the victim. Clearly, every case is unique and the examples from the real world should not be used to persuade the parties to engage in a restorative justice process.
- ⇒ **Statistical data:** it also helps to mention that a large percentage of victims participate and are satisfied with restorative justice, in order for victims not to feel alone or to feel like the 'pioneers' of a new practice (which they may have never heard about before).

## **ACTION** Use different methods to inform about restorative justice

At the police level, the first authorities in contact with victims could use different strategies to inform them about the availability of restorative justice services. Restorative Justice services should cooperate to provide information in different ways:

- ⇒ **Oral information:** given the amount of information the victim is dealing with, the policeman should rephrase this information in a short sentence.
- ⇒ **Checklist:** the victim will be asked if he/she understood his/her rights and she will sign a document. Among the rights included in the checklist, restorative justice could be included.

- ⇒ **Information flyer:** the policeman could give some written information about all victim's rights, including the possibility for restorative justice, to the victim. Possibly, a specific flyer should be prepared for details about victim support and restorative justice services. Also, such flyers should be translated in more common languages and include different designs addressing specific vulnerable groups (e.g. children and youngsters).
- ⇒ **Posters:** basic information about restorative justice could be presented in posters hanged at the police station. Again, different languages and designs could be used to speak to different types of victims.
- ⇒ **Contact list:** victims could be provided with a list of restorative justice services (including address, phone number, email and website) in order to encourage self-referrals.
- ⇒ **Website and social media:** the digital media used by the police to provide all information to victims of crime should include a section on restorative justice, where all printed communication material should be uploaded (e.g. flyers, posters, contact lists, checklist of victims' rights) and a list of video materials and films could be suggested.

## **ACTION** Consider the best time to inform victims

According to the Victims' Directive, victims should be informed about the available restorative justice services from their first contact with an authority. At this stage, restorative justice is mentioned as one of many other rights available for victims of crime: it is not a concrete offer and, because of the amount of information received in this stressful situation, the victim may easily forget about it.

Consequently, it is advisable that the information about restorative justice is **repeated in different forms** (e.g. flyers, letters, phone calls) and **by different professionals** (e.g. criminal justice authorities, victim support officers, social workers, health care providers,

religious leaders, educators). Since one of the main elements for restorative justice to be successful is the voluntariness of the parties to participate, such information should be repeated without pressuring the victim until a free and informed decision to participate (or not) is made. There is no clear rule for this, since this is following the unique development that characterises all restorative justice processes.

## The offer and the referral

There is a major difference between the mere information about restorative justice and the actual offer to participate. The first competent authority has the duty to inform victims about the existence of restorative justice services, but it does not necessarily have the duty to offer the service (if it is provided in-house) or refer the case to the competent restorative justice services (if applicable).

### **ACTION** Cooperate with the referring authorities

Access to restorative justice highly depends on the way criminal and restorative justice services cooperate with each other. Since information is not sufficient, the referral procedure should take place in a systemic way. In most Member States, this is not a common practice and the referral is left to **subjective decisions** taken by professionals who may consider the case not *appropriate* for restorative justice (e.g. because of the type of crime, or personal characteristics of the parties involved).

Consequently, the first step is to ensure that all victims of crime, at any stage and in any criminal case, are referred to the restorative justice services. This wide criteria should be included in **national legislation**, in order to ensure that **equal access** is granted to all

victims of crime who can voluntarily decide if they wish to participate or not in a restorative justice programme. Secondly, if the legislation allows it:

- ⇒ the first authority in contact with the victim will transfer his/her contact details and basic information about the case to the restorative justice services;
- ⇒ a letter will be automatically sent at home, informing the victim about the existence of restorative justice services and about the fact that he/she will receive a phone call by a practitioner in the following days;
- ⇒ the restorative justice practitioner will give a phone call to the victim with the aim to plan a first informative (or preparatory) meeting which should be at the home of the victim or other place of his/her choice.

## **ACTION** Consider the consequences of inviting the victim first

The Victims' Directive does not propose guidelines for making the actual offer of restorative justice to victims of crime. It only gives directions to keep them informed about the possibility of these services. Still, in a secondary stage, the restorative justice practitioner should arrange the first meeting with the victim, to give information and make the actual offer. The question arises whether the victim should be offered restorative justice **before or after the offender**.

Some practitioners may argue that victims should be invited only after the offender has accepted to meet, in order to avoid secondary victimisation in case the offender refuses to participate in a restorative justice process. Other practitioners may argue that victims should be given the right to be invited restorative justice first and that their acceptance to participate may even encourage the offender to take responsibility and 'do something back for the victim'. Again other practitioners may worry about the pressure that the victim may feel, either if she/he is the first one to make a decision to participate, or if she/he is the last one, knowing that the other party already accepted.

## **ACTION** Write the letter to the victim

The letter may be the first official contact between the victim and the restorative justice service. The letter should be informative and official, without pressuring the victim to engage in the process. It is advisable that the **standardised letter** results from the collaboration between the criminal justice authorities (for its legitimacy) and the restorative justice professionals (for the better understanding the process). Such standardised letter should use clear, easy and concise language to address the victim, clarify restorative justice (definition, aims, procedures and benefits), present real cases' examples and explain the consequences in the criminal justice process (see also the section 'Information'). Each letter should then be **adapted to the specific case**, taking into consideration the personal characteristic of the victim (e.g. age, mental development, literacy maturity, physical impairments such as blindness) and the details about the type of crime suffered. In cases of domestic violence, the first contact with the victim could move on directly in the following steps (phone call and meeting), skipping the letter's phase.

## **ACTION** Prepare the phone call to the victim

Before dialling the number, the restorative justice practitioner should have collected **all relevant information** about the crime and details about the victims' personal characteristic (e.g. language, level of maturity, education, socio-cultural background) and he/she should have gained sufficient communication skills to summarise the conversation, re-explain points of discussion when needed, deal with resistance and negative feelings (e.g. anger) and inspire trust when inviting the victim to accept a first preparatory face-to-face meeting.

The language should be clear and concise, focusing on the **principles of restorative justice** (e.g. active participation, voluntariness, confidentiality of the process, impartiality

of the mediator). The restorative justice practitioner should also be able to suggest further reading and/or films about restorative justice to further explain the process to the victim and, upon request, he/she should be able to organise a face-to-face encounter with other victims who experienced a similar offence and already engaged in a restorative justice process.

The aim of the phone call is to arrange a **first face-to-face meeting** between the victim and the restorative justice practitioner, thus venue and time should be agreed at this stage. The choice of the venue is especially important because the victim must feel safe to meet and speak, either in a public or private space. The practitioner should demonstrate a certain degree of flexibility in agreeing on the venue and time of the meeting and keep informed his/her colleagues about it (for safety reasons).

### **ACTION** Invite the victim to a first face-to-face informative meeting

The first meeting with the victim is about **listening and understanding** what the victim needs and wants and enabling him/her to tell his/her story. It is also about **assessing** the victim's understanding of restorative justice and his/her capacity to communicate and freely take part in a restorative justice process. It is essential to listen to the victim, in order to reinforce one's argument to participate (or not) in a real process, and identify the best procedures that could be offered for the specific case (e.g. direct, shuttle, video recordings, meetings in presence of security guards). The actual offer to participate in a restorative justice process is made only once it is clear that restorative justice can help the victim to address what she/he needs and wants.

The practitioner must always stress the importance of the **principle of voluntary participation** in the process by reminding both parties that their voluntary consent to participate can be withdrawn at any stage and that any possible outcome of the meeting

will result from a voluntary agreement reached by the parties. In case of withdrawal of one of the parties, this fact cannot be used against the offender during criminal proceedings. Again, the practitioner's role is to enable the victim to address his/her needs, and not to persuade him/her to participate in a restorative justice process.

The practitioner should be prepared to **offer further material** to better understand the restorative justice ideas and practices and to organise one or more meetings (either with the victim alone, or with the victim and his/her support group, or with other victims who experienced similar offences and participated in a restorative justice process).

This is the stage when the practitioner also evaluates and/or enables the victim to evaluate for himself/herself if a victim-offender meeting is **appropriate or not** to protect the victim (and the offender). He/she should assess the reasons to motivate a meeting to take place, the individual personalities and capabilities of the parties, the possible risks during and after the victim-offender meeting and the best procedures to make it happen (or not) and, in case of doubt, brainstorm with the colleagues about the specific case to find a solution.

Only after this, the practitioner will actually start to prepare the victim for the real face-to-face meeting with the offender and consider all practical arrangements for the restorative justice process to start (e.g. choice of the date and location; transportation of the victim; possible child-care at the venue during the process).

### **ACTION** Consider the timeframe

Information and referrals should be done within a limited period of time, possibly at the first contact between victims (and offenders) and criminal justice authorities. Still, the actual beginning of the restorative justice process should not have time-limits, since this is a voluntary decision for parties to participate which could take certain time to occur. It is important to keep this in mind when proposing restorative justice to victims (and offenders).

# Training

The training of practitioners is crucial to protect victims of crime from further victimisation and offer safe and competent services. The Victims' Directive is clear on the fact that different groups of professionals must be aware of victims' rights and must be trained in dealing with victims of crime. The opportunity for restorative justice services lays on different levels: its practitioners must be trained in assisting victims of crimes and other practitioners must be trained in raising awareness about restorative justice.

## **ACTION** Train restorative justice professionals

Concerning the training on restorative justice, these could be delivered on different modules:

- ⇒ a first module could serve to **raise awareness** about the theories, principles and practices of restorative justice, in order to be able to better inform victims (and offenders) about the possibilities and benefits of restorative justice processes;
- ⇒ a second module could serve to actually **train restorative justice practitioners**, including real cases and role plays to train different communicative practices (e.g. to learn to identify and address needs of the parties; to manage conflict situations in a non-violent way);
- ⇒ a third module could serve to further **strengthen the practitioners' skills**, for example by including methods for peer-to-peer or self-evaluation after a process, for systematically reporting to the organisation (and not only), for learning ways of detaching from the case and avoiding secondary traumatisation, for dealing with particular cases (e.g. intercultural conflicts, or domestic violence);

⇒ a fourth module could serve to train practitioners to share their skills with junior facilitators, for example by **becoming the trainers** in restorative justice theories, principles and practices in the first module.

An important element to be discussed when delivering these trainings is the concept of the *impartiality* (or multipartiality) of the practitioner. Indeed, victims should be reassured that the restorative justice process is not impartial about the harm caused but will use a balanced approach to the restoration process. The facilitator instead will take a multiparty approach towards the parties, meaning that he/she will be attentive about both without taking a side.

It could be worth to **identify basic good models** for delivering such trainings. These are difficult to be standardised at the European level, since they adapt to the local legislation, practices and problematic, but it could be the role of European organisations such as the EFRJ to collect these models and identify the basic standards for providing training to restorative justice practitioners. Clearly, the exchange of best practices and the possible educational exchanges between professionals (see section on 'Cooperation') are crucial for further improving restorative justice services in Europe.

### **ACTION** Train criminal justice authorities

Restorative justice services could also take the lead to provide training on restorative justice to criminal justice authorities and other professionals who may have the first contacts with victims of crime. Observing real restorative justice processes (see section on 'Cooperation') and role plays could better prepare these audiences to actually understand how a restorative justice encounter works in practice. These trainings could then be given on two modules:

- ⇒ the first module on **basic elements** of restorative justice (theories and practices) in order to raise awareness about these services and prepare these professional groups to inform victims of crimes about these possibilities;
- ⇒ the second module on **real cases** (i.e. observation and role plays) in order to influence the attitudes and gain trust from these professionals on restorative justice;
- ⇒ the third module on **cooperation** measures in order to establish appropriate referral procedures.

In these cases, residential trainings are suggested to bring together different groups of professionals, not only criminal justice, but also victim support and restorative justice practitioners. Indeed, a few days residential training does not include only the actual hours of formal training, but also the additional informal moments useful for strengthening cooperation between different professional groups working with victims of crime.

## Legislation

Despite the straightforward definition of restorative justice in the Victims' Directive, different understandings of restorative justice exist in national legislations across Europe. The term 'restorative justice' has not been introduced yet in most national legislations. Consequently, even at the practice level, the term may create some confusion if it is not yet utilised in legal acts. What seems to be well known though is the concept and practice of 'victim-offender mediation', probably thanks to its dissemination via the recommendation R(99)19 on mediation in penal matters proposed by the Council of Europe. It is important to address these differences, in order to grant equal access to these services to victims of crime all over Europe.

## **ACTION** Get inspired by other legislations

A valuable example of how restorative justice has been integrated in national legislation, contributing to the success of these services across all the country, is the Belgian law of 22 June 2005 regarding the implementation of mediation in penal matters. Inspired by the recommendation R(99)19, Belgium's definition focuses on the **voluntary consent of the parties to actively participate** in the process accompanied by an impartial facilitator. Importantly, the process and outcomes are kept confidential and only if the parties wish so they can be shared with the judge who may take them into consideration when sentencing the offender. It is significant to notice that the definition is applicable to **all types of crimes and to any stage** of the criminal process. Similarly, the Victims' Directive proposes an open definition of restorative justice, applicable to all cases and parties involved in the crime, and depending only on the voluntary decision of the parties to participate.

## **ACTION** Present research findings to broaden the eligibility criteria to participate

While still focusing on the definitions of restorative justice (or victim-offender mediation) across Member States, it is interesting to notice that, when services are provided, the State may still have a role in deciding who can actually take part in a restorative justice process. The right to equal access these services is undermined by a **general belief** that certain types of crimes or parties with certain characteristics are not suitable to engage in a restorative communication process. What it is noticeable across Europe is that the seriousness of the crime (e.g. when punishable with more than five year sentence, or in cases of domestic violence where victims may suffer a structural power imbalance) or the vulnerabilities expected in certain categories of victims and offenders (e.g. age, disability)

are used to discriminate certain parties, even when they are spontaneously requesting to participate in a restorative justice encounter.

A valuable counter-argument to such beliefs and attitudes (which are unfortunately integrated in some national legislations) comes from **research**. The EFRJ, as well as many of its members across Europe, coordinated several researches proving that restorative justice can be adapted to different criminal settings, e.g. in cases of sexual violence, domestic abuse, terrorism, juvenile cases. Research is a crucial instrument to identify which criteria are to be kept in mind when granting access to victims (and offenders) to restorative justice services: often the exclusion criteria pre-determined by law do not necessarily meet the individual needs of the parties affected by the crime, undermining a right to freedom of expression and a right to be heard that are protected by other regulations.

## **ACTION** Lobbying

As mentioned above, many Member States do not include yet a proper definition of restorative justice in their national legislation. If they do so, they may give limited access to the services only to specific groups of victims, adopting exclusion criteria which may not be in line with the needs of certain victims of crime. Also, the existing legislation may focus only on protection measures for restorative justice (as in the Victims' Directive) while a next step is needed to put in place proper referral procedures for offering and actually initiating a restorative justice process.

In order to move forward in this field and influence national legislation, **lobbying strategies** should be structurally organised on different levels:

- ⇒ by individuals, organised groups, and/or professional lobbyists;
- ⇒ addressing directly legislators and/or indirectly the general public giving opinions on specific laws;

⇒ using different strategies, such as printed/ digital communication materials, the organisation of seminars and public debates, the shared reports evaluating restorative justice processes and outcomes, policy briefs summarising the results of research in the field

In general, restorative justice services could **assist legislators** not only to draft a regulation for the specific restorative justice cause, but also to include concrete guidelines for action. Indeed, the practical implementation of a given legislation may risk to fail if too much room is left for interpreting the legal act. Definitions and rights concerning restorative justice should not be left to the individual understanding of the professionals involved in criminal justice issues, but they should have proper guidelines for granting a fair and equal access to these services to all victims (and offenders).

## **ACTION** Monitoring and evaluating restorative justice

Once national legislation includes the points mentioned above to define and grant rights on restorative justice matters, a follow-up is needed to monitor and evaluate how these legal acts are implemented in practice. Also the Victims' Directive requests Member States to find proper ways to collect national data (Recital 46), although not necessarily on restorative justice matters. Additionally, Art. 26 on cooperation measures between Member States mentions the vital importance to exchange best practices in order to further improve the implementation of the whole Victims' Directive.

Monitoring and evaluation are particularly important to avoid the risk of the so-called 'implementation failure' of legislation and reducing the **gap between law and practice**. In the case of restorative justice, it is particularly important since what the Victims' Directive proposes does not oblige Member States to put in place restorative justice services in their countries. This means that in practice, despite the right to be informed and the right to safe and competent services, the availability of such services is often non-

existent in many regions Europe. The work done by (independent) researchers who monitor and evaluate the legislation in place is in line with the work of the lobbyists who may argue for a change or stricter guidelines when needed.

### **ACTION** Present costs of the services

The availability of services and the right to equally access all of them clearly depends also on the costs of the process. Satisfaction rates for both parties are higher in restorative justice compared to criminal justice processes and the system experiences costs' reductions by referring cases to restorative justice services. It is expected that the service is provided free of charge to both parties, and at least definitely to victims of crime. Clearly, this depends also on the way restorative justice is presented in national legislation (as a right to access the service).

# CHALLENGES & OPPORTUNITIES

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The Victims' Directive offers different opportunities for restorative justice to be implemented across all Member States, but it also presents some challenges:

- ⇒ The Victims' Directive presents a broad definition of restorative justice including some basic principles (e.g. voluntariness, active participation). This is an opportunity because it leaves room for processes to take different forms in practice (e.g. victim-offender mediation, restorative conferencing) and it does not propose planned desirable outcomes of the restorative justice process (since the outcomes depend upon agreement by the parties, and in some cases there is a lack of agreement).
- The Victims' Directive mentions different restorative practices in one of the recitals (e.g. mediation, conferencing and circles). This is an opportunity because it acknowledges the existence of different practices according to different needs and contexts.
- ⇒ The Victims' Directive mentions in one of the recitals that restorative justice has proven to be beneficial for victims of crime. This is perhaps a missed opportunity, because the recital does not list any of the benefits and it immediately moves on into the protection measures needed to safeguard victims of crime.
- ⇒ The Victims' Directive mentions the victims' right to be informed about the available restorative justice services. This is an opportunity in terms of giving access to restorative justice to victims of crime, although no regulation exists on the way referrals are made.
- ⇒ The Victims' Directive offers a full article for restorative justice to protect victims before, during and after the process takes place (i.e. full and unbiased information,

voluntary consent of victims, possibility to withdraw at any point, confidentiality of the process, offender's acknowledgment of basic facts). Still, it remains a challenge because the focus on safeguards put the emphasis inevitably on merely protecting victims, instead of empowering them.

- ⇒ The Victims' Directive contains a specific article on the training of professionals, including restorative justice practitioners. This is an opportunity in order to better provide safe and competent restorative justice services, but it is a challenge in terms of defining standards for training as well as evaluation of practitioners' skills and competences
- ⇒ The Victims' Directive includes an article referring to the importance of cooperation and coordination of services. This is an opportunity in terms of exchanging best practices, strengthening European networks working in the field of victims' rights and raising awareness. The challenge here remains not only for the practical implementation of this article, but also on the focus on how Member States work at the national and European levels.
- ⇒ The Victims' Directive proposes a series of clear outcomes to be achieved to provide good and appropriate victims' assistance in all Europe, but the strategies to obtain such results are freely chosen by each Member State. This may be problematic when evaluations for its implementation take place, since the different strategies adopted leave room for different interpretations of the results achieved.

# RESOURCES

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