



## How should restorative justice be included in the revised Victims' Rights Directive

### Key considerations from the European Forum for Restorative Justice (EFRJ)

#### SUMMARY

- the EFRJ aims at creating a right of access to restorative justice (RJ)
- > this implies: right to information, right to self-referral, clear referral pathways, available restorative justice services, standards for safeguards, legal remedies for victims
- we believe that this right empowers victims in taking an active role, asking their questions and make the offender face and take responsibility for the harm caused, to receive restoration according to the victims' needs, to experience justice and to find closure (and to heal). We believe that not legal authorities, but restorative justice services should assess the requests for RJ and access to RJ should not depend on offender or offence characteristics but on the needs of the victim
- we find important that restorative justice services are widely available, free of charge and adhere to high standards

#### Introduction

With the adoption in 2012 of the European Union (EU) **Victims' Rights Directive** (Directive 2012/29/EU) (VRD) and in 2018 of the Council of Europe's (CoE) landmark Recommendation on restorative justice in criminal matters (CM/Rec(2018)8), the restorative justice field witnessed new international legal instruments and guidelines that demonstrate a growing consensus of the international community for a wider applicability of restorative justice (RJ) in criminal matters and beyond.

In 2020, the United Nations Office on Drugs and Crime (UNODC) published the Second Edition of the **Handbook on Restorative Justice Programmes**, integrating new developments, including the potential of restorative justice in meeting the needs of victims of serious crimes.

In June 2020, the European Commission adopted the **EU Strategy on Victims' Rights** (2020-2025) that recognises the role of restorative justice to achieve its first objective: empowering victims of crime, for them to participate in criminal proceeding and to recover. It also states that "restorative justice services provide victims with a safe environment to make their voice heard and support their healing process". It considers that "the potential benefits of such services depend on the availability, accessibility and quality of restorative justice services in the Member States".





The 2019 EC **Milquet Report** “Strengthening victims’ rights: from compensation to reparation” embraces a holistic move from a limited understanding of compensation, towards recognition, restitution, support and care, as valuable reparations to support victims to cope with, and recover from the harm caused by crime.

In December 2021, the Ministries of Justice of the Council of Europe Member States unanimously adopted a ***Declaration on the Role of Restorative Justice in Criminal Matters*** (the Venice Declaration). The Venice Declaration fully endorses the CoE Recommendation CM/Rec(2018)8 on restorative justice and calls on the Council of Europe to support its Member States to implement it by underlining the importance and advantages of restorative justice. Member States are encouraged to draft national action plans and consider granting the right of access to restorative justice, to actively raise awareness of restorative justice nationwide and to provide adequate judicial and legal training in this respect. It also situates this within **United Nations Sustainable Development Goal 16**: promoting just, peaceful, and inclusive societies. It does not consider restorative justice only “as a simple tool in the framework of the traditional approach to criminal justice, but as a broader culture that should permeate the criminal justice system based on the participation of the victim and the offender on a voluntary basis, as well as other affected parties and the wider community in addressing and repairing the harm caused by crime”. Reference is made to empirical evidence on the positive impact of restorative justice and its benefits for criminal justice systems, victims, offenders and society.

### *Research findings*

Mediation and other RJ practices should not replace the trial in front of the court and should not be alternative to punishment. Restorative justice should be considered as a complementary process to the criminal justice system, a process that enables the participation of victims and perpetrators more effectively than the traditional justice system. Relevant research findings tell us that victims and offenders participating in RJ processes have a more satisfactory experience of justice. By giving victims the choice to decide about participating in RJ processes, RJ advances procedural justice and empowers victims. Studies consistently state that restorative processes achieve at least 85% satisfaction among victims, improve closure and healing and reduce the fear of further harm to the victim. Meeting with the offender has been shown to reduce post-traumatic stress symptoms in victims and in general helps victims to move forward.

### *RJ and victims’ needs*

Victims’ needs and interests are taken into consideration throughout the whole process. RJ is more successful in increasing offender compliance with restitution when compared to more traditional criminal justice processes and court ordered material compensation. Indeed, among the five broad categories of victims’ needs recognised by the European Commission <sup>1</sup>, RJ is acknowledged as a form of compensation/restoration. Indeed, agreements concluded in the RJ process comprise often monetary,

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<sup>1</sup> Victims’ rights in EU”: [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en)





material or other form of compensation of victims by the perpetrators. These agreements are fulfilled by offenders in a higher percentage than court ordered compensation. Nevertheless, as explained above, research shows that RJ goes much beyond the financial compensation and addresses potentially all five categories of victims' needs, namely: respectful treatment and recognition as victims; protection from retaliation and further harm; support of longer-term psychological benefits; access to justice and participation; and, as already mentioned, compensation and restoration.

### RJ provisions in the revised VRD

To ensure the benefits of restorative justice and safeguards for victims are realised, an effective and equal access to restorative justice services must be guaranteed for all victims of crime. The aim of the European Forum for Restorative Justice (EFRJ) concerning the revision of the Victims' Rights Directive (VRD) is to create a **right to access to restorative justice services for all victims**, at any time and in any type of case. This at minimum entails the right to receive full information about the nature, availability and accessibility of restorative justice services, effective and systematic referral procedures taking into consideration the voluntary nature of the process, and an individualised, case-by-case assessment by, and ongoing support from, competent restorative justice services, governed by recognised standards. The right of access also entails that Member States should create or fund restorative justice services where these are not yet fully available.

As for the Council of Europe's (CoE) Recommendation on restorative justice in criminal matters (CM/Rec(2018)8), restorative justice should be a generally available service at all stages of the criminal justice process and for all types of crime (Rule 18 and 6). The definition as well as the other provision concerning RJ listed below are mainly inspired by this document.

In order to ensure a right to access high quality RJ services, the revised VRD should include:

- DEFINITION

"Restorative justice" means any process which enables those harmed by crime and those responsible for that harm (hereinafter: the parties), if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of a trained and impartial third party (hereinafter: the facilitator).

Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals and members or representatives of affected communities.

"Restorative justice principles" means the principles which underpin the delivery of restorative justice services, namely: stakeholder participation; voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of the parties; procedural fairness; collective, consensus based agreement; a focus on repairing harm through reparation, reintegration and achieving mutual understanding; and avoiding





domination. These principles may be used as a framework with which to underpin broader reforms to criminal justice

- RIGHT to INFORMATION on RJ 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: their right to access restorative justice services in all cases where a suspect or offender is known, and at any time following the offence, and the manners in which they can access those services.

Member States shall set up a coordinated provision of information through state and non-state bodies (including victim support services and restorative justice services) that come into contact with victims to ensure consistent, systematic provision of information. Information should be provided effectively, in several formats (including verbally by trained restorative justice professionals) and at several times.

- RIGHT to RESTORATIVE JUSTICE SERVICES THAT ADHERE TO STANDARDS

Restorative justice should be a generally available service at all stages of the criminal justice process. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude victims from accessing restorative justice services.

Member States shall establish or fund restorative justice services that have sufficient capacity to realise this right, and are available free of charge, nationwide and at all stages of the criminal justice process.

Member States shall take measures to ensure that restorative justice services are governed by standards which are acknowledged by the competent authorities. Standards of competence and ethical rules are necessary to prevent secondary and repeat victimisation, intimidation and retaliation. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) restorative justice shall only take place with the free and informed consent of all parties, which may be withdrawn at any time. No person should be induced by unfair means to participate in restorative justice. Restorative justice shall not proceed with those who are not capable, for any reason, of understanding the meaning of the process;

(b) before agreeing to participate in the restorative justice process, the parties are 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 and, if relevant, the possible implications for ongoing legal proceedings;





- (c) the basic facts of a case should normally be acknowledged by the parties as a basis for starting restorative justice. Participation in restorative justice should not be used as evidence of admission of guilt in subsequent legal proceedings;
- (d) restorative justice provides a neutral space where all parties are encouraged and supported to express their needs and to have these satisfied as far as possible. As such, restorative justice services are used only when in the interest of the parties, with due consideration given to victims' needs and interests, safety considerations, and the need for protections and standards;
- (e) any agreement is arrived at voluntarily and may be taken into account in any further legal proceedings;
- (f) agreements should only contain fair, achievable and proportionate actions to which all parties provide free and informed consent;
- (g) agreements do not have to include tangible outcomes, as the parties are free to agree that the dialogue sufficiently satisfied their needs and interests;
- (h) 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.

- REFERRAL TO RESTORATIVE JUSTICE SERVICES

To realise the right to access restorative justice services, Member States shall facilitate the systematic referral of cases to restorative justice services, including by establishing clear referral pathways at each stage of the criminal justice process, and by enabling victims to self-refer to restorative justice, including in the absence of a prosecution and at any time following the offence.

Justice ministries, criminal justice agencies and judicial authorities should collaborate to ensure that restorative justice is fully accessible by creating the conditions, procedures and infrastructure necessary to refer cases to restorative justice services. This requires clear referral pathways, mechanisms for sharing information (such as victim contact details and risk information), and a common understanding of the meaning and purpose of restorative justice.

In cases which are not referred to restorative justice, the reasons for doing so should be recorded and, if sought, communicated to the victim.

In cases where, for any reason, dialogue between victims and offenders is not possible, judicial authorities, criminal justice agencies, victim support services and restorative justice services may enable, provide or refer victims to other services or practices aimed at reparation or recovery that are delivered in accordance with restorative justice principles.

- TRAINING





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.

Whereas a victim may benefit from referral to restorative justice services at every stage of the criminal justice process, Member States shall ensure that all competent authorities are trained to explain restorative justice accurately and impartially, and to make referrals to restorative justice services. This training should be provided in relevant training colleges and programmes, such as in police and judicial training, and include regular, ongoing training opportunities for professionals.

Training of restorative justice facilitators should be governed by recognised standards as a core safeguard for the parties. Facilitators should be experienced and receive advanced and specialist training before delivering restorative justice in sensitive, complex or serious cases, or cases involving vulnerable victims.

- SYSTEMIC COOPERATION and COORDINATION OF SERVICES

Member States shall promote the systemic cooperation between (state and non-state) actors likely to come into contact with victims, including restorative justice services.

There should be regular consultation between judicial authorities, criminal justice and restorative justice agencies, legal professionals, offenders and groups acting on behalf of victims and communities, in order to enable the development of a common understanding of the meaning and purpose of restorative justice.

### Further considerations

- Restorative Justice delivered by Probation Services

There are concerns about the neutrality and appropriateness for victims of RJ services that are provided by agencies (e.g. probation services) primarily working with offenders. If this is the case, the institutional framework should offer the necessary neutrality of the service and the facilitators, standards of practice should contain additional safeguards for victims and training of facilitators should contain modules on how to work with victims and what is the difference between the role of the probation officer and the role of the facilitator.

- Institutional frame of RJ services (i.e. how should RJ services be set up)

Ideally, RJ services should be set up as an independent service from other criminal justice agencies, with public funding. Service providers could be state or community organisations. Trust in the restorative justice service by the referring bodies and due information sharing between these services should be enabled. Services should be accessible in a geographically balanced way. Quality of the services should be supervised by the state.







- Funding of RJ services

As shown by practices and research findings, RJ reduces the costs of the criminal justice process and of reconviction. It also saves money on (mental) health care. Still, in many Member States these savings are not reallocated to finance restorative justice services and/or victim support. Investing in high quality and accessible restorative justice services would save money in the long term for the whole society and could create resources for more efficient support for victims of crime.

- Legal remedies for victims

Legal remedies for victims regarding not receiving information, the non-referral of the case to restorative justice against their wish and for their potential negative experience (e.g. right to a fair, neutral process adhering to safeguards) in the restorative justice process should be introduced in the criminal justice process.

