

European policymaking at the crossroads of probation, restorative justice and victims of crime

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I. Links between probation and RJ: victims and desistance

- The victims

- Historically: CJS and probation focused exclusively on the offender
 - Gradual introduction of ‘the victim’: rights in the procedure, victim support, quid in hard core parts of the system (prison and probation)?
 - Different methods:
 - Bring/allowing the victim in the picture in the supervision work (awareness, responsibility)
 - Refer to training around victim awareness
 - Refer to RJ services or organise RJ in probation
- Supported by European policymaking ?

- Desistance:
 - Research provides proof of effect of RJ on re-offending (recidivism research)
 - Indications about the mechanisms within RJ that initiate or support desistance (desistance research)
- What do we learn from a recent European research on this topic?

So, linking probation with RJ is supportive for victim and offender!

2. Support in European policymaking for probation to move towards RJ?

CoE: growing support

EU: no regulation

Council of Europe

- CoE Recommendation R(92)16 on the European rules on community sanctions and measures
 - R.45 supplement the work of the probation service by using ‘all appropriate resources existing in the community in order to meet the needs of offenders’

- CoE Recom Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures

Stimulates in (r1.) the development of a bigger variety of community sanctions and measures, including VOM

→ recognition of VOM as a ‘measure’ or ‘intervention’ useful for offenders

- CoE CM/Rec(2010)1 Council of Europe probation rules
 - R.96 probation interventions shall aim at increasing offenders' awareness of the harm done to victims and their taking responsibility for such harm
 - R.12, 37 and 79: work in partnership with other public and private organisations, complementary inter-agency work is necessary to meet the often complex needs of offenders, co-operate with support agencies and the wider civil society
 - Definition of probation agency: recognition that the work of a probation agency may also include RJ interventions (but: distinctive skills → training needed)

3. Support at the European level for the development of RJ?

A mixed picture

CoE: strong support, elaborate regulation

EU: moderate support and limited regulation from the victim's perspective only

Council of Europe

- Early support in different recommendations (not binding) on victims, juvenile justice, community sanctions and measures
- Rec(99)19 on mediation in penal matters
 - Extensive regulation, robust, providing guidance
 - Balanced approach, ‘the parties’
 - Not binding but high moral force
- Rec(2006)8 on assistance to crime victims
 - clear support, but
 - a little cautious (types of crime, potential risks, need for clear standards)

EU

- Victims' Directive (2012/29/EU)
 - Binding, minimum rules, natural persons
 - RJ related parts: Recognition of the benefits, a right to information, safeguards
 - RJ approached from the victims' perspective only
 - Most aspects equally relevant for offenders, but no binding EU legislation for them
 - Risk: RJ officially framed only as a method for meeting victims' needs; denaturation of RJ

Recognition of the benefits of RJ for victims of crime

‘RJ services, including for example VOM, FGC and sentencing circles, can be of great benefit to the victim’ (Recital 46)

A right to information about RJ

MS must ensure that victims are offered information on the available RJ services from the first contact with a competent authority (article 4.1 (j))

Priority to safeguards in the context of RJ services

- Article 12
- Protect victims against secondary and repeat victimization, and against intimidation and retaliation, by ensuring that RJ services are safe and competent
- If RJ is implemented, it needs to respect certain safeguards

- Voluntariness (art. 12.1.(a), (b), (d))
- Confidentiality (art. 12.1(e))
- Safety (art. 1 (a))
- RJ will only be possible if the offender has acknowledged the basic facts of the case (art. 12.1 (c))
- Any agreement may be taken into account in any further criminal procedure (art. 12.1 (d))
- RJ services should only be used if they are in the interest of the victim (art. 12.1 (a))

Missed opportunities challenges ahead

- make self-referral possible
- RJ for all types of victims / for all types of crime
- at any stage of the criminal proceedings
- stimulate the development of RJ / general availability of RJ services (geographically)
- free service

4. Mechanisms for Desistance from Crime within Restorative Justice Practices

Some results from a European research project

Criminal Justice 2011

with the financial support of the European Commission

Directorate-General Justice, Directorate B: Criminal Justice



General set up

- Coordinated by the EFRJ (2013-2014)
- Funded by the Criminal Justice programme of the EC
- Three regions: Austria, Belgium, Northern Ireland
- A research and a practice organisation collaborate
 - Austria: IRKS and Neustart
 - Belgium: KU Leuven and Médiante
 - Northern Ireland: Queen's University and Youth Justice Agency
- Diversification of the practices: adults/minors, mediation/conferencing, pre- and posttrial, minor and very serious offending

Research questions

- How does participation in RJ influence the desistance journey of people who have offended?
- Which factors within RJ practices supported changes that help initiate or maintain desistance from crime?

Research design in a nutshell

- Literature review
- Empirical part: in each region more or less 30 interviews with desisters who participated in RJ

Results of the empirical research in Belgium

Sample Characteristics and Data Collection

- 25 interviews
 - all adult men, between 24 and 69 years old, mainly in their twenties and thirties
 - different types of offences
 - murder, armed robbery, theft with breaking and entering, severe battering and assault, extortion, swindle, receiving stolen goods, sexual offences
- All interviewed in person
- Challenges: long process before the interview actually happened, recollection of the mediation, introvert persons, complexity of the process of change

Data analysis

- Desisters?
 - Most had a previous criminal life style (career criminal, living in the margins, linked to drug and alcohol addiction, youngsters in precarious social environment under the influence of peers, sexual deviance)
 - Criminal record check and self report (traffic offences, smoking pot)

Mediation

- initiating desistance
- as a support for maintaining desistance
- insignificant for desistance

Mechanisms within mediation supporting desistance

- the attitude of the mediator,
- the open communication
- the communication with the victim
- the emotional work done in the mediation
- the reparation agreed on and implemented
- the narrative around their identity during the mediation process
- the mediation as a support for their early release from prison.

The results put in perspective

- Comparison with Austria and Northern Ireland
- Factors of desistance not linked to the restorative process

Thank you for your attention!

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