

# **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  
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# 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!**

For more information visit

[www.euforumrj.org](http://www.euforumrj.org)

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