



**VICTIMS AND RESTORATIVE JUSTICE: A
EUROPEAN PERSPECTIVE – IMPLICATIONS
FOR PROBATION AND PRISONS**

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St. Catherine's College, Oxford, England**



- **The context**
- **The actual picture**
- **The near future**



THE CONTEXT: THE MAIN FEATURES OF PRISON AND PROBATION IN EUROPE

- **Increased complexity of populations (mental health, social problems)**
- **Increased mobility (foreign nationals)**
- **Increased level of judicial interventions versus fundamental human rights of offenders (and victims)**
- **Increased demands for effectiveness of penal interventions (evidence-based policies) --- IMPACT FROM THE ECONOMICAL CRISIS**



- **Varying/increasing public, media and political attention for crime and insecurity**
- **Varying/increasing emotional context of penal policies (incidents, populism)**
- **Varying social/health policies, availability of social/health services ---- IMPACT FROM ECONOMICAL CRISIS**
- **Varying prison populations and the search for alternatives (middle-high risk; foreigners, ethnic minorities, mentally ill offenders; drugs, violence, sex offenders) versus Varying/increasing risk-aversion (the myth of zero risk)**



THE ACTUAL PICTURE: RJ AND VICTIMS IN THE CoE RULES.

Council of Europe Probation Rules R (2010) 1

Definition: 'Probation Service' relates to the implementation of *community sanctions and measures (850.737, Space II; 2007)*, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve *supervision, guidance and assistance* aiming at the *social inclusion* of an offender as well as at contributing to *community safety*. It may also involve providing *information and advice* to judicial authorities to help them reach informed and just decisions; providing guidance and support to offenders while in *custody* in order to prepare their *release and resettlement*; monitoring and assistance to persons subject to early or conditional release; *restorative justice* interventions; and offering assistance to *victims* of crime.

Council of Europe Prison Rules R (2006) 2.

Art. 103.7 Prisoners who consent to do so may be involved in a program of restorative justice and in making reparation for their offences.



THE ACTUAL PICTURE: ARE RJ AND VICTIMS IN THE PRACTICAL AGENDA OF PROBATION?

YES, IN SOME JURISDICTIONS RJ AND VICTIMS ARE **PART OF THE MISSION** (CZECH REPUBLIC "PROBATION AND MEDIATION SERVICE"); **MAIN COMPONENTS** OF THE DAILY WORK (AUSTRIA, NORTHERN IRELAND); **INCLUDED** IN THE PROBATION SYSTEM BUT NOT DELIVERED BY PROBATION OFFICERS (CATALONIA, HUNGARY); DELIVERED BY NON-PROFIT ORGANISATIONS WITH **STRONG LINKS** WITH PROBATION (UK, GERMANY).



THE ACTUAL PICTURE: ARE RJ AND VICTIMS IN THE PRACTICAL AGENDA OF PRISONS?

Randomized good practices

In Europe, focus on victims program (Hamburg); Circles of Support and Accountability (from CANADA to UK, NL, CAT); The Restorative Prison Project in the UK; Restorative justice consultants in Belgium.

And Worldwide, The Sycamore Tree Project Australia, Cayman Islands, Colombia, Costa Rica, Hong Kong, Hungary, Korea, New Zealand, Panama, Philippines, Rwanda, South Africa, and USA; The offender-family reconciliation program in Cambodia; The offender-community reconciliation program in Zimbabwe; The post-conflict reconciliation program in Sri Lanka.



THE NEAR FUTURE: IMPLEMENTING THE EU DIRECTIVE 2012/29/EU. THE VIEW OF THE CRIMINAL JUSTICE PLATFORM IN EUROPE (CJP)

Many articles are aimed at police, public prosecution or victim support organisations.

5 Articles however (1, 3, 6, 12, 25) are relevant for the CJP (Confederation of European Probation, European Forum for Restorative Justice, Europris, Victim Support Europe).



ARTICLE 1

Treat victims in a respectful manner

1. (...) Member States shall ensure that **victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts** with victim support or restorative justice services or a competent authority, **operating within the context of criminal proceedings**. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including due respect to their residence status.



ARTICLE 3

Right to understand and to be understood

1. Member States shall take **appropriate measures to assist victims to understand and to be understood** from the first contact and during any further necessary interaction they have with a competent authority **in the context of criminal proceedings, including where information is provided by that authority.**
2. Member States shall ensure that **communications with victims are given in simple and accessible language, orally or in writing.** Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.



ARTICLE 6

Right to receive information about their case

Member States shall ensure that **victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them, is released from or has escaped detention.**

Furthermore, Member States shall ensure that **victims are informed about any relevant measures issued for their protection in case of release or escape of the offender.**



ARTICLE 12

“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.



ARTICLE 12

“Safeguards in the context of restorative justice services”

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, subject to at least the following conditions:**



ARTICLE 12

“Safeguards in the context of restorative justice services”: conditions

- a) restorative justice only in the interest of the victim (...) based on the victim's free and informed consent (...); before agreeing to participate (...),
- b) the victim is provided with full and unbiased information about that process and about the potential outcomes (...);
- c) the offender has acknowledged the basic facts of the case;



ARTICLE 12

“Safeguards in the context of restorative justice services”: conditions

- d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
- e) discussions in restorative justice processes (...) 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.



ARTICLE 25

Training of practitioners

4. (...) 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.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, **training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.**



CJP: TOPICS FOR A COLLABORATIVE WORK

How to promote in prison settings and in probation services?

- Treat victims in a respectful way (art. 1)
- Communication and information (art. 3 and 6)
- Restorative justice (art. 12)
- Training of practitioners (art. 25)



CEP

**Confederation of European
Probation**