



## European Forum for Restorative Justice<sup>1</sup> Gender Based Violence Working Group<sup>2</sup>

### **Making restorative justice possible in cases of gender based violence (GBV): some starting reflections of the EFRJ Working Group on Restorative Justice and Gender based violence**

The European Forum for Restorative Justice (EFRJ) and its Working Group on Gender Based Violence would like to draw the attention of the European Commission to the importance of a restorative justice (RJ) in all matters that involve victims and offenders of gender based violence, and in particular call on the EC to make restorative justice available for victims of GBV.

#### **RJ and GBV: what Istanbul Convention says**

Art. 48 of Istanbul Convention sets a prohibition of mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the Convention. It has formally regard to mediation both in civil and criminal matters, although banning only **compulsory mediation, which is something very far from the mediation based on informed, free and ongoing will of all participants**, as it is provided and practiced in criminal matters on the base of the Recommendation 2018/8 of the Council of Europe.

Despite this consideration seems to limit the ban to mediation in civil and family proceedings, art. 48 of Istanbul Convention reveals a skepticism against the use of restorative justice in addressing domestic violence: the reasons of it are pointed out in the Explanatory Report of Istanbul Convention and in some Greivio's Reports.

The Explanatory Report observes that mediation may have negative effects, because of the high vulnerability of gender-based violence victims and because of the danger of re-privatisation in addressing gender-based violence out of Court.

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<sup>1</sup> The European Forum for Restorative Justice (EFRJ) is the leading European network for supporting the development of restorative justice in Europe. Founded in 2000 at the KU Leuven Institute of Criminology, the EFRJ is a membership organization that currently comprises around 500 members (either individual or organisational), from Europe and beyond.

<sup>2</sup> The Working Group on Gender Based Violence and Restorative Justice was set up by the EFRJ in 2020 and is composed by key experts in this domain. The objective of the Working Group is to discuss and develop models of restorative justice in cases of gender based violence which are safe, anti- oppressive and effective. [Here](#), more information.





Regarding the first issue, it is highlighted in the Explanatory Report that “victims of such violence can never enter the alternative dispute resolution processes on a level equal to that of the perpetrator. It is in the nature of such offences that such victims are invariably left with a feeling of shame, helplessness and vulnerability, while the perpetrator exudes a sense of power and dominance“.

### **Greivio’s Reports on the use of RJ to address GBV cases**

However, this peremptory exclusionary rule results quite mitigated in Greivio’s Reports, where State parties are invited to make a careful check of victim’s will: due to the relationship of domination and control over the victim, the informed, voluntary and free consent of the victim involved must be carefully checked. Moreover, the high risk of secondary victimization suggests that a special caution has to be used in assessing victim’s ability to consciously and freely choose the restorative process and to face it without undergoing the effects of an unequal relation. In addition, the risk for a gender-based violence victim entering into a mediation is greater when the legal professional concerned (such as judges, prosecutors and mediators) are not trained in the dynamics and risks of violence against women.

On the second side, the Explanatory Report means to avoid that violence against women is treated as a private matter, reducing violence to the dimension of a conflict between spouses managed as a family matter. For this reason, mediation should not replace the trial in front of the Court and should not be alternative to punishment, justifying the idea that violence is not worth be punished, while one of the aims of Istanbul Convention is to raise the complaint rate and the punishment to make clear that gender-based violence cannot be longer tolerated.

### **Some starting point for further reflections**

In front of these objections, the EFRJ has set a special Working Group on Restorative Justice and Gender Based Violence, in order to verify the opportunity and the conditions to address this kind of violence through restorative practices. As a starting point for the reflections shared in the Working Group, we can observe that:

1) **RJ is always based on the informed and free will of all participants**, on the balance between them and on the empowerment of the victim, never being introduced when one of the parties is not ready to face it. These conditions are always carefully checked before entering any mediation: they could be worth of a specific assessment of GBV victims and offenders in order to verify the eligibility to enter mediation.

2) **RJ is not a form of re-privatisation of the violence, as long as it is conducted by a third party (the mediator/facilitator)** involved on the base of a judicial authority request, pending a criminal proceeding. Moreover, mediation can represent a third way between





silence and access to trial, giving the victim the chance to make a different choice, which foster the surfacing of the phenomenon in all those cases where victims are not ready to fill a complaint, helping to counteract the high attrition rate.

In this sense, **restorative justice is not a way to avoid the trial, it is a way to overcome the silence.**

## Recommendations

To secure the availability of restorative justice to victims of GBV, to inform them about the existence of these services and to give them the opportunity to freely choose to participate or not, within and beyond criminal procedures, taking into account their needs. In particular:

- 1) To provide for an individual assessment of the victim and of the offender, tailored to the entry into restorative justice processes (to verify that her/his choice is free and that there is no important imbalance between the participants).
- 2) To provide specific training for mediators about the structural and cultural characteristics of GBV and on the cycle of domestic violence and sexual violence.
- 3) To use restorative justice to counteract the low complaint rate of GBV, not as an escape from justice.

## Documents:

- 1) Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, <https://rm.coe.int/16800d383a>
- 2) Country monitoring Report by Grevio, <https://www.coe.int/en/web/istanbul-convention/country-monitoring-work>, especially Belgium, the Netherland, Finland, Monaco

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## Restorative Justice

*“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.”* (EU Victims’ Rights Directive, Directive 2012/29/EU)

Restorative Justice is an evolving approach oriented towards repairing, as far as possible, the harm caused by crime or other transgressions. Active participation by the victim, the offender and possibly other parties (the community) is a core element of restorative justice, with voluntary participation based on informed consent. Restorative justice practices such as victim-offender mediation, conferencing and circles are used in Europe and beyond to bring together people who experience harm in society, the justice system, organisations, schools or families. Involved parties engage in a respectful, facilitated dialogue over specific questions, mostly about the harm, responsibility and restoration. Restorative justice is a justice process that encompasses both RJ principle and practices and that has to be distinguished from mediation in penal matters and from mediation in family proceedings.

Recently, the field of restorative justice has gone through a significant development to enhance the rule of law and access of justice. In the last few years, in fact, significant progress has been made in the provision of restorative justice by international and European instruments:

- The [EU Victims’ Rights Directive 2012/29/EU](#) has provided restorative justice in Europe with a more solid position and a clear victim orientation. Recently (June 2020), the European Commission adopted a new [EU Strategy on victims’ rights \(2020 - 2025\)](#) that recognises the role of restorative justice to achieve the first objective of the Strategy itself, namely empowering victims of crime.
- The [Council of Europe Recommendation CM/Rec\(2018\)8](#) concerning restorative justice in criminal matters), adopted on 3 October 2018, reflects new developments and a broader concept of restorative justice approaches. Importantly, it states that **“restorative justice should be a generally available service. The type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders”** (rule 18). As asserted also by the CoE Recommendation, no offences are considered unsuitable. The key criterion is the willingness of the perpetrator and victim to meet or communicate in some other way and the obligation of the professionals to ensure that the process is safe for all parties.
- In May 2020, the United Nations Office on Drugs and Crime (UNODC) released the [Second Edition of the Handbook on Restorative Justice Programmes](#). It integrates the developments in the field and in particular the potentials of restorative justice in dealing with serious crimes, including sexual violence, often express a willingness to meet face-





to-face with the offender. The Handbook cites a satisfaction survey conducted on behalf of the Ministry of Justice of New Zealand that **reports that 83 per cent of victims of sexual violence who had participated in a restorative justice process were satisfied with the overall process.** It also states that, since sexual crimes have low reporting, prosecution and conviction rates, restorative justice can provide the opportunity for the victim to access justice services when other processes may be less likely to occur. Very significantly the UN Handbook recognises the risk of second victimisation and that the **“vulnerability of victims of sexual violence raises concerns about if, when and how to approach the topic of restorative justice with them”** but that **“failing to discuss the possibility of restorative justice with the victims may deprive them of an opportunity to heal”**.

Research on restorative justice shows considerable evidence about its effectiveness for victims, offenders and communities.<sup>3</sup> Research findings tell us that victims and offenders have a much more satisfactory experience of justice than with the formal, traditional process. Restorative justice processes empower victims and offenders by engaging their participation. Studies consistently state that restorative processes improve closure and healing for victims and achieve at least 85% satisfaction among victims, reducing their fear of further harm and reducing post-traumatic stress symptoms. Research furthermore confirms that restorative justice stimulates desistance from offending, decreases recidivism of offenders and increases offender compliance with restitution when compared to other traditional criminal justice processes.

Restorative justice approaches are developed taking into consideration the specific needs and capabilities of the parties involved. During the preparation phase, well-trained facilitators identify needs, risks and expectations and support the parties in deciding how they would like to participate or not to participate in a restorative justice process. This applies also, and even more so, when vulnerable groups of victims are involved.

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<sup>3</sup>European Forum for Restorative Justice. (2017). *Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe*. European Forum for Restorative Justice. Leuven. Belgium. Retrieval on [www.euforumrj.org](http://www.euforumrj.org)

