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# SCHRIFTENREIHE SOZIALE STRAFRECHTSPFLEGE

## **Victims in Restorative Justice at Post-sentencing Level A MANUAL**

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# VICTIMS IN RESTORATIVE JUSTICE AT POST-SENTENCING LEVEL

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Schleswig-Holstein Association for Social Responsibility in  
Criminal Justice; Victim and Offender Treatment



in co-operation with

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SCHRIFTENREIHE  
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MANUAL

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## INTRODUCTION

The content of this manual evolved from our action research project 'Restorative Justice at post-sentencing level; supporting and protecting victims' carried out by an international European team from Belgium, Croatia, Germany, Portugal, Spain and the United Kingdom. This manual is one of several project publications. More information can be found in the website [www.rjustice.eu](http://www.rjustice.eu) and in a book publication (cf. Lummer et al. 2015).

The target group of this manual consists of those who are, in the widest sense, related to the work with victims of crime but also those, who are interested in Restorative Justice. From a Restorative Justice perspective, all fields that are related to the process of dealing with criminal offences and their consequences should pay more attention to victims and their needs. As long as offenders are the main, or initial, focus in professional and voluntary practice in criminal justice work, the victim remains neglected and is only referred to victim organizations for help. Restorative Justice sees the offender and the victim as a part of the whole social system. The mere punishment of offenders is not satisfying to the general circumstances of society, in which and out of which damages to victims occur. Neither does punishment recognize material, physical and psychological damage to victims.

This manual describes how victims of crime and therewith offenders and the community can be supported in various different ways. Therefore, the awareness of their needs is central at the outset. Furthermore, it aims to provide understanding of the individual process of coping and may therefore also lead to more self-awareness. If the victim is interested and prepared, it is possible to carry out Restorative Justice procedures in all types of crime and at all levels of seriousness, as long as it fits the person's needs. The different steps to gain understanding of the situation of a victim and to provide support, as well as to empower in order to deal with what has occurred, are described in this manual. The different phases, before, during and after a restorative process, will be outlined as well as various RJ-procedures, from indirect victim-offender-mediation to conferencing and possible techniques to apply during these procedures. That an atmosphere of trust is essential during the whole process appears evident as it is a basic principle of all Restorative Justice procedures. In order to provide better orientation, each sub-section is initiated with a number of key issues, which are then elaborated in a short text and concluded with a precise recommendation for practitioners to apply in the work with victims. More experienced practitioners can use this manual as a book of reference and concentrate on the recommendation whereas those, who have had less contact with victims in their work, can use it as an additional guide. In the final section, some case studies from the project partners England, Schleswig-Holstein, Portugal and Croatia give an exemplary insight into the restorative work carried out, from the victim perspective only. Since the UN declaration of Basic

Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34) in 1985 there have been attempts to improve the situation for victims of crime.

The EU-directive 2012/29 of 25 October 2012 on establishing minimum standards on the support and protection of victims of crime, could be a milestone for the protection of victims of crime and hopefully also the spread of the idea of restorative justice in Europe. The basis for this directive is the Lisbon-contract. This development of the EU-constitution led to a delegation of legislation competence in some areas of the criminal law away from the EU-member states to the EU. In contrast to the EU framework decision of 15 March 2001 on the standing of victims in criminal proceedings, the EU is now able to put the member states under more pressure to implement restorative justice in their criminal procedure. Previous evaluations have shown an unsatisfactory implementation of the framework decision. Formulations such as "Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate..." (Art. 10 framework decision) appeared vague and unclear. Based on Art. 82 paragraph 2 Treaty on the functioning of the EU (TFEU), the EU has now established the directive 2012/29 for victim rights to replace the framework decision. Some argue that it is questionable to introduce restorative justice as a victim related instrument. But concerning the limited competence of the EU in the field of criminal law, it is currently indeed the only way to strengthen restorative justice by EU-law in Europe. The member states are obliged to introduce the directive until 16 November 2015 into national law.

From the restorative justice point of view, Art. 12 of directive 2012/29 is the key. While paragraph 1 regulates some obligations to protect victims in RJ-procedures, paragraph 2 obligates the member states to promote the delivery of restorative justice for victims if it is suitable. For the detailed implementation the member states have to establish procedures and guidelines. Among other factors, it depends on the interpretation of the directive 2012/29 if it will succeed. For example, it is questionable if Art. 12 paragraph 2 only obliges the member states to put in place RJ-procedures, or if the states have to offer the victims a right to choose (Kilchling, 2014). In terms of ownership, this approach would be suitable, but only if the decision for a restorative procedure would not depend on selective referrals by official agencies. Therefore, it would be a small consolation that the directive contains only minimal standards so that the member states could extend the rights voluntarily in their law.

While the EU directive refers explicitly to the protection of victims, the question remains open whether this means a 'protective' approach how it is referred to in victimological research, which is to conceptualize the contradiction to 'proactive' approaches. The support and protection of victims of crimes can be understood in several ways. Often, victims experience that they lose control of some aspects of their life in the moment of the event. Feeling oneself to be exposed is only one negative consequence of victimization. This could also concern a possible future encounter with the offender. Protection could prevent a victim being subject to

secondary victimization or traumatization in this way. One could also say self-protection is a way of reacting to deal with such events or dangers. From experience, it is known that a fully protective approach is not realistic. Life experiences cannot be controlled overall. Therefore, a protective approach is not sufficient, in order to support victims in their coping process. Rather, Wemmers and Van Camp (2011) found, in their Belgian and Canadian study, that a proactive approach is more satisfying for victims. The term 'proactive' describes an understanding that is, opposed to the mere defence of the unwanted, interested in bringing about the desired change. A proactive approach aims to assist victims to take responsibility for their own fate and to develop a viewpoint from which they are able to find new opportunities for action for their individual situation. One could also speak of a conscious guidance of own behavior instead of a reaction to others. Restorative Justice works proactively with victims of crimes and their experiences. They learn how to deal with their own image of the traumatic event that has occurred and are therewith empowered to see their own needs and, if willing and prepared, to see those of the offender with whom they are involuntarily related through the offence. The strategy and attitude required for this are acceptance, empathy and appreciation, whilst the goals are to recognize and accept one's own vulnerability and gain back trust to one's own self. If the parties are prepared accordingly, they could, if it appears appropriate to them, experience a process based on dialogue, reparation and compensation as healing. Thus, Restorative Justice aims towards a proactive approach in the coping process of victims as a form of victim support. In terms of coping, the same applies to offenders, for them to understand how to take responsibility proactively for their behavior and also, identify their own needs. Ideally, the community (others affected by the offence, relatives and supporters of both parties, those responsible within the CJS, media, etc.) also learn how to react in a responsible and constructive way to criminality.

A proactive approach is characterized by victims having been informed about restorative justice from the start. They can decide whether they want to get involved and proceed, or not, at any stage of the criminal justice process. Therefore, ideally, all victims are made the offer and have the free choice to participate based on sufficient and impartial information provided to them by sensitive practitioners (Wemmers and Van Camp, 2011).

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| <p>Recommendation: This research shows that the support of victims already starts with how the offer of Restorative Justice is being made. If an approach could be chosen that allows victims to decide for themselves based on suitable information, the first step towards a proactive support is achieved.</p> |
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## PART 1 – VICTIM NEEDS AND COPING STRATEGIES

Scientists agree upon the universality of human needs (e.g. Maslow, 1943; Staub-Bernasconi, 2007), hence victims have basically the same needs as all other human beings. Trauma-Therapists Firus et al. (2012: 78) stress the need for safety which involves secure bonds, orientation and control as well as an enhancement of self-esteem and protection of self-worth in addition with maximization of pleasure in life and the avoidance of aversive feelings. Taxonomies vary in details, especially whether there is a hierarchy of needs and whether general wealth and culture have an influence. It is plausible that a need which is currently not satisfied will play the dominant role for that particular moment. In the context of victimization this will be true for physiological (health) and safety needs during and directly after the occurrence of the harmful incident. However, as time passes, these needs will hopefully retreat giving priority to other needs such as love and self-esteem needs, to use the terminology of Maslow (1943). “In addressing the needs of victims there has also been increasing incorporation of the principles of Restorative Justice and a realisation that assisting victims does not necessarily mean curtailing the rights and needs of offenders” (Cook et al., 1999; on the situation in Australia where particularly the need for a long-term counselling option for victims is stressed).

Rosenberg (2001) points to the fact that in Western culture we do not normally refer to our needs. Victims will instead express wishes, or formulate expectations. These are partly emerging from needs, but partly they have been suggested by societal forces, including customs and imperatives from powerful systems such as the media, politics, economics and law. Whereas needs are relatively few and finite, wants are potentially infinite and insatiable (see Bennett’s, 2007, critique of a consumerist approach). Marcuse (1964) warned against “false needs” which should be taken into consideration when being confronted with a so-called ‘need for punishment’ (which is a societal suggestion, not part of the taxonomies mentioned above).

### Key facts:

- First of all, victims want their ‘normality’ back.
- They want to regain their previous status; this can include compensation, or reparation of material damages.
- Victims want to make the offender feel and realize what they have caused by their actions.
- Victims appreciate it if the offender takes responsibility for his/her actions.
- Victims want to be certain that there will be no repetition of the victimization.

- Victims want to know, *why* they have been victimized.<sup>1</sup>
- Victims appreciate the offender asking that the apology they offer will be accepted rather than the offender presuming that the victim will be ready to accept an apology without question.
- Victims want acknowledgment, a confirmation that they faced injustice.

These were the results of in-depth interviews with victims of various forms of assault and burglary (Hagemann, 1993). Heather Strang (2002) found similar answers in her research in Canberra. Focusing on the process to (re-)establish justice after a victimization, victims want a less formal process (than the court) where their views are taken into account. They ask for more information about both the processing and outcome of their cases. They want to participate in their cases and wish to experience respectful and fair treatment, material restoration and emotional restoration, including an apology by the offender (Strang, 2002: 60). Basically the same tendency was found by Shapland and colleagues (1985) in the pioneering study of this kind in England. Victims found it very unsatisfactory without having an alternative option to court at that time.

The EU recommends respectful treatment and recognition for victims, including protection from intimidation, retaliation and further harm, as well as support, including physical, psychological and practical assistance, access to justice and compensation and restoration. This should be provided through a variety of means including mediation, or other forms of restorative justice that allow victims to face the accused, with a view to reaching a voluntary agreement between them on how to repair the harm to the victim.<sup>2</sup>

## INDIVIDUALITY OF VICTIMIZATION

*“People falling victim to crime have a range of needs, varying from victim to victim. To meet these individual needs, it is necessary that all victims are treated individually.”* (EU Commission)

The criminal justice system habitually starts from the offender perspective and defines justice in part as treating one offender of a certain offence in a similar way to another one (proportionality). This way of thinking is not appropriate from the victim perspective. Experiencing a victimization of a certain type can mean completely different things for different people. It is a very ignorant approach to pretend to know in advance about the exact nature of the consequences for the victim from the outside. From health studies of Antonovsky (1987) the notions of

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<sup>1</sup> This seems to be the most crucial and the most precarious question. In the case of an unknown offender (or if s/he refuses to answer) the victim is left alone with speculations involving a high potential for self-blame [see Bard & Sangrey, 1986]. There is even an organization running a victimological website [www.why-me.org](http://www.why-me.org) (1.8.2014) under this title.

<sup>2</sup> EU Commission [http://ec.europa.eu/justice/criminal/victims/rights/index\\_en.htm](http://ec.europa.eu/justice/criminal/victims/rights/index_en.htm) 14.11.2014

resilience (and salutogenesis) have been derived. Resilience means that certain persons are less vulnerable and will not develop the same serious harms as others. Although the concept is not fully understood yet it is clear that certain social and personal characteristics are correlated with resilience. Very important to resilience is an existing and accessible informal support network. However, it is not only 'objective' facts, but also a range of mental convictions (self-efficacy) which are moderating the impact of victimization. And the same person with the same network and personality can be more vulnerable on one day than on another. Christie (1986) has written about the ideal victim, which is a conception of a completely innocent person who deserves every support. This is of course a fiction and real victims often do not behave like this idealised model suggests. Christie's concern was the treatment of this latter group of victims who often face disbelief, suspicion and even rejection. Strobl (1998) has shown that everyday conceptions of many police-officers prevent them from treating young male immigrant victims appropriately because they fit usually with their conception of the group of offenders. Likewise prostitutes are often denied the status of being treated as a rape victim.

Recommendation: Therefore, although standards<sup>3</sup> for service delivery are important, it does not make much sense to develop standardized routines of assistance. Nor does this mean that there is no way for professionals and other supporters to prepare themselves for encounters with victims. Victims have already experienced the ignorance of an offender not caring about their needs and wishes. Supporters are asked not to dominate the victims and give them instructions, but to listen carefully to them and be empathetic.

## COPING PROCESSES

Victims need to overcome the problematic situation caused by the victimization experience. Coping describes all efforts to regain normality or a new acceptable equilibrium. It means that the consequences of the victimization have to be overcome, or that they should no longer be of major importance (e.g. a scar may constitute a sign on the body, but unless by being visible or causing other problems it does not affect daily life). Either the victim builds a new identity, or is in a position to restore his or her old identity.

The following coping forms can be identified (Hagemann, 1993; Lazarus & Folkman 1984):

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<sup>3</sup> Cf. European Forum for Victim Services' Statement of victims' rights to standards of services

## 13 different coping-forms

### *Problem-solving and regulating emotions:*

Increasing strength

Fighting

Looking for supporters

Suffering

Adaptation

### *Temporary moratorium of activities:*

Gaining distance

Inhibition of action

### *Solely emotion-regulating:*

Expressing emotions

Inner growth

Mystical thinking

Ignoring and repressing

Rationalizing

Retreat

These examples derived from a research study with victims of burglary and assault (Hagemann, 1993) and do not necessarily represent all possible coping forms, especially given the level of aggregation of different forms. The combination of all forms used by an individual is called the coping repertoire of that person: the broader the coping repertoire the better. Coping is a dynamic process. Victims are relying on different coping forms at different points in time (also depending on the personality, the type of offence and other aspects). According to Lazarus & Folkman (1984) activities chosen from the top category help a lot. The middle category is only suitable temporarily and can be effective to escape from a threatening situation, but is not useful in the long run. The bottom category may offer relief, but does not change anything in the reality outside the person, thus leaving her in a very vulnerable state. We must keep in mind that persons use different forms at different points in time. If the choice of the victim is in favor of 'retreat', for example, at least temporarily, there is no chance for engaging the person in a mediation process. Whereas if the current choice favors 'fighting' the person may see a chance to interrogate the offender, or to pay back to him/her and thus welcome a mediation involving direct dialogue (Hagemann, 1991). The purpose of the inclusion of some basic knowledge about coping mechanisms and processes is to understand better the specific behavior of victims. Therefore it is relevant for supporters, but is also relevant for offenders and facilitators in a subsequent restorative process. What is the appropriate time for a victim to be contacted? How shall I deal with undesirable or unexpected reactions? Is it the end of the road to peacemaking when a victim rejects a request for a dialogue?

In our project we have found that some victims came back to the offer after several months, or even years. They did not refuse a dialogue absolutely, but needed their time to recover and prepare themselves for it. This is a delicate matter because facilitators and offenders who like to apologize and restore the harm to the extent possible, do not have many opportunities to approach a victim. They should avoid structuring interviews which lead to a clear refusal because that closes the door and can prevent the offer of further opportunities for dialogue. Instead they might convey a clear and open offer and the opportunity to come back to it in appropriate time in the future (see proactive strategy).

## LERNER'S 'BELIEF IN A JUST WORLD'

### Key Facts:

- According to Lerner's 'Theory of a Just World' everyone gets their just deserts.
- The belief in a just world fulfills essential functions (trust, motives) but can also have negative consequences for victims of crime and injustice.
- This belief is particularly defended through psychological reconstruction by those who appear to be in danger.

According to the 'Belief in a Just World' people believe that the world is generally just and that justice is neither dependent on coincidences, nor on fate. Based on observations and experiments, Melvin Lerner has developed the 'Theory of a Just World' (Lerner, 1980). The central message is that people usually need to assume that everybody gets one's just deserts. This belief serves several functions. At first, the 'Belief in a Just World' creates trust. The more one believes in it, the more trust one has in other people and the less fear of injustice or misfortune, is experienced. It is believed that one's own good behavior will be rewarded in future and it is expected that in situations of performance, one is confronted with fair challenges, including to reach fair results. Such situations are seen as challenges rather than as a threat. On the other hand, the belief does also involve the function of motives. A good character and therewith own behavior has consequences for one's own future. It is a personal contract which obliges oneself to conform to just behavior. This, in turn, causes the person to help others in emergency situations, as far as they have not caused their problems themselves, and are seen as members of their own group. If, however, a person experiences injustice, without the possibility to stop it, or to restore justice, the justice is reconstructed psychologically in that the extent of the injustice that has occurred will be reduced mentally. For instance, this can occur by devaluation of a victim who experiences injustice. Either, they are attributed a bad character which would justify the injustice as a form of punishment, or the occurrence is ascribed to 'wrong' behavior of the affected person. The harmed person must have done something wrong and the

injustice is the logical consequence of that. The psychological reconstruction can furthermore have self-reflective effects. This can result in people who have experienced injustice, then experience the harm as either self-imposed, or as their just deserts and therefore as just. At the same time, the reduction of the offenders' harmful intention can occur, or the extent of the injustice is reduced or trivialized. Besides the positive effects of the 'Belief in a Just World', as for instance the support in relation to moderating one's worries regarding security and the perception of the world as stable and structured, it can on the other hand have tragic consequences for victims of crimes, by impeding their successful coping processes, as well as causing secondary victimization.

Recommendation: Practitioners who have contact with victims through Restorative Justice-procedures, or otherwise, should be familiar with the Theory of the 'Belief in a Just World' and have reflected it so as to avoid causing harm by supporting some of the assumptions which the Theory contains.

## APPRECIATION AND EMPATHY

In the context of supporting victims, appreciation is connected with sympathy and understanding. It implies, first of all, to respect the victim and to acknowledge their status without looking down on him or her, or degrading or excluding the person. Support does not mean paternalism which can be associated with the offender's behavior of ignoring the integrity and the needs of the victim. Therefore, empathetic reactions of professional and private support persons are necessary to avoid secondary victimization and create an atmosphere of trust and safety.

Empathy plays a crucial role in the context of victimization and offending. Improving awareness of the consequences of one's own actions contributes to prevent victimizations including secondary victimizations. Former offenders who are able to empathize and who are aware of the consequences of their own actions could avoid the future infliction of pain and suffering by being trained in helping techniques. The challenge is to make empathy accessible to everyone, all the time and everywhere! Thus the timing of a victim-empathy-training for prisoners and the transfer from the training situation to everyday life need to be focused on. Empathy can also bridge the gap between victims and offenders after victimization (Wallis 2014). „Empathy is the emotional glue that binds people together in respect and dignity. I call the way we relate when we exchange empathy ‚peacemaking‘“ (Pepinsky, 2008: 188).

Lipps (1907) understood empathy as a "psychological resonance phenomenon" triggering inner processes to understand objects and other humans by 'inner imitation' which seems to be close to Mead's (1934) notion of perspective taking, which requires mental flexibility and presupposing self-other-awareness. Self-other-awareness could be missing in very young children, or mentally ill

persons. Baron-Cohen (2011) has focused on people suffering from autism, dementia, or dissocial personality disorders, who are not capable of developing empathy. Whereas imitation presupposes a certain cognitive decision, the concept of emotional contagion bypasses the consciousness (affective empathy). The term embodiment refers to physical expressions of which the actors are not aware, for instance victims' needs can be communicated (see Rosenberg's (2001) non-violent communication based on value-free observations). Empathy allows direct access to these needs, or a sensitivity to ask victims about their needs.

According to Rogers (1975: 4; in Håkansson, 2003: 5) "empathy means entering the private perceptual world of the other and becoming thoroughly at home in it. It involves being sensitive, moment to moment, to the changing felt meanings which flow in this other person, to the fear or rage or tenderness or confusion or whatever, that he/she is experiencing." Empathy allows sensing the hurt or the pleasure of another subject (see also Rogers, 1959; who views empathy as a basic concept in therapy which enables patients to change). Seeing the other as a subject and not as an object prevents reification. Dehumanizing others, as in regarding them as mere targets, facilitates harming them. Empathy does not necessarily require that the subject and target – the other subject – feel the same emotions and it should not be mixed up with sympathy. In conclusion empathy is a correlation of cognitive and affective processes in which the "affective responses are due to the fact that the perception of another person activates similar neurons in the subject and the target" (Stueber, 2013).

Empathy is not a "defining character trait of individuals or organizations" (Pepinsky, 2008: 196) but a dynamic process and not something which can be acquired and will last forever, or will be present every time. Of course some people do better than others, but in some situations (of personal distress) even the empathetic do not show empathy. A distressed person may need all of his/her energy for him/herself (see Lazarus/Folkman, 1984; Lerner, 1980). Traumatic experiences, including psychological and physical abuse, accidents and health problems and similar life events can impede or prevent the development of empathy (see Hüther, 2003; Bauer, 2005; Baron-Cohen, 2011). Pranis' (2000) reflections on raising children in today's society seem to be important. She mentions that we do not teach the interconnectedness of all things and the need to always understand the impact of our actions on others.

Victim empathy usually refers to empathy with the situation of a victim. However, what about the empathy of the victim? As empathy was defined as an affect which allows stepping into somebody else's shoes and an affect is something uncontrollable by the affected person we should at least reflect upon this aspect, too. In the (psychotherapeutic) literature on coping with the trauma and overcoming traumatic experiences some authors vehemently reject the idea that victims develop empathy for their offender. According to that position this will interfere with healing. On the other hand some victims who survived such an

incident seek face-to-face meetings with their offender, provided that s/he has accepted responsibility, shows a certain degree of remorse and is willing to meet on a voluntary basis (Yantzi, 1998). Gustafson & Smidstra (1989) found 82% of victims having experienced severe trauma expressed the need to engage in a dialogue with their offender. Such meetings cannot be conceptualized as mere negotiations. They usually involve empathy on both sides. Of course they should be carefully prepared and one has to face the risk of a secondary victimization. However, victims have stressed the enormous healing experience and some victims kept contact afterwards (Zehr & Baliga, 2013; Stacey, 2012).

To be empathetic means to get access to the needs of that person without asking her explicitly. This is a practical feature because some victims find themselves in a state of shock, making it impossible to express demands or expectations. Professionals are trained to understand victim's needs and can offer support. In general though, the role of professionals and the volunteers of professional organizations such as victim support, is limited to a relatively short time span. We can suppose that most of the comfort and support has to be offered by ordinary people like you and me, who have no routine for such situations. Empathy is the key to effective support. If the victim is lucky s/he finds a person who is able to empathize and consequently to act appropriately (from the viewpoint of the victim). Depending on the situation and on the relationship between the victim and the other, this might be the case in most incidents. However, time plays an important role and we are back to processes. The recovery process of a victim may take a while and may fall back into crisis situations. Time is a subjective perception and some others might think that the time for recovery, healing and returning to normal is exceeded after a certain period. This may result in a loss of empathy, in the more extreme form almost in open, or hidden aggression. Or, the reduced ability of the supporter to empathize, may be perceived by the victim in such a way. This is the gate to secondary victimization. Victimization is a subjective concept – the victim's environment does not always share the perspective of the victim. It may even reject the claim to be acknowledged as a victim.

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| Recommendation: As empathy is such a valuable feature it should be stimulated by training and every-day practice at all possible occasions as Rosenberg suggests. It is not only important for offenders, but also for professionals and even for victims to show its characteristic as emotional glue. |
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## OFFENDER IMAGE

What about the person responsible for the problems and suffering of the victim? Without him or her, the incident of harm would not have occurred. A new link (not a relationship) has been established. The offender is present (although sometimes unknown), s/he has invaded the life and thoughts of the victim (personal communication with C. von Braunmühl, see Becker, 1987). It is like falling in love with someone, but with the negative emotions of hatred. He or



she, or a group, or an organization has to be blamed, but that does not help much (on the contrary it can become an obsession as in the Moby Dick-story). It would help to act out on that person, to make him feel what one has felt. It would help to know about his motives to prepare better for similar situations in the future. Victims can spend a lot of time and energy on this aspect. Sometimes the offender develops into a monster which might grow bigger and bigger over time. Many aspects can be projected onto this imaginary person and thereby it has power over the victim. In this regard coping means to cut the tie, but that is easier said than done.

A specific aspect of the general coping problem is related to the offender, especially in cases committed by unknown perpetrators. Then victims construct their own image of the (unknown) offender. Hagemann (1991) identified three different types of this image construction. Type 1 is no normal human being, a socially inferior person, potentially dangerous. Type 2 is socially superior, with no rational motivation for committing the offence. This again is an indication of the dangerousness. Only type 3 is a rationally acting offender. This person is less dangerous because if he gets what you might be able to offer he will not be interested in causing further trouble for the victim, or for himself. The trouble with this type is that the victim is to blame because of the rationality of the offender. He would not have committed his offence if the victim had taken necessary precautionary measures. It is unlikely that victims want to meet type 1-offenders, whereas they might hope to gain insights to reduce their vulnerability by meeting the other types. Regarding type 2 it would help to discover the weakness and vulnerability of the offender in a restorative meeting. Closely connected with the image of the offender and also relevant for the RJ approach, are the ideas of victims about sanctions. Partly, this is the result of (unsuccessful) coping. The coping process and this attitude are closely interrelated. However, the attitude may have existed before the victimization. Some victims neither expressed a real interest in the person of the offender, nor in clearing up the conflict. Others expressed a willingness to punish the offender themselves in order to pay him back in his own coin, not relying on abstract formal sanctioning. The victims who were committed to social issues and not too seriously victimized, expressed a need for more flexible and individualized sanctioning. The second and third groups are motivated to take part in RJ because they would be able to influence the outcome.

## SECONDARY VICTIMIZATION

During its short history the discipline of victimology has nevertheless invented some specific terms. Art. 22 of the EU-Directive refers explicitly to the term 'secondary victimization'. The Council of Europe (2006) defines secondary victimization as "the victimization that occurs not as a direct result of the criminal act, but through the response of institutions and individuals to the

victim.”<sup>4</sup> Secondary victimization describes a form of victimization that occurs – unwillingly, mostly by negligence – in the aftermath of the initial victimization incident and is usually not inflicted by the initial offender. Instead, many victims claim that the subsequent treatment, by the police, during trial, during medical examination and treatment, or by potentially supportive people from the (close) environment hurts like – sometimes even worse than – the initial victimization. The separation of the victimization and the secondary victimization emerges in the 1970s in the context of sexual victimizations, where women accused potential supporters of treating them in similar ways as the perpetrator. Despite training programs for police officers, medical staff and information being provided to lawyers and the general public, secondary victimization still seems to play an important role. It can sometimes lead to the victim being given the advice not to inform the police, especially in cases of sexual victimization and domestic violence and in some cases when members of minorities are victimized. This concept was originally invented in the contexts of a) police interrogation of witnesses and b) hearings in court when the defendant’s attorney, or other people challenge the victim’s story. From the victim’s perspective this was perceived as harmful behavior, sometimes more intimidating than the original behavior of the offender. Also, in the police investigation phase, or during medical examination in rape cases, victims frequently reported non-empathic and non-supportive treatment, at least in the early years of the victim’s movement in the 1970s. Groenhuijsen and Letschert (2014: 209) have recently pointed to the role of the media in secondary victimization, especially by intimidating, or even threatening, victims to cooperate by disclosing information, or private pictures (e.g. coercing a victim into an interview) but also by misleadingly publishing information about the incident. For example, calling a series of murders in Germany ‘Döner-Morde’ because nearly all victims had a Turkish background. They turned out later to be hate crimes committed by Neo-Nazis, thus, adding insult to injury! Media reports disturb coping processes and victim blaming may occur in a false attempt to gain background facts or insight (Groenhuijsen and Letschert, 2014: 211).

As a consequence of secondary victimization the victim faces additional challenges which lead to an aggravated impact and makes successful coping more difficult. In a way, it imposes similar demands to repeated or multiple victimizations. To the extent that professionals can be blamed for causing this phenomenon, the topic has been included in qualification programs. However, the problem cannot be solved completely because the police, judicial and medical actors cannot act in a partisan way. There is no objection against

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<sup>4</sup> “Secondary victimization refers to the attitudes, processes, actions and omissions that may intentionally, or unintentionally, contribute to the re-victimization of a person who has experienced a traumatic incident as a victim through failure to treat the victim with respect and dignity, disbelief of the person’s account, unsympathetic treatment, blaming the victim and lack of (or insufficient) support services to assist the victim at interpersonal, institutional and broad social level” (South African Department of Justice and Constitutional Development 2008; Hall 2010).

empathetic reactions, but there is also a need to collect and preserve evidence and to keep a certain professional distance.

Recommendation: Develop specific procedures to make it easier to give evidence – in some countries it is possible to give anonymous evidence.

## EMPOWERMENT

### Key Facts:

- Crime leaves victims powerless;
- Empowerment is crucial for the victim's healing process and allows the victim to experience a sense of Justice;
- The safety of the Restorative Justice process has to be assured, victim and offender must be willing to participate and mediators/facilitators ought to be trained, otherwise empowerment will fail, along with the restorative approach.

A crime victim faces many challenges and overcomes various difficulties on their way to recovery. Frequently the person feels powerless because there is a need to be present at court whenever demanded to do so. The person has to answer all the questions addressed in order to find proof of evidence that enables the court to convict or absolve the offender. The person has to answer questions from the judge, the prosecutor and the defence lawyers. Throughout, the person has to deal with the offender's presence. Needs, expectations and fears of the victim are generally not addressed. The victim's questions remain unanswered. At the end of the case, the person is rejected by the criminal court system. Again, the victim is left feeling powerless. Even if the offender is convicted, because justice was achieved through a tough and intrusive process, one can argue that most important aspect for the victim is the conviction, no matter what. However, justice at all costs, mainly for the victim, is not always the right thing.

*What happens* is just as important as *how it happens*, how the decision is made. And having power to intervene at both levels is crucial to a crime victim. Through a Restorative Justice approach, that is possible. Taking into account a timeline analysis of the restorative process, at the first stage, the restorative process is focused on the past, trying to discover what happened. From the victims' perspective, that is an opportunity to put a set of questions to the offender, such as: what were you thinking at that moment? What did you feel at that time? Why did you choose me as your victim? Do I have anything different from other's that made you decide to choose me as your victim? At the second stage the restorative process addresses the consequences of the crime for the victim. The victim has now the 'floor' to confront the offender with their reality after the crime: the fear they faced that may have demanded quitting a number of things that were previously done (e.g. not going out at night, keeping all windows and

doors closed), the harm that was caused to relationships (e.g. intimacy with the partner) and on the health impact of the crime (drugs are now what makes the person move on). Finally, at the third stage the restorative process focuses on the future, trying to discover a way of repairing the harm caused by the crime and satisfying victims' needs. This is a crucial moment for the victim, in which they look towards the offender, identify their own needs to overcome the crime, seek reassurance that it will not happen again and understand how repair will be achieved in order to proceed with life.

The common element at all stages of the restorative process is the power being regained by the victim. The power to intervene, to ask questions, to confront the offender. The kind of power that makes the victim stronger and allows them to defeat fear and overcome the fragility, the offence has previously engendered. Before the restorative process takes place, that power is often seen by the victim as resting with the offender. It is the safe environment of the restorative process that offers victims power. In this way victim's empowerment is achieved by a Restorative Justice approach. Justice *happens* through the process and the way it is made empowers victims along the way as the victim influences *how justice is made*.

#### Recommendations:

During preparatory meetings mediators/facilitators must identify victims' needs, expectations and fears, especially taking into account the balance of power between victim and offender, because restorative processes are not always suitable, since fear/suffering can be too severe at certain stages of the victim's recovery.

During the restorative process, mediators/facilitators should put power back into the victim's hands, allowing them to address questions/comments/remarks towards the offender.

Mediators/Facilitators must avoid imposing their own agenda. They should embrace an empowering style of mediating/facilitating, promoting interaction and exchanging information between victim and offender, because victim's empowerment has its roots in an empowering Restorative Justice process.

## TRAUMATIZATION

#### Key Facts:

- Psychological trauma is an event outside normal human experience and can pose a threat to his life
- In addition to psychological consequences, psychological trauma has biological effects within our body that can have long term effects.

- It is a psychological trauma that establishes a connection between the offender and his victim
- The healthiest way of settling the consequences of psychological trauma is the effort and understanding of the community in which the traumatized person lives.

Any violation of personal or social space is a traumatic experience for a human being to a greater or lesser extent. Therefore, discussions on trauma offense should not begin by asking whether it was a trauma or not, but to help people to alleviate the consequences of traumatising events. This stems from the basic human right to personal dignity and not from the fact that the unlawful conduct of another has caused damage. The most common definition of psychological trauma is one that says that this is an encounter with an event outside normal human experience which poses a threat to his life. The event excludes the typical reaction to the environment that usually gives people a sense of control, purpose and connection to events. Common reactions to psychological trauma are:

- intense fear, or even panic
- a sense of helplessness
- a feeling of loss of control
- fear of physical destruction

Psychological trauma is a response to the traumatic event. The traumatic event causes stress, and in some people can develop post-traumatic stress disorder. In the biological nature of the human being have been built two automatic model reactions to the traumatic event: the fight and the flight. These two responses are based on a series of physiological reactions of the organism that follow after swift and instinct dictated observations and assessments of the situation. Psychological trauma is an inevitable link between perpetrators and victims of crime. Trauma unites them in a unique phenomenon in which everyone is featured, both with his story and his view of the event. The very fact of this unity facilitates the concept of restorative justice. The concept, however, by its nature, does not arise from the legal system and law. It stems from the trauma and the need to respond to the trauma and not to the disruption of legal order. It is not necessary to think only of the traumatic experience of the victim, because the perpetrator as a part of the continuum of life can, and often is, or was the victim himself. This statement does not mean his exculpation in the traditional sense of the word. It just relates to the dynamics of crime as a human and social act. In the crime, however, the person does not appear as an isolated individual. There they appear with their entire family and personal history, with the history of their closer and more distant environment. The law, with its custom and practice, is far too narrow a medium to capture all the dimensions of life. The law as such, can only operate at the level of cause and effect. Restorative justice works at the level of the human community. The way of life that leads to the fact that

someone commits a crime is usually caused by multiple traumas. Most people who commit crimes usually were themselves multiply traumatized.

Recommendation: The practitioners dealing with the area of crime have, in the first place, to explore the possibility that the community can find ways to help the victim and the perpetrator. It is not possible to do this without, at least sometimes symbolically, the participation of both parties.

## VULNERABILITY

### Key Facts:

- Victims can come from vulnerable groups (e.g. children, the elderly, those from marginalised groups and those with mental health problems) and suffer victimisation; victims can be targeted for crimes because of their vulnerability; and the experience of being a victim of crime can make a person more vulnerable.
- Acknowledging and addressing the needs of vulnerable victims is an important part of the RJ process, including exploring the needs behind strong emotions. Failing to recognise and address vulnerability can lead to secondary victimisation.
- Victims need to feel in control of the RJ process and to be part of decision making for the way forward, or to opt out on the basis of an informed decision.
- Facilitators need to work with other agencies particularly those agencies that are involved with vulnerable victims, and which will help to support them. Working with such agencies can provide support to vulnerable victim which will enable them to participate in RJ processes.
- Aftercare at the end of the RJ process should be addressed with the victim and special care should be taken to ensure that this is in place for vulnerable victims.

Many criminal jurisdictions make special provisions for victims who have been identified as vulnerable. This includes both those victims who were vulnerable at the time of the offence and those who have been made vulnerable because of the physical, psychological, or emotional effects of the crime upon them. The kinds of special provision include the methods undertaken to interview the victim, to support the victim through the court process and the process of giving evidence to the court. Such provision can include the appointment of police family liaison officers, the provision of special accommodation for the interviewing and examination of rape victims and the giving of evidence in court via video link, or from behind a screen. Categories of vulnerable victim can include child victims, the frail elderly, victims from minority groups, including from ethnic minorities, victims with mental health problems and victims with a range of special needs, for example autism. Vulnerability may also result from,

or be a feature of, certain crimes, for example stalking, child sexual abuse, rape and hate crime.

Vulnerable victims may express a wish to take part in RJ. Vulnerable victims should not be excluded from the offer of RJ, or be excluded as a result of assessment, simply on the basis of vulnerability. The advantage of the proactive offer of RJ (over a protective approach) is that it ensures that RJ is offered to all victims, on an open basis, through the provision of general information, rather than by a selective approach often controlled by over-protective professionals. In this way vulnerable victims will not be left out, nor will they be the subject of intrusive offers at unhelpful points of the criminal process. Vulnerable victims may choose to take up the offer of RJ many years after the crime as is the case in crimes of historic child abuse. The knowledge of the availability of RJ in such cases is more important in such cases, rather than the approach by any particular agency or individual.

Vulnerable victims who put themselves forward for RJ need particular care and attention in three main areas:

- Support and preparation.
- The selection of an appropriate RJ process to both meet their needs and take their vulnerability into account.
- Appropriate follow-up and aftercare

Support and preparation will involve attention to the victim's special needs and may require liaison with other agencies such as health professionals, but also family and friends. The victim may need support to challenge the over protectiveness of professionals, or family and work may need to take place to bring them on board as supporters of the vulnerable victim. Appropriate support and preparation what enable vulnerable victims to take part in RJ. Selecting an appropriate process does not necessarily mean that face to face RJ is less likely to be a suitable process for vulnerable victims, although this may be the case. It could be that indirect methods are used as a preparation for face to face. It could also mean that a face to face approach is adapted by giving adequate opportunity for breaks and time out. Appropriate follow-up and after care means having a specific plan to deal with anticipated needs post conference and to ensure that support is available when it is likely to be needed.

In many ways dealing with vulnerable victims is no different to dealing with all victims. The key differences are simply the level of attention to the needs identified and the ability to work with the victim to create appropriate support. As with all victims, it is the process of putting them in a position where they feel in control of what is going on and not subject to a process over which they have no control. The essential element is a trusting and open relationship between facilitator and victim. It is important however that the facilitator ensures that the support is provided by helpful others, rather than the facilitator him or herself.

**Recommendations:**

Victims who express a desire to participate in RJ should not be excluded from RJ processes solely on the grounds of vulnerability.

RJ processes should be adapted to meet the needs of vulnerable victims through the provision of support, preparation and aftercare

## PART 2 – Supporting Victims into and Through Restorative Justice

### BEFORE RESTORATIVE JUSTICE PROCEDURES

#### **Contact and accessibility**

**Key Facts:**

- RJ needs to be explained and promoted to the general public through media campaigns (including press, TV and the full range of social media). The message needs to be adapted to suit males and females, different age groups, different ethnic groups and groups who may be the targets of particular forms of crime, including hate crime.
- RJ is not well known and is poorly understood by criminal justice professionals and the general public.
- RJ needs to be explained and promoted to criminal justice professionals through training targeted at their specific roles, in particular those who need to provide information to victims and offenders and those who are likely to make referrals.
- RJ Services need to develop a high profile with an easily accessible point of contact.
- RJ needs to be made accessible through particular actions to include potentially marginalised groups, including wheelchair users, people from ethnic minorities, those with child-care responsibilities, those for whom the mother tongue is not their native language, those with hearing difficulties, those who are housebound, those who work long hours.

Making RJ available to all victims of crime relies upon four main factors:

*Public awareness of the process of restorative justice and its potential to deliver benefits for victims and offenders who take part.* The general public are fed an unhelpful diet of news, sensational crime stories and drama which present an inaccurate picture of the risk of crime and the potential for approaches, other than punishment, to address the problem of crime helpfully. This imposes a duty upon those involved in restorative justice to present clear, accurate and helpful



messages about the effectiveness of restorative justice and to counter the idea that it is a process fraught with risk and likely to cause damage.

*Good, clear information about restorative justice being easily available to victims at key points in the criminal justice process.* This covers a period, which may last years, from the occurrence of the incident of harm, through the process of reporting the incident to the police, investigation by the police, arrest of the offender, prosecution, verdict, sentence and in serious cases, release from prison and beyond. It is important to note that this is not a simple, predictable, linear process in which all steps are completed according to a straightforward timetable. Many offenders are not apprehended and some prosecutions fail. At each stage the victim should be given information which refers to the availability of restorative justice and makes it clear how to gain more detailed information, if required.

*Professionals within the criminal justice system having sufficient knowledge about restorative justice to deal with victims questions and to know where to point them to get a full understanding of what RJ could mean for them.* Many professionals within the criminal justice system have a poor knowledge and understanding of restorative justice, often based on ignorance and myth. This lack of knowledge and misunderstanding can combine with an unhelpfully risk averse culture to prevent access and referral to restorative justice. This must be rectified by training of staff who have contact with victims across the key agencies.

*The RJ service in a locality must have a high profile which gives a clear message as to the service it provides and is easily accessible via a range of media including web-site, phone, text, social media, email, etc.* Building such a profile will take time and effort through a clear promotion and communication strategy. It needs to be backed up by referral and engagement processes which are simple, user friendly, reliable and efficient. The experience of service users must be utilised so that 'word of mouth' processes from 'satisfied customers' continue to build a sound reputation. The service also needs to have a range of leaflets and other materials, which may include talks by those who have experienced RJ, who will be able to inform and advise potential users of the service and how it worked for them.

In addition, access to a service can be prevented by a range of factors which fail to take into account the needs of vulnerable, marginalised, socially excluded groups and those with special needs. Victims of crime tend to be over represented in such groups and also tend to be more isolated by the effects of crime because of their often vulnerable status. RJ service providers need to give particular attention to reaching out to such groups and also making their service flexible to meet the needs of such groups when they are engaged. Examples of groups who may be marginalised, vulnerable or potentially excluded include: wheelchair users, those with mental health problems, children, women who

suffer abuse, non-native language speakers, victims of homophobic crime, victims of hate crime, those from ethnic minorities, refugees and asylum seekers. Each group needs particular consideration in relation to how they may be prevented from gaining free access to the service.

RJ services need to ensure that they do not have suitability criteria which unintentionally discriminate against such groups. All victims of crime are potentially suitable cases, if they wish to pursue a restorative process. It is the responsibility of the RJ service to describe RJ in an understandable way and to work with victims to identify a helpful way of pursuing a restorative outcome.

**Recommendations:**

Agencies delivering RJ develop a comprehensive communications strategy which focuses on: Internal stakeholders, external stakeholders, related criminal justice professionals (in particular those who make referrals), the general public, particular groups at risk of exclusion and marginalization.

Communications are undertaken using a wide range of media designed to reach a wide range of audiences.

Practical actions are taken in relation to the delivery of each intervention which ensures that no party is prevented from participation in RJ because access is prevented by avoidable reasons of exclusion.

### **Information and confidentiality**

**Key Facts:**

- Cases must be researched as far as possible before victims are approached.
- Project must handle and store data in accordance with relevant legislation and participants must give their consent.
- Information should not be exchanged between participants without their consent.

Victim initiated restorative justice services gather a range of personal data from participants, including both victims and offenders. The data collected includes personal information such as date of birth, details of family members, home address, contact information and in-depth information regarding the offence and how people have been affected. In addition to this, each case will have detailed information regarding the victim's experience of the criminal justice system and their needs and wishes related to seeking a restorative process. Information is provided by the participants themselves, as well as from agencies who work with them. During inception of the project, debate was held as to how much information should be gathered in respect of the individual referred prior to a first meeting and how to process and record this data. It was agreed that, in

order for the facilitators to be able to perform their role in an effective manner, it was essential that as much factual information is gathered in respect of the offence, the offender and the case in general. This enables the facilitator to be as knowledgeable about the case as possible and is likely to reduce the possibility of re-victimisation which could be caused by the need to repeat distressing information unnecessarily.

Information from both victim and offender is required to be stored, handled and processed as 'sensitive data'. When transferring such information electronically, it must be anonymised if not using secure networks. All mail containing sensitive data should be 'double enveloped' to ensure that it cannot be opened by unauthorised persons. Data subjects should be aware that their data is being held by the responsible agency and that they can have access to their personal data on request.

As an example of how personal confidential information should be handled by RJ schemes the UK Information Commissioners Office (ICO) states "*If you handle personal information about individuals, you have a number of legal obligations to protect that information under the Data Protection Act 1998.*" In the storing and processing of data that is personal to an individual, all organisations must register with the ICO and, the data must be handled in accordance with The Data Protection Act (1998) and its principles which are that you must:

- have legitimate reasons for collecting and using the personal data;
- not use the data in ways that have unjustified adverse effects on the individuals concerned;
- be open and honest about how you intend to use the data, and give individuals appropriate privacy notices when collecting their data;
- handle people's personal data only in ways they would reasonably; and
- make sure you do not do anything unlawful with the data.

Participants should be made aware of the information that is held on them and that access to their information is readily available to the facilitators. Participants should also be made aware that their information will be handled confidentially and that unauthorised persons will not have access to it. In particular victims and offenders are assured that the other party will not be given information about their circumstances or needs, without their permission. In some circumstances the sharing of such information may be helpful to facilitating a process, but this will only take place after permission has been given. All facilitators carry official identification as restorative justice facilitators when undertaking their work and produce it when introducing themselves to potential participants for the purposes of safety and reassurance.

**Recommendations:**

Information sharing protocols should be established between relevant agencies to facilitate the progress of cases and ensure the safety of participants and RJ staff.

Appropriate leaflets should be prepared to explain to participants how their personal data will be handled and what to do in the event of a complaint.

**How to identify victims' needs**

**Key Facts:**

- Victim initiated RJ relies upon agencies involved with victims of crime making referrals to RJ schemes or victims referring themselves. This requires such services to have a high profile and easily accessible services.
- Victims should be enabled to identify their own needs and be given sufficient information about RJ to enable them to discern whether it offers a helpful way forward.
- Facilitators should research the background of the case as far as possible and be open with victims about the extent of their knowledge.
- The first meeting requires a skilful listener, who is able to impart useful information about RJ; enable the victim to reflect on their needs; build a relationship of trust which conveys the safety of the process; and leaves the victim in control of a process of choice as to how to proceed.

Self-referrals rely on the victim of a crime expressing a wish to learn more about the possibility of initiating a process of communication with the person who harmed them. In cases of homicide the approach is usually taken from a family member whose relative has died as a result of the offender's actions. Each victim will have their own idea of what they hope to achieve from participation. Their expectations must be managed in order to balance the likely outcome with what they may expect, which will be established only after contact with the offender has taken place.

The process of establishing the victim's needs and whether contact with the offender, possibly involving a face-to-face meeting, should be a process in which the victim is helped to identify their own needs and thereby enabled to make informed choices at each stage of the process. The paragraphs below set out how to undertake the initial steps of a restorative process which is initiated by the wishes of the victim to know more about what RJ may have to offer them.

Establishing facts of the case: Sound knowledge of the background to the case, together with factual information regarding the offence, will enable the facilitator to show a professional and caring approach at this first meeting. It avoids the need for questions the victim may have answered many times before and may

not want to re-visit. The victim will expect the facilitator to have done their research in order for them to perform their job role effectively and support the victim in making informed choices about how best to proceed.

First contact with victim: The purpose of this meeting is to listen to the victim; understand how they have been affected; explain the process of restorative justice; to ask the victim what they might need in terms of answers to questions; explore how harm might be repaired; enable them to make choices about how they wish to proceed. It is at this meeting that their expectations must be managed in order to enable them to begin to consider the many possible outcomes and the complex nature of a process in which there are few certainties. Victims may see the process as fraught with serious risk and need reassurance that their safety is the prime concern of the facilitator. It is not the primary purpose of facilitators to promote face-to-face meetings, although powerful research evidence demonstrates their effectiveness in increasing victim satisfaction. What is important, at this first meeting with the victim, is that a relationship of trust is developed so that the victim is enabled to pursue an outcome of their choice. The process is one of empowerment for the victim in which they continue to make choices determined by their judgement about their own needs and how RJ may or may not fulfil them.

**Recommendations:**

Services should develop a range of materials which offer information about RJ and are easily accessible, accurate and informative to a diverse group such as victims of crime.

These materials (in a range of formats and languages) are available to victims, referral agencies, offenders and the general public.

Information resources tackle the question of the risk to victims which is presented by RJ and explain the safeguards in place to prevent harm and re-victimisation.

RJ facilitators have opportunities for skills practice, case discussion and supervision to enable them to carry out the role within a culture of continuous improvement.

## **Voluntarism and post-sentence Restorative Justice**

### **Key Facts:**

- Voluntary participation depends upon being given full and accurate information about what RJ may involve and the risks associated with participation.
- Victims should be offered choices at each stage of the process which includes the right to withdraw without explanation.

- Victims should feel in control of the process as part of a process of empowerment.
- Victims should be offered a range of alternative restorative procedures, which if their offender refuses to take part, can include the possibility of designing their own restorative outcome.

It is most important to give victims a free and open choice about whether to embark on a restorative process which could lead them to having a face-to-face meeting with the person who harmed them. In cases where the process is initiated by a request from the victim, their voluntary participation may appear to be a simple issue based on the victim's choice to be referred, or to refer him or herself, for RJ. The victim has in fact only volunteered, at the point of referral, to learn more about what RJ may involve and to consider whether they wish to take part. Depending on the circumstances of the referral, the victim may have had to negotiate many hurdles before being offered a first appointment to learn more about what RJ has to offer. Alternatively, they may have been referred by a helpful professional, a friend, or a relative.

Voluntary participation is best facilitated by a first appointment which enables the victim to make a free and fully informed choice about participation and also to make a choice about how and at what pace, the process will proceed. The victim must be given as much information as possible about what RJ could involve, to enable them to make a fully informed choice. Given that the process is not simple, or wholly predictable, the victim must be given control of how to proceed at each stage. At each stage the victim should be offered renewed options and choices, depending on the changing circumstances of the case and these options must include the option to withdraw. By proceeding in this way the victim is empowered. This will contrast with their experience of both the crime and the process of the criminal justice system. Coercion or pressure is likely not only to be harmful to the recovery of the victim and a denial of the process of empowerment, but also is less likely to lead to a face-to-face meeting which, in suitable cases, has the greatest power to repair harm. The process of continuous review of progress and reaffirmation of consent as to how the case will proceed, continues right up to and through the conference door. In cases which do not proceed to a conference, the victim should be engaged in considering how harm can best be repaired by alternative means.

Projects need to develop a range of options which offer victims genuine choice, including for example, a letter of apology (where the offender can be engaged in such a process) offender absent conferences, healing circles/group work with other victims, healing circles/group work with other offenders, or a process agreed with the victim and tailored to meet their needs.

The right to voluntary participation applies equally to offenders in almost every respect. This right may be limited if engagement in RJ is part of a community sentence, a prisoner's sentence plan, or a post-release licence condition. In

each of these circumstances the offender will have given voluntary consent to take part in RJ. It is only their right to withdraw that may be curtailed by being part of a sentence of the court. Offenders should be introduced to RJ through a first interview at which the process of RJ is fully explained and voluntary consent to participate is gained after the offender has had an opportunity to consider their involvement.

At each stage of the process the offender's participation and engagement should be reviewed and they should be made aware that they have the right to withdraw. Nevertheless, the offender may be asked to give consideration to the impact upon the victim if they choose to withdraw at a late stage. They may need to be asked how they can be supported to remain engaged. Once the RJ process is embarked upon there is an implicit moral duty upon the offender to carry on the process, unless there are good reasons to withdraw. How this element of pressure is exercised by the facilitator is crucial. If it is done in a heavy handed manner this could create resistance within the offender which could lead to poor engagement in the process, damage to the victim in a face-to-face meeting, or absolute refusal to take part. The offender's reasons for withdrawal should be explored and supports put in place to enable the process to proceed, if this is possible.

**Recommendations:**

The preparation of good quality information about what RJ involves for both victims and offenders in a range of formats which are easily accessible and suit different learning styles.

Alternative RJ procedures should be made available which meet the needs of victims who want a face-to-face process, but whose offenders do not wish to take part.

## **Managing the Expectations of Victims participating in RJ**

### **Key Facts:**

- Victims' expectations may vary and may be realistic or unrealistic. Facilitators need to manage expectations from the first encounter so the consequences will not be harmful to the victim.
- Facilitators need to communicate with the victim what RJ is and what it will involve and that it is a voluntary, confidential and is intended to be a restorative process for all who participate.
- Victims need to understand that the restorative journey they are on may be a long and unpredictable one. Setting a realistic time frame is important to manage expectations.
- Facilitators need to share with victims regular updates of progress and setbacks, including next steps – i.e. what the facilitator will be

doing next, what is the expected outcome and when and how this will be communicated back to the victim.

Most victims will enter the restorative justice procedure with a range of expectations of what it will deliver for them. Some may have had to live with the consequences of the harm they suffered over many years. The decision to access RJ is often a giant step for them, and they may come into the process with high expectations of what it will deliver. Not managing such expectations can be harming in itself, and may lead to re-victimisation. During the first RJ appointment, the facilitator's role is to focus on the harm caused and the victim's needs, including what they would see as the 'best outcome'. The victim's expectations of what RJ will deliver for them can vary considerably, and can range from being able to confront their harmer, to hoping that a meeting will allay their fears and provide answers to long unanswered questions. Victims may see that justice can only be served with a face-to-face meeting, particularly if the harmer is serving a prison sentence. There may be an assumption that the offender will and should, meet with them. Facilitators need to be open and clear with victims about what RJ can involve and how the process may be a long and sometimes disappointing one. It is important for victims to understand from the first meeting that the participation of all is voluntary, and that it is a confidential, impartial process, which aims to deliver a restorative outcome for all. The harmer has the right not to participate, or withdraw from the process, at any time, as does the victim. This will then impact on the procedure going ahead. A harmer may also minimise, or even deny, some of the harm caused. Facilitators need to explore the victim's expectations, emotions and concerns around such possibilities, as an important part of the preparatory process. Good preparation is essential for helping to manage expectations, along with risk assessment. If a face-to-face meeting is not feasible, exploring other possibilities with the victim at an earlier preparatory stage can help prepare them for such an eventuality, should it arise.

Setting a realistic time frame is important – but it is also important to explain that it may not be feasible to complete the process within a specified period. Victims need to have a realistic understanding of the various hold ups and setbacks which may occur. This can best be achieved by the facilitator's regular communication with victims – to ensure that they are informed of what is or is not happening. Facilitators can do this sensitively and with care, and may involve either a phone call, email text, or a visit. After each communication it is important for facilitators to set out 'next steps' – so the victim is clear of what will happen next, including how and when the facilitator will get back to them. As facilitators we need to keep in mind that this process is about the needs of the victims, and to ensure they are informed and their views sought over events which arise.



**Recommendations:**

Ensure that the victim's identified 'best outcomes' for their RJ journey is revisited throughout the procedure and is realistic and achievable. Ensure also that potential 'worst outcomes' are addressed and prepared for.

Victims need to receive basic information about their harmer's engagement to help them best prepare for the RJ dialogue and to manage setbacks and changes.

Facilitators should be honest and open with victims in providing updates of progress and setbacks.

Other restorative intervention should be explored with the victim at an early opportunity if a face-to-face meeting is unlikely to happen.

Victims' views, ideas and wishes should be sought and enacted upon throughout the procedure, so they feel empowered, included and not marginalised.

**Which procedure for which victim?**

**Key Facts:**

- Many different factors govern the opportunities for a victim to take part in a RJ procedure within any particular case.
- RJ is a process undertaken with victims in which, opportunities are explored, choices are identified and victims are put in control of how to proceed.
- The formal justice system offers court and sentence based processes which usually involve rigid timetables. Victims can choose whether or not to take part in such processes, having made an informed choice about the potential benefits and risks of taking part.
- Victims can initiate RJ procedures over which they have control, subject to the engagement of the offender.
- Victims have choices about how to proceed when the offender does not wish to engage in a process of communication.

Whether and how a victim may want to become involved in a restorative justice procedure depends on a whole range of factors including:

- When and how they first become aware of the possibility of engaging in RJ, following the incident of harm.
- How the offer of RJ is presented to them.
- Their state of recovery and coping following the incident of harm.
- Their experience of the criminal justice process to date.

- Their needs and wishes as presented to the RJ facilitator who meets them.
- The nature of support, or lack of it, from family, friends and others.

A key principle is that RJ is a procedure undertaken with a victim not an intervention done to a victim. RJ must be an empowering process for victims in which they make choices about whether and how they wish to participate. Opportunities to participate in RJ are also affected by the stage the case may have reached in the formal process of criminal justice. Pre-sentence RJ may be undertaken within a process of diversion from the court procedure and may offer the possibility of financial compensation from the offender, agreed in a process of victim-offender-mediation. RJ undertaken post-sentence, whilst the offender is in prison, may offer an opportunity to focus on fears related to the offender's imminent release. Generally, however the victim can be given choices with regard to the process and timing of communication and also about whether, or not, a face-to-face meeting is the goal of such communication. Court and criminal justice processes can impose time limits to certain kinds of activities and it is the victim's choice as to whether to engage in such structured RJ activities.

Alternatively, the victim can choose to involve themselves in a process which is independent of court/sentence timetables and is governed solely by the needs and wishes of the participants. The victim's choices will be affected by the offender's circumstances and the choices made by the offender about whether and how to take part in RJ. An offender who chooses not to take part leaves the victim with a choice about whether to withdraw from the process; wait and see if the offender changes their attitude; or wishes to take part in an alternative process, not involving communication with the offender. Alternative processes can include healing circles/group work involving other victims, a conference which includes others affected by the crime but not including the offender, a dialogue with offenders who are not the harmer in their case or an involvement in a process tailored to meet the needs and wishes of the victim.

**Recommendation:**

The involvement of victims in RJ should contribute to a process of their empowerment through enabling them to make choices as to how their case will proceed. Victims should be offered a range of options of how to participate, which can start with different techniques of indirect mediation, group work with other victims, dialogue with indirect offenders, as well as different forms of procedures of face-to-face mediation.

## DURING RESTORATIVE JUSTICE PROCEDURES

In the previous sections, it was made clear how crucial the preparatory process for a restorative justice procedure is. Clear information about the principles of restorative justice, such as voluntariness, as well as about the different possible options and their procedure are necessary. Certainly, expectations must be managed and needs of victims and offenders be identified in order to apply the right procedure for each individual case and time. Restorative justice is a flexible process (not a rigid intervention) and includes many different tools of procedure to pick from, or choose in combination. What is put into practice in the end will depend on many different factors and particularly on the wishes and willingness of those concerned. Possible procedures can include:

- Group work with victims on the impact of the victimization to support their coping process by exchanging experiences with others who have been affected by a crime as well.
- Group work with victims on the impact of the victimization including a dialogue with surrogate offenders or a group of offenders.
- Indirect mediation with the offender who has caused the victimization. This can be done through shuttle mediation by the facilitator, who is relaying messages between the parties, through letters or video messages.
- A direct or face-to-face mediation/conference with the offender concerned. This can take place in a victim-offender-mediation setting, including those three parties, or as a conference, including supporters of any kind; or in a circle setting, including a larger community and professionals.

Restorative Justice procedures therefore do not always have a clear beginning or end, rather, it is a dynamic procedure that demands intensive involvement of those concerned. How can these persons and in this context here, particularly victims, be supported and protected within this process? After a one-to-one preparatory phase, the victim can ideally choose to participate in group work with other victims. This should always be carried out by professionally trained personnel and in a mixed gender team. The group participants should get to know the group leaders before the group work starts and create, as far as possible, a trusting atmosphere. It should become clear that the process is confidential and completely voluntary – one can always leave the room and is not forced to contribute. Some flexibility is required due to the possibility of difficulties arising with commitments of a group of people. The larger the group becomes, and the more people are employed, the more difficult this can get. This must be kept in mind as a possible obstacle of participation, particularly as it is essential that the group composition should not change as this would hinder the development of group dynamics and trust. Furthermore, the room selection is important as the atmosphere should be warm and friendly.

The start of group work should be taken slowly to build up trust. It is good to include several exercises to make the process more interactive, rather than based on sole talking, as the content is very often severe and stressful. Remember that listening to others' pain is exhausting. Breaks and individual time-out should therefore be offered at any possible time. In regard to a possible dialogue with surrogate offenders (not the victim's direct offenders), participants should be well prepared. Ask how they feel most comfortable, how they wish to sit and whether there should be a table in the room or not. Furthermore, the composition of victimizations/type of offences should be transparent and discussed within the group in cases of imbalances. For instance, victimization experiences may not be similar to those offences committed by the offenders. This does not necessarily have to be a problem, but should be kept in mind. If the composition is the other way around it could lead to one person being the focus of the group.

On the day of the dialogue, the group should meet in advance, as it is a better feeling to be together beforehand and support each other in cases of nervousness. During the meeting, there should be several break-out rooms for the participants to be by themselves, if required. Food and drinks should be available. There should be a clear structure and enough time for everyone to talk, as well as enough time for the most essential part of one-to-one conversations. Furthermore, there should be enough facilitators available, but predominantly persons involved who are known to everyone. It is inadvisable to have too many external persons or observers present. It is absolutely necessary to have access to a psychologist, if needed at any point. After the meeting it is important to have some time to talk within the group, without the offenders and reflect upon the experiences made. Soon afterwards, a follow up group session should take place as emotions may be changing.

If indirect / shuttle mediation with the direct offender is wanted, the first step is another preliminary interview with the victim to clarify individual motivations and expectations. If these have been discussed and managed, the offender can be approached. If the offender is willing to participate and has an interest in the procedure as well, shuttle mediation can begin by relaying messages from one side to the other. Here, it is essential to clearly identify which messages are intended to be transferred. Each side usually communicates a lot more about their perspective than what is actually the substance of what the person wants relayed to the other party. Therefore, these messages must be formulated in a clear way and the party reassured that their message will be relayed without embellishment. If this first step is made in this way, the parties could, if they wish, think about sending letters or video messages. Depending on the abilities of the parties, individual support may be required which may extend this procedure in length. The content of any message should always be reviewed by the facilitator to avoid secondary victimization of any kind. If one or the other party does not want to receive messages immediately, these can be held for later use. The party must then only be informed that there is a message

available and how to access it. This could be at the mediator's office, or via the party's attorney.

If the indirect procedure is completed satisfactorily, or if the parties opt for a direct face to face process from the outset, then the preparatory phase needs to be as intensive as previously described. Once this has occurred and everyone involved feels ready for a meeting, several questions arise regarding its setting and in terms of who will be involved. At first, the victim and the offender should be asked of who they want to be involved in the procedure. If, they state that they wish for most possible privacy, thus, only themselves and the mediator to be present, a victim-offender-mediation is carried out. If, they choose to involve supporters, the setting is extended to a conference, in which case it is to make sure that no imbalances occur. Thus, it is advisable that both sides are supported by a similar number of people. Certainly, in terms of preparation, this requires more organizational effort as each supporter should also be prepared for the meeting. Furthermore, it often turns out to be difficult to find an appointment to suit a large group of people. This becomes even more difficult, if the aim is a circle setting, where whole communities and professionals are invited. In that case, preliminary circles with smaller sub-groups are carried out beforehand as a form of preparation. Certainly, the larger the group gets, the more difficult it can be to find a suitable room with a good atmosphere. This is additionally complicated if the meeting shall take place in prison setting and requires additional preparatory time. Overall, in more serious cases and the more people are involved, co-mediation is advisable. It is not only helpful due to increasing work load, but also to reflect upon the process of the case and to support each other on an emotional level. Also, the application of different communication technique, providing a range of options, can only be carried out in a team. Besides the application of various communication techniques during a meeting, breaks, individual talks and the opportunity to split the meeting into several appointments should be offered at any time. Separate meetings with different offenders, or long processes, may make different meetings necessary. This is, as everything else, dependent on the emotional needs of the participants. In direct meetings between victims and offenders it is just as necessary as in group work, to have support persons available, such as chaplains and/or psychologists, if needed. This should not only be the case during the meeting, but also in the aftermath as part of a plan of post-conference support for both parties.

**Recommendation:**

Throughout all different possible procedures, secondary victimization must be avoided through a clear and transparent way of approaching the facilitation of the potential case. The offer of various different procedures, the possibility to adapt the process at any time and the ability to apply different communication techniques during the procedure, should make the process as individually tailored as possible, depending on the needs of each of the participants.

## AFTER RESTORATIVE JUSTICE PROCEDURES

After-care is just as important as preparation. Any kind of restorative justice process can be very exhausting for all those involved, not to forget professionals. Therefore, it must be assured, that some kind of support is available right after the meetings, as well as in a longer term. Separate post-meetings with the participants involved should be arranged to speak about how they have experienced the procedure and what they have gained out of it, or not. Depending on this experience, there may be further interventions to be arranged. It is advisable to carry out some kind of evaluation of the service and to be aware of the satisfaction of participants and possibly adapt the service, in the light of participant feedback, if needed.

## PART 3 – CASE STUDIES

### THAMES VALLEY: RJ INITIATED FROM THE VICTIMS SIDE

In 2008, Sarah, a young woman in her early 20s was murdered by her ex-partner, RW. Their relationship had ended a few days earlier and Sarah had gone to RW's home to retrieve her belongings. During this visit, RW killed Sarah. At his trial, RW was found guilty of murder and sentenced to life imprisonment. Sarah's brother, Adam was 17 at the time. Despite the successful prosecution, Adam felt that many questions about his sister's death remained unanswered; he was curious to know, for example, exactly what happened, what events led up to Sarah's death, what was said, and what had happened the previous weekend when Sarah had been away with RW. In 2013 Adam contacted RW's Offender Manager to say that he wanted to visit RW in prison. This request led to Adam's referral to Thames Valley Victim Led Restorative Justice Project by the Victim Liaison Unit. This was not a straightforward case to work on and there were various issues that needed to be dealt with before a conference could be considered. It was necessary to work closely with prison staff, and preparation of the offender (who was initially assumed to be in denial about his responsibility for the crime) took time. After several months' preparation a date for a restorative justice conference was agreed. The day before the conference was due to take place, the offender pulled out asking if it could be postponed. More work was needed, particularly with RW, but also to provide ongoing support for Adam. Five months later a second date was agreed and the conference went ahead.

From the victim's perspective the conference was successful. To Adam's surprise, RW appeared 'genuine' and 'honest' in his distress about what he admitted he had done, but Adam would not go so far as to call this remorse. There were still questions that remained unanswered after the conference, but Adam was happy to report that he felt 'a bit more at ease about what happened that night'. Moreover, the process of preparing for the conference had also helped Adam and for the first time he felt that he was given a voice and properly listened to. Prior to Adam's request to visit RW, his mother had also tried to meet with the offender. Her attempts had been unsuccessful not least because, at the time, victim led restorative justice was not available in Thames Valley. Following Adam's successful conference he felt able to encourage his mother to have her own restorative justice conference which the offender has agreed to. Adam will also be there as his mother's supporter and he is pleased to have the opportunity to revisit RW and learn more about his sister's death. After the conference Adam acknowledged that there were 'probably millions of questions' he could have asked and that he might 'never get everything he wants'; however, he was certain that the support and preparation he had received had helped him in significant ways and that if he ever wished to meet RW again he would seek to do so through restorative justice.

Key facts:

- Restorative justice can play a crucial role for people bereaved by homicide who very often have a strong need to learn the truth about how their relative died.
- Offenders who are initially regarded as unsuitable to take part in restorative justice because of denial may change over time through careful preparation.
- Preparation takes time and it is important not just that participants are well prepared but that they *feel* well prepared and ready to go ahead.
- One conference may pave the way for further conferences to take place, with other victims (or victims' family members) of the same crime, or for the same victim to re-visit the offender.

Recommendation:

Victim led restorative justice should be promoted as a service that can be of particular value to families bereaved by homicide. Their need to learn the truth about what happened is well documented and the role such information can have in the healing process is widely recognised. In some cases and with appropriate safeguards, restorative justice may be the best, and possibly only, route available to victims' families. It would be valuable to explore further the potential for restorative justice to be delivered through more than one meeting or conference.

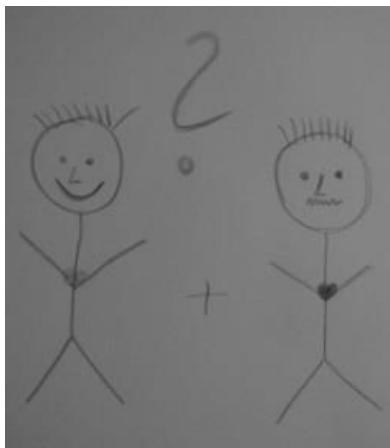
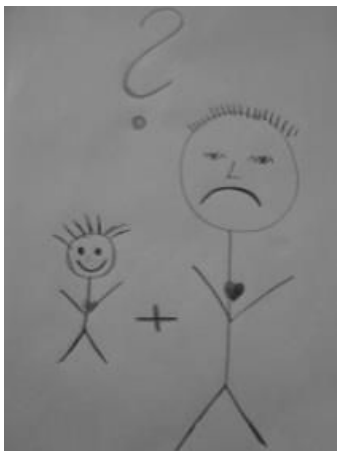


## SCHLESWIG-HOLSTEIN: VICTIM EXPERIENCE IN CRIMINAL-ACT-DIALOGUE GROUP WORK (INCLUDING A MEETING WITH JUVENILE INMATES)

Julia, 27 years, became a victim of serious bodily harm in a night club seven years ago. She decided to join the Criminal-Act-Dialog Group because the victimization is still an issue for her in everyday life and because her offender has never been caught. From the group work with other victims, she expected to find a way to start talking about it and see how others deal with such issues. She wanted to lose fear and try to understand what offenders think. Why do people do such things? She wanted to understand why this has occurred, which motivations lead to such a behavior. Despite initial nervousness, Julia talks about the victimization and its consequences openly in the first group meeting. She describes her severe physical injuries caused by the offence and the long term psychological impact. The years following the victimization, she avoided talking about it, not even with her family, which now appears to her as an additional burden for her and all family members. Only now, years afterwards, she decided to speak about it. In daily life, it is very difficult to explain certain behavior in specific situations to friends, for instance at mass events or parties, where she feels very uncomfortable.

In the second session, the group carried out the 'stone and feather' exercise which brings out some thoughts about the things that made life very difficult after the victimization and those that helped to overcome the pain. Julia explained that her family played a large role in regard to her coping process. On one hand, the presence of her family was very supportive and on the other hand, she experienced her family as controlling, constantly supervising and worrying about her. Also very painful were a lot of questions and sensation seeking of friends and strangers who have heard about what happened through others. Immediately after the victimization, she felt secondarily victimized by police interviewing techniques, as *"they asked questions, I wanted some quietness, I somehow had the role of the offender a little bit. They asked questions where I thought how am I supposed to know?"* (V1) Until today, she reports the pain of not knowing who did it in a small town, where gossip soon spreads and everybody somehow knows about the case. During the group work, the victims image of their, or of an offender, played a large role in preparations for the meeting with the offender group. In a painting exercise, the participants could express their personal image of the offender. This exercise was repeated after the dialogue in prison, in order to see whether the offender image has changed somehow. In explanation of her first painting, Julia states: *"Preferably I would have liked to draw question marks or leave a blank page, he didn't have emotions therefore the black heart, but generally he surely also has emotions and therefore the second person within him that is good"* (V1). Generally her focus is however, on the WHY because the door will stay closed to him personally. Was it because of alcohol, or is he generally an aggressive type of person? He did something that was very painful for her. He does not care about others. However, there is no hatred, because she does not know that person.

She wants to know who it was – that could change everything for her and allow her to deal with it in a better way. She wants to draw the good person on the picture larger (V1).



In the break during the meeting with the offenders, a one-to-one conversation with Julia and Christophe took place. Afterwards, she reports that he wanted to know how she sees him. In response she told him about the drawing and said she presumes that he also has a good side. After that, he immediately felt bad; the acceptance that she expressed towards him has had a strong effect on his emotions. When the exercise was repeated after the meeting, Julia does not hesitate a moment and explains: *“before the visit I would have drawn it large again, now he is smaller, the bad man. That is because I have exposed my feelings and started to speak about it”* (V1). She furthermore said that she *“will not forget this meeting, it is now a little bit easier to speak about the feelings, more relaxed, perhaps through dealing with it and trust in the group.”* She was proud of herself and surprised, but if she had been so well prepared, she would have left the meeting after half an hour. During the meeting she looked at the criminal-act-dialogue group participants and that has helped her to stay strong. Generally, all offenders who participated in the dialogue could have committed a similar offence. This on the one hand made it possible to refer directly to one another’s situation on a very emotional level, but on the other hand it caused her to be in the focus compared to the other victimizations. According to her, she was so nervous in that situation, that she could not think clearly, all had committed bodily harm, all referred to her, she would have wished that there was another victim who felt like her. At the end of the meeting she said: *“Yes, my feelings are pretty mixed up. Today I have for the first time allowed the wall to fall down, symbolically. To speak about the feelings at all, yes I have to deal with that at first now”* (V1).

Two days after the prison visit, the next session was arranged. Not too much time should pass until the next group session because participants have a lot to talk about after such an emotional experience. During this meeting, Julia describes that the dialogue helped her, in that she is now able to talk about the victimization. It is not possible to repress it anymore. *“Today I came the first time without a stomach ache, before the dialogue, it was only hardly possible to bear talking about it. When the offenders talked about their offences, it was difficult to take, I had to control myself”* (V1). Nevertheless, an answer to her question of WHY someone does things like that does not exist. However, perhaps there can be some understanding that there are circumstances, not an excuse, that can lead to such things. For the victims the meeting was also important in that they wished that the offenders could take something positive out of the meeting too; and that they will remember it when it comes to a similar situation.

In the next session, the victims were asked to write a letter to their offenders. Some of them were not able to do that as it would allow the offender to come too close to them and instead put down some central messages. Julia, however, formulated a full letter which is characterized by a very personal style. Several times it was stressed that she does not only see the negative side in him and that she thinks that they share a painful event and memory. As a result of this they are bound together forever, as she does not believe that one of them could ever forget something like that. She writes: *“We both look for ways to forget the experience, but I certainly know, we will not. It will continue to live within us”* (V1). For her, such victimization can never be forgotten. Therefore what is central, is for her to find a way to deal with it and get the possibility to speak about it without being confronted with prejudices and advice. The advice and conversation may certainly be well-intended, but can still be stressful and experienced as an overload of offers of help. Society is not sensitized enough to deal with such issues yet. Furthermore in this session, the participants drew the second image of their offender, as already described above. In order to finish the group work in a positive way and to close up in terms of content in relation to the victimization experiences, the group met up a last time for a dinner together in a good atmosphere.

## PORTUGAL: ACCESSIBILITY OF VICTIMS TO RJ PROCEDURES

Currently, there is a very limited accessibility for victims to restorative justice procedures in Portugal. There may be several reasons for this. Perhaps the most discussed, and the most common, is the lack of information about its benefits, or even about its existence. Concerning the Portuguese reality, this problem is visible mainly at an institutional level. The possibility of referring cases to Restorative Justice (RJ) procedures, more specifically to mediation, is given by the Law 21/2007. An overview of this law shows the virtues of introducing restorative justice procedures in the penal process, giving the victims the opportunity to participate in a restorative process and consequently be repaired in relation to the harm caused by the crime. However, in this context, there still are some barriers concerning accessibility, due to the fact that restorative justice procedures, as mediation, is actually limited to the investigation stage of the criminal process, and only directed to minor and non-severe crimes, such as simple bodily harm, damage to property, or insult. Back in 2004, during the preparation of the mediation law, the possibility of having RJ procedures at all stages of the criminal process and serious crimes was widely discussed among academics, prosecutors, judges, and lawyers. Some of these stakeholders supported this idea. However, it was not legally embraced and was not implemented by the government in the year of 2007. Furthermore, the mediation law delivers mediation referrals to the prosecutor. Victim and offender can demand mediation, but they must do it jointly. Over the last few years, the classification of the nature of some crimes has changed profoundly. The most glaring example is the crime of domestic violence, typified now as a public (serious) crime, while previously it was typified as semi-public crime and before that as a private one. In terms of accessibility to the traditional justice system, one can see substantial advantages with this change, since it is no longer necessary that the victim makes a complaint in order for the public prosecution to initiate the criminal process. On the other hand, this can also be viewed as a limitation in terms of accessibility of victims to RJ procedures, because serious crimes are not legally suitable for mediation. In the end, RJ accessibility is strongly limited to the pre-sentencing level. At post-sentencing level, Portugal is on the opposite side. In fact, since 2009, the penalty execution code allows RJ programs at post-sentencing level that should be implemented by the Directorate-General of Reintegration and the Prison Service. But they only started in 2014, the year in which we began to approach the present Project.

### Accessibility at post-sentencing level:

Portugal is now taking the first steps in this matter. Within the implementation of this Project, we took some of those first steps along with the Directorate-General of Reintegration and Prison Service. The Portuguese partnership developed the Project in two prisons, one for males and another for females. Accessibility and engagement of the victims of those offenders selected to participate in restorative processes under this Project became a problem. We were aware of these potential difficulties from the start. In fact, when we reached the

Directorate-General at the beginning of the Project, one of the main issues discussed was precisely who should reach the victims and how. The difficulties are mainly structural, because there is no department responsible for victims, nor a similar structure inside the Directorate-General of Reintegration and Prison Service. That is a public service whose core business is related to inmates, therefore it is not focused on victims.

As the Project progresses, it came to our knowledge that some victims knocked on the prisons door, because they wanted to confront their offenders. In one concrete case, a victim wanted to show her offender the result of the brutal attack she had suffered. It was important to her that the offender saw how it was to live without one eye. She approached the prison where the offender was, but, at that time, there was no way to provide a RJ procedure. So, an institutional bridge in terms of accessibility and engagement for victim's participation in restorative processes is crucial. The lack of such an institutional bridge was also an issue in relation to our Project development. Nevertheless, the Directorate-General of Reintegration and Prison Service provided precious help to look for victim's identity and contact details in the process of each inmate involved in this project. But again, we had another setback: time. As a matter of fact, that research took a lot of time. Since the Portuguese partner only joined this Project in April 2014, eight months before its conclusion, that represented another difficulty in terms of getting the necessary time for contacting, and preparing the victims for the participation in the restorative processes.

Key facts:

- Victims should have access to restorative justice procedures at all stages of the criminal process, according to the EU-directive 2012/29 of 25 October 2012
- Since the beginning of the criminal process, victims should be informed by the authorities that they may request and have access to a RJ procedure;
- Dissemination of RJ among justice stakeholders (police, judges, prosecutors, lawyers) through seminars, conferences and training is a real need;
- Probation services, prison services and other departments/structures that assume a relevant position on a post-sentencing level in each country should:
  - a) Engage their staff in RJ, offering training on RJ procedures prior to any program involving inmates;
  - b) Have a department with a multidisciplinary team that victims could reach directly or, alternatively, that can be coordinated with victim support agencies.

## CROATIA: MEETING OF TRAFFIC OFFENCE VICTIMS WITH TRAFFIC OFFENCE OFFENDERS IN THE CROATIAN PRISON SYSTEM

In the Prison system of the Republic of Croatia a program has been conducted for adult traffic offenders since 2005, respectively since 2009 in two institutions. Based on knowledge and experience gained through direct work with prisoners during the implementation of this program, there was a need of a comprehensive program that will raise the prisoners' awareness of seeking danger and risk acceptance, motivational, emotional, mental, physical, and social factors that impact on drivers. Therefore, the main traffic program expanded to a program called 'The Treatment of prisoners – traffic offenders'. This program is distinctive by the fact of including experts from different areas, injured parties and family members of victims in traffic offences. Risk factors for committing a crime in traffic could be e.g. the probability of occurrence of adverse consequences and the severity of potential adverse consequences. These are primarily tiredness, stress, use of psychoactive drugs, lack of sleep, night driving, aggressive' driving and others. It also teaches inmates how to adopt a friendly attitude to other road users, collaborate with other drivers, to avoid conflict situations, to react in a socially adaptive manner to conflict situations. It promotes the understanding of the impact of attitudes and motivation on driving behavior and the development of positive attitudes towards traffic safety. These risks are associated with dangers, e.g. with the existence of objective and subjective factors in the traffic system which can lead to adverse consequences. The objective risk is evaluated on the basis of objective data characteristics for a particular traffic situation. Subjective risks refer to individual assessment in terms of the driver's identification and assessment of risks and dangers of a specific traffic situation. Based on the perception of risk, in accordance with the motivational factors (intentions, goals, needs) and abilities, a decision is made about a given traffic situation. Recognizing the dangers in traffic and driving that is adjusted to traffic conditions is the foundation of safe driver behavior in traffic. It is necessary to become aware of the existence of subjective risk factors. The subjective risk factors are the point of entry in order to effect a reduction of unwanted traffic events. It is obligatory to lower the difference between objective and subjective risks. The majority of researched factors are (Vallet, 2001; Aberg, 2001): delusions of perceptual and cognitive processes; a subjective sense of control of the situation; decisions and driver behavior; low traffic control; examples, norms, images, fatigue factor; the influence of psychoactive substances; sleep disorders; and particular motivations when driving (competition, aggressive driving, self-affirmation and hedonistic motives).

Focusing on driving as a majorly socio-psychological activity led us to a psychological approach in our work (Mikus and Franjić, 2010). The intention of 'the treatment of prisoners – traffic offenders' was to teach the perpetrators driving skills and knowledge in driving schools. But also to teach responsible and

conscientious attitudes towards themselves and towards other road users are being taught so that they might be adopted throughout life.

Following the aim of increasing the responsible behavior of drivers in order to prevent traffic accidents, different programs were implemented. Inside prison a group work, concentrating on self-experience and self-expression, with traffic-offenders took place. In several high schools a prevention program for young and prospective drivers called 'life- changing second' was initiated with the help of an association of families which had lost a person in a traffic accident. This program involved inmates, traffic offenders, victims of traffic accidents and family members of victims. Moreover traffic offenders, direct victims and indirect victims, i.e. family members joined preventive workshops, organized by and in cooperation with Association of the families of traffic casualties. Such workshops contribute to confronting and working through emotions related to the psychosocial consequences of road accidents. Also, they develop empathy for the victims of traffic accidents and recognize the importance of expressing regret and help reduce the damage caused to victims of traffic accidents.

The offender cannot revive the victim, whose death he caused, but with his experience and by realizing his own mistake, the chance of recidivism is lowered. He might help others and maybe save somebody else's life. By describing their pain, the victims, direct and indirect, have an impact on the offender not to commit a traffic offence again. Their common aim is to prevent more casualties and to raise awareness that in future they could be on the other side. Motivational and emotional factors are the propellant mechanisms that lead to behavioral changes. They are applied by facing the offenders and the victims (direct and indirect) as two opposite sides. The impressions of all involved in these workshops are very positive with the conclusion that they are very emotionally hard for both sides, but that they should be continued (Mikuš and Franjić, 2010).

Years of experience in working with traffic offenders in the Croatian prison system have shown that there is a need for the introduction of the psychosocial approach. This is an upgrade of the fundamental transport program which emphasizes the importance of regulation of the psychological mechanism of assessing the danger or risk acceptance, awareness and self-assessment of subjective factors which are the key risk factors in relation to safe driving. Key elements are: the importance of cooperation and communication with other road users; the development of positive attitudes and motivation in relation to road safety; gaining insight into their own behavior; and coping with the serious consequences they caused. Through the treatment of traffic offenders, these inmates are taught about a large number of subjective risk factors which, at a given time, may lead to poor judgment and wrong decisions, in order to raise awareness of their existence. Many years of good cooperation with the Association of families of persons killed in traffic has resulted in the implementation of two different types of prevention workshops through which

prisoners are faced and worked through the emotions related to the psychosocial consequences of accidents. These emotions are: a sense of guilt, loss, adjustment disorder, post-traumatic stress disorder. They also develop empathy for the victims of traffic accidents and recognize the importance of expressing regret and helping in reducing the damage caused to victims of traffic accidents.



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